GO Committee #1
September 30, 2021
Worksession

M E M O R A N D U M

September 27, 2021

TO: Government Operations Committee

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Expedited Bill 29-21, Contracts and Procurement – Minority Owned Businesses - Sunset Date – Amendment

PURPOSE: Worksession –Committee recommendation expected

Expected attendees:
Ash Shetty, Director of Procurement
Grace Denno, Office of Procurement

Expedited Bill 29-21, Contracts and Procurement – Minority Owned Businesses - Sunset Date - Amendments, sponsored by Lead Sponsor County Council, was introduced on July 13, 2021. The Council held a public hearing on the bill with no speakers on July 20, 2021.[1]

Background

Chapter 11B, Article XIV of the County's Procurement Law authorizes a program to remedy the effects of discrimination against certain Minority Owned Businesses that is scheduled to sunset on December 31, 2021. County Code §11B-61(b) states:

> By July 1, 2021, the County Executive must submit a report to the County Council evaluating the need to extend the minority owned business purchasing program.

The County Executive submitted a Disparity Study to the Council on July 1, 2014 prepared by Griffin and Strong that supported the continuation of the program and the Council extended the sunset date until December 31, 2021 based on this Disparity Study. The law requires the Executive to submit a report by July 1, 2021 evaluating the need to extend this program.

The Council approved a special appropriation to fund a disparity study this year along with the introduction of Bill 29-21. The Executive is unable to evaluate the need to continue the program without an updated disparity study based on more recent contracting data.

E-Bill 29-21 would extend the time for the report until July 1, 2023 and the sunset date of the program until December 31, 2023. Bill 29-21 would extend the program for 2 years and require

[1] #MoCoMinorityOwnedBizPurchases
Other search terms: Minority owned purchases, Minority owned businesses, County purchases

the Director of the Office of Procurement to submit the report to the Council and the Executive on the need to continue the Program.

Discussion

OMB estimated that the Bill would not impact County revenues or expenditures (©4). The Council approved a special appropriation for $700,000 to fund an updated disparity study on July 20, 2021 in Resolution No. 19-950. The Office of Procurement is expected to issue an RFP to retain a consultant to perform the Disparity Study soon.

OLO estimated that the Bill extending the MFD Program would have a net positive impact on economic conditions in the County by increasing the number of local companies receiving County contracts. However, OLO was unable to estimate the magnitude of the increase (©6). OLO also estimated that Bill 29-21 would favorably impact racial equity and social justice in the County by narrowing the entrepreneurship gap by race and ethnicity in the County (©12).

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Expedited Bill No. 29-21
Concerning: Contracts and Procurement – Minority Owned Businesses – Sunset Date - Amendments
Revised: 7-7-21 Draft No. 3
Introduced: July 13, 2021
Expires: January 13, 2023
Enacted: [date]
Executive: [date signed]
Effective: [date takes effect]
Sunset Date: [date expires]
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: County Council

AN EXPEDITED ACT to:

(1) extend the sunset date for the County's minority owned business purchasing program; and
(2) generally amend the County's minority owned business purchasing program.

By amending
Montgomery County Code
Chapter 11B, Contracts and Procurement
Sections 11B-61 and 11B-64

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec 1. Sections 11B-61 and 11B-64 are amended as follows:

11B-61. Reports.

* * *

(b) By July 1, **[**2021**]** 2023, the **[**County Executive**]** Director of the Office of Procurement must submit a report to the County Council evaluating the need to extend the minority owned business purchasing program.

Sec. 11B-64. Sunset date.

This Article is not effective after December 31, **[**2021**]** 2023.

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

LEGISLATIVE REQUEST REPORT

Expedited Bill 29-21
Contracts and Procurement – Minority Owned Businesses - Sunset Date – Amendments

DESCRIPTION: Bill 29-21 would extend the sunset date for the County's minority owned business purchasing program until December 31, 2023.

