

**DIVERSITY & ECONOMIC OPPORTUNITY PROGRAMS  
COMPLIANCE MANUAL (NON-FEDERAL - SBE)  
REVISION 4 – ISSUED MAY 15, 2009**

**SECTION 1 SBE PROGRAM REQUIREMENTS**

**1.0 EQUAL OPPORTUNITY POLICY**

It is the policy of the Los Angeles County Metropolitan Transportation Authority (Metro) to provide equal opportunity in procurement and contracting actions to each Bidder, Offeror or Proposer in connection with their projects. No person or business shall be discriminated against in any Metro procurement or contracting action because of race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), age (over 40), marital status, veteran status, or any other status protected by applicable federal or state statutes.

The contractor agrees that the above statement of policy shall be inserted into all subcontracts issued pursuant to this contract and agreed to by all subcontractors, suppliers and sources participating in this contract. Failure to carry out the above statement of policy or failure to comply with Metro Small Business Enterprise (SBE) Program shall be treated as a breach of this agreement. Upon notification to Metro of any failure to carry out this policy or failure to comply with Metro SBE Program and this SBE Contract Compliance Manual by any contractor, subcontractor, supplier or other source participating in this contract, Metro shall investigate and may impose sanctions as provided in the Special Provisions Section and/or other sections of the contract and/or may take other legal action as is deems appropriate.

**1.1 INCORPORATION OF THE SBE PROGRAM DOCUMENT INTO THE CONTRACT**

The SBE Program document, approved by the Board of Directors of the Los Angeles County Metropolitan Transportation Authority, is hereby incorporated into this contract by reference as though set forth in full. Copies of the SBE Program are available from Diversity and Economic Opportunity Department

**A. POTENTIAL CONFLICTS WITH THE SBE PROGRAM DOCUMENT**

This Contract Compliance Manual, which is part of this contract, focuses on SBE Program compliance requirements set forth in the SBE Program document. Any errors, omissions, ambiguities, conflicts or inconsistencies between this SBE Contract Manual and the SBE Program Document shall be resolved in favor of the SBE Program Document. All record keeping and reporting requirements of the SBE Program will be monitored and enforced by Metro throughout the life of the Contract.

## 2.0 PROGRAM PURPOSE AND STANDARDS

### 2.1 PURPOSE

Metro has received funds from sources other than the federal government for the support of this contract effort. These sources of funds include state, county or local governments or agencies. As a condition of this contract, contractors shall comply with the terms and conditions of the Small Business Enterprise (SBE) Program, sections of which are presented in this Contract Compliance Manual. This manual sets forth contract provisions implemented by Metro to ensure that all small businesses have a maximum opportunity to participate in Metro contracts funded from other than federal sources.

### 2.2 SBE STANDARDS

#### (a) SBE COMMITMENT

The level of SBE participation of which the Contractor commits to in its bid or proposal becomes the Contractor's SBE commitment, the commitment of record in the contract. The contractor's SBE commitment is stated in the Special Provision section of the Contract and shall be monitored and enforced as described herein.

#### (b) COMMERCIALLY USEFUL FUNCTION

- (1) Expenditures to an SBE subcontractor or supplier will count toward SBE commitment only if the SBE subcontractor or supplier performs a commercial useful function.
- (2) A commercially useful function is performed when the business is responsible for the 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 company must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) the material and paying for the material itself. To determine whether a company is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount of the firm is to be paid under the contract is commensurate with the work it is actually performing and the SBE credit claimed for its performance of the work and other relevant factors.
- (3) If a SBE 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 SBE 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, Metro must presume that the SBE firm is not engaged in performing a commercially useful function. The presumption that arises is rebuttable.

## 2.3 FRAUDS AND FRONTS

- (a) Suspension or debarment proceedings may be initiated against any firm:
  - (1) That attempts to participate in a program as an SBE if the firm does not meet the eligibility criteria stated in the certification standards for SBE programs 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, or
  - (2) That in order to meet SBE contract goals or other SBE program requirements uses or attempts to use on the basis of false, fraudulent or deceitful statements or representations, another firm that does not meet the SBE eligibility criteria stated in the SBE Program's certification standards.
- (b) In either case Metro may take whatever administrative, legal and/or contractual action it deems appropriate.
- (c) While Metro may consider that the purported SBE business was issued an SBE certification letter, SBE certification issued on false or misleading grounds will not preclude Metro from determining that the purported SBE or that any firm which used or attempted to use the purported SBE to meet SBE goals, should be suspended or debarred.

