

Evaluation of the Local Small Business Reserve Program



**OFFICE OF LEGISLATIVE OVERSIGHT
REPORT NUMBER 2010-4**

December 8, 2009

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EVALUATION OF THE LOCAL SMALL BUSINESS RESERVE PROGRAM
OFFICE OF LEGISLATIVE OVERSIGHT REPORT 2010-4 / DECEMBER 8, 2009

OVERVIEW

In April 2005, the County Council adopted Bill 23-04 to establish the Local Small Business Reserve Program (LSBRP). The legislative intent of the new program was to enhance the business climate for County-based small businesses and broaden the pool of local small businesses doing business with the County. The law:

- Authorized a process for reserving County contracts for bidding only by local small businesses.
- Required all County departments to award 10% of *eligible* contract dollars to local small businesses.
- Exempted certain procurements from the 10% requirement, e.g., single procurements greater than \$10 million; pre-existing contracts; contracts for which there are no qualified local small businesses.

The legislation and an accompanying Executive Regulation also set eligibility criteria for local small businesses, which included a maximum number of employees (by type of business) and maximum gross sales.

In March 2009, as part of the County Executive's Economic Assistance Plan, the Council approved changes to the parameters of the LSBRP. The program amendments increased the size limits for local small businesses and doubled (from 10-20%) the percent of *eligible* contract dollars that each department must award to local small businesses. In addition, the Director of the Department of General Services must now approve exemptions from the program based on the reason that there is no qualified local small business available.

The initial law creating the LSBRP established a program sunset date of December 31, 2009. The amendments to the law enacted earlier this year (Bill 3-09) extended the sunset date for the program to December 31, 2012.

PROGRAM RESULTS

In FY07, LSBRP vendors received contracts worth a total of \$11.5 million, or 19.2% of *eligible* contract dollars. In FY08, LSBRP vendors received contracts worth \$11.8 million, or 14.8% of *eligible* contract dollars.

Value of County Contracts	FY07		FY08	
	\$ in millions	Percent	\$ in millions	Percent
Total Amount Eligible for LSBRP	\$59.6	100%	\$80.1	100%
Portion Awarded to LSBRP Vendors	\$11.5	19.2%	\$11.8	14.8%

These data demonstrate that the County Government met the statutory requirement to award at least 10% of *eligible* contract dollars to local small businesses. However, the following facts suggest that compliance with the 10% procurement goal does not translate into an overall finding that the LSBRP met the legislative goals identified when the program was established.

Only a fraction of eligible local small businesses registered to participate. Between January 2006 and June 2009, a total of 1,540 local small businesses registered with the program. This represents only a fraction of the more than 20,000 businesses in the County that meet the program's eligibility criteria for the program.

Almost all of the contract dollars awarded to LSBRP vendors resulted from regular procurements, not the contract reserve process. In FY07, only 1.2% of the \$11.5 million in contracts awarded to LSBRP vendors resulted from use of the contract reserve process; in FY08, the value of contracts awarded through the reserve process increased slightly, but still only to 3.1% of the total \$11.8 million awarded to LSBRP vendors.

More than 90% of the County Government's total contract spending was exempted from the LSBRP. In FY07, \$959.5 million, or 94% of the County Government's approximately \$1 billion in contract purchases, was exempted from the LSBRP. In FY08, the amount exempted was \$904.8 million, or 92% of the total. The three most commonly cited reasons for exempting contracts were: the contract was in place before the LSBRP was established; no local small business was deemed qualified; or that the contract was awarded non-competitively.

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PERSONNEL AND OPERATING COSTS

Since 2005, three different offices have been responsible for administering the LSBRP. The program was initially assigned to the Department of Economic Development. In January 2008, the program was transferred to the Office of Procurement. In July 2008, responsibility for LSBRP was transferred again, this time to its current location in the Department of General Services Office of Business Relations and Compliance.

The primary staff activities associated with managing the program are conducting outreach to the business community; assisting contract administrators across County Government to identify contracts for reserved bidding by local small businesses; collecting program data; and compiling the annual report to the Council.

Over the past three years, the cost of personnel and operating costs dedicated to managing the LSBRP has ranged from \$209K to \$362K. These estimated costs do not include the staff time spent by contract administrators across all other County Government departments to implement the program.

Personnel and Operating Costs of Administering the Local Small Business Reserve Program, FY07-FY10			
FY07	FY08	FY09	FY10 (Budgeted)
\$240,000	\$209,000	\$362,000	\$211,000

FEEDBACK FROM THE BUSINESS COMMUNITY AND COUNTY GOVERNMENT STAFF

OLO's online survey of local small businesses and interviews with representatives of the business community evidenced support for the concept of the LSBRP, but disappointment with how the program has worked in practice. In particular, small business owners had expected that LSBRP would result in more opportunities to bid on reserved contracts and that these contracts would be worth higher amounts. Also, business owners thought that attention should be paid to better matching available vendors with the County's purchasing needs.

OLO interviewed contract administrators who implement the LSBRP in 13 County Government departments. Although most departments had met the program target of purchasing 10% from local small businesses, contract staff expressed some concern about meeting the new 20% requirement. The most common reason given for not reserving more contracts through the LSBRP was the limited vendor pool. Contract administrators also voiced frustration with the LSBRP database, describing it as confusing and difficult to work with.

CHALLENGES TO DETERMINING PROGRAM EFFECTIVENESS

The following factors made it difficult for OLO to make a final determination about the effectiveness of the Local Small Business Reserve Program.

- **Absence of data on all County Government procurements.** To date, the County has only collected data on awards to local small businesses on contracts affected by the LSBRP program. Because such a large portion of all County Government contracts (90%) was deemed exempt from the LSBRP, it is not known how much of the \$900 million in exempt County Government contracts each year went to local small businesses through the regular procurement process.
- **Only two years of data combined with recent program changes.** Earlier this year, Bill 3-09 made significant changes to the parameters of the LSBRP program; it is premature to assess the impact of these changes. Recently enacted program changes combined with the availability of only two full years of program data (FY07 & FY08) limit the ability to draw conclusions about program accomplishments.

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COMPARATIVE INFORMATION

The State of Maryland established a small business reserve program in 2004 that requires certain State agencies to award 10% of contract dollars to small businesses. Reports on the results of the State's program show that, on average, participating agencies have awarded about 6% of contract dollars to small businesses under this program.

Although Montgomery County's Local Small Business Reserve Program was initially modeled after the State of Maryland program, there are significant differences between the two programs:

- The State program does not limit program eligibility to small businesses located in Maryland; in comparison, the County's program only applies to small businesses located in the County.
- The State's eligibility requirements for businesses are based on *both* number of employees *and* gross sales, while the County bases eligibility on *either* number of employees *or* gross sales.
- The State program requires 10% of contract dollars spent by certain State agencies to be awarded to small businesses; in comparison, (since the law was amended in 2009) Montgomery County's program requires 20% of eligible contract dollars spent by all County departments.
- The State program identifies one category of procurement as exempt from the program. In comparison, the County Government's law identifies seven exemption categories.

OLO also compiled information about small business procurement programs offered by the Federal Government and other governments in the Washington, D.C. area. In addition to set-asides, programs included:

- Price preferences for local small businesses;
- Mandatory local small business subcontracting goals on contracts over a certain amount;
- Reserving a contract solicited through the regular procurement process for local small businesses, if a minimum number of qualified local small businesses bid on the contract; and
- Reducing or waiving requirements for bonding or insurance to contract with otherwise-qualified local small businesses.

GOALS OF THE LOCAL SMALL BUSINESS RESERVE PROGRAM

The table below summarizes the program's goals, as currently found both in the legislative record and in the legislation that established the Local Small Business Reserve Program.

LSBRP Program Goal	Source
Award at least 10 percent (now 20%) of "eligible" contract dollars for goods, services, or construction to local small businesses.	Legislation
Enhance the competitiveness of County-based small businesses by creating a separate market where small business can compete against each other rather than against larger firms for procurement opportunities.	Legislative Record
Broaden the pool of local small vendors doing business with the County.	Legislative Record
Encourage the County's economic growth by enhancing the business climate for local small businesses.	Legislative Record

RECOMMENDATIONS

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As reviewed in the report, the absence of comprehensive procurement data and recent changes to the structure of the Local Small Business Reserve Program make it difficult to draw definitive conclusions about program effectiveness. Further, even though the County Government exceeded the 10% target set for awarding *eligible* contract dollars to local small businesses, other program results – the small number of registered businesses, the large portion of contract exemptions, the rarely used reserve process – raise questions about whether the legislative goals of the program were accomplished.

OLO's recommendations for Council action focus on compiling the information needed to make informed judgments about the effectiveness of the LSBRP and decisions about the future structure of the program, e.g., the contract reserve mechanism, mandated targets, criteria for exemptions.

Recommendation #1: Decide the future of the LSBRP based upon a complete picture of all County Government purchases from local small businesses.

In the course of reviewing the Local Small Business Review Program, OLO found that a substantial gap of knowledge exists about County Government purchases from local small businesses. Because 90% of the County's procurement dollars were exempted from the LSBRP, the data tracked to date about the County Government's purchases from local small businesses only reflects information on about 10% of the County's contract purchases. Further the data do not take into account local small businesses that are hired as subcontractors on larger County contracts.

OLO recommends that the Council's future decisions about the LSBRP be based on the full picture of the County Government's procurements from local small businesses. OLO also recommends that the Council request a companion report on the contracts awarded to locally-based non-profit organizations.

Recognizing that it will take some time to collect these data, OLO recommends that the Council ask the Chief Administrative Officer to provide a report on all contract awards to local small businesses and locally-based non-profits during FY10 by **November 30, 2010**. OLO recommends asking the Executive Branch to incorporate these data into the FY10 annual report to the Council on the LSBRP.

Recommendation #2: Explore strategies other than the contract reserve mechanism for accomplishing the goals of the LSBRP.

LSBRP data for FY07 and FY08 indicate that only a fraction of the County's procurement dollars awarded to local small businesses was awarded through the process established for reserving contracts for local small businesses. In other words, almost all (97-98%) of contract dollars awarded to local small businesses in FY07 and FY08 resulted from the regular (non-reserve) procurement process.

If the LSBRP program data for FY09 and FY10 continue to evidence this same pattern of contract awards to local small businesses, then OLO recommends the Council either amend or eliminate the LSBRP contract reserve process and consider alternative strategies for assisting local small businesses.

To enable an informed Council discussion about feasible alternatives to the contract reserve mechanism, OLO recommends that the Council task the Chief Administrative Officer with exploring other strategies. OLO recommends that the Council ask for a report back from the CAO on alternative program structures by **November 30, 2010**, as an addendum to the report on all FY10 procurements from local small businesses.

For a complete copy of OLO Report 2010-4, go to: www.montgomerycountymd.gov/olo.
This document is available in alternative formats upon request.

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CHAPTER I. Authority, Scope, and Organization

A. Authority

Council Resolution 16-1047, *FY 2010 Work Program for Office of Legislative Oversight*, adopted July 21, 2009.

The origin of this evaluation assignment from the Council is the 2005 legislation that established the Local Small Business Reserve Program (LSBRP). This law explicitly mandated that the Office of Legislative Oversight conduct an evaluation of the LSBRP before December 31, 2009, the program's initial sunset date.

In March 2009, the Council adopted Bill 3-09, which amended the LSBRP and extended the program's sunset date to 2012. At that time, the Council indicated a continued interest in having OLO conduct a program evaluation of the LSBRP by the end of this year.

B. Scope and Organization of Report

OLO's evaluation of the Local Small Business Reserve Program is organized as follows:

Chapter II, Legislative History of the Local Small Business Reserve Program, describes the initial 2005 version of the law that established the LSBRP as well as the 2009 amendments and identifies the major policy issues discussed by the Council during its deliberations on the legislation.

Chapter III, Program Staffing and Major Activities, summarizes the staffing history of the LSBRP and reviews major program activities, including website and database management, program administration, and outreach to the business community.

Chapter IV, Local Small Business Reserve Program Results, presents data on businesses registered for the LSBRP, procurement awards to local small businesses, and procurements that were exempt from the LSBRP requirements.

Chapter V, Feedback from the Business Community and County Government Staff, summarizes input on program strengths and weaknesses obtained from the business community, registered LSBRP businesses, and contract administrators in County Government departments.

Chapter VI, Comparative Information, describes the State of Maryland's Small Business Reserve Program and several other government procurement programs in the Washington D.C. area that provide contracting preferences to small and/or local businesses.

Chapters VII and VIII present OLO's **Findings and Recommendations** for Council action.

Chapter IX, Agency Comments, contains the written comments from the County's Chief Administrative Officer on the final draft of this report.

C. Methodology

Office of Legislative Oversight staff members Jennifer Renkema and Leslie Rubin conducted this study. The research for this report consisted of examination of County laws and regulations; Council worksession packets; and data on the LSBRP provided by the Department of General Services, Department of Technology Services, and Department of Economic Development. OLO also interviewed County Government staff who have managed the program as well as contract administrators in County Government departments who implement program requirements. In addition, OLO staff interviewed members of the business community and surveyed businesses registered for the LSBRP to obtain feedback on the program.

E. Acknowledgements

OLO received a high level of cooperation throughout the study period. OLO appreciates the information shared and insights provided by all who participated. OLO would like to acknowledge:

COUNTY GOVERNMENT

- **Geeta Arurkar,**
Department of Environmental Protection
- **Mary Jane Berry,**
Montgomery County Council
- **Eric Carzon,**
Montgomery County Public Libraries
- **Grace Denno,**
DGS Office of Procurement
- **Alvaro Demoya,**
DGS Office of Business Relations and Compliance
- **David Dise,**
Department of General Services
- **Angela Dizzelos,**
Office of Management and Budget
- **Kara Ingram Dukes,**
Department of Health and Human Services
- **Marc Hansen,**
Office of the County Attorney
- **Sonia Healy,**
Office of Councilmember Ervin
- **Shelley Janashek,**
Department of Environmental Protection
- **Bobby John,**
Department of Technology Services/311
- **Amy Kim,**
Department of Economic Development
- **Sonetta Neufville,**
Offices of the County Executive
- **Joann Ricchiuti,**
Montgomery County Sheriff's Office
- **Richard Riffe,**
Montgomery County Fire and Rescue Services
- **Carmen Ruby,**
Department of Environmental Protection
- **William Selby,**
Department of Transportation
- **Jenna Shovlin,**
Department of Economic Development
- **Steve Silverman,**
Department of Economic Development
- **Joyce Spear,**
Department of Police
- **Katheryn Swick,**
Office of the State's Attorney
- **Ken Taylor,**
DGS Office of Business Relations and Compliance
- **Alicia Thomas,**
Department of Permitting Services
- **Marchell Thompson,**
DGS Office of Business Relations and Compliance
- **Sherry White,**
Department of Health and Human Services

BUSINESS COMMUNITY

- **Charles Atwell**, Innovative Business Interiors, Inc.
- **Marilyn Balcombe**, Gaithersburg-Germantown Chamber of Commerce
- **Shu-Ping Chan**, Asian Pacific American Chamber of Commerce
- **Patrick Darby**, Clarksburg Chamber of Commerce
- **Warren Fleming**, Quality Solutions Technologies, Inc.
- **Jennifer Hilpert**, Potomac Chamber of Commerce
- **Matt Hodgson**, Hodgson Consulting
- **Ellen Kendell**, Alternative Resolutions
- **Carmen Larsen**, Hispanic Chamber of Commerce
- **Laura Levengard**, Women Business Owners of Montgomery County
- **Jorge Ribas**, Mid-Atlantic Hispanic Chamber of Commerce
- **Jane Redicker**, Greater Silver Spring Chamber of Commerce
- **Sally Sternbach**, Rockville Economic Development, Inc.
- **Vicky Surles**, Wheaton-Kensington Chamber of Commerce

OTHER JURISDICTIONS

- **Lisa McDonnell**, Maryland Department of General Services
- **Makita Haynes**, District of Columbia Department of Small and Local Business Development
- **Janice Montague**, Maryland Governor's Office of Minority Affairs
- **Ron Price**, West Virginia Purchasing Division
- **Lawrence Wright**, Virginia Department of Minority Business Enterprise
- **MaryJo Yeisley**, Maryland Department of Labor, Licensing, and Regulation

In addition, OLO acknowledges the valuable assistance provided by OLO staff member Teri Busch.

CHAPTER II. Legislative History of the Local Small Business Reserve Program

The Council enacted legislation in April 2005 to create the Local Small Business Reserve Program (LSBRP). In March 2009, the Council approved amendments to the law as part of the County Executive's recommended Economic Assistance Plan. This chapter describes the legislative history of the program and identifies the major policy issues discussed by the Council when the LSBRP was established.

Section A, The Local Small Business Reserve Program: Established in 2005 and Amended in 2009, describes the 2005 legislation that created the LSBRP and reviews the changes to the program adopted earlier this year.

Section B, Issues Discussed by the Council, summarizes the major policy issues discussed by the Council during worksessions on the LSBRP legislation in 2005 and 2009.

A. The Local Small Business Reserve Program: Established in 2005 and Amended in 2009

The Council enacted Bill 23-04, *Contracts and Procurement – Local Small Business Reserve Program* in April 2005. According to the legislative record, a goal of Bill 23-04 was to enhance the competitiveness of County-based small businesses by creating a separate market where small businesses can compete against each other rather than against larger firms for procurement opportunities. Additional goals stated in the legislative record were to “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.”¹

The basic provisions of Bill 23-04 were modeled after a 2004 State of Maryland law, which requires selected State agencies to award at least ten percent of specific types of procurements to small businesses.² Chapter VI (see p. 41) and Appendix A provide a comparison of Montgomery County’s program to the State’s program.

Bill 23-04 and its accompanying Executive Regulation went into effect on January 1, 2006.³ In sum, the legislation:

- Permitted County Government departments to “reserve” (or set aside) solicitations for bidding only by local small businesses;
- Required departments to award at least ten percent of “eligible”⁴ contract dollars for goods, services, or construction to local small businesses;⁵ and
- Required departments to post planned purchases valued between \$5,000 and \$25,000 on a County website for five days before making a purchasing or contract decision.⁶

¹ Executive Regulation 21-05AM (approved by the Council under Method 2) [hereinafter “Exec. Reg. 21-05AM”]; April 12, 2005 County Council Worksession Packet: *Agenda Item #8, Bill 23-04, Contracts and Procurement – Local Small Business Reserve Program* [hereinafter April 12, 2005 County Council Worksession Packet], p. 2

² Md. Code, State Finance and Procurement §§ 14-501 – 14-505

³ Montgomery County Code § 11B-66 (2005), Exec. Reg. 21-05AM

⁴ County Code § 11B-66 exempts certain types of procurements from the ten percent requirement.

⁵ Montgomery County Code § 11B-66 (2005)

⁶ County Code § 11B-17A (a) (2005), Exec. Reg. 21-05AM § 5(h)(ii)(d)

Earlier this year, County Executive Leggett proposed amending the LSBRP law as part of his Economic Assistance Plan. In March 2009, acting upon the Executive's recommendation, the Council approved Bill 3-09, which doubled the portion of eligible contract dollars that County Government departments must award to local small businesses from ten percent to 20 percent. In addition, the program amendments increased the size limits for local small businesses, and changed the procedure for exempting certain contracts from the LSBRP.

