



Los Angeles County
Metropolitan Transportation Authority
(MTA)

**DISADVANTAGED
BUSINESS ENTERPRISE
(DBE) PROGRAM**

*July 2002
Revised*

Diversity and Economic Opportunity Department

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Los Angeles County
Metropolitan Transportation Authority
(MTA)

**DISADVANTAGED
BUSINESS ENTERPRISE
(DBE) PROGRAM**

SUBMITTED TO:

Federal Transit Administration, Region IX
201 Mission Street, Suite 221
San Francisco, CA 94105

Attention: Mr. Leslie T. Rogers
Regional Civil Rights Officer

Diversity and Economic Opportunity Department

Statement of Objectives/Policy

Section 26.1, 26.23 Objectives/Policy Statement

The Los Angeles County Metropolitan Transportation Authority (MTA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. As a recipient of Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the MTA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the MTA to ensure that DBEs defined in 49 CFR Part 26 have an equal opportunity to receive and participate in DOT-assisted contracts. The objectives of the DBE Program include:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Deputy Executive Officer (DEO) of the Diversity and Economic Opportunity Department (DEOD) has been delegated as the DBE Liaison Officer. In that capacity, the DEO is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the MTA in its financial assistance agreements with the Department of Transportation.

MTA will disseminate this policy statement to the MTA Board of Directors and circulate to all components of the Authority. In addition, MTA will distribute this statement to DBE and non-DBE communities and business organizations. Distribution will be accomplished through posting on the MTA website and publication in vendor and small business newsletters, and through electronic notification to DBE firms.

Roger Snoble
Chief Executive Officer

Date

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SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are found in the policy statement on the first page of this program.

Section 26.3 Applicability

The MTA is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definitions

The MTA will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

The MTA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the MTA 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 DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

MTA will report DBE participation to DOT as follows:

MTA will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

The MTA will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

MTA collects this information on a form provided with all solicitations to bidders and offerors. The form directs all respondents and their subcontractors to report bidders list information on the form and submit it with its bid or proposal documents.

Section 26.13 Federal Financial Assistance Agreement

MTA has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

MTA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the MTA of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

This language will appear in financial assistance agreements with sub-recipients. This language is to be used verbatim, as it is stated in 26.13(a).

Contract Assurance: 26.13b

MTA will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

This language is to be used verbatim, as it is stated in 26.13(b).

SUBPART B- RESPONSIBILITY OF DBE PROGRAM IMPLEMENTATION

Section 26.25 DBE Liaison Officer (DBELO)

MTA has designated the following individual as MTA's DBE Liaison Officer:

Linda Wright
Deputy Executive Officer (DEO),
Diversity and Economic Opportunity Department (DEOD)
Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012-2952

Telephone: (213) 922-2638

E-Mail: wrightl@mta.net

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the MTA complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to Roger Snoble, Chief Executive Officer of the MTA, concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a technical staff of seven (7) to assist in the administration of the program. The duties and responsibilities include the following:

1. Develops implements and monitors, with participation by legal counsel, the DBE Program document, keeping it up-to-date with the current business environment and the latest revisions to the applicable federal regulations, ensuring the DBE program is responsive to and in compliance with the regulations, including, but not limited to, 49 CFR Part 26.
2. Gathers and reports statistical data and other information as required by DOT.
3. Reviews third party contracts and purchase requisitions for compliance with this program.
4. Works with all departments to set overall annual goals.
5. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
6. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
7. Analyzes MTA's progress toward attainment and identifies ways to improve progress.
8. Participates in pre-bid meetings.
9. Advises the CEO and MTA Board of Directors on DBE matters and achievement.
10. Chairs the Transportation Business Advisory Committee (TBAC), a DBE Advisory Committee.
11. Participates in pre-bid meetings.
12. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
13. Plans and participates in DBE training seminars.
14. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in California
15. Provides outreach to DBEs and community organizations to advise them of opportunities.
16. Maintains the MTA's updated directory on certified DBEs.

The Chief Executive Officer (CEO)

The CEO designates the DBELO, grants to that DBELO direct, independent access to him or her concerning DBE matters and ensures the DBELO has sufficient resources to implement the DBE program in compliance with the provisions of 49 CFR part 26.

The General Counsel

1. Addresses small business matters relating to procurement and the implementation of the DBE program; and
2. Renders legal opinions regarding the interpretation of DBE solicitation and contract provisions; and
3. Advises the DBELO or his/her designees and the CEO regarding imposition of administrative sanctions against contractors that fail to comply with DBE requirements; and
4. Represents MTA in all legal actions involving DBE issues; and
5. Provides the DBELO with legal opinions relevant to DBE certification.

Shared Responsibility

The following MTA departments have a shared responsibility to achieve the MTA's Annual Goal and ensure compliance with the DBE Program.

The Executive Officer, Procurement (EO)

1. Provides the DBELO with draft scopes of work and engineering estimates to enable the DBELO to actively engage in goal setting, outreach and the development of appropriate DBE language in solicitation documents; and
2. Provides the DBELO with copies of final IFB's, RFP's, RFIQs, Purchase Orders (PO), mailing lists and advanced notices of procurements; and
3. Incorporates DBE goals and compliance language into the solicitations; and
4. Notifies the DBELO of any changes to IFBs, RFPs, RFIQs and PO's; and
5. Sends IFBs, RFPs, RFIQs and POs to the DBEs indicated by the DBELO; and
6. Places and documents the placement of legal notices in response to 49 CFR part 26 publication requirements for annual overall goals and places solicitation notices all in general, trade and minority focused newspapers; and
7. Notifies the DBELO of pre-bid, pre-proposal and pre-construction conferences; and
8. Maintains DBE vendor listing organized by predetermined categories and assists in the identification of potential DBE vendors and contractors; and
9. Calls for DBELO or staff member participation on Bid & Proposal Evaluation, and Negotiation Committees or Teams,
10. Forwards copies of Bids and Proposals to the DBELO for evaluation of responsiveness or responsibility to DBE requirements; and
11. Participates in outreach programs, including vendor fairs.
12. All other contract administration that impact DBE participation.

The Chief Financial Officer (CFO)

1. Contacts the DBELO for the names of DBE financial institutions, uses their services in connection with DOT-assisted projects and periodically reports the level of use of DBE financial institutions to the MTA Board of Directors; and
2. Assists the DBELO in compiling federal funding data to calculate the annual DBE goal; and
3. Promotes a level playing field for DBE financial advisors, investment bankers and bond counsel in the sale of Revenue Anticipation Notes, Equipment Trust Certificates, and other investment instruments; and
4. Assists the DBELO in developing financing, bonding and insurance programs to help increase the number of DBEs participating in DOT-assisted contracts.

Other Support Personnel

MTA personnel from other Departments share the responsibility for ensuring the effective implementation of the DBE Program. They are expected to give their full cooperation and active support to the DBELO in this effort. Following are the support personnel and examples of their respective responsibilities.

