




EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

6.b

DATE: OCTOBER 12, 2005

TO: BOARD OF DIRECTORS

FROM: RICHARD D. THORPE 
INTERIM CHIEF EXECUTIVE OFFICER

ACTION: ADOPT AND APPROVE THE DBE PROGRAM, CONTRACT COMPLIANCE MANUAL, AND DBE GOALS FOR NEGOTIATED DESIGN-BUILD; APPOINT GENERAL COUNSEL AS DBE LIAISON OFFICER

RECOMMENDATION

- A. Adopt and approve the Disadvantaged Business Enterprise (DBE) Program and Contract Compliance Manual, as shown in Attachments A and B.
- B. Adopt and approve 20% DBE Contract Goals for the Negotiated Design-Build Contract
- C. Appoint General Counsel as the Authority DBE Liaison Officer

SUMMARY

Adopting this DBE program, Contract Compliance Manual, DBE Contract Goals and appointment of a DBE Liaison Officer will ensure that the Project is executed in compliance with the approved Exposition Metro Line Construction Authority (Authority) Administrative Code and Federal Statutory and Regulatory requirements, including the DBE Regulations of the U.S. Department of Transportation (49 C.F.R. Part 26.).

DISCUSSION

DBE Program & Contract Compliance Manual -- The Capital Funding Plan for the Mid-City Exposition Corridor Light Rail Transit Project (Project) contemplates using over \$200 million in Federal Congestion Mitigation and Air Quality funds, Federal Transportation Enhancements Activities funds and Other Federal Discretionary funds. In order to be eligible to receive federal funds, the recipient agency must meet the requirements of the Federal DBE Regulations by establishing a DBE Program. In compliance with this requirement, the Los Angeles County Metropolitan Transportation Authority (Metro) has developed a DBE Program and an Overall Annual Goal (which is also a regulatory requirement), both of which have been approved by the Federal Transit Administration (FTA).

To assist the Authority in preparing a DBE program to effectively fulfill its statutory obligation, the services of Thompson Coburn LLP were engaged. Thompson Coburn has extensive experience in developing DBE programs and addressing issues of DBE compliance for transit agencies, DBE's and prime contractors throughout the country. Attorneys from Thompson Coburn reviewed Metro's approved DBE Program, Contract Compliance Manual (Manual) and met extensively with Metro staff. During those meetings, the participants reviewed and evaluated all aspects of a DBE Program and Manual that would meet the specific needs of the Authority while ensuring full compliance with both the letter and the spirit of the Federal regulations.

The establishment by the Authority of an entirely new DBE Program, in compliance with the various Federal regulatory requirements would entail extensive staff time and could take well over a year to receive FTA approval. This would severely impact the established Project procurement and construction schedule. Therefore, staff recommends that the Authority adopt and approve the DBE Program established by Metro with modifications to fit the specific needs of the Authority. This will allow the Authority to rely upon the administrative structure and procedures already in place in Metro's DBE Program, such as a DBE directory, monitoring and enforcement mechanisms, information collection, and reporting.

The modifications to Metro's DBE Program include references that the Metro shall be deemed to refer to the Authority, the General Counsel shall serve as the DBE Liaison Officer, and the Chief Executive Officer shall be given authority to delegate all other responsibilities identified in the DBE Program as appropriate to ensure the Authority's compliance with 49 C.F.R. Part 26. This DBE Program with a Statement of Modification is included as Attachment A.

The proposed Contract Compliance Manual is based on the Metro's Contract Compliance Manual with the following modifications designed to efficiently accomplish DBE compliance on unique Authority procurements:

The proposed Manual clarifies:

- The purpose of the DBE Bid and Proposal Forms,
- Contractor responsibilities in the event of contract changes,
- Communication of findings of non-compliance by the Authority through cure notices,
- The determination of Good Faith Efforts by the Authority.

The proposed Manual streamlines:

- DBE Bid and Proposal Forms,
- DBE utilization reports,
- Resolution of disputes between the contractor and subcontractors.

Finally, the proposed Manual modifies the enforcement mechanisms from the use of penalties to reliance on withholdings from contractor invoices for non-compliance with Manual and contractual DBE requirements.

This proposed Manual (Attachment B) in conjunction with the proposed DBE Program satisfies Federal regulatory requirements.

Contract Goals -- A Federal grantee normally meets its overall DBE goal through the use of contract goals on the various procurement and purchasing actions it takes during the year. An individual contract goal may be higher or lower than the agency's overall goal (in terms of DBE participation), based on the availability of DBE firms for the particular work involved, and there is no requirement that every contract include a goal. Metro has approved 8% as the Federal Transit Administration Disadvantaged Business Enterprise Annual Overall Goal for Federal Fiscal Year 2006.

It is proposed that the Authority establish specific DBE goals for the Negotiated Design-Build contract. The proposed contract goals are: (1) 20% of the Design Allowance (including fee); (2) 20% of the Professional Services Allowance (including fee) and; (3) 20% of the Construction Allowance (including fee). These goals are consistent with the DBE goals used for other recent major public transportation projects in the Los Angeles region, which were based upon the availability of willing and able DBE firms to perform the work involved.

Appointment of the DBE Liaison Officer – The Federal Requirements noted above also stipulate that the Authority identifies a DBE Liaison Officer to implement the DBE program and who reports directly to the CEO on DBE issues. Staff believes that, at least initially, the Authority's General Counsel can most effectively perform this requirement.

FINANCIAL IMPACT

Adopting this DBE program, contract compliance manual and contract goals for the Negotiated Design-Build contract and appointing a Liaison Officer will not affect the Project Cost as shown in the Metro approved Full Funding Plan.

NEXT STEPS

Following adoption of the DBE Program and the Negotiated Design-Build contract goal, the Authority will utilize the Program in its implementation of the Project and will require its design-build contractor to meet, or make Good Faith Efforts to meet the contract 20% goals described above. The DBE Liaison Officer will submit this Program, Manual and report compliance data to the FTA.

ATTACHMENTS

- A. Proposed Exposition Metro Line Construction Authority
DBE Program (Metro DBE Program with a Statement of Modification)
- B. Proposed Exposition Metro Line Construction Authority
Contract Compliance Manual

EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

MID-CITY/EXPOSITION LIGHT RAIL TRANSIT PROJECT

DBE AND EEO PROGRAMS

The Exposition Metro Line Construction Authority (Authority) is a sub-recipient of U.S. Department of Transportation (DOT) Federal funding and is subject to the requirements of the DOT Disadvantaged Business Enterprise (DBE) Program regulations as specified in 49 Code of Federal Regulations (CFR) Part 26. The Authority adopted the DOT approved DBE Program dated July 2002 by the Los Angeles County Metropolitan Transportation Authority (Metro). This program sets the standards, policies, practices and procedures the Authority uses to assess whether a contractor is in compliance with regulatory and contract requirements on DOT assisted projects. All contractors, as a condition of participation in Authority issued DOT assisted contracts, 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.

