

REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
9	09/27/10	Open	Action	09/14/10

Subject: Approve Sacramento Regional Transit District Small and Local Business Preference Program Policy Recommendations

ISSUE

Whether or Not to Approve Sacramento Regional Transit District Small and Local Business Preference Program Policy Recommendations.

RECOMMENDED ACTION

Adopt Resolution No. 10-09-____, Approve Sacramento Regional Transit District Small and Local Business Preference Program Policy Recommendations.

FISCAL IMPACT

Implementation of the RT Small and Local Business Preference Program has had negligible fiscal impact. Additional staffing was not required to support implementation and maintenance of the program. When the program was implemented it was uncertain what additional costs to procure goods and services would result from the price preferences available in the program. Only one procurement in 2009 involved an application of the 5% price preference and a resultant additional cost of \$1,920.

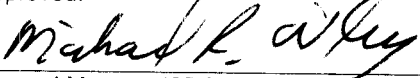
DISCUSSION

On December 8, 2008 the Sacramento Regional Transit District Board approved an RT Small Business (SBE) and Local Business (LB) Preference Program. The following report describes RT's efforts in meeting the program overall annual 25% SBE and 25% Local Business goals adopted by the RT Board.

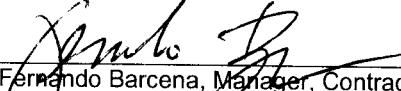
The table below contains procurement related commitment and payment data for calendar year 2009 and 2010 year to date trends. Commitment and payment dollar values related to Original Equipment Manufacturer (OEM) purchases and approved sole source procurements are separated out to show the impact on SBE and LB utilization percentages since these procurements do not provide opportunities to seek competitive quotes from SBEs and LBs. In the table, the percentages for SBE NOT OEM (Line J) shows the utilization rate of SBEs on procurements that were subject to competition and for which procurement staff could proactively outreach to and solicit bids from SBEs. Similarly, the percentages for LOCAL NOT OEM (Line H) shows the utilization rate of LBs on procurements that were subject to competition and for which procurement staff could proactively outreach to and solicit bids from LBs.

The program includes a sheltered market element which requires that to the maximum extent feasible, informal RT procurements will be procured only from certified SBEs and LBs with a focus

Approved:


General Manager/CEO

Presented:


Fernando Barcena, Manager, Contracts & DBE

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on providing bidding opportunities to Micro Businesses. A Micro Business is a small business that, together with affiliates, has an average annual gross receipts of \$3,500,000 or less over the previous three years, or is a small business manufacturer with 25 or fewer employees. The percentages for SBE MICRO is the ratio of SBE Micro dollars over ALL SBE dollars and is a statistic that may reflect the effectiveness of the program’s sheltered market element focus on outreach to Micro Businesses

SACRAMENTO REGIONAL TRANSIT DISTRICT SMALL AND LOCAL BUSINESS ENTERPRISE UTILIZATION STATISTICS 2009-2010

	DESCRIPTION	2010			2009		
A	TOTAL CONTRACTS	\$15,855,060.05			\$92,857,137.82		
B	TOTAL OEM	\$11,304,628.09	71.30%	B/A	\$16,780,058.67	18.07%	B/A
C	NOT OEM	\$4,550,431.96	28.70%	C/A	\$76,077,079.15	81.93%	C/A
D	OEM-NOT LOCAL	\$2,342,277.94	14.77%	D/A	\$4,575,518.94	4.93%	D/A
E	OEM-LOCAL	\$8,962,350.15	56.53%	E/A	\$12,204,539.73	13.14%	E/A
F	LOCAL	\$10,745,848.90	67.78%	F/A	\$25,931,692.17	27.93%	F/A
G	NOT LOCAL	\$5,109,211.15	32.22%	G/A	\$66,925,445.65	72.07%	G/A
H	LOCAL NOT OEM	\$1,783,498.75	39.19%	H/C	\$13,727,152.44	18.04%	H/C
I	ALL SBE	\$811,296.78	5.12%	I/A	\$9,949,859.41	10.72%	I/A
J	SBE NOT OEM		17.83%	I/C		13.08%	I/C
K	SBE MICRO	\$389,771.45	48.04%	K/I	\$1,890,617.91	19.00%	K/I

As shown in the table, RT exceeded the Overall Annual 25% LB goal in 2009 (Line F) and is trending towards exceeding the LB goal in 2010. RT did not meet the Overall Annual 25% SBE goal in 2009 (Line J), but is trending upward in 2010 on SBE utilization. Micro SBE utilization is also trending upward in 2010 (Line K).

Attachment 1 included with this report provides the same statistical analysis for the time period 2007-2010 YTD. The data for 2007-2010 was analyzed to determine the impacts before and after adoption of the program in December 2008.

Other successful program implementation efforts include RT’s continued DBE, SBE and LB outreach activity, including conducting and participating in DBE and Small Business development expos, conferences, and training workshops in partnership with the local ethnic chambers, the Federal Technology Center, and other local government agencies.

POLICY RECOMMENDATIONS

Staff offers the following policy recommendations based on experience implementing the program. These suggested policy recommendations have been incorporated into the program policy included as Exhibit A for adoption by Board resolution.

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The policy included a Sunset Clause that was incorporated because of uncertainties regarding the fiscal impacts of the price preference provisions of the program. RT's experience has been that the price preferences have had negligible fiscal impact and therefore, staff recommends that the sunset clause be deleted from the program policy keeping the program policy in effect until such time as the Board may elect to rescind it. Based on the Board's action to adopt the policy effective January 1, 2009, the program expired on January 1, 2010; however the application of the policy since January 1, 2010 has not been inconsistent with state and federal procurement codes. In particular, there has been no bid in 2010 in which the bidder's prices resulted in the application of price preferences.