Project Managers

1. Develop a working knowledge of the DBE program's policies, practices and procedures including race neutral and race conscious methods of achieving DBE participation, by reading the DBE program, and/or the project's solicitation documents and/or the contract manual and by attending DBE orientation sessions presented by the DBELO and staff members; and
2. Notify the DBELO in a timely manner of their project's Pre-Proposal or Pre-Bid conferences and "Kick-Off" Meetings; and
3. Structure individual contracting actions to create a level playing field and participation by DBE firms wherever possible. This includes dividing a contract statement of work, where possible, into portions that will enable DBE firms to compete as prime contractors. Proper use of this structuring for DBE participation shall not result in the avoidance of proper approval authority. This also includes, if not prohibited by state law, waiving or reducing bonding requirements or allowing for incremental bonding; and
4. Participate with the DBELO in monitoring that DBE firms are used and DBE records and reports are prepared and submitted in accordance with the terms of the contract; and
5. Identify and refer potential DBE utilization problems promptly to the DBELO.

Vendor Relations

1. Posts and updates the web listing of newly certified or decertified firms to www.mta.net. This web site provides up-to-date information electronically about MTA contracting opportunities, upcoming events at MTA and current program information; and
2. Provides technical assistance over the telephone to firms requesting to be placed on the mailing list and responds to their questions about doing business with MTA; and
3. Publishes the "Metro Business Outlook," a monthly newsletter reporting on MTA contracting opportunities, projects, and events, including a six-month forecast of upcoming business opportunities; and
4. Participates in DBE outreach programs that advertise and disseminate information about MTA seminars, programs, solicitations and contracts.

Risk Management

1. Provides periodic reports on industry insurance and bonding standards and requirements to the DBELO. Provides information about insurance and bonding trends relevant to DBE firms for the coming year, if available, to the DBELO; and
2. Participates with the DBELO and with legal counsel in the structuring of bonding and insurance requirements and standards in individual contracting actions to create a level playing field and participation by DBE firms wherever possible. This includes dividing a contract statement of work, where possible, into portions that will enable DBE firms to compete as prime contractors. Proper use of this structuring for DBE participation shall not result in the avoidance of proper approval authority. This also includes, if not prohibited by state law, waiving or reducing bonding requirements or allowing for incremental bonding.

SUBPART C - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the MTA has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, MTA will continue to carry out this program until all funds from DOT financial assistance have been expended. MTA will provide to DOT updates representing significant changes in the program.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this program.

Section 26.27 DBE Financial Institutions

It is the policy of the MTA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions.

At this time, the MTA has not identified DBE-owned financial institutions. However, MTA encourages contractors to use the services of minority and women owned financial institutions identified from listings posted at the Website of the Financial Management Service, US Dept of the Treasury, Minority bank Deposit Program. The Internet address of this website is: <http://www.fms.treas.gov/mbdp>.

MTA has identified and provided the contact information of the minority and women owned financial institutions listed in Attachment 2.

Section 26.29 Prompt Payment Mechanisms

MTA will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contract receives from MTA. The prime contractor agrees further to return retainage payments to each subcontractor within ten (10) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the MTA. This clause applies to both DBE and non-DBE subcontracts.

Enforcement

If MTA determines that the prime contractor has failed to comply with the prompt payment provisions set forth above, MTA may give written notice to the Contractor and the Contractor's Surety that, if the default is not remedied within a specified period of time (at least 5 days), the contract may be terminated. The Contract may be terminated for cause in accordance with the Contract Article entitled TERMINATION FOR DEFAULT. The MTA may also impose penalties and sanctions for non-compliance with the prompt payment clause contained in Section 26.37, Monitoring and Enforcement Mechanisms.

The prime contractor is encouraged to include the Dispute Resolution language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms contained in Attachment 4, Monitoring and Enforcement Mechanisms to resolve payment disputes in their subcontract agreements.

Section 26.31 Directory

The MTA maintains a hardcopy directory identifying all firms located in the Los Angeles Area Cluster Group (LAACG) that are eligible to participate as DBEs. The directory lists the firm's name, address, phone number, fax number, DBE certification expiration date, on-site visit date, ethnicity and gender of ownership, and the type of work the firm has been certified to perform as a DBE. The MTA revises the Directory ongoing basis. The Directory is available as follows:

Diversity & Economic Opportunity Department
Small Business Certification Unit
Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012
Phone: (213) 922-2600

The Directory may be found in Attachment 3 to this program document.

Additionally, the LAACG DBE directory is available via the internet. The internet directory is updated at least monthly and provides easy search and query capability. Information from the directory may be downloaded as a PDF file or an MSExcel spreadsheet into a local computer. This version of the LAACG DBE directory is available via www.mta.net.

A complete listing of eligible DBE firms certified in the State of California is provided by the California Department of Transportation (Caltrans) via the internet. The Statewide DBE directory can be found at www.dot.ca.gov, under the Office of Civil Rights.

Section 26.33 Overconcentration

MTA has not identified that overconcentration exists in the types of work that DBEs perform. If overconcentration is identified, MTA will obtain FTA approval of the measures it develops for dealing with any overconcentration that excludes non-DBE firms from the opportunity to work.

Section 26.35 Business Development Programs

MTA has not established a business development program. The DBELO will evaluate the need and assess whether MTA should establish a Business Development Program and/or a Mentor-Protégé Program in the MTA's geographic procurement market area. If MTA establishes either program, the program will be guided by the applicable Appendix of 49 CFR Part 26 and approved by the FTA before being implemented.

Section 26.37 Monitoring and Enforcement Mechanisms

The MTA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. MTA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.

2. MTA will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 4 lists the regulation, provisions, and contract remedies available to MTA in the events of non-compliance with the DBE regulation by a participant in MTA's procurement activities.
3. MTA will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by the following:

Notification of Reporting Requirements

Prior to execution of all contracts containing DBE goals the prime contractor shall be verbally directed to the MTA's *Compliance Manual (Federal)* for specific requirements of the DBE Program. Contractors shall be specifically advised of DOT requirements for prompt payment and retention covering all DBE and Non-DBE subcontracts.

Pre-Construction (Kick-off) Meeting

Both the Contractor and the DBE Subcontractor(s) or a representative of each firm shall attend the kick-off meeting concerning DBE requirements and other matters, prior to or immediately after Notice to Proceed is issued. Further, the Contractor shall report its failure to execute subcontractor agreements for any of the listed DBE subcontractors within 14 working days of signing the contract with the MTA. The Contractor shall be responsible for informing the Subcontractors of all DBE requirements as specified by the MTA herein.

Monthly Expenditure Plan

A monthly expenditure plan in calendar form for each of its approved DBE Subcontractors/Suppliers shall be submitted within 30 days of Notice to Proceed. The planned expenditures shall equal the dollars committed to each DBE Subcontractor/Supplier and shall be developed according to the approved project schedule. The plan shall be updated to incorporate any schedule changes and executed Changed Notices and Work Authorization Change Notices affecting the DBE's work. A revised plan shall be submitted within 30 days from the incorporation of the change.