Definition of Local Small Business. The 2005 legislation identified four criteria that distinguished a "local small business" from other businesses. A local small business:

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 criteria, size limits, and gross sales amounts established by ... regulations.⁷

The Executive Regulation adopted for the LSBRP further defined criteria #1 and #4. A small business "generates a significant amount of economic activity in the County"⁸ if:

- The business has its physical business location(s) only in the County; or
- The business has physical business locations both in and outside of the County, and the county-based location(s) account for over 50 percent of the business's total number of employees, or over 50 percent of the business's gross sales.⁹

The Executive Regulation for the LSBRP also defines the maximum "size" of a small business – a business qualifies when it meets *either* the criteria for number of employees *or* for gross sales. The table below lists the limits initially established in 2005 and the higher limits approved in 2009 as part of a revised Executive Regulation promulgated to accompany the legislative changes in Bill 3-09.

Table 2-1: "Local Small Business" Defined by Executive Regulation: 2005 and 2009

Type of Business	LSBRP Business Size Limits			
	Maximum Number of Full-Time Equivalent Employees		Maximum Average Gross Sales from Previous 3 Fiscal Years	
	2005 Regulation	2009 Regulation	2005 Regulation	2009 Regulation
Wholesale	15	30	\$2 million	\$5 million
Retail	15	30	\$2.5 million	\$5 million
Manufacturing	20	40	\$7 million	\$14 million
Services	25	50	\$2.5 million	\$5 million
Construction	25	50	\$7 million	\$14 million

Source: Executive Regulation 21-05(AM) § 3; Executive Regulation 2-09 § 3

⁷ Montgomery County Code § 11B-65(a) (2005)

⁸ Montgomery County Code § 11B-65(a)(1) (2005)

⁹ Exec. Reg. 21-05AM § 2(n)

A business becomes ineligible for the Program when it has received a total of \$10 million in County contracts *and* received at least ten separate contracts after January 1, 2006.¹⁰

Definition of “Eligible” Contract Dollars. As described above, the legislative intent of the LSBRP was to expand procurement opportunities for local small businesses with the County Government. To achieve this, the law requires County Government departments to award a designated percent of their total contract purchases to local small businesses. However, the law exempts certain types of contracts and does not count those contracts toward a department’s total contract spending. As enacted in 2005, the law establishing the LSBRP exempted:

- Contracts to which the LSBRP law did not apply because of a conflict with state, federal, or local law or a grant requirement;
- Pre-existing contracts or extension(s) of pre-existing multi-year contracts;
- Non-competitively awarded contracts;
- Public entity or emergency procurements;
- Contracts granted a waiver by the Chief Administrative Officer;
- Any single procurement greater than \$10 million; and
- Any procurement where no local small business was qualified or able to perform the contract.¹¹

With respect to the final exemption listed above, the 2005 LSBRP law required this determination to be made at the department level by the respective department directors. As part of the 2009 amendments to the LSBRP law, the Director of the Department of General Services now must approve a department’s claim that a procurement is exempt on the grounds that no local small business is qualified to perform the contract.

In 2005, the Council considered and rejected two additional exemptions – bridge contracts and contracts with non-profit organizations. The legislative record indicates that the Council concluded that most bridge contracts would qualify as an exemption for contracts with public entities¹² and many contracts with non-profit organizations would qualify under the exemption for non-competitive procurements.¹³

Reporting Requirements and Sunset Date. The LSBRP law requires the Executive Branch to submit an annual report on the LSBRP to the County Council by November 30 of each year. The report must include data on the number, type, and amounts of LSBRP awards, comparisons to the previous year, and descriptions of outreach efforts to businesses.¹⁴

¹⁰ Montgomery County Code § 11B-67(e) (2005)

¹¹ Montgomery County Code § 11B-66(c) (2005); Montgomery County Executive Regulations 21-05AM § 4(c)

¹² April 12, 2005. *Meeting Transcript of the Montgomery County Council*, p. 45, 71; Montgomery County Code § 11B-66(c)

¹³ April 12, 2005. *Meeting Transcript of the Montgomery County Council*, p. 35-38

¹⁴ During the April 12, 2005 Council worksession on Bill 23-04, Councilmember Knapp expressed concern that the business community was not accessing information about County Government procurement opportunities. As a result, he requested that the Executive Branch report its marketing and outreach activities to the Council.

The 2005 law established a sunset date for the LSBRP of December 31, 2009 and required the Office of Legislative Oversight (OLO) to evaluate the program before the sunset date. The amendments to the law enacted earlier this year extended the sunset of the program to December 31, 2012, but maintained the requirement for an OLO evaluation.

B. Issues Discussed by the Council

In addition to the parameters of the LSBRP reviewed above, the Council discussed several additional issues related to program implementation before passing Bill 23-04 in April 2005. These issues are summarized below.

Department Assigned Responsibility for LSBRP. At the public hearing on Bill 23-04, the Director of the Office of Procurement testified that an office or department other than the Office of Procurement should manage the LSBRP.¹⁵ The final version of Bill 23-04 assigned program management responsibility to the Department of Economic Development (DED). As stated in the Committee's recommendation, this was because "the legislative intent to assist and support small businesses in competing for County Government contracts and encourage the County's economic growth by enhancing the business climate for small business [was] more in line with the DED's mission."¹⁶

In January 2008, responsibility for managing the LSBRP was transferred to the Office of Procurement. In July 2008, responsibility was transferred again, this time to its current location in the Department of General Services. Changes in the program's management are discussed more fully in Chapter III.

Estimated Fiscal Impact. The fiscal impact statement for Bill 23-04, prepared by the Office of Management and Budget (OMB), estimated that the initial cost of the program for personnel, information technology, and operating expenses would be approximately \$358,200. OMB also estimated that contract costs for reserve contracts would be up to 20 percent greater than the cost for non-reserved contracts because of decreased competition. If the program was successful, OMB predicted it could increase tax revenue, but indicated the County could not measure the increase.¹⁷

Internet Posting Requirements. The final version of the 2005 bill required the County to post planned purchases between \$5,000 and \$25,000 on the County website for five business days before making a final purchasing or contract decision. This requirement differed from the original version of the bill, which required posting planned purchases between \$1,000 and \$25,000.

OMB recommended the increased threshold for efficiency concerns and because most County Government purchases under \$5,000 are for specialized or public safety emergency procurements that would be exempt under the LSBRP. In contrast, the business community requested a longer posting period.

¹⁵ April 12, 2005 County Council Worksession Packet, p. ©29

¹⁶ April 12, 2005 County Council Worksession Packet, p. 3

¹⁷ April 12, 2005 County Council Worksession Packet, p. ©90-94

Local Preference and Reciprocal Discrimination. During discussions on Bill 23-04, the County Attorney raised concerns about the original LSBRP bill related to the bill’s preference for local businesses. The original bill required a business to:

- Have a principal place of business in the County;
- Have at least 50 percent of its employees working in the County; and
- Have paid personal property taxes to the County Government in the year prior to receiving the contract and continue to pay personal property taxes to the County Government for the term of the contract.

The County Attorney stated that this local preference could be challenged under either the Equal Protection Clause or the Privileges and Immunities Clause of the Federal Constitution and recommended that “the legislative record be supplemented with information, data, findings, expert analysis, or the like that identify the social and economic evils that the local preference is meant to remedy and that describe how the Program will remedy those evils.”¹⁸

The County Attorney and Chief Administrative Officer also raised concerns about reciprocal preference laws in other jurisdictions. Some jurisdictions allow their governments to penalize a business that bids on a contract if the business’ home jurisdiction has a local preference law. The County Attorney and CAO argued that reciprocal preference laws could create a competitive disadvantage for County businesses in other jurisdictions.

Based on these concerns, the MFP Committee removed from the bill the requirement that a small business be “local.” The Council, however, reinstated the local preference in the final bill, reasoning that the legislation’s goal was to provide opportunities for County-based small businesses.¹⁹ The “local” language in the final version of the bill required only that a small business “generate[] a significant amount of economic activity in the County.”²⁰ The Executive Regulations define “local” in more specific terms. (See above, p. 5.)

Charter Requirement for Competitive Procurement. Section 314 of the County Charter states that “[t]he Council shall prescribe by law for competitive procurement for purchases by or contracts with the County in excess of an amount or amounts established by law.”

During the Council’s consideration of the original LSBRP bill, the County Attorney expressed concern that the bill, as written, did not comply with the spirit of open competition required by the Charter because the bill limited the types of businesses that could bid on County Government contracts. To address this concern, the County Attorney recommended that the Council limit the size of contracts that would fall under the program. Accordingly, the Council limited the LSBRP to contracts under \$10 million.²¹

¹⁸ April 12, 2005 County Council Worksession Packet, p. ©55

¹⁹ The amendment passed 7-2. (April 12, 2005. *Meeting Transcript of the Montgomery County Council*, p. 33)

²⁰ Montgomery County Code § 11B-65(a)(1) (2005)

²¹ April 12, 2005. *Meeting Transcript of the Montgomery County Council*, p. 74-81

CHAPTER III. Program Staffing and Major Activities

This chapter describes the staffing history of the LSBRP and reviews the major activities related to managing the program.

Section A, Program Staffing and Budget, describes the staffing responsibilities and costs associated with administering the LSBRP.

Section B, Website and Database, describes the program's website and the database established to track LSBRP data.

Section C, Details of Program Administration, describes tasks associated with managing LSBRP, including business registration, data collection and reporting, and staff training.

Section D, Outreach to the Business Community, summarizes the County Government's efforts to promote the LSBRP in the business community through websites, trainings, presentations, and other media.

A. Program Staffing and Budget

Staffing for the LSBRP involves a combination of “dedicated” staff that are assigned to manage the program as well as other County Government staff that are tasked with implementing LSBRP requirements in their departments.

1. Dedicated Program Staff

Since July 2009 the Office of Business Relations and Compliance (OBRC) in the Department of General Services has administered the Local Small Business Reserve Program (LSBRP). OBRC represents the third “home” for LSBRP. Responsibility for program management was initially assigned to the Department of Economic Development; as a result of Executive Branch reorganizations, responsibility was subsequently transferred to the Office of Procurement and then to the Office of Business Relations and Compliance.

Department of Economic Development (January 2006 – December 2007). The Department of Economic Development (DED) was responsible for administering the LSBRP from January 2006 through December 2007. DED staff assigned to the LSBRP included a full-time program manager, a full-time business outreach specialist, and a part-time office services coordinator.

DED staff were responsible for launching the LSBRP. During those first two years, DED staff helped County Government departments to identify potential LSBRP contracts, performed outreach to local small businesses, developed methods to verify businesses’ eligibility for the program, trained department contract administrators, compiled program data, and prepared LSBRP annual reports.

Office of Procurement (January 2008 – June 2008). In January 2008, the County Executive transferred management of the LSBRP from DED to the Office of Procurement, which managed the program through June 2008, when program management was transferred to the new Department of

General Services.¹ Two DED staff members were reassigned to the Office of Procurement with the program as the LSBRP program manager and office services coordinator. These staff remained in DED's budget until the end of FY08.

DGS' Office of Business Relations and Compliance (July 2008 – Present). In July 2008, the new Department of General Services was established. As part of this Executive Branch reorganization, responsibility for the LSBRP was assigned to a newly-created Office of Business Relations and Compliance (OBRC) within DGS. The OBRC also manages the County Government's Minority, Female, and Disabled Owned Businesses Program and monitors compliance with the County Government's living wage and prevailing wage laws. The table below summarizes the allocation of DGS staff time to the LSBRP in FY09.

Staff Member	Estimated Percent of Time Spent on LSBRP (FY09)
OBRC Manager	55%
Office Services Coordinator	40%
Program Manager	100%
Total Workyears	1.95 WYs

Source: OBRC Staff

According to DGS, the major activities of OBRC staff related to administration of the LSBRP are:

- Promoting the program to businesses and to County Government departments;
- Training department contract administrators;
- Providing technical assistance to departments and businesses;
- Overseeing changes to the LSBRP website and database;
- Responding to businesses' concerns; and
- Overseeing data collection and reporting.

Table 3-1(on the next page) contains data on dedicated LSBRP costs for FY07–FY10. Data for FY07–FY09 are actuals; FY10 data is budgeted. In sum:

- In FY07 DED dedicated \$252,000 to the LSBRP, including \$240,000 for personnel (2.5 workyears) and \$12,000 in operating expenses. In FY08, DED spent \$219,000 on the program, including \$209,000 for personnel (3.0 workyears) and \$10,000 in operating expenses.
- In FY09 the program costs amounted to \$368,000. This included \$87,000 in DED for one workyear, \$275,000 in DGS for 3.15 workyears, and \$5,000 in DGS for operating expenses.
- In FY10, \$210,000 are budgeted in DGS, including \$201,000 for personnel (2 workyears) and \$10,000 for operating costs.

¹ In July 2008, the Office of Procurement became an office within the Department of General Services.

Table 3-1: LSBRP Costs: FY07-FY10

Department	Actual			Budgeted
	FY07	FY08	FY09	FY10
Dept. of Economic Development	\$252,385	\$219,593	\$87,956	--
<i>Personnel</i>	\$239,855 (2.6 WYs)	\$208,913 (3.0 WYs)	0 (1.0 WYs)	--
<i>Operating</i>	\$12,530	\$10,680	--	--
Dept. of General Services	--	--	\$280,000	\$200,897
<i>Personnel</i>	--	--	\$275,000 (3.15 WYs)	\$200,897 (2.00 WYs)
<i>Operating</i>	--	--	5,000	\$10,000
Total Program Costs	\$252,385	\$219,593	\$367,956	\$210,897

Source: DED and DGS Staff

2. Roles of Staff in Other Departments

The Department of Technology Services (DTS), Office of Procurement, and all County Government departments/offices that purchase goods or services also have roles related to the implementation of the Local Small Business Reserve Program.

Department of Technology Services. The Department of Technology Services (DTS) helped design the LSBRP internet website and intranet database. Currently, DTS staff help maintain and update the program website and database.

Office of Procurement. Staff in the Office of Procurement help prepare and issue LSBRP solicitations; help verify vendors' eligibility; and inform LSBRP staff about solicitations that may be appropriate for the program. Office of Procurement staff are also working with OBRC and DTS staff to update the LSBRP website and database and integrate the LSBRP database with the County Government's new Central Vendor Registration System (see p. 12 for more information).

All County Government Departments/Offices. Each County Government department or office has someone tasked with serving as the LSBRP contract administrator (some departments have LSBRP contract administrators in multiple divisions). For these individuals, working with LSBRP is one among many procurement-related responsibilities.

The major responsibilities of each LSBRP contract administrator are to coordinate LSBRP solicitations among department staff and DGS; encourage department staff to consider LSBRP vendors for solicitations; and manage the department's data in the LSBRP intranet database. For larger departments these tasks can require large amounts of staff time, while for smaller departments/offices, these tasks require very minor investments of time. (See p. 15-16 of this chapter on "resolving" transactions and p. 37 in Chapter V for feedback from County staff.)

B. LSBRP Website and Database

The 2005 regulation for the LSBRP required DED to create a database that would, among other things:

- Offer general information about the LSBRP,
- Allow vendors to register for the program,
- Provide a list of LSBRP vendors, and
- Track the number and dollar amount of County contracts awarded to LSBRP vendors.²

Accordingly, Executive Branch staff developed two websites for the LSBRP: an internet website where small businesses can register for the program and an intranet database for County Government departments to administer, record, and track LSBRP activities. Businesses began registering on the internet website in January 2006; the intranet database became operational on March 6, 2006.

Website. The LSBRP website provides general information for the public about the LSBRP. In addition, it offers online methods for:

- Businesses to register for the program, renew their registration, and update their information;
- Businesses to find out about solicitations posted on the Office of Procurement's website, including solicitations reserved under the LSBRP; and
- County staff to search for registered businesses.

As of November 2009, LSBRP registration was integrated into the County Government's Central Vendor Registration System (CVRS). Previously, businesses registered for the LSBRP using the program website.

According to OBRC staff, integration with the CVRS should enable easier tracking of awards to LSBRP vendors. However, the CVRS will only disqualify vendors from the LSBRP if they do not have a business location in the County. The CVRS will not screen out vendors that register for the LSBRP but do not meet LSBRP requirements for number of employees or gross sales. OBRC staff report that requiring the CVRS to screen businesses attempting to register for the program for both location and size would overwhelm the system.

Intranet Database. The LSBRP intranet database provides administrative functions for County Government departments. The database:

- Provides information about the program and describes departments' LSBRP responsibilities;
- Allows departments to search for LSBRP-registered vendors by various categories;
- Allows departments to track, input, and report information required under the program; and
- Generates summary reports that show whether a department met its LSBRP procurement requirement.

² Montgomery County Executive Regulations 21-05AM § 5(h)(i)(a-b)

The database provides lists of LSBRP vendors that have been certified by OBRC staff and vendors that have been disqualified from the program. The list of disqualified vendors includes the reason for disqualification, such as lack of a business location in the County or failure to renew their certification.

C. Details of Program Administration

The tasks involved with administering the LSBRP include registering businesses in the program; identifying and helping create contract opportunities; collecting and reporting data; and assisting County Government department staff with program-related responsibilities.³ This section provides some additional information about each of these core activities.

Registration of Businesses. From January 2006 through October 2009, businesses registered for the program through the LSBRP website. Beginning in November 2009, this process was integrated into the County Government's Central Vendor Registration System. In order to register for the program and bid on a contract reserved for LSBRP vendors, a business must provide data on its:

- Number of employees;
- Gross sales figures for the prior three years;
- Sales figures in Montgomery County for the prior three years; and
- Business address.

If a business is selected for a reserved contract, they must verify their eligibility for the program. In order to remain eligible to bid on reserved contracts, businesses must re-submit this information annually. (See Appendix B for a copy of the registration form.)

Reserving and Awarding LSBRP Contracts. Under the 2005 and 2009 LSBRP laws and regulations, County Government departments may meet their LSBRP procurement requirement either by awarding contracts to LSBRP-registered vendors through the regular procurement process and/or through reserving a contract specifically for LSBRP vendors.

a. Identifying LSBRP Contract Opportunities

Under the LSBRP, County Government departments can "reserve" contracts, which means that only LSBRP-registered vendors can bid on those contracts. LSBRP staff work with departments to identify potential solicitations to reserve for the LSBRP. For example, beginning in FY07, DED staff reviewed departments' anticipated procurements to identify potential LSBRP contracts and then encouraged department staff to reserve certain solicitations under the program.

OBRC staff have continued these practices and implemented additional strategies to identify LSBRP procurement opportunities. For example, OBRC staff:

- Look for potential LSBRP solicitations during a routine solicitation review process for the MFD program.

³ In addition, the OBRC conducts outreach to the business community, which is addressed in the next section.

- Encourage County Government departments to modify existing contracts to allow purchases outside the contract under certain conditions, which can open up LSBRP opportunities. For example, the County Government modified a novelties contract to allow departments to make purchases under \$5,000 from other vendors (e.g., local small businesses).
- Review current contracts to identify potential LSBRP contracts. OBRC staff are focusing on existing bridge contracts,⁴ legacy contracts,⁵ and large contracts that could be broken into smaller contracts.

Since the beginning of FY10, OBRC staff have been working with County Government departments to help them identify potential contracts to reserve for the LSBRP. OBRC staff compiled lists of contracts under \$10 million for each department. OBRC staff have asked departments to identify contracts on this list that should *not* be reserved for the LSBRP and provide justification for the decision. The OBRC is recommending that all other contracts be reserved for the LSBRP.