In regards to Local Business preferences, the program policy included as Exhibit A has been revised to incorporate language reviewed by the Board in December 2008 that LB preferences will only be applied to: (1) informal procurements; and (2) service contracts over \$50,000. For State and Locally-funded formal procurements for services, a 10% point preference will be applied.

In regards to SBE goals applied to federally funded procurements, the policy has been revised to state that SBE goals on federally funded procurements will be set on a project-by-project basis. Furthermore, project SBE goals on federally funded procurements will be based on an analysis of subcontracting opportunities available in the project and an analysis of the availability of SBEs that perform the type of work included in the project.

The average annual gross receipts criteria for Microbusiness eligibility has been changed by the State of California from \$2,750,000 or less over the previous three years to \$3,500,000 or less over the previous three years. The definition of Microbusiness in the RT program policy has been changed accordingly.

Staff does not recommend the establishment of an RT SBE Program Advisory group at this time, due to a lack of procurement staff resources to support the administrative burden necessary to conduct regular meetings of such a body. Furthermore, the RT Small Business (SBE) and Local Business (LB) Preference Program has been successfully implemented without an advisory group.

RECOMMENDATION

Staff recommends the Board adopt a resolution approving the proposed revisions to the RT Small and Local Business Preference Program set out in Exhibit A to the resolution.

SACRAMENTO REGIONAL TRANSIT DISTRICT SMALL AND LOCAL BUSINESS ENTERPRISE UTILIZATION STATISTICS 2007-2010

	DESCRIPTION	2007-2010	
A	TOTAL CONTRACTS	\$237,525,510.56	
B	TOTAL OEM	\$89,144,463.87	37.53% B/A
C	NOT OEM	\$148,381,046.69	62.47% C/A
D	OEM-NOT LOCAL	\$54,888,704.08	23.11% D/A
E	OEM-LOCAL	\$34,255,759.79	14.42% E/A
F	LOCAL	\$96,030,813.48	40.43% F/A
G	NOT LOCAL	\$141,494,697.08	59.57% G/A
H	LOCAL NOT OEM	\$61,775,053.69	41.63% H/C
I	ALL SBE	\$24,626,010.84	10.37% I/A
J	SBE NOT OEM		16.60% I/C
K	SBE MICRO	\$6,646,249.98	26.99% K/I

	DESCRIPTION	2009				2008				2007			
A	TOTAL CONTRACTS	\$15,855,060.05		\$92,857,137.82		\$102,283,465.74		\$26,529,846.95					
B	TOTAL OEM	\$11,304,628.09	71.30% B/A	\$16,780,058.67	18.07% B/A	\$56,605,691.75	55.34% B/A	\$4,454,085.36	16.79% B/A				
C	NOT OEM	\$4,550,431.96	28.70% C/A	\$76,077,079.15	81.93% C/A	\$45,677,773.99	44.66% C/A	\$22,075,761.59	83.21% C/A				
D	OEM-NOT LOCAL	\$2,342,277.94	14.77% D/A	\$4,575,518.94	4.93% D/A	\$43,984,471.11	43.00% D/A	\$3,986,436.09	15.03% D/A				
E	OEM-LOCAL	\$8,962,350.15	56.53% E/A	\$12,204,539.73	13.14% E/A	\$12,621,220.64	12.34% E/A	\$467,649.27	1.76% E/A				
F	LOCAL	\$10,745,848.90	67.78% F/A	\$25,931,692.17	27.93% F/A	\$45,010,778.31	44.01% F/A	\$14,342,494.10	54.06% F/A				
G	NOT LOCAL	\$5,109,211.15	32.22% G/A	\$66,925,445.65	72.07% G/A	\$57,272,687.43	55.99% G/A	\$12,187,352.85	45.94% G/A				
H	LOCAL NOT OEM	\$1,783,498.75	39.19% H/C	\$13,727,152.44	18.04% H/C	\$32,389,557.67	70.91% H/C	\$13,874,844.83	62.85% H/C				
I	ALL SBE	\$811,296.78	5.12% I/A	\$9,949,859.41	10.72% I/A	\$11,285,499.92	11.03% I/A	\$2,579,354.73	9.72% I/A				
J	SBE NOT OEM		17.83% I/C		13.08% I/C		24.71% I/C		11.68% I/C				
K	SBE MICRO	\$389,771.45	48.04% K/I	\$1,890,617.91	19.00% K/I	\$3,538,606.00	31.36% K/I	\$827,254.62	32.07% K/I				

Legend:

OEM - Original Equipment Manufacturer (or single source)

LOCAL - The Greater Sacramento Region. Counties of Sacramento, El Dorado, Placer, Sutter, Yolo and Yuba.

TOTAL OEM - Procured directly from the original manufacturer or supplier of the item to be replaced, or from an approved sole source.

RESOLUTION NO. 10-09- 0124

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

September 27, 2010

APPROVE SACRAMENTO REGIONAL TRANSIT DISTRICT SMALL AND LOCAL BUSINESS PREFERENCE PROGRAM POLICY RECOMMENDATIONS

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Sacramento Regional Transit District Small and Local Business Preference Program, as set forth in Exhibit A, is hereby approved.



