Montgomery County Council

Committee: PHED
Committee Review: Completed
Staff: Christine M.H. Wellons, Legislative Attorney
Purpose: Final action – vote expected
Keywords: #EconomicDevelopmentAssistance

AGENDA ITEM #15A
March 16, 2021
Action

SUBJECT

Bill 37-19, Economic Development Fund – Use of Fund and Remedies for Noncompliance
Lead Sponsor: Councilmember Glass
Co-Sponsors: Councilmembers Riemer and Jawando

EXPECTED ATTENDEES

N/A

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- The Planning, Housing and Economic Development (PHED) Committee recommends enactment of Bill 37-19 with amendments.

DESCRIPTION/ISSUE

Bill 37-19 would:

(1) require recipients of Economic Development Fund assistance to agree to certain terms and conditions regarding the use and repayment of the assistance;
(2) alter eligibility requirements for the Small Business Innovation Research and Small Business Technology Transfer Matching Grants;
(3) require the repayment to the County of Small Business Innovation Research and Small Business Technology Transfer Matching Grants in certain circumstances; and
(4) impose remedies related to the provision of false or fraudulent applications and the use of Fund assistance for unauthorized purposes.

SUMMARY OF KEY DISCUSSION POINTS

The PHED Committee recommends enactment of Bill 37-19 with amendments:

(1) to allow the Finance Department to except certain EDF programs from the bill's requirement to have a written agreement for EDF grants if the grant recipient has no ongoing obligations to the County after receipt of the funds; and
(2) to expand eligibility for the SBIR/STTR matching grant programs to certain companies receiving federal SBIR/STTR funds for biotechnology, medicine, and biosciences.

The enclosed version of the bill (©1) incorporates the amendments recommended by the PHED Committee.

This report contains:

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Agenda Item 15A
March 16, 2021
Action

M E M O R A N D U M

March 11, 2021

TO: County Council

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Bill 37-19, Economic Development Fund – Use of Fund and Remedies for Noncompliance[1]

PURPOSE: Action - roll call vote required

Expected Attendees
Mike Coveyou, Director of Finance
Peter McGinnity, Manager, Economic Development Programs
Laurie Boyer, Department of Finance

Bill 37-19, Economic Development Fund – Use of Fund and Remedies for Noncompliance, sponsored by Lead Sponsor Councilmember Glass and Co-Sponsors Councilmembers Riemer and Jawando, was introduced on December 3, 2019. A public hearing was held on January 14 at which there were no speakers. The Planning, Housing and Economic (PHED) Committee held a worksession on the bill on November 16, 2021.

Bill 37-19 would amend the law concerning the administration and use of the Economic Development Fund in order to:

(1) Increase accountability in the use of grant funds; and

(2) Expand eligibility for the Small Business Innovation Research and Small Business Technology Transfer Matching Grant Program (SBIR/STTR Program).

BACKGROUND AND SPECIFICS OF THE BILL

Increased Accountability for Grant Recipients

In a Preliminary Inquiry Memorandum dated August 1, 2019, the Office of the Inspector General (OIG) stated with respect to the SBIR/STTR Program:

> While grantees sign an award offer letter in order to receive funding, that award offer letter lacks many of the elements of a more formal county contract or agreement, such as the right to audit and a method for dispute resolution. This may create vulnerability for the County should a grantee use the County grant funds for

[1] #EconomicDevelopmentAssistance

non-project related expenses or fail to perform under or otherwise abuse their federal grant.

To remedy the concerns raised in the OIG Memorandum, the bill would require all grants provided through the Economic Development Fund (EDF), including the SBIR/STTR Program, to be memorialized in written agreements. The agreements would be required to include terms:

(1) Setting forth the grantee's performance criteria;

(2) Granting the County the right to audit the grantee;

(3) Requiring periodic reporting from the grantee;

(4) Prohibiting unauthorized uses of County funds; and

(5) Providing remedies for the County in the event that a grantee misuses funds, fails to meet performance requirements, or otherwise breaches its agreement with the County.

Under the bill, a grantee who submits a false or fraudulent application for funds, or who uses funds for an unauthorized purpose, would be guilty of a Class A violation and liable for the County's court costs and attorney's fees.

Expanded Eligibility for the SBIR/STTR Program

At the federal level, the SBIR/STTR grant programs provide funding to small businesses engaged in research and development. *See* https://www.sbir.gov/about.

Under current County law, which was enacted in 2018, recipients of SBIR or STTR grants from the National Institutes of Health (NIH) are eligible for County matching funds. The bill would expand eligibility for County matching funds to SBIR or STTR grant recipients of any participating federal agency.

Other federal agencies that award SBIR and STTR grants include:
(1) Department of Defense (SBIR and STTR);
(2) Department of Energy (SBIR and STTR);
(3) National Science Foundation (SBIR and STTR);
(4) Department of Health and Human Services (SBIR and STTR);
(5) National Aeronautics and Space Administration (SBIR and STTR);
(6) Department of Agriculture (SBIR);
(7) Department of Commerce (SBIR);
(8) Department of Energy (SBIR);
(9) Department of Homeland Security (SBIR);
(10) Department of Transportation (SBIR);
(11) Department of Education (SBIR); and
(12) Environmental Protection Agency (SBIR).

SUMMARY OF THE FIRST PHED WORKSESSION

The PHED Committee initially discussed Bill 37-19 at a worksession on November 16, 2020. At the worksession, the Department of Finance expressed concerns that the bill would impose certain contractual requirements on programs for which the requirements are not relevant. For instance, several EDF programs are considered "of right" programs – meaning that once the applicant satisfies eligibility requirements up front, the applicant is entitled to funding. In those cases, there are no follow-up performance criteria, as contemplated under the bill.

In addition to discussing concerns of the Finance Department, the Committee asked staff to review Administrative Procedure 2-4, which the Executive adopted shortly after the issuance of the OIG's 2019 memorandum.

SUMMARY OF THE SECOND PHED WORKSESSION

During the second worksession on Bill 37-19 on March 1, the PHED Committee discussed the following issues, and voted (3-0) to recommend enactment of the bill with amendments.

1. Whether to Require Written Contracts for All EDF Programs

The bill as originally drafted would require all grants under the Economic Development Fund, including SBIR/STTR grants, to include written agreements with terms: (1) Setting forth the grantee's performance criteria; (2) Granting the County the right to audit the grantee; (3) Requiring periodic reporting from the grantee; (4) Prohibiting unauthorized uses of County funds; and (5) Providing remedies for the County in the event that a grantee misuses funds, fails to meet performance requirements, or otherwise breaches its agreement with the County.

Subsequent to the first worksession, the bill sponsor's staff, Council central staff, the Finance Department, and the Office of the County Attorney met multiple times to discuss nuances of specific EDF programs. According to the Finance Department, certain EDF programs may not be amenable to written agreements.

The following chart provides a summary of the EDF programs based upon information from the Finance Department.

Name of Program	Description	Written Agreement Currently Required?
Economic Development Fund Grant & Loan Program (EDFGLP)	Strategic attraction and retention program for projects in targeted industry sectors that generate significant economic development benefits.	Yes, including provisions re: conditions for disbursement, minimum performance measures, clawback/repayment of funds, and evidence that funds were used for the intended purpose.
Small Business Assistance Program (SBAP)	Program to assist certain small businesses that are adversely impacted by a County-funded redevelopment project or a redevelopment project located on County-owned property.	Yes, including provisions re: conditions for disbursement, minimum performance measures, clawback/repayment of funds, and evidence that

Name of Program	Description	Written Agreement Currently Required?
	Currently focused on the Wheaton Redevelopment Project.	funds were used for the intended purpose.
Impact Assistance Fund (IAF)	Program that provides financial assistance and/or technical assistance to financially healthy small businesses in designated areas of the County that are adversely impacted by a redevelopment project initiated by the County, on County-owned property, or of a County facility. There are currently designated geographic areas in Silver Spring, Bethesda, and Clarksburg.	Yes, including provisions re: the use of funds, performance measures, and clawback/repayment if conditions are not met.
The Small Business Innovation Research and Small Business Technology Transfer Matching Grant Program (SBIR/STTR Program)	Program that allows Montgomery County companies who have been awarded a SBIR or STTR Phase I or Phase II grant from the National Institutes of Health (NIH), and that conduct at least 51 percent of research & development operations in the County, to apply for a local Montgomery County match.	Yes, including provisions re: the use of funds, performance measures, and clawback/repayment if conditions are not met.
Make Office Vacancies Extinct (MOVE) Program	Program targeted at attracting new businesses to the County in order to reduce vacant Class A and B office space. Businesses new to the County can apply for the program after signing a direct lease for at least three years for up to 20,000 square feet. Upon verification, businesses receive a grant of $8.00 per square foot leased, for a maximum grant amount of $80,000.	No. According to the Finance Department, AP 2-4 does not apply.
Biotechnology Investor Incentive Program (BIIP)	BIIP grants are awarded to qualified investors who receive a final tax credit certificate from the State of Maryland's Biotechnology Investor Incentive Tax Credit Program. Grants are prorated based on the amount appropriated for the program and portion of an investor's state tax credits	No. According to the Finance Department, AP 2-4 does not apply.

