

Small Business Enterprise Program

Summary of Policy

The Small Business Enterprise Program is a race and gender-neutral business assistance program designed to foster economic development within the Los Angeles County. The SBE Program is designed to provide all business owners equal opportunities and accessibility to contracting and procurement activities funded exclusively with local or state dollars. The program is aimed at achieving priorities of inclusiveness, diversity, and economic development.

The SBE Program has been modeled after the Disadvantaged Business Enterprise (DBE) Program by incorporating applicable federal requirements of the DBE program that best fit the SBE Program. These requirements include:

- a. changing the SBE certification period from two to three years;
- b. adding annual “notice of change” certification affidavits;
- c. prompt payment and retention provisions;
- d. and good faith efforts reconsideration.

At its regular meeting in July 2005, the Board approved to extend the current SBE Program Goal of 15% for Fiscal Years 2006 and 2007. The Board also approved a Bi-Annual Small Business Enterprise Program Goal Review beginning Fiscal Year 2007.

Historical Perspective

The United States Supreme Court ruling in *Croson vs. City of Richmond* (1989) requires that government agencies conduct a DBE Predicate Study to establish a firm legal foundation for DBE programs. Such studies analyze the agency’s current and past procurement

practices to determine if remedial action is necessary to better utilize DBE resources.

To satisfy legal requirements, public agencies enacting affirmative action programs must satisfy two requirements:

1. there must be compelling government interest underlying the program. This means that an agency like the LACMTA must have a “strong basis in evidence” for concluding that an ongoing substantive problem exists with discrimination in contracting.
2. its affirmative action program must be narrowly tailored to serve that interest.

A Predicate Study gathers and analyzes two types of data/evidence. The first type involves an analysis of statistical and other evidence, which would identify any statistically significant disparity between the number of DBE/MBE/WBE contractors which are available versus the number which have been utilized.

The second component involves an analysis of interviews and other anecdotal information, which further describes the extent of any discriminatory practices, which may exist in governmental contracting practices.

The Predicate Study conclusion found significant disparities (underutilization) for African American, Hispanic, and Asian firms in both construction and professional services. According to the study, minority owned firms were used 80 percent or less than what would have been expected in the absence of discrimination. Disparity analyses found that African American, Hispanic, and Asian firms were under represented among new business starts in both construction and professional services. Significant disparities were also found in regard to women owned business in professional

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services, and to some degree in construction.

The statistical evidence indicates that businesses owned by minorities and women do not do nearly as well as businesses owned by white males in the geographic areas and industries which we procure construction and professional services. Small businesses owned by minorities and women do less well than small businesses owned by white males, and minority and female business owners earn less than white males with similar demographic profiles.

According to the study, the statistical evidence would provide a compelling governmental interest in continuing affirmative efforts to include D/M/WBEs when corroborated with direct evidence of marketplace discrimination against minority and women business owners in geographic procurement market areas.

On April 3, 1996, the Board adopted the findings of the Predicate Study, which revealed that disparity in contract awards exist for all minority groups and for females in the professional services.

On April 16, 1996, the Secretary of State announced that the California Civil Rights Initiative (CCRI), Proposition 209, qualified for the November 5, 1996 General Election ballot. The CCRI would dismantle and prohibit the implementation of voluntary affirmative action programs that have served to remedy issues of under-utilization of women and minorities in employment.

The CCRI would eliminate affirmative action programs and policies based on race, color, national origin or sex in public employment, contracting and education.

At its April 1996 meeting, the Board directed staff to make recommendations to increase subcontract opportunities,

increase the number of different firms participating in subcontract opportunities, increase the number of prime contract opportunities for small and mid-size firms, increase outreach and technical assistance, and identify the barriers faced by small and mid-sized firms in successfully accessing and competing for contracts.

In November 1996, the voters of California adopted a state constitutional amendment, CCRI. A coalition represented by the ACLU, immediately sued to block CCRI's enforcement, arguing that its broad mandate of equal treatment violates the Fourteenth Amendment's guarantee of equal protection because the end of racial and gender preferences would distort the political process in a racial manner by preventing them from lobbying municipalities and the state legislature for preferences. An injunction was imposed.

On April 8, 1997, the United States 9th Circuit Court of Appeals ruling, upheld the CCRI/Prop 209, prohibits the continued implementation of the State and Local Minority and Women-Owned Business Programs. A 21-day stay was put in place at that time.

On April 14, 1997, the Board authorized staff to implement the race and gender-neutral SBE program for non-federally funded negotiated contracts. The SBE Program was implemented as an alternative to the state and local M/WBE Program.

In October 1999, the Board adopted a motion to bolster efforts at identifying and assisting disadvantaged small businesses to become certified as DBE or SBE. The motion requires staff to hold seminars that help small businesses understand how to negotiate the pre-qualification process and interpret relevant procurement documents. It also requires

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us to rotate the DBE and SBE vendor solicitations to increase the number of businesses that can bid on projects.

The Board also adopted a Voluntary M/WBE Program for State and locally funded competitively bid contracts to comply with state law. This program is strictly voluntary; M/WBE participation is encouraged.

In July 2003, staff recommended revisions to the SBE Program modeling DBE Program requirements and a Small Business Preference Program that will provide for a 5% preference for certified SBE firms during the contract award process for negotiated procurements.

This revision 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.

Last Board Action

July 28, 2005 – Small Business Enterprise Program

The Board approved on consent calendar:

- A. 15% Small Business Enterprise Program Goal for Fiscal Year 2006 and Fiscal Year 2007; and
- B. Bi-Annual Small Business Enterprise Program Goal Review beginning Fiscal Year 2007.

See Related

[Disadvantaged Business Enterprise](#)

[Procurement](#)

[Small Business Technical Participation](#)

[Predicate Study](#)

[Proposition 209 \(California Civil Rights Initiative\)](#)

[Public Utilities Code § 130051.19](#)

[Public Utilities Code § 130239](#)

[California Constitution Article 1 § 31](#)