



## Board Report

File #: 2021-0355, File Type: Program

Agenda Number: 33.

### CONSTRUCTION COMMITTEE JUNE 17, 2021

**SUBJECT: NEW ENHANCEMENTS TO METRO'S MEDIUM-SIZE BUSINESS ENTERPRISE PROGRAM AND SMALL BUSINESS ENTERPRISE PROGRAM**

**ACTION: APPROVE RECOMMENDATIONS**

#### **RECOMMENDATION**

APPROVE:

- A. New Medium Size Business Program Enhancements;
- B. Increase of Small Business Prime limits for competitively negotiated procurements;
- C. Community Level Contracting Program Concept; and
- D. Pursuit of Letters of Agreement with the County of Los Angeles, Los Angeles Community College District, the City of Los Angeles, Los Angeles Unified School District, Metrolink, and Los Angeles World Airports for them to officially accept Metro's SBE Certification and pursue reciprocity agreements with BART and VTA since they have similar requirements for certification.

#### **ISSUE**

On January 28, 2021, the Board passed Motion 51 (Directors Dupont-Walker, Hahn, Mitchell, Butts, Najarian and Solis) requesting a report back in April 2021 on strategies to create new pathways for the increase and continued access to contracting opportunities for Small Business Enterprises (SBEs) and Medium-Size Business Enterprises (MSZs) through the enhancement of Metro's MSZ and SBE Programs. Subsequently, the Board directed staff to report back in June with program recommendations for Board consideration with an implementation timeline.

#### **BACKGROUND**

Metro's current Small Business Enterprise (SBE) goal program has aided Metro in increasing SBE participation on Metro contracts. Over the last three fiscal years, Metro has awarded \$424 million to small businesses on its non-federally funded contracts. Small business set-asides allow for small businesses to bid as primes, fostering opportunities to grow and build capacity. In 2014, Metro

launched its Small Business Prime Set-Aside program to help small businesses compete for contracts as primes by "setting aside" specific purchases from three thousand dollars (\$3,000) to three million dollars (\$3,000,000) exclusively for participation by Metro SBE certified firms. The program has experienced continuous improvement through legislative authorization to include set-aside procurements on competitively low bid procurements contributing to the increase of participation in the program. From program inception through to-date, Metro has awarded more than \$177 million in SBE Prime Set-Aside awards. This program is vital to increasing small business participation in Metro's contracting and has proven to be successful toward meeting this growth objective. In 2016, Metro launched its Medium Size Business Enterprise (MSZ) program, the first of its kind nationally to address the gap between small and large businesses by creating opportunities where MSZs can compete on non-federally funded procurements.

## **DISCUSSION**

### **Medium Size Business Program**

Assessment of the MSZ program consisted of creating a tiered approach for competitively negotiated procurements and incorporating feedback received from stakeholders in the February 2021 program improvement survey, reviewing existing contract thresholds, and revisiting the MSZ eligibility criteria. The current MSZ limit is \$12M - \$30M. New enhancements to the MSZ Program include a two-tiered approach for non-federally funded competitively negotiated procurements.

<b>MSZ-I and MSZ-II Competitively Negotiated Threshold and Applicability Request for Proposal (RFPs)</b>				
<b>Action Type</b>	<b>Current MSZ Threshold</b>	<b>Proposed MSZ Threshold</b>	<b>Applicable to Federally Funded Acquisition</b>	<b>Applicable to Non-Federally Funded Acquisitions</b>
Negotiated procurements for, Supplies, Equipment Materials and Services, including professional services, excluding Architecture and Engineering Services	<b>Formal Acquisitions</b>	<b>Formal Acquisition</b>		
	<b>MSZ</b> \$12M - \$30M	<b>MSZ- I</b> \$5,000,000 - \$14,999,999  <b>MSZ- II</b> \$15,000,000 - \$30,000,000	RFP  No	RFP  Yes

To determine the proposed thresholds, Metro reviewed the number of contracts awarded within the gap between the SB Prime and the MSZ programs. The review revealed that small, medium, and large businesses are all bidding within this space without a program in place that creates set aside