PROBLEM: The County's minority owned business purchasing program is set to expire on December 31, 2021 unless the Council extends the sunset date.

GOALS AND OBJECTIVES: The goal is to extend the program.

COORDINATION: County Attorney; Office of Procurement

FISCAL IMPACT: OMB

ECONOMIC IMPACT: Finance

EVALUATION: To be done.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: Class A Violation

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Fiscal Impact Statement
Bill 29-21, Contracts and Procurement – Minority Owned Businesses – Sunset Date - Amendments

1. **Summary:**

   Expedited Bill 15-19 extended the sunset date for the County's minority owned business purchasing program until December 31, 2021. Bill 29-21 would extend the deadline that the County Executive must submit a disparity study to the Council by another two years, July 1, 2023.

2. **An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes sources of information, assumptions, and methodologies used.**

   The bill does not impact revenue or expenditures.

3. **Revenue and expenditure estimates covering at least the next 6 fiscal years. There are no anticipated changes to expenditures beyond the normal personnel costs.**

   The bill does not impact revenue or expenditures.

4. **An actuarial analysis through the entire amortization period that would affect retiree pension or group insurance costs.**

   Not applicable.

5. **An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

   Not applicable.

6. **Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.**

   Not applicable.

7. **An estimate of the staff time needed to implement the executive regulation.**

   Not applicable.

8. **An explanation of how the addition of new staff responsibilities would affect other duties.**

Not applicable.

9. An estimate of costs when an additional appropriation is needed.

Not applicable.

10. A description of any variable that could affect revenue and cost estimates.

Not applicable.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

12. If the proposed regulation is likely to have no fiscal impact, why that is the case.

The bill simply changes the deadline for submitting a disparity study.

13. Other fiscal impacts or comments.

Not applicable.

14. The following contributed to and concurred with this analysis:

Avinash G. Shetty, Office of Procurement
Marc Hansen, Office of the County Attorney
Rafael Pumarejo Murphy, Office of Management and Budget

_____ _____

Jennifer Bryant, Director
Office of Management and Budget

Date

Economic Impact Statement

Office of Legislative Oversight

Expedited Bill 29-21 — Contracts and Procurement – Minority Owned Businesses – Sunset Date – Amendments

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Expedited Bill 29-21 would have a net positive impact on economic conditions in the County. By extending the County's Minority, Female, and Disabled-Owned Businesses (MFD) Program, OLO anticipates the likelihood that more local businesses would receive County procurement contracts than otherwise would occur without the continuation of the program, which would stimulate economic activity in the County. However, OLO cannot estimate the magnitude of the MFD Program's economic impacts due to data limitations and uncertainty regarding prime contractor compliance with program requirements. Finally, it should be noted this analysis does not consider the potential economic impacts of alternative uses of gained or forgone County revenue due to the MFD Program's impact on County contracting costs.

BACKGROUND

Expedited Bill 29-21 would amend the County's Minority, Female, and Disabled-Owned Businesses (MFD) Program. According to the County Code, the purpose of the MFD Program is "to establish procedures to facilitate the goal of the County to remedy the effects of discrimination by making efforts to contract with minority owned businesses (MFD owned business or MFD, as defined in Chapter 11B of the County Code) and encouraging contractors to subcontract with MFD businesses."[1] The MFD Program assists businesses owned by socially disadvantaged groups gain opportunities as contractors for County contract awards with an estimated dollar value of $50,000 or more. Eligible businesses include those owned by vendors in the following groups: African American, Hispanic American, Asian American, Native American, Female, and Persons with Disabilities.[2]

The MFD Program is set to expire on December 31, 2021. If enacted, the Bill would extend the sunset date for the program until December 31, 2023.[3]

[1] Montgomery County Code, Section 11B.04.01.07, https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_comcor/0-0-0-65371.

[2] Office of Procurement, FY20 Annual Report: Minority, Female and Disabled-Owned Businesses (MFD) Program, Montgomery County Government, https://www.montgomerycountymd.gov/PRO/Resources/Files/Reports/MFDReport_FY20.pdf.

