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**May 16, 2016**

**TO: BOARD OF DIRECTORS**

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

**FROM: IVAN PAGE** *IPage*  
**INTERIM EXECUTIVE DIRECTOR**  
**VENDOR/CONTRACT MANAGEMENT**

**SUBJECT: MEDIUM-SIZE BUSINESS ENTERPRISE PROGRAM**

### **ISSUE**

Metro intends to establish a Medium-Size Business Enterprise Program. The purpose is to provide contracting opportunities for firms that have graduated from the small business categories but would still find it difficult to compete with large firms as prime contractors. This program provides Medium-Size Business Enterprises the opportunity to compete with similar size firms. In essence, this program is bridging the gap between small businesses and large business concerns by creating procurement contracting opportunities for which only Medium-Size Business Enterprises will compete.

### **DISCUSSION**

Metro is defining a Medium-Size Business Enterprise as a firm with more than 25 employees and with a three (3) year average of \$25M - \$250M in gross annual receipts. The Medium-Size Business Enterprise Program threshold will apply to non-federally funded competitively negotiated solicitations between \$12 million and \$25 million.

The program will be administered by the Diversity and Economic Opportunity Department (DEOD) and implemented by Vendor/Contract Management.

### **NEXT STEPS**

Metro staff has prepared a draft of the Program (copy attached) and sent it out for comment to the Transportation Business Advisory Council (TBAC), trade organizations,

such as the Associated General Contractors (AGC) and American Council of Engineering Companies (ACEC), and to various ethnic chambers of commerce, such as the Los Angeles Latino Chamber of Commerce and others. Comments are due back by June 15, 2016.

Metro is seeking legislation to implement the program on non-federally funded competitive low bid solicitations. Staff will also be seeking to implement this program on federally funded, competitively negotiated and competitive low bid solicitations with approval from the Federal Transit Administration.

## **ATTACHMENTS**

Draft Medium-Size Business Enterprise Program



## **MEDIUM-SIZE BUSINESS ENTERPRISE PROGRAM (MBEP)**

### **1. Purpose**

Metro's purpose in establishing a Medium-Size Business Enterprise Program is to provide contracting opportunities for firms that have graduated from the small business categories but would still find it difficult to compete with large firms as prime contractors. This program provides Medium-Size Business Enterprises the opportunity to compete with similar size firms. In essence, this program is bridging the gap between small businesses and large business concerns by creating procurement contracting opportunities for which only Medium-Size Business Enterprises will compete.

- a. Metro may at its discretion set-aside solicitations for competition among Medium-Size Business Enterprises.
- b. The MBEP is administered by the Diversity and Economic Opportunity Department (DEOD) and implemented by Vendor/Contract Management (V/CM) in solicitations.
- c. The MBEP currently covers non-federally funded competitively negotiated solicitations. Metro is seeking legislation to implement the program on non-federally funded competitive low bid solicitations. Metro will also be seeking to implement the program on federally funded competitively negotiated and competitive low bid solicitations.

### **2. Medium-Size Business Enterprise Program (MBEP) Requirements**

- a. **Definition:** Medium-Size Business Enterprises are defined as firms with a three (3) year average of \$25 million - \$250 million in gross annual receipts and with more than 25 employees.
- b. **Self-Certification:** Metro does not have nor will it maintain in the future a database that identifies Medium-Size Business Enterprises by NAICS code. Therefore the Letter of Invitation for the solicitation will announce the set-aside requirements and the requirement for self-certification. Medium-Size Business Enterprises responding to the solicitation shall self-certify that they are Medium-Size Business Enterprises that meet the Metro definition, which would be validated by the V/CM Pre-Qualification group as part of the Metro Pre-Qualification Process.

### 3. Medium-Size Business Enterprise Program Set-Aside Threshold Chart\*

Action Type	Formal Acquisitions	Applicable to Federally Funded Acquisitions	Applicable to Non Federally Funded Acquisitions
Negotiated awards for Supplies, Equipment Materials and Services including Architecture & Engineering <sup>1</sup>	\$12 Million-\$30 Million	No	Yes
Awards under Sealed Bid Procedures - except Public Works <sup>2</sup>	\$12 Million-\$30 Million	No	No
Public Works <sup>3</sup> - Awards under Sealed Bid Procedures	\$12 Million-\$30 Million	No	No
Public Works <sup>4</sup> – Awards under a negotiated procurement process.	\$12 Million-\$30 Million	No	Yes

\* The "base contract estimate" shall be used to determine if a formal solicitation falls within the MBEP threshold. Options will not be included in the estimated contract value to determine MBEP applicability.  
 \*\*\$12 Million represents approximately 50% of a small business' three-year average of gross receipts

### 4. Medium-Size Business Enterprise Set-Aside Procedure

#### a. Requirement

Solicitations within the thresholds indicated in the Set-Aside Threshold Chart above, may be set-aside for Medium-Size Business Enterprises.

