

**Metropolitan Transportation Commission  
Policy Advisory Council Equity & Access Subcommittee**

February 12, 2020

Agenda Item 2

**Overview of the Updated Small Business Enterprise (SBE) Program**

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**Subject:** Overview of the updated SBE Program.

**Background:** Currently there are two SBE Programs; an adopted Construction Project SBE Program (adopted in October of 2015) and a Professional Services SBE Pilot Program (approved by the MTC Administration Committee in January of 2017). The proposed SBE Program combines the current two programs into one program covering all procurements, broadens the acceptable certifications and expands the SBE Preference into a two-tiered program. This would create one comprehensive SBE program that casts a wider net to SBE firms in the nine county Bay Area and increase the number of contracts with the SBE Preference being applied. Staff seeks the Council's input on this proposed program prior to bringing the programs for approval to each of the entities listed below. After receiving this Council's input, Staff intends to present for adoption the proposed new SBE Program to MTCs Administration Committee, Bay Area Toll Authority Oversight Committee, Bay Area Infrastructure Financing Authority, Bay Area Headquarters Authority, and MTC Service Authority for Freeways and Expressways in March 2020.

The objectives of the SBE Program include:

- To increase the number of certified SBEs participating in non-federally funded and non-Architectural and Engineering contracts;
- To increase overall competition on non-federally-funded contracts potentially allowing for the completion of projects at a lower overall cost;
- To create a level playing field on which SBEs can compete fairly on non-federally funded contracts;
- To ensure that only SBE firms (prime Consultant/Contractor or Subconsultant/Subcontractor/Vendor) meeting the Program's eligibility requirements are eligible for the Evaluation Preference allowed under the Program;
- To help remove barriers to the participation of SBEs in non-federally funded and non-Architectural and Engineering contracts; and
- To identify business enterprises that are qualified as SBEs and are qualified to provide MTC with required materials, equipment, supplies and services.

The current SBE Programs:

- Applies to non-federally funded and non-architectural & engineering contracts with a budget in excess of \$25,000;
- Only accepts firms that are certified by the State of California as SBEs through the Department of General Services (DGS); and
- Allows for a Bid/Proposal Evaluation Preference discount of 5% or 5 points to the total amount of a bid/proposal submitted by a Bidder/Proposer for a contract solely for the purpose of bid/proposal comparisons when determining the lowest responsive and responsible bid/proposal.

(Note: The current SBE Programs allows for an either/or Evaluation Preference: A) when the Proposer meeting specifications is a certified SBE and is performing at least forty percent (40%) of the work; or B) when the Proposer is a non-SBE that commits to subcontract with SBE firms for at least forty percent (40%) of the work.)

The proposed SBE Program:

- Applies to non-federally funded and non-architectural & engineering contracts with a budget in excess of \$25,000;
- Only firms (prime Contractor or Subconsultant/Subcontractor/Vendor) that meet the following requirements are eligible for the Evaluation Preference allowed under the SBE Program:
  - The firm is eligible for certification as a small business under the regulations applicable to the State of California Small Business Program (see the Cal Procure website); and
  - The firm is certified under any of the programs outlined below:
    - *California Certified Small Business as certified by the California Department of General Services (DGS)*
    - *A Disadvantaged Business Enterprise (DBE) as certified by the California Unified Certification Program (CUCP)*
    - *City and County of San Francisco Local Business Enterprise (LBE) as certified by the Contract Monitoring Division (CMD)*
    - *Alameda County Small Local and Emerging Business (SLEB) program as certified by the Alameda County SLEB Certification Unit; and*
    - *LBE/MBE/SBE/WBE certification from a formal certifying agency in the nine county Bay Area, provided that the certification can be verified through a searchable database.*

- Allows for a two-tiered Bid/Proposal Evaluation Preference to the total amount of a bid/proposal submitted by a Bidder/Proposer for a contract solely for the purpose of bid/proposal comparisons when determining the lowest responsive and responsible bid/proposal.
  - 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 commits to twenty-five percent (25%) SBE participation for the work (which can be achieved by the prime, by a sub(s), or a combination of prime and sub(s) who meet the requirements.
  - An Evaluation Preference of 10 percent (10%) or ten (10) points will be added to the total evaluation percentage or points, when the Proposer meeting specifications commits to forty percent (40%) SBE participation for the work (which can be achieved by the prime, by a sub(s), or a combination of prime and sub(s) who meet the requirements.
- After review by this Council, staff, in March 2020, will present resolutions for Adoption to MTCs Administration Committee, Bay Area Toll Authority Oversight Committee, Bay Area Infrastructure Financing Authority, Bay Area Headquarters Authority, and MTC Service Authority for Freeways and Expressways
- The Proposed SBE Program is to be included on all procurements that are not federally funded or involve architectural & engineering services
- The Proposed SBE Program will be incorporated into the next revision of EDMM 352

**Issues:** None identified.

**Recommendation:** Information

**Attachments:** Attachment A: Draft Metropolitan Transportation Commission Small Business Enterprise (SBE) Program  
Attachment B: PowerPoint presentation.