[3] Montgomery County Council, Expedited Bill 29-21, Contracts and Procurement – Minority Owned Businesses – Sunset Date – Amendments, Introduced on July 13, 2021. See Bill in Introduction Staff Report, https://apps.montgomerycountymd.gov/ccllims/DownloadFilePage?FileName=2720_1_15580_Bill_29-2021_Introduction_20210713.pdf.

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

The goal of the MFD Program is to increase the participation in County contracting of minority, female, and disabled-owned businesses, whether based inside or outside the County. OLO believes the economic impact of enacting Expedited Bill 29-21 would be based on the MFP Program's "opportunity cost" and "local multiplier" effects, as well as the quality of enforcement.

Opportunity Cost Effect: This refers to the effect of the MFD Program on County contracting costs – either reducing or increasing costs relative to what they would otherwise be without the program – and the economic impact of alternative uses of gained or forgone County revenue. It is beyond the scope of this analysis to estimate the opportunity cost of the MFD Program. Therefore, this analysis focuses on the potential local multiplier effect.

Local Multiplier Effect: Although not the program's goal, this effect refers to the extent to which the MFD Program directs County spending to local businesses, rather than businesses based outside the County, and its impact on local economic activity. The MFD Program could have a significant impact on economic conditions in the County given its scale. According to the most recent annual report on the program, the County awarded $182,699,735 to certified MFD-owned businesses in FY20, which equated to 23% of total procurement dollars subject to the program ($797,894,633).[4] If more local businesses would receive County procurement contracts than otherwise would occur without the MFD Program, then it would increase the local multiplier effect of County spending. To illustrate, a County contract awarded to an IT firm based locally would have a greater effect on subsequent rounds of spending in the County than a firm based in San Francisco, for example. Employees at a local firm would be more likely to spend their earnings on goods and services provided by local businesses than employees at an external firm.[5]

Does the MFD Program increase County procurement to local firms? While the Office of Procurement publishes a range of metrics to assess the impact of the MFD program in its annual reports, no data on the location of MFD firms is included in the reports.

Despite this data limitation, OLO believes it is possible that the MFD Program increases spending to local businesses through its interaction with the County's Local Small Business Reserve Program (LSBRP). LSBRP "ensures that County departments award 25 percent (with specified exceptions) of their procurements for goods, services and construction to registered and certified local, small businesses."[6] Local, small businesses awarded prime contracts with the County must also comply with the MFD Program requirements and include MFD businesses in their contracting proposals. If local, small business prime contractors are more likely to have business connections with local MFD firms than external MFD firms, then a potential byproduct of the interaction between the LSBRP and MFD programs is to increase participation of local MFD firms as sub-contractors. In fact, the FY20 Annual Report on the MFD Program suggests this much when it states,

> "[LSBRP] continues to be instrumental in the participation of minority firms as many of Montgomery County local small businesses are also minority or female owned businesses. The continued implementation of Bill 48-14 (adding MFD participation evaluation points in RFPs) provides an incentive for prime contractors to include minority businesses in their proposals."

[4] Office of Procurement, FY20 Annual Report.
[5] For more on the multiplier effect, see U.S. Bureau of Economic Analysis, *RIMS II: An Essential Tool for Regional Developers and Planners*, December 2013.
[6] For details on the program, see Montgomerycountymd.gov, Local Small Business Reserve Program (LSBRP), Office of Procurement, https://www.montgomerycountymd.gov/PRO/DBRC/lsbrp.html.

OLO was unable to empirically verify whether the MFD Program induces a local multiplier effect through its interaction with LSBRP, much less the magnitude of this effect. OLO requested data on the location and industry of businesses that receive County contracts through the MFD Program from the Office of Procurement. This data is currently unavailable. According to the Office of Procurement, data on the location of MFD businesses will be included in the upcoming FY21 Annual Report on the program.[7] Although OLO was unable to empirically verify the local multiplier effect, we believe it is a likely outcome due to the programs' requirements. For this reason, the analysis in subsequent sections of this report is based on this potential.

