



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

6E

August 26, 1998

To: Board of Directors (Executive Committee--Action)
From: Katherine W. Moret, Chair *Katherine W. Moret*
Diversity Steering Committee
Subject: Report and Recommendations from the Diversity Steering Committee regarding Metropolitan's Business Outreach Program

RECOMMENDATIONS

It is recommended that the Board:

1. Revise the current Metropolitan Business Outreach policy and adopt a Contracting and Procurement Policy Statement as set forth in the attached Summary Report.
2. Direct the staff to develop for the Board's consideration at the October Board meeting a plan to implement the additional recommendations in the attached summary report including:
 - a) ensure compliance with open and competitive purchasing procedures;
 - b) add key elements to improve Metropolitan's contracting and procurement systems;
 - c) implement refinements to the Business Outreach Program;
 - d) implement a debarment and non-discrimination in subcontracting policies and;
 - e) monitor and communicate ongoing diversity initiatives.
3. That the Chairman of the Board designate a standing committee as the committee of jurisdiction to monitor and receive regular reports on the implementation of the recommendations.

EXECUTIVE SUMMARY

Transmitted for the Board's consideration is the Diversity Steering Committee's report and recommendations regarding Metropolitan's Business Outreach Program. In July of 1997, the Chairman of the Board created the Diversity Steering Committee to review the existing policies and procedures and develop recommendations which would ensure that minority and women-owned business enterprises (M/WBE's) have equal opportunity to compete for Metropolitan's contracting and purchasing opportunities.

To assist the Committee in its review of the Business Outreach Program, Metropolitan retained a study team led by BBC Research & Consulting (BBC) to examine methods to further open its purchasing and contracting processes to M/WBE's that would conform to the existing legal

requirements. Upon review of the consultant's evaluation of the Business Outreach Program, the Committee identified strengths and weaknesses of Metropolitan's current efforts to include M/WBE's in opportunities for Metropolitan contracts and purchases. The Committee then formulated a number of recommendations to improve Metropolitan's contracting and purchasing systems and current Business Outreach Program.

LR:vb

Attachment

Evaluation of the Metropolitan Water District of Southern California Business Outreach Program

SUMMARY REPORT

**Attachment to 6E
Office of Diversity
August 26, 1998**

**Evaluation of the Metropolitan Water District of
Southern California Business Outreach Program**

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**Summary Report
August 26, 1998**

Summary of Recommended Changes to the MWD Business Outreach Program

This report summarizes recommended changes to the Business Outreach Program of the Metropolitan Water District of Southern California (MWD).

Background

The MWD Board of Directors has adopted a policy which states:

“It is the declared policy of the Metropolitan Water District to aid, counsel and assist, insofar as is legally permissible, the participation of minority and women-owned business enterprises (MBEs and WBEs) in contracts for Metropolitan properties, facilities and services.”

In 1992, MWD’s staff developed the Business Outreach Program to implement this policy.

Recent legal developments including Proposition 209 have changed the ability of local governments in California to encourage opportunities for MBE/WBE participation in government contracts and purchases. There has been a wide variety of local government responses to these developments, ranging from no response at all to complete restructuring or elimination of MBE/WBE programs.

The MWD Board of Directors created a Diversity Steering Committee to further explore these legal developments and ways in which MWD could still move forward in its efforts to ensure that minority and women-owned firms have equal opportunity to compete for MWD contracting and purchasing opportunities.

Under the direction of the Diversity Steering Committee, MWD retained a study team led by BBC Research & Consulting (BBC) to examine methods to further open Metropolitan’s purchasing and contracting processes to minority and women-owned firms that would conform to the new legal requirements. BBC was assisted by the Minority Business Enterprise Legal Defense and Education Fund, a Washington, D.C.-based public interest law firm; Triaxial Management Services, Inc., a minority-owned Los Angeles-based research and consulting firm; and The Solis Group, a minority woman-owned multi-disciplinary consulting firm based in Los Angeles.

The BBC study team identified strengths and weaknesses of Metropolitan’s current efforts to include minority and women-owned firms in opportunities for MWD contracts and purchases. The study team then formulated a number of recommendations to improve MWD contracting and purchasing systems and to refine MWD’s current Business Outreach Program.

Recommended Changes

1. **Revise the Current MWD Business Outreach Policy Statement and Adopt a Contracting and Procurement Policy Statement.**

a. *MWD Business Outreach Policy*

Current policy statement: see the first page of this document.

Proposed policy statement: "Recognizing the fact that minority and women-owned firms currently comprise approximately one-half of all Southern California businesses and evidence that race and gender discrimination within the Southern California marketplace has negatively affected minority and women-owned businesses, it is the policy of The Metropolitan Water District of Southern California (Metropolitan) to ensure that minority and women-owned firms can compete for Metropolitan purchases and other business opportunities in an environment free from the effects of race and gender discrimination."

b. *MWD Contracting and Procurement Policy*

Current policy statement: None.