Name of Program	Description	Written Agreement Currently Required?
	compared to the total state tax credits received by all investors of County biotechnology businesses.	
Cybersecurity Supplement Program (CSP)	CSP grants are awarded to qualified businesses which receive a final tax credit certificate from the State of Maryland's Cybersecurity Investment Incentive Tax Credit Program. Grants are prorated based on the amount appropriated for the program and portion of the businesses' state tax credits compared to the total state tax credits received by all qualified businesses in the County.	No. According to the Finance Department, AP 2-4 does not apply.
MicroLoan Program	Program to provide loans ranging from $500 to $15,000 for County residents needing additional help to start and grow small businesses. The County has contracted with two experienced microloan providers – Life Asset and Latino Economic Development Corporation (LEDC) – to underwrite, monitor and manage the portfolio of microloans generated through the Microloan Program. Annual reports are provided to the County identifying microloan recipients, the loan amount, and repayment status.	Yes, in that the microloan providers require the recipients to sign promissory notes.

As noted by the Finance Department, EDF programs differ in their complexity and specific contractual needs. To provide needed flexibility for the different programs, the Committee voted (3-0) to amend the bill as follows.

Amend subsection (f)of section 20-75 as follows.

(f) **[**Unless expressly inconsistent with any other federal, state, or County law, the**]** **[[**The**]]** Except as provided in subsection (h), the terms and conditions of any assistance from the Fund:

(1) must be specified in a written agreement between the County and the recipient; and

(2) except to the extent expressly inconsistent with any other federal, state, or County law, must:

(A) require the recipient to meet certain eligibility criteria and, if applicable, performance criteria specified in the offer of assistance**[**, including a repayment agreement unless the Executive justifies why repayment of assistance is not required.**]**;

(B) grant the Director the right to audit or monitor the recipient's compliance with the terms and conditions of assistance;

(C) require periodic reports, if applicable, from the recipient;

(D) prohibit the use of assistance from the Fund for unauthorized purposes; and

(E) provide remedies for the County, including the repayment of assistance, if the recipient:

(i) uses the assistance for an unauthorized purpose;

(ii) fails to meet eligibility criteria and, if applicable, performance criteria specified in the written agreement; or

(iii) otherwise breaches the written agreement.

* * *

(h) The requirements of subsection (f) do not apply to assistance from the Fund if the Director determines that the assistance program does not require program recipients to comply with any terms or conditions after receipt of the assistance.

2. <u>Relationship of the Bill to Administrative Procedure 2-4</u>

The PHED Committee reviewed the following chart, which compares the requirements of the bill to the requirements of Administrative Procedure (AP) 2-4. The Executive adopted AP 2-4 shortly after the issuance of the OIG's 2019 memorandum.

	Scope	**Required Contractual Terms**	**Ability to Alter**
Bill 37-19	All EDF programs	Required terms include: • Performance criteria • Right to audit • Periodic reporting • Prohibition against use of funds for unauthorized purposes • Remedies for the County NOTE: If the Committee adopts the amendments discussed under Item #1, then the performance criteria and periodic reporting would be required only if applicable, and the right to audit would be a right to "audit or monitor".	County legislation by the County Council
Administrative Procedure 2-4	Requires a written agreement prior to: "(1) a formal request for, or transfer of, goods, services, information or an interest in real property; or (2) undertaking any activity requiring an Agreement as defined in paragraph 2.1." Under paragraph 2.1, "This AP governs an	Required terms include: • Responsibilities of parties; • Authority; • Estimated costs; • Term; and • Resolution of disagreements NOTE: Under Section 5.2 of the AP, the terms can be modified with	Approval of a new or revised administrative procedure by the Chief Administrative Officer.

	Scope	Required Contractual Terms	Ability to Alter
	agreement that requires the: A. Disbursement of County funds by the County or a Contractor or sub-contractor; or B. Receipt of funds by the County or a Contractor or sub-contractor on the County's behalf." However, the AP exempts certain contracts, namely procurements under Chapter 11B and collective bargaining agreements.	the approval of the OCA.	

In summary, Bill 37-19 applies specifically to EDF programs, while AP 2-4 applies more broadly to non-procurement agreements. The bill and the AP require similar, but slightly different, mandatory terms. The terms under the AP may be modified with the permission of the OCA. If the Committee adopts the amendments under Item #1 of this memorandum, then the Department of Finance would be able to modify certain terms as applicable to a specific program. The AP may be changed by the CAO, whereas the bill, if enacted, could not be changed without legislation.

3. <u>Expansion of Eligibility for the SBIR/STTR Matching Grant Program</u>

Currently, the County's SBIR/STTR matching program is limited to recipients of NIH SBIR or STTR grants. The bill would expand program eligibility to any recipient of an SBIR/STTR grant, regardless of whether NIH or another federal agency provided the grant. The OIG has pointed out that: "Unlike the Montgomery County Program, none of the [14] state programs reviewed [by the OIG] limited the match to a particular federal agency, such as NIH." (©18).[2]

According to OMB, the Department of Finance received 16 applications under the current eligibility criteria for the SBIR/STTR program in FY19, and it made awards to 14 applicants. Awards totaled $550,000 in FY19, and $100,000 budgeted for FY19 went unspent. The budgeted amount for the program in FY20 is $425,000.

OMB has indicated that – from 2017 through 2019 – Montgomery County companies *averaged* 118 SBIR/STTR awards from the federal government per year, with a total average

[2] Virginia, however, "does limit grants to grant recipients conducting research in particular industry sectors including: clean energy, cyber security, data analytics, life sciences, and unmanned systems." (© 18).

dollar amount exceeding $50 million per year. Therefore, if the County law expands eligibility for the matching program, it might expect a significantly larger number of applicants for the program.

The PHED Committee discussed whether to broaden the types of research and types of businesses that the County funds through the program. In order to expand eligibility, but retain a biotech focus, the Committee voted (3-0) to recommend adoption of the following amendment to subsection (c) of section 20-76E.

(c) *Eligibility*. A business is eligible to receive the matching grant if the business:

(1) has been awarded a SBIR or STTR Phase I or Phase II grant during the current calendar year**[** by the National Institutes of Health**]** <u>to conduct research in medicine, biotechnology, or life sciences</u>; and

(2) conducts at least 51% of its research and development operations at a physical location in the County.

* * *

NEXT STEPS

Roll call vote on whether to enact Bill 37-19 with the amendments (described above) recommended by the PHED Committee.

<u>This packet contains</u>:	<u>Circle #</u>
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Bill No. 37-19
Concerning: Economic Development Fund – Use of Fund and Remedies for Noncompliance
Revised: 3/4/2021 Draft No. 5
Introduced: December 3, 2019
Expires: December 31, 2021
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ________

County Council for Montgomery County, Maryland

Lead Sponsor: Councilmember Evan Glass
Co-Sponsors: Councilmembers Riemer and Jawando

AN ACT to:

(1) require recipients of Economic Development Fund assistance to agree to certain terms and conditions regarding the use and repayment of the assistance;
(2) alter eligibility requirements for the Small Business Innovation Research and Small Business Technology Transfer Matching Grants;
(3) require the repayment to the County of Small Business Innovation Research and Small Business Technology Transfer Matching Grants in certain circumstances;
(4) impose remedies related to the provision of false or fraudulent applications and the use of Fund assistance for unauthorized purposes; and
(5) generally amend the law related to the Economic Development Fund.

By amending
Montgomery County Code
Chapter 20, Finance
Sections 20-75 and 20-76E

By adding
Chapter 20, Finance
Section 20-76F

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 20-75 and 20-76E are amended, and Section 20-76F is added, as follows:

20-75. Use of Fund.

