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# **CHAPTER 10: RECOMMENDATIONS**

## **I. INTRODUCTION**

This chapter presents race and gender-neutral recommendations for the Los Angeles County Metropolitan Transportation Authority's (Metro) Disadvantaged Business Enterprise (DBE) Program. These recommendations are offered to increase DBE and small business enterprise (SBE) access to Metro's prime contracts and subcontracts.

The race and gender-neutral recommendations apply to all ethnic and gender groups and industries. The recommendations are derived from an analysis of Metro's *Compliance Manual*, a review of Metro's web page, anecdotal testimonials, regression analyses, and government and corporate best management practices.

## **II. RACE AND GENDER-NEUTRAL MEASURES**

Pursuant to 49 CFR Section 26.51 Federal Transit Administration (FTA), recipients are required to meet the maximum feasible portion of its overall goal by using race-neutral measures. Section 26.51 delineates race-neutral measures as:

- Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation for DBEs and SBEs.
- Assist DBEs and SBEs in obtaining bonding and/or financing.
- Provide technical assistance.
- Disseminate information on contracting procedures and specific upcoming contract opportunities.
- Implement supportive services program to improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and SBEs.



- Provide services to improve long-term development, increase opportunities to participate in Metro’s contracts, handle increasingly significant projects, and achieve eventual self-sufficiency for DBEs and SBEs.
- Establish a program to assist start-up firms, particularly in fields in which DBE participation has historically been low.
- Distribute DBE directory through print and electronic means to ensure maximum dissemination to potential prime contractors.
- Assist DBEs and SBEs in developing their capability to utilize emerging technology and conduct business through electronic media.

**A. Metro’s Current Race and Gender-Neutral Recommendations**

Metro has implemented several race and gender-neutral measures to increase the participation of DBEs and SBEs on its contracts. Table 10.01 below summarizes Metro’s current race and gender-neutral measures.

**Table 10.01: Metro’s Race and Gender-Neutral Measures**

<b>METRO’S RACE-NEUTRAL MEASURES</b>	<b>OBJECTIVES</b>
<i>Transportation Business Advisory Council</i>	Provide recommendations to improve Metro’s procurement process, certification, outreach and program tracking.
<i>Insurance Broker Panel</i>	Assist contractors in meeting Metro’s contractual insurance requirements.
<i>Meet the Primes Network</i>	Provide an opportunity for DBEs and SBEs to build relationships with Metro’s large prime contractors.
<i>Meet the Buyers</i>	Provide an opportunity for DBEs and SBEs to meet Metro’s contract administrators and buyers.
<i>Vendor Fairs</i>	Attend vendor fairs with other agencies to disseminate information on how to do business with Metro.
<i>Membership in Contracting Organizations</i>	Partner with various contracting organizations to provide information on how to register as a Metro vendor and comply with certification procedures.
<i>How to do Business with Metro Workshops</i>	Help DBEs and SBEs understand how to do business with Metro.



<b>METRO'S RACE-NEUTRAL MEASURES</b>	<b>OBJECTIVES</b>
<i>Shared Responsibility Program</i>	Require each Metro department to: 1) identify contracting opportunities for DBE and SBE participation; 2) establish an internal Departmental 25 percent SBE and DBE goal; 3) identify contracting opportunities within their respective departments for SBE participation.
<i>Small Business Preference</i>	Establish an SBE goal on state or locally funded projects as permitted by the California Public Utilities Code Section 130232. Grant a five percent bid or proposal preference to certified SBEs and a five percent bid preference to bidders or proposers meeting or exceeding the SBE subcontracting goal.
<i>Small Business Program Plan</i>	Foster small business participation pursuant to 49 CFR Section 26.39.
<i>Unbundling Prime Contracts</i>	Unbundle large projects into small contracts to increase opportunities for DBEs and SBEs.
<i>Contract Look Aheads</i>	Distribute and post Metro's upcoming bidding opportunities.