STEVE MILLER, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary


By: 
Cindy Brooks, Assistant Secretary

Exhibit A

**SACRAMENTO REGIONAL TRANSIT DISTRICT
SMALL AND LOCAL BUSINESS PREFERENCE PROGRAM**

Revised September 2010

**SACRAMENTO REGIONAL TRANSIT DISTRICT
SMALL AND LOCAL BUSINESS PREFERENCE PROGRAM**

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**SACRAMENTO REGIONAL TRANSIT DISTRICT
SMALL AND LOCAL BUSINESS PREFERENCE PROGRAM**

I. OBJECTIVES/POLICY

It is the policy of Sacramento Regional Transit District (RT), to provide maximum practical opportunities for Small Businesses and Local Businesses to supply the goods and services used in RT's operations, and to ensure that Small Businesses and Local Businesses, as defined in this program, have an opportunity to receive and participate in RT contracts. Special emphasis will be placed on subcontracting opportunities. RT believes that the establishment of this Small and Local Business Preference Program will help foster competition in the marketplace and result in a greater number of qualified vendors ready and willing to participate in RT Solicitations.

To help remove barriers to the participation of Small Businesses in RT contracts, and to assist the development of firms that can compete successfully in the marketplace outside RT's Small and Local Business Preference Program, RT will offer incentives for Small Businesses and Local Businesses to participate in RT's competitive bid process. Prime Contractors that are Non-Small Businesses may also participate in the RT Small and Local Business Preference Program and receive incentives by subcontracting with Small Businesses.

The RT Procurement Division is responsible for implementing all aspects of RT's Small and Local Business Preference Program. As part of this policy, the RT Procurement Division will continue to identify qualified Small Business and Local Business firms (as defined in this program) and encourage them to establish good business relationships with RT. Small Businesses and Local Businesses will be afforded a reasonable opportunity to become familiar with RT's purchasing requirements and procedures and to market their goods and services to RT. RT operational business units will coordinate with RT's Procurement Division to identify business and contracting opportunities suitable for performance by Small and Local Businesses. These efforts will be accomplished in consonance with existing RT procurement policies and applicable federal and state laws and regulations. RT has adopted a 25% overall annual goal for Small Business participation.

RT has an interest in a strong local economy for at least two reasons (1) more local businesses mean more local employees, thereby promoting transit patronage; and (2) RT is a beneficiary of locally-generated tax revenues. RT has adopted a 25% overall annual goal for Local Business participation.

This policy will be circulated to all RT personnel and to members of the community that perform or are interested in performing work on RT contracts.

If you have any questions or would like further information regarding this RT Small and Local Business Preference Program, please contact the RT Small Business Liaison Officer (SBLO) by telephone at (916) 556-0151.

Date: _____

General Manager/CEO

II. NONDISCRIMINATION

No person will be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any Contract covered by this RT Small and Local Business Preference Program on the basis of race, color, sex, or national origin.

In administering this Small and Local Business Preference Program, RT will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the Small and Local Business Preference Program with respect to individuals of a particular race, color, sex, or national origin.

III. DEFINITION OF TERMS

The terms used in this RT Small and Local Business Preference Program are defined as follows:

- a. **A/E Contract** means any Contract to be awarded by RT for the performance of architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services. A/E Contracts are not subject to either the good faith efforts requirements or the point preferences described in this document.
- b. **Bid** means an offer made in response to a Solicitation for Public Works, Supplies, or Non-Professional Services.
- c. **Business** means an entity organized for profit including, but not limited to, an individual, sole proprietorship, partnership, limited liability partnership, corporation, limited liability company, joint venture, association or cooperative.
- d. **Commercially Useful Function** means:
 1. The contractor or subcontractor is responsible for the execution of a distinct element of the work of the Contract; carrying out its obligation by actually performing, managing or supervising the work involved; and performing work that is normal for its business services and functions; and
 2. The contractor or subcontractor is not further subcontracting a greater portion of the work than would be expected by normal industry practices.
 3. The contractor or subcontractor is responsible, with respect to materials and supplies provided on the subcontract, for negotiating price, determining quality and quantity, ordering the material, installing (when applicable), and paying for the material itself.
 4. A contractor or subcontractor will not be considered as performing a commercially useful function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to achieve the appearance of Small Business participation.
- e. **Contract** means a written agreement, including, without limitation, letter of agreement, memorandum of understanding, cooperative purchase agreement, contract, contract change order, purchase order, contract work order, or an amendment or supplemental agreement to any of the foregoing.
- f. **Local Business** means a business located within Sacramento, El Dorado, Placer, Sutter, Yolo or Yuba county.