* * *

(f) [Unless expressly inconsistent with any other federal, state, or County law, the] [[The]] Except as provided in subsection (h), the terms and conditions of any assistance from the Fund:

(1) must be specified in a written agreement between the County and the recipient; and

(2) except to the extent expressly inconsistent with any other federal, state, or County law, must:

(A) require the recipient to meet certain eligibility criteria and, if applicable, performance criteria specified in the offer of assistance[, including a repayment agreement unless the Executive justifies why repayment of assistance is not required.];

(B) grant the Director the right to audit or monitor the recipient's compliance with the terms and conditions of assistance;

(C) require periodic reports, if applicable, from the recipient;

(D) prohibit the use of assistance from the Fund for unauthorized purposes; and

(E) provide remedies for the County, including the repayment of assistance, if the recipient:

(i) uses the assistance for an unauthorized purpose;

(ii) fails to meet eligibility criteria and, if applicable, performance criteria specified in the written agreement; or

(iii) otherwise breaches the written agreement.

*   *   *

(h) The requirements of subsection (f) do not apply to assistance from the Fund if the Director determines that the assistance program does not require program recipients to comply with any terms or conditions after receipt of the assistance.

20-76E. Small Business Innovation Research and Small Business Technology Transfer Matching Grant Program.

*   *   *

(c) *Eligibility*. A business is eligible to receive the matching grant if the business:

(1) has been awarded a SBIR or STTR Phase I or Phase II grant during the current calendar year**[** by the National Institutes of Health**]** to conduct research in medicine, biotechnology, or life sciences; and

(2) conducts at least 51% of its research and development operations at a physical location in the County.

*   *   *

(f) Administration.

(1) The Director must administer the Program.

(2) The Director must require a business to enter into an agreement under Section 20-75(f), including an agreement to pay back any grant payments received if:

(A) the business does not remain in the County for **[**at least 2 years after receiving the grant payment.**]** a minimum time period specified in the agreement; or

(B) the business uses the payment for an unauthorized purpose.

* * *

20-76F. Remedies for Fraudulent Applications or Misuse of Funds.

(a) The remedies under this Section supplement any other remedy available under the law, including any remedy under Section 20-75(f)(2).

(b) A person who submits a false or fraudulent application, or withholds material information, to obtain assistance under this Article has committed a Class A violation.

(c) A person who violates Subsection (b), or who uses assistance from the Fund for an unauthorized purpose under Section 20-75(f), is liable for all court costs and expenses and reasonable attorney's fees incurred by the County to recover any payment, interest, or penalty.

LEGISLATIVE REQUEST REPORT

Bill 37-19
Economic Development Fund – Use of Fund and Remedies for Noncompliance

DESCRIPTION: Bill 37-19 would:

(1) require recipients of Economic Development Fund assistance to agree to certain terms and conditions regarding the use and repayment of the assistance;
(2) alter eligibility requirements for the Small Business Innovation Research and Small Business Technology Transfer Matching Grants;
(3) require the repayment to the County of Small Business Innovation Research and Small Business Technology Transfer Matching Grants in certain circumstances; and
(4) impose remedies related to the provision of false or fraudulent applications and the use of Fund assistance for unauthorized purposes.

PROBLEM: Need for increased accountability in the use of grant funds.

GOALS AND OBJECTIVES:
(1) Increase accountability in the use of grant funds; and
(2) Expand eligibility for the Small Business Innovation Research and Small Business Technology Transfer Matching Grant Program (SBIR/STTR Program).

COORDINATION: Department of Finance

FISCAL IMPACT: OMB

ECONOMIC IMPACT: Finance

EVALUATION: To be done.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Christine M.H. Wellons, Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: Submission of a false or fraudulent grant application would constitute a Class A violation.

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August 1, 2019

TO: Andrew W. Kleine
Chief Administrative Officer

FROM: Edward L. Blansitt III
Inspector General

SUBJECT: SBIR and STTR Matching Grant Program
OIG Publication #20-003

A Preliminary Inquiry Memorandum (PIM) describes specific issues or complaints received and the outcomes of limited procedures undertaken during a Preliminary Inquiry conducted by the Office of the Inspector General (OIG). Copies of this PIM along with your response, if any, will be provided to the members of the County Council and the County Executive within 10 business days of the date of this PIM.

Background:

Beginning in Fiscal Year (FY) 2019, Montgomery County began offering matching grant funds to local business recipients of National Institutes of Health (NIH), Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR), Phase I or Phase II grants. The OIG conducted this inquiry between January and May 2019 for the purpose of determining whether the new SBIR and STTR Matching Grant Program had enough controls to ensure that grant funds would be utilized for the purposes intended by the legislation.

Summary and Conclusion:

Because the SBIR and STTR Matching Grant Program is funded through the Economic Development Fund, payments can be processed through a Direct Purchase Order, using an exempt transaction code. While grantees sign an award offer letter in order to receive funding, that award offer letter lacks many of the elements of a more formal county contract or agreement, such as the right to audit and a method for dispute resolution. This may create vulnerability for the County should a grantee use the County grant funds for non-project related expenses, or fail to perform under or otherwise abuse their federal grant.

After the first awards were approved at the beginning of FY 2019, Montgomery County Interim Administrative Procedure 2-4, *Agreements between Montgomery County Government and Other Organizations* (Interim AP 2-4) was issued. The new administrative procedure defines a number of required agreement provisions that must be memorialized in an agreement between the grantee and the County prior to issuing a DPO for payments from the Economic Development Fund. Revision of future award offer letters to match the requirements of interim AP 2-4 could alleviate many of the concerns the OIG has identified in this memorandum.

At the time of our review, written procedures regarding program administration had not been approved and were not provided to the OIG. The Department of Finance should take steps to document and approve written policies and procedures as soon as possible. The Department of Finance may also want to consider implementing SDAT checks for SBIR and STTR Matching Grant Applicants, as well as any other similar County grant programs to ensure that County funds are disbursed to awardees authorized to do business in Maryland.

PRELIMINARY INQUIRY DETAILS

The federal SBIR and STTR Programs

The SBIR and STTR programs provide early-stage capital for US-owned and operated small businesses to engage in federal research and development that has a strong potential for commercialization. These programs allow small businesses to develop and commercialize new technologies without giving up intellectual property or company equity.

SBIR requires federal agencies budgeted over $100 million for federally funded extramural research or research and development to set aside a percentage of that budget for small business. Similarly, STTR requires federal agencies budgeted over $1billion for federally funded extramural research or research and development to set aside a percentage of that budget for small business concerns that work in cooperation with universities, federally funded research and development centers, and other non-profit scientific and educational instructions.

Both programs contribute significant funding to early-stage, high risk funding for research and development (R&D) based small businesses and are structured in three phases: Phase I - Feasibility-Related Experimental Study or Theoretical Research/ Research and Development, Phase II – Continued Research/ Research and Development Effort, and Phase III – Commercialization.

A significant amount of federal SBIR and STTR funding is provided by the National Institutes of Health (NIH) which is headquartered in Montgomery County. (See Figure 1 below.) For the larger SBIR program[1], only about 6% ($42.7 million) of the NIH dollars awarded during fiscal year (FY) 2016 were awarded within the state of Maryland.

	FY 2016 Total Federal Obligation[2] (All Participating Agencies)	FY 2016 NIH Funding[3] (Total NIH Funding)
SBIR	$2.36 billion	$752 million
STTR	$313 million	$115 million

Figure 1: FY 2016 SBIR/STTR Funding

[1] OIG staff was unable to readily locate comparative numbers by state for the STTR program.
[2] Total FY 2016 obligation as reported in the SBIR and STTR Annual Report published by the U.S. Small Business Administration 2016.
[3] Data regarding total funding for FY 2016 NIH awards obtained from https://sbir.nih.gov/statistics/award-data, last accessed July 30, 2019.

Enabling Legislation for Montgomery County Matching Grant Program

On March 20, 2018, the Montgomery County Council (Council) passed legislation amending the law governing the Economic Development Fund[4] to establish a SBIR and STTR Matching Grant Program. The grant program is administered by the Director of Finance through the Economic Development Fund. The Economic Development Fund was established in FY 1996 "to aid the economic development of the County by assisting private employers who are located or plan to locate or substantially expand operations in the County."

Beginning in FY 2019[5], the legislation states that the "Director of Finance must pay, subject to appropriation, a SBIR or STTR Matching Grant to each business who meets certain eligibility standards." These require that the business:

1. has been awarded a NIH SBIR or STTR Phase I or Phase II grant during the current calendar year, and
2. conducts at least 51% of its research and development operations at a physical location within the County.

Grants must be awarded on a first come, first served basis and grantees are eligible to receive a 25% match of a federal grant up to a defined maximum of $25,000 for Phase I grants and $75,000 for Phase II grants.