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# **Metropolitan Transportation Commission Small Business Enterprise (SBE) Program**

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## **OBJECTIVES/POLICY STATEMENT**

In order to provide economic opportunity for residents and businesses, and stimulate economic development in the San Francisco Bay Area Region, the Metropolitan Transportation Commission (MTC) hereby establishes a Small Business Enterprise (SBE) Program (“SBE Program” or “Program”) to assist SBE firms in participating in MTC materials, equipment, supplies, services and construction contracts. This Program is aimed at using the power of the public purse to stimulate economic development.

The objectives of the SBE Program include:

1. To increase the number of certified SBEs participating in non-federally funded contracts;
2. To increase overall competition on non-federally-funded 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 contracts;
4. To ensure that only SBE firms (prime Consultant/Contractor or Subconsultant/Subcontractor/Vendor) meeting the Program’s eligibility requirements are eligible for the Evaluation Preference allowed under the Program;
5. To help remove barriers to the participation of SBEs in non-federally funded contracts; and
6. To identify business enterprises that are qualified as SBE’s and are qualified to provide MTC with required materials, equipment, supplies and services.

The Director of Administration & Facilities Services Section (AFS) has been designated as the SBE Liaison Officer (SBELO). In that capacity, the AFS Director is responsible for implementing all aspects of the Program. Implementation of the SBE Program is accorded the same priority as compliance with the MTC Disadvantaged Business Enterprise (DBE) Program.

**SUBPART A – GENERAL REQUIREMENTS**

**A.1 Objectives**

The objectives are found in the policy statement on the first page of this 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 Program without consideration of race, sex, or ethnicity. This Program sets forth the policies and procedures to be implemented by MTC to confirm that small businesses have the maximum opportunity to participate in MTC non-federally funded materials, equipment, supplies, services and construction contracts.

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

This Program applies solely to non-federally funded materials, equipment, supplies, services and construction contracts. This Program does not apply to contracts with federal funding.

**A.3 Definitions**

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

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

2<sup>nd</sup> Tier Subconsultant/Subcontractor/Vendor – A subconsultant or subcontractor to a 1<sup>st</sup> Tier subconsultant or subcontractor.

AFS – Administrative and Facilities Services Section.

Bid – The offer of the bidder for the construction project when completed and submitted in response to an IFB on the prescribed bid form.

Bid Preference – The application of a percentage discount to the total amount of a bid submitted by a Bidder for a contract solely for the purpose of bid comparisons when determining the lowest and best bid, or lowest responsible bid. The use of a bid preference for bid comparison does not alter the total amount of the bid submitted by a bidder or the contract executed based on a bid.

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

Civil Construction --. Civil Construction is a segment of the broader construction industry focused on building core infrastructure such as highways, roads, bridges, telecommunications, subway tunnels, light rail transit lines and public buildings.

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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 that 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/Vendor – 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.

Invitation for Bid (IFB) – Invitation for Bid issued by MTC for construction services.

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 Program.

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

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

Proposer – Consultant/Contractor/Vendor 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.

SBE Program – The MTC SBE Program.

Small Business Enterprise (SBE) – A firm that meets the requirements set forth in Section B.3 Certification Standards and SBE Directories.

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 under any of the programs outlined in Section B.3 Certification Standards and SBE Directories, which is used by MTC and its Consultants/Contractors/Vendors to identify potential SBE Consultants/Contractors/Vendors and Subconsultants/Subcontractors/Vendors and suppliers.

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/Vendor with a Subconsultant/Subcontractor/Vendor.

Subconsultant/Subcontractor/Vendor – 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 tracking software provided by MTC to Consultants/Contractors/Vendors accessible from any internet browser on any platform or operating system.