Before proceeding, it is important to note the potential for noncompliance among prime contractors with MFD Program requirements may undermine its local economic impacts. Compared to other programs administered by the Office of Procurement, the MFD Program has relatively weaker enforcement requirements. For example, where the MFD law instructs the Chief Administrative Officer to develop "monitoring" procedures for program compliance (adopted as a regulation in the Code of Montgomery County Regulations (COMCOR)), the Wage Requirement Law outlines much more detailed "enforcement" requirements in the Montgomery County Code. Where the MFD Regulations say program monitoring "may include … audits of contractors' books and records relative to County contracts," random or regular audits are not required. By contrast, the Wage Requirement Law requires the Chief Administrative Officer or a designee to "perform random or regular audits and investigate any complaint of a violation." **Table 1** presents the full language of the monitoring procedures for the MFP Program from COMCOR and the enforcement requirements from the County Code for the Wage Requirement Law Program.

[7] Correspondence with personnel from the Office of Procurement.

Table 1. MFD Program Monitoring Procedures and Wage Requirement Law Program Enforcement

MFD Program Monitoring – COMCOR § 11B.04.01.07.5
7.5 Monitoring Procedures 7.5.1 The contract administrator must monitor all contracts with an MFD plan to ensure compliance by contractors with the requirements of the contract. Monitoring may include site visits, audits of contractors' books and records relative to County contracts, the submission of copies of invoices from minority subcontractors to the prime contractor, submission of Contract Monitoring Reports at scheduled intervals during the life of the contract, and other procedures that the Director may require. 7.5.2 The Director must notify certified MFD owned businesses of their responsibility to report to the contract administrator in a timely manner any changes in status that affects the entity's eligibility for certification as an MFD owned business. The failure of the MFD owned business to report any relevant change in a timely manner constitutes sufficient grounds for de-certification.
Wage Requirement Law Program – Montgomery County Code § 11B-33A(i)
(i) *Enforcement.* (1) The Chief Administrative Officer must require each covered employer to: (A) certify that the employer and each subcontractor is aware of and will comply with the applicable wage requirements of this Section; (B) keep and submit any records necessary to show compliance; and (C) conspicuously post notices informing employees of the requirements of this Section, and send a copy of each such notice to the Chief Administrative Officer's designee. (2) The Chief Administrative Officer or a designee must perform random or regular audits and investigate any complaint of a violation of this Section. If the Director determines that a provision of this Section has been violated, the Director must issue a written decision, including imposing appropriate sanctions, and may withhold from payment due the contractor, pending a final decision, an amount sufficient to: (A) pay each employee of the contractor or subcontractor the full amount of wages due under this Section; (B) satisfy a liability of a contractor for liquidated damages as provided in this Section; and (C) reimburse the County for the cost of the audit. (3) An employer must not discharge or otherwise retaliate against an employee for asserting any right under this Section or filing a complaint of violation. Any retaliation is subject to all sanctions for noncompliance with this Section. (4) The sanctions of Section 11B-33(b) which apply to noncompliance with nondiscrimination requirements apply with equal force and scope to noncompliance with the wage requirements of this Section. (5) Each contract may specify that liquidated damages for any noncompliance with this Section includes the amount of any unpaid wages, with interest, and that the contractor is jointly and severally liable for any noncompliance by a subcontractor. In addition, each contract must specify: (A) that liquidated damages may be imposed on the contractor in the event that a covered employer violates the wage reporting or payroll records reporting requirement in subsection (g), including for providing late or inaccurate payroll records; and (B) that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under this Section and recover any unpaid wages with interest, a reasonable attorney's fee, and damages for any retaliation for asserting any right under this Section. (6) If a contractor or subcontractor fails to submit, or is late in submitting, copies of any payroll record or other report required to be submitted under this Section, the County may deem invoices unacceptable until the contractor or subcontractor provides the required records or reports, and may postpone processing payments due under the contract or under an agreement to finance the contract.