The law provides that the Director of Finance must require a business to pay back the grant funds if the business does not remain in the County for at least two years following receipt of the grant payment, but does not appear to place any specific restrictions on the use of County grant funds or specify the repayment of grant funds should they be used for purposes unrelated to the project.[6]

County Program Implementation

During FY 2019, $650,000 was appropriated to fund the County program. At the time of our review, the SBIR and STTR Matching Grant Program Manager (Program Manager), an Economic Development Manager within the Department of Finance, Division of Fiscal Management provided a SBIR/STTR Marching Grant Program Tracking Summary spreadsheet reflecting that 14 local businesses had been approved to receive matching funds totaling $550,000.

The County Code provides that the Executive may adopt regulations to implement this program. In reference to the Economic Development Fund, the Code of Montgomery Regulations (COMCOR) allows each subprogram of the Economic Development Fund, to adopt policy for the administration of the program, as long as the policy does not conflict with COMCOR or the law in regards to eligibility standards and the award process. At the time of our review, the Program Manager stated that written policies and

4 Montgomery County Code, Section 20-76E
5 Montgomery County Council Bill 41-17 was effective as of July 2, 2018.
6 We note that for several other programs administered through the Economic Development Fund which are also established within Montgomery County Code Chapter 20, Article XIII, the legislation establishing the program specifically states that any applicants who submit false or fraudulent applications, or withhold material information, to obtain payment have committed a Class A violation. For these programs the law requires repayment of the amounts improperly paid, with interest and penalties.

procedures regarding program administration were under development. However, the Program Manager described the process which was followed in disbursing grant funds during an interview with OIG staff.

Applicants to the County program are required to submit a copy of their NIH SBIR/STTR grant award notification and complete an online application which includes information regarding the company and its location, as well as a brief description of their SBIR/STTR grant. The online application does not request any information regarding the applicant's intended use of the County funds. Applications are time and date stamped by the online system, and grant funds are disbursed on a first come, first served basis.

Upon receipt of the application and federal award letter, program staff confirm the location of the company in CoStar, a commercial real estate intelligence database. If the applicant appears to be at least 51% based in Montgomery County and there are available funds, the application is funded. Successful applicants receive an award offer letter from the Department of Finance.

The award offer letter states that subject to the applicant signing and returning the award offer letter, self-registering online with the County's Central Vendor Registration System, and providing banking information to allow an ACH electronic payment, funds will be disbursed. The letter states that the funding is conditional on the company maintaining operations and business interests within the County for a minimum of 2 years from the date of the grant disbursement to the business. The sample letter reviewed by the OIG also states that, "This conditional grant is to be used to further your research on [federal project name] and for no other purpose."

Because the program was still in its first year at the time of our review, the Finance Department had not yet asked for any follow-up reporting from grantees. The Program Manager stated that following the first year of the program (in approximately September 2019), she intends to request proof that each of the grantees continue to have operations in the County. The Program Manager did not intend to ask grantees how the funds were spent.

Comparative Local Programs

OIG staff attempted to identify similar local government SBIR and STTR matching grant programs for comparative purposes and found 14 states with similar grant programs. OIG staff reviewed program guidelines or spoke with program staff for 8 of these programs. We learned that, on average, the state programs we reviewed provide $69,000 in matching funds for Phase I grant recipients and $147,000[7] to Phase II recipients.

Unlike the Montgomery County Program, none of the state programs reviewed limited the match to a particular federal agency, such as NIH. Virginia does limit grants to grant recipients conducting research in particular industry sectors including: clean energy, cyber security, data analytics, life sciences, and unmanned systems.

7 North Carolina was one of the 8 programs reviewed but does not provide Phase II funds. Based on information published on their website, their program awards appear to be awarded to Phase I recipients only.

All of the state programs reviewed by the OIG required recipients to submit outcome reporting. Additionally, all required grant recipients to submit a proposed budget or specific information regarding how funds would be or were utilized to further project goals.

In comparison, the Montgomery County program does not ask grantees what the funds will be used for or how County funds are spent. Additionally, it does not appear that the County intends to request any outcome reporting.[8]

Use of County Grant Funds

OIG staff asked the Program Manager whether award recipients were required to sign any contract or agreement containing the County's usual contractual terms and conditions, such as the right to audit.[9] The Program Manager indicated that other than the award offer letter and the application, no other document is signed by the grantee to memorialize their agreement with the County.[10] There also does not appear to be any provision for audit outlined within the enabling legislation.

OIG staff asked the Program Manager what steps would be taken in the event that the County received allegations that a grantee used the funds for a purpose unrelated to the federal SBIR or STTR project attached to the County grant, such as a personal expenses.[11] The Program Manager stated that she would contact the awardee and ask how the County funds had been used, but provided no additional information regarding what further steps would be taken in the event funds were misspent.

Because the County does not require any written agreement specifically outlining how funds will be used or allowing the County to audit or seek recovery of misspent funds, it is unclear whether the grantee would be required to even answer any County questions regarding the expenditure of funds.

The federal SBIR and STTR programs employ a number of controls to aid in the prevention and detection of fraud waste and abuse, including established rules and policies, and regular communication with grantee. The federal government also lays out the acceptability of dozens of different types of costs. For example, costs such as charitable contributions and alcoholic beverages are "generally unallowable." Violators may face criminal, civil, and administrative penalties.

On the other hand, the County program does not appear to have any control over how funds are spent. At the same time, the award offer letter and legislation do not specifically describe circumstance under which the County could demand repayment of the grant, other than under circumstances wherein the grantee leaves the County less than 2 years after receiving the grant payment. There does not appear to be any defined

8 Other than verifying that the business continues to maintain operations in the County.

9 As previously stated, applicants are required to sign and return the County's award offer letter in order to receive grant funds.

10 The online application for the County program does have a caveat that states "By typing your name and submitting this application, you certify that this application and all other information furnished now and in the future to Montgomery County are and shall be true and complete."

11 The Program Manager was given the specific example of a grantee who used funds for a vacation and asked how she would react to such an allegation.

process discussed in the documents which would enable the County to require the repayment of the grant should the awardee default on the project, engage in fraud related to the federal award, or fraudulently claim receipt of a federal award in order to gain funding.

Montgomery County Administrative Procedure 2-4 "Agreements between Montgomery County and Other Organizations"

The SBIR and STTR Matching Grant Program is a part of the Economic Development Fund. The program is not subject to Procurement Regulations and program expenditures may be processed using exempt transaction codes under a Direct Purchase Order (DPO).

On September 11, 2018, Montgomery County Interim Administrative Procedure 2-4, *Agreements between Montgomery County Government and Other Organizations* (Interim AP 2-4) was issued. Following, the issuance of Interim AP 2-4, a workgroup was formed to develop enhancements to Interim AP 2-4, prior to the issuance of the final Administrative Procedure. The draft final Administrative Procedure is undergoing final review with the County. The OIG has been told that the draft final AP 2-4 requires that an agreement "provide a clear and comprehensive description of work to be conducted."

The County's current *Consolidated Exemption List* indicates that purchases made using the Economic Development Fund are subject to this AP 2-4 and requires that an agreement be in place in order to issue a DPO for payments from the Economic Development Fund. SBIR and STTR Matching Grant Program recipients do enter into an signed agreement with the County in that they are required to sign their offer letter in order to receive funding.

The bulk of FY 2019 SBIR and STTR Matching Grant Program awards were approved prior to the issuance of interim AP 2-4, including the award resulting from the sample offer letter provided to the OIG. However, for comparative purposes, we compared the offer letter to interim AP 2-4 to determine whether changes would need to be made in order for the letter to meet the requirements of an agreement as outlined in the procedure.

We found that the sample award offer letter used during FY 2019 does not comply with Interim AP 2-4 which states that the agreement shall be subject to general terms and conditions, defined, maintained and updated by the Office of the County Attorney and requires that the agreement contain a number of specific provisions including a termination/cancellation clause, a right to audit clause, and a section addressing the resolution of disagreements. None of those elements are contained in the sample award offer letter provided to OIG.

While we note that interim AP 2-4 was not in place when the awards began to be approved for FY 2019, we would expect that future award offer letters will be revised or a separate agreement be written to incorporate the requirements of AP 2-4. The OIG has not been provided any information indicating that the final version of AP 2-4 would not include the same requirements.