**SUBPART B - ADMINISTRATIVE REQUIREMENTS**

**B.1 Program Updates**

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

**B.2 SBELO and Program Implementation**

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

Director of Administration and Facilities Section (AFS)  
Metropolitan Transportation Commission 375 Beale St, Suite 800  
San Francisco, CA 94105  
Phone: (415) 778-6700  
Email: [contracts@mtc.ca.gov](mailto:contracts@mtc.ca.gov)

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

The SBELO is responsible for developing, implementing and monitoring the SBE Program, in coordination with other appropriate officials. The SBELO has staff to assist in the administration of the SBE 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 SBE Program.
3. Works with AFS staff to determine if a Proposer/Bidder 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 all applicable procurements.
6. Analyzes MTC's progress toward SBE attainment and identifies ways to improve progress.
7. Participates in pre-proposal/pre-bid 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 them of opportunities and technical assistance to SBEs to assist in Proposal, SOQ and/or bid preparation and obtaining bonding and insurance.

**B.3 Certification Standards and SBE Directories**

MTC does not administer an SBE certification program. Only firms (prime Contractor or Subconsultant/Subcontractor/Vendor) that meet the following requirements are eligible for the Evaluation Preference allowed under the SBE Program:

- A. The firm is eligible for certification as a small business under the regulations applicable to

the State of California Small Business Program<sup>1</sup> (see <https://www.caleprocure.ca.gov/pages/sbdvbe-index.aspx>); and

B. The firm is certified under any of the programs outlined below:

1) *California Certified Small Business as certified by the California Department of General Services (DGS) -Procurement Division (PD) - Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS)*

The State of California SBE Directory can be accessed at:

<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

2) *A Disadvantaged Business Enterprise (DBE) as certified by the California Unified Certification Program (CUCP)*

The CUCP Directory can be accessed at:

<https://dot.ca.gov/programs/business-and-economic-opportunity>

3) *City and County of San Francisco Local Business Enterprise (LBE) as certified by the Contract Monitoring Division (CMD) Directory Certification Unit*

The Directory of Certified LBEs can be accessed here:

<https://sfgov.org/cmd/directory-certified-lbes>

4) *Alameda County Small Local and Emerging Business (SLEB) program as certified by the Alameda County SLEB Certification Unit*

The SLEB Supplier Query System Database can be accessed at:

[https://www.acgov.org/sleb\\_query\\_app/gsa/sleb/query/slebresultlist.jsp?smEmInd=C](https://www.acgov.org/sleb_query_app/gsa/sleb/query/slebresultlist.jsp?smEmInd=C)

5) LBE/MBE/ SBE /WBE certification from a formal certifying agency in the nine county Bay area, provided that the certification can be verified through a searchable database.

Note:

<sup>1</sup>

Per Title 2, California Code of Regulations, § 1896.12. Eligibility for Certification as a Small Business. To be eligible for certification as a small business, a business must meet all of the following qualifying criteria:

- (1) It is independently owned and operated; and
- (2) Its principal office is located in California; and
- (3) The officers of the business (in the case of a corporation); officers and/or managers, or in the absence of officers and/or managers, all members in the case of a limited liability company; partners in the case of a partnership; or the owner(s) in all other cases, are domiciled in California; and
- (4) It is not dominant in its field of operation(s), and
- (5) It is either:
  - (A) A business that, together with all affiliates, has 100 or fewer employees, and annual gross receipts of fifteen million dollars (\$15,000,000) or less as averaged for the previous three (3) tax years, as biennially adjusted by the Department in accordance with Government Code § 14837(d)(3) (If the business or its affiliate(s) has been in existence for less than three (3) tax years, then the GAR will be based upon the number of years in existence); or
  - (B) A manufacturer as defined herein that, together with all affiliates, has 100 or fewer employees.

**B.4 Record Keeping Requirements**

When a non-federally funded contract is awarded to a Consultant/Contractor/Vendor based on the Evaluation Preference listed in Subpart C, Section C.1 of this SBE Program, AFS will monitor the contract per Subpart D, to confirm that the Consultants/Contractors/Vendors are in compliance with the requirements of the SBE Program. AFS 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/Vendors to maintain records and documents of payments to all Subconsultants/Subcontractors/Vendors (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/Vendors will be reviewed to verify that the actual amount paid to SBE Subconsultants/Subcontractors/Vendors 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.

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

**C.1 Evaluation Preference**

MTC will allow an evaluation preference to be applied as a percentage discount to the total amount of a proposal/bid submitted by a Proposer/Bidder for a contract solely for the purpose of bid comparisons when determining the lowest and best bid, or lowest responsible bid. The use of an evaluation preference for Proposal, SOQ, or Bid comparison does not alter the total amount of the bid submitted by a bidder or the contract executed based on a bid. The SBE Program evaluation preference will be applied to all locally-funded solicitations when issued.