### **III. RACE AND GENDER-NEUTRAL RECOMMENDATIONS**

#### **A. Pre-Award Recommendations**

##### **1. Publish Micro-Purchases**

Metro should publish its upcoming micro-purchases for goods and other services valued at \$3,000 and less to increase contracting opportunities for DBEs and SBEs. Informal solicitations for construction, miscellaneous and other professional services, and goods and other services procurements should also be published.

##### **2. Encouragement of Prime Contractors**

Metro should consider encouraging potential prime contractors and consultants to expand their outreach to DBEs and SBEs to increase subcontracting opportunities. The following enhancements are suggested:

- Include language in procurement solicitations encouraging bidders and proposers to document all efforts undertaken toward extending opportunities to DBEs and SBEs through advertisements with local news media. Advertisements should be placed at least fourteen (14) days prior to the bid or proposal date. Examples could include: advertising in regional minority and women trade association newsletters, minority-owned media specifically targeted to Metro's service area, and written notifications sent to DBE and SBE associations.
- Partner with DBE and SBE advocacy groups to identify potential subcontractors. Metro could provide contractors with contact information on regional DBE and SBE advocacy groups.
- Host a pre-bid meeting, prior to bid completion, to reach qualified DBEs and SBEs. Pre-bid meeting agendas with sign in sheets (containing DBE and SBE's signatures and contact data) could be submitted as outreach documentation.

##### **3. Establish a Direct Purchase Program for Construction Contracts**

A Direct Purchase Program is recommended for construction contracts because it would allow Metro to procure construction materials and supplies directly from the supplier. The bid would include the estimate, and Metro would make the purchase and pay the vendor's invoice directly. For the purpose of bonding a job, the cost of supplies could be subtracted from the bid price, thereby reducing the amount of the contractor's bond.

With the existence of this Program, the construction supplies and materials quotes that DBEs and SBEs receive should also be lower. It is anticipated that the supplier, knowing that it would receive direct payment from Metro, would also quote a more competitive price,



reducing the overall bid amount and allowing DBEs and SBEs to be more competitive. The cash flow required to pay suppliers in advance of receiving reimbursement from Metro is also eliminated.

#### **4. Promote Diversity in Distributorships**

Manufacturers seeking business with Metro should be required to document their efforts to authorize DBE and SBE distributors to sell their product lines at the regional or the national level. This factor should be incorporated into the prequalification standards for suppliers and manufacturers.

#### **5. Pay Mobilization to Subcontractors**

Under circumstances where mobilization payments for construction services are approved for the prime contractor, the subcontractor should be paid an amount equal to its participation percentage no later than five (5) business days before it is required to mobilize to perform its work. To ensure transparency, subcontractors should be notified when prime contractors receive mobilization payments from Metro. Notification should be provided through facsimile or e-mail. The information should also be posted on Metro's website. For subcontractors project start-up costs can also be significant. A subcontractor that has limited resources and access to credit may find that expenses inhibit its ability to bid on Metro contracts.

#### **6. Maintain Virtual Plan Room**

Metro should consider purchasing software that would allow bidders to obtain digitalized plans and specifications on its website at no cost. Online access to plans and specifications could reduce the cost for Metro to produce the documents and for the contractor to acquire them. Plan rooms located in trade and business associations' headquarters and at Metro should be established.

The plan rooms should be outfitted with computers for electronic access to the plans and specifications. Hard copies of the documents should also be made available.

#### **7. Revise Insurance Requirements**

Metro implemented a Insurance Broker Panel to assist DBEs and SBEs in meeting Metro's insurance requirements. Despite these efforts, several business owners reported difficulty meeting Metro's insurance requirements. Thus, Metro's insurance requirements should be evaluated to ensure that smaller contracts do not require a disproportionately high level of coverage. When insurance requirements exist for small contracts, the type and level of coverage should be set in relation to the actual contract liability. Risk management should carefully consider the impact on DBEs and SBEs when contemplating insurance rate increases. Criteria should be developed for insurance waivers for small contracts under \$100,000. The process to apply for a waiver of Metro's insurance requirements should be made available on Metro's website.