The Authority will not do business with any employer who discriminates on the basis of: race, sex, color, religion, ancestry, national origin, marital status, age (over 40), disability (including AIDS and cancer related medical conditions) or covered veteran status. To this end, the Authority has adopted Metro's Non-Discrimination and Equal Employment Opportunity (EEO) Program as specified in Metro's Contract Compliance Manual (Section 2), revised May 2002.

The DBE and EEO Program requirements applicable to this contract are specified in the attached Contract Compliance Manual.

CONTRACT COMPLIANCE MANUAL

DBE AND EEO PROGRAM REQUIREMENTS

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SECTION I

DBE PROGRAM REQUIREMENTS

1.0 OBJECTIVES, STATEMENTS AND POLICIES

1.1 OBJECTIVES AND POLICY STATEMENT

The Exposition Metro Line Construction Authority (Authority) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT) found at 49 Code of Federal Regulations (CFR) Part 26. The Authority is a sub-recipient of DOT Federal financial assistance and, as a condition of receiving this assistance, must comply with 49 CFR Part 26.

It is the policy of the Authority to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in Authority issued DOT-assisted contracts. It is also the Authority's policy to:

- Ensure non-discrimination in the award and administration of Authority issued DOT assisted contracts.
- Create a level playing field on which DBEs can compete fairly for Authority issued DOT assisted contracts.
- Ensure that the Authority's DBE Program is narrowly tailored in accordance with applicable law.
- Ensure that only firms that fully meet 49 CFR Part 26 certification eligibility standards are permitted to participate as DBEs on Authority issued contracts.
- Remove barriers that hinder the participation of DBEs in Authority issued DOT assisted contracts.
- Assist in the development of DBE certified firms so that they can compete successfully in the market place outside of the DBE program.

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The Department of Transportation is responsible for implementing all aspects of the DBE Program for the Authority. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the Authority in its DOT related financial assistance agreements.

This policy statement is in distribution to the Authority's Board of Directors, to all components of Authority's organization, and to the DBE and the non-DBE business communities that perform work for the Authority on its contracts.

1.2 NON-DISCRIMINATION POLICY STATEMENT

It is the policy of the Authority never to 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 Authority 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 or a particular race, color, sex or national origin.

1.3 STATEMENT OF ASSURANCES

The Contractor and all subcontractors (at every tier) shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. 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 Authority, in its capacity as DOT recipient, deems appropriate. Each contract signed by the Contractor and any subcontractor (at every tier) shall include the assurances set forth this paragraph.

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1.4 QUOTAS

The Authority does not use quotas in any way in the administration of the DBE Program.

1.5 INCORPORATION OF THE DBE PROGRAM INTO THE CONTRACT

49 CFR Part 26 and the DOT approved DBE Program adopted by the Authority are hereby incorporated by reference into this contract as though set forth in full.

Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a material breach of this contract. The Contractor and all project subcontractors are subject to the requirements of the DBE Program and to all requirements of the DOT DBE program found at 49 CFR part 26.

The Authority will investigate any allegation of the Contractor, subcontractor or any other participating business failing to carry out the requirements of this DBE Program. Should this investigation find merit in the allegations, the Authority may pursue legal and/or contractual remedies and/or impose sanctions as provided for in 49 CFR Part 26. In appropriate cases, the Authority may also refer the matter to proper Federal authorities 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.).

The Contract Compliance Manual is a component of this contract. It describes the Authority's DBE Program requirements applicable to this contract. The provisions and enforcement mechanisms set forth in the Contract Compliance Manual are in addition to all other provisions and enforcement mechanisms available to the DEO set forth elsewhere in this contract. The Contractor's compliance with the DBE Program requirements will be monitored by the Authority throughout the life of the contract.

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1.6 TRANSIT VEHICLE MANUFACTURER CERTIFICATION

Transit Vehicle Manufacturers (TVMs) participating on Authority contracts that include transit vehicle procurements are required, as a condition of being authorized to bid or propose on transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26, Section 49.

2.0 DBE STANDARDS

The Contractor shall ensure that DBEs it has committed to in its bid or proposal have a level playing field to successfully perform their contract responsibilities and further commits to meet the DBE Goal for the contract. These efforts should include but are not limited to the following:

- A. Negotiate in good faith to attempt to finalize subcontract and supply agreements with DBEs listed in its bid.
- B. Continue to provide assistance to DBE subcontractors or DBE suppliers in obtaining bonding, lines of credit, or other capital financing through referral to the DOT Bond Assistance Program (800) 532-1169.
- C. Issue the DBE(s) a written notice of any potential problem and provide a reasonable time frame for the DBE to remedy the problem. The Contractor shall, concurrently with the issuance of the notice to the DBE, send a copy of the notice by First Class mail, postage prepaid, to the Authority. In instances where the DBE fails to remedy the problems identified in the notice, the Contractor shall take the steps outlined in Section 4.0 RESOLUTION OF DISPUTES BETWEEN CONTRACTOR AND (DBE) SUBCONTRACTORS before formally requesting approval from the Authority to substitute a DBE.

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2.1 DBE COMMITMENT

The level of DBE participation to which the Contractor commits in its bid or proposal is the Contractor's DBE commitment. The Contractor's DBE commitment is expressed as a percentage of the total contract price. Only DBEs identified in bid or proposal documents or those approved by the Authority in writing prior to performance of the work shall be used by the Contractor to perform work to meet the DBE commitment.

The Contractor shall promptly notify the Authority in writing of any problems or concerns it has identified in achieving the level of DBE commitment stated in the Contract. The Contractor's DBE commitment and its attainment shall be monitored and enforced by the Authority. DBE attainments are payments actually made to DBE firms for work identified in the bid and proposal documents and specified in the contract or approved by the Authority in writing prior to DBE performance.

2.2 DBE BID AND PROPOSAL FORMS

DBE commitments are documented by the Contractor prior to contract award through the use of the DBE bid and proposal forms, presented in Appendix I of this Contract Compliance Manual. The DBE bid and proposal forms are used to describe the intended participation of the Bidder/Proposer and all proposed subcontractors (at every tier) to perform on the project.

The Authority recognizes that the intended participation of the successful Bidder/Proposer and its subcontractors will change through the life of the contract as a result of change orders, amendments, contractor substitution or other circumstance. The Contractor shall submit DBE bid and proposal forms with its proposal responding to change orders, amendments, contractor substitution or other circumstance.

