

- **Board of Directors**
Legal, Claims and Personnel Committee

May 15, 2001 Board Meeting

10-3

Subject

Report on the proposed modifications to the Business Outreach Program

Description

Background: On September 15, 1992, the Board of Directors adopted a policy encouraging the participation of minority and women-owned business enterprises (MBE/WBE) in its contracts for Metropolitan's properties, facilities, and services. The General Manager was directed to establish, direct, and monitor a program to implement the policy, and to take positive steps to direct all personnel within the organization to affirmatively support the policy.

In December 1993, the Blue Ribbon Task Force Report recommended establishing an Office of Diversity to govern the Equal Employment Opportunity and Business Outreach Program (Program). The Office of Diversity was formed and reported to the Office of the General Manager. In December 1994, the first Business Outreach Program manager was brought on board to direct the activities of the Program.

In 1995, the Program implemented a Mandatory Subcontracting Minimum (MSM) requirement. The MSM required contractors to subcontract a percentage of the contract to any subcontractor, including minority and women-owned businesses. This was done to encourage participation, as well as address Proposition 209 and the *Adarand v. Pena* Supreme Court decision.

In July 1997, the Board of Directors established the Diversity Steering Committee to address remaining issues identified by the Blue Ribbon Committee Report. The committee selected a consultant to survey Metropolitan's procurement practices and other public agencies. The consultant issued a report in August 1998, which recommended changes in both the Program and procurement practices. Many of the recommendations were implemented with a few that remain outstanding.

On November 30, 2000, the California Supreme Court issued its opinion in *Hi-Voltage Wire Works Inc. vs. City of San Jose*, invalidating the City of San Jose's MBE/WBE outreach program. This opinion supported the previous voter initiative, Proposition 209.

The Hi-Voltage decision and related court decisions have changed the way California public agencies can encourage the business community to practice affirmative action in its contracting activities. The recent case law development raised questions about the legal defensibility of Metropolitan's current Business Outreach Program. Although, Metropolitan remains committed to opening opportunities to minority and women-owned businesses, these legal challenges have resulted in staff restructuring the current program.

Proposed Program: It is proposed that Metropolitan modify the existing Program to encourage and implement full and equitable opportunities for regional, local, small and disadvantaged businesses to participate in Metropolitan's contracts. The regional, small and disadvantaged business program is designed to provide a regional re-investment effort and provide contracting opportunities to local, small and disadvantaged business enterprises.

The region is defined as Metropolitan's service area, which include portions of the County of Los Angeles, Orange County, Riverside County, San Diego County, San Bernardino, and Ventura County. A regional business enterprise is a firm located within the service area at a fixed commercial or residential address, which constitutes a

business location where administrative, clerical, professional or other productive work is performed relative to its commercial purpose.

A small business enterprise (SBE) is a certified business that meets the size standards by the annual gross receipt for the past three years or the number of employees set forth by the Small Business Administration (SBA) in accordance with 13 Code of Federal Regulations (CFR), Section 121, and other certifying agencies.

A small and disadvantaged business enterprise (SDBE) is a firm owned and controlled by socially and economically disadvantaged persons. A SDBE is a small business concern that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged.

Program Elements: The Program will establish organizational goals for regional participation in all categories of contracts. Metropolitan will extend a preference-based regional goal (points) for bids and contracts. Points shall be awarded as incentives to contractors, consultants and vendors who provide documentation evidencing that its main business location resides within the regional service area.

For procurement contracts, a value of 10 preference points may be awarded to a regional firm. Points shall be translated to a percentage and the bid reduced by such percentage for the purpose of evaluation to determine the lowest responsible bidder. Small business subcontracting requirements will be established. Contracts less than \$25,000 will be designated for establishing opportunities for small and disadvantaged business enterprises.

For the purpose of goal establishment for construction contracts, each contract will be evaluated to set a small business-subcontracting requirement. After the small business requirement is established, it is further required that no less than 75 percent of the small business-subcontracting requirement be designated for regional based firms. Small business requirements must be met or the bid will be deemed non-responsive. Good faith efforts are still required.

For the purpose of goal establishment of consulting and professional services, a value of five regional points will be awarded to the proposal evaluation determination, and an additional five points will be awarded for meeting the established small business subcontracting participation levels. Contracts under \$50,000 will be designated for establishing opportunities for small and disadvantaged business enterprises.