Executed DBE Subcontract Agreements

The Contractor shall submit to MTA copies of all executed DBE subcontracts and/or DBE purchase orders (PO) within fourteen (14) working days after the Contractor executes their contract or PO with MTA. The contractor is required to incorporate the prompt payment and dispute resolution provisions in all executed subcontract agreements.

4. MTA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. MTA's Summary of Subcontractors Paid Report (Form 103) is used to keep running tally.

All prime contractors shall submit the Form 103 on a monthly basis. Failure to submit the FORM 103 reports may result in the imposition of a penalty of \$100 per day for each report overdue.

The FORM 103, SUMMARY OF SUBCONTRACTORS PAID REPORT, includes the following information:

- a. Name of each DBE Subcontractor.
- b. General work assignment of each DBE Subcontractor.
- c. The specific portion of work executed by each DBE Subcontractor during the reporting period.
- d. The dollars committed to each DBE Subcontractor.

- e. The dollars paid to each DBE Subcontractor during the reporting period.
- f. The dollars paid to date for each DBE Subcontractor.
- g. The dollars paid to the DBE as a result of a change order or other cost modification.
- h. The dollars paid to date as a percentage of the total commitment to each DBE.
- i. Date of last progress payment
- j. Invoice amount & Invoice Date
- k. Invoice number corresponding to last payment to subcontractor

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The MTA does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f) the MTA will submit its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, MTA will consult with the Transportation Business Advisory Council (TBAC) and other small business resource organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the MTA's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, MTA will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice. Normally, MTA will issue this notice by July 1 of each year. The notice must include address to which comments may be sent and business location where the proposal may be reviewed.

MTA's overall goal submission to DOT will include a summary of information and comments received during this public participation process and MTA's responses.

MTA will begin using the established overall goal on October 1 of each year, unless MTA have received other instructions from DOT.

Section 26.49 Transit Vehicle Manufacturers Goals

MTA will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, MTA may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 6 to this program. This section of the program will be updated annually when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

The MTA will use contract goals to meet any portion of the overall goal MTA does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, contract goals will cumulatively result in meeting any

portion of MTA's overall goal that is not projected to be met through the use of race-neutral means.

MTA will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. MTA need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

MTA will express MTA's contract goals as a percentage of the total amount of a DOT-assisted contract.

DEOD will review all procurements over \$25,000 for construction, and all procurements for professional services and goods and commodities over \$40,000 to determine the extent of subcontracting opportunities and DBE availability.

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The DBELO and Contract Compliance Manager are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive:

MTA will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before MTA commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

MTA treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within three (3) working days of being informed by MTA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following Reconsideration Official:

David Vila

Reconsideration Officer
Metropolitan Transportation Authority
One Gateway Plaza
Mail Stop: 99-9-1
Los Angeles, CA 90012-2952

Telephone: (213) 922-1028
E-mail: VilaD@mta.net

The Reconsideration Official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with MTA's Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. MTA will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

MTA will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. MTA will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In such a situation, prior approval by MTA is required of any contractor acting as the substitute for the DBE. We require the prime contractor to provide us with copies of the new or amended subcontracts. If the candidate contractor to be substituted is not a DBE, MTA also requires the prime contractor to submit documentation of their good faith efforts.

Failure to Secure Prior Approval

If the prime contractor fails or refuses to comply in the time specified MTA may take appropriate actions, including but not limited to those set forth in the Attachment 4, Monitoring and Enforcement Mechanisms. The MTA's contracting office may issue an order stopping all or part of payment or work until satisfactory action has been taken. If the prime contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Bid Specification

When a contract goal is established pursuant to MTA's DBE program, the sample bid specification can be used to notify bidders/offerors of the requirements to make good faith efforts. The forms found at Attachment 7 can be used to collect information necessary to determine whether the bidder/offeror has satisfied these requirements. The sample specification is intended for use in both nonconstruction and construction contracts for which a contract goal has been established. Thus, it can be included in invitations for bid for construction, in requests for proposals for architectural/engineering and other professional services, and in other covered solicitation documents. A bid specification is required only when a contract goal is established.

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the MTA to practice nondiscrimination based on race, color, sex, or national origin in the award or

performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of ____ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 Attachment 10, to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

MTA will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

SUBPART E – CERTIFICATION STANDARDS AND PROCEDURES

Section 26.81 Unified Certification Programs

The MTA is a member of the California Unified Certification Program (CUCP) administered by the California Department of Transportation (Caltrans). The CUCP will meet all of the requirements of 49 CFR Part 26.

All California based U.S. Department of Transportation (DOT) recipient agencies, including the MTA, participate in the California Unified Certification Program (CUCP). This U.S. DOT approved program provides “one-stop shopping” for eligible businesses seeking DBE certification. Under the CUCP, a firm certified by just one of California’s 140 plus U.S. DOT recipient agencies is eligible to participate as a DBE statewide. The CUCP went into effect January 1, 2002.

The CUCP is organized into four geographic regions called “Clusters.” Each Cluster consists of a small group of U.S. DOT recipient agencies that process DBE certification applications submitted by applicant businesses located within a Cluster. These agencies are known as CUCP “Certifying Members.” The Certifying Member processing a certification application for a firm is identified as that firm’s “Home Agency.” The remaining California U.S. DOT recipient agencies are identified as “Non-Certifying Members” of the CUCP.

When a Certifying Member completes the processing of a DBE certification application, it makes a recommendation for or against certification of the applicant business to a committee composed of all Certifying Members within its Cluster. The decision whether to grant DBE certification is made by the concurrence of the other Certifying Members at regularly scheduled monthly Cluster meetings.

ATTACHMENT 8 CUCP DBE Application lists the four constituent clusters of the CUCP, the counties they serve and the names of the Certifying Members in each Cluster.

NOTE: All DBE firms certified by California based U.S. DOT recipient agencies prior to January 1, 2002 have been “Grand-fathered” into the CUCP. Businesses seeking a DBE certification or re-certification may contact any of the Certifying Members within their geographic Cluster to request certification or re-certification processing. Non-California based businesses seeking certification will be processed by the California Department of Transportation (Caltrans).

Section 26.61 – 26.73 Certification Process

The DBE certification process undertaken by the MTA’s Small Business Certification Unit of the Diversity and Economic Opportunity Department (DEOD) consists of a desk audit performed on the information contained in a completed CUCP DBE application and attached supporting documentation submitted by applicant firms. This information is reviewed against the certification eligibility criteria spelled out above. Subsequent to the desk audit, an on-site interview is conducted with the qualifying owners and key personnel from the applicant firm to further evidence satisfaction of the certification eligibility criteria.

When it is determined that the DBE eligibility requirements have been satisfied, the MTA will recommend to the Los Angeles Area Cluster Group’s (LAACG’s) Certifying Members that DBE certification status be granted to the applicant firm. The Certifying Members of the LAACG include the MTA, City of Los Angeles, John Wayne Airport, and Orange County Transportation Authority. An applicant firm is granted DBE status under the CUCP if the recommendation to certify is unanimously approved by all Certifying Members of the LAACG at the monthly meetings.