## **8. Form Partnerships with Financial Institutions**

Metro's relationships with financial institutions should be leveraged to assist DBEs and SBEs with project financing and operating capital. Financial institutions currently providing services to Metro could offer financial assistance to DBEs and SBEs which typically face barriers to commercial capital, as evidenced in *Chapter 7: Regression Analysis' Business Loan Approval Analysis*. The evaluation criteria Metro uses to select financial institutions should include points for evidence of prior experience providing credit cards, operating capital, lines of credit, capital improvement loans, and related financial services to DBEs and SBEs.

As described in *Chapter 7: Regression Analysis*, the Business Loan Approval Analysis revealed statistically significant disparities for minorities and women when compared to similarly situated Caucasian males. The documented disparity in minority and women businesses' access to business capital may have adversely impacted the number of these businesses in the construction, miscellaneous and other professional services, and goods and other services industries.

The recommended partnership can also benefit the financial institutions in meeting their Community Reinvestment requirements.

## **9. Review Selection Panel Process**

Metro's procurement process, which is intended to be transparent, could be enhanced by publishing the panel members' evaluation scores for architecture and engineering and miscellaneous and other professional services contracts with the Intent to Award. The bidders should have access to the evaluation forms promptly, so that they may assess their performance and engage in protest procedures, if necessary.

## **10. Publish Bid Protest Procedures**

Metro conducts "How to Do Business with Metro" workshops to provide information on its procurement process. Metro's bid protest procedures should be included in this workshop and in all solicitation documents, as well as posted on Metro's website. All businesses that submit a response to a solicitation should receive a Notice of Intent to Award at least ten (10) days before the decision is scheduled to be made. The Notice of Intent to Award should detail the steps and timetable that must be adhered to when submitting a protest. The decision to award the contract at issue should be suspended pending the outcome of the protest.

The Notice of Intent to Award should be published and submitted to each business that submitted a proposal, bid, or statement of qualification. The release of the Notice of Intent to Award should mark the beginning of the protest period.





## **11. Enhance DBE and SBE Outreach Initiatives**

Metro's existing outreach initiatives should be enhanced to promote the DBE and SBE Programs' objectives and policy goals. The outreach campaign should communicate the goals and objectives of the Programs to DBEs and SBEs.

A well-planned and executed outreach campaign is essential to increasing DBE and SBE participation. A comprehensive outreach campaign should be initiated to promote the enhancements from the Disparity Study. The following outreach and marketing objectives should be implemented:

- (a) Disseminate press releases and public service announcements to inform the media and community regarding Metro's Diversity & Economic Opportunity Department.
- (b) Pursue quarterly interviews with local radio and television stations and partner with local business organizations to discuss opportunities for collaboration that will benefit DBEs and SBEs.
- (c) Draft a business development brochure and manual for Metro's DBE and SBE Programs.
- (d) Promote cross marketing strategies with other jurisdictions and trade and professional associations.
- (e) Develop a quarterly newsletter that includes contracting information pertaining to DBEs, and SBEs and highlight Metro's DBE and SBE Programs' success.
- (f) Aggressively target small, minority, and women-owned businesses identified in the study to apply for DBE certification in an effort to increase the number of Metro-certified DBEs.



## **B. Post-Award Recommendations**

### **1. Enhance DBE Subcontractor Substitution Standards**

Metro has comprehensive subcontractor substitution procedures for DBE subcontractors. These procedures require a prime contractor to provide notice prior to substituting a certified DBE. The prime contractors are encouraged to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE.

Penalties for non-compliant prime contractors should be included as part of Metro's procurement standards. Prime contractors that fail to inform Metro prior to substituting a DBE or SBE subcontractor could be subjected to increased reporting requirements or a mandatory audit of their subcontracting records.