The Evaluation Preference applied as a percentage or point preference to the total evaluation percentage or points of a Proposal, SOQ, or Bid submitted by a Proposer/Bidder 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, SOQ or Bid comparison will alter the total evaluation percentage or points allotted to a Proposer/Bidder.

The Evaluation Preference will be applied to all non-federally funded solicitations. The Evaluation Preferences will be applied as follows after MTC verifies that the 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 commits to twenty-five percent (25%) SBE participation for the work (which can be achieved by the prime, by a sub(s), or a combination of prime and sub(s) who meet the requirements set forth in Section B.3 of this SBE Program), or
- An Evaluation Preference of 10 percent (10%) or ten (10) points will be added to the total evaluation percentage or points, when the Proposer meeting specifications commits to forty percent (40%) SBE participation for the work (which can be achieved by the prime, by a sub(s), or a combination of prime and sub(s) who meet the requirements set forth in Section B.3 of this SBE Program).

AFS staff will monitor MTC’s SBE Program to confirm that the Consultants/Contractors/Vendors are in compliance with the requirements of the SBE 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 level of SBE participation that allowed the Evaluation Preference. Prime Consultants/Contractors/Vendors must maintain the SBE percentages indicated in the Proposal, SOQ or Bid documents at the time of Proposal, SOQ or Bid submittal throughout the term of the contract.

If MTC modifies the original scope of work, the Consultant/Contractor/Vendor must make reasonable efforts to maintain the SBE participation that allowed the Evaluation Preference. In the event of amendments, AFS 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/Vendor fail to maintain the SBE participation listed at the time of Proposal, SOQ or Bid submittal, MTC reserves the right to enforce Consultant/Contractor/Vendor compliance with this SBE Program through one or more of the remedies included in Section D.3 of this SBE Program.

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

Substitution of listed Subconsultants/Subcontractors/Vendors 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/Vendor 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, SOQ or Bid is being submitted. If a joint venture is proposing/bidding on a project requiring license or certification, at the time of Proposal, SOQ or Bid 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, SOQ or Bid 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, SOQ or Bid 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/Vendors, 1<sup>st</sup> tier Subconsultants/ Subcontractors/Vendors, or 2<sup>nd</sup> tier Subconsultants/Subcontractors/Vendors. 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 or 2<sup>nd</sup>

Tier Subconsultant/Subcontractor/Vendor 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.

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**SUBPART D – COMPLIANCE AND ENFORCEMENT**

**D.1 Monitoring**

When a contract is awarded to a Consultant/Contractor/Vendor based on the Evaluation Preference listed in Subpart C, Section C.1 of this Program, AFS will monitor the contract per Subpart D, to confirm that the Consultants/Contractors/Vendors comply with the requirements of the Program. AFS 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/Vendors to maintain records and documents of payments to all Subconsultants/Subcontractors/Vendors (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/Vendors will be reviewed to verify that the actual amount paid to SBE Subconsultants/Subcontractors/Vendors 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 their eligibility for participation in the SBE Program and to provide annual reports of SBE utilization on Professional Services or Civil Construction projects achieved under the SBE Program.

MTC has implemented the following monitoring mechanisms to monitor Consultant/Contractor/Vendor 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 a Professional Services or Construction project has a public works portion of work valued over \$1,000.00, the State's Labor Code requires Consultants/Contractors/Vendors to pay their employees in accordance with general prevailing wages that apply to that portion of the work. The prime Contractor and all Subconsultants/Subcontractors/Vendors 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/Vendors will provide MTC with executed copies of its Subconsultant/Subcontractor/Vendor agreements to verify dollar amounts stated for all SBEs.

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

Consultants/Contractors/Vendors are required to submit monthly SBE Utilization Reports electronically to MTC AFS. The Consultant/Contractor/Vendor 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/Vendor and Subconsultant/Subcontractor/Vendor 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/Vendor 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/Vendor 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/Vendor 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/Vendors, suppliers of materials and others.

## **D.3 SBE Program Enforcement**

MTC has available several remedies to enforce compliance of the SBE 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, RFQ or IFB 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, RFQ or IFB.