Failure to provide these completed forms and the accompanying documents may be cause for the Authority to deny the bid or proposal as non-responsive. Individual businesses

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failing to provide a completed form will be presumed not certified and their participation will not be counted.

In "design-build" contracting situations, the Authority awards its contract as a master contract to the Contractor, who in turn will award subsequent construction subcontracts for the work of the project. The Authority has established DBE goals for Design/Professional Services and Construction for this project. The Contractor shall establish construction subcontract goals, as appropriate, for each construction subcontract it lets. The Authority reserves the right to maintain oversight of the Contractor's activities to assure compliance with 49 CFR Part 26.

2.3 CHANGE ORDERS, AMENDMENTS AND MODIFICATIONS

By causing the total contract amount to increase or decrease and/or by altering the distribution of work among contractors, change orders and other contract modifications can impact the participation of DBE firms and the ability of the Contractor to achieve its DBE commitment. To ensure full compliance with the requirements of 49 C.F.R. Part 26 and this manual, the Contractor shall:

- A. Assess change orders and other contract modifications to determine any impact to the Contractor's ability to meet its DBE Commitment;
- B. Factor the impacts of changes into the Contractor's DBE Commitment; and
- C. Take appropriate actions to ensure that the Contractor will continue to meet the DBE Commitment or will satisfy the good faith efforts to meet the DBE Commitment.

When change orders or other contract modifications alter the dollar amount of the contract or the distribution of work, any impacted contractors are required to update the DBE Commitment Forms (Form 6) and to submit the updated form to the Authority.

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2.4 COUNTING DBE PARTICIPATION

When a DBE participates in a contract, only the value of the work actually performed by the DBE may be credited towards the Contractor's DBE commitment. Additionally, the expenditures to a DBE contractor may only be credited towards the Contractor's DBE commitment if the DBE is performing a commercially useful function on that contract.

- A. The entire amount of that portion of a contract that is performed by the DBE's own forces may be credited towards the Contractor's DBE commitment. Included is the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
- B. If applicable, the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of this contract, may be credited towards the Contractor's DBE commitment, provided the fee is found by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- C. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the DBE commitment only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE commitment.
- D. When a DBE performs as a participant in a joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces may be credited towards the Contractor's DBE commitment.
- E. Credit for materials and supplies purchased from DBEs will be as follows:

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1. If the materials and supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will count toward the DBE commitment.
2. If the materials or supplies is purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will count toward the DBE commitment. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.
3. Credit for materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer will be limited to the entire amount of fees and commissions charged by the DBE for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

F. Credit for DBE trucking companies is as follows:

1. The DBE must be responsible for the management and supervision of the entire trucking operation. There cannot be a contrived arrangement for the purpose of meeting the DBE commitment. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
2. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
3. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

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4. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

For the purposes of paragraphs (3) and (4) above, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working or others during the term of lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

2.5 COMMERCIALY USEFUL FUNCTION

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors must be evaluated.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, similar transactions, particularly those in which DBEs do not participate, must be examined.

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If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Authority must presume that the DBE is not performing a commercially useful function.

When a DBE is presumed by the Authority not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption. The Authority may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

The Authority's decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

2.6 CREDIT TOWARDS DBE COMMITMENT

The dollar value of work performed by a DBE subcontractor shall be credited towards the Contractor's final compliance with its DBE obligations on this contract only when the amount being credited has actually been paid to the DBE.

If a DBE subcontractor is decertified during the life of the contract, the Contractor will continue to receive credit toward its DBE commitment for the firm's work.

3.0 DBE PROGRAM COMPLIANCE MONITORING

This section describes the review and monitoring system to ensure that all contractors, subcontractors, consultants, vendors, suppliers, dealers, brokers and other sources, and all Authority departments comply with the DBE requirements and all other contract provisions related to DBE participation.

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3.1 CURE NOTICE

Non-compliance by the Contractor with the DBE requirements of this contract, the Authority's DBE Program or 49 CFR part 26 constitutes a material breach of contract. In the event of non-compliance, a cure notice will be issued to the Contractor identifying the non-compliance matter(s) and specifying the required course of action for remedy.

The Contractor shall respond in writing to the Authority regarding the matter(s) identified in the cure notice. Failure to comply with the cure notice and/or to remedy the identified non-compliance matter(s) is a material breach of contract and is subject to the sanctions identified in Section 7.0.

3.2 PRE-CONSTRUCTION (KICK-OFF) MEETING

Representatives of the Contractor and shall attend the project kick-off meeting. During this meeting, Authority DBE Program representatives will discuss DBE requirements applicable to this contract. Additionally, the Contractor and all project subcontractors (at every tier level) will have an opportunity to discuss any potential issues related to the DBE requirements. The Contractor shall be responsible for informing the subcontractors of all DBE requirements as specified by the Authority herein.

3.3 CONTRACTOR MONTHLY DBE PROGRESS REPORT

The Contractor shall submit timely and complete monthly progress reports that detail the status of commitments to DBE firms, attainments to DBE firms, and prompt payment / retainage counts to all firms (DBE and non-DBE firms) performing on this contract. The monthly progress report shall be submitted to the Authority by the 15th day following the reporting month.

The Monthly DBE Progress Report shall include the following information:

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A. General Contract Value Information - The following general contract value information must be provided:

1. Original Contract Amount
2. Running Total of Change Order Amount
3. Current Contract Amount
4. Amount Paid to Contractor During Month
5. Amount Paid to Contractor Inception to Date
6. DBE Contract Goal
7. Total Dollar Amount of DBE Commitment
8. DBE Commitment as Percentage of Current Contract Amount

B. Contractor/Subcontractor information The following information shall be prepared for the Contractor and each subcontractor (at every tier level) performing on the contract:

1. Firm General Information:
 - (a) name, (b) address, (c) phone, (d) DBE status, (e) contact person, (f) prime contractor name, (g) date contract agreement signed, (h) scope of work, (i) anticipated first date of performance, (j) anticipated last date of performance.
2. Firm Contract Value Information:
 - (a) Original contract amount, (b) running total of change order amount, (c) current contract amount, (d) amount paid to contractor during month, (e) amount paid to contractor to date.
3. Prompt Payment (Running history of information related to invoices submitted by and payments made to contractors, including):
 - (a) Contractor invoice number, (b) invoice amount, (c) invoice date, (d) contractor's prime's invoice number that incorporates this invoice for billing purposes, (e) date of said invoice, (f) project Contractor invoice number and date submitted to Authority,

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(g) date and amount Authority paid on Contractor's invoice, (h) date and amount contractor's prime paid contractor on invoice, (i) breakout of retention withheld (further broken out by regular retention and disputed retention) and payments on withheld retention, (j) check number, date and amount paid to contractor.