OBRC staff have also been encouraging departments to look at opportunities for prime contractors to use local small businesses as subcontractors.

b. Identifying LSBRP Vendors

Departments are encouraged to identify a sufficient number of suitable LSBRP vendors before reserving a solicitation for the LSBRP. LSBRP staff help individual County departments/offices to identify potential LSBRP vendors using several strategies:

- Searching the LSBRP database;
- Notifying suitable vendors of expected LSBRP solicitations and encouraging vendors to register for the program;
- Notifying business leaders (e.g., chambers of commerce, trade associations) of expected LSBRP solicitations and encouraging outreach to their members;
- Searching databases of businesses in Montgomery County to identify potential LSBRP vendors; and
- Helping departments identify current County Government vendors that are unregistered local small businesses and encouraging the vendors to register for the program.

Some departments have encountered obstacles to reserving contracts for local small businesses. In some cases, departments have identified potential LSBRP contracts but have not been able to reserve them because of a limited vendor pool or lack of capable vendors. For example, in FY08, the Montgomery County Police Department could not reserve a uniform cleaning contract for small, local dry cleaning businesses because businesses reported a lack of capacity to meet the terms of the contract. In other cases, departments have reserved contracts for the LSBRP that did not generate sufficient responses, requiring the departments to restart the solicitation process.

⁴ A bridge contract allows the County Government to buy goods or services under an existing contract between the vendor and another public entity for the same terms and conditions as the existing contract.

⁵ Legacy contracts are contracts that have been awarded to the same vendor multiple times.

c. Advertising Solicitations

On January 1, 2006, the County Government began posting all solicitations for \$5,000 or more on the Office of Procurement website for five business days, as required by the LSBRP law. Postings indicate whether a solicitation is reserved for LSBRP vendors. There is a link to this Office of Procurement website from the LSBRP website.

From FY07–FY09 the County Government posted 34 LSBRP-reserved contracts on the Office of Procurement’s website.⁶

d. Verifying LSBRP Vendor Eligibility

The LSBRP regulation requires businesses to provide documentation of LSBRP eligibility when requested by the Director of DGS.⁷ LSBRP staff only require businesses to document their eligibility for the program when a business is awarded a contract through a *reserved* LSBRP solicitation.⁸

When LSBRP vendors receive awards through the regular procurement process, department staff are encouraged, but not required, to verify the eligibility of vendors.⁹ In practice, this has meant that only a fraction of County Government contracts awarded to LSBRP vendors have actually been required to go through the verification process.¹⁰

Data Collection. Before the March 2009 legislative changes to the program, all County Government departments/offices were required to direct ten percent of their program eligible procurement spending to local small businesses. To measure and report on departments’ success in meeting the program’s procurement requirement, OBRC collects data through the LSBRP database on each procurement transaction over \$5,000 made by County Government departments.¹¹

The LSBRP database pulls information about departments’ procurement transactions (e.g., purchase amount, date, department) from two Office of Procurement databases into the LSBRP database. For purchases that are always exempt from the LSBRP (e.g., non-competitive contracts), the database automatically records them as exempt. Collecting data for the remaining transactions requires LSBRP contract administrators in each department to use the LSBRP database to individually “resolve” every procurement transaction over \$5,000 made by a department. Large departments may have several hundred transactions to resolve.

⁶ See Chapter IV, p. 27 for additional data on reserved solicitations.

⁷ Executive Regulation 2-09 § 5(d).

⁸ LSBRP staff use documents such as leases, tax records, and State unemployment insurance filing reports to verify businesses’ eligibility.

⁹ County Government departments can count awards to LSBRP vendors made through the regular procurement process toward their annual LSBRP procurement requirement. In some cases, departments encourage vendors to register for the program after vendors receive a solicitation award.

¹⁰ Of the \$11.8 million awarded to LSBRP vendors in FY07, only \$100,000 was awarded through the reserve process. Similarly, of the \$11.8 million that went to LSBRP vendors in FY08, only \$400,000 was awarded through the reserve process.

¹¹ A procurement transaction is a purchase order, direct purchase order, or direct voucher.

Resolving a transaction requires a contract administrator to specify in the database whether each transaction was for construction, goods, professional services, or “other than professional services”; and whether it was exempt or non-exempt from the LSBRP. If a transaction is exempt from the LSBRP, the contract administrator must specify the type of exemption and provide a written justification for the exemption. If it is non-exempt, the contract administrator must indicate whether it was reserved for and/or awarded to an LSBRP vendor.

Some departments have hundreds of transactions to resolve annually. For example, in FY08 the Department of Public Works and Transportation had over 1,700 transactions and the Department of Health and Human Services had over 900 transactions. While contract administrators may resolve procurement transactions throughout a fiscal year, most departments resolve all transactions at the end of the fiscal year.

Annual Report. The LSBRP law and regulation require DGS to provide an annual report to the Council on the prior fiscal year’s program results by November 30 each year.¹² To meet this deadline, the LSBRP law and regulation requires departments to resolve all transactions for a fiscal year by September 30.¹³ The Council has received three annual reports on the LSBRP.¹⁴

DED and OBRC staff use the information reported by departments to generate the annual report on LSBRP results required by the County Code. Although OBRC staff repeatedly remind department staff to resolve outstanding transactions, no penalties exist for departments that do not resolve all their transactions by the September 30th deadline.

Currently, unresolved transactions remain in the LSBRP database for all years that the program has operated. Unresolved transactions result in incomplete program data and prevent DGS from reporting complete data to the Council. As of October 6, 2009, the database showed 1,567 unresolved transactions totaling \$319 million for FY09 (Table 3-2, below).

Table 3-2: Unresolved Procurement Transactions, FY09

	Resolved	Unresolved	% Unresolved
Number of transactions	7,672	1,567	17.0%
Dollar amount of transactions	\$746.2	\$318.8	29.9%

Source: LSBRP database, October 6, 2009

Assistance and Training for County Government Staff. DED and OBRC staff have provided training and technical support on the LSBRP to hundreds of contract administrators and other staff since the program began in January 2006. Specific activities have included: (1) fielding questions from contract administrators and vendors regarding program policies and technical assistance with the LSBRP website and database and (2) meeting with contract administrators in departments with large budgets to identify potential LSBRP contract opportunities.

¹² Montgomery County Code § 11B-69 (b) (2005); Executive Regulation 2-09 § 5(h)(i)(d).

¹³ Montgomery County Code § 11B-69 (a) (2005); Executive Regulation 2-09 § 5(h)(iI)(e).

¹⁴ See Appendices F, G, and H (available online) for copies of the FY06, FY07, and FY08 annual reports.

Recently, OBRCs staff offered workshops to train department staff to resolve procurement transactions in the LSBRP database. OBRC staff also provide training on an individual basis when requested.

D. Outreach to the Business Community

The 2005 and 2009 LSBRP regulations require the managing department to market the program to local small businesses. Specifically, the regulations require the department to:

- Advertise the program in the media,
- Prepare and distribute printed material;
- Participate in at least three County business events annually,
- Work with small business resource groups (e.g., chambers of commerce), and
- Prepare an annual press release on program results.¹⁵

Accordingly, DED and the OBRC have used a variety of methods to inform businesses about the program and to encourage participation, as summarized below.

Department of Economic Development Outreach. When DED managed the LSBRP, staff engaged in general outreach activities to the business community to get the word out about the program, e.g., business events, news releases, and distribution of printed materials. DED staff also did targeted recruiting to specific industries to increase the vendor pool for LSBRP solicitations.

During FY06, DED mailed 4,300 brochures directly to County businesses.¹⁶ County staff fostered relationships with several chambers of commerce and other business groups, distributing written program information and speaking about the LSBRP at meetings.¹⁷ DED staff also regularly presented information about the LSBRP at business conferences and procurement fairs. Although DED no longer manages the LSBRP, DED staff continue to provide information about the program at business events.

DED also advertised the program in print media, including in the *Business Gazette*, *Montgomery Sentinel*, and Hispanic, Chinese, and Korean newspapers. Staff also provided interviews to local television and radio programs and held a press event to publicize program results from FY06 and the first half of FY07.

DGS Office of Business Relations and Compliance Outreach. OBRC staff have continued many of DED's outreach strategies, including meeting with business groups, attending numerous business events, and targeting recruitment to specific industries. Staff recently updated the program brochure with the new procurement requirement and business eligibility requirements. The OBRC did not do a press release on the FY08 program results.

¹⁵ Montgomery County Executive Regulation 21-05AM § 5(h)(i)(c) and Montgomery County Executive Regulation 2-09 § 5(h)(i)(c)

¹⁶ Department of Economic Development. *Report to Montgomery County Council on Local Small Business Reserve Program*, November 30, 2006 and November 30, 2007

¹⁷ E.g., the Maryland Small Business Development Center, Rockville Economic Development, Inc., and the Action Business Committee.

This year, OBRC staff implemented several new outreach strategies. In particular, OBRC staff send out regular email notifications about anticipated solicitations to business leaders for sharing with their business networks, including businesses that are not yet registered for the LSBRP. The OBRC is also encouraging current unregistered County Government vendors that qualify for the program to register.

To ease the registration process, OBRC staff created a pre-registration form that helps businesses gather all necessary information before registering online. OBRC staff have also provided group training through chambers and trade associations on how to register for the program.

In an effort to help County Government departments increase purchases from small businesses, OBRC staff are currently exploring ways to unbundle contracts for purchases such as office supplies and janitorial services. As part of this effort, OBRC staff have convened meetings with businesses from these industries to better educate them about the County Government's solicitation and contract requirements and processes and to gain a better understanding of the capacity of the businesses to meet the County Government's needs.

CHAPTER IV. Local Small Business Reserve Program Results

This chapter provides an overview of data on the results of the Local Small Business Reserve Program:

Section A, Local Small Business Participation in the Program, reviews data on the number of vendors registered with the Local Small Business Reserve Program.

Section B, Contract Spending Exempted from the Program, reviews data on County contracts that were deemed exempt from the LSBRP.

Section C, Total Value of Contracts Awarded to Local Small Businesses, reviews data on the value of contracts awarded to local small businesses as part of the LSBRP.

Section D, Compliance by Department, summarizes information on individual departmental compliance with the LSBRP requirements.

A. Local Small Business Participation in the Program

From FY06–FY09, a total of 1,540 separate businesses registered with the LSBRP (Table 4-1).

Table 4-1: Number of Businesses that Newly Registered with the LSBRP, FY06-FY09

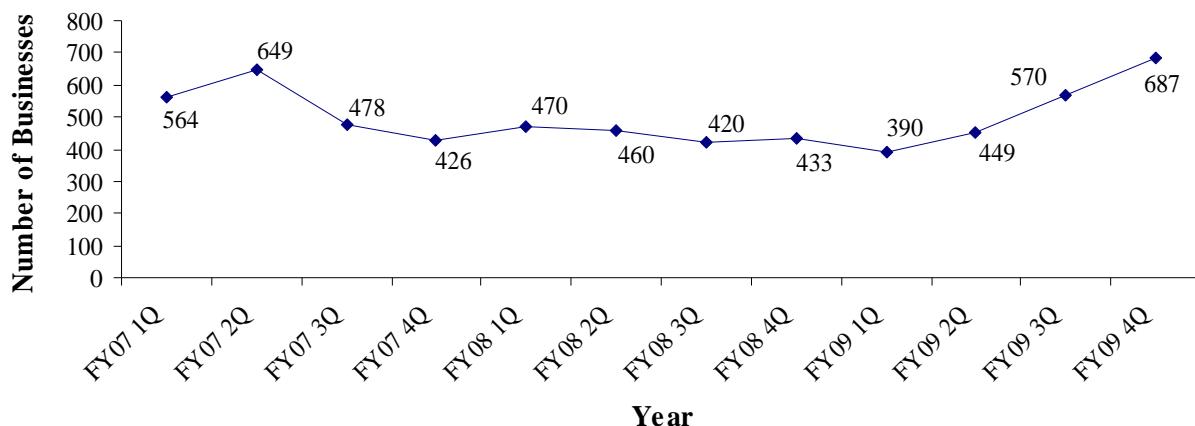
	FY06	FY07	FY08	FY09	Total FY06–FY09
Number of Businesses	486	334	333	387	1,540

Source: Department of General Services (DGS)

Businesses must renew their registrations annually to maintain their eligibility for the program. Exhibit 4-1, on the next page, shows (for each quarter of the fiscal year) the number of “active” registered businesses (i.e., businesses that have up-to-date registrations) from January 2007 through June 2009.

Compared to the total number of businesses registered since 2006, the number of LSBRP businesses tracked as active at any given time is substantially smaller. In fact, at the end of FY09, only 687 (45%) of the 1,540 businesses that have ever registered for the program had current registrations. One reason for the difference is that businesses chose not to renew their registrations; in other cases, businesses were found ineligible for the program.

**Exhibit 4-1: Number of Active Registered Businesses by Quarter
FY07–FY09**



Source: DGS

Snapshot of Registered Businesses – September 2009. Data from September 2009 showed 637 active registered businesses in the LSBRP database. Based on self-reported information, these 637 businesses averaged five employees and annual gross sales of about \$416,000.¹

Table 4-2: Year of Initial LSBRP Registration for Active Registered Businesses, September 2009

	2006	2007	2008
Number of Businesses	264	162	211

Source: Department of Technology Services (DTS)

Among active registered businesses, the most commonly offered commodities or services were:

- Consulting services,
- Miscellaneous professional services,
- Management services,
- Data processing services and software,
- Building maintenance and repair services,
- New building construction, and
- Communications and media related services.

¹ The data on the characteristics of LSBRP businesses comes from information self-reported by the businesses at the time of registration. As explained in Chapter III (see p. 15), the County Government's practice is to "fully certify" a business as meeting the LSBRP eligibility requirements if/when a business is selected to receive a contract that was reserved for LSBRP registered businesses. The LSBRP database indicates that a total of 38 businesses have been fully certified by the County since the inception of the LSBRP.

The 2005 Executive Regulation for the LSBRP established eligibility criteria for the program by business category. Specifically, the 2005 Regulation set different maximums for the number of employees and average gross sales for wholesale, retail, manufacturing, service, and construction businesses.

Table 4-3 compares the characteristics of the businesses registered with the LSBRP in September 2009 to the maximums established by the 2005 Regulation; for reference, the table also shows the higher maximums adopted earlier this year. The data indicate that across all five business categories, the average sizes of the businesses actively registered with the LSBRP in September 2009 were notably smaller than the legally established maximums, both in terms of average gross sales and number of employees.

Table 4-3: Comparison of Maximum Business Size to Actual Business Size for Active Registered LSBRP Vendors, September 2009

	Maximum Business Size*		Actual Average Business Sizes**
	2005	2009	
Wholesale Businesses			
Number of Businesses	--	--	66
Average Gross Sales from Previous 3 Fiscal Years	\$2 million	\$5 million	\$324,173
Number of Employees	15	30	3
Retail Businesses			
Number of Businesses	--	--	27
Average Gross Sales from Previous 3 Fiscal Years	\$2.5 million	\$5 million	\$521,259
Number of Employees	15	30	3
Manufacturing Businesses			
Number of Businesses	--	--	55
Average Gross Sales from Previous 3 Fiscal Years	\$7 million	\$14 million	\$640,033
Number of Employees	20	40	6
Service Businesses			
Number of Businesses	--	--	460
Average Gross Sales from Previous 3 Fiscal Years	\$2.5 million	\$5 million	\$383,309
Number of Employees	25	50	5
Construction Businesses			
Number of Businesses	--	--	29
Average Gross Sales from Previous 3 Fiscal Years	\$7 million	\$14 million	\$628,802
Number of Employees	25	50	5

* Executive Regulation 21-05(AM) § 3

** Data on gross sales and number of employees based on information provided by the businesses.

Source: DTS

Number of County Businesses Eligible to Participate in the LSBRP. OLO set out to compile data that answered the following questions:

- How many businesses in Montgomery County meet the eligibility requirements for the LSBRP and what percent of all businesses in the County does this represent?
- What percent of all eligible local small businesses have registered with the LSBRP?

In the course of conducting this study, OLO learned that the data needed to answer these threshold questions are not readily available. Further, the data sets that are available count businesses differently; for example, some count businesses by *ownership* while others count each business *location* in the County.

In addition, the LSBRP regulation allows businesses to qualify for the program based on *either* number of employees *or* gross sales by business type (e.g., wholesale, retail, service). There are no readily available data sources that specifically track small businesses as defined by the law and regulation establishing the LSBRP.

The table below summarizes data from three sources that report the total number of businesses in Montgomery County and which also identify the number of businesses with 50 or fewer employees.² While these data illustrate how the question on the number of businesses in the County has different answers, all three data sources evidence that:

- The number of businesses with 50 or fewer employees represent upwards of 94 percent of all businesses in the County, suggesting that a great majority of County businesses qualify for the LSBRP; and
- The number of small businesses registered to date with the LSBRP (1,540) represents only a fraction of the businesses that may be eligible for the program.

Table 4-4: Number and Size of Businesses in Montgomery County

Source	Year	Reported Total Number of Businesses	Number of Businesses with 50 or Fewer Employees	% of Businesses with 50 or fewer employees
U.S. Census Bureau, County Business Patterns	2007	27,264 businesses	25,743	94%
Maryland Department of Labor, Licensing and Regulation	2008	32,558 business locations	31,118	96%
Dun & Bradstreet Selectory	2009	53,752 business locations	52,646	98%

Source: Department of Economic Development (DED)

² The 2005 regulation permitted businesses to qualify for the LSBRP with 15 – 25 employees, depending on business type. The 2009 regulation increased these limits to 30 – 50 employees. See Table 4-3 for details.

B. Contract Spending Exempted from the Program³

The County law that established the LSBRP identified the following procurements as exempt from the program:

- Pre-existing contracts or extension(s) of pre-existing multi-year contracts;
- Any procurement where no local small business was qualified or able to perform the contract as determined by the head of the County Government department;⁴
- Non-competitive contracts;
- Public entity or emergency procurements;
- Contracts to which the LSBRP law did not apply because of conflict with state, federal, or local law or a grant requirement;
- Contracts granted a waiver by the Chief Administrative Officer;
- Any single procurement greater than \$10 million.⁵

For FY07 and FY08, the table below shows the split between procurements that were categorized as “eligible” for the LSBRP and procurements that were categorized as “exempt.”⁶

In sum, the data show that in FY07, \$960 million (94%) of \$1.0 billion in total contract expenditures were classified as exempt from the LSBRP. In FY08, \$905 million (92%) of \$985 million in total contract expenditures were classified as exempt from the LSBRP.

Table 4-5: LSBRP Eligible and Exempt Contract Expenditures, FY07–FY08 (\$ in millions)

Expenditure Type	FY07		FY08	
	\$	%	\$	%
Exempt	\$959.5	94.1%	\$904.8	91.9%
Eligible	\$59.6	5.9%	\$80.1	8.1%
Total	\$1,019.1	100%	\$984.9	100%

Source: DTS

³ This chapter primarily presents program data for FY07 and FY08, the two years for which 12 months of data were available. FY06 data were excluded because the program only operated for six months of that year. Where available, FY09 data are included. As of this writing, FY09 LSBRP data from individual departments had not yet been fully compiled; by law, the FY09 annual report is due to the Council by November 30, 2009.

⁴ As part of the 2009 amendments to the LSBRP law, the DGS Director must now also approve each of these exemptions.

⁵ Montgomery County Code § 11B-66(c); Montgomery County Executive Regulation 21-05AM § 4(c)

⁶ In general, contract expenditures do not include procurements under \$5,000 because they are not tracked by the LSBRP database. However, a department may choose to report purchases from LSBRP vendors that were under \$5,000. Departments that report these purchases may use them to meet the required allocation of contract dollars to local small businesses.