- g. **Manufacturer** means a Business as defined in Government Code Section 14837.
- h. **Microbusiness** means a small business that, together with affiliates, has average annual gross receipts of \$3,500,000 or less over the previous three years, as adjusted pursuant to Government Code Section 14837(d)(2), or is a Manufacturer, as defined in Government Code Section 14837, with 25 or fewer employees.
- i. **Net Bid or Proposal Price** means the verified price of a Bid or Proposal, after all adjustments described in the Solicitation have been made.
- j. **Non-Professional Services** means and includes services of a nonprofessional character of any type, description, or variety, including, without limitation, landscape maintenance, janitorial, repair of office machines and equipment, and security guard services.
- k. **Non-Small Business** means a responsible bidder or proposer that is not certified as a Small Business.
- l. **Prime Contractor** means the legal entity with which RT executes a Contract.
- m. **Professional Services** means and includes professional services of any type or variety, including, without limitations, services rendered by accountants, actuaries, appraisers, architects, attorneys, consultants, doctors, and engineers.
- n. **Proposal** means a document submitted in response to an RFP or RFQ.
- o. **Public Agency** means any state, state agency, county, city, city and county, district, public authority, public agency, school district, any other political subdivision or public corporation of a state.
- p. **Public Works** means a project for the erection, construction, alteration, repair or improvements of transit works or transit facilities.
- q. **Request for Proposal (RFP)** means a solicitation for the submittal of proposals to perform Professional Services.
- r. **Request for Qualifications (RFQ)** means a solicitation for submittal of qualifications to perform Professional Services.
- s. **Responsive Bid or Proposal** means a Bid or Proposal that complies without material deviation with all specifications, requirements, and the terms and conditions of the solicitation.
- t. **Small Business** means a business that has been certified as a small business by the California Department of General Services (DGS) or any other Public Agency that certifies small businesses using substantially the same criteria. For the purposes of this RT Small and Local Business Preference Program policy, whenever the term Small Business is used, it means certified small business and includes Microbusinesses certified by the DGS.
- u. **Solicitation** means the notification to prospective bidders and proposers that RT wishes to receive Bids or Proposals for furnishing goods, services, information technology, or construction.
- v. **Supplies** means and includes personal property, goods, equipment and materials, including, without limitations, materials required for the maintenance or repair of any property of RT or of any other person or Public Agency for which it is the duty of RT to maintain and repair.

IV. FEDERALLY FUNDED SOLICITATIONS

For federally-funded Solicitations (other than A/E Contracts and federally-funded Solicitations for which there is an established Disadvantaged Business Enterprise (DBE) goal), no point or price preference will be applied for Small Business participation. Instead, RT will establish a Small Business participation goal for federally-funded Solicitations. SBE participation goals up to 25% will be set on a project-by-project basis. Project specific SBE goals on federally funded procurements will be established based on an analysis of subcontracting opportunities in the project and an analysis of the availability of SBEs that perform the type of work to be performed in the project. To be deemed "responsible," all proposers or bidders must demonstrate either: (1) that they have met the Small Business participation goal; or (2) that despite documented good faith efforts to include Small Businesses, the goal could not be met.

Subject to compliance with the following requirements, Small and Non-Small Business bidders will be determined to be responsible and eligible for award by either: (1) meeting the established Small Business goal set for the project or (2) making a documented good faith effort to meet the Small Business goal. The bidder or proposer:

- a. Has included in its Bid or Proposal a notification to RT that it either (i) is a certified Small Business or (ii) commits to subcontract with one or more Small Business(es) in an amount of its net Bid or Proposal price sufficient to meet the project specific SBE goal set for the project; or
- b. Submits, upon request, documentation of a verifiable good faith effort to meet the project Small Business goal, and
- c. Has submitted a timely, Responsive Bid or Proposal; and
- d. Submits a list of the Small Business(es) it commits to subcontract with for a Commercially Useful Function in the performance of the Contract. The list of subcontractors must include their name, address, phone number, a description of the work to be performed, and the dollar amount or percentage (as specified in the Solicitation) per subcontractor, and
- e. Is otherwise determined to be a responsible bidder or proposer.

V. STATE AND LOCALLY FUNDED SOLICITATIONS REQUIRING AWARD TO THE LOWEST RESPONSIBLE BIDDER UNDER STATE LAW

A. Basis for Preference

The RT Small and Local Business Preference Program price and point preferences will be applied to all State-and Locally-funded Solicitations over \$5,000 for Public Works and over \$40,000 for Supplies. Preferences will be applied as set out in this Section V. as permitted under California Public Contract Code Section 2002, which states:

- (a) Notwithstanding any other provision of law requiring a local agency to award contracts to the lowest responsible bidder, any local agency may do any of the following in facilitating contract awards to small businesses:
 - (1) Provide for a small business preference in construction, the procurement of goods, or the delivery of services where responsibility and quality are equal. The preference to a small business shall be up to 5% of the lowest responsible bidder meeting specifications.

- (2) Establish a subcontracting participation goal for small businesses on contracts and grant a preference, up to a maximum of 5%, to those bidders who meet the goal.
 - (3) Require bidders to make good faith efforts to meet a subcontracting participation goal for small business contracts. Bidders that fail to meet the goal shall demonstrate that they made good faith efforts to utilize small business contractors.
- (b) The term “small business,” as used in this section, shall be defined by each local agency.

B. Application of the Small Business and Non-Small Business Subcontractor Preferences

In evaluating a Bid, RT will determine whether a Small Business has submitted the lowest-priced, Responsive Bid. If a Small Business has not submitted the lowest-priced, Responsive Bid, RT will, subject to the following qualifications, provide a 5% price preference in the Bid evaluation to all Small Businesses and to Non-Small Businesses that commit to meeting a 25% Small Business subcontracting requirement. The preferences will be applied when a Small Business or Non-Small Business:

1. Has included in its Bid a certification to RT that it is a Small Business; or
2. Has included in its Bid a certification to RT that it commits to subcontract at least 25% of its Net Bid Price with one or more Small Business(es) and submits a list of the Small Business(es) it commits to subcontract with for a Commercially Useful Function in the performance of the Contract. The list of subcontractors must include their name, address, phone number, a description of the work to be performed, and the dollar amount or percentage (as specified in the Solicitation) per subcontractor; and
3. Has submitted a timely, Responsive Bid; and
4. Is otherwise determined to be a responsible bidder.

