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**MARCH 30, 2016**

**TO: BOARD OF DIRECTORS**

**THROUGH: PHILIP A. WASHINGTON** *PAW*  
**CHIEF EXECUTIVE OFFICER**

**FROM: IVAN PAGE** *Page*  
**EXECUTIVE DIRECTOR (INTERIM), VENDOR/CONTRACT  
MANAGEMENT**

**SUBJECT: INFORMATION REQUEST, FEBRUARY 2016 AGENDA ITEM 41,  
POWER SWEEPING SERVICES CONTRACT WITH  
NATIONWIDE ENVIRONMENTAL SERVICES INC.**

### **ISSUE**

In February 2016 the Board approved item #41 for a contract modification with Nationwide Environmental Services, Inc. to exercise the first one-year option to the contract term. Director Sheila Kuehl at the February 25, 2016 Board Meeting requested a report back regarding Nationwide's plan to increase DBE participation for the Power Sweeping contract. As requested, staff is reporting back with an update on Nationwide's DBE commitment.

The Diversity & Economic Opportunity Department (DEOD) established a 10% Disadvantaged Business Enterprise Anticipated Level of Participation (DALP) for this contract. The award of this contract occurred in April 2013, at the time Metro was governed under a race-neutral (voluntary) DBE program and meeting the DALP level of participation was not a condition of award. Nationwide Environmental Services (Nationwide) made a 0.74% DALP commitment. The contract is 60% complete and the current DALP participation by Nationwide is only 1.69%.

### **DISCUSSION**

On March 3, 2016, Metro staff met with Nationwide to establish a plan of action by Nationwide for increasing their current DBE participation from 1.69% and to intensify their outreach efforts, in order to provide additional opportunities for DBE subcontractors. Nationwide indicated the majority of the contract value is for labor expenses covering their employees. Nationwide Environmental Services agreed to increase their DBE commitment, by taking the following steps:

- 1) Nationwide submitted a request to add Carl's Electric, a DBE firm, to supply motor vehicle electrical and electronic equipment, which Metro approved on March 9, 2016, increasing their DBE commitment from 0.74% to 2.48%.
- 2) Outreach to DBE subcontractors to supply tires as an additional potential subcontracting opportunity. On March 8, 2016, staff provided a list of DBE certified tire suppliers along with the California Unified Certification Program (CUCP) website for their concerted outreach efforts.
- 3) Nationwide Environmental Services further confirmed that they will provide monthly documentation of their efforts undertaken to further increase DBE participation for the contract through supply of tires or other identified opportunity.

The contract with Nationwide was awarded immediately prior to Metro transitioning to DBE contract goals. However, instances can still occur on a Federally funded contract where the bidder/proposer's commitment is less than the goal established by Metro. In those instances, the Federal program provides for the submittal of Good Faith Efforts (GFE). If a bidder/proposer is determined by Metro to have met the GFE, the bidder/proposer would be eligible for award at the lesser DBE commitment percentage. Conversely, in this same example, if Metro determines the bidder/proposer to not have sufficiently demonstrated GFE, the bidder/proposer would be deemed ineligible for award. While GFE can be looked upon as being ineffective in holding bidders/proposers accountable in meeting the goals, it is required by Federal regulation (49 Code of Federal Regulations Part 26).

Under the Metro Small Business Enterprise (SBE) and Disabled Veteran Business Enterprise (DVBE) programs, Metro has taken significant steps to eliminate the opportunities for proposers to commit less than the established SBE goal. These efforts include:

1. Elimination of GFE on non-federally funded negotiated procurements, which was made effective September 2015. Proposers that do not commit to the Metro goal, as a minimum, at time of proposal submittal will be deemed ineligible for an award.
2. In regards to elimination of GFE on non-federally funded competitively low bid procurements, Staff is working with Government Relations to seek legislative change to Section 130232(5) of the Public Utilities Code. This change will authorize Metro to award contracts to the lowest responsive responsible bidder that meet SBE/DVBE contract goals. Bidders that do not meet the SBE/DVBE goals will be deemed ineligible for award. This Legislative change is being sought through Assembly Bill 2690 (Ridley-Thomas). AB 2690 is currently pending referral to the Assembly Local Government Committee.