

APPENDIX C



Fostering Small Business Participation

In accordance with 49 CFR Part 26.39

Prepared by the MBTA's Office of Diversity and Civil Rights



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MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

Fostering Small Business Participation

Introduction

The Massachusetts Bay Transportation Authority (“the MBTA”) has implemented a small business program that complies with the requirements of the Fostering Small Business element established under the U.S. Department of Transportation’s 49 CFR Part 26.39 as mandated in the Final Rule dated February 28, 2011.

It is the policy of the MBTA is to ensure non-discrimination on the basis of race, color, national origin, or gender in the award and performance of any contract, and to take all reasonable and necessary steps to ensure non-discrimination in the administration of the small business program. It is the intent of the MBTA to create an environment that is equitable and in which small businesses can compete fairly for contracts financed with federal funds.

The implementation of the small business element is an MBTA-wide initiative and receives the full cooperation and close collaboration of the various departments including Procurement and Logistics, Contract and Administration, Legal, Marketing and Budget.

The MBTA DBE Program

The MBTA has an established DBE Program for businesses that are certified as socially and economically disadvantaged in accordance with the USDOT regulations, 49 CFR Part 26. The MBTA’s policy objective is to create a level playing field by promoting equal opportunity and nondiscrimination in all of its procurement activities in accordance with State and Federal laws and regulations. As a condition of receiving federal financial assistance, the MBTA ensures that DBE-certified businesses have an equal opportunity to compete for and perform on MBTA contracts.

Fostering Small Business Participation Requirement

Section 26.39 of the DBE regulations requires that recipients add a small business element in their DBE programs plan to facilitate small business participation on federally-assisted contracts for all small businesses including DBEs. The purpose of this requirement is to encourage DBE Programs, by facilitating small business participation, to augment race/gender-neutral efforts to meet DBE goals.

Any proposed program provisions that help small businesses are likely to also help DBEs. The small business program element brings together the different ways that the MBTA reaches out to small businesses and makes it more conducive for them to compete for federally funded contracts, and therefore fosters and improves the DBE Program. Specifically, because the small businesses program is intended to be race/gender-neutral, the program enhances the MBTA in generating increased race/gender-neutral DBE participation which is encouraged by the regulations.

Elements of MBTA's DBE Program Small Business Program

Whereas the rule does not propose to mandate any specific elements to foster participation, DBE programs includes an element to structure contracting requirements to facilitate competition by small business concerns, taking all necessary steps to eliminate barriers that might impede participation. The MBTA Small Business Program develops procurement procedures that facilitate small business participation and include but not limited to the following elements: unbundling of large contracts where feasible; in the absence of DBE goals, requiring primes to provide subcontracting opportunities to small businesses; providing small business support services, conducting small business outreach activities and performing other functions that will facilitate small business participation. Other measures being proposed to further development are race/gender-neutral small business set-asides on smaller procurements and initiating a small business bidding preference program. Under the leadership of the Chief Procurement Officer, the MBTA Procurement & Logistics Department, undertakes the responsibility to facilitate small business development and participation.

As part of the MBTA's commitment to Small Businesses, the Procurement & Logistics Department engages other departments in conjunction with the MassDOT Small Business Resource Center and the Commonwealth Operational Services Division to remove barriers that might impede the involvement of small businesses and to ultimately increase participation in MBTA projects and procurements.

In addition to streamlining the procurement process to ensure equity, an essential element of the MBTA is forging partnerships with businesses, agencies and community-based organization that support small business growth and development.

MBTA's objective is to create an integrated process and partnerships, the key elements of which are building relationships to promote access, foster growth, and facilitate the transfer of technology. This approach provides small businesses, contractors, vendors, suppliers and individuals in the skilled trades with resources to meet these important objectives while advancing participation on MBTA projects.

This process has begun with the relationship established between the MBTA and the Commonwealth Operational Services Division (OSD). MBTA currently takes advantage of the Small Business Purchasing Program administered by OSD, which has the potential of significantly increasing opportunities and spending with participating small businesses able to serve MBTA. The eligibility of this program is discussed later in this document. The Small Business Purchasing Program will complement the MBTA's current procurement processes and activities.

