



MEMORANDUM REPORT

August 21, 2006

TO: County Council

FROM: ^{CA} Craig Howard, Legislative Analyst
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Office of Legislative Oversight

SUBJECT: OLO Memorandum Report 2006-9: *Planning for the Legally-Required Evaluation of the Local Small Business Reserve Program*

In April 2005, the Council enacted legislation that established Montgomery County's Local Small Business Reserve Program (LSBRP or Program). The law requires that the Office of Legislative Oversight (OLO) begin a review of the LSBRP one year after implementation of the program begins, and report to the Council on the effectiveness of the program. By law, unless the Council affirmatively acts to extend the program, the LSBRP expires on December 31, 2009.

This memorandum report updates the Council on OLO's planning efforts related to the future evaluation of LSBRP. It is organized into four sections as follows:

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PART A. OVERVIEW OF ASSIGNMENT AND LEGISLATIVE INTENT OF PROGRAM

On April 12, 2005, the Montgomery County Council enacted Bill #23-04, *Contracts and Procurement – Local Small Business Reserve Program*. The County Executive signed the bill into law on April 25, 2005. The legislation and Executive Regulations (approved by the Council under Method 2) to implement the program went into effect on January 1, 2006.

The legislation mandates that “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.” Unless the Council affirmatively acts to extend the program, the LSBRP and Regulations both expire on December 31, 2009.

The legislation also mandates that, by November 30 each year, the Director of the Department of Economic Development (DED) must report to the Council on the Program. This report must include:

- The number, type, and dollar amount of contracts awarded under the Program during the preceding fiscal year;
- The number, type, and dollar amount of each waiver pertaining from the Program granted by a department director or the Chief Administrative Officer;
- Information about how these numbers have changed from the preceding fiscal year; and
- The extent of outreach efforts by DED.¹

As summarized by Council staff in the final worksession packet on Bill #23-04, the Council’s legislative intent in establishing the LSBRP is to “. . . enhance the competitiveness of County-based small businesses by creating a separate defined market in which small businesses will compete against each other, not against larger firms, for County contracts; broaden the pool of local small vendors doing business with the County, and encourage the County’s economic growth by enhancing the business climate for local small businesses.”²

The Local Small Business Reserve Program Regulation defines a “local small business” as one that:

- Is independently owned and operated;
- Is not a subsidiary of another business;
- Generates a significant amount of economic activity in the County; and
- Meets the criteria, size, and gross sales amounts found in the Regulation.³

¹ Montgomery County Code § 11B-69(b); Montgomery County Executive Regulations 21-05AM § 5(i)(d).

² April 12, 2005 County Council Worksession Packet : *Agenda Item #8, Bill 23-04, Contracts and Procurement – Local Small Business Reserve Program*, pg. 2

³ Montgomery County Code § 11B-65(c); Montgomery County Executive Regulations 21-05AM § 2(i).

The Regulation further defines a local small business by establishing limits: 1) on the number of employees in a business *or* 2) on the average gross sales of the business over three fiscal years. The size and sales limits, as outlined in Regulation, differ for businesses based on five business types: wholesale, retail, manufacturing, services, or construction operations.⁴

The Local Small Business Reserve Program (LSBRP or Program) has two primary components. The first component requires each County department to award at least 10 percent of the department's eligible contracts for goods, services, or construction to local small businesses.⁵ The second requires County departments to post each planned purchase valued between \$5,000 to \$25,000 on a County web site for five days before making a purchase or entering into a contract.⁶

PART B. OVERVIEW OF PROGRAM IMPLEMENTATION

As of August 2006, the Department of Economic Development (DED) has taken a series of steps to implement the Local Small Business Reserve Program. This section provides a brief overview of DED's efforts, which include:

- Developing Internet and intranet sites for the LSBRP, working in conjunction with the Department of Technology Services;
- Educating and working with County staff across the department to meet the requirements of the Program;
- Providing outreach about the Program to businesses and Chambers of Commerce in the community; and
- Assisting businesses to register and become certified for the Program.

This section also describes DED's staffing and funding for the Program and OLO's actions with regard to evaluation planning.

Development of LSBRP Web Sites. As part of the LSBRP implementation, DED and DTS developed two web sites: an Internet web site where small businesses can register for the Program; and an intranet web site for County departments to administer, record, and track LSBRP activities. Businesses began registering on the Internet web site in January 2006; the intranet web site went live on March 6, 2006.

⁴ If a business engages in more than one type of operation, the combined business operations must fall within the size or sales criteria limits of the operation with the higher limits. Montgomery County Executive Regulations 21-05AM § 3(g).

⁵ Montgomery County Code § 11B-66.

⁶ Montgomery County Executive Regulations 21-05AM § 5(h)(ii)(d).

The Internet website serves four primary functions. It:

- Provides an overview of the Program, including eligibility criteria;
- Allows businesses to register for the Program;
- Provides contact data for registered businesses and their commodity/service category in order to facilitate networking; and
- Provides a link to the Office of Procurement web site where all County solicitations are posted. The Office of Procurement's web site identifies when a procurement is restricted to LSBRP-eligible vendors.