VARIABLES

The primary variables that would affect the economic impacts of extending the MFD program through enacting Expedited Bill 29-21 are the following:

- change in total County contracting costs;
- change in total County contracting allocation to local businesses;
- industrial composition of local businesses awarded contracts; and
- prime contractor compliance with MFD requirements.

As previously discussed, OLO restricts the subsequent analysis to the local multiplier effect and does not investigate the potential economic impact of alternative uses of gained or forgone County revenue due to the MFD Program's effect on total County contracting costs.

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

If the MFD Program increases County spending to local businesses than would occur otherwise without the program, then OLO anticipates that enacting Expedited Bill 29-21 would have a positive impact on private organizations in the County in terms of several of the Council's priority indicators.[8] Local firms that receive County contracts would likely experience an increase in business income and earnings and/or the size of their workforce. Depending on the characteristics of the procurement, these firms may purchase goods and services from other local firms, which may also experience increases in business income and workforce earnings and/or size. Similarly, any increase in earnings for workers in the affected businesses would likely increase spending in the County, thereby benefiting other businesses.

To assess the potential impact of Expedited Bill 29-21 on the Council's other priority indicators (e.g., private sector capital investment, economic development, and competitiveness) would require an estimate of the change in total County contracting allocation to local businesses and the industrial composition of local businesses awarded contracts due to the MFD Program. Due to data limitations previously described, assessing the Bill's impacts on these indicators is beyond the scope of this analysis.

Residents

If the MFD Program increases County spending to local businesses above what would occur otherwise without the program, then OLO anticipates that enacting Expedited Bill 29-21 would have a positive impact on County residents in terms of several of the Council's priority indicators. The primary residents impacted by the Bill would be owners and employees of the affected businesses who reside in the County and experience an increase in earnings and household income. It is beyond the scope of this analysis to investigate the Bill's impacts on residents in terms of the Council's other priority indicators.

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[8] Montgomery County Code, Sec. 2-81B, Economic Impact Statements, https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-80894.

DISCUSSION ITEMS

For a better understanding of the MFD Program's effect on economic conditions in the County, Councilmembers may want to consider requesting the Office of Procurement to provide data on the location and industry of businesses that are part of the MFD Program by September 30, 2021.

Councilmembers may want to consider discussing with the Office of Procurement whether the MFD Program's enforcement procedures should be strengthened to increase program compliance among prime contractors.

Finally, Councilmembers may want to consider reviewing how County contracting policies could further incentivize prime contractors to include MFD-owned businesses based in the County to optimize the program's local economic impacts.

WORKS CITED

Montgomery County Code. Sec. 2-81B. Economic Impact Statements.

Montgomery County Council. Expedited Bill 29-21, Contracts and Procurement – Minority Owned Businesses – Sunset Date – Amendments. Introduced July 13, 2021.

Montgomerycountymd.gov. Local Small Business Reserve Program (LSBRP). Office of Procurement. https://www.montgomerycountymd.gov/PRO/DBRC/lsbrp.html.

Montgomery County Office of Procurement. FY20 Annual Report: Minority, Female and Disabled-Owned Businesses (MFD) Program.

U.S. Bureau of Economic Analysis. *RIMS II: An Essential Tool for Regional Developers and Planners*. December 2013.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

EXPEDITED BILL 29-21: CONTRACTS AND PROCUREMENT – MINORITY OWNED BUSINESSES – SUNSET DATE - AMENDMENTS

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Expedited Bill 29-21 will favorably impact racial equity and social justice in the County by extending the County's minority-business procurement program for another two years.

