



## Board Report

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**EXECUTIVE MANAGEMENT COMMITTEE  
SEPTEMBER 15, 2022**

**SUBJECT: SURVEY OF SMALL BUSINESS ENTERPRISE (SBE) CERTIFICATION PROGRAMS  
AND EXPLORING OPPORTUNITY FOR RECIPROCITY (REPORT NO. 22-AUD-05)**

**ACTION: RECEIVE AND FILE**

**RECOMMENDATION**

RECEIVE AND FILE Office of the Inspector General (OIG) Final Report on the Survey of Small Business Enterprise (SBE) Certification Programs and Exploring Opportunity For Reciprocity.

**ISSUE**

As part of our ongoing effort to assist Metro in improving the efficiency and effectiveness of operations, the OIG performed a survey of selected government agencies, including (a) the 10 California Unified Certification Program (CUCP) certifying member agencies, (b) the California Department of General Services (DGS), and (c) the City and County of Los Angeles.

The objective of this survey was to determine whether Metro and selected government agencies could increase reciprocity of SBE certifications, simplify the certification process, and increase SBE participation.

**BACKGROUND**

The Disadvantaged Business Enterprise (DBE) program has a standard eligibility criterion which is set forth in the Code of Federal Regulations; primary eligibility criteria are:

- Individuals who are U.S. citizens are considered disadvantaged if they meet the federal definition of socially and economically disadvantaged as defined in 49 CFR Part 26.67. Individuals who are women, Black, or Hispanic are presumed to be disadvantaged.
- Personnel net worth must not exceed \$1.32 million (excluding the individual's ownership in the business and equity in their primary residence, and including only the present value of assets in pension plans, IRAs and 401 (k) accounts, less the tax and interest penalties that would accrue if the asset were distributed at the present time).

Metro's Small Business Prime Set Aside Program is race and gender-neutral, sets aside applicable

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contracts for small businesses, and enables small businesses to compete only against other small businesses for projects up to \$5 million. Only Metro-certified SBEs can participate in the Small Business Prime Program. As of December 31, 2021, Metro certified 2,338 SBE firms, of which 689 firms were awarded Metro contracts. Under Metro's Program, applicants must meet five requirements.

1. Personal Net Worth: Personal Net Worth must not to exceed \$1.32 million.
2. Business Size Standard: A firm (including affiliates) must be a small business as defined by the Small Business Administration. Annual gross receipts must not exceed \$26,290,000.
3. Ownership: The business must be a for-profit small business concern with the applicant/owner having at least 51% interest and control management of the daily business operations.
4. Independence: The business must not be affiliated to another firm in such a way as to compromise its independence and control or its eligibility as an SBE.
5. Management and Control: The applicant owner(s) must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day decisions, as well as long-term decisions on matters of management, policy and operations.

## DISCUSSION

### 1. Summary

The DBE program has uniform standards and criteria, and all 10 CUCP member agencies accept DBE firms certified by the other CUCP members. However, there are no uniform requirements and standards for SBE certification and no statewide reciprocity program to accept SBE firms certified by other agencies. Each agency surveyed had its own program, standards and criteria to certify and accept or not accept small business firms certified by other agencies, and some agencies did not have an SBE certification program.

### 2. Survey Results

A. SBE Certification Programs. The survey found that:

- 1) Five of the 10 CUCP member agencies have their own SBE certification program (Metro, City of LA, San Francisco Bay Area Rapid Transit District (BART), San Mateo County Transit District (SamTrans), and Santa Clara Valley Transportation Authority (VTA); one agency (BART) had the same certification requirements as Metro, and the other three agencies did not have a personal net worth requirement.
- 2) The remaining 5 agencies do not have an SBE certification program (Caltrans, City of Fresno, San Diego County Regional Airport Authority (SDCRAA), San Francisco International Airport (SFO), and San Francisco Municipal Transportation Agency (SFMTA).
- 3) None of the 10 CUCP member agencies, DGS, or the County of Los Angeles had unlimited or unconditional reciprocity to accept SBEs certified by any government agency.
- 4) Nine agencies (Caltrans, City of LA, SDCRAA, BART, SFO, SFMTA, SamTrans, VTA, and County of Los Angeles) have limited reciprocity to accept certifications from certain government agencies, and they also accept DGS certifications. Metro and the City of

Fresno do not accept DGS certifications.

B. California Department Of General Services. The DGS small business certification program follows State law, which in some areas differ from Metro 's requirements. For example, DGS's program does not have a personal net worth (PNW) requirement and has a self-certification process, while Metro has a PNW requirement and verifies application information. Therefore, Metro does not accept DGS SBE certifications because it could compromise the integrity of Metro's Program.

