



**METROPOLITAN  
TRANSPORTATION  
COMMISSION**

# **Metropolitan Transportation Commission**

## **Professional Services Small Business Enterprise (SBE) Pilot Program**

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## OBJECTIVES/POLICY STATEMENT

In order to provide economic opportunity for the residents and businesses, and stimulate economic development in the San Francisco Bay Area Region, the Metropolitan Transportation Commission (MTC) has established a Professional Services Small Business Enterprise (SBE) Pilot Program (“Pilot Program”) for its Professional Services contracts to assist SBE firms in participating in MTC’s Professional Services contracts. This Pilot Program is aimed at using the power of the public purse to stimulate economic development.

The objectives of the Pilot Program include:

1. To increase the number of certified SBEs participating in non-federally funded Professional Services contracts;
2. To increase overall competition on non-federally-funded Professional Services contracts potentially allowing for the completion of projects at a lower overall cost;
3. To create a level playing field on which SBEs can compete fairly on non-federally funded Professional Services contracts;
4. To confirm that only firms (prime or subcontractor) certified by the State of California as SBEs per the requirements listed at <http://www.dgs.ca.gov/pd/Programs/OSDS/SBEEligibilityBenefits.aspx> are eligible for the Evaluation Preference allowed under the Program; and
5. To help remove barriers to the participation of SBEs in non-federally funded Professional Services contracts.
6. To allow MTC staff and Professional Services Consultants/Contractors an opportunity to provide input and feedback on the Pilot Program prior to final Program adoption.

The Director of Administrative Services Section (ADS) has been designated as the SBE Liaison Officer (SBELO). In that capacity, the ADS Director is responsible for implementing all aspects of the Pilot Program.

## **SUBPART A – GENERAL REQUIREMENTS**

### **A.1 Objectives**

The objectives are found in the policy statement on the first page of this Pilot Program.

### **A.2 Applicability**

MTC is a recipient of state and local funds. As a condition of this assistance, and in compliance with Proposition 209, MTC shall implement this Pilot Program without consideration of race, sex, or ethnicity. This Pilot Program sets forth the policies and procedures to be implemented by MTC to confirm that all small businesses have the maximum opportunity to participate in MTC non-federally funded Professional Services contracts.

When a non-federally funded Professional Services contract is awarded to a Consultant/Contractor based on the Evaluation Preference described in C.1 of this Pilot Program, the Consultant/Contractor must adhere to all the requirements included in this Pilot Program.

This Pilot Program applies solely to non-federally funded Professional Services contracts with a budget in excess of \$25,000. This Pilot Program does not apply to Professional Services contracts with a budget of \$25,000 or less or to contracts with federal funding.

### **A.3 Definitions**

MTC adopts the following definitions listed below for this Pilot Program:

1st Tier Subconsultant/Subcontractor – A subconsultant or subcontractor to a Consultant or Contractor.

ADS – Administrative Services Section.

Business Suppliers – An individual or business entity that makes available a certain commodity for meeting demand or for purchase at a given price.

Commercially Useful Function (CUF) – An SBE performs a commercially useful function when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. An SBE does not perform a CUF if it does not perform or exercise responsibility for at least 60 percent of the total cost of its contract than would be expected on the basis of normal industry practice for the type of work involved. If, in MTC's judgment, the SBE does not perform a CUF in the transaction, no Evaluation Preference will be awarded.

Community Based Organization (CBO) – A non-government agency created to provide training, employment or community assistance.

Consultant/Contractor – The individual, partnership, corporation, joint venture or other legal entity entering into a contractual agreement with MTC.

Evaluation Preference – The application of a percentage or point preference to the total evaluation

score of a Proposer for a procurement or solicitation, solely for the purpose of Proposal or SOQ comparisons when determining the highest ranked Proposal or SOQ. The use of an Evaluation Preference for Proposal or SOQ comparison will alter the total percentage or points allotted to the Proposer.

Manufacturer – A firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies purchased.

MTC - Metropolitan Transportation Commission.

Monitoring – The system established to measure compliance with the Pilot Program.