C. Computing the Small Business and the Non-Small Business Subcontractor Preferences

1. The 5% Small Business or Non-Small Business subcontractor price preference will be used for Bid evaluation purposes when either (i) there is at least one Small Business competing or (ii) there is at least one Non-Small Business competing that is subcontracting at least 25% of its Net Bid Price to one or more Small Businesses, and award of the Contract will be made to the lowest responsive, responsible bidder. The preference will be computed and applied as follows:
 - i. The lowest, responsive and responsible Bid will be multiplied by 5%. The result of this calculation is the preference amount (Lowest Bid x .05 = Preference Amount).
 - ii. The preference amount is subtracted from the Bid amount of any Small Business and any Non-Small Business that has committed to meet the 25% Small Business subcontracting requirement.
 - iii. The Bids are re-ranked after applying the preference and the new lowest responsive and responsible bidder is determined

2. If, after application of the Small Business preference to the Bid of a Small Business, or Non-Small Business meeting the 25% subcontracting requirement, that Bid is equal to the lowest-priced, Responsive Bid from a responsible Non-Small Business not entitled to a preference, or, for Most Qualified Proposer Solicitations, equal to the highest-scored Proposal offered by a responsible Non-Small Business not entitled to a preference, as applicable, the Contract will be awarded to the Small Business for the amount of its Bid, unless RT has reserved the right to negotiate with multiple bidders/proposers, in which case RT may negotiate with both bidders.
3. In Solicitations where RT has reserved the right to award by line item, or make multiple awards, the Small Business preference will be applied to maximize the participation of Small Businesses.

VI. STATE AND LOCALLY FUNDED SOLICITATIONS FOR PROFESSIONAL AND NON-PROFESSIONAL SERVICES OVER \$50,000 (OTHER THAN A/E CONTRACTS)

A. Application of the Small Business and Non-Small Business Subcontractor Preferences

RT has two separate bases on which it may award competitively solicited Contracts for Services: (1) to the lowest responsive and responsible bidder (for an Invitation to Bid); and (2) to the most qualified proposer. For Contracts in the former category, a price preference will be applied. For Contracts in the latter category, a point preference will be applied.

In evaluating a Bid or Proposal, RT will determine whether a Small Business has submitted the lowest-priced, Responsive Bid, or, for an RFP or RFQ, the highest-scoring Proposal. If a Small Business has not submitted the lowest-priced, Responsive Bid or highest-scoring Proposal, RT will, subject to the following qualifications, provide a 10% point or price preference in the Bid or Proposal evaluation to all Small Businesses and to Non-Small Businesses that commit to meeting a 25% Small Business subcontracting requirement. The preferences will be applied when a Small Business or Non-Small Business:

1. Has included in its Bid a certification to RT that it is a Small Business; or
2. Has included in its Bid a certification to RT that it commits to subcontract at least 25% of its Net Bid Price with one or more Small Business(es) and submits a list of the Small Business(es) it commits to subcontract with for a Commercially Useful Function in the performance of the Contract. The list of subcontractors must include their name, address, phone number, a description of the work to be performed, and the dollar amount or percentage (as specified in the Solicitation) per subcontractor; and
3. Has submitted a timely, Responsive Bid; and
4. Is otherwise determined to be a responsible bidder.

B. **Computing the Small Business and the Non-Small Business Subcontractor Preferences**

1. **Awards Made to the Lowest Responsive, Responsible Bidder**

- a. The 10% Small Business or Non-Small Business subcontractor price preference will be used for Bid evaluation purposes when either (i) there is at least one Small Business competing or (ii) there is at least one Non-Small Business competing that is subcontracting at least 25% of its Net Bid Price to one or more Small Businesses, and award of the Contract will be made to the lowest responsive, responsible bidder. The preference will be computed and applied as follows:
 - i. The lowest, responsive and responsible Bid will be multiplied by 10%. The result of this calculation is the preference amount ($\text{Lowest Bid} \times .10 = \text{Preference Amount}$).
 - ii. The preference amount is subtracted from the Bid amount of any Small Business and any Non-Small Business that has committed to met the 25% Small Business subcontracting requirement.
 - iii. The Bids are re-ranked after applying the preference and the new lowest responsive and responsible bidder is determined

2. **Awards Made to Most-Qualified Proposer**

- a. The 10% Small Business or Non-Small Business subcontractor point preference will be used for Proposal evaluation purposes when either: (i) there is at least one Small Business competing or (ii) there is at least one Non-Small Business competing that is subcontracting at least 25% of its Net Proposal Price to one or more Small Businesses and award of the Contract is to be made to the highest-scored Responsive Proposal submitted by a responsible Proposer following an evaluation process that weighs multiple factors, including price. The preference will be computed and applied as follows:
 1. RT will specify the minimum number of points, if any, that a Proposal must receive in order to be deemed responsive and of acceptable quality. If a Small Business or Non-Small Business meeting the 25% subcontracting requirement does not achieve the specified minimum number of points, it will not be entitled to the 10% point preference.
 2. The score of the highest-scored Responsive Proposal will be multiplied by 10%. The result of the calculation is the point preference amount ($\text{Highest Score} \times .10 = \text{Point Preference Amount}$).
 3. The point preference will be added to the score of any responsive Small Business with the required minimum number of points and any Non-Small Business meeting the 25% subcontracting requirement and receiving the required minimum of points.
 4. The Proposals will then be re-ranked using the adjusted scores and the highest-scoring Proposal (or Proposals, if specified in the RFP or RFQ) will be selected for negotiation and/or award.

