



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Local Business Preference Program	Number 13-20
Originating Department Office of Procurement	Effective Date August 1, 2020

Montgomery County Regulation on:

LOCAL BUSINESS PREFERENCE PROGRAM

Issued by: County Executive

COMCOR 11B.92

Authority: Code Section 11B Article XXI

Supersedes: None

Council Review Method (2) Under Code Section 2A-15

Register Vol. 37, Issue 7

Comment Deadline: July 31, 2020

Effective Date: August 1, 2020

Summary: This Regulation establishes a Local Business Preference Program for certain County contracts

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Background: Montgomery County Code 11B Article XXI. Local Preference Program requires that a Local Business Preference Program for certain County contracts established by executive regulation under method (2).

COMCOR 11B.92.01. Local Business Preference Program

11B.92.01.01 Authority

In accordance with the requirements of Montgomery County Code § 11B-8, and the Program authorized under Chapter 11B, Article XXI of the County Code, as codified at §§ 11B-92 through 98, this Executive Regulation establishes definitions, processes, and procedures to administer and implement the Local Business Preference Program.



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11B.92.01.02 Definitions

The Definitions noted in the County Procurement Law and related Regulation apply to this Regulation, unless stated otherwise.

(a) Broker - A person that conducts business (other than real estate, investment, or insurance sales) on a pass-through basis and with respect to:

(i) Supplies:

- a. Does not own, operate, or maintain a place of business in which supplies of the general character required under the contract are kept in stock in the regular course of business,
- b. Does not regularly assume physical custody or possession of supplies of comparable character to those offered to the County, or
- c. Exclusively acts as a middleman in the provision of supplies offered to the County;

or

(ii) Services: does not regularly maintain the capability, capacity, training, experience, and applicable regulatory licensing to directly perform the principal tasks of a contract with the County, and acquires the services elsewhere, for the benefit of the County.

(b) Director - For purposes of this Regulation related to the Local Business Preference Program, the term “Director” means the Director of the Office of Procurement.

(c) Department - For purposes of this Regulation related to the Local Business Preference Program, the term “Department” means the Office of Procurement.

(d) Employment or Employ - The measurement of the number of people a business did or did not employ is calculated on a “Full-Time Equivalent” (FTE) basis. Any full-time, part-time, temporary,



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or contractual employee, who is not a broker, including an employee of a temporary help firm or a subcontractor, working for and receiving compensation from the business, will be included in determining the number of people a business did or did not employ for a particular period. The averaged sum of the specific FTE employment levels for a business at the end of each calendar quarter (i.e., March 31, June 30, September 30 and December 31) will determine the business's annual FTE employment level.

(e) Local Business - A business, other than a broker, that:

- (i) has its principal place of business in the County;
- (ii) is not a subsidiary of another business; and
- (iii) meets criteria noted in this Regulation, including those in 11B.92.01.03 below.

(f) Local Business Certification Application - An on-line based application system that resides in the County's web site, by which a Contractor completes an on-line application, and submits it to the Director for certification as a Local Business.

(g) Local Business Certification Database - A database that resides in the County's web site that stores the list of Local Business applicants, and enables search by the business name, industry sector, and the County commodity code.

(h) Solicitation – For purposes of this legislation, a Request for Proposal or Invitation for Bid issued under Section 4 of these Regulations.

(i) Subsidiary of Another Business - A business controlled by another business that owns all or a majority of its shares or interest.

11B.92.01.03 Criteria

To qualify as a Local Business, a business must: meet the definition in 11B.92.01.02 above.



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11B.92.01.04 Contract Under Local Business Preference Program

(a) Any procurement under this Program is subject to all requirements and procedures otherwise applicable to the procurement under the Procurement Regulations. Except as otherwise provided by law, the provisions of this Regulation supplement, but do not replace, other provisions of, and definitions in, the County's Procurement Regulations and Procurement Law.

11B.92.01.05 Procedures and Program Operations

(a) A business must affirm and provide supporting documentation to the Director to show that it is a Local Business as defined herein when required or requested by the Director. The Local Business must complete any required Local Business Certification Application and any supporting affidavit required by the Director to demonstrate to the Director that it is a Local Business.

(b) The Local Business must be in compliance with applicable Federal, State and County laws and regulations, including those relating to permits, licenses, and zoning that apply to operating the business. In addition, the business must operate in or from a physical location, and, among other things, reference by the business to a post office box or virtual office is insufficient to substantiate a physical location from which the business operates.