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opportunities for small certified firms and firms that have surpassed the limits of certification programs. Metro also considered benchmarking results from the City of Chicago's Medium Size Business Initiative (MBI), the only MSZ program we could find nationally outside of Metro's program. Chicago's two-tier contracting thresholds are: MBI 1 - for contracts estimated not less than \$10 million and not more than \$20 million and MBI 2 - for contracts not less than \$3 million and not more than \$10 million. In addition, Metro assessed results of its Medium Size Business (MSZ) and Small Business (SBE) Program's survey conducted in February 2021 and found respondents recommended a wide range of threshold changes from \$500K to as high as \$75M. Notwithstanding, as a ground breaking initiative, Metro took the approach to split the middle of the new range to create the tiers.

- **MSZ-I:** The MSZ-I will provide set-aside prime contracting opportunity for firms that have surpassed the limits for participation in the certification programs and are now considered medium size firms and meets the definition for MSZ-I. These firms are no longer eligible to participate in the Small Business Prime program. The new threshold, will offer an immediate step from the Small Business Prime (subject to threshold change) to the MSZ-I. An additional enhancement to this program is to open a pathway for certified small, disadvantaged, and disabled veteran business firms to team, bid and compete as a prime, among MSZ-I firms within this contract threshold. It is recommended that MSZ-I solicitations are strictly set-aside for firms that meet the MSZ-I definition.
- **MSZ-II:** The MSZ II will provide set-aside prime contracting opportunities for medium-sized firms that meet the definition of MSZ-II. This upper limit of the MSZ threshold range does not exceed the current \$30 million cap for the program. The MSZ-II tier will promote growth for MSZ-I firms by providing an open pathway for MSZ-I firms to team, bid and compete among MSZ-II firms within this contract threshold.

Solicitations that fall within the MSZ-I and MSZ-II contract thresholds will be subject to established SBE/DVBE goals, where applicable. As such, MSZs and all other proposers must meet the SBE/DVBE goal(s) to be eligible for award. The recommended changes to the MSZ definition for each level are:

- **MSZ - I:**
  1. A firm that is not a subsidiary of another firm and has gross annual receipts, averaged over three years or number of employees that do not exceed one and a half times the Small Business Size Standards set forth in 13 C.F.R. Part 121, in its applicable North American Industry Classification System (NAICS) Code(s), as amended; or
  2. A certified Metro SBE firm, a DBE firm certified by the California Unified Certification Program (CUCP) or certified as a DVBE by the Department of General Services. Firms no longer deemed eligible under the subject certification programs, must meet (1) above.

- MSZ - II:

1. A firm that is not a subsidiary of another firm and has gross annual receipts of at least \$26.30 million, averaged over three years or number of employees that do not exceed two times the Small Business Size Standards, as set forth in 13 C.F.R. Part 121, in its applicable North American Industry Classification System (NAICPS) Code(s), as amended.

For non-federally funded competitive low bid procurements, Metro is unable to apply the MSZ tier-approach. This will require a legislative change to the Public Utilities Code (PUC) Section 130232(f) (5)(vi). The current definition for MSZ, a firm that is not a subsidiary of another firm, has gross annual receipts of \$25 million - maximum \$250 million (averaged over three years), with a maximum of 250 employees, will remain unchanged for competitive low bid procurements. However, Metro does recommend lowering the minimum threshold for competitive low bid from \$12M down to \$3M but not to exceed \$29,999,999, which is allowable under current statutory authority. This change will create an immediate step from the Small Business Prime program to the MSZ program for competitively low bid procurements.

Competitively Low Bid Threshold and Applicability Invitation for Bid (IFB) / Request for Quotes (RFQs)			
Action Type	Formal Acquisitions	Applicable to Federally Funded Acquisition	Applicable to Non- Federally Funded Acquisitions
Awards under Sealed Bid for Supplies, Equipment materials and Services, and Public Works, excluding Architecture and Engineering Services	\$3,000,000 - \$29,999,999	IFB/RFQ	
		No	Yes

### Small Business Prime

The recommended improvement to the Small Business Prime limits is specifically for non-federally funded competitively negotiated procurements. The recommendation is to increase the maximum contract threshold from \$3 million to \$4,999,999. The benefit for this change is to allow an immediate step from the Small Business Prime to the new proposed minimum of the MSZ-I tier.

