

**Board Report**

File #: 2021-0116, **File Type:** Motion / Motion Response

Agenda Number: 34.

**CONSTRUCTION COMMITTEE
APRIL 15, 2021**

SUBJECT: ENHANCEMENTS TO METRO'S MEDIUM-SIZE BUSINESS ENTERPRISE PROGRAM AND SMALL BUSINESS ENTERPRISE PROGRAM

ACTION: RECEIVE AND FILE

RECEIVE AND FILE the response to Board Motion 51 by Directors Dupont-Walker, Hahn, Mitchell, Butts, Najarian and Solis at the January 2021 Board meeting.

ISSUE

On January 28, 2021, the Board passed Motion 51 (Directors Dupont-Walker, Hahn, Mitchell, Butts, Najarian and Solis) and requested a report back in April 2021 on strategies to create new pathways for the increase and continued access to contracting opportunities for Small Business Enterprises (SBEs) and Medium-Size Business Enterprises (MSZs) through the enhancement of Metro's MSZ and SBE Programs.

BACKGROUND

Metro has identified and implemented programs to provide opportunities for Disadvantaged (DBE) and Small Business Enterprises (SBE) to participate in many of the larger construction initiatives. Prime contractors are required to submit proposals with innovative DBE Contracting Outreach and Mentoring Plans (COMP), and must also include a Mentor Protégé program in their proposals. Race Conscious DBE contract goals apply to federal procurements and Metro has eliminated Good Faith Efforts (GFE) provisions for all non-federally funded RFPs and IFBs. Metro has designed and implemented programs to provide opportunities specific to helping SBEs win contracts as prime contractors and established set-aside contracting opportunities for medium-size businesses (MSZs) to compete with similar size firms to addresses the gap between small and large businesses.

While Metro recognizes that its programs offer exciting opportunities for small and medium sized businesses, Metro recently sought comments from this community by launching a survey that was distributed to over 20,000 participants to obtain feedback on their experiences and provide recommendations for improvement. The survey was conducted February 16th through 26th with 331 firms responding.

In addition to the survey, Metro staff also benchmarked several agencies to seek best practices and assess program requirements, certification standards, and processing.

DISCUSSION

Metro has taken the results of the survey and benchmarking study into consideration when addressing the following recommendations from Motion 51 as follows:

A. Review requirements for contracting opportunities with SBEs, including but not limited to:

1. Determining feasibility of achieving certification reciprocity with agencies at the state, county, and local levels that have similar baseline standards as Metro.

Metro's analysis revealed that the City of Los Angeles, LAWA, LAUSD, and the County of Los Angeles accept both Metro and DGS certification. In addition, the County of Los Angeles has had conversations with Metro regarding its SBE Program and is considering developing their own program that would emulate Metro's.

This may present an opportunity for 1) the City, County and Metro to develop reciprocity agreements for a County Wide Small Business Program where both the city and the county accept Metro Certification, or 2) the city and County adhere to Metro certification standards.

2. Exploring strategies to ensure that only legitimate SBEs and MSZs may compete for Metro contracts

Through benchmarking Metro found that most agencies accept or follow a program similar to the DGS certification for SBE Programs and Projects. Metro's review of these programs found that they rely on a self-certification process, with little to no vetting taking place. This process allows for non-disadvantaged firms to participate in these programs. Metro's review and certification is more robust including features such as requiring that businesses be independent and organized for profit, qualified owner(s) personal net worth must meet established thresholds, annual gross receipts must be less than specified targets over a three year average, qualifying applicants must be in control of management and daily business operations and own 51% of the business, and the applicant must be a U.S. Citizen or lawfully admitted permanent resident. Accepting a self-certification would not be in the best interest of the small business community and potentially may allow non-qualified firms to participate in programs intended for small business.

3. Reviewing certification standards, ownership, owner credentials, and other costs associated with competing for contracts, and recommending steps to streamline the process, ensuring integrity while making it more user-friendly and less costly.

We previously discussed some of the features that Metro reviews in order to ensure that only legitimate firms compete for contracts. In addition, once firms are vetted Metro makes every effort to ensure that the competitive process is fair and open to appropriate competition. Metro's solicitations are advertised and available via the Vendor Portal,

generally for download. There are exceptions where certain solicitations may exceed Metro's technology capabilities and thus require alternative delivery methods. An alternative delivery method may involve obtaining the documents in hardcopy or via another form of media. Vendors requesting alternative media are subject to a small, incidental cost to receive the media. Metro's Vendor/Contract Management has instituted the ability to accept credit cards for these transactions making it easier to pay for them without having to transact with Metro's cashier.

Metro is currently exploring new ways to enhance its ability to transact more electronically, but have been impacted by funding and resource technology constraints as there are many conditions (both internally for Metro and for our external Vendor community) that need to be considered before Metro can successfully transition. Since the COVID-19 Pandemic, Metro is working to accelerate advancements and is now utilizing email to accept IFB and RFP submittals. An email address has been established to exclusively handle this activity reducing the costs to receive media and/or physically deliver responses.

Metro is also in the process of updating the Pre-Qualification process and enabling fillable forms for the applications. The forms have been developed and are available on Metro's website. Vendor's can download, complete electronically, and return via email reducing time and delivery costs. There is no additional cost to complete and submit the fillable forms. Lastly, interested Vendor's can self-register on Metro's website and receive notifications for solicitations that meet their criteria at no cost. Further enhancements to these processes are being considered.

