

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

April 5, 2021

Agenda Item 5

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**MTC Small Business Enterprise (SBE) Update and Title VI Report Follow Up**

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**Subject:** SBE Update and Title VI Report Follow Up.

**Background:** At the February 2020 meeting, the Equity & Access Subcommittee requested that information on commitments and actual payments under the MTC SBE Program. Staff will provide updates and information on commitments and actual payments under the SBE Program for the period of April 2020 through March 15, 2021.

In September 2020 staff presented the draft 2020 Title VI Report (“Report”) to the Equity & Access Subcommittee for review and feedback. While Equity & Access Subcommittee approved moving the draft Report forward to the MTC Administration and Commission for approval and submittal to the Federal Transit Administration (FTA), the Equity & Access Subcommittee had several questions regarding the Report. Staff will provide a presentation that responds to those questions.

The final 2020 Title VI Report was submitted to the FTA in November 2020, and can be accessed at MTC’s website:

[https://mtc.ca.gov/sites/default/files/Title\\_VI\\_Triennial\\_Report\\_2020.pdf](https://mtc.ca.gov/sites/default/files/Title_VI_Triennial_Report_2020.pdf)

**Issues:** None identified.

**Recommendation:** Information

**Attachments:** Attachment A: SBE Presentation and Title VI Presentation  
Attachment B: FTA Circular C 4702.1B  
Attachment C: 2020 Title VI Report Question and Answer Document



**METROPOLITAN  
TRANSPORTATION  
COMMISSION**

Bay Area Metro Center  
375 Beale Street, Suite 800  
San Francisco, CA 94105  
415.778.6700  
[www.mtc.ca.gov](http://www.mtc.ca.gov)

# Small Business Enterprise Program & Title VI Report Follow Up

**Presenter:**

**Michael Brinton**

**Assistant Director – Contracts/Procurement**

# Small Business Enterprise (SBE) Program

## MTC/ABAG SBE Program

Applicable to:	Acceptable Certifications:	Bid/Evaluation Preference:
The Program applies to non-federally funded, non-Architectural & Engineering (A&E) materials, equipment, supplies, services and construction contracts with a budget in excess of \$25,000	State of California Department of General Services (DGS) SBE Program, California Unified Certification Program DBE certification, City and County of San Francisco Local Business Enterprise (LBE) as certified by the Contract Monitoring Division (CMD) Directory Certification Unit, Alameda County Small Local and Emerging Business (SLEB) program as certified by the Alameda County SLEB Certification Unit; as well as any DVBE/LBE/ LGBTBE/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 and meets the requirements of the State of California Small Business Program	<p>Two-tiered:</p> <p>An Evaluation Preference of five percent (5%) or five (5) points will be applied to the total evaluation when the Proposer meeting specifications commits to twenty-five percent (25%) SBE participation for the work</p> <p>An Evaluation Preference of ten percent (10%) or ten (10) points will be applied to the total evaluation when the Proposer meeting specifications commits to forty percent (40%) SBE participation for the work</p>

# SBE Program Objectives & Outreach

## Objectives:

- To increase the number of certified SBEs participating in non-federally funded, non-A&E contracts;
- To increase overall competition on non-federally funded, non-A&E 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; and
- To help remove barriers to the participation of SBEs in non-federally funded contracts.

## Outreach:

- Agency Website: <https://mtc.ca.gov/about-mtc/doing-business/small-business-enterprise-sbe>
- SBE Program information is included in every applicable procurement and promoted during each Proposers' Conference
- Local and Regional organizations and working groups

# Small Business Enterprise (SBE) Program Commitments & Utilization

Results April 2020 – Present (does not include ABAG procurements)

<b>Contracts Awarded:*</b>	<b>12</b>	<b>Active Contracts:</b>	<b>5</b>
# of SBE Primes:	10	# of SBE Primes:	3
# of SBE Subs:	5	# of SBE Subs:	5
\$ Awarded:	\$ 15,351,834	SBE Commitments:	\$ 779,153
SBE Commitments:	\$ 14,896,153	Utilization/Payments Made:	\$ 250,699
% Commitment	97%	% Payment vs Commitment:	32%

\* 7 Freeway Service Patrol contracts were awarded in 2020 however start dates for work begins 07/01/2021 therefore there is no utilization yet. However, all 7 of the contracts have a DBE/SBE Prime with 100% utilization.