In addition to the partnership with the Commonwealth, MBTA strategies to enhance the small business element moving forward are as follows:

- Ensuring small businesses are performing essential elements of projects.
- Strategic partnering between stakeholders that produce results.
- Prime contractor and subcontractor collaboration.
- Partnering with prime contractors to identify unobligated work that maximizes small business subcontracting opportunities.
- Review the procurement process annually to determine success, identify barriers and recommend modifications if needed to increase small business participation.
- Develop pilot programs for small businesses to ensure that businesses exist that can compete and win.
- Engage in agency peer collaboration to learn and apply best practices that deliver proven results.

1. Chief Procurement Officer

To further enhance the procurement processes and procedures, the MBTA's Chief Procurement Officer provides guidance to ensure that the procurement process provides for fair and open competition thus providing opportunities for small businesses to participate with respect to contracts, projects. Competitiveness, compliance pressures and the need for centralization have elevated the visibility of the procurement discipline within transit authorities and other organizations. The Chief Procurement Officer provides oversight to ensure that the small business elements are woven into the procurement process and therefore increase small business opportunities.

2. Unbundling of Contracts

As a race/gender-neutral means of facilitating small business participation and to increase the ability and capacity of DBEs to perform contracts, the MBTA is committed, wherever possible and feasible, to unbundle projects to encourage better competition. The concept is, when conducive, to unbundle projects into small contracts so that small firms, including DBEs, can bid and win as prime contractors. A collaborative effort between procurement departments and ODCR will be crucial for this initiative.

The MBTA supports removing barriers to participation by small businesses by the unbundling of contracts to meet the capacity of the diverse market and the establishment of contract size limits. In addition, other approaches will be examined such as teaming of like services as well as offering small businesses key opportunities on reliable long term contracts. This would affirmatively build the capacity of small businesses.

The MBTA's practice of unbundling, when reasonable to do so, follows the policy to move forward in the direction of unbundling to ensure that small businesses, including firms owned by women and minorities, have fair access to Federal contracting.

3. Procurements without a DBE goal

There are times when it is not feasible to establish a DBE goal on procurement because of availability of DBEs. When this situation arises and small businesses would be able to participate on the procurement, MBTA may establish a small business goal for the procurement.

4. Race/Gender-Neutral small business set-side program

Section 26.43 of the DBE regulations generally prohibits the use of set-asides as it pertains to DBEs. This is essential as a result of the DBEs being based on race and gender-conscious classifications. It is the race/gender-conscious nature of the DBE set-aside that brings about the prohibition. On the other hand, a small business set-aside program is race/gender-neutral and is limited only on the basis of size considerations.

The MBTA's set-aside program is being contemplated and may apply to the following:

- Goods and services contracts procured through the Procurement and Logistics Department where small businesses exist to compete;
- Businesses that have annual gross receipts not exceeding \$15 million may qualify; currently this is in line with the OSD's Small Business Program. MBTA's preference is to have a program in which certified DBEs automatically qualify and which establishes a higher size limit for small business eligibility to allow for greater participation. MBTA will need to establish a vetting process before the higher standard is established.
- Businesses bidding for set-aside contracts are required to submit verifiable financial information providing proof of size;
- If there are no eligible businesses that can provide the prescribed good or service, other businesses may bid for the procurement.

5. Small business bidding preference program

To foster small business participation, the MBTA may also consider a Small Business Bidding Preference policy. This policy may include granting a 5 percent bidding preference to qualified small businesses.

The 5 percent preference may be used merely as a calculation for determining the lowest bidder but will not affect the actual price of the bid.

6. Support Services for the Small Business Program

A key element of the Small Business Program's support services is building relationships to promote access, foster growth, increase business capacity and facilitate the transfer of technology. The support services program provides professional development and technical assistance services led by industry experts. The workshops and services delve into a variety of relevant topics to provide real-world knowledge and insight into how small businesses gain a competitive edge.

The MBTA's small business program is a direct beneficiary of the following MassDOT's Business Development Program Support Services:

MassDOT's DBE Supportive Services (DBE/SS): The objective of this program is to increase the number of small businesses within the Commonwealth that have resources, finances, management and technical skills necessary to compete successfully for prime and subcontracts. The business support services program is implemented through an agreement with the Greater New England Minority Supplier Development Council.