B. Review procurement requirements and identify potential ways to increase contracting opportunities for MSZs, including but not limited to:

1. Reviewing eligibility requirements for participation in the MSZ program to identify strategies to increase the number of businesses that qualify for the program

Survey feedback resulted in a desire to close the gap between the Small Business Prime Set-Aside maximum amount of \$5M and the \$12M lower limit for the MSZ Program. Suggestions for a two-tier program and separating construction and professional services contracts was also recommended and is being considered. Additionally, the 3-year annual gross receipts requirements and the maximum number of employee's threshold will also be reviewed to ensure that they represent this group appropriately. Comments received in the survey suggests that Professional services firms are concerned that they can meet the gross receipts requirements, but exceed the 250-employee maximum threshold.

2. Ensuring that recommendations consider equity, historically underutilized businesses, and key elements of the Disparity Study (current or proposed, if within the next 12 months).

Metro staff met with the City of Los Angeles' staff on their Community Level Contracting

program. This is a project specific contracting program for small businesses for predetermined projects such as sidewalk repair, truck washing and solar panel installation. These projects are typically under \$100,000, priced by the City, and offered to small business on a pre-approved list on a rotating basis. Metro staff reviewed a sampling of the City's RFQ documents for this initiative and is conducting further research to determine the possibility of developing a comparable program.

The initial assessment is that the City of Los Angeles's contracting authority support's the execution of contracts to be used in a manner similar to Job Order Contracting (JOC) for construction contracts of \$100k or less. Currently, Metro does not have authority to enter into similar arrangements under the Public Contract Code, unlike the City and many school and college districts. Staff will continue to explore this community contracting approach and will further assess applicability, potential policy and statute changes that will yield specific benefits for Metro and its contracting community.

In addition, Metro is also looking into other initiatives like the "Leader Follower Mentor/Protégé" program where the roles of prime contractor and subcontractor switch during the project, providing development and capacity building experience to the subcontractor. This approach has been used in the Federal government most prominently with the United States Air Force. Metro staff is reviewing FAR Subpart 17.4 (Leader Company Contracting) and conducting further research to determine the feasibility of this program, and will provide updates in the future.

Staff reviewed lessons learned from the Business Interruption Fund (BIF) and Business Solution Center (BSC) to garner additional strategies for equity and to increase contracting opportunities for certified firms in underserved areas. Lessons learned for further assessment include:

0. Establishing trust with small business owners
 1. One-on-one outreach to small business owners works
 2. The need for a network of referral services
 3. The importance of financial literacy
 4. Demonstrating empathy and understanding of construction concerns

3. *Defining strategies to create incentives for prime contractors to utilize MSZs that no longer meet SBE criteria; and*

Staff will explore ways to create incentives for prime contractors to utilize MSZs that no longer meet SBE criteria, particularly on capital projects. There is a lack of best practices regionally and nationally related to such incentives, requiring further research on opportunities and challenges. Metro will ascertain how best to obtain feedback from firms regarding their experiences in contracting outside of the SBE program and how prime contractors identify such firms when establishing teams. Currently, Metro does not maintain a database for firms that no longer meet SBE criteria. This is another area staff will examine for consideration of future programmatic improvements.

RECOMMENDATIONS

Explore establishing reciprocity agreement(s) with cities, counties, and other agencies (BART, VTA) for SBE certifications.

Continue to review program requirements for Personal Net Worth and the potential to remove notarization requirements for SBE certification (notarization is a Federal requirement for DBE certification).

Continue to work with client's on expanding contracting opportunities for SBEs and MSZs through review of upcoming anticipated work and program thresholds.

Explore establishing a 2-step MSZ program with the first step rebranded as a bridge to reduce or eliminate the current gap between the SBE maximum amount of \$5M and the \$12M lower limit for the MSZ Program, thus allowing for firms that graduate out of the SBE or DBE program to continue competing with peer companies.

Review eligibility requirements for participation in the MSZ program with the intent to grow the number of firms that participate in the program including, but not limited to, thresholds for gross receipts and number of employees.

Enhance outreach for SBEs and MSZs to foster relationships with primes contractors. Engage TBAC and the small business community on SBE and MSZ programs to ensure there is adequate awareness including, but not limited to, announcements of any proposed changes to ensure that benefits can be realized.

Continue to utilize surveys and/or working sessions with the SBE community to maintain regular dialogue and gather ongoing feedback.

Other items to consider include:

- Explore the community contracting approach for potential policy changes.
- Explore the Mentor/Protégé Leader Follower concept.
- Include the Equity platform goals as part of the disparity study scope for recommendations on how Metro can strengthen its contracting programs to reach historically overlooked neighborhoods and underserved communities.

FINANCIAL IMPACT

There is no immediate budget impact to this Receive and File report. However, there are several actions Metro can take to increase contracting opportunities and advance equity that may have a financial impact to the FY22 budget.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

This report supports strategic plan Goal 5.5, "Expanding opportunities for businesses and external organizations to work with Metro."

NEXT STEPS

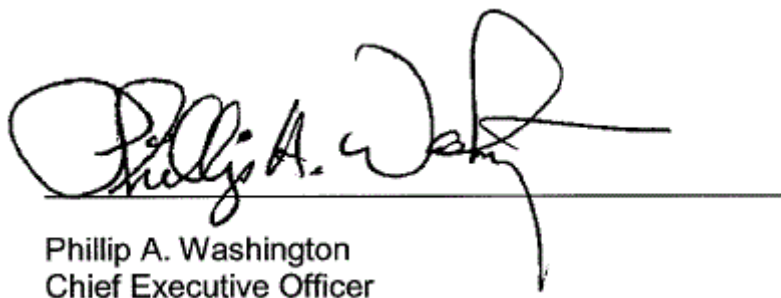
Staff will continue with the recommendations outlined above and engage with internal and external stakeholders and clients as required to advance changes and improvements for the purposes of updating and or seeking approval from the Board, as needed.

ATTACHMENTS

Attachment A - Motion 51

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