C. Metro Does Not Accept SBE Certifications From Other Agencies. Metro has a robust verification process to ensure applicants actually meet SBE eligibility requirements. Metro currently does not accept SBE firms certified by other agencies, in part, because of concerns that others may not adhere to the same standards as set forth in Metro's SBE Program and may not verify SBE application information. Additionally, Metro conducted a test of DGS's program by creating a fictitious company and was granted SBE certification in a matter of minutes. It appears that DGS's self-certification had little to no verification whether the applicant qualifies as a small business.

D. Some Agencies Accept SBE Certifications Of Others. We found that some agencies accept small businesses certifications of other agencies, which demonstrates an interest and need for reciprocity. For example:

- 1) The City of Los Angeles accepts small business certification from DGS, and the City's propriety departments accept SBE certification from several agencies including Metro and LSBE certifications from the County of Los Angeles.
- 2) SDCRAA accepts SLBE certifications from the City of San Diego, DGS, and other agencies that use SBA size standards.
- 3) BART accepts SBE certifications if there is an MOU for reciprocity with the certifying agency.
- 4) SFO accepts SBE certifications from other agencies that use SBA size standards.
- 5) SFMTA accepts San Francisco Local Business Enterprise and DGS certifications.
- 6) SamTrans accepts small business certifications from VTA and DGS.

In addition, four agencies (SDCRAA, BART, SFO, and SFMTA) accept a certified DBE as an SBE.

### 3. Opportunities For Improvement

Our survey found opportunities to increase contracting opportunities for small businesses by increasing SBE certification reciprocity with other agencies, which will improve the effectiveness of the Metro SBE Program. In our opinion, Metro may consider accepting SBE certifications from other agencies or developing SBE certification reciprocity with other agencies if the other agencies have a formal SBE Program and use the same or similar certification requirements as Metro and those agencies or Metro verify the information of the applications. BART uses the same five SBE certification requirements as Metro. Thus, an opportunity for SBE reciprocity exists there.

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Metro is recognized as a leader in the certification of SBE applicants in the State and is viewed by other agencies with confidence in its verification process. Metro may increase its leadership role and improve its acceptance of other agencies SBE certifications, or at least increase acceptance of Metro's SBE certifications by other agencies, by conducting increased outreach to other agencies for that purpose.

Metro should not engage in SBE reciprocity with agencies who do not have their own formal SBE certification program but instead rely upon the SBE certification program from DGS, whose Small Business Program does not currently meet or exceed Metro's SBE certification requirements or verification standards. If Metro's Program were to become rife with fraud, it would diminish the reputation of the agency and dilute Program benefits for legitimate SBE vendors.

#### **4. Recommendations**

1. Review and evaluate BART's SBE certification process and standards to determine if reciprocity can be developed with them.
2. Work with the City and County of Los Angeles to harmonize their SBE Programs, and develop SBE certification reciprocity.
3. Consider leading a Los Angeles County SBE Certification Summit to discuss program terms, requirements, minimum standards, and reciprocity among other agencies.
4. Continue to be a lead agency by making Metro's SBE Program known to other agencies throughout the State and encourage them to accept Metro's SBE certifications.
5. Continue to review and evaluate the California DGS's small business certification program and standards to determine whether Metro can recognize or accept some DGS certifications without compromising Metro's own SBE certification standards.

#### **FINANCIAL IMPACT**

There is no financial or budgetary impact by accepting the report. However, Metro's compliance with the recommendations would improve the effectiveness of its SBE certification program by working with other agencies to achieve increased reciprocity and potentially expand the SBE pool for Metro.

#### **EQUITY PLATFORM**

It is the OIG's opinion that there is no equity consideration or impact caused by this report. However effective implementation of the recommendations herein has the potential to improve SBE participation and contract awards for entities, and job opportunities for persons, that live and work in disadvantaged and low income areas in our region.

#### **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

Recommendations support strategic plan goal number 5.5: "Metro will expand opportunities for

businesses and external organizations to work with us.”

### **NEXT STEPS**

Metro management has provided the OIG with its response to our report. They agree with our recommendations and to take action to carry out the recommendations within a reasonable time. The OIG will assist as requested to help them carry out those endeavors.

### **ATTACHMENTS**

Attachment A: Final Report on the Survey of Small Business Enterprise (SBE) Certification Programs and Exploring Opportunity For Reciprocity (Report No. 22-AUD-05)

Attachment B: PowerPoint Presentation

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