OIG staff asked the Program Manager whether applicants were compared with the Maryland Department of Assessments and Taxation (SDAT) Business Entity database to confirm that the company is eligible to do business in Maryland, prior to any funds being disbursed. For County contracts (including Council grants), it is the responsibility of the Contract Administrator within the using department to obtain a SDAT certificate of good standing prior to entering into a contract with an incorporated entity. The Program Manager indicated that this was not a current practice, but stated that they would likely be willing to adopt this practice. The OIG believes that it would be in the best interests of the County for the Program Manager to incorporate this step into the grant process.

cc: Fariba Kassiri, Deputy Chief Administrative Officer
Michael Coveyou, Acting Director, Department of Finance
Robert Hagedoorn, Division Chief, Treasury Division, Department of Finance

CAO Response to the Memorandum

On August 16, 2019 the Chief Administrative Officer (CAO) responded:

MONTGOMERY COUNTY · 1776 · MARYLAND

OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

Andrew W. Kleine
Chief Administrative Officer

MEMORANDUM

August 14, 2019

TO: Edward L. Blansitt III
Inspector General

FROM: Andrew W. Kleine AWK
Chief Administrative Officer

SUBJECT: SBIR and STTR Matching Grant Program, OIG Publication #20-00x

Thank you for the opportunity to respond to the conclusions and recommendations resulting from the limited procedures performed and conveyed in the August 1, 2019 *Preliminary Inquiry Memorandum – SBIR and STTR Matching Grant Program – OIG Publication #20-00x* (Memorandum). Following are the responses to the Memorandum's recommendations.

Memorandum Summary and Conclusion:

Because the SBIR and STTR Matching Grant Program is funded through the Economic Development Fund, payments can be processed through a Direct Purchase Order, using an exempt transaction code. While grantees sign an award offer letter in order to receive funding, that award offer letter lacks many of the elements of a more formal County Contract or Agreement, such as the right to audit and a method for dispute resolution. This may create vulnerability for the County should a grantee use the County grant funds for non-project related expenses or fail to perform under or otherwise abuse their federal grant.

After the first awards were approved at the beginning of FY 2019, Montgomery County Interim Administrative Procedure 2-4, *Agreements between Montgomery County Government and Other Organizations* (Interim AP 2-4) was issued. The new administrative procedure defines a number of required agreement provisions that must be memorialized in an agreement between the grantee and the County prior to issuing a DPO for payments from the Economic Development Fund. Revision of future award offer letters to match the requirements of interim AP 2-4 could alleviate many of the concerns the OIG has identified in this memorandum.

At the time of our review, written procedures regarding program administration had not been approved and were not provided to the OIG. The Department of Finance should take steps to document and approve written policies and procedures as soon as possible. The Department of Finance may also want to consider implementing SDAT checks for SBIR and STTR Matching Grant Applicants, as well as any other similar County grant programs to ensure that County funds are disbursed to awardees authorized to do business in Maryland.

CAO Response:

The Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs are subject to the requirements of the Interim AP 2-4, issued September 11, 2018. Prior to the issuance of the Interim AP, the form and content of the offer letter agreement for SBIR and STTR grants were approved by the Office of the County Attorney (OCA), working with the Department of Finance (Finance). This offer letter Agreement template was consistent with the specific provisions of County Code 20-76E, Small Business Innovation Research and Small Business Technology Transfer Matching Grant Program. For example, grants are subject to repayment to the County if the business does not remain in the County for at least two years after receiving the grant payment, and Finance's procedures include a validation of compliance with this legal requirement.

Finance has been coordinating with OCA to identify and implement any revisions to the offer letter Agreement necessitated by the Interim AP; for example, inclusion of general terms and conditions. Under the Interim AP and in appropriate situations, OCA can waive certain required Agreement provisions. Finance and OCA are in the process of evaluating and determining the applicability of each of the Interim AP required Agreement provisions to the SBIR and STTR offer letter Agreements, based on County Code 20-76E. Once the final AP 2-4 is issued, which we expect shortly, Finance and OCA will ensure the offer letter Agreements are revised, as necessary, to fully comply with the Final AP.

As it relates to written policies and procedures, Finance has developed standard operating procedures for the SBIR/STTR Local Matching Grant Program, which include language regarding confirming good standing with the State of Maryland through SDAT. These standard operating procedures will be subject to revision once a final determination is made of any impact of AP 2-4 on the offer letter Agreement and related processes.

Thank you again for the opportunity to review and respond to the findings of this inquiry. If you have any questions, please contact Mike Coveyou at 240-777-880.

Cc: Fariba Kassiri, Deputy Chief Administrative Officer
Mike Coveyou, Acting Director, Department of Finance
Rich Madaleno, Director, Office of Management and Budget
Ash Shetty, Office of Procurement
Robert Hagedoorn, Division Chief, Treasury Division, Department of Finance

ROCKVILLE, MARYLAND

MEMORANDUM

January 17, 2020

TO: Sidney Katz, President, County Council

FROM: Richard S. Madaleno, Director, Office of Management and Budget
Michael Coveyou, Acting Director, Department of Finance

SUBJECT: FEIS for Bill 37-19, Economic Development Fund – Use of Fund and Remedies for Noncompliance

Please find attached the Fiscal and Economic Impact Statements for the above-referenced legislation.

RSM:cm

c: Andrew Kleine, Chief Administrative Officer
Fariba Kassiri, Deputy Chief Administrative Officer
Caroline Sturgis, Assistant Chief Administrative Officer
Debbie Spielberg, Special Assistant to the County Executive
Dale Tibbitts, Special Assistant to the County Executive
Lisa Austin, Office of the County Executive
Barry Hudson, Director, Public Information Office
Laurie Boyer, Department of Finance
Rob Hagedoorn, Department of Finance
Dennis Hetman, Department of Finance
Peter McGinnity, Department of Finance
David Platt, Department of Finance
Monika Coble, Office of Management and Budget
Chrissy Mireles, Office of Management and Budget
Pofen Salem, Office of Management and Budget

Fiscal Impact Statement
Bill 37-19, Economic Development Fund –
Use of Fund and Remedies for Noncompliance

1. Legislative Summary

Bill 37-19 would amend the law concerning the administration and use of the Economic Development Fund (EDF) in order to: 1) increase accountability in the use of grant funds; and, 2) expand the eligibility for the Small Business Innovation Research and Small Business Technology Transfer (SBIR/STTR) Matching Grant Program.

This legislation would specifically stipulate the following requirements:

1. Require recipients of Economic Development Fund assistance to agree to certain terms and conditions regarding the use and repayment of the assistance;
2. alter eligibility requirements for the SBIR/STTR Matching Grants;
3. require the repayment to the County of SBIR/STTR Matching Grants in certain circumstances; and
4. impose remedies related to the provision of false or fraudulent applicants and the use of Fund assistance for unauthorized purposes.

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 source of information, assumptions, and methodologies used.

Bill 37-19 will not impact County revenues currently assumed in the approved budget. However, this legislation could have a significant impact on County expenditures as a result of the increased number of federal grant recipients eligible for the County's SBIR/STTR Matching Grants and the additional workload needed in the Department of Finance to implement the written agreements and reporting requirements for all EDF programs if the County chooses to support all eligible grantees.

Operating Expenses: The proposed legislation would expand the eligibility for County matching funds to SBIR/STTR grant recipients from the National Institutes of Health (NIH) to 11 additional federal agencies that also award SBIR/STTR grants. The current regulation provides a matching grant to any NIH SBIR/STTR Phase I or Phase II grant recipients who conduct at least 51% of its research and development operations at a physical location within the County. Grants are awarded on a first come, first serve basis, and grantees are eligible to receive a 25% match of a federal grant up to a maximum of $25,000 for Phase I grants, and $75,000 for Phase II grants. County resources allocated for the County's SBIR/STTR Matching Grant Funds were $650,000 for FY19 and $425,000 for FY20.

In FY19, Finance received 16 grant applications, but the County's matching grants were only awarded to 14 local companies (nine for Phase I and five for Phase II), totaling $550,000. For the first two quarters of FY20, 10 grant applications were received to date and the matching grants have been awarded to 4 local companies for Phase I and 4 for Phase II. Based on the federal data released at www.sbir.gov, an average of 82 County companies per year received the Phase I grants and 36 companies received the Phase II grants between 2017 and 2019. If the current eligibility is expanded from NIH to all 12 federal agencies, it is estimated that County expenditures could be increased to approximately $4.75M per year if the County chooses to support all eligible grantees. This estimated amount includes $2.05M for Phase I matching awards (= 82 companies x $25,000) and $2.7M for Phase II matching grants (= 36 companies x $75,000).

Montgomery County Companies Received Federal SBIR/STTR Grant Awards (in thousands)

	2017		2018		2019		Average	
	No. of Awards	Amount	No. of Awards	Amount	No. of Awards	Amount	No. of Awards	Amount
SBIR - Phase I	98	$ 20,048.4	83	$ 18,621.6	53	$ 8,513.5	78	$ 15,727.8
SBIR - Phase II	45	$ 53,313.2	38	$ 26,452.6	17	$ 15,117.0	33	$ 31,627.6
STTR - Phase I	5	$ 649.9	4	$ 746.5	2	$ 290.0	4	$ 562.1
STTR - Phase II	3	$ 2,499.8	7	$ 5,997.3	0	$ -	3	$ 2,832.4
Total	**151**	**$ 76,511.3**	**132**	**$ 51,818.0**	**72**	**$ 23,920.5**	**118**	**$ 50,750.0**

Data Source: www.sbir.gov. Note that award amounts tallied for Montgomery County in 2019 exceed the total award amounts for the State of Maryland.