4. Expenditure Plan vs Actual Payments (Cash flow projection for contractor versus payments to contractor):

Monthly forecast of planned utilization (projected monthly payments to contractor) versus actual utilization. Note: The planned expenditures should equal the dollars committed to the contractor and shall be developed according to the approved project schedule. The original plan must be approved and each revision must be approved by the Authority's Resident Engineer prior to submittal to the Authority in this report. The original planned utilization amounts (baseline) may be re-baselined at the request of the Authority.

5. Change Order Information: Running history of all change orders affecting contractor participation on the project, including the following information as it relates to the affected contractor:

(a) Change order number (Prime designation and/or Authority designation), (b) change order effective date, (c) change order amounts and amendments, (d) change order description, (e) amended scope, (f) list of firms under subcontract to this firm affected by change order.

C. DBE Trucking Activity Information:

The Contractor shall provide to the Authority the preceding month's trucking activity. The Contractor shall submit documentation showing the amount paid to all listed DBE trucking companies performing on the contract. This monthly documentation shall indicate the portion of revenue paid to DBE trucking companies which is claimed toward DBE participation. The Contractor shall also obtain and submit documentation to the Authority showing the amount paid by DBE trucking

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companies to all firms, including owner-operators, for the leasing of trucks. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The records must confirm that the amount of credit claimed toward DBE participation conforms with the requirements of Section 2.0. The Contractor shall also obtain and submit documentation showing the truck number, owner's name, California Highway Patrol CA number and if applicable, the DBE certification letter of the owner of the truck for all trucks used during that month for which DBE participation will be claimed. The Authority has developed a series of forms that may be adopted by the Contractor to meet this requirement (Appendix III) or the Contractor may develop its own report format and present to the Authority for approval and use to meet the DBE Monthly Progress Report requirements.

3.5 SUBMITTAL OF ALL DBE SUBCONTRACT AGREEMENTS

The Contractor shall submit to the Authority copies of executed subcontracts and/or purchase orders (PO) for all DBE firms participating on the contract within fourteen working days of written request from Authority. The Contractor shall immediately notify the Authority in writing of any problems it may have in obtaining the subcontract agreements from listed DBE firms within the specified time.

3.6 REQUIRED LANGUAGE FOR ALL SUBCONTRACT AGREEMENTS

The Contractor shall incorporate by reference 49 CFR Part 26, the Authority's DBE Program document and this Contract Compliance Manual into each purchase order and each subcontract issued under this contract. Each subcontractor, consultant, dealer, broker, vendor or other source shall agree to the terms and conditions thereof.

The Contractor shall ensure that the following language is included in each subcontract agreement signed by any contractor at any tier performing on this contract:

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A. Contract Assurance:

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 Authority deems appropriate. (This language is to be used verbatim, pursuant to federal regulations.)

B. Prompt Payment:

The Contractor shall incorporate the Prompt Payment Clause, set forth above, in all subcontract, broker, dealer, vendor, supplier or other source agreements or Purchase Orders issued to both DBE and Non-DBE firms. Contractor shall include a prompt payment and retention clause in all DBE and non-DBE subcontracts. The clause ensures prompt payment of all monies due and owing to DBE and non-DBE firms within 10-business days of receipt of payment from the Authority as per the contract agreement and the Prompt Payment Act. Payment of retention shall be made to all DBE and non-DBE subcontractors within ten (10) days following satisfactory completion of the subcontracted work. Any delay or postponement of payment from the above referenced time may occur only for good cause following written approval of the Authority. This clause applies to both DBE and non-DBE firms.

C. Dispute Resolution:

The Contractor must include in its DBE Subcontract Agreement(s) the Dispute Resolution provisions in Section 4.0 of the Contract Compliance Manual for disputes arising out of or related to this contract between contractor and its subcontractors which cannot be settled by discussions between the parties involved. The contractor and its subcontractor, in the event of a dispute to their contract, agree to proceed

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through informal meetings, mediation, or arbitration (if applicable), 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.

3.7 PROMPT PAYMENT, RETAINAGE AND RETENTION

The Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10-business days from receipt of each payment the prime contractor receives from the Authority. Thereafter, each prime at any level agrees to pay each of its subcontractors for satisfactory performance of its contract no later than 10-days from the receipt of each payment from the contractor at the next higher tier.

Retainage or retention is a portion of the payment owed by the prime contractor to a subcontractor that is held pending completion of the subcontractor's work. The prompt payment clause specifically applies to retainage and retention. The Contractor agrees to make payment of and return retainage and retention to each Subcontractor within 10-business days after the Subcontractor's work is satisfactorily completed. Satisfactorily completed means all tasks called for in the subcontract have been accomplished and documented as required by the Authority.

Holding back a certain percentage of the payment owed a subcontractor until the Authority makes final payment to the Prime Contractor is not authorized. Any delay or postponement of payment beyond the 10-day time period stated above may occur only for good cause following written approval by the Authority. Information concerning payments to subcontractors, including retainage or retention amounts, shall be provided by the Contractor to the Authority in accordance with the Monthly DBE Progress Report requirements of Section 3.4.

This clause applies to both DBE and non-DBE Subcontractors performing on this contract.

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3.8 FINAL REPORTING

The Contractor shall submit Monthly DBE Progress Reports as specified in Section 3.4 until final payment, release of retention and acceptance of the contract work has been made by the Authority.

4.0 RESOLUTION OF DISPUTES BETWEEN CONTRACTOR AND (DBE) SUBCONTRACTORS

Disputes arising out of or related to this contract between any contractor and its DBE subcontractor which cannot be settled by discussions between the parties involved shall be settled as described herein. Disputes arising out of or related to the prompt payment provisions set out in Section 3.7 of this Contract Compliance Manual between any contractor and its subcontractor (DBE and non-DBE) which cannot be settled by discussions between the parties involved shall also be settled as described herein.

These provisions shall not apply to disputes between the Contractor and the Authority. These provisions do not alter in any way or waive compliance with any other provisions of the Contract document.

STEP 1: INFORMAL MEETINGS

The Authority shall schedule and conduct informal meetings with the parties to a dispute at the request of any party to the contract. Interested parties should contact the Authority to initiate the process. The Authority's findings are non-binding and are only advisory opinions. However, where the Authority deems it appropriate, the Authority may direct that the parties to the dispute proceed either to Step 2 Mediation with an Independent Third Party (in which case the Authority reserves the right to direct the parties to proceed to Step 3 Arbitration at a later time) or directly to Step 3 Arbitration.