- A. Women, Black Americans, Hispanic Americans, Asian/Pacific Americans, Subcontinent Asian Americans and Native Americans are rebuttably presumed to meet the requirement of individual social and economic disadvantage.
- B. Individuals who are not members of the presumptive group may be determined to be Socially and Economically Disadvantaged if they, on a case-by-case basis, so demonstrate by a preponderance of the evidence.
- C. Applicants must also submit a Personal Net Worth (PNW) Statement. This Statement, in the case of an applicant for DBE status, must show that the individual business owner's/owners' personal net worth is less than \$750,000, excluding equity in their primary residence and the applicant business.
- D. Other technical aspects of individual social and economic disadvantage may be relevant and considered on a case-by-case basis.

Ownership Determinations

- A. The business must be at least 51% owned by socially and economically disadvantaged individuals (qualifying owners).
- B. The ownership by these individuals must be real, substantial and continuing, going beyond pro forma ownership, as presented merely in ownership documents.
- C. Qualifying owner(s) contributions of capital or expense must be real and substantial.
- D. Other technical aspects of ownership may be relevant and considered on a case-by-case basis.

Control Determinations

- A. The business must be independent its viability must not depend on a relationship with another firm or firms.
- B. The business must not be subject to any formal or informal restrictions that limit the customary discretion of the socially and economically disadvantaged owners.
- C. The qualifying owners must possess the power to direct or change the direction of the management and policies of the firm, and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
- D. Individuals who are not socially and economically disadvantaged may be involved in a DBE firm, but must not possess or exercise the power to control the firm or not be disproportionately responsible for operating the firm.
- E. The qualifying owners may delegate authority, but such delegations must be revocable and the owners must retain a managerial role and the power to hire and fire the person to whom they delegate.
- F. The qualifying owners must have an overall understanding of (and managerial, technical competence & experience directly related to) the type of work in which the business is engaged and the firm's operations.
- G. Qualifying owners must possess all state or locally required licenses or credentials.
- H. Differences in remuneration between the qualifying owners and other participants in the firm may be considered in determining the owners' level of control.
- I. Qualifying owner(s) must work in the business in order to be considered as controlling the firm. They cannot engage in outside employment or other business interests that conflict with managing the firm, unless the firm is itself a part-time business.
- J. Other technical aspects of control may be relevant and considered on a case-by-case basis.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

The MTA will review the eligibility of firms that have been previously certified or recertified by the MTA under Part 26 every three years. For previously certified DBE firms, the MTA may require the submission of an updated application. Additionally, the re-certification process will include the performance of an on-site interview with qualifying owners and key individuals of the applicant firm.

"No Change" Affidavits and Notices of Change (26.83(j))

The CUCP requires all DBEs to inform their Home Agency, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with their application for certification.

The CUCP also requires all owners of DBEs certified under the CUCP to submit to their Home Agency, on the anniversary date of their certification, an Annual Update Affidavit that meets the requirements of 49 CFR §26.83(j). The Annual update affidavit includes the following:

"I declare under penalty of perjury of the laws of the United States that the firm continues to meet SBA business size criteria, and that my personal net worth in accordance with 49 CFR Part 26 does not exceed \$750,000, and that foregoing statements are true, accurate and complete."

The MTA requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

Likewise, the obligation to submit a notice of change applies if a firm's owner knows or should know that he or she, or the firm, fails to meet a, "49 CFR Part 26," eligibility requirement (e.g., personal net worth).

The MTA will notify all of its currently certified DBE firms of these obligations via U.S. Mail each year two months in advance of their certification anniversary.

Personal Net Worth

When a firm applies for DBE certification or re-certification the MTA requires a signed and notarized Personal Net Worth (PNW) Statement from all persons who claim to own and control the firm and whose ownership and control are relied upon for DBE certification. The PNW Statement must include appropriate supporting documentation (i.e. tax returns or other relevant documents), upon request by the MTA Small Business Certification unit.

The purpose of this PNW Statement requirement is to determine whether the presumption of economic disadvantage really applies to individual applicants. This is particularly important, in the context of a narrowly tailored program, to ensure that the benefits are focused on genuinely disadvantaged people (not just anyone who is a member of a designated group).

Section 26.85 Denials of Initial Requests for Certification

When the MTA determines that a new applicant firm is ineligible for certification, it will bring the recommendation to deny certification to the next monthly meeting of the LAACG. The Cluster will decide by a unanimous decision if the proposed action is appropriate based on the burdens of proof established in 49 CFR 26.61. If the LAACG reverses the MTA's recommendation, the MTA will certify the firm. If the LAACG upholds the recommendation, the MTA Small Business Certification unit will send a letter to the firm advising it is not eligible for certification and stating the reasons for denial. The notice will advise the firm of its right to appeal to U.S. DOT for reconsideration. The firm may not reapply for DBE certification at the MTA or any other Certifying Member of the CUCP until twelve months have passed from the denial action.

Section 26.87 Removal of a DBE's Eligibility

In the event MTA propose to remove a DBE's certification, MTA will follow procedures consistent with 26.87. Attachment 9 to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, MTA have determined that Maria Guerra, Chief of Staff of the MTA, will serve as the decision-maker in de-certification proceedings. MTA have established an administrative "firewall" to ensure that Maria Guerra, Chief of Staff of the MTA, will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

Section 26.89 Certification Appeals

Any firm or complainant may appeal MTA's decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights Certification Appeals Branch
400 7th Street, SW
Room 2104
Washington, D.C. 20590

MTA will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for MTA's DOT-assisted contracting (e.g., certify a firm if DOT has determined that MTA's denial of its application was erroneous).

The MTA's system for administrative appeals of certification decision can be found in Attachment 9. This system is not a remedy a firm need exhaust before making a certification appeal to DOT under 26.89.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

MTA will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. The California Legislature created the Public Records Act, mindful of the right of individuals to privacy, finding and declaring that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Government Code, §6250) The California legislature states public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as provided at Government Code §6253. A broad range of exceptions is provided in consideration of an individual's right to privacy or where otherwise excluded from disclosure by law.

Nothing shall be construed to require disclosure of records that are specifically identified as not to be disclosed in the Public Records Act, including, "Records Whose Disclosure Is Exempted or Prohibited," (Government Code §2654 (k)). This provision identifies as exempt from disclosure under California law, "records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege. Federal Regulations state, that MTA must not release an individual's personal net worth statement nor any documentation supporting it to any third party without the written consent of the submitter. 49 CFR §26.67(a)(2)(ii). Therefore, personal net worth statements are protected under the DBE program.