Table 4-6, below, summarizes the reasons cited in FY07 and FY08 for exempting contracts from the LSBRP. Until this year, the decision to exempt a contract was delegated to each department. Under the new law, exempting a contract because no local small business is qualified must also be approved by the Director of the Department of General Services. For purposes of tracking, departments must select only one reason for exempting a contract, even if the contract qualifies for multiple exemptions.

As reported above, County departments exempted contracts worth more than \$900 million in both FY07 and FY08. As shown in Table 4-6, the three most commonly cited exemptions, which together explain over 85 percent of the contract dollars exempted in FY07 and FY08, were:

- The contract was pre-existing (i.e., in place before the LSBRP was established);
- No local small businesses was deemed qualified by the using department; and
- The contract was awarded non-competitively.

**Table 4-6: LSBRP Exempt Contract Expenditures,
FY07–FY08 (\$ in millions)**

Exemption Category	FY07		FY08	
	\$	%	\$	%
Pre-existing contract	\$408.0	42.5%	\$381.2	42.1%
No local small business deemed qualified	\$283.9	29.6%	\$285.5	31.6%
Non-competitive contract	\$117.0	12.2%	\$131.7	14.6%
Public emergency procurement	\$107.6	11.2%	\$32.4	3.6%
Conflicts with a state, federal, or local law or a grant requirement	\$37.8	3.9%	\$46.3	5.1%
Chief Administrative Officer waiver	\$5.2	0.5%	\$2.1	0.2%
Procurement exceeds \$10 million	\$0.2	0.0%	\$25.5	2.8%
Total	\$959.5	100%	\$904.8	100%

Source: DTS

Exemptions for pre-existing contracts accounted for about 42 percent of exempt expenditures. Commonly procured goods and services included employee benefits; road and building construction; recycling and refuse collection; transportation services; and consulting services.

About one-third of exempt expenditures resulted from determinations by the using department that no local small business was qualified to meet the requirements of the contract. Purchases by the Department of Liquor Control, including liquor products, accounted for \$274 million (49%) of \$570 million in expenditures exempted under this provision in FY07 and FY08. Other goods and services procured under this exemption included:

- Non-residential, industrial, and other construction services;
- Fire trucks and fleet vehicle purchases;
- Insurance and risk management services; and
- Automotive and diesel fuel.

Non-competitive contracts made up 12 percent (FY07) and 15 percent (FY08) of expenditures exempted from the LSBRP. At least \$66 million in FY07 and \$63 million in FY08 of non-competitive contract exemptions were for Council grant awards to DHHS vendors.⁷ Overall, goods and services procured under this exemption included:

- Social services (e.g., youth care, mental health, counseling, homelessness prevention, and family and social services);
- Real property transactions;
- Rent/lease payments;
- Sole source and bridge contracts.

Additional Information on Procurements under \$5,000. The LSBRP database does not capture any procurements under \$5,000 unless they are voluntarily reported by a department as a purchase from an LSBRP vendor. As a result, most expenditures under \$5,000 are not reflected in either the eligible or exempt procurements discussed above.

According to Office of Procurement data, the County Government spent approximately \$41.4 million in FY07 and \$42.3 million in FY08 on individual procurements of less than \$5,000. Of this total amount, the LSBRP database identifies only \$59K in FY07 and \$56K in FY08 as purchases made with businesses registered with the LSBRP. Because of how data on procurements with local small businesses are currently collected, this area of procurements under \$5,000 represents another substantial component of County spending for which there is incomplete information on how much is actually being procured from local small businesses.

C. Total Value of Contracts Awarded to Local Small Businesses

1. Overview of Procurement Dollars Awarded to LSBRP Vendors

The 2005 LSBRP law required departments to award ten percent of eligible (non-exempt) procurement dollars to businesses that meet the definition of local small business established in the LSBRP law. As reviewed earlier, the 2009 amendments to the LSBRP law doubled this requirement to 20 percent.

The data collected about the LSBRP show that for the first two full program years (FY07 and FY08), the County Government as a whole exceeded the ten percent LSBRP requirement. Specifically:

- In FY07, the County purchased \$11.5 million in goods and services from vendors registered with the LSBRP; this represented 19.2 percent of all program-eligible procurements.
- In FY08, the County purchased \$11.8 million in goods and services from vendors registered with the LSBRP; this represented 14.8 percent of all program-eligible procurements.

⁷ There may be other Council grant awards in HHS that were not described as such in the LSBRP database. In addition, this number does not include Council grant awards to vendors for other departments.

Table 4-7: Percent of Eligible Procurements Awarded to LSBRP Vendors, FY07–FY08 (\$ in millions)

Recipient	FY07		FY08	
	\$	%	\$	%
Non-LSBRP Vendors	\$48.2	80.8%	\$68.3	85.2%
LSBRP Vendors	\$11.5	19.2%	\$11.8	14.8%
Total	\$59.6	100%	\$80.1	100%

Source: DTS

In FY07 and FY08, the procurements tracked as being awarded to LSBRP vendors represented only one percent of County Government total procurement dollars (Table 4-8, below). This reflects the large portion of County procurement dollars that the law exempted from the LSBRP, as well as the limits to the current approach to collecting data about which contracts are awarded to local small businesses.

Table 4-8: Percent of Total County Government Procurements Awarded to LSBRP Vendors, FY07–FY08 (\$ in millions)

Recipient	FY07		FY08	
	\$	%	\$	%
Non-LSBRP Vendors	\$1,007.7	98.9%	\$973.1	98.8%
LSBRP Vendors	\$11.5	1.1%	\$11.8	1.2%
Total	\$1,019.1	100%	\$984.9	100%

Source: DTS

2. Data on Procurements from Businesses Registered with the LSBRP

As reported above, the County made purchases of \$11.5 million in FY07 and \$11.8 million in FY08 from businesses registered with the LSBRP. Table 4-9 (on the next page) shows the breakdown of the amounts awarded through the local small business contract reserve process, the amount awarded through the normal contract award process, and the amount awarded as part of an under \$5,000 purchase.

In sum, these data show that few of the contract dollars awarded to LSBRP businesses resulted from the LSBRP contract reserve process. Specifically:

- Of the \$11.5 million awarded to LSBRP vendors in FY07, \$100,000 was a result of the LSBRP contract reserve process; another \$60,000 was in the form of under \$5,000 purchases. The other \$11.3 million (98%) was through the regular contract award process.
- Of the \$11.8 million awarded to LSBRP vendors in FY08, \$400,000 was a result of the LSBRP contract reserve process; another \$60,000 was in the form of under \$5,000 purchases. The other \$11.4 million (97%) was through the regular contract award process.

Table 4-9: County Procurements from Registered LSBRP Businesses, FY07–FY08 (\$ in millions)

Type of Procurement	FY07		FY08	
	\$	%	\$	%
Not Reserved	\$11.25	98.2%	\$11.39	96.4%
Reserved	\$0.14	1.2%	\$0.37	3.1%
Under \$5,000*	\$0.06	0.5%	\$0.06	0.5%
Total	\$11.45	100%	\$11.82	100%

*Department may voluntarily report purchases of less than \$5,000 from LSBRP vendors

Source: DTS

From FY07 through FY09, County Government departments reserved a total of 34 solicitations for registered LSBRP businesses (Table 4-10). Of these solicitations, 22 resulted in a contract with a LSBRP vendor. The other 12 solicitations were cancelled due to insufficient vendor responses or other reasons specific to the contract. Appendix C contains a complete list of all reserved solicitations for FY07 through FY09.

Table 4-10: Reserved Solicitations, FY07–FY09

	FY07	FY08	FY09
Reserved Solicitations	14	4	16
Awarded to LSBRP Vendor	10	3	9
Not awarded to LSBRP vendor	4	1	7

Source: DED and Office of Procurement

2. Data on Distribution of Contract Awards to LSBRP Vendors

In FY07, the \$11.5 million awarded to LSBRP vendors were distributed among 101 vendors. In FY08, the \$11.8 million were distributed among 89 vendors. Although a few vendors received awards of over \$1 million, most vendors received much smaller awards. Table 4-11 provides some additional summary details on these contract awards for FY07 and FY08. In sum:

- The average (mean) contract award received by an LSBRP vendor was \$112K in FY07 and \$133K in FY08, the median award was \$25K in FY07 and \$50K in FY08.
- In FY07, one vendor received a contract worth close to \$2 million, which represented 17 percent of all County Government procurement dollars awarded to LSBRP vendors. Two other vendors also received contracts valued at more than \$1 million, which together totaled \$3 million (27%) of expenditures to LSBRP vendors.
- In FY08, the same vendor again received a contract worth about \$2 million (17%). Two other vendors also received awards of over \$1 million, which together totaled \$2.2 million (18%) of expenditures to LSBRP vendors.

**Table 4-11: Characteristics of All Awards to LSBRP Vendors,
FY07–FY08**

	FY07	FY08
Number of Vendors	101	89
Maximum Amount Received by Vendor	\$1,975,000	\$2,116,200
Minimum Amount Received by Vendor	\$118	\$325
Average Amount Received by Vendor	\$112,271	\$132,820
Median Amount Received by Vendor	\$25,000	\$50,000

Source: DTS

As reviewed above, very few of these contracts were awarded to LSBRP vendors through the contract reserve process. Table 4-12 provides some summary details on the few *reserved* awards that LSBRP vendors received.

- In FY07, the \$100,000 awarded to LSBRP vendors through the reserve contract process went to four vendors. Total amounts received by the individual vendors ranged from \$7,540 to \$37,612.
- In FY08 the \$400,000 that went to LSBRP vendors through the reserve contract process went to eight vendors. Total amounts received by individual vendors ranged from \$3,000 to \$115,000.

**Table 4-12: Characteristics of Reserved Awards to LSBRP Vendors,
FY07–FY08**

	FY07	FY08
Number of Vendors	4	8
Maximum Amount Received by Vendor	\$37,612	\$115,000
Minimum Amount Received by Vendor	\$7,540	\$3,000
Average Amount Received by Vendor	\$35,538	\$46,438
Median Amount Received by Vendor	\$42,360	\$18,409

Source: DTS

3. Examples of Procurement Expenditures that were Eligible for the LSBRP

Procurements from Vendors Registered with the LSBRP. In FY07 and FY08, the Departments of Environmental Protection, Health and Human Services, Homeland Security, Public Works and Transportation, and Recreation accounted for over 80 percent of procurements from vendors registered with the LSBRP. Examples of goods and services procured from LSBRP vendors by these departments included:

- Translation services;
- Psychological services;
- Snow and ice removal services;
- Grounds maintenance;
- Sports professional services;
- Security systems and equipment; and
- Sewer and storm drain construction.

Procurements from Vendors NOT Registered with the LSBRP. In FY07 and FY08, the Departments of Health and Human Services, Public Works and Transportation, and Recreation accounted for about three-quarters of procurements that were eligible for the LSBRP but were awarded to vendors who were *not* registered for the program.⁸ Examples of goods and services procured from non-LSBRP vendors were:

- Dental, medical, and other health related services;
- Alcohol and drug prevention services;
- Mental health services;
- Buses;
- Road and highway equipment;
- Janitorial and custodial services;
- Tree trimming and pruning services;
- Sports professional services; and
- Cultural arts services.

D. Compliance by Department

In FY07 and FY08, 43 County Government departments/offices were required to follow the LSBRP procurement requirements. Data for procurements by these departments show that a majority met the requirement to award at least ten percent of their procurement dollars to LSBRP vendors (Table 4-13); about half of these departments had LSBRP-eligible procurements. Specifically:

- In FY07, 72 percent (18) of the 25 departments that awarded contracts which met the LSBRP criteria awarded at least ten percent of their procurement dollars to LSBRP vendors. Seven departments did not achieve the ten percent requirement.

⁸ Some goods and services procured by DHHS may have been purchased from non-profit organizations. Although the purchases are eligible for the LSBRP, non-profit organizations are excluded from the program.

- In FY08, 73 percent (16) of the 22 departments that awarded contracts which met the LSBRP criteria awarded at least ten percent of their procurement dollars to LSBRP vendors. Six departments did not meet the requirement.

Appendix D provides data for each department with LSBRP-eligible procurements.

Table 4-13: Departmental Compliance with LSBRP Requirements, FY07–FY08

	FY07	FY08
Departments meeting requirement	18	16
Departments not meeting requirement	7	6
Total departments with eligible procurements	25	22

Source: DTS

CHAPTER V. Feedback from the Business Community and County Government Staff

This chapter summarizes feedback on the LSBRP from the small business community and County Government staff who administer LSBRP contracts. The chapter is organized as follows:

Section A, Feedback from the Business Community, summarizes input obtained from the business community through interviews and an online survey of registered LSBRP vendors.

Section B, Feedback from County Government Staff, summarizes comments obtained from interviews with contract administrators across 13 County Government departments.

A. Feedback from the Business Community

In order to solicit feedback on the LSBRP from the business community, OLO:

- Interviewed representatives from chambers of commerce and other business groups based in the County; and
- Conducted an online survey of businesses that are registered in the LSBRP database.

In sum, the business community believes the LSBRP is an important County program, but one that (at least to date) has not substantially expanded opportunities for local small business to contract with the County Government. Recurring concerns about the LSBRP voiced by representatives of the business community are that the process of participating is too complex; the program is not well publicized; and the LSBRP is not consistently implemented across County Government departments.

1. Feedback from the Business Community

OLO received feedback about the LSBRP through interviews with representatives from the following ten business groups based in the County:

- Asian Pacific American Chamber of Commerce,
- Clarksburg Chamber of Commerce,
- Gaithersburg-Germantown Chamber of Commerce,
- Greater Silver Spring Chamber of Commerce,
- Hispanic Chamber of Commerce,
- Potomac Chamber of Commerce,
- Rockville Economic Development, Inc.,
- Mid-Atlantic Chamber of Commerce,
- Wheaton-Kensington Chamber of Commerce, and
- Women Business Owners of Montgomery County.¹

Nine of the ten individuals interviewed indicated they were familiar with the LSBRP, and three of them indicated their comments were based on substantial experience with the program. During the course of this study, OLO also interviewed individual business owners who had an interest in the program.

¹ OLO also contacted, but did not receive feedback from, the African American Business Council, Greater Bethesda-Chevy Chase Chamber of Commerce, Montgomery County Chamber of Commerce, Olney Chamber of Commerce, Poolesville Area Chamber of Commerce, and Rockville Chamber of Commerce.

Representatives from the business community indicated strong support for the concept of a reserve program as a mechanism for providing local small businesses with additional opportunities to sell their goods and services to the County Government. However, despite this overall positive attitude about the LSBRP, business representatives also believed the implementation of the program could and should be improved. Two of the most commonly expressed concerns about the LSBRP are briefly described below.

Actual LSBRP results have not met expectations. A majority of the business representatives interviewed commented that the LSBRP has not met their expectations. Specifically, the business community had expected that the LSBRP would result in more County contracts reserved for local small businesses. In addition, it was expected there would be more opportunities for local small businesses to compete for and receive County contracts worth higher dollar amounts.

The LSBRP is not well publicized. About one-third of the business representatives interviewed believe the County Government needs to improve outreach and publicity about the LSBRP. For example, it was suggested that the County pro-actively identify local small businesses whose goods and services match up with the County's contract needs, and encourage those businesses to register with the LSBRP and compete for contracts.

In addition, several recurring complaints were raised about the management of the LSBRP, including: (1) the process of participating is "too complex" and (2) the program is not consistently implemented across all County Government departments.

2. Survey of Registered LSBRP Vendors

OLO employed an online survey tool to solicit feedback about the LSBRP from business owners who are registered in the LSBRP database.² This section provides a brief overview of the 112 survey respondents and summarizes their feedback about the LSBRP.

a. Overview of Survey Respondents

OLO received responses from 112 of the 768 individual business owners who were invited to provide feedback on the LSBRP; this represented a response rate of 15 percent. As depicted in Exhibits 5-3, 5-4, and 5-5 on pages 39 – 40, among survey respondents:

- 41 percent first registered with the LSBRP in 2006; 17 percent in 2007; 25 percent in 2008; and 17 percent in 2009.
- 70 percent are registered with the LSBRP as "service businesses;" 9 percent are registered as "construction businesses;" and 9 percent as "multiple types of businesses;"
- 46 percent learned about the LSBRP from a County website; 30 percent learned about the LSBRP at a business event such as a procurement fair or networking event; and 22 percent learned about the program from a County Government staff member.

² A copy of the survey is included as Appendix E.

Most respondents had never received a contract from the County Government. 78 percent of survey respondents reported never receiving a contract from the County Government (Exhibit 5-1, below). Among those who had received a contract: 7 percent reported receiving at least one contract from the County through the LSBRP reserve process; 8 percent reported receiving at least one contract through the regular contracting process; and another 7 percent reported receiving County contracts both through the reserve process and the regular contract process.

Exhibit 5-1: Percent of Respondents Receiving County Government Contracts by Type of Contract

(N = 111)

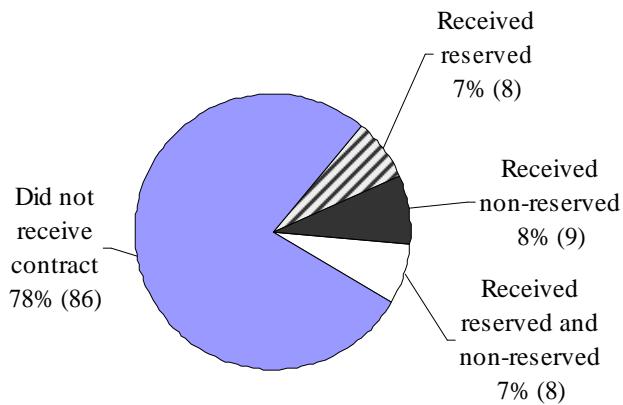


Table 5-1, on the next page, summarizes additional information obtained from the 85 survey respondents who are registered LSBRP vendors who have not received a County contract. In sum, 61 percent of these vendors indicated they had not responded to any County solicitations; the most often cited reason for not responding was that they had not seen any County Government solicitations which sought the services/good offered by the respondent's business. The other 39 percent had responded to a County solicitation (either reserved under the LSBRP or not reserved under the LSBRP), but were not the successful bidder.

Among all survey respondents, 72 percent believe that solicitations for goods or services provided by their business were available only “rarely” or “sometimes.” Another 16 percent reported that in their experience such solicitations were “never” available. Only 12 percent reported that in their experience applicable solicitations were available “often.” (Exhibit 5-6, p. 40)

Table 5-1: Additional Responses from Survey Participants Who Did Not Receive a County Government Contract (N = 85)

Response	Percent
Did not respond to a solicitation	61%
<i>I have not seen any County Government solicitations for services/goods that my business provides.</i>	54%
<i>There have been County Government solicitations for services/goods that my business provides, but I chose not to respond.</i>	7%
Responded, but did not receive a solicitation	39%
<i>I responded to BOTH RESERVED AND NON-RESERVED County Government solicitations, but I did not receive a contract.</i>	22%
<i>I responded to a County Government solicitation(s) RESERVED under the LSBRP, but I did not receive a contract.</i>	9%
<i>I responded to a County Government solicitation(s) THAT WAS NOT RESERVED under the LSBRP, but I did not receive a contract.</i>	7%

Source: OLO survey

b. Feedback on the LSBRP from Survey Respondents

Overall, survey respondents support the concept of a reserve program for local small businesses, but express disappointment that the LSBRP has not resulted in more opportunities for them to contract with the County Government. Respondents were not confident that recent changes to the LSBRP that increased the County's LSBRP procurement requirement and increased eligibility limits would create more opportunities. Some businesses felt the changes would hurt them because of the potential for increased competition.