The current Small Business Prime competitively low bid threshold exceeds \$5,000 - but is less than \$3 million. Any change will require a legislative change to the Public Utilities Code (PUC) Section 130232(f)(5)(v). As such the current threshold will remain in place. Metro will assess the current competitive low bid contract threshold limits for Small Business Prime and MSZ and will propose new legislative changes as applicable for the 2022 Legislative calendar.

Action Type	Current Threshold	New Threshold
Negotiated awards for Supplies, Equipment, Materials and Services, including all professional services, excluding Architecture and Engineering Services (RFPs)	\$3,000 to \$3 Million	\$3,000 to \$4,999,999

### SBE Certification

In evaluating other local and regional SBE Programs through extensive benchmarking as well as evaluating the responses to Metro's Small Business Programs Survey, Metro recommends that DEOD obtain letters of agreement with the City of Los Angeles, the County of Los Angeles, Los Angeles Community College District, Metrolink, LAWA, and the Los Angeles Unified School District in order for them to officially recognize Metro's SBE Certification. In addition, Metro staff will increase the Small Business Program's (SBE) Personal Net Worth (PNW) threshold should legislation be approved by Congress increasing the PNW for the Federal DBE Program. A recent increase to the DBE Gross Receipts from \$23.98 million to \$26.29 million went into effect on January 13, 2021. In response, Metro has already increased the SBE program gross receipts to match this increase as Metro's SBE program mirrors the Federal DBE program.

While Metro staff does not recommend self-certification; we do recommend pursuing official Letters of Agreement with City and County agencies and reciprocity agreements with BART and VTA which share similar certification standards with Metro.

Additionally, the following is a partial list of entities already accepting Metro's Small Business certification (without a formal agreement), thereby leveraging the strength of Metro's certification for small businesses that choose to be certified with us:

- City of Los Angeles
- Los Angeles World Airports (LAWA)
- County of Los Angeles
- Los Angeles Unified School District
- Los Angeles Community College District
- Southern California Regional Rail Authority (Metrolink)
- Numerous private firms with supplier diversity/small business programs.

### Community Level Contracting Program

In March, Metro staff met with the City of Los Angeles' staff on their Community Level Contracting (CLC) program. The City of Los Angeles's contracting authority supports the execution of contracts to be used in a manner similar to Job Order Contracting (JOC). This project specific contracting

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program carves out construction opportunities for small and emerging businesses on predetermined projects, such as sidewalk repair, truck washing, and solar panel installation. These projects are typically under \$100,000, priced by the City, and offered to pre-approved small businesses on a rotating basis.

Currently, Metro does not have authority to enter into similar arrangements under the PUC. Through the Government Relations Office, Metro staff has initiated discussion with County Counsel and client departments to define Metro's objectives for the use of the JOC program on capital projects, inclusive of CLC program parameters. Metro is using the school districts JOC PUC statute as a model in crafting language for Metro. Government relations will coordinate efforts to pursue conforming legislation in the 2021 legislative calendar. Staff is developing the administrative manual to implement this Program.

#### Implementation Timeline

The timeline in Attachment A addresses the activities necessary for implementation of recommendations.

#### FINANCIAL IMPACT

There is no immediate budget impact to this Recommendation report. However, there are several actions Metro can take to increase contracting opportunities and advance equity that may have a financial impact to the FY22 budget.

#### IMPLEMENTATION OF STRATEGIC PLAN GOALS

This report supports strategic plan Goal 5.5, "Expanding opportunities for businesses and external organizations to work with Metro."

#### NEXT STEPS

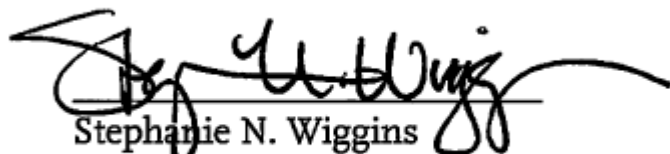
Staff will continue with its implementation plan and timeline as outlined and will provide report back to the Board in 6 months.