The overall organizational goal for small business participation will be 18 percent. Organizational goals will be applied on the subcontracting minimum requirements for procurement contracts between \$100,000 and \$250,000, if applicable. For consulting and professional services contracts, organizational goals will be applied between \$50,000 to \$250,000.

Metropolitan will accept or recognize certification of a small business enterprise by firms submitting documentation evidencing their current certification as a small business enterprise set forth by the Small Business Administration, 13 CFR, Section 121, or submitting an affidavit application verifying average annual gross earnings of the firm and the number of employees for the past three years. Metropolitan will accept certification of small and disadvantaged businesses from any public agency in California whose certification criteria complies with applicable law.

Business Outreach will send an affidavit application to vendors in Metropolitan's vendor database to request re-establishment of certification with Metropolitan, if applicable. Affidavit applications will be valid for one year or until such time a small business enterprise certification is obtained through the appropriate certifying agencies.

To be accepted as a regional business enterprise by Metropolitan, firms must provide evidence that the firm is located at a fixed commercial or residential address where administrative, clerical, professional or other productive work is performed relative to its commercial purpose. The business must be located within the regional service area for a minimum of one year. Proof of regional status will qualify firms for preferential point value in evaluation determination.

To monitor contract diversity, Business Outreach will also require each contractor, consultant or vendor to identify any MBE/WBE firms utilized in the procurement or contract and will be tracked through the documented good faith effort and Utilization Report process.

Program Requirements: All contract categories will establish regional and small business requirements. Evaluation and award determination will apply regional guidelines and small business requirements.

Metropolitan will reserve the right to unbundle tasks stipulated in an RFP and award them individually based on ability to perform. This will facilitate a second and actual outreach component with external business associations and individuals potentially interested in competing in each respective RFP process.

The Business Outreach office will provide a list of upcoming contract opportunities, as well as the results of contract awards during that month. Advertisement policies, procedures, and efforts will include the regional, local, and small business requirements. Minor construction projects less than \$50,000 will also be targeted for regional and small business participation.

The proposed regional, small and disadvantaged business program will require procedural changes in the Business Outreach Procedures manual, and all corresponding manuals. The major changes in the procedures manual are outlined in [Attachment 1](#). In addition, the proposed program will require a change in the business application process. It is recommended that the following actions be taken for program implementation:

- Send memorandum to all employees notifying them of the changes and requirements of the Program.
- Notify contractors, vendors, and consultants of the Program changes.
- Establish a help desk or hotline to address questions or concerns.
- Establish workshops for local and small businesses to discuss the requirements of the Program.
- Establish workshops and training with contract staff and managers to ensure proper and full implementation of the Program.
- Establish compliance and non-compliance procedures.
- Evaluate business practices for process improvements.
- Continue to track MBE/WBE participation.
- Require all contracts be reviewed by Business Outreach for Program compliance.
- Establish closeout procedures to evaluate contract and Program performance.
- Increase outreach efforts to promote regional and small business participation through External Affairs resources to encourage participation on specific RFPs.
- Establish employee evaluation criteria for Program compliance.
- Establish monthly, quarterly, and annual reports of the program activities, contract activities, and progress reports.

Policy


Current Policy: It is the declared policy of Metropolitan Water District of Southern California to implement a program that will aid, counsel, and assist, insofar as is legally permissible, the participation of minority-owned and women-owned enterprises (MBE/WBEs) in contracts for Metropolitan properties, facilities and services.

Recommended Policy: The Metropolitan Water District of Southern California is committed to create an environment which affords all individuals and businesses open access to the business opportunities available within the regional service area in a manner that reflects the diversity of its service area.

Therefore, it is the policy of Metropolitan to solicit participation in the performance of all construction contracts, professional service contracts, procurement of supplies, equipment procured by Metropolitan, by all individuals and businesses, including but not limited to small businesses, locally owned businesses, women, minorities and economically disadvantaged business enterprises.

Fiscal Impact


No fiscal impact.