Personnel Costs: If the County chooses to support all eligible grantees, Bill 37-19 would require all grants provided through the EDF programs to be memorialized in written agreements regarding the specific use and repayment of the assistance. The required workload would include setting the grantee's performance criteria, auditing the grantees, requiring periodic reporting from the grantees, prohibiting unauthorized uses of County funds, and providing remedies if a grantee misuses funds, fails to meet performance requirements, or breaches the agreement. Of the eight EDF programs, currently only two programs have actual written agreements between the County and grant recipients. To implement the requirements in the proposed legislation, Finance states that the increased workload cannot be absorbed within its current capacity and a dedicated, permanent full-time Program Manager II (Grade 25) position would be needed. The annualized personnel cost for a Program Manager II position would be approximately $114,350, calculated based on the FY20 mid-point of Grade 25 salary range plus benefits.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Based on the assumptions provided in Question #2, the total expenditures for the next six fiscal years are estimated at approximately $29.2M if the number of local companies awarded federal SBIR/STTR grants remains unchanged. However, the estimate will be adjusted based on the number of matching grants provided over time. This legislation would not impact County revenue for the next six years.

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Total
Personnel Costs (annualized)	114,350	117,781	121,314	124,953	128,702	132,563	739,663
Operating Expenses	4,750,000	4,750,000	4,750,000	4,750,000	4,750,000	4,750,000	28,500,000
Total	**4,864,350**	**4,867,781**	**4,871,314**	**4,874,953**	**4,878,702**	**4,882,563**	**29,239,663**

Note: Assume a 3% inflation rate for personnel costs but the same number of local companies (82 for Phase I and 36 for Phase II grants) received STTR/SBIR matching grants over the next six years.

4. **An actuarial analysis through the entire amortization period for each bill 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 bill authorizes future spending.**

   Currently, grants from one federal agency (NIH) are eligible for a match fund under the County's SBIR/STTR Matching Grant Program. If the program eligibility expands to all 12 federal agencies, there will be a demand for increased funding in future budgets for the County's SBIR/STTR Matching Grant Program.

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

   Per Question #2, this legislation would increase the workload for Finance staff to provide additional written agreements and reporting requirements for all EDF grant programs, in addition to expanding the eligibility for local companies to receive the matching grant from all 12 federal agencies. This would require a permanent full-time Program Manager II position to implement the expected workload.

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

   This full-time Program Manager II position would be dedicated to handle the increased workload related to the preparation of grant agreements and the reporting of oversight requirements as stipulated in Bill 37-19.

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.

Cost estimates will vary depending on the number of local companies receiving SBIR/STTR grant awards, the dollar amount of the Federal grants awarded, and the number of local companies applying for the match grant in the County.

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

It is difficult to project how many local companies would be eligible to apply for the County's SBIR/STTR matching grants if the program is expanded to include 12 different Federal agencies.

12. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable.

13. Other fiscal impacts or comments.

Not applicable.

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

Laurie Boyer, Department of Finance

Peter McGinnity, Department of Finance

Pofen Salem, Office of Management and Budget

Richard Madaleno

Richard S. Madaleno, Director
Office of Management and Budget

1/17/20
Date

Economic Impact Statement
Bill 37-19, Economic Development Fund – Use of Fund and Remedies for Noncompliance

Background:

This legislation would:

- Require recipients of Economic Development Fund (Fund) assistance to agree to certain terms and conditions regarding the use and repayment of the assistance;
- Alter eligibility requirements for the Small Business Innovation Research and Small Business Technology Transfer (SBIR/STTR) Matching Grants;
- Require the repayment to the County of SBIR/STTR Matching Grants in certain circumstances; and
- Impose remedies related to the provision of false or fraudulent applications and the use of Fund assistance for unauthorized purposes.

1. **The sources of information, assumptions, and methodologies used.**

   Source of information, assumptions, and methodologies used are from the Fiscal Impact Statement for Bill 37-19.

   Based on data reviewed at the www.sbir.gov website by the Department of Finance (Finance), the following SBIR and STTR Federal grants were awarded to Montgomery County companies in federal fiscal years 2017 – 2019 from all Federal agencies who provided these grants:

2017	**SBIR Phase 1**	**SBIR Phase 2**	**STTR Phase 1**	**STTR Phase 2**
No. of Awards:	98 (59.0%)	45 (56.2%)	5 (15.1%)	3 (17.6%)
Amount:	$20,048,424 (64.0%)	$53,313,169 (59.3%)	$649,932 (12.0%)	$2,499,821 (16.3%)

2018	**SBIR Phase 1**	**SBIR Phase 2**	**STTR Phase 1**	**STTR Phase 2**
No. of Awards:	83 (47.9%)	38 (51.3%)	4 (20%)	7 (77.7%)
Amount:	$18,621,579 (47.5%)	$26,452,628 (28.2%)	$746,474 (17.5%)	$5,997,300 (46.2%)

2019	**SBIR Phase 1**	**SBIR Phase 2**	**STTR Phase 1**	**STTR Phase 2**
No. of Awards:	53 (71.6%)	17 (60.7%)	2 (33.3%)	0 (0.0%)
Amount:	$8,513,495	$15,117,047	$289,990	$0

***Percentages shown represent the Montgomery County portion of all SBIR/STTR Awards in Maryland.**

Economic Impact Statement
Bill 37-19, Economic Development Fund – Use of Fund and Remedies for Noncompliance

(NOTE: Award Amounts tallied for Montgomery County in 2019 exceed the total Award Amounts for the State of Maryland on the sbir.gov website.)

On average, 78 local Montgomery County companies receive SBIR Phase I Federal grant funding annually and 4 local companies receive STTR Phase I Federal grant funding (for a total of 82 Phase I grant awards annually). Additionally, an average of 33 local companies receive SBIR Phase II Federal grant funding every year, and an average of 3 receive STTR Phase II Federal grant funding (for a total of 36 Phase II grant awards annually).

Based on these three-year averages, Finance estimates that if the Montgomery County program expands the eligibility to provide matching grants to companies who receive SBIR/STTR Phase I and II grants from 12 Federal agencies, the annual estimated costs would be:

82 Phase I awards @ $25,000 each:	$2,050,000
36 Phase II awards @ $75,000 each:	$2,700,000
Total annual costs for Phases I & II:	$4,750,000

These numbers are a significant increase from the 16 total grant applications that were received during FY19 and the 10 grant applications received during the first half of FY20 pertaining exclusively to NIH.

2. **A description of any variable that could affect the economic impact estimates.**

   The variable that could have an economic impact is the expansion of eligibility to provide matching grants to companies who receive SBIR/STTR Phase I and II grants from an additional eleven Federal agencies.

3. **The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

   Bill 37-19 would expand the eligibility to provide matching grants to companies that could have a positive impact on employment, investment, and business income to the recipients of the SBIR and STTR grants.

4. **If a Bill is likely to have no economic impact, why is that the case?**

   Please see Paragraphs 2 and 3.

5. **The following contributed to or concurred with this analysis:** David Platt, Laurie Boyer, and Rob Hagedoorn, Finance.

Economic Impact Statement
Bill 37-19, Economic Development Fund – Use of Fund and Remedies for Noncompliance

Michael Coveyou

Michael Coveyou, Acting Director
Department of Finance

1/13/20
Date

PURPOSE

1.0 To establish policies and procedures for the preparation, review, clearance, approval, and monitoring of an Agreement.

DEFINITIONS

2.0 ADVANCE PAYMENT – A payment for goods or services prior to the receipt of the goods or services, and prior to the receipt of an invoice.

2.1 AGREEMENT – A contract between Montgomery County Government ("County") and a private or public entity or person requiring the exchange of information, goods, or services, or the transfer of interests in real property with the County, and that is not subject to Chapter 11B of the Montgomery County Code (*Contracts and Procurement*). Agreements may involve payment, including Advance Payments, of County funds to, or the receipt of funds by the County from, the Contractor. Agreements include memoranda of agreement (MOAs) and memoranda of understanding (MOUs). This AP governs an Agreement that requires the:

A. Disbursement of County funds by the County or a Contractor or a sub-contractor; or

B. Receipt of funds by the County or a Contractor or subcontractor on the County's behalf.

2.2 CONTRACTOR – The organization, entity, or person entering into an Agreement with the County.

2.3 RESPONSIBLE DEPARTMENT/OFFICE – The Montgomery County Government department or office organizational unit that utilizes or facilitates the exchange of information or services contemplated under an Agreement.