### **2. Develop an Expedited Subcontractor Payment Program**

Metro includes a prompt payment provision in its USDOT-assisted contracts. Prime contractors are required to pay their subcontractors within ten (10) days of receipt of payment from Metro. Metro should expand the expedited payment program to require its prime contractors to pay DBE and SBE subcontractors, subconsultants, truckers, and suppliers in a timely manner. Prime contractors should be required to pay their DBE and SBE subcontractors within five (5) days of their receipt of payment. If there is a disputed invoice between a prime contractor and its subcontractor, the prime contractor should issue written notice within three (3) days, and disputed invoices should be paid within five (5) days of being resolved. Penalties should be imposed on prime contractors that fail to pay a listed subcontractor for work performed. Metro should not release final payment to a prime contractor until an audit of previous subcontractor payments has been satisfactorily completed.

### **3. Publish Prime Contractor Payments**

Several business owners reported receiving late payments from Metro's prime contractors during the anecdotal interviews. All prime contractor payments should be posted on Metro's website as a means of addressing the late payment problem. Late payments can be a disincentive for DBEs and SBEs wanting to perform as a subcontractor. To facilitate use of the published postings, the website should be updated on a weekly basis on the same day of the week. Subcontractors should be able to view prime contractor payments made for all projects valued at \$100,000 and greater. This system will provide subcontractors with information on payments made to prime contractors, thereby reducing subcontractors' inquiries about payment.



#### **4. Conduct Routine Post-Award Contract Compliance Monitoring**

Monthly contract compliance monitoring should be conducted to ensure that the subcontractor participation listed in bids, proposals, and requests for information and qualification is achieved for the contract duration. After the contract is awarded, regular compliance monitoring should verify the prime contractor's post-award subcontracting. Consistent contract compliance monitoring could minimize the hardships experienced by all subcontractors due to unauthorized substitutions and late payments.

The following contract compliance monitoring method is recommended: Track and report DBE and non-DBE subcontractor payments in an electronic database.

#### **5. Publish DBE and SBE Utilization Reports**

Utilization reports that measure the effectiveness of the DBE and SBE Programs should present year-to-date payment, original award, and modified award by change order or amendment. This data should be depicted according to industry and department. The report should also present the awards and payments by ethnicity, gender, and certification status. Change orders, amendments, and substitutions should be reported by prime contractors. Waivers to the subcontracting goals should also be published in the quarterly DBE and SBE Utilization Reports.

Customized reports should be used by the Manager of the Diversity & Economic Opportunity Department in generating quarterly utilization reports. The fourth-quarter report should include an assessment of program activities, an annual Diversity & Economic Opportunity Department evaluation, and recommendations regarding Metro's compliance with the equity requirements. Metro's exemplary practices and achievements should also be noted in the fourth-quarter report. All utilization reports should be posted on Metro's website and made available to businesses by e-mail.

#### **6. Provide Debriefing Sessions for Unsuccessful Bidders**

Debriefing sessions should be made available to unsuccessful bidders. This option should be published on Metro's website and included in the Notice of Intent to Award that is sent to unsuccessful bidders. The proposal, request for information and qualifications, or bid of the business recommended for award should also be made available upon written request.



## **IV. CONTRACTING AND ACQUISITION PROCESS RECOMMENDATIONS**

### **A. Procurement Process and DBE Program Enhancements**

#### **1. Standardize and Publish Metro's Procurement Procedures**

Metro should enhance its Compliance Manual and supporting procurement policies to ensure uniformity in its procurement practices across each department. The anecdotal analysis revealed that several interviewees were unsure of Metro's procurement process, specifically in regard to "informal bench contracts," which are not identified in the Compliance Manual. Procurement procedures should clearly identify the formal and informal thresholds for each industry and the specific solicitation process used to solicit responses to invitation for bids, request for proposals, and request for information and qualifications.