Notwithstanding any contrary provisions of state or local law, MTA shall not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

MTA will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be make available for inspection upon request by any authorized representative of the MTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

MTA will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

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ATTACHMENT 1

ORGANIZATIONAL CHART

ATTACHMENT 2

FINANCIAL INSTITUTIONS

Attachment 2

FINANCIAL INSTITUTIONS

AMERICAN INTERNATIONAL BANK
624 S. Grand Avenue
Los Angeles, CA 90017
213-688-8600

EAST WEST FEDERAL BANK
415 Huntington Drive
San Marino, CA 91108
626-799-5700

FOUNDERS NATIONAL BANK
3910 Martin Luther King Jr. Blvd
Los Angeles, CA 90008
323-290-7155

BANCO POPULAR, N.A.
6001 E. Washington Boulevard
City of Commerce, CA 90040
212-246-1094

EASTERN INTERNATIONAL BANK
688 New High Street
Los Angeles, CA 90012
213-687-7228

GARFIELD BANK
2417 W. Whittier Boulevard
Montebello, CA 90640
323-726-1411

BANK OF THE ORIENT
2001 Irving Street
San Francisco, CA 94122
415-338-0600

EVERTRUST BANK
1600 S. Azusa Avenue
City of Industry, CA 91748
626-854-9700

GATEWAY BANK, F.S.B.
919 Clement Street
San Francisco, CA 94118
415-831-1288

BORREGO SPRINGS BANK
7777 Alvarado Road, Suite 114
La Mesa, CA 91941
619-668-5159

FAMILY SAVINGS BANK
3633 Crenshaw Boulevard
Los Angeles, CA 90006
323-295-3381

GENERAL BANK
800 W. 6th Street
Los Angeles, CA 90017
213-896-0098

BROADWAY FEDERAL SAVINGS BANK
4800 Wilshire Boulevard
Los Angeles, CA 90016
323-634-1700

FAR EAST NATIONAL BANK
350 Grand Avenue
Los Angeles, CA 90006
213-687-1200

GRAND NATIONAL BANK
1138 S. Garfield Avenue
Alhambra, CA 91801
626-300-8888

CANYON NATIONAL BANK
1711 E. Palm Canyon Drive
Palm Springs, CA 92264
760-325-4442

FIRST CONTINENTAL BANK
8632 E. Valley Boulevard
Rosemead, CA 91770
626-288-8899

GUARANTY BANK OF CALIF.
12301 Wilshire Boulevard
Los Angeles, CA 90025
310-826-4228

CALIFORNIA CENTER BANK
2222 W. Olympic Boulevard
Los Angeles, CA 90006
213-386-2222

FIRST INTERNATIONAL BANK
318 Fourth Avenue
Chula Vista, CA 91910
619-425-5000

HANMI BANK
3660 Wilshire Boulevard, #A
Los Angeles, CA 90010
213-382-2200

CATHY BANK OF LOS ANGELES

777 N. Broadway
Los Angeles, CA 90012

213-625-4700

FIRST UNITED BANK

7320 Clairemont Mesa Boulevard
San Diego, CA 92111
858-496-3800

METROPOLITAN BANK

250 E. 18th Street
Oakland, CA 94606
510-834-1933

MILLENNIUM BANK

180 Sansome Street
San Francisco, CA 94104
415-434-2265

PAN AMERICAN BANK, FSB

1860 El Camino Real, Suite 406
Burlingame, CA 94010
650-345-1800

WESTERN STATE BANK

1801 E. Huntington Drive
Duarte, CA 91010
626-357-9611

MISSION NATIONAL BANK

3060 16th Street
San Francisco, CA 94103
415-826-3627

PREFERRED BANK

601 S. Figueroa Street, #2000
Los Angeles, CA 90017
213-891-1188

WILSHIRE STATE BANK

3200 Wilshire Boulevard
Los Angeles, CA 90010
213-387-3200

NARA BANK

3701 Wilshire Boulevard, #220
Los Angeles, CA 90010
213-389-2000

**SINCERE FEDERAL
SAVINGS
BANK**

1355 Stockton Street
San Francisco, CA 94133
415-392-0900

NATIONAL AMERICAN BANK

100 Clement Street
San Francisco, CA 94118
415-668-8877

STANDARD SAVINGS BANK

228 W. Garvey Avenue
Monterey Park, CA 91754
626-280-1688

**NOVATO COMMUNITY
BANK**

1400A Grant Avenue
Novato, CA 94945
415-898-5400

TRUST SAVINGS BANK

638 S. Atlantic Boulevard
Monterey Park, CA 91754
626-576-1811

OMNI BANK

111 N. Atlantic Blvd., #148
Monterey Park, CA 91754
626-289-1133

UNIVERSAL BANK

3455 Nogales Street, 2nd Floor
West Covina, CA 91792
626-854-2818

PAN AMERICAN BANK

3626 E. 1st Street
Los Angeles, CA 90063
323-264-3310

ATTACHMENT 3

DBE DIRECTORY

ATTACHMENT 4

MONITORING AND ENFORCEMENT MECHANISMS

Attachment 4

Monitoring and Enforcement Mechanisms

The following sections contain the standards, policies, practices and procedures MTA uses to assess whether a contractor is in compliance with regulatory and contract requirements applicable to DOT-assisted projects:

(1) REGULATORY PROVISIONS

including but not limited to:

- A. 49 CFR Part 26 - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs; particularly, Subpart F, Compliance and Enforcement
- B. 49 CFR Part 29 - Government-wide Debarment and Suspension (Non-Procurement) and Government-wide Requirements for Drug-Free Workplace.
- C. 49 CFR Part 31 - Program Fraud Civil Remedies
- D. 13 CFR Part 121 - Small Business Size Standards

(2) CONTRACT REQUIREMENTS AND REMEDIES

Contract requirements and remedies are provided in this DBE program and by administrative policies, practices and procedures requirements in each contract. All contractors, as a condition of participation in any DOT-assisted contract, shall agree to the terms of this DBE program, and shall incorporate the DBE program and the DBE administrative policies, practices and procedures requirements into their contracts and subcontracts at all tiers.

A. CONTRACTS MANUAL PROVISIONS

MTA's Diversity and Economic Opportunity Department requires each project supported by DOT-assisted funds to include in its contract terms and conditions, the MTA's Contracts Manual, whose program and administrative requirements include, but not limited to:

B. AUDITING AND INSPECTION

MTA reserves the right to audit the records and inspect the facilities of its Contractors and any Subcontractors of any tier for the purpose of verifying the DBE participation and / or adherence to the DBE Program requirements. Contractors and Subcontractors shall permit access to their records at the request of MTA. Notice is hereby given that state, local and federal authorities may initiate or cooperate with MTA in auditing and inspecting such records

C. PROCUREMENT PROVISIONS

In addition to contracts manual provisions required by the Diversity and Economic Opportunity Department, MTA's procurement department requires selected policies, practices and procedures to be defined in contract provisions in response to the circumstances associated with those categories of procurements. These policies, practices and procedures likewise provide the Deputy Executive Officer, Diversity and Economic Opportunity Department with monitoring and enforcement alternatives.