Post Award – The meeting held between MTC and Consultants/Contractors after the award of a Professional Services project and before contract execution. Post award meetings occur at the request of either MTC or Consultant/Contractor.

Professional Services – any non-public works service(s). Professional Services contracts may contain a minor public works component

Pilot Program – The MTC Professional Services Project SBE Pilot Program.

Proposer – Consultant/Contractor submitting a Proposal or SOQ in response to a RFP or RFQ.

Proposal – An Offer of a Proposer to provide Professional Services, in response to an RFP.

Request for Proposal (RFP) – RFP issued by MTC for professional services.

Request for Qualifications (RFQ) – RFQ issued by MTC for Professional Services.

Small Business Enterprise (SBE) – Firms certified by the State of California as SBEs per the requirements listed at <http://www.dgs.ca.gov/pd/Programs/OSDS/SBEEligibilityBenefits.aspx>.

SBE Broker – An SBE Broker is a firm that is not a vendor, but is providing assistance in the procurement of required materials or supplies.

SBE Dealer – An SBE Dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

SBE Directory – The list of firms certified by the State of California which is used by MTC and its Consultants/Contractors to identify potential SBE Consultants/Contractors and Subconsultants/Subcontractors and suppliers. The SBE directory can be accessed at the website link at <https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>.

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SBELO – Small Business Enterprise Liaison Officer.

SOQ – A statement of qualifications submitted by a Proposer in response to an RFQ.

Subcontract – A contract entered into between a Consultant/Contractor with a Subconsultant/Subcontractor.

Subconsultant/Subcontractor – The individual, partnership, corporation or other legal entity that contracts to perform part of or all of the obligations of another’s contract.

Subrecipient – Any agency that receives funds from MTC via statute, an interagency, cooperative or funding agreement.

Utilization – Percentage of total dollars of a type of work going to SBEs.

Web-based Diversity Tracking System – The diversity software provided by MTC to Consultants/Contractors accessible from any internet browser on any platform or operating system.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **B.1 Pilot Program Updates**

The SBELo or designee will provide the appropriate authorizing board with updates representing significant changes in the Pilot Program.

### **B.2 SBELo and Pilot Program Implementation**

MTC has designated the following individual as its SBE Liaison Officer (SBELo):

Director of Administrative Services Section  
Metropolitan Transportation Commission  
375 Beale Street, San Francisco, CA 94105  
Phone: (415) 778-56700, Email: [Contracts@mtc.ca.gov](mailto:Contracts@mtc.ca.gov)

In that capacity, the SBELo is responsible for implementing all aspects of the Pilot Program and ensuring that MTC complies with all provisions of the Pilot Program. The SBELo has direct, independent access to the Executive Director concerning Pilot Program matters.

The SBELo is responsible for developing, implementing and monitoring the SBE Pilot Program, in coordination with other appropriate officials. The SBELo has staff to assist in the administration of the Pilot Program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with the Pilot Program.
3. Works with ADS staff to determine if a Proposer has achieved the requirements for the Evaluation Preference.

4. Confirms that notices of procurement and solicitations are available to SBEs in a timely manner.
5. Identifies qualified contracts and procurements so that SBE preferences are included in Professional Services projects.
6. Analyzes MTC's progress toward SBE attainment and identifies ways to improve progress.
7. Participates in pre-Proposal meetings.
8. Advises the Executive Director and/or the appropriate authorizing board on SBE matters and achievement.
9. Provides outreach to SBEs and CBOs to advise of opportunities and technical assistance to SBEs to assist in Proposal or SOQ preparation and obtaining bonding and insurance.

### **B.3 Certification Standards and SBE Directory**

MTC does not administer an SBE certification program. Only firms (prime, Subconsultant/Subcontractor ) that are certified by the State of California as SBEs per the requirements listed at <http://www.dgs.ca.gov/pd/Programs/OSDS/SBEligibilityBenefits.aspx> are eligible for the Evaluation Preference allowed under the Pilot Program.