#### **2. Establish a DBE Ombudsperson Position**

Metro should authorize the appointment of an Ombudsperson as a resource to support the Diversity & Economic Opportunity Department. The Ombudsperson would have the authority to receive, investigate, and mediate complaints concerning the actions of Metro staff, its prime contractors, and subcontractors. The Ombudsperson would operate independently of the Diversity & Economic Opportunity Department and should be appointed by Metro's Board of Directors.

### **B. Website Enhancements**

The website is aesthetically pleasing and user-friendly and provides useful information on a logical platform for consumers and businesses. However, some modifications could enhance its functionality and facilitate simpler navigation for businesses seeking information on contracting opportunities and Metro's Diversity and Economic Opportunity Department. The following website enhancements are offered:

#### **1. Publish Useful Information**

While Metro's website is extremely informative and includes a breadth of information for consumers and contractors, the following inclusions would greatly increase accessibility of public contracting information. At a minimum, the following items should be available on the Metro's website:

- Virtual plan rooms
- Anticipated informal contracts
- Utilization reports
- Protest procedures
- Debriefing process



## **2. Maintain Navigation to Metro Website**

Any domain outside of Metro should be loaded in a new window or tab. Currently, the external links for Metro's social media sites are loaded on the Metro parent window. The user loses navigation of Metro's page once these pages are loaded. The links to Metro's YouTube, Facebook, LinkedIn, and Twitter pages should open in a new tab or window.

## **3. Prominently Display Mobile-Optimized Website**

Given the popularity of small handheld devices, it is recommended that the mobile-optimized website be more prominently displayed for a more efficient experience for handheld device users. Although smartphones can display the full Metro website, having easily accessible features with essential information can make the mobile web-browsing experience more user friendly. The current location of the mobile link on the homepage is difficult to locate. Also, when [www.metro.net](http://www.metro.net) is loaded from a handheld device, it automatically opens the full website, rather than opening the mobile-optimized website and giving the user the option of which format to use.

## **4. List Complete Contact Information for Procurement and the DEOD**

Names, telephone numbers, email addresses, and facsimile numbers for key staff within DEOD should be published for the convenience of vendors and customers. Metro's website provides names and a general telephone and fax number. However, office location, operating/office hours, and e-mail addresses are omitted from the listing. Also, the DEOD contact information is not prominently displayed on the "Help & Contacts" page. Complete contact information should be listed.

## **5. Promote Small Business Community Activities**

Metro's website has a calendar of outreach events, located in two locations; however, both were difficult to locate. A link to the Google calendar was found on the right side of the DEOD webpage but was nondescript. The second calendar at <http://www.metro.net/about/deod/calendar-events/> was located by using the search tool. Text near the bottom of this page indicates that it was last updated on January 11, 2011. This information should be more prominently displayed, easy to find, and updated on a more frequent basis. Also, the events calendar can also be displayed on the Small Business Outreach Unit page (<http://www.metro.net/about/deod/sbou/>). Outreach events within the market area should be posted and detailed on Metro's website and social media sites.

## **6. Offer Links to Small Business Enterprise Supportive Service Program**

The Metro website is very informative but should also offer links to local governments and market area trade and business association partners that offer small business enterprise supportive services. Metro should consider adding external links to the U.S. Small Business



Administration, as well. Information from these links would be a helpful research sources for SBEs and DBEs in the region.

### ***C. Data Management Enhancements***

#### **1. Add Source of Certification in the Prime Contractor Profile**

Metro should ensure that its financial information management system, which captures prime contracts, includes the certification status of each prime vendor.

#### **2. Track Subcontract Data**

Metro should ensure that prime contractors list all DBE and non-DBE subcontractors, suppliers, and truckers as required by its procurement standards. Metro solicitations for bids, proposals, and qualifications should require prime contractors to list all subcontractors, suppliers, and truckers in their bid, proposal, or statement of qualifications, and the information should be tracked electronically in a database.

Metro should also report and track all subcontractor payment information regardless of the subcontractor's DBE status. This system should be enhanced to have the functionality to track contract amounts and payments to all subcontractors, subconsultants, suppliers, and truckers.