(3) FINDINGS OF NON-COMPLIANCE AND ADMINISTRATIVE SANCTIONS

Contractors found not to be compliant with any part of the DBE program requirements shall be notified of MTA's finding of Non-Compliance, in writing, by certified mail. The notice shall cite the DBE program requirement under which the contractor is non-compliant, state the date of the findings and the grounds on which the finding was made and state the category of sanctions being imposed. Upon a finding of non-compliance, MTA may choose to impose sanctions including, but not limited to:

- A. **MANDATORY DBE TRAINING**
Attendance at a DBE Training program shall be mandatory for the owners, partners, or officers, and staff member of each firm, responsible for the management of DBE businesses and for the preparation of DBE related records and reports. Contractors shall be responsible for all travel, meals, lodging and similar expenses. The Contract Compliance Unit of the Diversity and Economic Opportunity Department will conduct the program.
 - B. **ASSESSMENT FOR NON-COMPLIANCE**
Contract payments will be reduced by the greater of:
 - an amount equal to up to Five Hundred Dollars (\$500) per day from the date MTA sends Notification to the contractor of the finding of non-compliance with a DBE Program requirement to the date the contractor is notified that MTA finds the firm has complied with the DBE program requirement or MTA chooses to excuse the contractor from performance of that DBE program requirement, **or**
 - an amount equal to ten percent (10%) of the total contract value including any approved Change Orders.
 - C. **SUSPENSION OF PAYMENT**
The MTA will suspend payment to the contractor of any monies held by it, as retained on the contract.
 - D. **TERMINATION OF THE CONTRACT FOR DEFAULT**
If the Board of Directors approves the action, MTA may terminate the contract for default.
 - E. **SUSPENSION AND DEBARMENT (49 CFR Part 29)**
Information concerning the existence of a cause for suspension or debarment shall be reported, investigated and referred, when appropriate, to the proper official for consideration. After consideration, the official will issue the appropriate notice of proposed action.
- (4) **ENFORCEMENT MECHANISMS**
The federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including, but not limited to, the following:
- A. Suspension or debarment proceedings pursuant to 49 CFR part 26
 - B. Enforcement action pursuant to 49 CFR part 31
 - C. Prosecution pursuant to 18 USC 1001.

(5) **RESOLUTION OF DISPUTES BETWEEN CONTRACTOR AND SUBCONTRACTORS**

Disputes arising out of or related to this contract between the Contractor and any lower tier DBE subcontractors which cannot be settled by discussions between the parties involved shall be settled as described herein. These provisions shall not apply

apply to disputes between the Contractor and the MTA. These provisions do not alter in any way or waive compliance with any provisions in Section GC36 SUBMITTAL OF CLAIMS of the Contract Documents.

The Contractor and Subcontractors shall include in their contract a provision indicating that in the event of a dispute to their contract they agree to proceed through informal meetings, mediation, or arbitration, or any combination thereof, specifying the terms under which disputes are to be submitted, the service or assistance to be employed, and the timing or submission of disputes.

A. Informal Meetings

MTA's Diversity and Economic Opportunity Department shall conduct informal meetings with parties to a dispute at the request of any party to the contract, but all parties must agree to the procedure on a voluntary basis. Interested parties should contact the Manager of Contract Compliance at (213) 922-2128. DEOD may require the parties to meet in an attempt to resolve the perceived differences.

B. Mediation

The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third party organizations. Individuals appointed to be mediators by MTA's Manager of Contract Compliance can also be considered another source of independent third parties. Submission to informal mediation is voluntary by the parties, is not binding and offers advisory opinions only.

C. Arbitration

Should the parties fail to resolve any DBE related dispute arising out of or related to the contract via informal meetings or mediation, the parties are contractually obligated to submit the claims for arbitration. Arbitration conducted pursuant to the contract shall be binding upon all parties to the arbitration. All arbitration is to be conducted in a manner consistent with section 1020 et seq. of the Public Contract Code and Section 1296 of Code of Civil Procedure.

Available mediation and arbitration services include:

The American Arbitration Association (213) 383-6516
Dispute Resolution Center (818) 793-7174

The Contractor shall incorporate this Section into each DBE subcontract related to work arising under this contract and shall not incorporate by reference.

Only when resolution of DBE disputes attempted through informal meetings, mediation, and/or arbitration has failed may the Contractor formally request substitution of a DBE subcontractor.

D. Timeliness

Should the parties proceed to arbitration, monies due, if any, shall be placed in a trust account. Such funds shall be released to the appropriate party within five (5) working days of a determination being issued by the arbitrator.

NOTE: Arbitration findings are binding upon the parties. However, the findings do not in any way relieve the contractor of its obligation to meet the DBE goals.

ATTACHMENT 5

OVERALL GOAL CALCULATION

Attachment 5

Section 26.45: Overall Goal Calculation

Amount of Goal

1. The Los Angeles County Metropolitan Authority (MTA) proposes an overall annual goal of twenty percent (20%) for Federal Fiscal Year 2003 (October 1, 2002 – September 30, 2003), which is an expressed percentage of the total amount federal financial assistance that the MTA anticipates expending in DOT-assisted contract. Pursuant to 49 CFR Part 26.49, FTA funds for procurement of transit vehicles were excluded from the federal funding base used to calculate the MTA annual DBE goal.
2. The dollar amount of DOT-assisted contracts that MTA expects to award during FFY2003 is \$369.8 million. This means that MTA has set a goal of expending \$225.5 millions with DBEs during this fiscal year.

Methodology used to Calculate Overall Goal

Step 1: 26.45(c)

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs}}{\text{All firms ready, willing and able}}$$

The data source or demonstrable evidence used to derive the numerator were 1) DOT Unified Certification Program (UCP); and 2) Economic Census Surveys of Minority-and Women-Owned Business Enterprises (SMOBE/SWOBE) in the County Business Pattern published by U.S. Census Bureau.

The MTA used the 1999 County Business Pattern (CBP) published by U.S. Census Bureau as the data source or demonstrable evidence used to derive the denominator.

When MTA divided the numerator by the denominator MTA arrived at the base figure for MTA's overall goal and that number was 18.39%.

Step 2: 26.45(d)

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the DBE participation MTA would expect in the absence of discrimination MTA have adjusted MTA's base figure by 1.7%.

The MTA used the median of its past participation to adjust the base figure. This method was used as the past participation closely reflects anticipated projects in the upcoming year. An examination of MTA history resulted in a past participation of 21.8%.

From this data, MTA have adjusted the base figure to twenty percent (20%).

Public Participation

MTA published its annual goal information in the following list of publications: The Los Angeles Times, Passenger Transport, LA Watt Times, Eastern Group Publications, LA Opinion, Chinese Daily News, and Rafu Shimpo.

To date, the MTA has not received comments from these individuals or organizations on the proposed annual goal.