PURPOSE OF RESJ IMPACT STATEMENT

The purpose of RESJ impact statements is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refers to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.[1] Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.[2]

PURPOSE OF EXPEDITED BILL 29-21

Expedited Bill 29-21 would extend the County's Minority Owned Business Purchasing Program's time frame for the Executive Branch to submit its report from July 1, 2021 until July 1, 2023 and the sunset date of the program until December 31, 2023. The law requires the Executive to submit a report evaluating the need to extend this program.[3] The County's Minority Procurement Program awards bidding preferences to Minority-Owned Business Enterprises (MBE's) to offset the discrimination MBE's have faced in government contracting.

Bill 29-21 was introduced on July 13, 2021. Of note, a special appropriation to fund a disparity study to inform the Executive Branch in their evaluation of the Minority Procurement Program accompanied the introduction of Bill 29-21. The last disparity study submitted to the County Council that supported the continuation of the Minority Procurement Program through the end of 2021 was prepared in 2014.

ENTREPRENEURSHIP AND RACIAL EQUITY

This RESJ impact statement describes data on the entrepreneurship gap by race and ethnicity and the structural drivers that contribute to it. The intent of this overview is to demonstrate that racial and ethnic disparities in entrepreneurship are neither random nor solely driven by differences in individual behavior. Instead, the entrepreneurship gap reflects historical and current inequities in wealth and economic opportunity by race and ethnicity. Moreover, removing these inequities could "enhance dynamism and productivity" such that if Black-owned businesses achieved revenue parity with their White-owned peers within their industries, McKinsey and Company estimate that this would add about $190 billion to the annual U.S. GDP.[4]

Data on Entrepreneurship Gap. Nationally, Black and Latinx residents represent 28 percent of the population, but 8 percent of business owners with employees.[5] Local data also demonstrates disparities in entrepreneurship by race and ethnicity, particularly with respect to revenue. For example, while the 2012 Survey of Business Owners indicates that Black and Latinx firms each accounted for 15 percent of local firms in Montgomery County and Asian firms accounted for 14 percent of County firms, Asian firms accounted for 4 percent of local business revenue, Black firms accounted for 1.7percent of local business revenue, and Latinx firms accounted for 1.5percent of local business revenue.[6]

Data from Montgomery County's Minority, Female, and Disabled-Owned Business Program also demonstrates an under-representation of minority-owned businesses. Whereas Black, Indigenous and Other Persons of Color (BIPOC) accounted for 55 percent of County residents, BIPOC-owned firms accounted for 18 percent of procurement contracts for County Government in FY20.[7] More specifically:

- Latinx-owned firms accounted for 7.5 percent of contracts;
- African American-owned firms accounted for 6.5 percent of contracts;
- Asian-owned firms accounted for 3.6 percent of contracts; and
- Native American-owned firms accounted for less than one-tenth of one percent of contracts.[8]

Further, the County's 2014 Disparity Study found statistically significant differences in business ownership and procurement opportunities by race, ethnicity, and gender.[9] The 2014 study compared the share of minority business enterprises that were qualified to perform work for Montgomery County to the total number of dollars awarded to such firms. It conducted this analysis across four business types: construction, professional services, services, and goods. Across each of these business categories, the study found that Black firms were under-represented among vendors and receipts with prime contracts, but that Latinx firms were over-represented among construction and professional services contracts relative their share of the local marketplace. More specifically, from 2008 to 2012:

- **Construction:** Black firms accounted for 11 percent of the marketplace, but less than 2 percent of prime contracts. White male firms accounted for 74 percent of the marketplace and 79 percent of prime contracts; Latinx firms accounted for 6 percent of the marketplace and 13 percent of prime contracts.
- **Professional Services**: Black firms accounted for 8 percent of the marketplace, but less than 2 percent of prime contracts. White male firms accounted for 82 percent of the marketplace and 92 percent of prime contracts; Latinx firms accounted for 1 percent of the marketplace but nearly 4 percent of prime contracts.
- **Other Services:** Black firms accounted for 13 percent of the marketplace, but less than 1 percent of prime contracts. White male firms accounted for 76 percent of the marketplace and 88 percent of prime contracts.
- **Goods:** Black firms accounted for 6 percent of the marketplace, but less than 1 percent of prime contracts. White male firms accounted for 86 percent of the marketplace and 97 percent of prime contracts while Latinx firms accounted for 3 percent of the marketplace but less than one percent of prime contracts.