The State of California SBE Directory can be accessed at .  
<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

### **B.4 Record Keeping Requirements**

When a non-federally funded Professional Services contract is awarded to a Consultant/Contractor based on the Evaluation Preference listed in Subpart C, Section C.1 of this Pilot Program, ADS will monitor the contract as per Subpart D, to confirm that the Consultants/Contractors are in compliance with the requirements of the Pilot Program. ADS staff will report SBE participation to the appropriate authorizing board via reports generated from the web-based diversity tracking system.

MTC will require Consultants/Contractors to maintain records and documents of payments to all Subconsultants/Subcontractors (SBEs and non-SBEs) for four years following the completion of the contract. MTC will perform interim reviews of contract payments to SBEs. Payments to SBE Subconsultants/Subcontractors will be reviewed to verify that the actual amount paid to SBE Subconsultants/Subcontractors equals or exceeds the dollar amounts stated in the schedule of SBE participation included in the contract.

### **B.5 Public Outreach**

MTC will participate in outreach events with other San Francisco Bay Area transportation agencies and CBOs) to leverage its efforts to assist SBE firms. MTC will also participate in Caltrans' CalMentor Protégé Program for small business development.

## **SUBPART C – EVALUATION PREFERENCE AND SBE PARTICIPATION**

### **C.1 Evaluation Preference**

Under this Pilot Program, the MTC SBELO or designee may at his/her sole

discretion, designate specific Professional Services solicitations as eligible for participation in the Pilot Program. If a solicitation is selected for participation in the Pilot Program, an Evaluation Preference of up to five percent (5%) or five (5) points shall apply, with the exact percentage or points determined by the MTC SBELo or designee prior to solicitation issuance. The Evaluation Preference will be included in the solicitation when issued.

The Evaluation Preference applied as a percentage or point preference to the total evaluation percentage or points of a Proposal or SOQ submitted by a Proposer for a contract will be solely for the purpose of evaluation comparisons when determining the highest ranked Proposal or SOQ. The use of an Evaluation Preference for Proposal or SOQ comparison will alter the total evaluation percentage or points allotted to a Proposer.

The Evaluation Preference will be applied to only those solicitations designated by the MTC SBELo or designee during the Pilot Program. Only non-federally funded Professional Services contracts with a budget in excess of \$25,000 will be selected for participation in the Pilot Program. The Evaluation Preference will be based on the level of participation proposed prior to the award of a contract. Evaluation Preferences will be applied as follows after MTC verifies responsiveness requirements have been met:

- An Evaluation Preference of five percent (5%) or five (5) points will be added to the total evaluation percentage or points, when the Proposer meeting specifications is a certified SBE and is performing at least forty percent (40%) of the work, or
- An Evaluation Preference of five percent (5%) or five (5) points will be added to the total evaluation percentage or points, when the Proposer is a non-SBE prime Consultant/Contractor that commits to subcontract with SBE firms for at least forty percent (40%) of the work in its Proposal or SOQ.

ADS staff will monitor MTC's Pilot Program to confirm that the Consultants/Contractors are in compliance with the requirements the Pilot Program. The report of SBE awards, commitments and payments will be generated from the web-based diversity tracking system.

## **C.2 Maintaining Participation**

Once a project begins, it is important to achieve and maintain the participation that allowed the Evaluation Preference. Prime Consultants/Contractors must maintain the SBE percentages indicated in the Proposal or SOQ documents at the time of Proposal or SOQ submittal throughout the term of the contract.

If MTC modifies the original scope of work, the Consultant/Contractor must make reasonable efforts to maintain the SBE participation that allowed the Evaluation Preference. In the event of amendments, ADS staff may use their discretion to allow adjustments to SBE percentages for the amended portion of the work. Upon request, MTC staff will help firms to determine methods of maintaining percentages.

Should the prime Consultant/Contractor fail to maintain the SBE participation listed at

the time of Proposal or SOQ submittal, MTC reserves the right to enforce Consultants/Contractors' compliance with this Pilot Program through one or more of the remedies included in Section D.3 of this Pilot Program.