## 3.0 CONTRACT COMPLIANCE

### 3.1 REVIEW AND MONITORING SYSTEM

This section describes the reviewing and monitoring system to ensure that all contractors, subcontractors, consultants, vendors, suppliers of goods and services, regular dealers and brokers, and all Metro departments comply with the SBE utilization requirements and all other contract specifications related to SBE participation.

Non-compliance by the contractor with the requirements of the SBE regulations constitutes a breach of contract. It requires submission of documentation of actions (Good Faith Efforts) toward meeting the level of commitment to SBE participation in the contract. Failure to comply with this request and/or satisfy Metro of good faith efforts (GFE) may result in (1) Metro directing the contractor to mandatory participation in a SBE Program training session, and/or (2) termination of the contract, and/or (3) imposition of liquidated damages and/or (4) other appropriate remedies.

### 3.2 NOTIFICATION OF REPORTING RESPONSIBILITY

Prime contractors at all tiers shall directed subcontractors and sources to the provisions in the contract governing SBE Program record keeping and reporting requirements.

### 3.3 SBE ACTIVITY REPORTING

All prime contractors shall submit monthly progress reports on SBE utilization to the SBE Program Office on the SUMMARY OF CONTRACTORS PAID REPORT (FORM 103). Failure to submit FORM 103 reports by the 15th of each month may result in the imposition of a penalty of \$100 per day, per report.

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

- i. Name of each SBE subcontractor.
- ii. General work assignment of each SBE subcontractor.
- iii. The specific portion of work executed by each SBE Subcontractor during the reporting period.
- iv. The dollars committed to each SBE Subcontractor.
- v. The dollars paid to each SBE Subcontractor during the reporting period.
- vi. The dollars paid to date for each SBE Subcontractor.
- vii. The dollars paid to date as a percentage of the total commitment to each SBE.
- viii. Modification to dollars paid resulting from change order activity.
- ix. Submit a copy of its Affirmative Action Plan on an annual basis.

b. MONTHLY EXPENDITURE PLAN

A monthly expenditure plan in calendar form for each of its approved SBE Subcontractors/Suppliers shall be submitted within 30 days of Notice to Proceed. The planned expenditures shall equal the dollars committed to each SBE 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 (WACN) affecting the SBE's work. A revised plan shall be submitted within 30 days from the incorporation of the change. The original plan, together with any revisions, must first be approved by the, "Construction Manager's Resident Engineer," before being submitted to the assigned DEO Representative and the Contract Administrator.

c. SUBMIT COPIES OF SBE SUBCONTRACTS

The Contractor shall submit to Metro copies of all executed SBE subcontracts within fourteen (14) working days after the Contractor executes the contract with Subcontractor. The subcontract should be sent to Metro, attention name of the assigned DEO Representative. The contractor shall incorporate this Contract Compliance Manual/Non-Federal into each agreement, whether purchase order (PO) or subcontract, issued under this contract, and each subcontractor, vendor,

consultant, dealer, broker or other source shall agree to the terms and conditions thereof.

d. COUNTING AND CALCULATING SBE PARTICIPATION

Counting and calculating SBE participation shall be done as set forth in the SBE Program and in the “Instructions to Bidders, Offerors and Proposers” distributed in the bid and proposal phase of this procurement, prior to contract award.

Expenditures to an SBE subcontractor or supplier will count toward the contract commitment only if the subcontractor or supplier performs a commercially useful function. Only those amounts actually paid to an SBE count toward SBE participation when calculating a contractor’s progress toward achieving the contract goal.

3.4 PRE-CONSTRUCTION (KICK-OFF) MEETING

Both the Contractor and the Subcontractor(s) or a representative of each firm shall attend the pre-construction meeting concerning SBE requirements and other matters, prior to or immediately after all executed Notice to Proceed subcontracts have been submitted. Listed first-tier subcontractors shall enter into subcontract agreements with the Contractor within fourteen (14) business days of the date the Prime Contractor executes contract documents with Metro. Failure to execute subcontract agreements in a timely manner shall be considered a violation of the SBE program requirements.

Further, the Contractor shall report its failure to execute subcontractor agreements for any of the listed SBE subcontractors within 20 business days of the Prime Contractor signing of the contract with the Authority. The Contractor shall be responsible for informing the Subcontractors of all SBE requirements as specified by Metro herein.