3. If, after application of the Small Business preference to the Bid or Proposal of a Small Business, or Non-Small Business meeting the 25% subcontracting requirement, that Bid or Proposal is equal to the lowest-priced, Responsive Bid or, for Most-Qualified Proposer Solicitations, equal to the highest-scoring Proposal from a responsible Non-Small Business not entitled to a preference, the Contract will be awarded to the Small Business for the amount of its Bid or Proposal, unless RT has reserved the right to negotiate with multiple bidders/proposers, in which case RT may negotiate with both bidders/proposers.
4. In Solicitations where RT has reserved the right to award by line item, or make multiple awards, the Small Business preference will be applied to maximize the participation of Small Businesses.
5. The Small Business point preference will be added to any Local Business point preference that may also be available in the solicitation and the computation of the point preference amount will be adjusted accordingly.

D. **Application of the Local Business and the Non-Local Business Subcontractor Preferences**

For state- and locally-funded procurements for services that require formal solicitation under RT's procurement ordinance (97-08-2), as amended, the proposed RT Small and Local Business Preference Program will include 10% point preference for Local Business status.

For competitively solicited Contracts for Services awarded to the most qualified proposer, a point preference will be applied.

In evaluating a Proposal, RT will determine whether a Local Business has submitted the highest-scoring Proposal. If a Local Business has not submitted the highest-scoring Proposal, RT will, subject to the following qualifications, provide a 10% point preference in the Proposal evaluation to all Local Businesses and to Non-Local Businesses that commit to meeting a 25% Local Business subcontracting requirement. The preferences will be applied when a Local Business or Non-Local Business:

1. Has included in its Proposal a certification to RT that it is a Local Business; or
2. Has included in its Proposal a certification to RT that it commits to subcontract at least 25% of its Net Proposal Price with one or more Local Business(es) and submits a list of the Local Business(es) it commits to subcontract with for a Commercially Useful Function in the performance of the Contract. The list of subcontractors must include their name, address, phone number, a description of the work to be performed, and the dollar amount or percentage (as specified in the Solicitation) per subcontractor; and
3. Has submitted a timely, Responsive Proposal; and
4. Is otherwise determined to be a responsible Proposer.

E. **Computing the Local Business and the Non-Local Business Subcontractor Preferences**

1. **Awards Made to Most-Qualified Proposer**

a. The 10% Local Business or Non-Local Business subcontractor point preference will be used for Proposal evaluation purposes when either: (i) there is at least one Local Business competing or (ii) there is at least one Non-Local Business competing that is subcontracting at least 25% of its Net Proposal Price to one or more Local Businesses and award of the Contract is to be made to the highest-scored Responsive Proposal submitted by a responsible Proposer following an evaluation process that weighs multiple factors, including price. The preference will be computed and applied as follows:

1. RT will specify the minimum number of points, if any, that a Proposal must receive in order to be deemed responsive and of acceptable quality. If a Local Business or Non-Local Business meeting the 25% subcontracting requirement does not achieve the specified minimum number of points, it will not be entitled to the 10% point preference.
2. The score of the highest-scored Responsive Proposal will be multiplied by 10%. The result of the calculation is the point preference amount (Highest Score x .10 = Point Preference Amount).
3. The point preference will be added to the score of any responsive Local Business with the required minimum number of points and any Non-Local Business meeting the 25% subcontracting requirement and receiving the required minimum of points.
4. The Proposals will then be re-ranked using the adjusted scores and the highest-scoring Proposal (or Proposals, if specified in the RFP or RFQ) will be selected for negotiation and/or award.

3. If, after application of the Local Business preference to the Proposal of a Local Business, or Non-Local Business meeting the 25% subcontracting requirement, that Proposal for Most Qualified Proposer Solicitations, is equal to the highest-scoring Proposal from a responsible Non-Local Business not entitled to a preference, the Contract will be awarded to the Local Business for the amount of its Proposal, unless RT has reserved the right to negotiate with multiple bidders/proposers, in which case RT may negotiate with both bidders/proposers.
4. In Solicitations where RT has reserved the right to award by line item, or make multiple awards, the Local Business preference will be applied to maximize the participation of Local Businesses.
5. The Local Business point preference will be added to any Small Business point preference that may also be available in the solicitation and the computation of the point preference amount will be adjusted accordingly.

VII. STATE AND LOCALLY FUNDED INFORMAL SOLICITATIONS

To the maximum extent feasible, the following state and locally-funded RT Contracts will be awarded only to certified Small and Local Businesses as further described below: Public Works Contracts \$5,000 and under; Contracts for Supplies \$40,000 and under, and Professional and Non-Professional Services Contracts (other than A/E Contracts) \$50,000 and under; however, RT may obtain OEM (Original Equipment Manufacturer) items from Non-Small Businesses and need not notify or award to a Small Business if no certified Small Businesses have been identified for the Public Work, Supplies or Professional or Non-Professional Services.

Informal Solicitations will be conducted in the following manner:

- Step 1: Bids will first be sought from Local Businesses that are also certified as Microbusinesses
- Step 2: If no qualified bidders are identified in Step 1, bids will then be sought from Local Businesses that are also certified as Small Businesses.
- Step 3: If no qualified bidders are identified in Step 2, bids will then be sought from businesses that are certified as Microbusinesses.
- Step 4: If no qualified bidders are identified in Step 3, bids will then be sought from businesses that are certified as Small Businesses.
- Step 5: If no qualified bidders are identified in Step 4, bids will then be sought only from businesses that are Local Businesses.
- Step 6: If no qualified bidders are identified in Step 5, bids will then be sought from any other businesses that may be able to meet the requirements of the Solicitation.

