



**EXECUTIVE MANAGEMENT AND AUDIT COMMITTEE  
JANUARY 15, 2004**

**SUBJECT: SMALL BUSINESS TECHNICAL PARTICIPATION POLICY**

**ACTION: APPROVE THE SMALL BUSINESS TECHNICAL PARTICIPATION  
POLICY**

**RECOMMENDATION**

- A. Adopt the Small Business Technical Participation Policy defined in Attachment A.
- B. Add Section 3.3 (Attachment B) to the MTA Procurement Policy Manual, Chapter 3.

**ISSUE**

In July 2003, the Board, as part of discussions to adopt the annual Disadvantaged Business Enterprise (DBE) annual goal, directed staff to “examine the procurement process and develop recommendations and written procedures on how to implement a Small Business Technical Participation Initiative in an effort to ensure that small businesses are included in a wide variety of technical work.” Staff was directed to report back in January 2004 with recommendations and an implementation plan.

**POLICY IMPLICATIONS**

The purpose of the recommended Small Business Technical Participation (SBTP) policy is to provide greater opportunity for small businesses to compete for and obtain meaningful participation in technical work on MTA contracts. The policy will require a technical and non-technical component to DBE and Small Business Enterprise (SBE) contract goals. The two goal components may be established when technical work is identified on competitively negotiated procurements requiring Board approval. This will require proposers to assemble their teams with DBE or SBE firms in technical areas to meet the technical component of the goal.

Currently, proposers can meet a contract goal by utilizing DBE or SBE firms in subcontract areas that are not part of the technical component. For example, when a goal is established that may include design scope, proposers can meet the goal by utilizing small businesses in administrative tasks such as report writing or delivery services, rather than civil engineering, landscape architecture, or surveying.

The recommended SBTP policy changes the existing process in which goals are established to ensure small business participation in technical areas of work. Although this change will increase the procurement process cycle time, the policy will work towards removing barriers impacting small businesses' ability to grow and develop in technical areas of work on MTA contracts. It will also strengthen existing DBE and SBE programs to effectively promote greater opportunities for small businesses to demonstrate their technical capability.

### **ALTERNATIVES CONSIDERED**

Staff investigated procedures to implement this policy as part of the source selection process. It was determined there was no reasonable modification to the source selection process which would ensure small business technical participation.

The Board may reject the recommended policy, however, staff does not recommend this alternative as this action is aligned with the MTA's small business programs to increase participation on MTA contracts in order to achieve the agency's SBE and DBE goals.

### **FINANCIAL IMPACT**

There is minimal budget impact to implement the recommended action.

### **DISCUSSION**

In the administration of the DBE and SBE Programs, MTA is required to establish contract goals for small business participation on federal and state/local funded projects. The Diversity & Economic Opportunity Department (DEOD) currently reviews all professional services procurements in excess of \$40,000 for subcontract opportunities. Where applicable, DEOD establishes contract goals for DBE or SBE participation. The contract goal is the percentage of the proposed amount that must be satisfied by DBE or SBE prime or subcontract participation.

Once a contract goal has been established, proposers are required to meet the contract goal, or document that Good Faith Efforts (GFE) were made to meet the goal to be responsive. If the proposers do not meet the goal, they must document adequate GFE such as advertisement of subcontract opportunities, outreach and technical assistance they employed to achieve the goal.

As part of the procurement process, the DEOD and the project manager jointly develop the technical and non-technical components of the work. From there, DEOD establishes the technical and non-technical goals for that procurement. Proposers who do not meet the technical or non-technical goal components and who do not satisfy the GFE requirements will be deemed non-responsive to the requirements of the solicitation and rendered ineligible for contract award. This will increase the probability that proposers interested in doing business with the MTA will include small businesses to perform core technical work. However, it may also increase the number of GFE determinations that must be made, therefore increasing the overall Procurement cycle time.

Procurement & Material Management and DEOD Departments completed a joint review of the public contract code and federal regulations to ensure that the recommended policy does not conflict with existing procurement policies and small business regulations. As a result, the SBTP policy will apply to competitively negotiated procurements, which reach the dollar threshold requiring Board approval and have either a DBE or SBE goal. The policy will not apply when the core work to be performed is proprietary to the prime contractor. Since the recommended policy requires a flexible approach during the selection process, the sealed bid process is not included.

Since the SBTP will affect the procurement process, it is recommended that it be incorporated into the Procurement Policy Manual. The Board approves all changes to the Procurement Policy Manual; therefore staff is seeking the Board's support for its recommendation B, incorporating the SBTP.