Web site users can search for vendors by: commodity/service provided; name; address; or business type (wholesale, retail, manufacturing, service, or construction). Businesses registering on the web site are asked a series of questions to determine whether they meet the criteria for a local small business. If they do not meet the criteria, they cannot complete the registration.

The intranet web site serves several informational and administrative functions for County departments. It:

- Provides information about the Program and describes departmental responsibilities under the LSBRP;
- Allows departments to search LSBRP-registered vendors by commodity and other categories to determine whether a sufficient number of vendors exist to designate a solicitation as part of the LSBRP;
- Allows departments to input and track information on procurements or other purchases in excess of \$5,000 (required) and under \$5,000 (optional), including whether the procurement was awarded to a business qualifying as a LSBRP; and
- Provides a reporting function that allows departments to easily summarize data on the type, amount, and LSBRP status of contracts issued each year in accordance with the Executive Regulation and County Code requirements.

Educating Departments about Program Requirements. Between January and August 2006, DED held seven training and feedback sessions attended by department Contract Administrators. During these sessions, DED staff:

- Explained requirements for complying with the Program;
- Discussed how to use the Internet and intranet web sites;
- Reviewed outreach efforts DED is making to the business community; and
- Obtained feedback on the intranet web site and other Program issues.

Because the Program began in the middle of FY06, DED wanted to allow departments to get used to the program requirements. As a result, DED required departments to show "good faith" efforts to comply with the Program requirements in FY06 and will require departments to meet the 10 percent LSBRP procurement standard beginning in FY07.

DED Outreach to the Local Small Business Community. DED reports conducting the following outreach activities for local small businesses as of August 2006:

- Gave presentations to over 360 individuals at 11 meetings hosted by various business organizations in the County;
- Attended 12 procurement fairs;
- Published 20 advertisements for the LSBRP in the Financial Gazette and other business journals;
- Developed promotional materials and distributed them to the Chambers of Commerce and Montgomery County libraries;
- Participated in two cable television programs that focused on the LSBRP;
- Provided training to Montgomery County librarians who assist business owners register for the LSBRP; and
- Developed plans to publish a newsletter for vendors starting in September 2006.

Certification of Businesses for Participation in LSBRP. When businesses register on the DED web site, they self-certify that they meet the requirements for a local small business. Businesses must annually renew their self-certification. Before a County department recommends a business for a LSBRP contract award, the business must submit documentation to DED verifying that it meets the criteria for a local small business. If it meets the local small business criteria, DED will certify the business for participation in the LSBRP and the business is eligible to receive the contract award.

As of August 4, 2006, 490 businesses are registered for the Program on the DED Internet web site. Also, as of early August, DED had verified the eligibility of eight businesses to receive contract awards under the Program.

Staffing and Funding. The Council appropriated FY06 funding to the Department of Economic Development for the following items associated with start-up of the Local Small Business Reserve Program:

\$ 80,000	Salary and benefits for a Program Manager (0.9 Workyear)
\$ 50,000	Information Technology contract services
<u>\$100,000</u>	Operating expenses
\$230,000	FY06 Total

In the FY07 approved budget, funding for the Local Small Business Reserve Program includes the addition of three workyears (WYs) – an IT Specialist, a Business Development Specialist, and an Office Services Coordinator – as well as annualization of the Program Manager position. The Council lapsed each of the three new positions by a 0.2 WY (for a total lapse calculation of a 0.6 WY).

As a result, DED’s FY07 approved funding associated with the Local Small Business Reserve Program is:

\$288,469	Salaries and benefits for 3.4 Workyears
<u>\$ 66,000</u>	Operating expenses
\$354,469	FY07 Total

In addition, in FY07 the Council approved the Office of Procurement's request to expand a part-time Program Manager position to a full-time position related to implementing the Local Small Business Reserve Program. The additional personnel cost in FY07 to make the position full-time is \$41,580. According to the Office of Procurement, this position expansion was needed to:

“ . . . ensure that living wage and [LSBRP] certification does not conflict with current procurement regulations; provide assistance to using departments regarding procurement rules related to the [LSBRP] requirements; and provide liaison services to ensure that using departments encumber appropriate funding to meet the [LSBRP] dollar limit.”⁷

Office of Legislative Oversight's Actions. OLO staff attended several meetings and briefings related to the development and implementation of the Local Small Business Reserve Program. In particular, OLO staff provided feedback to DED and DTS staff on the design of the Intranet Local Small Business Reserve Program Monitoring Database. OLO's participation to date was focused on ensuring that the database captured the information that will be needed for the future evaluation of the LSBRP.

At DED's request, OLO will be assisting DED develop a survey that DED will distribute to department staff and registered small businesses. The survey will be designed to gauge initial assessments of the Program's implementation, opinions on information received about the Program, and feedback on the form and content of the LSBRP web sites.