The survey asked respondents to rate (on a scale of 1-5) their experience with LSBRP's online self-certification process; whether the LSBRP has expanded opportunities for local small businesses to contract with the County government; and overall satisfaction with the LSBRP. In addition, OLO asked respondents whether they believed that the 2009 changes to the LSBRP would have an impact on their business. The responses from the LSBRP vendors who filled out the survey are summarized below.

The LSBRP online certification process received an average rating of 3.4 out of 5.0. Respondents were asked to rate their experience with the online LSBRP registration system on a five-point scale with 1 representing "very difficult to use" and 5 representing "very easy to use." On average, respondents rated the online certification system 3.4, with the greatest percent of respondents (40%) giving the system a rating of "easy to use."

About six percent of respondents believe the LSBRP has fully met its goal of expanding opportunities for local small business to contract with the County. Respondents were asked to rate whether they believed that the LSBRP met the goal of expanding opportunities for local small businesses to contract with the County government on a five-point scale, with 1 representing "does not meet the goal at all" and 5 representing "has fully met the goal." Only 5 respondents indicated that they believed the LSBRP had fully met the goal. In contrast 28 respondents (33%) indicated that they thought the program "does not meet the goal at all."

With respect to overall satisfaction, the LSBRP received an average rating of 2.5 out of 5.0.

Respondents were asked to rate their overall satisfaction with the LSBRP on a five-point scale, with 1 representing “very unsatisfied” and 5 representing “very satisfied.” On average, respondents gave the program a satisfaction rating of 2.5; 20 respondents (22%) gave the program a rating of 1, and 33 respondent (37%) gave it a rating of 2.

When asked to explain the reasons behind their ratings, respondents frequently indicated that they had seen few or no opportunities for their business to do business with the County. Others remarked that even when there were opportunities to bid, the bid process was “arduous” and contract requirements prevented them from meeting the qualifications.

Several respondents commented that, at least in their experience, County staff based in the departments were unfamiliar with the program. On the other hand, others indicated that they thought the program was a good idea and the LSBRP staff were helpful and responsive.

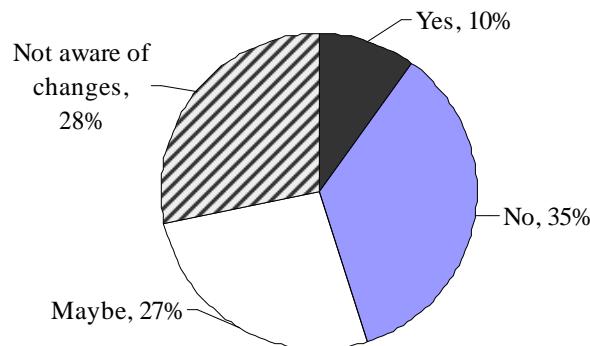
Comments on recent changes to the LSBRP. Respondents were asked whether they were aware of recent changes to the LSBRP that increased the County Government’s local small business procurement requirement to 20 percent of eligible transactions and increased the maximum size of businesses that are eligible to participate in the LSBRP. In sum:

- 28 percent of respondents indicated that they were not aware of the changes to the program.
- 35 percent did not believe that the changes would impact their business. Another 27 percent of respondents were not sure whether the changes would impact them. (Exhibit 5-2.)

When asked to explain their response, businesses indicated that they were not confident that the changes would result in additional opportunities to contract with the County Government. Businesses that expected the changes to impact them did not necessarily believe the changes would be helpful. Several businesses expressed the opinion that increasing the size of eligible businesses might hurt them rather than help since it increases competition within the program.

Exhibit 5-2: Percent of Businesses That Expect Recent Changes to LSBRP to Impact their Business

(N = 109)



B. Feedback from County Government Staff

OLO interviewed contract administrators from 13 County Government departments (see Table 5-2). This sample included departments that have done a significant amount of contracting with LSBRP vendors and those that have not.

In general, the staff interviewed believe the LSBRP provides opportunities for local small businesses to do business with the County Government, however they also expressed concerns about the program. Specific concerns that were repeatedly mentioned included that the vendor pool is “too small,” and the LSBRP database was difficult to use.

Table 5-2: Departments Represented in OLO Interviews

Department of Economic Development	Office of the County Council
Department of Environmental Protection	Montgomery County Public Libraries
Department of Fire and Rescue Services	Montgomery County Sheriff's Office
Department of Health and Human Services	Office of Management and Budget
Department of Permitting Services	Office of the County Executive
Department of Police	Office of the State's Attorney
Department of Public Works and Transportation*	

*OLO interviewed staff in the Department of Transportation and the Department of Environmental Protection who represented the former DPWT.

1. General Experiences with LSBRP Contracting

All but two of 15 department representatives interviewed spoke from their direct experience with the LSBRP and interaction with registered LSBRP vendors. One representative reported that because all of her department’s contracts were under \$5,000, she had not had the opportunity to contract with LSBRP vendors. Seven of the individuals interviewed reported that they had gone through the process of reserving contracts for the LSBRP.

All but two of the department representatives interviewed reported that his or her department met the requirement to award ten percent of their eligible procurement dollars to LSBRP vendors in FY07 and FY08. Departments reported that the strategies they used to meet this requirement included:

- Asking program staff to consider reserving solicitations for the LSBRP;
- Reviewing up-coming contracts at the beginning of the year to identify potential LSBRP opportunities;
- Using local vendors for purchases under \$5,000;
- Encouraging local vendors to register for the LSBRP prior to advertising a general solicitation; and
- Asking vendors to register for the LSBRP after they receive a contract through the regular solicitation process.

Among departments who had reserved contracts for the LSBRP, three reported that before advertising the solicitation as reserved for the LSBRP they researched the market to confirm that there were capable vendors. One reported that the department had reserved solicitations but did not receive any qualified bids. Another department initially reserved a contract, but withdrew it before the solicitation was complete because they learned there were no qualified vendors. Two representatives reported that researching the market to ensure that there are an adequate number of vendors slows down the solicitation process.

When asked why they had not reserved contracts for the LSBRP, the primary concern department representatives cited was a limited vendor pool. If departments do not receive a sufficient number of responses from qualified vendors, they must re-issue the solicitation. Department representatives reported that the time required to re-issue the solicitation creates too much of a time delay.

2. Areas of Concern and Recommended Program Improvements

Nine of the 13 contract administrators interviewed expressed concern about meeting the new 20 percent requirement for LSBRP procurements. They reported that as pre-existing contracts need to be resolicited, fewer of their purchases will be exempt from the LSBRP. Representatives stated that this can present a challenge when the goods or services are specialized or when they are provided by non-profit organizations.³ They also see the need for additional vendors to be registered with the LSBRP, including current vendors who qualify for the LSBRP but are not already registered.

The most commonly voiced concerns and suggestions for improvements are summarized below.

LSBRP Database. A majority of department representatives expressed frustration with using the LSBRP database. Representatives described it as confusing and requiring too many steps to report data about their purchases (i.e., “resolve” transactions, see Chapter III, p. 15 – 16).

For example, some reported that it was difficult to identify which transactions were with LSBRP vendors. Others reported that some transactions did not appear in the database and that other transactions appeared more than once. One person stated that it was difficult to know which purchases qualified for an exemption.

Department representatives commented that LSBRP staff were helpful when they had questions about the database. They also reported that LSBRP staff had made changes to the database which did improve the reporting process. Additional changes that department representatives suggested included:

- Recording whether the purchase was made from an LSBRP vendor in Office of Procurement databases at the time of purchase and
- Adding “exempt but awarded LSBRP” to the list of transaction types.

³ Purchases from non-profits are not exempted from the LSBRP, however non-profit organizations are not eligible to register as LSBRP vendors.

Limited Vendor Pool. Several department representatives expressed concerns about the limited pool of registered LSBRP vendors. Some representatives also reported that they had difficulty looking up qualified vendors in the LSBRP database. One person reported that vendors told them they were registered, but their registrations had expired. A few representatives expressed interest in additional training about how to search LSBRP vendors in the LSBRP database. Others suggested:

- Providing contract administrators with a comprehensive list of registered vendors;
- Notifying contract administrators when vendors become certified; and
- Indicating in the Office of Procurement database of vendors whether a vendor is also registered for the LSBRP.

Limitation of Competition and Competing Mandates. A few department representatives expressed concern that reserving contracts for LSBRP vendors can limit competition, possibly resulting in higher costs and lower quality vendors. One representative believed that the goals of the LSBRP compete with the mandate to get the best value for the customer at the lowest cost. This representative also felt that it was unclear how much more the County Government was willing to pay in order to do business with LSBRP vendors.

Other Suggestions for Improvements. Department representatives also suggested the following changes to the LSBRP:

- Unbundle contracts to create more opportunities to purchase from LSBRP vendors;
- Allow using departments to take credit for LSBRP purchases on a contract that is used by multiple departments rather than the current practice of giving the credit to the issuing department; and
- Improve opportunities to count purchases under \$5,000 toward the LSBRP procurement requirement.

Exhibit 5-3: Year Respondent First Registered for LSBRP

(N = 111)

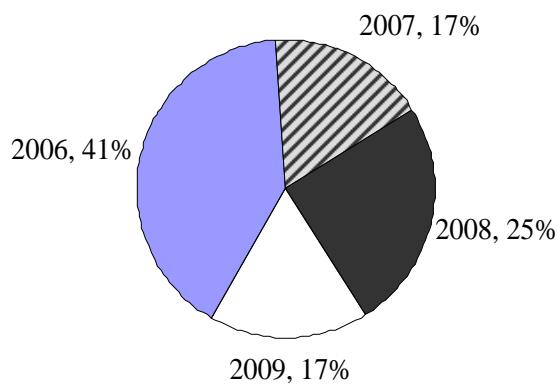


Exhibit 5-4: Respondents by Type of Business

(N = 112)

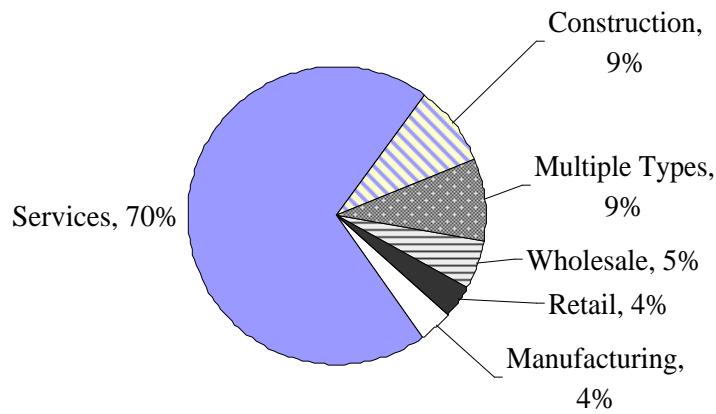
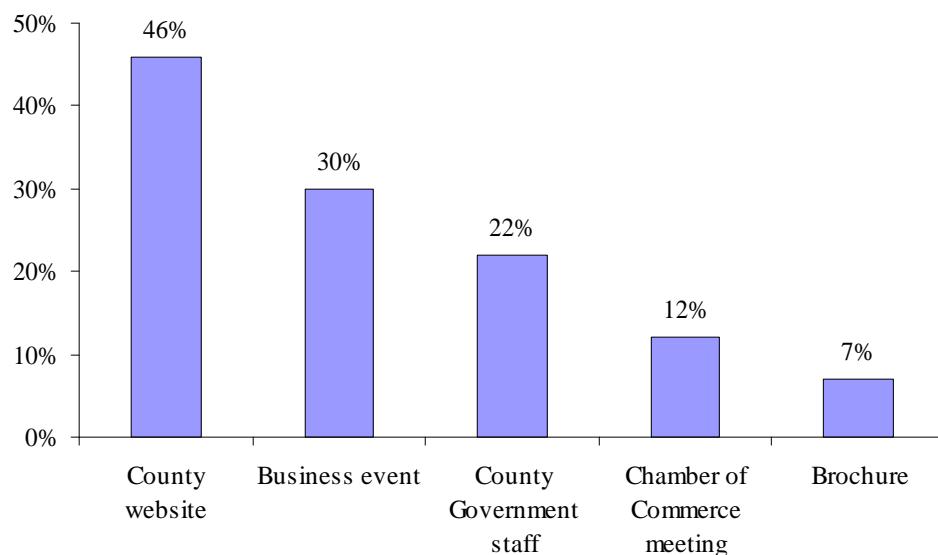
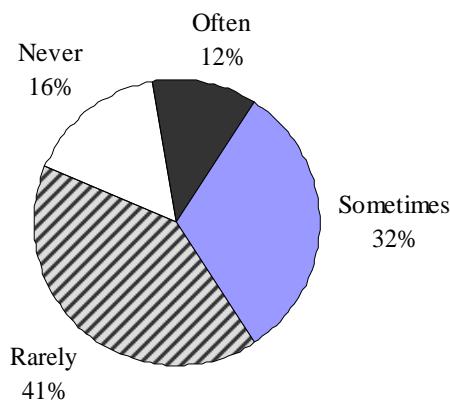


Exhibit 5-5: Sources Where Respondents Learned about the LSBRP*
(N = 100)



*Businesses could select multiple responses

Exhibit 5-6: Frequency of Solicitations for Goods or Services Provided by Respondents
(N = 108)



CHAPTER VI. Comparative Information

This chapter provides some comparative information about other government procurement programs operating in the Washington D.C. area that provide contracting preferences to small and/or local businesses. The chapter is organized as follows:

Section A, presents the State of Maryland's Small Business Reserve Program;

Section B, describes the District of Columbia's contracting preferences for Certified Business Enterprises and procurement targets for buying from registered small businesses;

Section C, summarizes the Washington Suburban Sanitary Commission's Small Local Business Enterprise Program; and

Section D, presents selected characteristics of small business programs operated by the federal government; the states of Maryland, Virginia, and West Virginia; and Cecil County, Maryland.

A. State of Maryland Small Business Reserve Program

The State of Maryland established a small business reserve program in 2004. This program requires designated agencies to award at least ten percent of their total contract dollars for goods, supplies, services, maintenance, construction, construction-related service, architectural service, and engineering service contracts to "small businesses" as defined by the Maryland Code. In 2008, the State amended the definition of "small business" to increase the size of businesses that can qualify for the program.¹

Although certain aspects of Montgomery County's LSBRP parallel the State program, there are also major differences between the County and State programs:

- The State program does not limit program eligibility to small businesses located in Maryland; in comparison, the County's program only applies to small businesses located in the County.
- The State's eligibility requirements for businesses are based on *both* number of employees *and* gross sales, while the County bases eligibility on *either* number of employees *or* gross sales. (See Table 6-1, page 42.)
- The State program requires ten percent of contract dollars spent by certain State agencies to be awarded to small businesses; in comparison, (since the law was amended in 2009) Montgomery County's program requires 20 percent of eligible contract dollars spent by all County departments/offices to be awarded to local small businesses.
- The State program identifies one category of procurement as exempt from the program;² in comparison, the County's law identifies seven exemption categories.

Appendix A contains a more detailed comparison of the State and County programs.

¹ *Small Business Reserve Program (SBR) FY2008 Annual Report*, Maryland Governor's Office of Minority Affairs; Changes to the maximum size of businesses were based on a study of Small Business Preference Program, Minority/Disabled Business Enterprise Program, and Department of Labor, Licensing and Regulation data (August 4, 2009 Interview with Janice Montague, Governor's Office of Minority Affairs)

² The state program allows exemptions for where a reserve would conflict with federal law. (Md. Code, State Finance and Procurement §§ 14-502 (d))

Table 6-1: Comparison of Current State of Maryland and Montgomery County Definitions of “Small Business”

Type of Business	State Eligibility Requirements (2008): Maximum Number of Full-time Equivalent Employees <i>and</i> Gross Sales		County Eligibility Requirements (2009): Maximum Number of Full-time Equivalent Employees <i>or</i> Gross Sales	
	Number of Employees	Gross Sales	Number of Employees	Gross Sales
Wholesale	50	\$4 million	30	\$5 million
Retail	25	\$3 million	30	\$5 million
Manufacturing	100	\$2 million	40	\$14 million
Services	100	\$10 million	50	\$5 million
Construction	50	\$7 million	50	\$14 million
Architectural and Engineering	100	\$4.5 million	N/A	N/A

Source: Md. Code, State Finance and Procurement §§ 14-501 – 14-505, Montgomery County Executive Regulation 2-09 § 3

The Governor’s Office of Minority Affairs publishes annual reports on the State’s Small Business Reserve Program. As shown in Table 6-2, between FY06 and FY08, most State agencies that were required to award ten percent of their procurement spending to small businesses did not meet the target. On average, participating State agencies have awarded about six percent of procurement dollars to small business.

Table 6-2: Summary of Maryland Small Business Reserve Program Results, FY06-FY08

Fiscal Year	Number of Agencies Required to Participate in Program	Number Awarding 10% of Procurements to Small Businesses	Average Percent of Procurement Dollars Awarded to Small Businesses
FY06	22	8	6.19%
FY07	22	4	6.02%
FY08	24	5	6.0%

Source: Small Business Reserve Program Annual Reports for FY06, FY07, and FY08, Governor’s Office of Minority Affairs

According to annual reports on the State’s program, the challenges identified by State agencies for meeting their small business award targets are similar to those expressed at the local level, such as:

- Difficulties collecting data and reporting purchases from small businesses;
- Hesitancy to reserve solicitations for small businesses because of a limited or unknown pool of small business vendors; and
- Difficulty identifying and registering small businesses for the program.³

³ *Small Business Reserve Program (SBR) FY 2006 and FY2007 Annual Reports*, Maryland Governor’s Office of Minority Affairs; August 4, 2009 Interview with Janice Montague, Governor’s Office of Minority Affairs.

C. District of Columbia Certified Business Enterprises

The District of Columbia offers contracting preferences to Certified Business Enterprises (CBE). While a business may qualify as a CBE based on a variety of characteristics, including as a small business, all CBEs must have headquarters with managerial staff located in the District of Columbia. In addition, a CBE must meet at least one of the following requirements:

- Greater than 50 percent of assets are located in the District;
- Greater than 50 percent of revenues are generated in the District; or
- At least 50 percent of owners or employees are residents of the District.⁴

To qualify as a small business, a CBE must be independently owned and operated and must either be registered with the United States Small Business Administration or meet gross income limits set by the District of Columbia. Under limited circumstances, a subsidiary business may qualify as a small business.⁵

Registered CBEs receive price reduction and point preferences when competing for contracts with the District. For example, local business enterprises receive a 2 percent price reduction or a 2 point preference; small businesses may receive up to a 3 percent price reduction or a 3 point preference.⁶

The District requires all agencies that contract through the Office of Contracting and Procurement to award 50 percent of their procurement dollars for goods and services, including construction, to registered small businesses.⁷ In addition, for construction contracts over \$250,000 and for all non-construction contracts, if a portion of the work is subcontracted, 35 percent of the contract must be awarded to registered small businesses.⁸

The District also requires agencies to set aside all contracts of \$100,000 or less for registered small businesses unless there are fewer than three registered and qualified businesses. Agencies may refuse to award a contract to a small business and reissue the solicitation for all businesses if the agency determines that the lowest bid by a small business was 12 percent or more above what would be expected in the open market.⁹

B. Washington Suburban Sanitary Commission

The Washington Suburban Sanitary Commission (WSSC) established a Small Local Business Enterprise Program in 2007 to increase contracting for Montgomery and Prince George's County small businesses.¹⁰ To register for the program, a business owner must demonstrate that the business:

- Is independently owned and operated;

⁴ District of Columbia Department of Small and Local Business Development, <http://lsdbe.dslbd.c.gov/logon.aspx>

⁵ D.C. Official Code § 2-218.32

⁶ D.C. Official Code § 2-218.43

⁷ D.C. Official Code § 2-218.41

⁸ D.C. Official Code § 2-218.46 (a)(1)(A), D.C. Official Code § 2-218.46 (a)(2)(A)

⁹ D.C. Official Code § 2-218.44

¹⁰ WSSC Standard Procedures 08-01, Purpose

- Meets the Maryland Department of General Services' size standards for a small business enterprise under the State's Small Business Reserve Program;
- Has a principal place of business in or significant employment presence in Montgomery or Prince George's County, with no less than 25 percent of employees living in those counties;
- Has been established for at least one year or the owners have at least three years of relevant experience;
- Has received no more than \$500,000 in WSSC contract awards in the preceding year.¹¹

Businesses can receive up to \$1.5 million in contracts in a single year and businesses "graduate" from the program after receiving at least \$5 million in at least five separate prime or subcontracts.¹² Businesses must recertify for the program every two years.¹³

Program Options. As summarized in the table below, WSSC's program allows for a number of different procurement strategies to increase the agency's contracting with local small businesses.