### **C.3 Substitution of Listed Subcontractors**

Substitution of listed Subconsultants/Subcontractors shall generally be made in accordance with Public Contracts Code Section 4107. In addition, the SBELO must concur in any decision to permit substitution of a SBE Subconsultant/Subcontractor(s) when the award was made on the basis of the Evaluation Preference listed in Section C.1 above.

### **C.4 Joint Venture Agreements**

A business that is competing for MTC contracts may associate with a certified SBE business to compete for contracts as a joint venture. Joint ventures receive an Evaluation Preference depending upon the SBE percentage of participation as set forth in Section C.1 of Subpart C, Evaluation Preference and SBE Participation. The parties must agree to enter into the relationship for at least the term of the project.

#### Basic Elements of the Joint Venture Agreement

A Joint Venture must submit a Joint Venture Management Plan and/or a Joint Venture Agreement in their Proposal or SOQ. Each agreement or management plan must include, but is not limited to the following:

- Detailed explanation of the financial contribution of each partner;
- List of the personnel and equipment used by each partner;
- Detailed breakdown of the responsibilities of each partner;
- Explanation of how the profits and losses will be distributed;
- Description of the bonding capacity of each partner; and
- Management or incentive fees available for any one of the partners (if any).

#### Commercially Useful Functions (CUF) Performed by Joint Venture Partners

Each JV partner must perform a "commercially useful function" as that term is defined herein. A SBE that relies on the resources and personnel of a non-SBE firm will not be deemed to perform a CUF.

#### Joint Venture License Requirements

Each joint venture partner must possess qualifications, certifications, accreditations, or licenses appropriate for the discipline for which a Proposal or SOQ is being submitted. If a joint venture is proposing on a project requiring license or certification, at the time of Proposal or SOQ submittal, each of the joint venture partners must hold a Joint Venture License or Certification and possess the requisite specialty license or certification for that profession.

### Delineation of Joint Venture Work

The SBE partner must clearly define the portion of the work to be performed during the project. This work must be of the similar type of work the SBE partner performs in the normal course of its business. The Proposal or SOQ must specify the portions of the project to be performed by each individual joint venture partner. Lump sum joint venture participation is not acceptable.

### Responsibilities of the SBE Joint Venture Partners

The SBE partner must share in the ownership, control, management responsibilities, risks, and profits of the joint venture in proportion with level of participation in the project; the SBE partner must perform work that is commensurate with its experience. The SBE partner must use its own employees and equipment to perform its portion of the project. Only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the SBE performs with its own forces will be counted toward SBE participation

### Application of Evaluation Preference for Joint Venture Agreements

To be eligible for an Evaluation Preference, at the time of Proposal or SOQ submittal, each joint venture partner must each have the qualification, certification, accreditation, or license that is appropriate for the project as required in the contract document of the contract award authority. Unless permission is granted by the SBELO or designee for good cause shown, based on sudden and unexpected necessity, the following actions are not permitted: i) the non-SBE partner performing work for the SBE partner; ii) leasing of equipment or property by the SBE partner from the non-SBE partner; and iii) the hiring of the non-SBE partner's employees by the SBE partner.

### Other Joint Venture Conditions

The SBELO or a designee must first approve the SBE Joint Venture Agreement/Management Plan before the joint venture is eligible for an Evaluation Preference. Any changes must also receive the prior approval of the SBELO or designee. In addition to any other information required by conditions specified herein, each SBE joint venture must provide upon request, cancelled checks and any other financial records to MTC.

## **C.5 Counting SBE Participation**

SBEs may perform as Consultants/Contractors, or 1st tier Subconsultants/Subcontractors. Only the value of the work to be performed by the SBE, including materials and supplies, will be counted toward SBE participation.

A SBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work. If an SBE 1<sup>st</sup> Tier Subconsultant/Subcontractor does not perform or exercise responsibility for at least

sixty percent (60%) of the total cost of its contract with its own work force, or if the SBE subcontracts a greater portion of work of a contract than would be expected on the basis of normal industry practice, then it will be presumed that the SBE is not performing a CUF.