PART C. PARAMETERS OF THE FUTURE PROGRAM EVALUATION

The stated legislative intent of the Local Small Business Reserve Program is to “. . . enhance the competitiveness of County-based small businesses by creating a separate defined market in which small businesses will compete against each other, not against larger firms, for County contracts; broaden the pool of local small vendors doing business with the County, and encourage the County's economic growth by enhancing the business climate for local small businesses.”⁸ Based on the data DED will be collecting, OLO's evaluation of the LSBRP will be able to examine indicators of program effectiveness since the Program's implementation. In particular, OLO's evaluation will examine:

- Annual trends in opportunities for small businesses since implementation of the Program, both in terms of total procurement dollars received and percent of total procurements received;
- Annual small business procurement trends by commodity/service provided and by business type;

⁷ May 9, 2006 County Council Worksession Packet: *Agenda Item #29, FY07 Operating Budget – Office of Procurement*, p.4.

⁸ April 12, 2005 County Council Worksession Packet : *Agenda Item #8, Bill 23-04, Contracts and Procurement – Local Small Business Reserve Program*, pg. 2

- Whether County departments have awarded 10 percent of their eligible contracts to local small businesses;
- Reasons using departments did not meet the 10 percent requirement, if applicable;
- Annual number, value, and types of procurements exempt from the Program;
- Qualitative feedback from County staff on the strengths and weaknesses of the Program; and
- Qualitative feedback from registered businesses on the strengths and weaknesses of the Program.

The absence of baseline data and its implications for OLO's evaluation. A future evaluation will not be able to compare data on small business opportunities before implementation of the LSBRP with data on opportunities after implementation of the LSBRP. As noted previously, a business must meet specific requirements related to both size and sales to qualify as a "small business" under the Program. According to the Office of Procurement, no County department recorded this size and sales data for businesses receiving County procurements before implementation of this Program.

From a program evaluation perspective, this means that no baseline data are available on small businesses (as defined by the LSBRP) that received County procurement dollars before the implementation of the Program. As a result, an LSBRP evaluation will only be able to analyze the expansion of opportunities for local small businesses during each year after the Program was initially implemented.

LSBRP Database. The data DED is collecting for the LSBRP will allow OLO to examine trends since implementation of the program. DED's Local Small Business Reserve Program's monitoring database is set up to indicate, for each department transaction over \$5,000, whether:

- The procurement was designated as an LSBRP-restricted contract and was awarded to an LSBRP vendor;
- The procurement was not designated as an LSBRP-restricted contract but was awarded to an LSBRP vendor;
- The procurement was not designated as an LSBRP-restricted contract, was not awarded to an LSBRP vendor, and was not exempt from the LSBRP;
- The procurement was designated as an LSBRP-restricted contract but was not awarded to an LSBRP vendor due to a lack of responses; or
- The contract or transaction was exempt under the LSBRP regulations and the reason why.⁹

While this information is required for all transactions over \$5,000, departments can enter the same information for transactions under \$5,000. Transactions under the \$5,000 threshold that go to LSBRP vendors count towards a department's 10 percent requirement.

⁹ The exemption categories in the LSBRP database are: 1) conflict with a State, federal, or local law or a grant requirement; 2) preexisting contract; 3) non-competitive contract; 4) emergency procurement; 5) waiver granted by the CAO; 6) no Local Small Business is qualified or able to perform the contract as determined by the head of the Using Department; and 7) procurement exceeds \$10 million.

PART D. NEXT STEPS

This section details three recommended “next steps” related to OLO’s Local Small Business Reserve Program evaluation planning.

- **OLO recommends the target date for a completed evaluation of the Local Small Business Reserve Program be September 2009.**

The Local Small Business Reserve Program’s enabling legislation mandates that “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.” OLO recommends that it provide the Council with its final evaluation report in September of 2009.

By that time, the County will have three years of data from the LSBRP. This time frame will allow OLO to conduct a comprehensive evaluation of the Program, based on three years of program data and trends. Additionally, Office of Procurement staff report that many County procurements extend over a three-year periods (an initial contract year followed by two renewal years). The three years of LSBRP program data will, according to Office of Procurement staff, cover a full “cycle” of County procurements.

A target completed date of September 2009 will also provide the County Council with sufficient time to review the evaluation results, and decide whether to extend the LSBRP beyond its current expiration date of December 31, 2009.

- **OLO recommends that the Council continue to include LSBRP evaluation planning on OLO’s annual Work Program to monitor data being collected by Program staff.**

Similar to other OLO projects that include follow-up work or monitoring in future fiscal years, OLO recommends that the Council ask OLO to continue monitoring LSBRP data collection efforts in the fiscal years leading up to a final evaluation report. Including this assignment will also set-aside staff time for working with DED to identify new and different types of data that might be useful for evaluation purposes.

- **OLO recommends that the Council seek recommendations from the Department of Economic Development on an annual basis for possible changes to the law or regulations to improve the LSBRP.**

As reviewed earlier, DED staff are making a concerted effort to obtain feedback on the Program from both using departments and participating local small businesses. As part of DED’s plan to annually report LSBRP program results to the Council, the Council should request that DED include any recommendations on changes to the LSBRP law or regulations that could enhance the Program.