Joseph E. Tait
Assistant General Manager

4/28/2001

Date



Ronald R. Jester
General Manager

4/28/2001

Date

Attachment 1 – Proposed Changes in the Business Outreach Procedures Manual

BLA #1010

The following are proposed changes to Business Outreach Program Policies and Procedures Manual to amend the MBE/WBE program to incorporate the Regional and Small Business Outreach Program:

<p>Section #1 (Overview)</p>	<p>Amend policy statement to reflect regional and small business program.</p>
<p>Section #2 (Organization & Responsibility)</p>	<p>Amend to add regional and small program implementation responsibility – Board, General Manager, Assistant General Manager, Group Manager, and Business Outreach Program Manager.</p>
<p>Section #3 (General Information – Program Components)</p>	<p>Add definitions for: Small Business Enterprise (SBE), Small and Disadvantaged Business Enterprise (SDBE), Regional Business Enterprise, Local Outreach, and Regional Outreach.</p> <p><u>Definitions</u>: amend language to define certified SBE, SDBE and amend Sole Source requirements.</p> <p><u>Goal Establishment</u>: amend language to specify regional and small business requirements.</p> <p><u>Certification Policy</u>: amend certification language to add SBE and Regional certification requirements.</p> <p><u>Outreach and Marketing</u>: amend to include regional/small outreach and marketing efforts and also add Member Agencies as a targeted market.</p> <p><u>Advertisement Procedures and Policies</u>: amend to include language for local and regional efforts and the responsibility for advertisement is Corporate Resources Group, Contract Administration Unit.</p> <p><u>Solicitation Policies and Procedures</u>: amend to include language for local and regional efforts.</p> <p><u>Reporting Policies and Procedures</u>: amend tracking and reporting to SBE/SDBE tracking and reporting.</p> <p><u>Monitoring Contract Compliance</u>: amend to include regional and small business monitoring.</p>

<p>Section #4 (Construction Contracts)</p>	<p><u>Goal Establishment</u>: amend title to “SBE Participation Requirements” and add regional requirements.</p> <p><u>Advertisement and Solicitation Procedures</u>: amend to include local and regional and advertisement. Also increase external advertisement or solicitation to include minor construction to SBE. Also advertising budget centralized in Contract Administration Unit.</p> <p><u>Counting Participation</u>: amend language to add SBE participation counting.</p> <p><u>Good Faith Effort</u>: amend to include regional, local and small business efforts.</p> <p><u>Award Determination</u>: add language – bidder will be deemed non-responsive if SBE and regional requirements are not met.</p> <p><u>Reporting Procedures</u>: amend to add SBE Utilization Report language.</p>
<p>Section #5 (Procurement Contracts)</p>	<p><u>Goal Establishment</u>: amend title to add “SBE Participation Requirements” and remove “Goal. Amend to add SBE participation requirements. Also eliminate waiver requirements.</p> <p><u>Advertisement for Notice Inviting Bid and Request for Proposals</u>: amend to add regional, local, and SBE language. Also add solicitation efforts to SBE and SDBE for lower bid dollar amounts.</p> <p><u>Counting Participation</u>: amend language to add counting of SBE/SDBE participation.</p> <p><u>Good Faith Effort</u>: modify requirements to include regional, local and small business efforts.</p> <p><u>Award Determination</u>: amend to add SBE language for anticipated levels of participation. Add bidder will receive ten (10) regional preference points if deemed a regional business enterprise. Points to be translated to a percentage discount. SBE requirements must be met or bid non-responsive.</p> <p><u>Reporting Procedures</u>: amend to add SBE Utilization Report language.</p>

<p>Section #6 (Consulting and Professional Services Contracts)</p>	<p><u>Goal Establishment</u>: amend title to add “SBE Participation Requirements” and remove “Goal.” Amend to add SBE participation levels. Also remove waiver language. Amend to add participation levels to be set for contracts from \$50,000 to \$250,000.</p> <p><u>Advertisement for Request for Proposal</u>: amend to add regional and local advertisement. Also target SBEs for contracts under \$25,000 and \$50,000.</p> <p><u>Award Determination</u>: amend to add (5) bonus points to total evaluation score for meeting the regional business preference an additional five (5) points for meeting the SBE participation levels.</p> <p><u>Reporting Procedures</u>: amend to add SBE reporting language.</p> <p><u>Renewable Contracts</u>: amend to set participation levels for contract amendment exceeding \$50,000.</p> <p><u>*Review Draft RFP</u>: New procedures in reviewing, analyzing scopes of work, and unbundling of task for RFPs.</p>
<p>Note:</p>	<p>All appendix documents will also require changes to reflect regional and SBE requirements.</p>