EXCLUSIONS

3.0 This policy does not apply to the following types of contractual relationships:

A. Procurement contracts subject to Chapter 11B (Chapter 11B) of the Montgomery County Code;

B. Collective bargaining agreements;

C. Exempt transactions that are not required to be evidenced by an Agreement, as listed on Consolidated Exemptions List (see "N" under "Agreement is Subject to AP 2-4" column);

D. Grant applications by, or grant awards to, the County, which are governed by Administrative Procedure 7-1, *Grant Application.*

POLICY

4.0 An Agreement between the County and the Contractor shall be executed prior to: (A) a formal request for, or transfer of, goods, services, information or an interest in real property, or (B) undertaking any activity requiring an Agreement as defined in paragraph 2.1. The Agreement shall be developed and approved under the appropriate legal authorities with necessary review, coordination, and clearances as required under this policy. Coordination and review ensure that an Agreement is in the proper format, reflects the appropriate authority for the specific Agreement, protects County interests, is consistent with County policies and plans, and does not violate any applicable laws.

4.1 No employee or representative of the County shall use the policies or procedures contained in this policy to circumvent statutory and regulatory requirements relating to the award of procurement contracts pursuant to Chapter 11B.

4.2 This policy assigns responsibilities and establishes general policies and procedures for the preparation, review, clearance, approval, and monitoring of an Agreement. The policy is for internal use by County personnel and does not create any rights or liabilities with respect to the public or any third party. This policy applies to all Agreements, including those not written or prepared by County officials, that must be approved by a County official, except as excluded under Section 3.0 above.

GENERAL

5.0 Before developing an Agreement, a Responsible Department/Office shall consider the activities and nature of the transaction that it wants to accomplish and determine whether an Agreement is the correct legal instrument.

5.1 If a Responsible Department/Office seeks to pursue the appropriate contractual relationship through an Agreement signed by either the County Executive (CE), Chief Administrative Officer (CAO) or another County official specifically delegated such authority by the CE or CAO or by law or regulation, the Agreement shall be reviewed and approved by the Office of the County Attorney (OCA) and other departments as set forth in this policy. The CE or CAO may delegate authority to sign an Agreement to another County official; all other requirements of this policy shall apply.

5.2 An Agreement, excluding those Agreements specified in Section 8.2, shall be subject to general terms and conditions, referred to as AP 2-4 *General Conditions of Agreement ("Contract") Between County and Contractor* ("AP 2-4 General Conditions"), which shall be defined, maintained, and updated by OCA. The AP 2-4 General Conditions, [found at https://mcgov.sharepoint.com/cat/Documents/AP 2-4 General Conditions.pdf], may not be revised or modified without the prior approval of OCA. In situations involving financial-related terms and conditions, changes to the AP 2-4 General Conditions are subject to additional approval of the Department of Finance (Finance).

GENERAL (Cont'd)

5.3 An Agreement involving the disbursement or receipt of funds shall be subject to Finance accounts payable or accounts receivable policies and procedures, respectively, on the Finance sharepoint site at www.montgomerycountymd.gov/mcg/controller (select Accounts Payable or Accounts Receivable) and www.montgomerycountymd.gov/mcg/electronic_payments. An Agreement shall be reviewed and approved by Finance if at least one of the following conditions applies. The Agreement:

A. Involves an Advance Payment to another party, except where such advance is considered part of a commercially-acceptable practice as in the case of equipment and software maintenance, periodical subscriptions, registrations, travel, catering service, licensing fees, and insurance premiums; or

B. Involves indemnification or insurance requirements.

5.4 An Agreement involving an Advance Payment as described in paragraph 5.3 shall be subject to Finance policies and procedures on the Finance sharepoint site at www.montgomerycountymd.gov/mcg/AP_procedures.

RESPONSIBILITIES

6.0 The Office of the County Attorney (OCA) shall:

A. Review all proposed Agreements for form and legality.
   1. In the event that the transaction that the Responsible Department/Office seeks to enter into is subject to the County's Procurement Law under Chapter 11B, OCA will refer the Responsible Department/Office to the Office of Procurement, as appropriate.

B. Assign a County identification number to the Agreement.

C. Maintain an inventory of all Agreements, to include for each Agreement the following:

1. Identification number;

2. Responsible Department/Office and other party(ies) to the Agreement;

3. Total Agreement Value (total estimated amount of County funds to be disbursed over the Agreement period, or the total estimated amount of funds to be received by the County over the Agreement period) as stated by the Responsible Department/Office;

4. Indication, as stated by the Responsible Department/Office, of whether the Agreement involves receipt of funds by the County or the Contractor/subcontractor on the County's behalf;

5. Indication, as stated by the Responsible Department/Office, of whether the Agreement involves an Advance Payment of funds by the County; and

6. Date of signature by CAO (or another authorized County official).

RESPONSIBILITIES (Cont'd)

D. Ensure an Agreement includes legal terms, and language agreed to with Finance or department(s) other than the Responsible Department/Office, as otherwise required by this policy.

E. Establish, maintain, and update as appropriate, AP 2-4 General Conditions for all Agreements.

F. Advise and assist the Responsible Department/Office in developing a standard "template" Agreement for a group of related or recurring contractual relationships, if appropriate.

G. Evaluate and render a decision on any request from a Responsible Department/Office to waive a Required Agreement Provision under paragraph 8.0 or a term and condition I, AP 2-4 General Conditions. When a request for waiver involves financial-related terms, consult with and obtain Finance approval.

6.1 The Responsible Department/Office shall:

A. Coordinate as necessary with each party to an Agreement to identify the responsibilities of each party and the activities to be undertaken.

B. Prepare the Agreement, except if subject to paragraph 6.1C, incorporating all requirements of this policy. Complete a checklist [found at https://mcgov.sharepoint.com/cat/Documents/AP 2-4 Checklist fillable.docx] documenting compliance with the requirements.

C. For Agreements not prepared by the County, review the Agreement presented to the department/office, negotiate as necessary, and ensure that the Agreement follows the County review and approval process, including review by OCA, and Finance if applicable under paragraph 5.3.

D. Conduct and document an analysis that the Contractor(s) is capable of fulfilling the requirements under the Agreement (determination of responsibility). (NOTE: This requirement does not apply to the types of Agreements identified under paragraph 8.2 subparagraphs B through I.) The determination of responsibility should address, at a minimum, the following factors:

1. The ability, capacity, organization, facilities, systems (including accounting systems), and skills of the Contractor to fulfill the requirements under the Agreement and within the time required by the County. This would include sufficiency of financial resources to perform as required under the Agreement.

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2. The integrity, reputation, and experience of the Contractor and its key personnel. This would include performance on previous Agreements or contracts with the County or other parties. Any debarment by the County or other entity must be

RESPONSIBILITIES (Cont'd)

noted.

3. Previous and existing compliance by the Contractor with laws, regulations, and ordinances.

E. Coordinate with Finance on insurance requirements to be included in the Agreement or its general terms and conditions, as well as on the appropriate forms and frequency of certifications and reports required to be provided by the Contractor(s) and subcontractor(s) regarding their accounting system(s).

F. Seek advice from OCA on any request to waive an Agreement general term or condition.

G. If applicable, coordinate with Finance on approval of an Advance Payment, consistent with the Advance Payment Policy.

H. For Agreements involving the payment of funds, certification from the Office of Management and Budget of its determination of the availability of sufficient funds to support the Agreement is required. Soon after execution of the Agreement a direct purchase order must be established in the County's financial system of record unless the goods or services being acquired are an exception under Finance's Authorized Payment Policy at www.montgomerycountymd.gov/mcg/authorized_payments.

I. Monitor performance and progress under the Agreement to ensure that Agreement activities are being performed consistent with the provisions of the Agreement. Track and monitor the goods or services provided for purposes of validating that amounts billed are appropriate and in compliance with the Agreement.

J. Ensure that payments are made and received according to the conditions of the Agreement. Maintain a complete file for each Agreement, including all documentation related to the Agreement and financial transactions, if any, resulting from the Agreement.

K. If applicable, develop and provide to Finance a plan including available budget for implementing any audit requirement under the Agreement.

