



**EXECUTIVE MANAGEMENT AND AUDIT COMMITTEE
JULY 18, 2003**

Metropolitan
Transportation
Authority

One Gateway Plaza
Los Angeles, CA
90012-2952

SUBJECT: SMALL BUSINESS ENTERPRISE PROGRAM

**ACTION: APPROVE REVISIONS TO THE SMALL BUSINESS
ENTERPRISE PROGRAM**

RECOMMENDATION

- A. Approve the Small Business Enterprise (SBE) Program revisions as summarized in Attachment A.
- B. Approve 15% SBE Program Goal for Fiscal Year 2004 (FY04)
- C. Authorize the Chief Executive Officer to make administrative changes to the SBE Program as required by changes State and Local statutes and regulations.

ISSUE

The Diversity & Economic Opportunity Department (DEOD) is recommending revisions to the SBE Program modeled from the federal Disadvantaged Business Enterprise (DBE) Program. The revisions incorporate federal requirements that best fit the SBE Program while limiting significant changes to current administrative process. These requirements include changing the SBE certification period from two to three years, adding annual "notice of change" certification affidavits, prompt payment and retention provisions, and good faith efforts reconsideration. The SBE Program revisions will streamline MTA's administration of its SBE and DBE programs and will improve MTA vendors and contractor ability to respond to program requirements.

POLICY IMPLICATIONS

Significant revisions to the updated SBE program includes monitoring and enforcement mechanisms to enforce the Prime Contractor's inclusion of a Prompt Payment and Retention clause in all subcontract agreements entered into with SBE and non-SBE firms participating on state and/or locally funded negotiated contracts.

The updated program extends SBE certification from two years to three years consistent with the DBE program and reduces the burden on small business in the certification process. New certification requirements also require SBEs to submit an annual written affidavit that the firm continues to meet the small business size standards and the existing \$250,000 Personal Net Worth requirement. In

addition, the SBE program offers proposers the opportunity for Reconsideration of its Good Faith Efforts (GFE) documentation when determined that it is not responsive because it has not documented sufficient good faith efforts to meet established contract-specific SBE goals.

The recommended 15% SBE program is based on historical data and represents the number of ready, willing and able SBEs identified as available to participate on state and/or locally funded negotiated contracts.

OPTIONS

The Board can disapprove the recommended changes and choose to continue with the existing SBE Program. This option will adversely impact program administration and participation of SBEs. Therefore, staff does not recommend this option.

FINANCIAL IMPACT

There is no increased cost to the MTA for implementing the revised SBE Program.

BACKGROUND

In April 1997, the MTA Board authorized staff to implement the SBE Program for non-federally funded negotiated contracts. The SBE Program was implemented as an alternative to the State and Local Minority and Women Business (M/WBE) Program as a result of the California Civil Rights Initiative (Proposition 209). Proposition 209 prohibits preferential treatment on the basis of race, sex, ethnicity, or national origin in the public contracting.

NEXT STEPS

The approved changes will be effective immediately.

ATTACHMENT(S)

- A. SBE Program Revisions

Prepared by: Tashai R. Smith, Manager, DEOD

Maria A. Guerra

Maria A. Guerra
Chief of Staff

R. Snoble

Roger Snoble
Chief Executive Officer

Major SBE Program Provisions

Attachment A

	SUBJECT	SUMMARY
1.	Objectives/Policy Statement	The Chief Executive Officer (CEO) issues signed and dated policy statement that expresses commitment to its SBE program and circulate throughout SBE and non-SBE business communities.
2.	Statement of Nondiscrimination	Ensures nondiscrimination in the award and administration of state and locally funded negotiated contracts with respect to individuals of a particular race, color, sex, or national origin.
3.	SBE Program Updates	Program will be updated when substantial changes are warranted to comply with state and local regulations and MTA Board directives.
4.	Quotas and Set-asides	Reaffirms that quotas and set-asides may not be used in any way in the administration of the SBE program.
5.	SBE Liaison Officer	CEO must designate a SBE Liaison Officer (SBELO) and adequate staff to administer SBE Program. This section names the SBELO, describes the duties and responsibilities of the SBELO, and shared roles and responsibilities of other departments in meeting the SBE program requirements.
6.	Contract Assurance	Requires that all contracts and subcontracts include an assurance of nondiscrimination on the bases of race, color, national origin, or sex in the award and performance of any state and locally funded negotiated contract or in the administration of its SBE program.
7.	SBE Financial Institutions	Policy to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, make reasonable efforts to use these institutions and encourage prime contractors on state and locally funded negotiated contracts to make use of these institutions. Identifies list of minority and women-owned financial institutions.
8.	SBE Directory	Policy to maintain a directory identifying all firms eligible to participate as SBEs and requires revision to directory at least annually. The directory must include the firm's name, address, phone number, date of most recent certification, and type of work the firm has been certified to perform as a SBE. Identifies how to obtain the SBE directory.
9.	Over-concentration	Policy to develop program addressing overconcentration of SBEs in one or more types of work, if overconcentration is identified in the administration of the SBE program.

Major SBE Program Provisions

Attachment A

	SUBJECT	SUMMARY
10.	Business Development Programs	Policy to develop mentor-protégé or business development programs, if for any reason, the SBELO identifies the need and feasibility of establishing such programs.
11.	Required Contract Clauses	Ensures that the contract assurance of nondiscrimination, prompt payment, and dispute resolution clause placed in every state and locally negotiated contracts and subcontracts.
12.	Monitoring and Enforcement Mechanisms	Describes methods used to compliance with SBE requirements by all participants and enforcement against any false, fraudulent, or dishonest conduct in connection with the SBE program. Lists the regulations, provisions, and contract remedies available in the event of contractor non-compliance with SBE requirements.
13.	Overall Goals	Defines the steps, factors and methodologies available to determine the amount of overall annual SBE goal as a percent of the state and local fund that will be expended for the forthcoming year.
14.	Contract Goals	Policy to establish contract goals only on those state and locally funded negotiated contracts that have subcontracting opportunities. Contract goals will be expressed as a percentage of the total amount of a state and locally funded negotiated contract.
15.	Good Faith Efforts	Describes contractor requirements to make good faith efforts as a matter of responsiveness. Requires that the bidder/offeror demonstrate that it has met good faith efforts by meeting the contract goal or documenting good faith efforts.
16.	Administrative Reconsideration	A bidder/offeror may request administration reconsideration if it is not responsive in documenting sufficient good faith efforts.
17.	Counting SBE Participation	SBE participation will be counted toward overall and contract goals.
18.	SBE Certification	Identifies the certification standards and procedures to determine eligibility of firms to participate as SBEs in state and locally funded negotiated contracts.
19.	Information Collection and Reporting	Describes procedures for monitoring payments to SBEs.
20.	Small Business Enterprise Preference	Policy that provides a five percent preference to certified SBE firms that propose on state and locally-funded competitively negotiated contracts.
21.	Attachments	List and append all attachments to SBE program to include regulations and updates, definition of terms, guidance policies, and administrative standards, practices and procedures.