Drivers of Entrepreneurship Gap. Researchers at the Brookings Institution find that disparities in entrepreneurship by race and ethnicity "do not reflect the intrinsic desire or talents of entrepreneurs of color themselves, but rather the structure of the systems they navigate."[10] Their review of the research finds that there "are no differences between racial groups in entrepreneurial capabilities or interest, as measured by degree of confidence, capacity to learn appetite for risk, creativity, and determination."[11]

Instead, a variety of factors adversely impact BIPOC as they consider starting and growing businesses, including inequities in educational attainment, personal wealth, and exposure to entrepreneurship in family and social networks.[12] For example, the Small Business Administration found that Black- and Latinx-owned firms are more likely to have been denied credit, to receive only a portion of the funding requested, or to refrain from applying for funding out of fear that their applications will be rejected.[13] Other factors that explain the disparity in capital for business development include discriminatory lending practices, less wealth to leverage, recent financial challenges, and lower credit scores.[14]

Anticipated RESJ Impacts

OLO anticipates that enacting Expedited Bill 29-21 and extending the County's Minority Procurement Program for two years will benefit current BIPOC-owned businesses participating in the program and future BIPOC applicants. BIPOC-owned business participation in the County's Procurement Program will help narrow the entrepreneurship gap by race and ethnicity in the County and in turn diminish racial and ethnic inequities in the County. Moreover, the special appropriation accompanying Bill 29-21 to fund an updated disparity study aligns with best practices for advancing contracting and procurement opportunities for BIPOC-owned firms to advance racial equity and social justice.[15]

Recommended Amendments

The County's Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.[16] OLO finds that Expedited Bill 29-21 should narrow racial and ethnic inequities in entrepreneurship by continuing the County's Minority Procurement Program until December 31, 2023. Should the Council desire more reductions in the entrepreneurship gap by race and ethnicity via legislation, amendments aligning with the following best practices could be added to Bill 29-21 to help increase the number of minority-owned businesses eligible to apply for government contracts.[17]

- Use "best value contracting" to require prime bidders to propose plans for maximizing utilization of minority-business enterprises (MBE),
- Streamline MBE certification processes,
- Break up large contracts into smaller subcontracts to encourage more MBE applicants,
- Help MBE subcontractors grow into prime contractors, and
- Remove onerous financial burdens for small businesses that may disproportionately impact MBE's.

Caveats

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

Contributions

Dr. Elaine Bonner-Tompkins, OLO Senior Legislative Analyst, drafted this RESJ impact statement.

[1] Adopted from definition of racial equity described in the Racial Equity Policy Scorecard included in "Applying a Racial Equity Lens into Federal Nutrition Programs," authored by Marlysa Gamblin; see the Government Alliance for Race and Equity's "Advancing Racial Equity and Transforming Government" resource guide for understanding the historical role of government in maintaining racial inequities https://racialequityalliance.org/wp-content/uploads/2015/02/GARE-Resource_Guide.pdf
[2] Adopted from racial equity definition provided by Racial Equity Tools. https://www.racialequitytools.org/glossary
[3] Montgomery County Council, Expedited Bill 29-21, Contracts and Procurement – Minority Owned Businesses – Sunset Date – Amendments https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20210713/20210713_11B.pdf
[4] McKinsey and Company estimates cited by Joseph Parilla and Darrin Redus in How A New Minority Business Accelerator Grant Program Can Close the Racial Entrepreneurship Gap, Brookings, December 9, 2020 https://www.brookings.edu/research/how-a-new-minority-business-accelerator-grant-program-can-close-the-racial-entrepreneurship-gap/
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