# Small Business Enterprise (SBE) Program

Additional results April 2020 – Present (does not include ABAG procurements)

- Bench Awards:

	# of SBE Primes	# of SBE Subs
2020 Electronic Payment Section (EPS) Consultant Assistance Bench RFQ - Cycle 1	5	16
2020 Website Support Services Bench RFQ - Cycle 1	9	0
2020 Quick-Build Design Engineering and Construction Management Services RFQ	3	10
2020 Bay Area Transit Coordination and Structure Bench	<u>2</u>	<u>13</u>
Total	19	39

- Increased competition with over 500 proposals received across all procurements during this time period, a record for the agency

# Title VI Report Follow Up

Link to 2020 Final Title VI Report:

[2020 Title VI Report](#)

# Title VI Report Follow Up

- The Equity and Access Subcommittee approved the draft 2020 Title VI Triennial report in Committee in September 2020
- Subsequently, the MTC Administration Committee and the full Commission approved in October 2020
- Final report submitted to FTA on 11/5/2020



Key Aspects of the Authorities	Title VI	Environmental Justice
<b>What is the basis for the authority?</b>	Title VI is a Federal statute and provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.	The basis for addressing environmental justice is an Executive Order: EO 12898 directs each Federal agency to “make achieving environmental justice part of its mission.” The EO is intended to improve the internal management of the executive branch and not to create legal rights enforceable by a party against the U.S.
<b>What is the purpose of the authority?</b>	Title VI prohibits recipients of Federal financial assistance (e.g., states, local governments, transit providers) from discriminating on the basis of race, color, or national origin in their programs or activities, and it obligates Federal funding agencies to enforce compliance.	EO 12898 calls on each Federal agency to achieve "environmental justice...by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations...."

# MTC Non-Discrimination Policies

No employee, officer, advisor, or agent of the Agency shall, on the grounds of race, color, sex, sexual orientation, religion, national origin, ancestry, age, physical or mental disability, medical condition, or pregnancy, childbirth or related medical conditions, permit discrimination against any person or group of persons in connection with the procurement of professional services (*California Civil Code § 51; California Government Code § 11135; Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132); and 49 U.S.C. § 5332*).

# Equity

- MTC Equity Platform Information [MTC Equity Platform](#)
- Bike/Pedestrian Efforts
  - Recent Household Travel Survey will include demographic data on race/ethnicity and income
  - Regional Active Transportation Plan
  - Richmond / San Rafael Bridge
  - Bridge Forward Projects
- Means Based Pricing
  - Clipper Start (active)
  - FasTrak Start (in development)

# Questions

## Next Update for the Equity & Access Subcommittee

Staff will return to this Committee in the Fall of this year and will present:

- Updated SBE Program Information
- DBE Program Information
- Information on any plans to expand or improve SBE Program or similar effort
- Outreach efforts

## Contact Information:

Michael Brinton  
Assistant Director,  
Contract Compliance Manager  
[mbrinton@bayareametro.gov](mailto:mbrinton@bayareametro.gov)

**BAY AREA METRO |**  
BayAreaMetro.gov  
Association of Bay Area  
Governments  
Metropolitan Transportation Commission

Bay Area Metro Center | 375 Beale Street  
| Suite 800  
San Francisco, CA 94105  
**O:** (415) 778-6727 | **M:** (925) 658-2803

## **2020 Title VI Report Question and Answer Document**

**1) During the October 2020 presentation on the draft Title VI Report, a committee member asked for clarification on Tables 11 & 12 from pages 23 – 24 of Appendix E to the Title VI Report - Final Revised Plan for Special Language Services to Limited English Proficient (LEP) Populations.**

In 2018, MTC conducted an agency-wide staff survey to determine the frequency and importance of contact with LEP individuals across all MTC departments, as well as a third-party contractor survey. Third party contractors include customer service representatives, service operators and program managers who provide services for MTC across the region through programs such as Clipper®, 511, FasTrak® and Freeway Service Patrol.

These tables show survey results on frequency of communications with LEP persons with Table 11 focusing on a survey of MTC staff and Table 12 focusing on MTC's contractors.

**2) Title VI does not seem to include discrimination on the basis of sex, sexual orientation, physical disability and mental disability. Nonetheless, does MTC include these in its own non-discrimination policies? And is there a way that MTC uses to measure these kinds of discrimination when reviewing projects for funding?**

FTA Circular C 4702.1B was issued October 1, 2012 and covers Title VI Requirements and Guidelines for Federal Transit Administration Recipients. The Agency is not aware if there are any planned updates to the Circular or the list of protected groups however there is a distinction between Title VI requirements and Environmental Justice (see Question #4 below).

MTC's Executive Director Memorandum #352 – Third Party Contracting Policies and Procedures states:

### Nondiscrimination in the Procurement Process

No employee, officer, advisor, or agent of the Agency shall, on the grounds of race, color, sex, sexual orientation, religion, national origin, ancestry, age, physical or mental disability, medical condition, or pregnancy, childbirth or related medical conditions, permit discrimination against any person or group of persons in connection with the procurement of professional services (*California Civil Code § 51; California Government Code § 11135; Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132); and 49 U.S.C. § 5332*).

**3) On page 44 it says, “Lastly, pedestrian and bicycle projects are assigned to local streets and roads due to a lack of sufficient data on use by income and race/ethnicity, and some regional programs such as the climate initiative were not included in the assessment since they do not fit the roadway or transit categories.” How will this deficiency be corrected for future reports?**

New data from a recent Household Travel Survey, last completed in 2012, will be available later this year that includes data on use by income and race/ethnicity. The Committee’s interest in this information has been passed on to MTC staff responsible for the survey results.