Table 6-3: WSSC Local Small Business Procurement Strategies

Procurement Strategy	Description
Annual Contracting Goals ¹⁴	Non-mandatory annual percentage goals
Price Preferences ¹⁵	<ul style="list-style-type: none"> • Up to a 10% price preference for local small businesses, if preference costs less than \$50,000 annually for the life of the contract • Up to a 20% point preference for a local small business in response to a Request for Proposals
Mandatory Subcontracting ¹⁶	<ul style="list-style-type: none"> • Mandatory subcontracting goals on contracts over \$25,000 on a contract-by-contract basis for up to 49% of the contract. • Prime contractors cannot subcontract more than 49% of a contract to a vendor that is not a local small business
Sheltered Market ¹⁷	Can reserve contracts of \$300,000 or less for only local small businesses if there are at least three qualified vendors
Competitive Business Development Demonstration Project ¹⁸	Experienced businesses and local small businesses develop joint ventures for services for which WSSC has difficulty generating adequate numbers of bidders
Other Assistance ¹⁹	Can reduce or waive requirements for bonding and insurance to contract with otherwise qualified local small businesses

Source: WSSC Standard Procedures

¹¹ WSSC Standard Procedures 08-01, Eligibility for the SLBE Program, §§ 1.0

¹² WSSC Standard Procedures 08-01, Graduation and Suspension Criteria

¹³ WSSC Standard Procedures 08-01, Eligibility for the SLBE Program, §§ 3.0

¹⁴ WSSC Standard Procedures 08-01, Definitions and Terms 5.0

¹⁵ WSSC Standard Procedures 08-01, Affirmative Procurement Initiatives for Enhancing SLBE Contract Participation [hereinafter "Procurement Initiatives"], 1.0.2

¹⁶ WSSC Standard Procedures 08-01, Definitions and Terms 5.0 and Procurement Initiatives, 1.0.3

¹⁷ WSSC Standard Procedures 08-01, Procurement Initiatives, 1.0.4

¹⁸ WSSC Standard Procedures 08-01, Competitive Business Development Demonstration Project

¹⁹ WSSC Standard Procedures 08-01, Procurement Initiatives, 1.0.1

D. Selected Characteristics of Other Programs

Federal Government. The Federal Government requires all federal agencies to set aside certain purchases of at least \$3,000 and up to \$100,000 for small businesses. Agencies must also set aside purchases over \$100,000 if there is a “reasonable expectation” that the agency will receive at least two qualified bids at fair-market prices.²⁰

Some federal agencies report that meeting the second requirement creates a risk that they will have to reissue the solicitation if they do not receive qualified bids for set-aside contracts over \$100,000. Additionally, some agencies have found that in order to meet the “reasonable expectation” requirement they have to do significant market research and recruit small businesses that may be able to meet the contract requirements.²¹

In order to address these challenges, agencies have implemented a “Small Business Cascading Evaluation Preference Process.” Using this approach, agencies issue a solicitation that is open to all bidders, however, the solicitation specifies that if a certain number of qualified bids are received from small businesses, only those bids will be considered.²² Criticisms of this approach include: (1) agencies use the approach to avoid performing market research and (2) some businesses invest resources in submitting bids that will never be considered.²³

State of Maryland. By law, the Maryland Department of General Services, Department of Transportation, University System of Maryland, Morgan State University, and Maryland Department of Public Safety and Correctional Services may provide a price preference to certified small businesses for certain types of procurements.²⁴

The State’s preference program allows these departments to award a contract to a small business with a bid up to five percent greater than the lowest non-small business bid. Departments may give an additional preference of two percent for veteran-owned small businesses or three percent for disabled veteran-owned small businesses.²⁵

Commonwealth of Virginia. In 2006, Virginia established the Small, Women-, and Minority-Owned Business Program (SWaM) to direct 40 percent of the Commonwealth’s discretionary spending²⁶ to SWaM-certified vendors.²⁷ The program sets different guidelines for purchasing from SWaM-certified businesses for Commonwealth agencies based on the amount of a purchase.²⁸

²⁰ Federal Acquisition Regulation 19-502-2 (a-b)

²¹ U.S. Department of Commerce, Procurement Memorandum 2004-2, *An Innovative Approach to Small Business Set Asides: Small Business Cascading Evaluation Preference Process* [hereinafter “Procurement Memorandum”] @ p. 1

²² Procurement Memorandum @ p. 2

²³ *Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress* [January 2007] @ pp. 282-283

²⁴ Md. Code, State Finance and Procurement § 14-202

²⁵ Md. Code, State Finance and Procurement § 14-206

²⁶ Discretionary spending includes daily operating expenses and construction under \$100,000

²⁷ Commonwealth of Virginia Executive Order 33 (2006)

²⁸ Different guidelines exist for purchases under \$5,000, from \$5,000 and \$49,999, from \$50,000 and \$99,999, and \$100,000 and above. July 30, 2009 Interview with Lawrence Wright, Virginia Department of Minority Business Enterprise [hereinafter *Wright Interview*]

While a business may be certified under the program both as a small business *and* a women- or minority-owned business, to participate a business *must* be certified as a small business – defined as having 250 employees or fewer and an average of \$10 million or less in receipts over three years.²⁹

State of West Virginia. The State of West Virginia offers a Resident Vendor Preference Program for all non-construction State contracts. Under the program, West Virginia businesses earn up to a five percent price preference in bidding against out-of-state businesses.³⁰ If a resident vendor's bid price is below the adjusted bid price (based on the preference) of out-of-state vendors, the State agency must award the contract to the resident vendor.³¹

Cecil County, Maryland. According to the Cecil County Code, the Board of Commissioners may show preference to a “local bidder” when purchasing supplies, equipment, and services. A local bidder: (1) has a place of business or maintains an inventory in Cecil County; (2) is licensed by Cecil County or the State of Maryland, if required; and (3) is subject to Cecil County real and/or personal property taxes.³²

A preference may not exceed six percent of the bid amount or \$60,000, whichever is less, and all invitations to bid must advertise the local preference.³³

²⁹ Women- or minority- owned business in the SWaM database may register as small or non-small businesses, however, Virginia law requires procurement to be race and gender neutral. Vendors that register as women- or minority-owned businesses may be eligible for Federal preference programs from the Federal government. (*Wright interview*); Virginia Department of Minority Business Enterprise, <http://www.dmbe.state.va.us/faq.html>; *Wright interview*

³⁰ Businesses may earn a 2.5% preference if they have a principal place of business in West Virginia; a 2.5% preference if at least 75% of their employees who will work on the project live in West Virginia; and/or a 3.5% preference if the business is veteran-owned.

³¹ August 4, 2009 Interview with Ron Price, West Virginia Purchasing Division

³² Cecil County Code § 183-21

³³ Cecil County Code § 183-21

CHAPTER VII. Findings

This chapter presents the Office of Legislative Oversight's evaluation findings, organized as follows:

- A. Legislative and Staffing History
- B. Program Results
- C. Data Collection
- D. Feedback on the LSBRP from the Business Community and County Government Staff
- E. Comparative Information

A. LEGISLATIVE AND STAFFING HISTORY

In 2005, the County Council initiated and adopted legislation to establish the Local Small Business Reserve Program (LSBRP). Earlier this year, as part of the County Executive's 2009 Economic Assistance Plan, the Council approved changes to the parameters of the LSBRP.

Legislative History

1. The Council's legislative record indicates that the goals of the Local Small Business Reserve Program were to: (a) enhance the competitiveness of County-based small businesses in the County Government's procurement process; (b) broaden the pool of local small businesses doing business with the County; and (c) encourage the County's economic growth by enhancing the business climate for local small businesses.
2. The 2005 law establishing the LSBRP (Bill 23-04) required all County Government departments to award at least ten percent of *eligible* contract dollars to local small businesses. The definition of "local small business," including maximum limits on a business' gross sales and number of employees, were established by executive regulation.
3. The law that established the LSBRP exempted the following types of contracts from the ten percent requirement:
 - Pre-existing contracts or extension(s) of pre-existing multi-year contracts;
 - Non-competitively awarded contracts;
 - Public entity or emergency procurements;
 - Contracts granted a waiver by the Chief Administrative Officer;
 - Any single procurement greater than \$10 million;
 - Any procurement for which no local small business was qualified or able to perform the contract; and
 - Contracts for which the LSBRP law did not apply because of a conflict with state, federal, or local law or a grant requirement.

4. As the primary mechanism for achieving the goals of the LSBRP, the law authorized a process for County Government departments to reserve (or set aside) contracts for bidding by only local small businesses. Staff responsible for administering the LSBRP work with contract administrators across County Government departments to identify contracts that are appropriate for the reserve process.
5. In March 2009, as part of the County Executive's Economic Assistance Plan, the Council approved changes to the parameters of the LSBRP. The program amendments increased the size limits for local small businesses and doubled (from 10-20%) the percent of *eligible* contract dollars that each department must award to local small businesses. In addition, the Director of the Department of General Services must now approve exemptions from the program based on the reason that there is no qualified local small business available.

Staffing History and Costs

6. Since 2005, as a result of Executive Branch reorganizations, three different offices have been responsible for administering the Local Small Business Reserve Program. The program was initially assigned in 2005 to the Department of Economic Development (DED). In January 2008, the program was transferred to the Office of Procurement. In July 2008, it was transferred again, this time to its current location in the Department of General Services' Office of Business Relations and Compliance (OBRC).
7. Between FY07 and FY09, personnel and operating expenses dedicated to managing the LSBRP ranged from \$209K to \$362K. In terms of workyears, the staff assigned to LSBRP fluctuated from 2.6 WYs (FY07) to 4.2 WYs (FY09). For FY10, dedicated program staffing is budgeted at two workyears in the Department of General Services. These budget data do not include the costs of time allocated by contract administrators across all County Government departments/offices to implement the program.

B. PROGRAM RESULTS

OLO analyzed program data and information on business eligibility and participation; contract awards to local small businesses; and compliance with the LSBRP law and regulation. While OLO was able to reach some meaningful findings on the results of the program (summarized below), the following factors made it difficult to make a final determination about the effectiveness of the LSBRP:

- **Absence of data on all County Government procurements.** To date, the County has only collected data on awards to local small businesses on contracts affected by the LSBRP. Because such a large portion of all County Government contracts (90%) was deemed exempt from the LSBRP, it is not known how much of the \$900 million in exempt County Government contracts each year went to local small businesses through the regular procurement process.
- **Only two years of data combined with recent program changes.** At the time OLO conducted the report, only two full years of program data (FY07 and FY08) were available. Earlier this year, Bill 3-09 made significant changes to the parameters of the LSBRP; it is premature to assess the impact of these changes. These recently enacted program changes combined with only two years of data limit the ability to draw conclusions about program accomplishments.

Contract Awards to Local Small Businesses

8. In FY07, the County Government awarded contracts totaling \$11.5 million, or 19.2 percent of *eligible* contract spending to local small businesses. In FY08, LSBRP vendors received contracts worth \$11.8 million, or 14.8 percent of *eligible* contract spending.

Value of County Contracts	FY07		FY08	
	\$ in millions	Percent	\$ in millions	Percent
Total Amount Eligible for LSBRP	\$59.6	100%	\$80.1	100%
Portion Awarded to LSBRP Vendors	\$11.5	19.2%	\$11.8	14.8%

Source: DTS

While these data demonstrate that the County Government met the statutory requirement to award at least ten percent of *eligible* contract dollars to local small businesses, the following facts on business participation in the program, the volume of program exemptions, and the minimal use of the contract reserve mechanism suggest that compliance with the procurement goal does not translate into an overall finding that the legislative goals of the LSBRP were fully met.

Business Eligibility and Participation

9. Only a fraction of the eligible local small businesses have registered to participate in the LSBRP. Between January 2006 and June 2009, a total of 1,540 vendors registered for the program. Data on the characteristics of the active registered business (as of September 2009) indicate that most of the vendors who have registered for the LSBRP are significantly smaller in size (number of employees and/or gross sales) than allowed by program eligibility criteria.
10. Available data indicate that upwards of 90 percent of the businesses located in Montgomery County likely qualify as “small businesses” under the eligibility requirement adopted (and amended earlier this year) for the LSBRP. While the estimates of the number of eligible businesses vary, a conservative number would be higher than 20,000.
11. At any given time the number of “active” vendors (defined as those with current registrations) is substantially smaller than the total number ever registered. For example, at the end of FY09, there were only 687 “active” vendors. One of the primary reasons for this disparity is that businesses choose not to renew their registrations.

High Percent of Contracts Exempted

12. More than 90 percent of the County Government's total contract spending was exempted from the LSBRP. In FY07, 94 percent of the County Government's approximately \$1 billion in contract spending met at least one of the legally-established program exemptions. In FY08, almost 92 percent of the \$985 million in total contract spending was exempt. The most commonly cited exemptions were for pre-existing contracts, no qualified local small business, and non-competitive contracts.

Value of County Contracts	FY07		FY08	
	\$ in millions	% of total	\$ in millions	% of total
Contract Spending	\$1,019.1	100%	\$984.9	100%
Portion Exempt from LSBRP	\$959.5	94.1%	\$904.8	91.9%

Source: DTS

Contract Reserve Mechanism Rarely Used

13. Only a fraction of the contract dollars successfully awarded to LSBRP businesses resulted from the LSBRP contract reserve process; virtually all contract awards resulted from the regular procurement process. In FY07, \$100,000 (1.2%) of awards to LSBRP vendors resulted from contracts that were reserved under the LSBRP. In FY08, \$400,000 (3.1%) of awards to LSBRP vendors resulted from reserved contracts.

Value of County Contracts	FY07		FY08	
	\$ in millions	% of total	\$ in millions	% of total
Awards to LSBRP Registered Vendors	\$11.45	100%	\$11.82	100%
Portion Reserved	\$0.14	1.2%	\$0.37	3.1%

Source: DTS

14. In FY07 and FY08, the County Government reserved a total of 18 solicitations for LSBRP vendors. Of these, 13 resulted in contracts with LSBRP vendors. In FY09, another 16 solicitations were reserved, and nine went to LSBRP vendors. The remaining solicitations were cancelled or reissued as regular solicitations due to insufficient vendor responses or reasons specific to the contract.

Compliance with LSBRP law and regulations

15. As noted above (see #8), in FY07 and FY08, the LSBRP exceeded the requirement in the LSBRP law and regulation to award ten percent of *eligible* procurement spending to local small businesses.

- In FY07, the County Government as a whole awarded 19.2 percent of *eligible* contract spending to LSBRP vendors; in FY08, the County Government awarded 14.8 percent of eligible spending to LSBRP vendors.
- In FY07 and FY08 about half of County Government departments/offices that were required to comply with the LSBRP law had program-eligible procurements. Of these, about three-quarters of the departments awarded at least ten percent of their *eligible* procurement spending to LSBRP vendors.

16. The LSBRP law and executive regulation also stipulate requirements for outreach, data collection, and reporting. The table below lists requirements and indicates whether they were met.

Requirement	Met			Comments
	Yes	No	Partially	
Outreach to Business Community				
Advertising in media	✓			
Distribute brochures	✓			
Business events (minimum of 3 annually)	✓			
Work with small business groups	✓			
Annual press releases			✓	Press release for FY06 and part of FY07 No press releases for FY08
Website and Database				
Provide general information about program	✓			
Allow registrations	✓			
Provide list of registered vendors	✓			
Track dollar amount of contracts awarded to LSBRP vendors	✓			
Track number of contracts awarded to LSBRP vendors		✓		Database does not capture number of contracts
Annual Report to County Council				
Due November 30			✓	FY08 report submitted in March 2009
Data on number and amount of contracts awarded under program			✓	No data on number of contracts
Data on number and amount of exempted contracts			✓	No data on number of exempt contracts
Data on Outreach to business community			✓	No information in FY08 report

C. DATA COLLECTION

Since the inception of the LSBRP, County Government staff have put substantial effort into gathering data on the LSBRP. However, the factors listed below made it difficult for County Government staff to provide the data needed for a comprehensive program evaluation.

17. The LSBRP database does not capture information on whether contracts that were exempt from the program were nonetheless awarded to local small businesses. Consequently, program staff cannot analyze 90 percent of the County Government's annual contract spending nor what percent of that spending is going to local small businesses.
18. At the time of program implementation in 2005, the LSBRP database was set up separately from other procurement databases. This created challenges for LSBRP data collection, which resulted in inefficient (and potentially inaccurate) reporting. Specifically:
 - The LSBRP database gathers data on expenditures from two Office of Procurement databases. These databases do not contain information on whether: the vendor is registered for the LSBRP; a contract was reserved for the LSBRP; or a contract was exempt from the LSBRP.
 - Department contract administrators must individually report this data for each procurement transaction over \$5,000, a time consuming process for large departments that literally have thousands of transactions annually.
 - Some departments do not report all of their contract information by the deadline for the LSBRP annual report. As a result, the annual report submitted to the Council does not contain the final program data.
 - The LSBRP database does not include data on purchases under \$5,000, and as a result, most expenditures under \$5,000 are not reflected in either the eligible or exempt procurements discussed above. Approximately \$41 million in County Government purchases were under \$5,000 in FY07, and approximately \$42 million in FY08. This area of procurement represents a substantial component of County spending for which there is incomplete information on how much is actually being procured from local small businesses.

D. FEEDBACK FROM THE BUSINESS COMMUNITY AND COUNTY GOVERNMENT STAFF

To obtain feedback about the Local Small Business Reserve Program, OLO conducted a survey of local small businesses that had registered with the LSBRP; consulted with selected other representatives of the business community; and interviewed contract administrators in 13 County Government departments/offices.

Feedback from the Business Community

OLO used an online survey tool to solicit feedback about the LSBRP from business owners who are registered in the LSBRP database. Of the 768 business owners who were invited to participate, 112 (15%) responded.