(c) The Director may waive a bid or proposal preference under this Section in a solicitation if the Director finds that a preference would result in the loss to the County of Federal or State funds.

(d) Montgomery County Code, Chapter 11B, Article XXI, does not give any person, including a Local Business, any right or status, including standing, to challenge the award of a contract under the County procurement system. That Article is enforceable only through the oversight function of the Chief Administrative Officer and the County Council.

(e) Administration and Implementation: The following delineates the departmental responsibilities to administer and implement the Program:

(1) The Department administers and implements the Program. It must compile and maintain a comprehensive vendor list of Local Business applicants that have completed and submitted the on-line Local Business Certification Application, and post that list on the County's web site.



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Subject Local Business Preference Program	Number 13-20
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- a. Certification: To be considered for preference points in connection with a solicitation, a local business must either: (1) have a valid, unexpired Local Business Certification; or (2) have properly completed and submitted the on-line vendor registration, including the Local Business Certification Application on the County's web site, prior to the applicable solicitation due date and time.
 1. The Director will review the application and approve or deny the Local Business Certification.
 2. The Certification expires 3 years after the date of certification. The vendor is responsible to renew their certifications.
- b. Competitive sealed proposals. The Director must include an evaluation factor awarding additional points for a proposal from a Local Business worth 10% of the total available points in a Request for Proposals issued under Section 11B-10.
- c. Competitive sealed bids. Except as noted below, the Director must adjust the bid of a Local Business who submits a bid in response to an Invitation for Bid issued under Section 11B-9:
 1. By reducing the bid price(s) by a factor of 10%, but not to exceed \$200,000, for the purposes of evaluation and award only; or
 2. If a Local Business is eligible for a reciprocal preference pursuant to Section 11B-9(j), the bid of the Local Business must be adjusted by that reciprocal preference if it exceeds the 10% preference factor. The Local Business preference points authorized under this Article must not be combined with reciprocal preference points authorized under Section 11B-9(j).
 - a. If a Local Business intends to seek a reciprocal preference pursuant to Section 11B-9(j), the Local Business must affirmatively notify the Office of Procurement of the request for a reciprocal preference and provide the Office of Procurement with documentation in support of the request.
 3. Invitations for Bids that are not based on aggregate total, such as those awarded by line item or by percentage discount or markup, and others similarly awarded, may be exempted from this Regulation by the Director.



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- d. Market the Program and Provide Outreach Efforts to Local Businesses by:
1. Advertising the Program in the media, as deemed necessary by the Director, to increase the public awareness of the Program.
 2. Preparing a Program brochure and other necessary collateral material, and distributing these materials in strategic locations, as determined by the Director, to enable easy and timely access by businesses in the County.
 3. Participating in County business events, at least three times a year, to market the Program.
 4. Working with business resource groups in the County such as the Chambers of Commerce to disseminate Program information to the member businesses.
 5. Preparing a press release once a year to publicize the Program results.
- e. Reporting: By October 31 each year, the Director must report to the Council on the Local Business Preference Program. This report must include: the number and solicitation type of contracts that were awarded pursuant to the Program during the previous fiscal year; the dollar amount of all Purchase Order encumbrances issued during the previous fiscal year on contracts that were awarded pursuant to the Program; information about how these numbers have changed from the preceding fiscal year; and, the extent of outreach efforts by the Director.

11B.92.01.06 Penalty; Enforcement

In addition to that stated under County Law, or a particular contract, any person who willfully makes a false statement to a County official or employee for the purpose of influencing participation in the Program; or fraudulently obtains, attempts to obtain, or aid another person in fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under this Regulation constitutes a



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material breach of the contract. Accordingly the County may then exercise any available remedy, including, terminating the contract for default.

- (a) A person must not:
 - (1) fraudulently obtain or retain, attempt to obtain or retain, or aid another person in fraudulently obtaining or retaining, or attempting to obtain or retain, certification as a Local Business;
 - (2) willfully make a false statement to a County official or employee for the purpose of influencing the certification of an entity as a Local Business; or
 - (3) fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining, or attempting to obtain, public monies to which the person is not entitled under this Article.
- (b) A violation of this Article:
 - (1) is a class A violation; and
 - (2) may disqualify the violator from doing business with the County for up to 2 years.

11B.92.01.07 Effective Date

This Executive Regulation takes effect upon approval by the County Council.

Approved:

Marc Elrich, County Executive

Date

Approved as to form and legality
Office of the County Attorney:

June 26, 2020

Megan Greene, Assoc. County Attorney

Date