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STEP 2: MEDIATION WITH INDEPENDENT THIRD PARTY

If the parties are unable to resolve the dispute through Step 1, the contractor and its subcontractor shall agree to endeavor to settle a dispute through informal mediation under independent third party organizations (NOT INCLUDING THE AUTHORITY). The contractor shall provide written notice to the Authority of the schedule prior to the initiation of the mediation process. For purposes of this paragraph, the Contractor is considered a third party when it is not a party to the dispute. Upon conclusion of the mediation process, the contractor shall be required to provide the Authority with a copy of the mediator's written report. The mediator's findings are non-binding and are advisory opinions only. If complete resolution of the dispute is not achieved within 10 working days of the issuance of the mediator's written report, the parties must proceed to Step 3 below.

STEP 3: ARBITRATION (IF DIRECTED BY AUTHORITY)

Arbitrations directed by the Authority shall be binding upon all parties to the arbitration and shall be conducted in a manner consistent with section 1020 et seq. of the Public Contract Code and Section 1296 of Code of Civil Procedure. 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.

Available mediation and arbitration services include:

The American Arbitration Association (213) 383-6516

Dispute Resolution Center (818) 793-7174

5.0 TERMINATING, SUBSTITUTION OR ADDING A DBE SUBCONTRACTOR

No contractor at any tier may terminate a DBE subcontractor for convenience and then perform that work with its own workforce or that of its affiliate. The Contractor shall

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provide written notice to the Authority of any failure in whole or in part to utilize committed DBEs for whatever reason.

5.1 SUBSTITUTION OF A DBE SUBCONTRACTOR

Substitution (including scope modifications) of any DBE subcontractor performing on the project must be approved in writing in advance by the Authority.

5.2 GROUNDS FOR DBE SUBSTITUTION

The Authority shall only authorize the substitution of a DBE subcontractor for one or more of the reasons listed below:

- A. The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project, or on the terms of such subcontractor's or supplier's written bid is presented by the Contractor.
- B. The listed DBE becomes bankrupt or insolvent.
- C. The listed DBE fails or refuses to perform his subcontract or furnish the listed materials.
- D. The listed DBE subcontractor fails or refuses to meet the bond requirements of the Contractor.
- E. The prime contractor demonstrates to the Authority, or its duly authorized officer, subject to the further provisions set forth in the Public Contract Code, Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.
- F. The listed subcontractor is not licensed pursuant to the Contractors License Law.
- G. The Authority determines that the work performed by the listed subcontractor is substantially unsatisfactory and is not in accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work

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5.3 NOTICE OF REQUEST FOR SUBSTITUTION

The Contractor shall provide written notice to the Authority when requesting substitution of a DBE firm. This notice must state the grounds, in accordance with Section 5.2 above, for the substitution request, and must also provide information on the firm that will perform the substituted work. The DBE Commitment Forms identified in Section 2.2 above are required to be updated and submitted to the Authority along with the request for substitution.

The Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was substituted, to the extent needed to meet the contract goal.

The requirement that DBEs must be certified by the bid opening date does not apply to DBE substitutions. DBEs must be certified at the time of the substitution. If substitution with another DBE firm is not viable, the Contractor shall document its actions (Good Faith Efforts) attempting to substitute the DBE firm with another DBE firm and submit this documentation to the Authority for review and approval.

The Authority will subsequently notify in writing the DBE subcontractor identified for substitution. This notice will provide the grounds stated by the Contractor for DBE substitution. The listed DBE subcontractor shall have five working days to submit written objections to the substitution or scope modification to the Authority.

Should the DBE subcontractor identified for substitution respond to the Authority with a non-consent to the request for substitution, the Authority will issue a determination on the matter either (1) approving the Contractor request for substitution, (2) denying the request for substitution or (3) directing the parties to resolve the dispute through the Dispute Resolution Process prescribed in Section 4.0. Failure to respond to a written

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notice may constitute the listed DBE subcontractor's consent to the substitution and the Authority will direct the Contractor to proceed with substitution.

5.4 ADDING A DBE SUBCONTRACTOR

If a subcontractor becomes a certified DBE during the life of the contract the Contractor shall notify the Authority in writing of the name of the subcontractor and the date of DBE certification, and provide updated DBE Commitment Forms that reflect the work of the newly certified DBE. The requirement that DBEs must be certified by the bid opening date may not apply to DBE additions. The Authority will review the matter to determine whether or not the dollar value of work remaining to be performed by the subcontractor will be credited towards the Contractor's DBE commitment and DBE Goal of Record. The Authority shall authorize the addition of a DBE subcontractor for DBE credit upon review of updated DBE Forms.

6.0 GOOD FAITH EFFORTS REQUIREMENTS

Good Faith Efforts are generally defined as all the necessary and reasonable steps taken by a firm, which by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation on a contract to achieve:

- A. The contract DBE goal (Pre-Award),
- B. The DBE commitment (Post Award)
- C. Other requirements of the DBE Program (Post Award)

Good Faith Efforts are further defined in the DBE Program found at 49 CFR part 26.

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6.1 PRE-AWARD GOOD FAITH EFFORTS ACTIVITIES

When the Authority establishes a contract goal on a DOT-assisted contract, a Bidder/Proposer must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The Bidder/Proposer can meet this requirement in either of two ways. First, the Bidder/Proposer can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the Bidder/Proposer can document adequate good faith efforts. This means that the Bidder/Proposer must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of 49 CFR Part 26, which, by their scope, intensity and appropriateness to the objective could reasonably be expected to obtain sufficient DBE participation, even if the Bidder/Proposer was not fully successful.

When it establishes a contract goal, the Authority will make a fair and reasonable judgment whether a Bidder/Proposer that did not meet the goal made adequate good faith efforts. The Authority will consider the quality, quantity and intensity of the different kinds of efforts the Bidder/Proposer has made. The efforts employed by a Bidder/Proposer should be those that one could reasonably expect a Bidder/Proposer to take if the Bidder/Proposer were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere Pro Forma Efforts are not good faith efforts to meet the DBE contract requirements. Likewise, the Authority will not ignore bona fide good faith efforts.

The following is a list of types of actions that the Authority considers as part of the Bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- Attend the Pre-Bid or Proposal Conference.
- Place Ads in General, Trade & Focused Publications
- Define Portion of Work to be Subcontracted

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- Notify Community Organizations and Groups
- Write Invitations to DBEs to Distribute RFPs & RFQs
- Follow-Up Initial Solicitation and Maintain Contact Logs
- List DBE Firms, Retain DBE Proposals, Justify Selection of Subcontractor or Other Source
- Assist DBEs with Bonding and Insurance

The following paragraphs further define the activities of the good faith efforts actions listed above and provides a listing of the type of documentation necessary to evidence the good faith efforts activities:

A. ATTEND THE PRE-BID OR PRE-PROPOSAL CONFERENCE

EFFORT: Attendance at the pre-bid or pre-proposal conference scheduled by the Authority is optional, however, it does provide evidence of the contractor's good faith efforts.