### **IMPLEMENTATION PLAN**

The following actions will be initiated to implement the policy recommendation:

1. DEOD, County Counsel and Procurement and Material Management will develop general definitions of technical and non-technical work and develop procedures to implement this policy. Program Managers will be briefed on these terms and their new role in supporting the SBTP Policy as part of the Shared Responsibility Program.
2. DEOD will revise all applicable small business forms and instructions that are included in the solicitation packages to reflect the SBTP.
3. The SBTP policy will be distributed to the business community. The SBTP policy will also be posted on DEOD and the Procurement "How to do Business" homepages on MTA's website.
4. In addition, Procurement and Material Management will notify vendors through the Request for Proposal (RFP) cover letter, in which it will highlight the SBTP policy.
5. Once the policy is implemented in FY05, each applicable new solicitation package will include SBTP contract goal requirements.
6. The SBTP contract goal requirements will be presented at applicable pre-proposal conferences.
7. DEOD and Procurement and Material Management will report back to the Board in twelve (12) months after implementation on compliance to policy, which will include a comparison between the pre and post implementation of this SBTP policy.

## **NEXT STEPS**

Following Board approval, the recommended policy will be incorporated into Chapter 3 of the Procurement Policy Manual. The policy will be effective first quarter FY05 for all new solicitations issued that are competitively negotiated and require Board approval.

## **ATTACHMENT(S)**

- A. Small Business Technical Participation Policy
- B. Chapter 3 Procurement Policy Manual Changes

Prepared by: Linda B. Wright, Deputy Executive Officer, DEOD  
Lonnie Mitchell, Executive Officer, Procurement and Material Management

*Maria A. Guerra*

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Maria A. Guerra  
Chief of Staff

*Roger Snoble*

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Roger Snoble  
Chief Executive Officer

## **BOARD REPORT ATTACHMENT A**

### **Small Business Technical Participation Policy**

#### Purpose

The purpose of the recommended Small Business Technical Participation (SBTP) policy is to provide greater opportunity for small businesses to compete for and obtain meaningful participation in core work on MTA contracts. The policy will require a technical and non-technical component to Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) contract goals. The two goal components will be established when technical work is identified on competitively negotiated procurements requiring Board approval.

The SBTP policy changes the existing process in which goals are established to ensure small business participation in technical areas of work. The policy will work towards removing barriers impacting small businesses to grow and develop in core areas of work on MTA contracts. It will also strengthen existing DBE and SBE programs to effectively promote greater opportunities for small businesses to demonstrate their technical capacity.

As part of the planning process for all competitively negotiated procurements, the Project Manager will need to define core technical work that is available for subcontracting opportunities. Diversity and Economic Opportunities Department (DEOD) in conjunction with the Project Manager will review the technical opportunities in relation to small business capability and recommend technical and non-technical participation goals. Procurement will include the recommended goal(s) in the solicitation package.

The MTA Board of Directors is responsible for approving an agency-wide Small Business Technical Participation Policy. The Chief Executive Officer is responsible for ensuring that the policy is converted into an action plan and budget and implemented by staff.

#### Policy:

1. The SBTP shall apply to all competitively negotiated procurements requiring Board approval that have a DBE or SBE goal recommended.
2. If the solicitation has a technical and non-technical goal established, the proposers shall propose a team with DBE or SBE firms in the core work to meet the technical portion of the goal.
3. The SBTP will not apply under the following conditions:
  - When the core work to be performed is proprietary to the prime contractor. Proprietary work is normally not subcontracted by the prime contractor.
  - To sealed bid procurements. The sealed bid procurement process is not conducive to this policy because of the inflexibility of the selection process required by law.
  - When a technical goal is not applicable or feasible based on the statement of work requirements.

4. MTA's DEOD is responsible for, but not limited to, the following:
  - Educating the MTA's project managers on their roles and responsibilities for this policy
  - Adopting SBTP procedures including the definition of core work and any other definitions required to adopt this policy
  - Revising DEOD certification forms necessary for proposers to complete to determine responsiveness to the SBTP
  - Distributing the program to the business community
  - Setting both technical and non-technical goals for each applicable solicitation in conjunction with the Project Manager
  - Identifying in the solicitation a listing of subcontracting opportunities for both technical work and non-technical work
  - Reviewing proposer's initial ability to meet the goal for each applicable solicitation
  - Reviewing Good Faith Efforts of proposers that do not initially meet the goal
  - Coordinating with Procurement during discussions with proposers regarding the technical and non-technical goals
  - Ensuring compliance to the SBTP policy and all applicable laws, rules and regulations
  
5. MTA's project managers are responsible for, but not limited to, the following:
  - Identifying subcontracting opportunities, which include identifying the technical and non-technical components of the work.

## **BOARD REPORT ATTACHMENT B**

### **Addition to Procurement Policy Manual Chapter 3 Diversity & Economic Opportunity**

#### **3.3 Small Business Technical Participation Policy**

The following DEOD policy has been added for competitively negotiated procurements:

- A. Under the Small Business Technical Participation Policy (SBTP), when DEOD identifies technical work, DEOD will establish a DBE-contract or SBE-contract goal consisting of a technical and non-technical component. If the proposer does not meet the technical and non-technical goal, the proposer must comply with existing Good Faith Efforts (GFE) requirements.
- B. The SBTP policy shall only apply to solicitations meeting all of the following requirements:
  - 1. Any new solicitation that requires Board approval, and
  - 2. Competitively negotiated procurements with a small business goal, where the technical component of the work to be performed is not proprietary to the prime contractor.
- C. This policy does not apply to Sealed Bid procurements.