



## **Board Policy No. 466**

### **Small and Small Local Business Enterprise Policy**

**ADOPTED:** 11/2007

**RECENT AMENDMENT:** 9/27/2017

**SEE ALSO:** 460, 465

**SUBJECT CATEGORY:** SECTION 400, OPERATIONS

**SUBSECTION:** PROCUREMENT AND MATERIALS

**CONTROL DEPARTMENT:** COMPLIANCE & DIVERSITY

#### **I. PURPOSE**

It is the policy of AC Transit to ensure that small business enterprises, as defined in federal regulations at 13 CFR Part 121, and small local business enterprises located within the District have equitable opportunity to participate in District procurements of goods, materials and services, including construction projects.

In order to provide economic opportunity for small local business enterprises, and to stimulate economic development in communities served by the District, the District will develop and implement procedures designed to maximize contract award opportunities for these companies. Procedures shall include set asides, preferences, and small-business goals as further defined in this Policy.

#### **II. PERSONS AFFECTED**

Certified Small, Small-Local, and Small-Disabled Veterans Enterprises.

#### **III. DEFINITIONS**

**“Availability”** means the number of small and small local business enterprises ready and willing to compete for work with AC Transit.

**“Bidder”** means a person or business submitting a bid or proposal to the District.

**“Board”** means AC Transit Board of Directors.

**“Contractor”** means a person or business awarded a contract with the District.

**“District”** means the Alameda Contra-Costa Transit District (AC Transit), a special district created under California law comprised geographically of 13 cities and adjacent unincorporated areas, including the cities of Alameda, Albany, Berkeley, El Cerrito, Emeryville, Fremont, Hayward, Newark, Oakland, Piedmont, Richmond, San Leandro, and San Pablo; and the unincorporated areas of Ashland, Castro Valley, Cherryland, El Sobrante, Fairview, Kensington, North Richmond, and San Lorenzo as further described in AC Transit Resolution No. 11-048.

**“Micro Small Business Enterprise”** means a small business enterprise whose average annual gross receipts for the previous three (3) years do not exceed \$10 million for construction firms or \$6 million for non-construction firms.

**“Small Business Enterprise (SBE)”** means a business with not more than a specified amount of average gross annual receipts over the previous three (3) years, as defined by the United States Small Business Administration’s size standard for the type of work conducted.

**“Small Local Business Enterprise (SLBE)”** means a business located within the District and certified as a small business by an authorized agency.

#### IV. POLICY

##### A. Background

1. Title VI of the Civil Rights Act of 1964 bars discrimination on the basis of race, color or national origin with regard to the participation in, or the denial of benefits for any program or activity receiving federal funds. As a recipient of federal funding, the District is subject to the mandates of Title VI.
2. California’s Proposition 209, passed by voters in 1996 amended the state constitution to prohibit discrimination by the state or other public entities in state or locally funded contracts. As a result, District procurement activities are governed by federal laws, state laws and guidelines, as set forth in the District’s procurement Policy, Board Policy No.465, adopted April 1992 and last amended October, 2016.

##### B. Intended Impacts of this Policy

1. Increase opportunities for contract awards to small and small local business enterprises to participate in District contract and procurement activities;
2. Increase the circulation of dollars within the District; and
3. Promote the development of the small local business enterprise community.

##### C. Policy Guidelines

1. The District recognizes the difficulties small businesses may encounter when competing against larger more established businesses. In order to assist, the District will seek to utilize SBEs, SLBEs and MSBEs to the extent permissible by law, when such businesses are available and the price of their goods, material or services sought is reasonable and competitive in the marketplace.
2. In order to ensure its legality, effectiveness and integrity, this Policy is neutral as to race, ethnicity, national origin, age, sex, religion, sexual orientation, disability or veteran status. Any small and small-local business seeking inclusion in the pool will be able to apply.

a. Small Business Enterprise Goals

The District will establish race and gender neutral, per-contract SBE utilization goals on federally and non-federally funded projects when practicable. The goal shall be established based on demonstrable evidence of the availability of ready, willing and able SBEs relative to all businesses ready, willing and able to participate on District contracts and expressed as a percentage of the anticipated value of the contract. The District's Contracts Compliance Office will evaluate each procurement for SBE opportunities and a determination will be made regarding the availability of small businesses. The District will require all bidders to provide a list of the SBE subcontractors to be utilized to meet the SBE goal and will require good faith efforts documentation for bidders not meeting the SBE subcontract goal prior to award of contract. The District will require the successful prime contractor to provide quarterly reports of payments to SBE subcontractors.