L. Upon receipt of the fully executed Agreement from the CAO, distribute copies of the executed Agreement to the Contractor, other County departments that reviewed the Agreement, and other party(ies) as appropriate, for their records. For Agreements where the authority to sign/execute the Agreement has been delegated to a Responsible Department/Office, that Department/Office is responsible for distribution of copies of the executed Agreement. (NOTE: The Office of the CAO, or the Responsible Department/Office if they are delegated authority to sign/execute the Agreement, shall electronically distribute copies of the executed Agreement to OCA, Finance, and the Responsible Department/Office.)

RESPONSIBILITIES (Cont'd)

M. Prepare amendments to an Agreement if the costs or scope of the Agreement will be changed. Facilitate re-review of the Agreement by Finance, OCA, and OMB.

6.2 The Department of Finance shall:

A. If the Responsible Department/Office is obligating funds and is not an authorized exception from related Finance direct purchase order policy reflected in the Authorized Payment Policy, ensure that the obligation is properly encumbered as a direct purchase order once the Agreement (or amendment to obligate additional funds) has been signed by all parties.

B. If applicable, evaluate and approve or deny the request for Advance Payment from a Responsible Department/Office.

C. Process transactions and maintain records consistent with County policy for financial transactions relating to an Agreement, including payments, Advance Payments, and accounts receivable/collections. For an Agreement involving an Advance Payment consistent with paragraph 5.3, determine any additional specific audit requirements, ensure that the appropriate right to audit and audit access clause language is included in the Agreement, and ensure that the Responsible Department/Office has a plan with appropriate resources identified and budgeted for to conduct any required financial audits.

D. If applicable, and in consultation with OCA, evaluate and approve any request from a Responsible Department/Office to waive an Agreement financial-related general term or condition.

6.3 The Office of Management and Budget shall:

A. If an agreement requires a payment or Advance Payment, determine that sufficient funds are available in the first fiscal year in the applicable Responsible Department/Office appropriation to enter into the Agreement. For multi-year Agreements, OMB's certification will be based on anticipated future appropriation levels, if known. In cases where Agreement costs are funded out of a much larger appropriated budget, OMB's certification may be based on a reasonability assessment since budgets are not appropriated on a line item basis.

B. Determine the availability of funds if Agreements are amended because of cost or scope changes.

6.4 The Chief Administrative Officer shall:

A. Review, approve, execute, and date an Agreement based on the recommendation of OCA.

B. The Office of the CAO shall electronically distribute copies of the executed Agreement to

RESPONSIBILITIES (Cont'd)

OCA, Finance, and the Responsible Department/Office; and return the original executed Agreement to the Responsible Department/Office for further distribution.

PROCEDURE

7.0	Responsible Department/Office	Defines nature of goods or services to be acquired or to be provided by County. Determines that acquisition of such goods or services is exempt from Chapter 11B of the Montgomery County Code and documents its determination of responsibility of the Contractor(s).
7.1	Responsible Department/Office	Prepares the Agreement in accordance with the policy on Agreement Provisions below. (NOTE: If an Agreement has been prepared by another party, the Responsible Department/ Office shall review the proposed Agreement to ensure it adheres to the policy provided herein.) Obtains certification from the Office of Management and Budget that sufficient appropriation is available to enter into the Agreement.
7.2	Office of Management and Budget	Provides certification that sufficient appropriation is available to enter into the Agreement.
7.3	Responsible Department/Office	Submits the proposed Agreement, along with all other relevant documentation, to include determination of responsibility, checklist, and approvals received from other County departments/offices, to OCA.
7.4	Office of the County Attorney	Reviews and approves the proposed Agreement for form and legality. Assigns Agreement number and forwards approved Agreement to CAO, or to Responsible Department/Office if signature authority has been delegated to that Department/ Office, for review and signature.
7.5	Chief Administrative Officer	Reviews, approves, and signs the Agreement; or remands for revision. The Office of the CAO electronically distributes copies of the executed Agreement to OCA, Finance, OMB, and the Responsible Department/Office.
7.6	Responsible Department/Office	For Agreements where signature authority has been delegated to the Responsible Department/Office, reviews, approves, signs, and dates the Agreement; electronically distributes copies of the executed Agreement to OCA, Finance, and OMB. Provides copy of executed Agreement to other party(ies) to the Agreement.

AGREEMENT PROVISIONS

8.0 REQUIRED AGREEMENT PROVISIONS. An Agreement's content depends upon financial circumstances, purpose, and authorities. The elements below are required for all Agreements and are in addition to the AP 2-4 General Conditions.

A. **Agreement Number**. An Agreement shall have an identification number assigned by OCA.

B. **Parties and Scope**. An Agreement shall clearly identify each party, including any subcontractors, by legal name and address, and describe the purpose and objective of the Agreement.

C. **Responsibilities of the Parties**. An Agreement shall specify the role of each party (who is doing what and when) and provide a clear and comprehensive description of the work to be conducted. The division of responsibilities and commitments of each side should be defined as precisely as possible. Where applicable, the Agreement should include goals, performance measures, deliverables, and a schedule of milestones. If an Agreement is for the provision of goods or services, then the Agreement shall clearly specify what the deliverables are and when they are due.

D. **Authority**. An Agreement shall include citation(s) to the applicable authorities that permit the contemplated activities and/or the transfer of funds, including reference to all payments from the County being subject to available appropriations and the encumbrance of funds.

E. **Estimated Costs and Accounting Information**. An Agreement shall specify the Total Agreement Value and, if appropriate, include a budget. An Agreement shall also explain the method and frequency (e.g., monthly or quarterly reimbursement, or in infrequent and unusual situations, an advance payment) with which payments will be made. If the Agreement calls for an advance payment, the Contractor must provide the County an accounting for how advance payments were expended in accordance with Finance policies and procedures on the Finance sharepoint site at www.montgomerycountymd.gov/mcg/AP.

F. **Term of Agreement**. An Agreement shall include a specified start date and completion date. If an Agreement will extend beyond five years, the Responsible Department/Office shall provide a justification and consult with OCA. The parties should agree to review the Agreement annually to ensure that the Agreement's terms remain accurate and capture the continuing intent of the parties.

G. **Resolution of Disagreements**. Each Agreement shall include a method of settling disputes and disagreements.

H. **Contact Information**. An Agreement shall include each party's technical/programmatic and administrative/financial contacts.

AGREEMENT PROVISIONS (Cont'd)

I. **Signatories**. An Agreement shall include signature and date lines for the officials duly authorized to sign the Agreement; normally this is the CAO, unless signatory authority for the Agreement has been specifically delegated to another County official, either by law or regulation or written delegation from the CAO. An Agreement is not effective, and, to the extent the Agreement involves the obligation of County funds (or state or federal funds), funds shall not be obligated until the Agreement is signed by all parties.

J. **Information Disclosure**. The Maryland Public Information Act (MPIA) requires that the County release any documentary materials requested by a non-Governmental party, unless the materials are covered by one of the MPIA's exemptions. If a party to the Agreement requires a provision concerning the protection or confidentiality of information, it should always be "to the extent permitted by State and County laws and regulations."

K. **Certification of Accounting and Related Systems**. An Agreement with a Contractor to manage a County program outsourced to the Contractor using funds advanced by the County, or using funds collected by the Contractor on behalf of the County shall include any specific requirements mandated by Finance concerning certification(s) and reports that the Contractor(s) or subcontractor(s) must provide concerning their accounting and related systems.

1. In the case of such an Agreement the Responsible Department must plan for the conduct on a minimum bi-annual basis of an audit of the Contractor and sub-contractor records, controls, and reporting related to the Agreement.

8.1 PROHIBITED AGREEMENT PROVISIONS. The following items shall not be included in the Agreement, unless agreed to by both OCA and Finance.

A. **Indemnification by County.** The County cannot agree to indemnify or hold harmless the other party to the Agreement. If such language appears in a draft Agreement, it shall be deleted in its entirety.

B. **Insurance Clauses**. The County is self-insured. Therefore, any clauses requiring the County to purchase insurance shall be removed from the Agreement.

8.2 EXCLUSIONS FROM REQUIRED AGREEMENT PROVISIONS. The following types of Agreements are not subject to specific terms and conditions under Section 8.0 above, nor the inclusion of the AP 2-4 General Conditions:

A. Property maintenance and operation agreements;

B. Loans;

AGREEMENT PROVISIONS (Cont'd)

C. Acquisition or disposition of an interest in real property, including leases and licenses to use real property;

D. Licenses or permits;

E. Insurance and bond agreements;

F. Condemnation proceedings;

G. Community Development Block Grants;

H. General development agreements; or

I. Where the Agreement is subject to federal, state, or other County terms and conditions approved/accepted by OCA.

DEPARTMENTS AFFECTED

9.0 All County Departments and Offices.