This program is designed to contribute to the growth and sustainability of construction and consultant DBEs competing and obtaining MBTA contracts. It addresses the barriers facing certified DBEs that will provide general business development training paired with specific transportation technical assistance and other resources to increase the capacity of participating DBEs. This will lead to improved bidding and estimating skills, an increase in the number of DBE firms that are capable of bidding on MBTA projects, and the development of strategic business relationships. Achieving these objectives will ultimately result in the successful participation of DBE firms on federally funded construction contracts.

DBEs will be enrolled in the business development workshop series to improve the core business functions of the firms and increase their knowledge of essential business tools and provide the tools needed to overcome the barriers to entrepreneurial growth and sustainability. A customized business plan will also be developed with two-year target objectives for each DBE that identifies needs, and a strategy will be developed to address each of the identified needs. The business development workshops include the following topics:

- Bringing a business to scale
- Talent Management – developing techniques for, and understanding of, effective delegation, holding others accountable, and driving performance.
- Strategy – leveraging strategic frameworks, competitive positioning and marketing
- Finance – understanding pricing, profitability, and cost management techniques.
- Pursuing Contracts – qualifying and applying for MassDOT contracts, selecting appropriate bids, and understanding the benefits of networking, teaming and joint ventures to access contracts.
- Networking and Teaming – meeting other DBEs interested in growing their businesses, as well as general and prime contractors who are looking to do business with DBEs.

DBE firms will also be provided with specific technical assistance according to the needs identified by assessment. Technical assistance with the specific challenges presented by the transportation industry will be delivered in the form of a combination of group workshops and one-on-one assistance. The topics to be addressed will include the following:

- Increasing market potential;
- Enhancing estimation capacity; and
- Bonding.

7. Eligibility and Criteria for Small Business Element

In October 2016, the MBTA launched COMMBUYS, the Commonwealth's electronic procurement system that paves the way for utilization of the state's Small Business Purchasing Program that is integrated within the COMMBUYS system. COMMBUYS and the Small Business Purchasing Program will complement the MBTA's current procurement processes and will be used in parallel with our existing programs.

By tapping into this state wide program, the MBTA will position itself to significantly increase opportunities and spending with participating small businesses to strengthen our economy, create jobs, innovate and empower our communities.

To be eligible to participate in this Small Business Purchasing Program, a firm must be independently owned, operated and controlled and must be established for profit. Other requirements include:

- Income of \$15M or less
- 50 employees or fewer; and
- 1 year in business.

An eligible firm may be a sole proprietorship, partnership, corporation, or any other legal form.

8. Small Business Outreach

Outreach activities are a critical element in the MBTA's Small Business Program. The ultimate thrust is to increase opportunities for small businesses to participate in the procurement process. Outreach activities will include producing events and collateral material; designed to educate small businesses and prospective entrepreneurs about doing business with the MBTA. Outreach activities will also help identify valuable resources and provide opportunities to help small businesses grow and thrive.

- In order to achieve this goal and to make outreach activities even more effective, the MBTA works closely and collaborate with MassDOT, MassPORT, MassHousing, CWE, DCAMM and The Minority Business Center of Boston.

The outreach activities will increase awareness amongst small businesses regarding business opportunities and the dos and don'ts of doing business with the MBTA.

Outreach activities may include:

- Organizing small business forums, workshop and seminars on how to do business with the MBTA
- Participating in trade shows and conferences to promote the business opportunities at the MBTA
- Producing brochures and other collateral material to market the business opportunities to small businesses
- Encouraging and facilitating collaboration between prime contractors and small businesses

- Providing technical assistance and guidance to small businesses interested in doing business with the MBTA
- Collaborate with the MBTA Procurement & Logistic Department to advertise and promote opportunities to small businesses on the MBTA website.

Monitoring and Reporting

Under the revised Section 26.39, the MBTA is not required to report on the level of small business participation achieved through the small business element. However, race/gender-neutral DBE participation generated through the small business element will be tracked and reported as is currently done through the DBE Program.