b. Small Business Set Asides

The District shall set-aside selected federally funded procurements with anticipated dollar values up to \$300,000 for small business participation only. Small business set-asides shall be determined by the District's Contracts Compliance Office when the availability of SBEs is empirically demonstrated relative to the applicable North American Industry Classification System (NAICS) Code and in such numbers to satisfy public procurement competition requirements.

c. Micro-business Set Asides

This District shall set-aside federally and non-federally funded procurements with anticipated dollar values up to \$100,000 for construction projects and up to \$60,000 for non-construction projects to certified MSBEs provided that it is determined by the District's Contracts Compliance Office that availability of MSBEs is empirically demonstrated relative to the applicable NAICS Code and in such numbers to satisfy public procurement competition requirements.

d. Small, Small-Local, and Small-Disabled Veteran owned Business Enterprise Preferences

On non-federally funded procurements up to \$100,000, provide for a small business preference in construction and/or the procurement of goods where responsibility and responsiveness criteria are satisfied. The preference to a small business is 5 percent of the lowest responsible bidder, 6 percent of the lowest responsible bidder for a Small-Disabled Veteran Enterprise, and up to 10 percent for small-local business enterprises. Where there is demographic overlap, the higher of the applicable percentages will be implemented.

e. Small-Local Business Enterprise Goals

Non-federally funded contracts (including Construction and Service contracts) for goods, material and services greater than \$10,000 will be reviewed, and SLBE subcontracting goals will be included based upon an availability analysis to determine whether subcontracting opportunities for SLBEs exist. Bids/Proposals will be reviewed for the prime contractor's SLBE subcontractor participation and/or good faith efforts; and the successful prime contractor will be required to provide reports of SLBE subcontractor payments for the duration of the contract.

f. Micro Purchases

Procurement purchases of goods, materials, and services below the bid limits, and not subject to competitive bidding, are required to be issued according to the District's non-discrimination and non-preferential treatment policies, and District staff will be expected to select and utilize bidders and contractors according to this policy.

g. Discretionary Spending and Prioritization

Discretionary spending for purchases of goods, material and supplies up to \$10,000 shall be formally conducted using the District's SBE & SLBE policy when a reasonable expectation exists that at least two responsible small business concerns can offer the goods, services or material at fair market prices.

i. For federally funded purchases, the District will target SBEs.

ii. For non-federally funded purchases, the District will target SLBEs first, and then target SBEs second.

SBEs and SLBEs will be given first priority in the performance of work in a public exigency or emergency.

h. Prompt Payment

The District's Contracts Compliance Office will ensure timely payment to small businesses upon receipt of properly documented invoices or other contract billings. Prompt payment provisions shall be incorporated into each District solicitation and resulting contract.

i. Collection of Vendor Data

The District's online vendor registration form allows businesses to identify their name and address, small business status, and other relative information. This information will facilitate sorting of the computerized vendor listing to identify small, small-local, and

micro small businesses for use by procurement and contract staff, and for award, payment tracking and reporting purposes.

Records will be maintained on bids received from, and awards and/or payments made to small local businesses; and semi-annual reports of the results will be made to the Board.

j. Outreach

The District will institute a program of outreach activities, including procurement networking sessions, roundtables and workshops, to make it possible for small, small-local, and micro small business owners to meet key contracting and other District personnel, and be counseled on the procurement and contract processes. The District will establish and maintain relations with community groups and attend meetings to provide information and guidance on this small local business policy.

#### **D. Administrative Requirements**

1. Administrative Requirements

- a. The District will assign appropriate and sufficient staff to oversee and administer all components of the SBE/SLBE program.
- b. Training: The District will provide ongoing training to procurement and District staff to assure adherence to this Policy.
- c. To the extent that it is a condition of a federal, state or other funding source that the District comply with Small Business Enterprise, Disadvantaged Business Enterprise, Minority and Women Business Enterprise and/or Disabled Veteran Business Enterprise requirements, the District will make this Policy consistent with external laws or regulations to the extent permissible by law.
- d. The provisions of this Policy are declared to be separate and severable. The invalidity of any portion or the invalidity or its application to any person or circumstance shall not affect the validity of the remainder of this Policy or the validity or its application to other persons or circumstances.