EVIDENCE: Provide the name & date of person(s) attending the conference. The Authority verifies attendance with the sign-in sheets. Attendees must sign-in to receive credit for attending any pre-bid or pre-proposal conference. See Appendix II, Exhibit A, Item 1, to review a Good Faith Efforts Evaluation Criteria scoring sheet used to evaluate Bidder's/Proposer's attendance at the conference.

B. PLACE ADVERTISING IN GENERAL, TRADE AND FOCUSED PUBLICATIONS

EFFORT: Bidders/Proposers shall place advertising in a timely fashion in at least one general circulation, one trade association, and one minority focused publication. The advertisement shall include, at a minimum, the information contained in Appendix II, Exhibit B, Sample Advertisement, herein. Advertisements will be timely if they appear at least twenty (20) days prior to the date of Bid opening or the

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due date of the proposal. If the Authority's solicitation does not allow twenty (20) days, a shorter publication time is acceptable.

EVIDENCE: Prepare a list of advertisements placed, including a copy of each advertisement placed and/or tear sheets. Use Exhibit C, Newspaper Advertisement Log found in Appendix II. See Appendix II, Exhibit A, Item #2, to review a Good Faith Efforts Evaluation Criteria scoring sheet used to evaluate Bidder's/Proposer's advertising.

C. DEFINE PORTIONS OF THE WORK TO BE SUBCONTRACTED

EFFORT: Define that portion of the contract work the contractor intends to be performed by its own work force, the portion the contractor intends to be performed by non-DBE businesses, and the portion of the work, supplies, or material to be provided by DBE businesses. Select portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. Contractors should, where appropriate, break out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own work force.

EVIDENCE: Identify efforts made to reasonably structure the contract scope of work for purposes of subcontracting with DBEs. Include documentation showing the portion of the Work that the Bidder/Proposer intends to perform with its own workforce, the portion of the Work that the Bidder/Proposer intends to subcontract and, the portion the intended to be placed with or subcontracted to DBE businesses. Use Appendix II, Exhibit D, Selected Work Categories Form. See Exhibit A, Item #3, to review a Good Faith Efforts Evaluation Criteria scoring sheet used to evaluate the Select Portion of Work to be Subcontracted.

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D. NOTIFY COMMUNITY ORGANIZATIONS AND GROUPS

EFFORT: Effectively using the services of available minority or women community organizations; minority or women contractors groups; local, state and federal minority women business assistance offices and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs. Notify by mail the minority organizations, women's organizations, and others listed in the Directory of Certified Firms. The notifications must include, at a minimum, a description of the Scope or Statement of Work, the company's contact, and the date of bid opening or the due date to the proposal.

EVIDENCE: Provide copies of the letters, faxes, meeting notes or records, telephone logs, etc. in connection with the notices to and contacts with community organizations and groups. Include the name of the organizations and groups, dates, names of contacts, and telephone numbers. Provide copies of correspondence received from these organizations and groups, particularly those acknowledging contact from the Bidder/Proposer. Provide evidence of such notification to at least five (5) community groups or organizations.

See Appendix II, Exhibit A, Item #4, to review a Good Faith Efforts Evaluation Criteria scoring sheet the Authority uses to evaluate the Bidder/Proposer's efforts to notify Small Organizations and/or Community Groups.

E. EXTENDING WRITTEN NOTICES, DISTRIBUTING IFBS AND RFPs TO DBES

EFFORT: Extend written notices to DBEs including Invitation for Bid (IFB) or Request for Proposal (RFP) documents for all work the Bidder/Proposer intends to subcontract. Provide each potential DBE participant with plans, requirements and specifications pertaining to the work.

EVIDENCE: Names, contact persons, addresses, phone numbers, and dates of all DBE firms solicited at least ten (10) days prior to the bid or proposal due date and by

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what means (letter, fax, phone, etc.). Include a copy of the solicitation letter. Provide evidence on which you are relying that these firms are in fact DBE Certified businesses. Citations to the Authority directory will be sufficient for listed DBEs there. If you use sources other than the Authority Directory, provide copies of those sources.

Describe the contract documents, plans and specifications made available to these DBEs for the purposes of soliciting their bids and the dates and the manner in which these documents were made available. Retain these records to document your contacts with both DBEs who choose not to participate and the DBEs who will ultimately be participating in the contract after award if yours is the successful bid or proposal.

Complete Appendix II, Exhibit E, Written Solicitation Submittal Form. A model written notice is provided in Appendix II, Exhibit H, Sample Letter of Solicitation. See Appendix II, Exhibit A, Item #5, to review a Good Faith Efforts Evaluation Criteria scoring sheet used to evaluate Bidders/Proposers.

F. FOLLOW-UP INITIAL SOLICITATION AND MAINTAIN CONTACT LOGS

EFFORT: Oral and/or written follow-up of initial solicitation of DBE firms.

EVIDENCE: The Bidder/Proposer shall maintain a log of the contacts made with DBE firms showing names of firms, contact persons, phone numbers, dates and methods used for following-up initial solicitation to determine whether or not DBEs were interested. Follow-up must be done with a minimum of seventy-five percent (75%) of the initial solicitations to DBEs. Use the form provided in Appendix II, Exhibit G, List of all Firms/Solicitation Responses Received, to log these contacts. See Appendix II, Exhibit A, Item #6, to review a Good Faith Efforts Evaluation Criteria scoring sheet used to evaluate Bidder's/Proposer's solicitation follow-up.

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G. NEGOTIATING IN GOOD FAITH WITH INTERESTED DBES

EFFORT: The Bidder/Proposer negotiates in good faith with DBEs and does not unjustifiably reject proposals prepared by any DBE.

A Bidder/Proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not, in itself, sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the Bidder/Proposer of the responsibility to make good efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

Do not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry membership in specific groups, organizations or associations and political or social affiliations such as union vs. non-union employee status, are not legitimate causes for the rejection or non-solicitation of bids or proposals in the contractor's efforts to meet the project goal.

EVIDENCE: Summarize your DBE negotiations by identifying the terms and conditions offered to DBE businesses and compare those subcontract terms and conditions with the terms and conditions used in your ordinary course of business and in dealing with the subcontractors and other sources that are not DBEs.

Document the name, address and phone number of every source that submitted a proposal. Document the negotiations with each participant. Include in the negotiation document the reasons why additional agreements could not be reached.