If competition is sought for informal Solicitation and the competitors include either Small Businesses and Non-Small businesses, or Local and Non-Local businesses, a point or price preference will be applied in accordance with the methodology set forth in Sections V and VI.

VII. RT SMALL BUSINESS CERTIFICATION PROCEDURES

RT will not certify Small Businesses but will accept Small Business or Microbusiness certifications of the DGS and any Public Agency whose Small Business certification criteria are substantially similar to the DGS criteria, except that the DGS requirement that the principal office be located in California will not be applied to Small Businesses certified by another Public Agency.

Vendors can apply for California Department of General Services Small Business certification on line at www.pd.dgs.ca.gov/smbus/getcertified.htm and may contact California Department of General Services for Small Business certification assistance by email at SBDVBE Cert@dgs.ca.gov, by phone at (916) 375-4940, or by fax at (916) 375-4950.

RT will ensure that only firms certified as eligible Small Businesses participate in the RT Small and Local Business Preference Program.

VIII. ELIGIBILITY FOR CERTIFICATION AS A SMALL BUSINESS

To qualify for the RT Small and Local Business Preference Program, a business must be certified as a Small Business or Microbusiness. The criteria and requirements for Small Business or Microbusiness certification by the California Department of General Services (DGS) can be found online at: <http://www.pd.dgs.ca.gov/smbus/sbregs.htm> and may be obtained from RT's Small Business Liaison Officer.

The following is a brief summary of the DGS certification criteria for Small Businesses:

- Must be independently owned and operated;
- Cannot be dominant in its field of operation;
- Must have its principal office located in California;
- Must have its owners (or officers in the case of a corporation) domiciled in California; and
- Together with its affiliates, be either: a business with 100 or fewer employees, and an average annual gross receipts of \$12 million or less over the previous three tax years, or a Manufacturer with 100 or fewer employees.

When considering Small Business or Microbusiness certifications from other public agencies, RT will not apply the DGS geographical limitations.

IX. RESPONSIBILITIES OF THE SMALL BUSINESS

To qualify for the RT Small and Local Business Preference Program, the vendor must maintain its certification as a Small Business or Microbusiness by the California Department of General Services (DGS) or any other Public Agency that has certified its Small Business status. The DGS guidelines for obtaining and maintaining certification are found on-line at: <http://www.pd.dgs.ca.gov/smbus/sbregs.htm> or may be obtained from the RT Small Business Liaison Officer.

Appeal of a certification denial, decertification, or the imposition of sanctions is a matter strictly between the business and DGS or the Public Agency has certified or declined to certify the business, and a business must make any appeals directly to the certifying agency.

Any Small Business contracting with RT must notify RT promptly upon receiving a notice of decertification or the imposition of sanctions.

X. SMALL BUSINESS DIRECTORY

The RT Procurement Division maintains an RT Vendor Directory database. The database will be modified to allow for the downloading of the DGS Small Business Directory to the RT database. To assist RT in identifying all DGS-certified firms eligible to participate as Small Businesses in RT's Small and Local Business Preference Program, the RT Vendor Directory database will be regularly updated to download the DGS Small Business Directory.

In addition, a Small Business certified by another Public Agency may submit a written request to the RT Small Business Liaison Officer to be included in the RT Vendor Directory database as a certified Small Business.

RT will use the Database as a resource in developing overall and Contract-specific Small Business participation goals and conducting outreach and other activities to promote Small Business participation in RT Contracts. The database will not in any way prequalify the identified Small Business firms with respect to licensing, bondability, competence or financial responsibility.

XI. SMALL BUSINESS DEVELOPMENT PROGRAMS

RT will provide race-neutral and gender-neutral efforts to promote Small Businesses in RT contracting opportunities through business development programs. Each year, the Small Business Liaison Officer will facilitate at least two major Small Business events. Small Businesses will be invited to meet with RT Procurement and Project Management staff, and learn about RT's contracting opportunities. RT staff will have an opportunity to become acquainted with qualified Small Business owners who are interested in supplying services and products to RT. In addition, the Small Business Liaison Officer will provide information on Small Business certification and RT Small and Local Business Preference Program requirements and procedures. These events will include explaining how to do business with RT and exploring best business practices that may be used to market Small Businesses at RT.

In addition, the RT Small Business Liaison Officer will host a monthly informal luncheon for Small Businesses to provide timely information regarding RT's current procurement plans, and to provide ongoing information relating to the development and implementation of RT's Small and Local Business Preference Program. Information to be distributed at these informal monthly luncheons will include a list of upcoming procurements showing details of the Professional or Non-Professional Services or Supplies to be purchased, RT staff contact names and phone numbers, and tentative dates for planned Solicitation time periods. RT Procurement and Project Management staff will participate in these monthly business luncheons to be available to respond to any questions and to network with Small Businesses interested in RT's contracting opportunities.

XII. MITIGATING UNDUE BURDEN ON NON-SMALL BUSINESSES

In order to mitigate undue burden on Non-Small Businesses, RT will set Small Business Contract goals on federally-funded procurements on a project-by-project basis using systematic analysis of the subcontracting opportunities in each federally-funded RT Contract and after verifying the relative availability of Small Businesses in the specific business categories required under each project.