19. In general, survey respondents expressed support for the concept of a reserve program for local small businesses, but disappointment that the LSBRP has not resulted in more opportunities for them to contract with the County Government.
20. Seventy-eight percent of survey respondents reported that they had never received a contract from the County Government. Of these 86 businesses, a majority (54%) reported that they had never seen a solicitation for the goods or services that they provide.
21. Twenty-two percent of survey respondents reported they had received at least one County Government contract. Of these 25 businesses, about one third reported receiving a contract through the LSBRP reserve process; one third reported receiving a contract through the regular contracting process; and one third reported receiving contracts both through the reserve process and the regular contract process.
22. Of the 72 percent of businesses that reported being aware of the March 2009 changes to the LSBRP, approximately half did not believe that the changes would have any significant impact on their business.
23. Consistent with the survey results, OLO's interviews with other members of the business community (including representatives of ten chambers of commerce) found strong support for the concept of a reserve program. However, the general view expressed was also that implementation of the program could and should be improved. Specific comments included:
 - The business community had expected the program would result in more opportunities for local small businesses to compete for reserved contracts and that these contracts would be worth higher amounts.
 - In general, the LSBRP needs to be publicized in a way that matches available vendors with the County Government's purchasing needs.

Feedback from County Government Staff

OLO interviewed 13 contract administrators who implement the LSBRP in County Government departments. Their LSBRP responsibilities include coordinating LSBRP solicitations among department staff and DGS; encouraging department staff to consider LSBRP vendors for solicitations; and managing the department's data in the LSBRP intranet database.

24. Eleven of the 13 department representatives interviewed reported that their department had met the LSBRP requirement to award ten percent of eligible contract dollars to local small businesses. Nine of these individuals expressed some concern about being able to meet the higher 20 percent requirement.

25. The most common reason given by contract administrators for not reserving more contracts through the LSBRP was the limited pool of vendors registered with the County. A recurring concern is the risk of a time delay that would occur if/when a reserved contract does not receive a sufficient number of responses, which would then require the department to reissue the solicitation.
26. County Government contract staff expressed frustration with the LSBRP database. They described it as confusing, and had difficulty searching for vendors and reporting data about their purchases.

E. COMPARATIVE INFORMATION

OLO's review of the State's small business reserve program and several other public sector procurement programs operating in the Washington D.C. area found that:

27. The State of Maryland established a small business reserve program in 2004 that requires certain State agencies to award ten percent of contract dollars to small businesses. Published reports on the results of the State's program show that, on average, participating agencies have awarded about six percent of contract dollars to small businesses under this program.
28. Although Montgomery County's Local Small Business Reserve Program was initially modeled after the State of Maryland program, there are significant differences between the two programs:
 - The State program does not limit program eligibility to small businesses located in Maryland; in comparison, the County's program only applies to small businesses located in the County.
 - The State's eligibility requirements for businesses are based on *both* number of employees *and* gross sales, while the County bases eligibility on *either* number of employees *or* gross sales.
 - The State program requires ten percent of contract dollars spent by certain State agencies to be awarded to small businesses; in comparison, (since the law was amended in 2009) Montgomery County's program requires 20 percent of eligible contract dollars spent by all County departments/offices to be awarded to local small businesses.
 - The State program identifies one category of procurement as exempt from the program. In comparison, the County Government's law identifies seven exemption categories.
29. OLO also compiled information about small business procurement programs offered by the Federal Government; Commonwealth of Virginia; State of West Virginia; District of Columbia; Washington Suburban Sanitary Commission; and Cecil County, Maryland. In addition to some set-asides for small and/or local businesses, programs offered by these jurisdictions included:
 - Price preferences for local small businesses;
 - Mandatory local small business subcontracting goals on contracts over a certain amount;
 - Reserving a contract solicited through the regular procurement process for local small businesses, if a minimum number of qualified local small businesses bid on the contract; and
 - Reducing or waiving requirements for bonding or insurance to contract with otherwise-qualified local small businesses.

CHAPTER VIII. Recommendations

The Local Small Business Reserve Program (LSBRP) was established by law in 2005 with a mandate that all County Government departments award at least ten percent of *eligible* contract dollars to local small businesses. The law established the procurement requirement and a contract reserve (set aside) process as the primary mechanism for accomplishing the stated goals of the program, which were to:

- Enhance competitiveness of County-based small businesses doing business with the County;
- Broaden the pool of local small businesses doing business with the County; and
- Encourage the County's economic growth by enhancing the business climate for local small businesses.

Earlier this year, at the County Executive's recommendation, the Council approved changes to the LSBRP and extended the sunset date of the program from December 2009 to December 2012. The approved changes included doubling the local small business requirement for County departments/offices from 10 to 20 percent of *eligible* procurements and changing the definition of what qualifies an enterprise as a "local small business" under the program.

As reviewed in previous chapters, OLO's evaluation found that the County Government was largely in compliance with the statutory requirements of the LSBRP. However, a number of factors – including the absence of critical procurement data and the recent changes to the program – made it difficult to draw definitive conclusions about the bottom-line effectiveness of the program. As a result, OLO's recommendations focus on providing the Council with the information needed to make informed decisions about the future of the LSBRP.

Recommendation #1: Decide the future of the LSBRP based upon a complete picture of all County Government purchases from local small businesses.

In the course of reviewing the Local Small Business Reserve Program, OLO found that a substantial gap in knowledge exists about County Government purchases from local small businesses. Because 90 percent of the County's procurement dollars were exempted (by law) from the LSBRP, the data tracked to date about the County Government's purchases from local small businesses only reflects information on ten percent of the County's contract purchases.¹ Further, the data do not take into account local small businesses that are hired as subcontractors on larger County contracts.

OLO recommends that the Council's future decisions about the LSBRP be based on the full picture of the County Government's procurements from local small businesses. Finding out the dollar value and types of goods and services the County Government is purchasing from local small businesses, both as a result of the LSBRP and through the regular procurement process, will better position the Council to:

- Judge the effectiveness of the LSBRP; and
- Make informed decisions about changes to the parameters of the LSBRP, e.g., business eligibility, mandated targets, criteria for exemptions.

¹ As explained in the report (p. 16), data collection is limited to the few solicitations reserved for local small businesses under the LSBRP plus procurements that individual departments identify in order to meet their LSBRP purchasing requirement.

The table below outlines the macro-level data about the County Government's contracts with local small business that OLO recommends the Council request the Executive Branch to compile about FY10 procurements.

Summary of FY10 County Government Contract Awards

Type of Business	Total Contract Dollars	Value of All Contracts Awarded...		Percent of Total
		Directly to Local Small Businesses	Indirectly to Local Small Businesses (Subcontracts)	
Wholesale				
Retail				
Manufacturing				
Services				
Construction				
TOTAL				

OLO also recommends that the Council request a companion report on the value of contracts awarded to locally-based non-profit organizations. Currently, non-profit organizations with workforces comparable to "local small businesses" (as defined in the law) do not qualify as such simply because they are not-for-profit businesses instead of for-profit businesses. Many of the County Government's contracts with non-profits, however, legitimately reflect County dollars spent with local organizations.

Recognizing that it will take some time to collect these data, OLO recommends that the Council ask the Chief Administrative Officer (CAO) to provide a report on all contract awards to local small businesses during FY10 by November 30, 2010. OLO recommends the Council ask the Executive Branch to incorporate these data into the FY10 annual report to the Council on the LSRP.

This timing will enable the Council to, approximately one year from now, discuss the future of the LSRP based on:

- A complete picture of the County Government's current contract awards from local small businesses, and
- Another full year of LSRP experience based on the March 2009 legislative changes to the program.

Recommendation #2: Explore strategies other than the contract reserve mechanism for accomplishing the goals of the LSRP.

The table below summarizes the goals, as currently found both in the legislative record and in the legislation that established the Local Small Business Reserve Program.

LSRP Goals	Source
Award at least ten percent (now 20%) of “eligible” contract dollars for goods, services, or construction to local small businesses.	Legislation
Enhance the competitiveness of County-based small businesses by creating a separate market where small business can compete against each other rather than against larger firms for procurement opportunities.	Legislative Record
Broaden the pool of local small vendors doing business with the County.	Legislative Record
Encourage the County’s economic growth by enhancing the business climate for local small businesses. ²	Legislative Record

As reviewed in the previous chapters, LSRP data for FY07 and FY08 indicate that only a fraction of the County’s procurement dollars awarded to local small businesses was awarded through the program’s process for reserving contracts for local small businesses. The remaining contract dollars awarded to local small businesses in FY07 and FY08 resulted from the regular (non-reserve) procurement process. The table below summarizes FY07 and FY08 data on LSRP-reserved contracts.

Known Procurement Awards to Local Small Businesses, FY07 and FY08

Fiscal Year	Contract Awards to Local Small Businesses		Total LSRP Procurements
	Through LSRP-Reserve Process	Through Regular Procurement Process	
FY07	\$100,000	\$11.4 million	\$11.5 million
FY08	\$400,000	\$11.4 million	\$11.8 million

If the LSRP data for FY09 and FY10 continue to evidence that the County Government awards all but a fraction of contracts to local small businesses through the regular procurement process, then OLO recommends the Council either amend or eliminate the LSRP contract reserve process and consider alternative strategies for assisting local small businesses.

To enable an informed Council discussion about feasible alternatives to the contract reserve mechanism, OLO recommends that the Council task the Chief Administrative Officer with exploring other strategies. OLO recommends that the Council ask for a report back from the CAO on alternative program structures by November 30, 2010, as part of the report on all procurements from local small businesses.

² Executive Regulation 21-05AM; April 12, 2005 County Council Worksession Packet: *Agenda Item #8, Bill 23-04, Contracts and Procurement – Local Small Business Reserve Program*, p. 2

Other jurisdictions that have developed programs to favor small and/or local businesses in their government procurements have employed several different methods to achieve the goal. These methods include:

- Price preferences for local small businesses;
- Mandatory subcontracting goals on contracts over a certain amount, with a mandatory percentage going to local small businesses;
- Reserving a contract solicited through the regular procurement process for local small businesses, if a minimum number of qualified local small businesses bid on the contract; and
- Reducing or waiving requirements for bonding or insurance to contract with otherwise-qualified local small businesses.

CHAPTER IX. Agency Comments on Final Draft

The Office of Legislative Oversight circulated a final draft of this report to the Chief Administrative Officer for Montgomery County, the Department of General Services, the Department of Economic Development, and the Department of Technology Services. OLO appreciates the time taken by agency representatives to review the draft and provide comments. OLO's final report incorporates technical corrections and comments provided by agency staff.

The written comments received from the Chief Administrative Officer are attached in their entirety and begin on the following page.



OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestone
Chief Administrative Officer

M E M O R A N D U M

December 3, 2009

TO: Karen Orlansky, Director
Office of Legislative Oversight

FROM: Timothy L. Firestone 
Chief Administrative Officer

SUBJECT: OLO Report 2010-4, Evaluation of the Local Small Business Reserve Program

The OLO Report 2010-4 provides a fair evaluation of the Local Small Business Reserve Program (LSBRP). As noted in the OLO report, recent legislative changes have increased the program's parameters and market penetration, thus creating a more active business outreach. The program transfer to the Department of General Services' Office of Business Relations and Compliance (OBRC) places the LSBRP in an environment with contracting expertise and direct links to County departments and local businesses. The partial reorganization of County government that created DGS is recognized as the catalyst for many of the OLO recommendations.

The report shows that since implementation of the new legislation the number of LSBRP solicitations has increased significantly. In fact, in the last six months more LSBRP solicitations have been issued than in the first two years of the program. However, as the report indicates, the current data collection system only tracks the performance of the LSBRP program and its vendors and does not address businesses that may qualify but are not registered in the database, nor does it track subcontracts, where it's expected that a great deal of local small business activity takes place as a distinct and indirect result of County contract. OBRC is working closely with the Office of Procurement to encourage large businesses to subcontract with LSBRP registered vendors. Additionally, solicitations are being advertised that will result in unbundling several large County contracts to maximize local contracting opportunities.

This response to the OLO report addresses specific statements made in the OLO Executive Summary and the report's two recommendations.

EXECUTIVE SUMMARY

Feedback from the Business Community and County Government Staff

OLO Language

OLO's online survey of local small businesses and interviews with representatives of the business community evidenced support for the concept of the LSBRP, but disappointment with how the program has worked in practice. In particular, small business owners had expected that LSBRP would result in more opportunities to bid on reserved contracts and that these contracts would be worth higher amounts. Also, business owners thought that attention should be paid to better matching available vendors with the County's purchasing needs.

Response: When the program was first created, LSBRP staff worked aggressively to promote the program and invite qualifying businesses to register, and many did. However, the effort to identify County requirements relative to businesses registering with the system was not thorough. As a result, many businesses that registered expecting opportunities were disappointed, while County departments searching the registry of businesses were unable to identify businesses providing the goods or service required. This resulted in few formal solicitations being advertised through the LSBRP reserve, and few contracting opportunities to registered businesses.

OLO Language

OLO interviewed contract administrators who implement the LSBRP in 13 County Government departments. Although most departments had met the program target of purchasing 10% from local small businesses, contract staff expressed some concern about meeting the new 20% requirement. The most common reason given for not reserving more contracts through the LSBRP was the limited vendor pool. Contract administrators also voiced frustration with the LSBRP database, describing it as confusing and difficult to work with.

Response: The original LSBRP database was cumbersome. After the program was moved to DGS, the database was planned to be part of the Central Vendor Registration System (CVRS) after it went live January 2009. The LSBRP database was moved to the CVRS in October 2009 and is now much easier to use.

By utilizing the CVRS, local small businesses may now register in only one place and are not required to register with LSBRP as a second and independent process. This has resulted in the identification of more businesses and, through marketing efforts by staff of the OBRC, businesses previously registered with the central system are now updating their record to include their qualifying status for the LSBRP.

The above-referenced earlier broad based efforts to register businesses is now more focused as OBRC staff meet with departments to determine contracting plans for the coming year and then work with the Department of Economic Development and County chambers of commerce to identify the available pool of businesses capable of addressing the contracting requirements. These businesses are then contacted to make sure they are registered with the County as LSBRP companies. Further, the recent legislative increase from 10% to 20% in the contracting goal also broadened the qualifying thresholds for small business will allow more businesses to participate in the program. These combined efforts are expanding the utilization of small businesses in both formal and informal contracting requirements, making the obtaining of the 20% goal achievable.

Challenges to Determining Program Effectiveness

OLO Language

The following factors made it difficult for OLO to make a final determination about the effectiveness of the Local Small Business Reserve Program.

- *Absence of data on all County Government procurements. To date, the County has only collected data on awards to local small businesses on contracts affected by the LSBRP program. Because such a large portion of all County Government contracts (90%) was deemed exempt from the LSBRP, it is not known how much of the \$900 million in exempt County Government contracts each year went to local small businesses through the regular procurement process.*
- *Only two years of data combined with recent program changes. Earlier this year, Bill 3-09 made significant changes to the parameters of the LSBRP program; it is premature to assess the impact of these changes. Recently enacted program changes combined with the availability of only two full years of program data (FY07 & FY08) limit the ability to draw conclusions about program accomplishments.*

Response: The combination of inadequate technology tools to track activity, low and unfocused enrollment in the LSBRP database and limited staff resources make accurate reporting on small business contracting a challenge. Past reports have reported only on the contracting activity with the businesses registered in the LSBRP database, in addition to records maintained through the year by County departments. Changes enacted in the past year will help track this information better.

The numerous exemptions allowed under the law do reduce the eligible contracting opportunities. However, the exemption category that permits a using department to determine that no local small business exists to meet that

department's requirement has the greatest room for improvement. A change in the LSBRP law that now requires review and approval of this determination by the DGS Director will reduce the number of contracts exempted.

Subcontracting is not specifically addressed in the law, however, a large amount of local small business contracting takes place through County contractors subcontracting with local companies. While the law focuses on direct County contracting activity, it is undeniable that subcontracting is a direct benefit to the local business community. Staff is now reviewing processes by which this may be tracked and reported in the future.

Comparative Information

OLO Language

OLO also compiled information about small business procurement programs offered by the Federal Government and other governments in the Washington, D.C. area. In addition to set-asides, programs included:

- *Price preferences for local small businesses;*

Response: Price preferences should be reviewed for legal compliance and prudently considered as local preferences tend to invite reciprocity by other municipalities and states, which would result in an unintended disadvantage to the businesses a preference is intended to support.

- *Mandatory local small business subcontracting goals on contracts over a certain amount;*

Response: Mandatory goals assume that subcontracting requirements can be met by the local business community, which may not always be the case. It may be preferable to award additional evaluation points based on the amount of local business participation, or some similar approach.

- *Reversing a contract solicited through the regular procurement process for local small businesses, if a minimum number of qualified local small businesses bid on the contract;*

Response: Preparing bids and proposal is a time consuming and expensive undertaking for any business. Asking business to prepare and submit a bid or proposal only to have it dismissed when a sufficient number of qualifying small businesses participate will discourage competition and could invite legal challenge. The current law provides for a reserve when sufficient competition is known to exist. Improvements in program administration should address this issue and should be pursued before more restrictive measures are considered.

- Reducing or waiving requirements for bonding or insurance to contract with otherwise-qualified local small businesses.

Response: In certain instances bonding limits may be unrealistically high and, therefore, exclude small business that typically have lower bonding capacity. Procurement staff review draft solicitations and consult with Risk Management and OBRC staff to determine if bonding is necessary, or limits are too high. This determination must be made on a case-by-case basis.

Goals of the Local Small Business Reserve Program

OLO Language

As reviewed in the report, the absence of comprehensive procurement data and recent changes to the structure of the Local Small Business Reserve Program make it difficult to draw definitive conclusions about program effectiveness. Further, even though the County Government exceeded the 10% target set for awarding eligible contract dollars to local small businesses, other program results – the small number of registered businesses, the large portion of contract exemptions, the rarely used reserve process – raise questions about whether the legislative goals of the program were accomplished.

Response: As stated earlier, the slow and unfocused beginning of this program has been replaced by a more strategic implementation. It is premature to question the accomplishments of a program that is only now under the direction it should have enjoyed at its inception. Scrutinizing exemption determinations, expanding program enrollment and targeting specific industries to address known County requirements will increase the amount of small business participation in County contracting. If the program's goal is to ensure that local small businesses are provided an equitable share of County contracting expenditures, these measures will help realize that goal.

OLO RECOMMENDATIONS

Recommendation #1: Decide the future of the LSBRP based upon a complete picture of all County Government purchases from local small businesses.

Recognizing that it will take some time to collect these data, OLO recommends that the Council ask the Chief Administrative Officer to provide a report on all contract awards to local small businesses and locally-based non-profits during FY10 by November 30, 2010. OLO recommends asking the Executive Branch to incorporate these data into the FY10 annual report to the Council on the LSBRP.

Response: This is a reasonable goal with which we agree.

Recommendation #2: Explore strategies other than the contract reserve mechanism for accomplishing the goals of the LSBRP.

To enable an informed Council discussion about feasible alternatives to the contract reserve mechanism, OLO recommends that the Council task the Chief Administrative Officer with exploring other strategies. OLO recommends that the Council ask for a report back from the CAO on alternative program structures by November 30, 2010, as an addendum to the report on all FY10 procurements from local small businesses.