Credit for an SBE Dealer of materials or supplies is limited to sixty percent (60%) of the amount to be paid to the vendor for the materials or supplies unless the vendor manufactures or substantially alters the goods. Credit for SBE Brokers is limited to only the fees and commissions portion of the amount paid. All other firms receive 100% credit, less work subcontracted by the SBE to non-SBE firms.

During the term of a contract, work performed by SBE firms whose certification has expired will continue to be counted toward the SBE participation.

## **SUBPART D – COMPLIANCE AND ENFORCEMENT**

### **D.1 Monitoring**

When a contract is awarded to a Consultant/Contractor based on the Evaluation Preference listed in Subpart C, Section C.1 of this Program, ADS will monitor the contract as per Subpart D, to confirm that the Consultants/Contractors comply with the requirements of the Program. ADS staff will report SBE participation to the appropriate authorizing board via reports generated from the web-based diversity tracking system.

MTC will require Consultants/Contractors to maintain records and documents of payments to all Subconsultants/Subcontractors (SBEs and non-SBEs) for four years following the performance of the contract. MTC will perform interim reviews of contract payments to SBEs. Payments to SBE Subconsultants/Subcontractors will be reviewed to verify that the actual amount paid to SBE Subconsultants/Subcontractors equals or exceeds the dollar amounts stated in the schedule of SBE participation included in the contract.

Subrecipients may be required to submit verification of the SBE Program adopted for non-federal funds allocated Professional Services projects and provide annual reports of SBE utilization on Professional Services projects achieved under the adopted program.

MTC has implemented the following monitoring mechanisms to monitor Consultant/Contractor compliance with Program requirements:

1. The SBELO or designee will verify that work committed to SBEs at contract award is actually performed by the SBEs.
2. The SBELO or designee will keep a running tally of actual payments to SBE firms for work committed to them at the time of contract award with the use of MTC's web-based diversity tracking system.

If the Professional Services project has a public works portion of work valued over \$1,000.00, the State's Labor Code requires Consultants/Contractors to pay their employees in accordance with general prevailing wages will apply to that portion of the work. The prime Contractor and all Subconsultants/Subcontractors including, if applicable, truckers and owner/operators are required to submit certified payroll records in accordance with Labor Code section 1776 upon request from MTC. Failure to submit certified payroll records could result in withholding of progress payment(s).

Upon request, Consultants/Contractors will provide MTC with executed copies of its Subconsultant/Subcontractor agreements to verify dollar amounts stated for all SBEs.

## **D.2 SBE Utilization Report**

Consultants/Contractors are required to submit monthly SBE Utilization Reports electronically to MTC ADS. The Consultant/Contractor will document the dollar value of payments to SBE firms and the percentage of the contract completed. MTC will monitor the contract for compliance with SBE requirements.

This system is web-based, accessible from any computer via the internet. Each Consultant/Contractor and Subconsultant/Subcontractor will receive an email providing them with Log On identification, a temporary password and instructions on how to use the system. Training will also be provided upon request. Consultant/Contractor will include this requirement in all of its subcontracts and purchase orders when required to provide or verify SBE utilization documentation.

If the SBE Utilization Reports indicate potential problems, such as a failure to comply with the contract SBE participation, the Consultant/Contractor shall meet with the MTC SBELO or designee to address any deficiencies and discuss appropriate corrective actions. When the Contract completion reaches 50% and the SBE participation completed is less than 50%, a detailed report of the reasons why must be submitted to MTC stating a plan to reach the SBE participation by Contract completion.

Prior to final payment, Consultant/Contractor will be required to submit a final SBE Utilization Report by selecting the "Final Audit" reporting designation within the web-based diversity tracking system. In addition to payments to the SBEs, the final report must include payments to and other information about all other businesses, including non-SBE Subconsultants/Subcontractors, suppliers of materials and others.

## **D.3 Pilot Program Enforcement**

MTC has available several remedies to enforce compliance of the Pilot Program requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the RFP or RFQ and contract.
2. Assessment of a penalty of up to one and one half times the amount that should have been awarded to SBE(s).
3. Termination of Contractor's performance of work under the contract.
4. Any other remedy available to MTC in the contract or the relevant RFP or RFQ.