RT will verify relative availability of Small Businesses on a project-by-project basis by first identifying the appropriate business/work category codes required in each project for which a Small Business goal is being considered. RT will perform a search of Small Business firms that are certified to perform work in the applicable Standard Industrial Class (SIC) codes. RT will search for Small Business firms in all available sources and databases, including RT's Vendor Directory Database. A reasonable project Small Business goal will be set according to the results of an availability analysis.

On a project-by-project basis, RT will further mitigate undue burden on Non-Small Businesses by: performing extensive outreach; providing technical assistance to both Small Businesses and Non-Small Businesses to meet project-specific goals; and advertising RT projects in newspapers of general circulation, trade publications, website postings and direct mail-outs. In addition, RT will continue its practice of disseminating to all interested bidders/proposers project-specific lists of qualified Small Businesses available to perform on RT projects.

XIII. METHODS FOR INCREASING SMALL BUSINESS PARTICIPATION ON RT CONTRACTS

RT will use the following strategies to facilitate Small Business participation in RT procurements:

1. Debundling large Contracts in smaller Contracts when feasible, if doing so would make Contracts more accessible to Small Businesses, and would not impose significant additional cost, delay or risk to RT;
2. Identifying components of the work that have subcontracting opportunities and identifying potential certified Small Businesses to participate as subcontractors when it is infeasible to debundle large Contracts into smaller separate Contracts. Prime contractors will be encouraged, in preparing their bids, to consider using subcontractors for components of the works, if there is a known supply of ready, willing, and able subcontractors, including Small Business subcontractors.
3. Assisting Small Businesses in overcoming limitations in bonding and financing;
4. Providing technical assistance in orienting Small Businesses to public contract procedures, use of the Internet, and RT's contracting activities;
5. Providing outreach and communications programs on Contract procedures and Contract opportunities to ensure the inclusion of Small Businesses; and
6. Providing business development assistance.

XIV. SUBSTITUTION OF A SMALL BUSINESS SUBCONTRACTOR

- a. After award of a Contract based in part on the application of a point or price preference or, for federally-funded Solicitations, the meeting of a subcontracting goal or demonstration of good faith efforts, the Prime Contractor must use the Small Business subcontractor(s) and/or supplier(s) proposed in the Bid or Proposal to RT unless a substitution is requested in writing to RT and RT approves the substitution in writing prior to the commencement of any work. The substitution request must include at least the following:
 1. An explanation of the reason for the substitution.
 2. A description of the work to be performed, identified both as a task(s) and as a dollar amount or percentage of the overall Contract that the substituted business will perform. The substituted business(es), if approved, will be required to perform a Commercially Useful Function in the Contract.

3. The Prime Contractor must substitute a Small Business with another Small Business. However, if a substitute Small Business is not available, the Prime Contractor must provide a written justification explaining the steps that were taken to try to acquire a new Small Business subcontractor and how that portion of the Contract will be fulfilled.
- b. The request for substitution of a Small Business, and RT's approval or disapproval thereof, cannot be used as an excuse for noncompliance with any other provision of law, including but not limited to, the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et seq.) or any other Contract requirements relating to substitution of subcontractors.
- c. If a Prime Contractor requests substitution of its subcontractor(s)/supplier(s) by providing a written request to RT in accordance with this Section, RT may consent to the substitution in any of the situations set forth in Public Contract Code Section 4107.
- d. Prior to approval of the Prime Contractor's request for the substitution, RT, or its duly authorized officer, will provide written notice to the listed subcontractor of the Prime Contractor's request to substitute and the reasons for the request to substitute. The notice will be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor will have 5 working days after the receipt of the notice to submit written objections to the substitution to RT. If the listed subcontractor fails to file a written objection, the subcontractor will be deemed to have consented to the substitution. If written objections are filed, RT will give written notice of at least 5 working days to the listed subcontractor of a hearing by RT on the Prime Contractor's request for substitution.
- e. Failure of the Prime Contractor to subcontract with the Small Businesses listed on its Bid or Proposal, or follow these substitution rules may be grounds for imposition of sanctions pursuant to Government Code Section 14842.5.

XV. SMALL BUSINESS LIAISON OFFICER (SBLO)

RT will designate an individual as the RT Small Business Liaison Officer:

The SBLO is responsible for implementing all aspects of the RT Small and Local Business Preference Program. The SBLO has direct, independent access to the General Manager/CEO concerning RT Small and Local Business Preference Program matters.

The SBLO is responsible for developing, implementing and monitoring the RT Small and Local Business Preference Program, in coordination other appropriate officials. Duties and responsibilities include the following:

1. Reviews third-party Contracts and purchase requisitions for compliance with this Program.
2. Ensures that bid notices and requests for proposals are available to Small Businesses in a timely manner.
3. Identifies Contracts and Solicitations so that Small Business goals are included in Solicitations and monitors results.
4. Participates in pre-bid meetings.
5. Advises the General Manager/CEO and Board of Directors on Small Business matters and achievement.

6. Provides Small Businesses with information and assistance in preparing bids, obtaining bonding and insurance.
7. Plans and participates in Small Business training seminars.
8. Provides outreach to Small Businesses and community organizations to advise them of contracting opportunities with RT.
9. Maintains RT's updated Vendor Directory Database, including certified Small Business listings.

Duties of Division Heads, Department Heads, and Procurement Staff

All Officers, Division Heads, Department Heads, and Purchasing and Procurement staff are responsible for the implementation of the RT Small and Local Business Preference Program in their respective areas of authority, in coordination with the RT SBLO.