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with a DBE to perform the work. Retain copies of all proposals for each item of the Statement of Work solicited.

Prepare a statement explaining your choice of Subcontractor or other source. Unless a DBE firm lacks qualifications to perform the work, only significant price differences, ten percent (10%) or more between the selected Subcontractor or Supplier and the rejected DBE will be judged as an acceptable cause for rejecting proposals.

See Appendix II, Exhibit A, Item #7, to review a Good Faith Efforts Evaluation scoring sheet used to evaluate Bidders/Proposers.

H. ASSIST IN BONDING, CREDIT, INSURANCE, EQUIPMENT, MATERIALS OR SUPPLIES

EFFORT: Offer assistance or making efforts to assist interested DBE firms in obtaining bonding, insurance, and necessary equipment, supplies, materials or related materials or related assistance or services.

EVIDENCE: Bidders/Proposers will document the assistance provided in aid of DBE firms. These efforts may be included (See Appendix II, Exhibit H) in the Letter of Solicitation. See Appendix II, Exhibit A, Item #8, to review a Good Faith Efforts Evaluation Criteria scoring sheet used to evaluate Bidders/Proposers.

6.2 DETERMINATION OF ADEQUACY OF CONTRACT DBE GOAL (PRE-AWARD) GOOD FAITH EFFORTS

If, after the Authority is satisfied all information is complete and accurate and the Bidder/Proposer's efforts have been documented, the Authority will choose to commit to the performance of the contract by the successful Bidder/Proposer who the Authority determines made Good Faith Efforts by:

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- A. Documenting that it obtained enough DBE participation to meet the goal, or
- B. Documenting that it made adequate Good Faith Efforts to meet the contract goal, even though it did not succeed in obtaining enough DBE participation to do so.

If an apparent successful Bidder/Proposer did not obtain enough DBE participation to meet the contract goal, its actions must satisfy the good faith efforts standard. The Bidder/Proposer's documentation of its actions will be called on to demonstrate that the contractor met the standard of Good Faith Efforts. Evidence of the contractor's actions must be submitted within forty-eight (48) hours of the request by the Authority.

6.3 RECONSIDERATION

- A. Opportunity for Reconsideration: The Authority provides the apparent successful Bidder/Proposer whose efforts were initially determined not to have met the Good Faith Efforts standard, an opportunity for administrative reconsideration prior to contract award.
- B. Reconsideration Hearing: Administrative Reconsideration Hearing gives the Bidder/Proposer an 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. Reconsideration will be handled by the Reconsideration Officer, an Authority Official, that did not take part in the original determination that found the Bidder/Proposer failed to meet the goal or failed to make adequate good faith efforts to do so.

The Bidder/Proposer will have the opportunity to meet in person with the Authority official who handles the reconsideration to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Authority will send the Bidder/Proposer 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.

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C. Reconsideration Decisions Are Not Appealable to the DOT

The result of this reconsideration process is NOT administratively appealable to the DOT.

6.4 POST-AWARD GOOD FAITH EFFORTS ACTIVITIES

In the event that the Contractor and/or a subcontractor (at any tier) fails to meet the goal with respect to post-award activities, the principles of Sections 6.1 & 6.2 shall be applied to the determination of whether the Contractor and/or subcontractors (at every tier) have satisfied the good faith efforts requirements with regard to the addition and/or substitution of subcontractors.

7.0 SANCTIONS FOR VIOLATIONS

Should the Authority find the Contractor to be in violation of any part of the contract's DBE requirements (either directly or through a subcontractor) during the performance of the Work, Contractor shall correct its deficiency and may be subject to appropriate administrative remedies and/or penalties.

Failure of the Contractor to remedy any identified violations of the DBE Program requirements shall constitute a breach of contract and may result in the Authority terminating the contract for default and/or imposition of appropriate sanctions as specified in this section.

Being subject to appropriate administrative remedies or sanctions under this section does not preclude the Authority from invoking other contract and/or legal remedies available under federal, state or local law.

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7.1 APPROPRIATE ADMINISTRATIVE REMEDIES

Any Contractor or subcontractor (at any tier) found by the Authority to be in violation of the contract DBE requirements will be informed of the identified violation by the Authority in writing, by certified mail, in the form of a cure notice per Section 3.1 above. The Authority will impose remedies for non-compliance with DBE Program requirements. Appropriate Administrative Remedies shall include, but not be limited to, the following sanctions:

- A. Withholding in the amount of 5% of the monthly payment(s) due to Contractor until strict compliance with the issued identified in the cure notice is achieved. The withholding will continue through multiple payments, if necessary, until compliance is effectuated. Any monies withheld by the Authority as a result of continued non-compliance with DBE program requirements through project close-out will be considered a permanent withholding.
- B. In the event that a contractor is found to be in violation of the prompt payment provisions of this contract, the Authority will withhold the total amount of any monthly payment due to the contractor violating the prompt payment requirements until compliance with the prompt payment requirements are effectuate.
- C. Chronic violators of the DBE requirements of this contract will be assessed monetary penalties to be forfeited to the Authority. The amount of the penalty will be based on the facts of the matter, viewed as a whole, and will range from 20% to 50% of the monies withheld pursuant to A and B above, at the discretion of the Authority.
- D. Termination of the Contract for default (Requires Board Approval)
- E. Debarment (29 CFR 5.6)

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7.3 RECONSIDERATION OF SANCTION DETERMINATION

The Contractor shall be given ten (10) working days from the date of the cure notice to (1) File a written appeal or (2) Request a hearing with the Authority to reconsider the Authority's determination of sanctions. Failure to respond within the ten (10) day period shall constitute a waiver of the Contractor's right to reconsideration appeal. If the Contractor files an appeal, the Authority, shall issue a written recommendation within ten (10) working days of receipt of the written appeal.

If, after review of the Contractor's appeal, the Authority decides to uphold the decision to impose administrative sanctions on the Contractor, the written recommendation shall state the specific sanction(s) to be imposed.

7.4 DOT SANCTIONS

Suspension or debarment proceedings may be initiated by the DOT against any firm that:

- A. Attempts to participate in this contract as a DBE if the firm does not meet the eligibility criteria stated in the certification standards of the DBE Program specified in 49 CFR Part 26 and if it attempts to participate on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty.
- B. In order to meet DBE contract goals or other DBE program requirements, uses or attempts to use on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the DBE eligibility criteria stated in the certification standards of the DBE Program specified in 49 CFR Part 26.

The DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31. Additionally, the DOT may refer the to the Department of

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Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in this contract or otherwise violates applicable Federal statutes.