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- 1 Negotiated awards involve the evaluation of submitted proposals based on evaluation factors in addition to price. Award can be made with or without negotiation.
  - 2 Awards are made to the lowest priced, responsive/responsible bidder. No negotiations can take place.
  - 3 Public Works are generally defined as, "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds."
  4. "Public transit facility" means any land, building, or equipment, or any interest therein, including any station on a public transportation route, to which access is controlled in a manner consistent with the public transit authority's security plan, whether or not the operation thereof produces revenue, that has as its primary purpose the operation of a public transit system or the providing of services to the passengers of a public transit system. A public transit system includes the vehicles used in the system, including, but not limited to, motor vehicles, streetcars, trackless trolleys, buses, light rail systems, rapid transit systems, subways, trains, or jitneys, that transport members of the public for hire.

b. Procedure

Upon receipt of a requisition for requirements within the applicable thresholds, the Contract Administrator (CA) shall perform the following:

1. In conjunction with the Project Manager and DEOD, as necessary, determine which North American Industry Classification System (NAICS) codes are applicable to the item or service to be purchased.
2. The CA shall launch the solicitation in CIMS for DEOD goal evaluation.

Non-Federally Funded Acquisitions:

- Proposers will be required to meet the SBE/DVBE goals for RFPs to be eligible for award.
- For non-federal IFBs, the MBEP will not apply until such time that statutory authority is granted wherein such a set-aside is approved.

Federally Funded Acquisitions:

- For Federally funded IFBs and RFPs, the MBEP will not apply until such time as it is determined that the MBEP does not conflict with the DBE Program.
3. Since Metro will not maintain a database of medium-size firms, the solicitation will allow any size firm to bid/propose. However, Metro will entertain bids/proposals from firms that are not Medium-Sized only in the event Metro does not receive more than one responsive/responsible bid/proposal from Medium-Size Business Enterprises.
  4. The CA shall proceed with the solicitation including posting the solicitation on Metro's website and advertise accordingly.

**5. Bench Contracts / Multiple Award Solicitations**

- a. On bench or multiple award solicitations Metro reserves the right to declare its intent on how many of the intended contracts can be awarded to small businesses, medium-sized businesses and large businesses.
- b. Upon receipt of a requisition intended to be released as a task order to an existing Bench Contract, the CA, in conjunction with the Project Manager, shall first make a determination regarding which bench discipline is best suited to perform the scope of work. The CA shall send the task order solicitation out to all the qualified firms listed on the Bench discipline. This shall not be construed to preclude any requirement of the SBE Set-Aside Program for bench contracts.

**6. Medium-Size Business Enterprise Program (MBEP) Exclusions**

- a. Non-competitive or emergency procurements
- b. Non-Federal Invitations for Bid (IFB) until such time that statutory

- authority is granted wherein such a set-aside is approved
- c. Original Equipment Manufacturer
- d. Transit Vehicle Manufacturer
- e. Federally-funded procurements

## **7. Medium-Size Business Enterprise Program (MBEP) Roles and Responsibilities**

### **a. Project Manager**

- i) During the early stages of a planned procurement, prior to the development of the scope of work and requisition, the Project Manager (PM) should look for opportunities to “unbundle” the work to promote SBE prime and MBEP business opportunities. If the anticipated work is severable, the Project Manager should give consideration to unbundling the anticipated work into smaller work segments thereby opening up opportunities to Medium-Size Business Enterprises.
- ii) Once the scope of work is created, the Project Manager shall identify the appropriate North American Industry Classification System (NAICS) codes and transmit that information to the assigned CA along with the requisition and other pertinent documents for posting and advertising.

### **b. Contract Administrator**

- i) The CA is responsible for working with and assisting the Project Managers in procurement planning, and execution.
- ii) The CA is responsible for implementing the MBEP.
- iii) If less than two responsive/responsible proposal(s) are received from a Medium-Sized Enterprise, the CA is responsible for documenting the finding in the procurement file.

### **c. Administrative Business Services Department**

- i) Administrative Business Services Contract Pre-Qualification Office will validate Proposers' self-certification that they are Medium-Size Business Enterprises that meet Metro's definition and requirement and include that information in their determination memo to the CA regarding pre-qualification.

### **d. Diversity & Economic Opportunity Department (DEOD)**

DEOD will review solicitations for applicability to establish SBE/DVBE goals on those contracts that are within the new MBEP set-aside threshold. For non-federal IFBs, the SBE Preference Program will also apply. DEOD will carry out compliance monitoring activities on contracts with SBE/DVBE goals.