*Forms are still being finalized to accompany this document*



# Proposed Small Business Enterprise (SBE) Program

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A revised comprehensive program incorporating  
the adopted Construction Project SBE Program and  
the Professional Services SBE Pilot Program

# Current SBE Programs

**Currently there are two (2) SBE Programs:**

➤ **Construction Project SBE Program**

- On October 28, 2015 MTC adopted Resolution No. 4203 which adopted the Construction Project Small Business Enterprise (SBE) Program to assist SBE firms in participating in MTC's contracts for locally funded formal construction projects.

➤ **Professional Services SBE Pilot Program**

- In January of 2017, with Admin Committee Approval, staff implemented a Pilot Program to assist SBE firms in participating in MTC's professional service contracts, which are a far larger element of MTC's procurement portfolio than our relatively limited construction work.

# Current SBE Programs (cont.)

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## Construction Project SBE Program (adopted in October 2015)

<b>Applicable to:</b>	<b>Acceptable Certifications:</b>	<b>Bid/Evaluation Preference:</b>	<b>Statistics:</b>
Non-Federally Funded and Non-Architectural & Engineering Contracts	State of California Department of General Services (DGS) SBE Program	<b>5% bid discount</b> applied if the lowest responsive, responsible bidder is a certified SBE and is performing at least forty percent (40%) of the work or commits to subcontract with certified SBE firm(s) for at least 40% of the work	7 Civil Construction IFBs have been issued since adoption, 3 of which were awarded based on the SBE Preference resulting in commitments to SBEs of \$6,250,726

## Professional Services SBE Pilot Program (MTC Admin Committee approval in January 2017)

<b>Applicable to:</b>	<b>Acceptable Certifications:</b>	<b>Bid/Evaluation Preference:</b>	<b>Statistics:</b>
Non-Federally Funded and Non-Architectural & Engineering Contracts	State of California Department of General Services (DGS) SBE Program	<b>5% bid discount</b> applied if the lowest responsive, responsible bidder is a certified SBE and is performing at least forty percent (40%) of the work <b>OR</b> commits to subcontract with certified SBE firm(s) for at least 40% of the work	13 RFP/RFQs have been issued since adoption, 6 of which were awarded based on the SBE Preference resulting in commitments to SBEs of \$21,623,124.83

# Proposed SBE Program

As was the stated intent when the Pilot Program was implemented in January 2017, Contracts staff proposes adopting a revised SBE Program that will combine the Construction Project & Professional Services Pilot Programs into one Small Business Enterprise (SBE) Program that will cover both construction and professional services procurements.

► **There are three main areas that have been revised:**

- Combine the Pilot Professional Services SBE program and the Construction Project SBE Program into one comprehensive Small Business Enterprise (SBE) Program;
- Broaden the acceptable SBE certifications in order to cast a wider net to SBE firms in the Bay Area, including Disadvantaged Business Enterprise (DBE), Local Business Enterprise (LBE), Minority Business Enterprise (MBE) and Women Business Enterprise (WBE).
- Revise the evaluation preference into a two-tiered program in order to capture more contracts with the SBE preference being applied.

# Proposed SBE Program (cont.)

## Proposed SBE Program

<b>Applicable to:</b>	<b>Acceptable Certifications:</b>	<b>Bid/Evaluation Preference:</b>	<b>Outcomes:</b>
<p>Non-Federally Funded and Non-Architectural &amp; Engineering Contracts</p>	<p>The firm is eligible for certification under the State of California Small Business Program; and one of the following certifications: State of California Department of General Services (DGS) SBE Program, California United Certification Program DBE certification, LBE/MBE/SBE/WBE certifications from a formal certifying agency in the nine county Bay Area</p>	<p><b>Two-tiered:</b>  <b>5% bid discount</b> applied if the lowest responsive, responsible bidder/proposer commits to at least twenty-five percent (25%).  <b>10% bid discount</b> applied if the lowest responsive, responsible bidder/proposer commits to at least forty percent (40%).</p>	<ul style="list-style-type: none"> <li>▪ Increase opportunity for SBEs to participate in contracts by broadening the acceptable certifications allowed in the program</li> <li>▪ Increase DBE participation on contracts by providing a two-tiered Bid/Evaluation Preference</li> </ul>

## Next Steps:

- ▶ After review by this Council, Staff, in March 2020, will present resolutions for Adoption to MTCs Administration Committee, Bay Area Toll Authority Oversight Committee, Bay Area Infrastructure Financing Authority, Bay Area Headquarters Authority, and MTC Service Authority for Freeways and Expressways
- ▶ The Proposed SBE Program is to be included on all procurements that are not federally funded or involve architectural & engineering services
- ▶ The Proposed SBE Program will be incorporated into the next revision of EDMM 352

# Questions