Response: The Executive Branch is willing to consider any strategy that will promote a strong economy and provide opportunity for local businesses to benefit from County contracting. As noted above, the strategies proposed have challenges but some alternatives may be considered in addition to the improved management of the current program.

cc: Kathleen Boucher, Assistant Chief Administrative Officer
David Dise, Director, Department of General Services
Steve Emanuel, Director, Department of Technology Services
Leon Rodriguez, County Attorney
Steve Silverman, Director, Department of Economic Development

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APPENDICES AVAILABLE ONLINE AT www.montgomerycountymd.gov/olo

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Appendix A

Comparison of State of Maryland and Montgomery County Small Business Reserve Programs

Characteristic	State Program	County Program
Managing Department	Department of General Services – Vendor registration Governor’s Office of Minority Affairs – Implementation	Department of General Services
Departments/Agencies Affected	24 State agencies*	County using departments
Program Start Date	October 1, 2004	January 1, 2006
Sunset Date	December 31, 2010	December 31, 2012
Preference Percentage	10% of eligible procurement dollars	20% of eligible procurement dollars
Local Preference	None	<ul style="list-style-type: none"> • Physical business location(s) only in the County; or • Physical business locations both in and outside of the County, and the County-based location(s) account for over 50% of the business’s total number of employees, or over 50% of the business’s gross sales
Types of Services	Goods, supplies, services, maintenance, construction, construction related services, architectural services, and engineering services	Goods, services, and construction
Small Business Eligibility	<ul style="list-style-type: none"> • Independently owned and operated • Not a subsidiary of another business • Not dominant in its field of operation 	<ul style="list-style-type: none"> • Independently owned and operated • Not a subsidiary of another business • Generates significant amount of economic activity for the County
Small Business Size Limits by Category	<ul style="list-style-type: none"> • Wholesale: Not more than 50 full-time equivalent employees (FTE) <i>and</i> gross sales did not exceed average of \$4M in last 3 FYs. • Retail: Not more than 25 FTE <i>and</i> gross sales did not exceed average of \$3M in last 3 FYs. • Manufacturing: Not more than 100 FTE <i>and</i> gross sales did not exceed average of \$2M in last 3 FYs. • Service: Not more than 100 FTE <i>and</i> gross sales did not exceed average of \$10M in last 3 FYs. • Construction: Not more than 50 FTE <i>and</i> gross sales did not exceed average of \$7M in last 3 FYs. • Architectural and engineering: Not more than 100 FTE <i>and</i> gross sales did not exceed average of \$4.5M in last 3 FYs. 	<ul style="list-style-type: none"> • Wholesale: Not more than 30 full-time equivalent employees (FTE) <i>or</i> gross sales did not exceed average of \$5M in last 3 FYs. • Retail: Not more than 30 FTE <i>or</i> gross sales did not exceed average of \$5M in last 3 FYs. • Manufacturing: Not more than 40 FTE <i>or</i> gross sales did not exceed average of \$14M in last 3 FYs. • Service: Not more than 50 FTE <i>or</i> gross sales did not exceed average of \$5M in last 3 FYs. • Construction: Not more than 50 FTE <i>or</i> gross sales did not exceed average of \$14M in last 3 FYs.
Characteristic	State Program	County Program

Certification Process	<ul style="list-style-type: none"> • Businesses self-certify and update registration annually • State DGS performs random checks of sales and employment data; Procurement Officers are encouraged to check qualifications before making an award • DGS performs complaint-based eligibility investigations 	<ul style="list-style-type: none"> • Business self-certify and update registration annually • DGS verifies location and sales or employment data prior to awarding a contract
Online posting	<ul style="list-style-type: none"> • Posted on eMaryland Marketplace, posting specifies if Small Business Reserve applies 	<ul style="list-style-type: none"> • Contracts of \$5K - \$25K posted on County website for 5 days, posting specifies if LSBRP applies
Contracts exempted from total procurement dollars	<ul style="list-style-type: none"> • Contracts by State Use Industries, Blind Industries and Services of Maryland, or sheltered workshops • Contracts where reserve preference would conflict with federal law. Purchasing department must obtain a letter from the Federal Government stating that participating in the small business reserve would violate federal law. 	<ul style="list-style-type: none"> • Contracts to which the law does not apply because of conflict with state, federal, or local law or a grant requirement; • Preexisting contracts or extension(s) of preexisting multi-year contracts; • Non-competitive contracts; • Public entity or emergency procurements; • Contracts granted a waiver by the Chief Administrative Officer; • Any procurement where no local small business is qualified or able to perform the contract as determined by the head of the County department and approved by the Director of DGS; • Any single procurement greater than \$10 million.
Reporting and Evaluation	<ul style="list-style-type: none"> • Within 90 days after the end of the fiscal year, each designated agency must report to the Board of Public Works and Governor's Office of Minority Affairs on the operation and effectiveness of the program • Within 60 days of receipt of these reports, the Board of Public Works must compile information and report to the legislative Policy Committee 	<ul style="list-style-type: none"> • By September 30 of each year each using department must submit data on the effectiveness of the program to DGS. DGS must compile data from and report to Council by November 30 of each year. • The Office of Legislative Oversight must evaluate the program prior to the sunset date.

*State Treasurer; Department of Budget and Management; Department of Business and Economic Development; Department of the Environment; Department of General Services; Department of Health and Mental Hygiene; Department of Housing and Community Development; Department of Human Resources; Department of Information Technology; Department of Juvenile Services; Department of Labor, Licensing, and Regulation; Department of Natural Resources; Maryland State Department of Education; Department of State Police; Department of Public Safety and Correctional Services; Maryland Department of Transportation; University System of Maryland; Maryland Port Commission; State Retirement Agency; Maryland Insurance Administration; Maryland Stadium Authority; Maryland Transportation Authority; State Lottery Agency; and Morgan State University

Sources: Md. Code, State Finance and Procurement §§ 14-501 – 14-505; The State of Maryland Small Business Reserve Program, <http://www.smallbusinessreserve.maryland.gov/>; Montgomery County Code §§ 11B-65-70, Montgomery County Executive Regulations 2-09



DEPARTMENT OF GENERAL SERVICES • OFFICE OF BUSINESS RELATIONS AND COMPLIANCE

Local Small Business Reserve Program (LSBRP)

This form contains the questions required to self certify a business with the Local Small Business Reserve Program (LSBRP). After completing the form, log onto the LSBRP website and self certify your business. The LSBRP registration link is:

www.montgomerycountymd.gov/lslrp • 240-777-9916

Vendor Details

Business Type: Wholesale Retail Manufacturing Service Construction

Are you a broker? YES NO

Is the Business independently owned and operated? YES NO

Is the Business a subsidiary of another firm? YES NO

Is the Business dominant in its field of operation? YES NO

Is the physical Business location(s) only in Montgomery County? YES NO

Business Inception Date _____

Total # of employees on payroll: _____ Total # of employees employed in the company: _____

Gross sales for the most recent three years: \$ _____ 2006 \$ _____ 2007 \$ _____ 2008

Sales of the most recent three years in the County: \$ _____ 2006 \$ _____ 2007 \$ _____ 2008

If the business has been in operation less than a year:

First year projected or estimated gross sales: \$ _____

First year projected or estimated sales in the County: \$ _____

Registration Information

County Vendor #: _____ (enter vendor ID # if you are already a registered Montgomery County vendor)

Federal Tax ID #: _____

Form W-9 #: _____

Business Structure: Proprietorship Partnership Corporation Limited Liability Company

Business Information

Business Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ FAX: _____

Email: _____ Web Address: _____

Name(s) of owners/partners/proprietors _____

Are you a certified minority business enterprise? YES NO

Commodity code(s) (if known):

State the type of goods or services your business provides if you do not know the Commodity Code:

Certification Agreement

- I am aware that I have the responsibility of notifying the Department of General Services immediately, via email at lsbrp@montgomerycountymd.gov or in writing to Montgomery County, Local Small Business Reserve Program, 255 Rockville Pike, Suite 180 Rockville, MD 20850-4168, if the business ceases to be independently owned and operated or becomes a subsidiary of another business.
- I hereby certify that the information provided is a true and correct statement of facts. I, as a designated legal representative of the company, further certify that this firm shall abide by and be subject to all applicable Federal, State and Local Laws and regulations pertaining to any subsequent contract that may be issued.
- Upon request of Montgomery County Government, the Business must promptly provide to the Department of General Services documentation on all of its business location(s) (if it has more than one), number of employees by location, annual gross revenue of the business for the past three fiscal years. The preferred documents are copy of a lease, Maryland Unemployment Insurance Contribution Report (summary or quarterly), and Financial Statement/Tax Returns. At the discretion of the Department of General Services, an alternative type of document might be accepted.
- I acknowledge that by registering with the program, I give the Montgomery County Department of General Services permission to obtain my business data from the State of Maryland's Department of Labor, Licensing and Regulation.

Signature (Name): _____

Business Title: _____

Phone: _____

Email: _____

Please select the category that best describes your level of involvement:

Owner President/CEO Senior Executive None Other: _____

Check this option to have your Company Name and Public Information available in Vendor Search.
Displaying this information can serve as a valuable networking resource.

Once the self-registration application has been received and processed, the applicant will receive an email notification message with your account information, including system login and password. Montgomery County, Maryland reserves the right to review or deny registrations at any time.

Appendix C
Solicitations Reserved Under the LSBRP, FY07 – FY09

Department	Description	Awarded to LSBRP vendor	
		Yes	No
FY07			
1. Department of Corrections and Rehabilitation	Consultant for staffing studies		N
2. Department of Economic Development	Audio/visual purchase	Y	
3. Department of Economic Development	Digital signage purchase	Y	
4. Department of Environmental Protection	Lease of wide format copier and maintenance		N
5. Department of Housing and Community Affairs	Demolition Services	Y	
6. Department of Housing and Community Affairs	Demolition Services	Y	
7. Department of Public Works and Transportation	Multi-family recycling bins		
8. Department of Public Works and Transportation	Graphic Arts Services	Y	
9. Department of Recreation	Trophies, awards, plaques, ribbons, and engraving		
10. Department of Technology Services	IT group facilitation and business process mapping services	N	
11. Montgomery County Public Libraries	Printed labels		N
12. Montgomery County Public Libraries	Printed labels	Y	
13. Office of Human Resources	JAWS software licenses, maintenance, and training		N
14. Office of Human Resources	Grievance factfinders/investigators	Y	
FY08			
1. Department of Police	Multi-agencies uniform laundry and dry cleaning services		N
2. Department of Economic Development	Space planning and design services	Y	
3. Department of Economic Development	Provide and install audio visual equipment at the Germantown Incubator	Y	
4. Department of Fire and Rescue Services	Fire-Rescue safety traffic vests	Y	

Appendix C Cont.

Solicitations Reserved Under the LSBRP, FY07 – FY09

Department	Description	Awarded to LSBRP vendor	
		Yes	No
FY09			
1. Department of Fire and Rescue Services	Bottled water	Y	
2. Department of Fire and Rescue Services	Fire and rescue apparel imprinting and embroidery services	Y	
3. Department of General Services	Transit bus enhanced cleaning service	Y	
4. Department of General Services	Car wash service	Y	
5. Department of General Services	Web-based bid management system and services		N
6. Department of General Services	Female facility upgrade		N
7. Department of General Services	Court reporting and stenographic reporting services	Y	
8. Department of Public Libraries	Bar code labels		N
9. Department of Public Libraries	Printing of 3-part continuous-feed self-mailers		N
10. Department of Transportation	Grounds maintenance services for park and ride lots	Y	
11. Department of Transportation	Towing services for parking enforcement	Y	
12. Department of Transportation	Parking equipment maintenance		N
13. Department of Transportation	Marketing services for transit services		N
14. Department of Transportation	Remove and replace of concrete curb, gutter and sidewalks in business districts county wide	Y	
15. Office of Human Resources	Executive development and coaching		N
16. Regional Services Center	Printing of marketing/events, dining and entertainment guides	Y	

Appendix D
LSBRP-Eligible Procurements by Department, FY07-FY08

Department	Total Eligible Procurements	Eligible Procurements Awarded to LSBRP Vendors	% of \$ Awarded LSBRP
	\$	\$	
FY07			
Total FY07	\$59,635,551	\$11,451,682	19.2%
Department of Fire/Rescue Services	\$57,194	\$57,194	100%
Department of Homeland Security	\$667,196	\$667,196	100%
Department of Technology Services	\$21,154	\$21,154	100%
Office of Community Use of Public Facilities	\$10,285	\$10,285	100%
Office of Legislative Oversight	\$2,074	\$2,074	100%
Office of the County Executive	\$7,540	\$7,540	100%
Office of the County Council	\$128,499	\$99,999	77.8%
Department of Housing & Community Affairs	\$66,250	\$50,000	75.5%
Department of Environmental Protection	\$1,146,248	\$621,249	54.2%
Department of Economic Development	\$102,611	\$37,612	36.7%
Office of the County Sheriff	\$1,323,012	\$413,250	31.2%
Office of Public Information	\$176,644	\$46,054	26.1%
Department of Public Works & Transportation	\$26,751,521	\$6,069,198	22.7%
Department of Police	\$530,706	\$93,283	17.6%
Department of Recreation	\$11,300,217	\$1,976,698	17.5%
Department of Correction & Rehabilitation Services	\$3,446,366	\$437,221	12.7%
Department of Finance	\$1,442,330	\$160,000	11.1%
Department of Public Libraries	\$202,256	\$20,365	10.1%
Department of Health & Human Services	\$9,905,947	\$640,940	6.5%
Regional Services Centers	\$536,980	\$13,570	2.5%
Office of Human Resources	\$1,628,321	\$6,800	0.4%
Board of Supervisors of Elections	\$137,504	\$0	0.0%
Department of Permitting Services	\$19,065	\$0	0.0%
Office of Management & Budget	\$19,630	\$0	0.0%
Office of Zoning & Administrative Hearings	\$6,000	\$0	0.0%

Appendix D Cont.

LSBRP-Eligible Procurements by Department, FY07-FY08

Department	Total Eligible Procurements	Eligible Procurements Awarded to LSBRP Vendors	% of \$ Awarded LSBRP
	\$	\$	
FY08			
Total FY08	\$79,507,494	\$11,821,023	14.9%
Circuit Court	\$62,081	\$62,081	100%
Department of Liquor Control	\$77,000	\$77,000	100%
Department of Permitting Services	\$9,140	\$9,140	100%
Office of the County Council	\$84,500	\$84,500	100%
Department of Economic Development	\$140,532	\$122,632	87.3%
Department of Fire/Rescue Services	\$156,721	\$97,791	62.4%
Department of Finance	\$128,964	\$75,964	58.9%
Department of Environmental Protection	\$4,057,621	\$1,826,229	45.0%
Office of Management & Budget	\$61,938	\$24,999	40.4%
Department of Homeland Security	\$326,124	\$116,624	35.8%
Department of Recreation	\$12,938,992	\$2,355,980	18.2%
Department of Correction & Rehabilitation Services	\$1,673,772	\$270,900	16.2%
Office of Human Resources	\$316,868	\$45,582	14.4%
Department of Public Works & Transportation	\$39,867,122	\$5,185,191	13.0%
Department of Police	\$2,015,445	\$250,526	12.4%
Office of the County Sheriff	\$1,408,661	\$169,825	12.1%
Office of Public Information	\$300,775	\$25,000	8.3%
Department of Health & Human Services	\$14,703,445	\$1,002,061	6.8%
Department of Public Libraries	\$558,545	\$18,998	3.4%
Board of Supervisors of Elections	\$153,117	\$0	0.0%
Department of Housing & Community Affairs	\$451,133	\$0	0.0%
Office of the Inspector General	\$14,999	\$0	0.0%

Local Small Business Reserve Program Evaluation

The following three questions gather basic information about your business and how you learned about the Local Small Business Reserve Program.

1. I first registered my business for the Local Small Business Reserve Program (LSBRP) in:

- 2006
- 2007
- 2008
- 2009

2. I learned about the LSBRP from (select all that apply):

- A brochure
- County website
- County Government staff
- Chamber of Commerce meeting
- A business event (e.g., procurement fair, networking event)

Other (please specify)

3. My business is registered in the LSBRP as the following type of business:

- Wholesale
- Retail
- Manufacturing
- Services
- Construction
- More than one of the above

The next few questions ask about your experience with County solicitations (i.e., Invitations for Bid and/or Requests for Proposals).

Local Small Business Reserve Program Evaluation

4. Please select the statement that most closely applies to your business.

- I responded to a County Government solicitation(s) and received a contract(s) RESERVED under the LSBRP.
- I responded to a County Government solicitation(s) and received a contract(s) THAT WAS NOT RESERVED under the LSBRP.
- I responded to County Government solicitations and received BOTH RESERVED AND NON-RESERVED contracts from the County.
- I have not received any contracts from the County.

5. Please select the statement that most closely applies to your business:

- There have been County Government solicitations for services/goods that my business provides, but I chose not to respond.
- I have not seen any County Government solicitations for services/goods that my business provides.
- I responded to a County Government solicitation(s) RESERVED under the LSBRP, but I did not receive a contract.
- I responded to a County Government solicitation(s) THAT WAS NOT RESERVED under the LSBRP, but I did not receive a contract.
- I responded to BOTH RESERVED AND NON-RESERVED County Government solicitations, but I did not receive a contract.

6. How many County solicitations have you responded to?

Invitations for Bid

Requests for Proposals

7. In my experience, County Government solicitations for my commodity code(s) are available:

- Never
- Rarely
- Sometimes
- Often

Local Small Business Reserve Program Evaluation

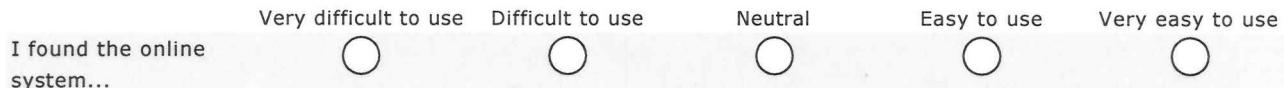
8. Please indicate how you learned about the County Government solicitation(s) that you responded to (select all that apply):

- Office of Procurement website
- Email notification
- Discussion with County Government staff
- Information from others in the business community
- I have not responded to any solicitations

Other (please specify)

The next two questions ask about your experience with LSBRP certification.

9. Please describe your experience with the LSBRP online self-certification process:



10. Have you been asked to verify your eligibility for the LSBRP?

- Yes, when I received a contract(s)
- No, but I received a contract(s) that was RESERVED under the LSBRP
- No, the contract(s) I received was not reserved for the LSBRP
- No, I have not received a contract

The last four questions ask for your general feedback about the LSBRP.

Local Small Business Reserve Program Evaluation

11. The goal of the LSBRP is to expand opportunities for local small businesses to contract with the County Government. Please indicate whether, in your opinion, the program meets this goal. Use the following scale.

1 - Does not meet the goal at all	2	3	4	5 - Has fully met its goal	No opinion
The LSBRP...	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your response.

12. Please rate your overall satisfaction with the LSBRP on the following scale:

1 - Very unsatisfied	2	3	4	5 - Very satisfied	No opinion
Overall program satisfaction	<input type="radio"/>				

Please explain your response.

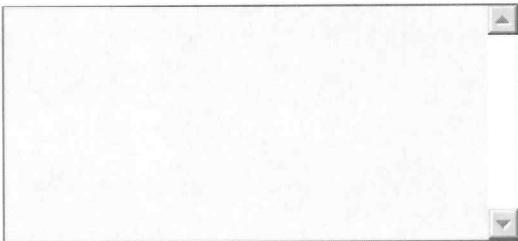
13. The County recently increased its local small business procurement goal to 20% of eligible transactions and increased the maximum size of businesses that are eligible to participate in the LSBRP. Do you expect these changes to affect your business?

- Yes
- No
- Maybe
- I was not aware of these changes.

Please explain your response.

Local Small Business Reserve Program Evaluation

14. Do you have any other comments about the LSBRP?

A large, empty rectangular box designed for handwritten or typed responses. It features a vertical scroll bar on its right side, with a small upward-pointing arrow at the top and a downward-pointing arrow at the bottom.