ATTACHMENT 6

**BREAKOUT OF ESTIMATED RACE-NEUTRAL &
RACE-CONSCIOUS PARTICIPATION**

Attachment 6

Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious Participation

MTA's DBE goal will include projections of the portion of the overall annual DBE goal that MTA expects to meet through race-neutral means as well as race-conscious means and the bases for those projections. MTA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. MTA anticipates that, in meeting our overall goal of 20%, MTA proposes to obtain 4% from race-neutral participation and 16% through race-conscious measures. MTA will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation. In addition, MTA will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: when a DBE wins a prime contract through customary competitive procurement procedures; DBE participation is awarded through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract that exceeds a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

MTA uses the following race-neutral means to increase DBE participation, but not limited to: 1) delivery schedules in ways that facilitate DBE, and other small businesses' participation; 2) providing assistance in overcoming limitations such as inability to obtain bonding or financing; 3) providing technical assistance; carrying out information and communications programs on contracting procedures and specific contract opportunities; 4) ensuring distribution of MTA Certified Directory; 5) assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media; 6) organizing Small Business Outreach functions; and 7) implementing a Mentor Protégé Program.

The remaining race-conscious will be achieved by establishing contract-specific goals for particular projects that have subcontracting opportunities. Contract goals are established to meet any portion of the overall goal that MTA does not expect to meet through race-neutral measures. Establishing reasonable contract-specific goals requires an examination of individual project requirements for subcontracting opportunities (including estimated dollar value, material content, etc.), as well as consideration of the apparent capability and availability of DBEs to participate on specific contracts. It must be emphasized that goals-setting in this context is viewed as aspirational (within the overall context of sound procurement practice). This process also requires recognizing that there may be limits related to the actual interest level, capability, and/or availability of DBEs that may prevent the attainment of goals established on a particular project. While unknown factors preclude precise quantification of DBE goals, MTA will carefully review individual contract prior to solicitation to ensure that established goals appear to be reasonably attainable in view of the DBE firms ready, willing, and able to compete for contracting opportunities.

ATTACHMENT 7

FORM 1& 2 FOR DEMONSTRATION OF GOOD FAITH EFFORTS

FORM 1 – DBE GOAL DECLARATION

DBE Goal Achieved

The Bidder, Offeror, or Proposer declares to the best of its knowledge, information and belief that by its efforts, it is committed to a minimum level of _____percent (_____)% DBE participation for this contract.

See FORM 7, SUMMARY OF COUNTING AND CALCULATING REPORTS, attached.

Executed on: _____, 20____, at, _____, _____
Date City State

Company Name: _____

By: _____
Authorized Signature Printed Name

Title: _____

DBE Goal Not Achieved

The Bidder, Offeror, or Proposer declares to the best of its knowledge, information and belief that by its efforts, (if unable to meet the DBE goal of ____%) it is committed to a minimum level of _____percent (_____)% DBE participation for this contract.

While the Bidder, Offeror, or Proposer did exert efforts to achieve the goal, it was not successful. The Bidder, Offeror, or Proposer certifies that, if requested, it will submit evidence in support of its good faith efforts, within forty-eight (48) hours of MTA's request.

See FORM 7, SUMMARY OF COUNTING AND CALCULATING REPORTS, attached.

DO NOT SUBMIT EVIDENCE OF GOOD FAITH EFFORTS WITH THE BID OR PROPOSAL.

Executed on: _____, 20____, at, _____, _____
Date City State

Company Name: _____

By: _____
Authorized Signature Printed Name

Title: _____

FORM 2 - PRIME CONTRACTOR COMMITMENT / DBE AFFIRMATION FORM

Bidders, Offerors, or Proposers bidding on DOT-assisted contracts must provide a written commitment to utilize each DBE firm listed to help meet its DBE commitment and an affirmation by each DBE firm that they are participating in the contract. Complete this form and submit the form and attachments with the bid or proposal for each subcontractor. If you have any questions please call your Prime Contractor or the Diversity & Economic Opportunity Representative assigned to the project.

RFP/IFB Number: _____ Project Title: _____

Name of Contractor: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Financial Description: Complete Form 6, CONTRACTOR'S COUNTING AND CALCULATION REPORT – The Bidder, Offeror, or Proposer is committed to utilizing the above-named DBE firm for the work described below. The total value of DBE participation committed to this DBE firm is \$ _____.

Technical Description: Describe clearly and completely the portion of the work assigned to this DBE. Provide Northern America Industry Classification System (NAICS) code(s).

Affirmation:

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: _____
Signature of Authorized Contractor's Representative

Typed or Printed Name of Person Signing for Contractor

Title of Person Signing for the Firm

Telephone

By: _____
Signature of Authorized DBE's Representative

Typed or Printed Name of Person Signing for the Firm

Title of Person Signing for the Firm

Telephone

ATTACHMENT 8

CERTIFICATION APPLICATION FORMS

ATTACHMENT 9

**PROCEDURES FOR REMOVAL OF DBE'S ELIGIBILITY AND CERTIFICATION
APPEALS**

Attachment 9

Procedures for Removal of DBE's Eligibility & Certification Appeals

Removal of DBE Certification

When the MTA determines it is appropriate to remove the eligibility decertify of a DBE firm, it will bring this recommendation to the next monthly meeting of the LAACG. The LAACG will decide by unanimous decision if the proposed action is appropriate based on the preponderance of the evidence that the firm is not eligible for continued certification. If the LAACG reverses the MTA's recommendation, the MTA will give effect to the decision by keeping the firm certified. If the decision follows an ineligibility complaint (third party), the complaining party shall be notified by the MTA of the decision to keep the firm certified. The complaining party shall also be notified of its right to appeal the administratively final decision to U.S. DOT.

If the LAACG upholds the MTA's recommendation to decertify the firm, the MTA Small Business Certification unit will send a letter to the firm advising that it is not eligible for continued certification and stating the reasons for decertification. The notice will advise the firm of its right to appeal/rebut the decision to the MTA Office of Appeals. The MTA Small Business Certification unit will inform its Office of Appeals of any notices proposing to find a firm ineligible sent to firms currently certified.

The MTA's Office of Appeals will track the firms that have been notified of proposed ineligibility. The MTA Office of Appeals will notify the Small Business Certification unit when an appeal is received. Further decertification activity will be suspended pending the administratively final decision of the MTA Office of Appeals.

If the firm does not request an appeal with the MTA Office of Appeals within the appropriate time frame (30 days), the firm will be decertified. The decertification action will be made 45 days after the date of the notice proposing to find the firm ineligible to allow for mailing delays, but will be in effect retroactive to the 31st day after the notice proposing to find the firm ineligible. The MTA Office of Appeals will notify all CUCP Members of the decertification.

The affected firm may also appeal directly to the U.S. DOT. The firm must send a letter to the U.S. DOT within 90 days of the date the MTA decision to decertify is upheld by the LAACG.

A firm that has been decertified may not reapply until 12 months have passed from the decertification date.

Certification Appeals

The CUCP provides a uniform procedure for the Appeals Process to ensure consistency, objectivity and fairness to a firm that appeals a notice proposing to find a firm ineligible to continue participation in the DBE Program. Title 49 of the Code of Federal Regulations (CFR), Part 26 governs the Appeals Process. Due process is afforded to a firm that is currently participating in the DBE program only if the firm is:

- 1) denied renewal of certification; or
- 2) decertified as a result of an ineligibility complaint (challenge), recipient-initiated proceedings or a U.S. DOT directive.