#### ATTACHMENTS

Attachment A - New Medium and Small Business Program Enhancement Implementation Timeline  
Attachment B - Motion 51

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## ATTACHMENT A

NEW MEDIUM SIZE AND SMALL BUSINESS PROGRAM ENHANCEMENT IMPLEMENTATION TIMELINE					
	March – May	June – July	August – September	October – November	December – January
<b>MSZ Policy Enhancements</b>	<ul style="list-style-type: none"> <li>• Explored new program requirements</li> <li>• Review changes with VCM and County Counsel</li> <li>• Draft Policy changes</li> <li>• Prepare Board recommendations</li> </ul>	<ul style="list-style-type: none"> <li>• Present policy recommendations to EMC</li> <li>• Upon Board approval, work with VCM and Acquisition Policy to update solicitation Templates with new requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Update VCM administrative procedures</li> <li>• Announce new program changes to bidding community</li> <li>• New policy changes will apply to Solicitations advertised on or after September 1, 2021</li> </ul>	<ul style="list-style-type: none"> <li>• Engage Government Relations on any updates to PUC Section for applications on competitively low bid procurements</li> </ul>	<ul style="list-style-type: none"> <li>• Develop framework for PUC statute change as applicable for the 2022 Leg Calendar</li> </ul>
<b>Community Level Contracting (CLC)</b>	<ul style="list-style-type: none"> <li>• Develop Task Force with DEOD/VCM/ County Counsel</li> <li>• Review state/federal statute impacts</li> <li>• Review Job Order Contracting (JOC) and CLC requirements for compatibility to Metro</li> <li>• Pursue new PUC Section to address JOC and CLC programs</li> </ul>	<ul style="list-style-type: none"> <li>• Develop draft JOC/CLC statute language</li> <li>• Engage Clients for best project scopes to Pilot</li> <li>• Seek bill sponsor for the current 2021 Leg Calendar</li> </ul>	<ul style="list-style-type: none"> <li>• Collaborate with Government Relations, VCM/Counsel through Leg process</li> </ul>	<ul style="list-style-type: none"> <li>• Develop Administrative Policy for CLC based on final bill language</li> </ul>	<ul style="list-style-type: none"> <li>• January 1, 2022 effective date subject to successful signing of impending bill into law</li> </ul>
<b>Leader / Follower</b>	<ul style="list-style-type: none"> <li>• Develop Task Force with DEOD/VCM/ County Counsel</li> <li>• Review state/federal statute impacts</li> </ul>	<ul style="list-style-type: none"> <li>• Explore and define opportunities and challenges</li> </ul>	<ul style="list-style-type: none"> <li>• Research concept on applicability competitively negotiate procurements</li> <li>• Assess enhancement to existing Mentor Protege program</li> </ul>	<ul style="list-style-type: none"> <li>• Draft program initiative</li> </ul>	<ul style="list-style-type: none"> <li>• Develop implementation plan</li> </ul>
<b>Certification Enhancements</b>	<ul style="list-style-type: none"> <li>• Benchmarking of Local SBE Programs and CUCP SBE Programs</li> <li>• Review of other transit agency SBE programs</li> <li>• Conducted a Metro Small Business survey and conducted an analysis of responses</li> <li>• Identify potential Personal Net Worth Increases to the SBE Program Thresholds</li> </ul>	<ul style="list-style-type: none"> <li>• Present Recommendations to EMC</li> <li>• Upon Board Approval, contact local agencies, and pursue letters of agreement from those who will accept Metro's SBE Certification</li> <li>• Pursue potential reciprocity agreements with BART and VTA</li> </ul>	<ul style="list-style-type: none"> <li>• Execute letters of agreements and applicable reciprocity agreements as appropriate.</li> <li>• Make appropriate changes as approved to the SBE Program language.</li> <li>• Make approved changes to B2GNow.</li> </ul>	<ul style="list-style-type: none"> <li>• Implement Changes</li> </ul>	





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## Board Report

**File #:** 2020-0930, **File Type:** Motion / Motion Response

**Agenda Number:** 51.

**REVISED**  
**REGULAR BOARD MEETING**  
**JANUARY 28, 2021**

### Motion by:

#### **DIRECTORS DUPONT-WALKER, HAHN, MITCHELL, BUTTS, NAJARIAN, AND SOLIS**

#### Enhancements to Metro's Medium-Size Business Enterprise Program and Small Business Enterprise Program

In the time of current economic distress, Metro should review its Small Business Enterprise (SBE) program and Medium-Size Business Enterprise (MSZ) program to create new pathways for a continuum of contracting opportunities for SBEs and MSZs.