Additionally, in January 2021, MTC staff kicked off the Active Transportation Plan (AT Plan) to strategically guide investments in active transportation infrastructure, policy and implementation. Equity is included in many of the Plan tasks.

The project will include paid Community Based Organization (CBO) outreach to elevate the voices of residents of disadvantaged communities and Communities of Concern. The stakeholder engagement will inform the plan equity metrics which will be based on the policy and program analysis and best practices.

Many of the gaps and strategies for improvement focus on hyper-local issues includes biking and walking improvements. The 5-Year Implementation Plan (IP) will include near-term action to support Covid-19 needs. The effects of the pandemic have highlighted the importance of a resilient and equitable transportation system that meets the needs of all residents and workers, especially the most vulnerable. The IP will look at how we can quickly improve biking and walking all residents and workers, including our most vulnerable residents and workers.



**4) Investments in transportation projects can have disparate impacts on minority populations other than just their mobility: air pollution, disruption of communities, opportunities for recreation, access to health care and employment, etc. Are these being measured and reported? Are they required for analysis by Title VI?**

Contained with FTA Circular C 4702.1B, Chapter 1 Article 6 is a useful guide to the differences between Title VI and Environmental Justice (see below):

Key Aspects of the Authorities	Title VI	Environmental Justice
<b>What is the basis for the authority?</b>	Title VI is a Federal statute and provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.	The basis for addressing environmental justice is an Executive Order: EO 12898 directs each Federal agency to “make achieving environmental justice part of its mission.” The EO is intended to improve the internal management of the executive branch and not to create legal rights enforceable by a party against the U.S.
<b>What is the purpose of the authority?</b>	Title VI prohibits recipients of Federal financial assistance (e.g., states, local governments, transit providers) from discriminating on the basis of race, color, or national origin in their programs or activities, and it obligates Federal funding agencies to enforce compliance.	EO 12898 calls on each Federal agency to achieve "environmental justice...by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations...."
<b>To whom does the authority apply?</b>	Title VI is a Federal law that applies to recipients and subrecipients of Federal financial assistance (e.g., States, local governments, transit providers), and not to DOT itself.	EO 12898 applies to Federal agency actions, including DOT’s and FTA’s actions. Title VI is one of the tools used by Federal agencies to implement this directive.

<b>What does the authority require, and of whom?</b>	Under Title VI, DOT has the responsibility to provide oversight of recipients and to enforce their compliance with Title VI, to ensure that recipients do not use DOT funds to subsidize discrimination based on race, color, or national origin.	EO 12898 is a directive from the President of the United States to Federal agencies intended to improve the internal management of the Federal government. DOT issued its own Order implementing EO 12898, and updated the Order in May 2012 (Order 5610.2(a)).
<b>What does the authority say with regard to negative effects or impacts?</b>	In accordance with 49 CFR part 21 and Title VI case law, if an otherwise facially neutral program, policy, or activity will have a discriminatory impact on minority populations, that program, policy, or activity may only be carried out if (1) the recipient can demonstrate a substantial legitimate justification for the program, policy, or activity; (2) there are no comparably effective alternative practices that would result in less-disparate impacts; and (3) the justification for the program, policy or activity is not a pretext for discrimination.	In accordance with EO 12898 and the DOT Order on EJ, if a DOT program, policy, or activity will have a disproportionately high and adverse effect on minority or low-income populations, that program, policy, or activity may only be carried out if further mitigation measures or alternatives that would reduce the disproportionately high and adverse effects are not practicable. In determining whether a mitigation measure or is “practicable,” the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.
<b>Does the authority create any rights or remedies?</b>	Title VI allows persons alleging discrimination based on race, color, or national origin by recipients of Federal funds to file administrative complaints with the Federal departments and agencies that provide financial assistance. Persons alleging intentional discrimination (i.e., disparate treatment) may bring a court but cannot do so with regard to allegations of discrimination based on agency disparate impact regulations. Disparate impact claims may be filed with the Federal agency.	EO 12898 establishes the Executive Branch policy on environmental justice; it is not enforceable in court and does not create any rights or remedies.

**5) There is a strong correlation between the cost of a given transit ride and the utilization by low-income and people of color. For example, a BART extension project will likely be of less benefit than a MUNI extension simply because BART is more expensive. What can be done to equalize fares on various transit systems?**

MTC is pursuing multiple avenues in addressing equity throughout region, including:

Implementation of the Equity Platform at MTC through which “MTC advances equity with a racial justice focus by investing resources for historically underserved, systemically marginalized groups including low-income and communities of color at a scale to meaningfully reverse the disparities in access that diminish the nine-county Bay Area.”

MTC is actively pursuing Means Based Pricing Programs including:

- Clipper Start Program (active)
- FasTrak Start Program (in development)

Additionally, the MTC Fare Coordination and Integration Study is exploring potential of integrating the various fare structures across all systems in the Bay Area.