In a suspension or debarment proceeding brought under the DBE Program specified in 49 CFR part 26, the DOT may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the DOT from determining that the purported DBE or another firm that has used or attempted to use the purported DBE to meet DBE goals should be suspended or debarred.

8.0 AUDIT AND INSPECTION

The Authority 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 Authority. Notice is hereby given that state, local, and federal authorities may initiate or cooperate with Authority in auditing and inspecting such records.

END SECTION I

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SECTION II

NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

1.0 POLICY

The Exposition Metro Line Construction Authority (☐Authority☐) will not do business with any employer who discriminates on the basis of: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); disability (including AIDS, and cancer-related medical condition) or covered veteran status.

2.0 IMPLEMENTATION

The Authority has adopted the Construction Industry Compliance Program procedures for compliance reviews of construction contractors and subcontractors including those involved in federally assisted construction to determine whether they are complying with requirements prohibiting discrimination and requiring affirmative action to ensure equal employment opportunity without regard to race, color, religion, national origin, sex, disability, or covered veteran status.

- 2.1 Any Contractor who is performing work financed in whole or in part by an agency of the federal government, whether on a project sponsored by the Authority or another agency, may follow the federal regulations which implement Executive Order 11246.
- 2.2 The Authority is responsible for implementing the Equal Employment Opportunity program. The Authority shall collect all reports and related information, and conduct all monitoring and enforcement activities as outlined in the regulations. Any Contractor who is performing work as described in paragraph B of this Section is also required to submit reports and related information to the regional office of the U.S. Department of Labor Employment Standards Administration, Office of Federal Contract Compliance Program (OFCCP).

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2.3 A Contractor is covered under Executive Order if the contract exceeds \$ 10,000 and Section 503 if the amount is more than \$2,500; and under 38 U.S.C. 4212 if the amount exceeds \$10,000 or more. Federal Assisted construction contracts and subcontracts in excess of \$10,000 are covered under Executive Order 11246 only and not under 503 or 38 U.S.C. 4212. Contractors meeting the threshold criteria in this paragraph are required to include the following clause in their contract:

- A. During the performance of this Contract, the Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); or, disability (including AIDS, and cancer-related medical condition). Contractors and Subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and Subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) The applicable regulations of the Fair Employment and Housing implementing Government Code, Section 12900, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this Contract by reference and made a part hereof as if set forth in full. The Contractor and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- B. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform Work under the Contract.

3.0 NONCOMPLIANCE

The Authority shall determine violations of the nondiscrimination and compliance requirements and recommend possible remedies. In the event of noncompliance by an Authority Contractor or Subcontractor, the Office of Small Business Diversity and Labor Compliance will inform the Prime and Contract Administrator of such finding. The Authority may pursue such remedies as it deems appropriate, including cancellation,

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termination or suspension of the Contract, declaring the Contractor ineligible to bid on future contracts for a specified period of time, or such other sanctions which shall take into account the severity of the violation or violations.

4.0 EQUAL EMPLOYMENT OPPORTUNITY

- 4.1 The Contractor shall not discriminate against any employee or applicant for employment because of: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); or, disability (including AIDS, and cancer-related medical condition). The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); or, disability (including AIDS, and cancer-related medical condition). Such actions shall include but not be limited to the following: employment, upgrading, demotion, and transfer; recruitment and recruitment advertising; layoff and termination; rates of pay and other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post notices to be provided, setting forth the conditions of this Section, in conspicuous places available to employees and applicants for employment. The Contractor shall insert a similar condition in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
- 4.2 The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); or, disability (including AIDS, and cancer-related medical condition).
- 4.3 The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided, advising the said labor union or workers' representatives of the Contractor's

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commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 4.4 The Contractor shall comply with all provisions of Executive Order 11246, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 4.5 The Contractor shall furnish information and reports required by Executive Order 11246, as amended, and by rules, regulations, and orders of the Secretary of Labor or pursuant thereto and shall permit access to its books, records and accounts by the Authority and the Secretary of Labor, for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 4.6 In the event of the Contractor's noncompliance with the nondiscrimination conditions of the Contract or with any of the said rules, regulations, or orders, the Contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts, in accordance with procedures authorized in Executive Order 11246, as amended; and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 4.7 The Contractor shall include the conditions of this Section in every subcontract of any tier or purchase order, unless exempted by rules, regulations, or orders of the Secretary of Labor, issued pursuant to Section 204 of Executive Order 11246, as amended, so that such conditions shall be binding upon each Subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Authority may direct, as a means of enforcing such conditions, including sanctions for noncompliance, provided, however, that, if a Contractor becomes involved in or is threatened with litigation with a Subcontractor or vendor as a result of such direction by the Authority the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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5.0 AFFIRMATIVE ACTION REQUIREMENTS AND EQUAL EMPLOYMENT OPPORTUNITY

5.1 Requirements for Affirmative Action to Ensure Equal Employment Opportunity pursuant to Executive Order 11246, as amended, apply to this Contract.

5.2 The Contractor shall comply with the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth herein.

5.3 The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the Los Angeles County Area are as follows:

A. Goals and Timetables for Female Participation.

TIMETABLE	TRADE GOAL
From April 7, 1978 extended indefinitely	All 6.9%

B. Goals and Timetables for Minority Participation.

TIMETABLE	TRADE GOAL
Until further notice by the Office of Federal Contract Compliance Programs (OFCCP)	All 28.3%

These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside the covered area, it shall apply the goals established for such geographical area where the work is generally performed. With regard to this second area, the Contractor is also subject to the goals for both its federally involved and non-federally involved construction.

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- 5.4 The Contractor's compliance with Executive Order 11246, the regulations in 41 CFR Part 60-4, and the Authority's Equal Employment Opportunity Policy shall be based on its implementation of this Section, specific affirmative action obligations set forth in 41 CFR 60-4.3 (a) and its efforts to meet the goals established for the Los Angeles County geographical area where the Work is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor must demonstrate a good faith effort to employ minority persons and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goal shall be a violation of the Contract, Executive Order 11246, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.
- 5.5 The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days after award of any construction subcontract in excess of ten thousand dollars (\$10,000) at any tier for construction work under the Contract. The notification shall list the name, address, and telephone number of each subcontractor and employer identification number; estimated dollar amount of subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
- 5.6 As used in the Contract, the "covered area" (or otherwise termed the "Work") is the area of jurisdiction of the Los Angeles Building and Construction Trades Council.
- 5.7 MONTHLY EMPLOYMENT UTILIZATION REPORTS (CC257)

The CC-257 is used to report minority and female employee utilization. Contractors are required to record the total hours worked by all construction employees and the number of hours worked by minority and female employees by construction trade, on construction projects in a specific geographical area. The employment goals for minority