Metro's SBE Program was intended to create opportunities for small businesses to obtain contracting agreements with Metro. With Metro's size and presence in Los Angeles County, an SBE's trajectory can dramatically change with one contract, however small it may seem compared to Metro's overall contracting portfolio.

Most importantly, the SBE program has served as a tool for equity and can be made even more impactful with carefully administered adjustments. Metro, through its unique position in the county, has a responsibility and opportunity to lift up local small businesses, especially those in historically overlooked neighborhoods. The chance to compete for Metro contracts should be more accessible to, and protective of, these underserved communities. This creates more possibilities for L.A. County's remaining SBEs and addresses the needs of an emerging group of MSZs.

Metro currently has many working relationships with such businesses. Still, there is always room for improvement-especially at this moment of ongoing economic distress. One potential is to strengthen its MSZ program to set-aside contracting opportunities for medium-size businesses to compete with similar-size firms.

In January 2019, Metro established the MSZ program. This program addresses the gap between small businesses and large businesses by creating opportunities where only MSZs can compete on non-federally funded procurements. Pursuant to AB-1205 (Jones-Sawyer), the MSZ program applies to both negotiated Requests for Proposal (RFPs) and low-bid Invitations for Bid (IFBs) with an estimated value between \$12 million and \$30 million. MSZs are defined as firms that are not a

subsidiary of another firm, have gross annual receipts of \$25 million - maximum \$250 million (averaged over three years), with a maximum of 250 employees. While the intent of the program is to solicit and award to MSZs, solicitations still allow larger-size firms to respond. If Metro receives only one bid/proposal from an MSZ, it will consider bids/proposals from larger-size firms as well. This may have the unintended consequence of discouraging MSZs from competing for contracts.

Currently, there is one solicitation for the Construction Support Services for Metro G Line (Orange) Bus Rapid Transit Improvements Project. This procurement is pending a result based on proposals being received.

Acknowledging Metro's desire to create a more robust MSZ program, Metro should take additional steps to identify more opportunities to increase MSZ Prime contracting participation while continuing to facilitate small and disadvantaged business participation on such contracts.

**SUBJECT: ENHANCEMENTS TO METRO'S MEDIUM-SIZE BUSINESS ENTERPRISE PROGRAM AND SMALL BUSINESS ENTERPRISE PROGRAM**

**RECOMMENDATION**

APPROVE Motion by Directors Dupont-Walker, Hahn, Mitchell, Butts, Najarian, and Solis that the Board direct the Chief Executive Officer to study and recommend MSZ and SBE solutions that embrace Equity considerations, including but not limited to the Disparity Study, impact on historically underutilized businesses, and consistency with industry best practices. These studies should focus on the following:

- A. Review requirements for contracting opportunities with SBEs, including but not limited to:
  - 1. Determining feasibility of achieving certification reciprocity with agencies at the state, county, and local levels that have similar baseline standards as Metro
  - 2. Exploring strategies to ensure that only legitimate SBEs and MSZs may compete for Metro contracts
  - 3. Reviewing certification standards, ownership, owner credentials, and other costs associated with competing for contracts, and recommending steps to streamline the process, ensuring integrity while making it more user-friendly and less costly
- B. Review procurement requirements and identify potential ways to increase contracting opportunities for MSZs, including but not limited to:
  - 1. Reviewing eligibility requirements for participation in the MSZ program to identify strategies to increase the number of businesses that qualify for the program
  - 2. Ensuring that recommendations consider equity, historically underutilized businesses, and key elements of the Disparity Study (current or proposed, if within the next 12 months)

3. Defining strategies to create incentives for prime contractors to utilize MSZs that no longer meet SBE criteria; and

C. Report back on all the above at the April 2021 Board cycle.