Proposed policy statement: "Recognizing that MWD spends millions of dollars each year, MWD contracting and procurement must be designed to be open to competition from all firms. All contracting and procurement transactions will be conducted in accordance with MWD procedures and applicable state and federal laws in a manner that:

- provides the essential goods and services in a timely fashion to support the provision of a reliable water supply to its member agencies;
- encourages and maintains good community and vendor relations;
- ensures fair and equitable treatment of all persons who deal with the MWD in contracting and purchasing matters;
- promotes economy in Metropolitan contracting and purchasing;
- ensures that minority and women-owned firms can compete for Metropolitan contracts, purchases and other business opportunities in an environment free from the effects of discrimination; and
- provides safeguards for the maintenance of a contracting and procurement system of quality and integrity."

2. Ensure Compliance with Open, Competitive Purchasing Procedures.

- a. *Waiver of competitive bidding.* MWD should minimize the use of waivers of competitive bidding. Sole source contracts should be further limited. A clear statement of competitive bidding requirements should be written and distributed to all staff with purchasing responsibilities. The Deputy General Manager should review all requests for waivers of competitive purchasing of more than \$5,000 and the Board should continue to approve all such requests of more than \$250,000. The Board should regularly receive a report summarizing the use of waivers of competitive bidding.
- b. *Use of own construction forces.* Although maintenance of its own construction forces may meet other MWD policy objectives, it may be removing contracting opportunities from small, local construction firms including MBE/WBEs. MWD should evaluate the size and scope of construction projects undertaken by its own forces.
- c. *Reducing contract sizes.* As is true for many governmental agencies, MWD's practice of bundling individual purchases into large contracts for certain types of purchases may limit competition from small contractors and vendors. MWD should evaluate the effect of contract consolidation on small and MBE/WBE firms. MWD should avoid overly large contracts where the advantages to the organization do not clearly outweigh the anti-competitive effect of such practices.
- d. *Specifications and evaluations.* Further progress is necessary to avoid unnecessarily restrictive qualifications criteria and bid specifications in MWD contracts and purchases. MWD should also develop consistent contracting and procurement procedures and train proposal evaluators.
- e. *Dissemination of information on bids and proposals.* MWD needs to improve its vendor database and conduct outreach to the business community to ensure the information used to solicit firms for bids and proposals better reflects the make-up of the local business community.

3. Add Key Elements to Improve MWD's Contracting and Procurement Systems.

While gaps in a comprehensive public sector contracting and procurement system for MWD may not have a direct negative effect on minority and women-owned firms, these gaps may have important indirect impacts on MBE/WBE opportunities and the effectiveness of any Business Outreach Program. Recommendations include development of a Procurement Manual and encouragement of advance planning of procurements.

4. Refine the Business Outreach Program and Fully Implement.

- a. *Construction.* MWD should retain the current Business Outreach Program for construction, which incorporates Mandatory Subcontracting Minimums with Anticipated Levels of Participation (ALPs) of Minority Business Enterprises and Women Business Enterprises where applicable. Where applicable, the prime contractor must also comply with a Good Faith Effort component.
- b. *Professional Services.* MWD should implement a Business Outreach Program for professional services that incorporates Mandatory Subcontracting Minimums with Anticipated Levels of Participation (ALPs) for MBEs and WBEs where applicable. Where applicable, the prime consultant must also comply with a Good Faith Effort component.
- c. *Goods and Miscellaneous Services.* MWD should implement a Business Outreach Program for goods and miscellaneous services that incorporates Mandatory Subcontracting Minimums with Anticipated Levels of Participation (ALPs) for MBEs and WBEs where applicable. Where applicable, the provider must also comply with a Good Faith Effort component.

5. Debarment and Nondiscrimination in Subcontracting Policies.

The study team outlined a debarment policy and a new program that would prohibit MWD from doing business with any firm that had discriminated against MBE/WBE subcontractors and suppliers in any of its business activities.

- a. *Debarment.* MWD should adopt a debarment policy that outlines procedures to be followed for the debarment and suspension of bidders. Causes for debarment would include certain criminal convictions; certain violations of contract provisions, MWD ethical standards and the MWD Business Outreach Policy; and debarment by another governmental entity for certain reasons. The debarment procedure should include an appeals process.
- b. *Nondiscrimination in Subcontracting Policy.* The study team outlined a new program that would require bidders and proposers on MWD projects to complete a form stating that they have not discriminated on the basis of race or gender in their selection of subcontractors and suppliers in any of their public and private sector business activity. Penalties would apply to any firms awarded MWD contracts that were found to violate this policy, potentially including debarment from future MWD work. The study team recommended that MWD staff further explore implementation of this program.

6. Other Recommendations.

The consultants also recommended the following ongoing initiatives:

- Communicate changes to staff regarding Board-approved contracting, procurement and Business Outreach policies and requirements.
- Monitor changes in legal landscape and other agencies' results from pilot programs.
- Further explore race and gender-based programs not prohibited by Proposition 209.
- Make further changes, implement new programs as needed.