The MTA has established an Office of Appeals comprised of individuals knowledgeable about the certification requirements of the DBE Program. The Office of Appeals is separate from the MTA Small Business Certification unit. [49 CFR, Part 26.87 (e)].

To ensure separation of functions in a de-certification, MTA has determined that Maria Guerra, Chief of Staff of the MTA will serve as the decision-maker in de-certification proceedings. MTA has established an administrative “firewall” to ensure that Maria Guerra, Chief of Staff of the MTA will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

In the event of a certification denial or decertification action, the MTA will notify a firm in writing of its right to due process. When the MTA issues its administratively final decision to deny certification or, after rebuttal, to decertify a firm, the MTA will notify the firm of its right to appeal the decision to U.S. DOT.

Before the MTA Small Business Certification unit removes a firm's eligibility for any reason except graduation from the program based on personal net worth, the Small Business Certification unit will issue a notice proposing to find a firm ineligible. The firm will be notified of its right to appeal the decision to the MTA Office of Appeals.

A firm may appeal a notice proposing to find the firm ineligible to the MTA by:

- 1) Submitting a written appeal/rebuttal within 30 days from the date of the notice proposing to find the firm ineligible; or
- 2) Requesting an Informal Hearing within 30 days from the date of the notice proposing to find the firm ineligible.

Submission of Written Appeal/Rebuttal

A firm must notify the MTA Office of Appeals of its intent to appeal and must submit its written rebuttal within 30 days of the date on the notice proposing to find the firm ineligible. All supporting evidence and documentation must be received within this time frame, with the exception of any additional documentation specifically requested by the MTA Office of Appeal subsequent to their receipt of the rebuttal. The firm will be given a reasonable period of time to submit requested documentation. If documentation is not received, the MTA Office of Appeals will proceed with its analysis and recommendation based on the documentation and facts at hand. The appeal must specifically address and rebut all issues raised in the notice proposing to find the firm ineligible. Failure to address and rebut any issue may be reason for upholding the decision. Failure to submit the rebuttal letter within the specified time frame will result in the automatic decertification of the firm. The firm will also lose the right to appeal to the MTA Office of Appeals. However, the firm may still have a right of appeal to U.S. DOT.

Changes in the form and/or status of the firm after the date of the notice proposing to find the firm ineligible will not be considered.

A firm may waive the option of appealing to the MTA and appeal directly to U.S. DOT. The U.S. DOT may remand the appeal back to the MTA Member to apply the provisions of Section 26.87. When a firm appeals directly to U.S. DOT, waiving the MTA appeal, the firm will be decertified 45 calendar days following issuance of the notice proposing to find the firm ineligible. The decertification will be effective retroactive to the 31st day following issuance of the notice.

The appeal request must be made in writing to U.S. DOT within 90 days of the date of the administratively final decision of a CUCP Member [49 CFR 26.89(c)]. U.S. DOT may refuse to grant this appeal procedure to firms that do not, in the opinion of U.S. DOT, perform transportation-related work. If U.S. DOT reverses the decision of the MTA, the firm shall be certified as of the date the MTA is notified of U.S. DOT's final decision [49 CFR, 26.91(b)(3)].

Processing Written Appeals

If the firm submits its written rebuttal within the 30-day time frame, the MTA Office of Appeals will send a letter to the firm acknowledging the receipt of the firm's written rebuttal. The MTA Office of Appeals will conduct an independent review of the entire file. The reviewer may request additional information and/or clarification regarding issues raised in the notice proposing to find the firm ineligible in order to complete the analysis. The reviewer may occasionally determine that one or more areas have not been fully examined and/or an additional onsite visit may be required. In this case, the MTA Office of Appeals will remand the file back to the Small Business Certification unit with a specific request for the relevant information that is missing. The Small Business Certification unit will return the file with the relevant information within sufficient time to enable the MTA Office of Appeals to complete the appeals process within the specified time frames. If the Office of Appeals determines the new information supports certifying the firm, the MTA Office of Appeals will complete the certification process.

The MTA Office of Appeals will make a recommendation to the LAACG to either "Sustain or Overturn" the MTA Small Business Certification Unit's decision based on the analysis of the written rebuttal or the information provided by the Small Business Certification unit as the result of a remand. The LAACG will render a decision on the Office of Appeal's recommendation.

Request for Informal Hearing

A firm desiring an Informal Hearing must submit the request to the MTA Office of Appeals within 30 days of the date of the notice proposing to find the firm ineligible. The MTA Office of Appeals will provide the firm with written notification of the date, time and place of the Informal Hearing within 15 days of the request for a hearing. The firm may bring counsel, witnesses and other interested parties to the hearing; however, unless other parties at the hearing are questioned directly, it is the owner of the firm that is expected to respond to any questions asked at the hearing. The Informal Hearing will be tape-recorded.

Processing Informal Hearings

The MTA will strive to conduct the Informal Hearing within 15 days of the date of the written notification. At the Informal Hearing, the MTA Office of Appeals may question the firm's owner, witnesses, counsel and other interested parties. The Office of Appeals may also request additional documentation to complete the file. The Office of Appeals will make a recommendation to the CUCP Cluster to either "Sustain or Overturn" the Small Business Certification unit's decision based on the analysis of the entire file, including the evidence presented in the rebuttal letter and the informal hearing. The LAACG will render a decision on the MTA's Office of Appeal's recommendation.

Administrative Final Decision

Except as noted below, the firm will be notified by the MTA Office of Appeals of the LAACG's decision within 60 days of receipt of either the rebuttal letter or the informal hearing. If additional documentation is required to perfect the file, the LAACG's decision shall be issued within 60 days of receipt of the rebuttal letter or the informal hearing. If the decision of the CUCP Cluster is to "Overturn," the firm will be notified in writing of its continuing eligibility. If the decision is to "Sustain" the notice proposing to find the firm ineligible, the firm will be decertified and a notification letter will be mailed to the firm in accordance with 49 CFR 26.87(g). The letter will also include information on how to proceed with an appeal to U.S. DOT. A firm may not re-apply for certification as a DBE for twelve months after the decertification action.

Withdrawn and Closed Appeals

A firm may withdraw its appeal at any time. The firm must do so by notifying the MTA Office of Appeals, in writing, of its intent to withdraw. The MTA will issue its administrative final decision to find the firm ineligible (decertify) the firm as of the date the Office of Appeals receives the written withdrawal. The file will be closed and no further action will be taken. All CUCP Members will be notified of the firm's withdrawal and decertification.

Notification of a firm's withdrawal from the U.S. DOT appeals process will be received by the MTA from U.S. DOT, or in writing from the firm. The MTA will notify the other CUCP Members of the firm's withdrawal.

Any firm or complainant may appeal an MTA decision in a certification matter to the U.S. DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights
Certification Appeals Branch
400 7th St., SW, Room 2104
Washington, DC 20590

The MTA will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

The MTA's system of administrative appeals of certification decision is not a remedy a firm need exhaust before making a certification appeal to DOT under 26.89.

ATTACHMENT 10

REGULATIONS: 49 CFR PART 26