3.5 SBE MAXIMUM OPPORTUNITY TO PARTICIPATE

The Contractor shall ensure that the SBEs it has committed to in its bid or proposal have maximum opportunity to successfully perform their contract responsibilities and that the Contractor further commits to meet its SBE goal. 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 the SBEs listed in its bid. Contractors using additional SBEs after award shall notify the Contract Compliance Unit for verification of SBE Program and SIC eligibility. Notification should include proposed firm names, scope of work and proof of certification.
- b. Continue to provide assistance to SBE Subcontractors or Suppliers in obtaining bonding, lines of credit, or other capital financing, and/or refer the SBEs to the Transit Bond Assistance Program (818) 294-1017.
- c. Contractors who failed to meet the SBE goals established for the contract, but who were determined by the AUTHORITY to have fulfilled the good faith effort requirements to meet the goal, shall make additional documented efforts to seek out and utilize additional first-tier SBE Subcontractors and Suppliers to increase its SBE participation, during the life of the contract.

- d. Immediately inform Metro SBE Program Office of any problems anticipated in attaining the SBE commitment agreed upon at the time of award.
- e. Issue the SBE(s) a written Cure Notice of any potential problem and provide a reasonable time frame for the SBE to cure the problem. Concurrently with the issuance of the Cure Notice to the SBE, send a copy of the Cure Notice by First Class Mail, postage pre-paid, to the assigned DEO Representative and Metro Contract Administrator. In instances where the SBE fails to cure, the Contractor is then obligated to take the steps outlined in the section RESOLUTION OF EQUAL OPPORTUNITY (EO) SBE DISPUTES BETWEEN CONTRACTOR AND SBE SUBCONTRACTORS before formally requesting approval from the AUTHORITY to substitute a SBE; and
- f. Make timely payments of all monies due and owing to SBE firms as per the contract agreement and Prompt Payment Act.

### 3.6 RESOLUTION OF SBE EQUAL OPPORTUNITY (EO) DISPUTES BETWEEN CONTRACTORS AND SUBCONTRACTORS

For disputes arising out of or related to this contract between the Contractor and any lower tier SBE subcontractor which cannot be settled by discussions between the parties involved, the parties may seek to settle the dispute as described herein.

These provisions shall not apply to disputes between the Contractor and Metro. 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

The assigned Diversity and Economic Opportunity Representative will conduct informal meetings with the parties to a dispute at the request of any party to the contract, however, all parties must voluntarily agree to the procedure. Interested parties should contact the DEO Contract Compliance Manager at (213) 922-2603. The assigned Diversity and Economic Opportunity Representative 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. Metro's Diversity and Economic Opportunity Department is considered an independent third party. 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 EO 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 arbitrations are to be conducted in a manner consistent with §1020 et. seq. of the California Public Contract Code and §1296 of California 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 Paragraph, 3.6 into each SBE subcontract related to work arising under this contract and shall not incorporate by reference.

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

d. TIMELINESS

Should the parties proceed to arbitration, moneys due, if any, shall be placed in a trust account. Such funds shall be released to the appropriate party within five (5) business 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 SBE goals.

3.7 SUBSTITUTIONS

If, after award, and following the above dispute resolution procedures, a Contractor should request a substitution of Subcontractors pursuant to the provisions of the California Public Contracts Code, the Contractor shall replace a SBE Subcontractor with another SBE firm. THE CONTRACTOR SHALL PROVIDE WRITTEN NOTICE TO THE ASSIGNED DEO REPRESENTATIVE OF ANY FAILURE IN WHOLE OR IN PART TO USE LISTED SBEs.

- a. If a SBE Subcontractor substitution is requested, the Contractor shall submit a list of any requested substitute SBE Subcontractors, together with corresponding certification to Metro.
  - i. The Contractor shall, at a minimum, provide the Resident Engineer and the Contract Compliance Department with a listing of firms and organizations of enterprises solicited and those utilized as subcontractors on the proposed project. Such listing shall clearly delineate which firms are classified as SBE.
  - ii. Efforts made to identify and retain a SBE as a substitution subcontractor when arrangements with the original SBE proved unsuccessful shall be submitted in writing to Metro SBE Compliance Officer for approval. Work in the Category concerned shall not begin until such approval is granted in writing.

- iii. Notification of a subcontractor's termination shall be sent to Metro's Resident Engineer and to the assigned DEO Representative and the Manager, Contract Compliance Unit, Diversity and Economic Opportunity (DEO) Department. Said termination notice will include the subcontractor's ethnic classification and reason for termination.
- b. The new list shall include the dollar value and the type of work covered by each Subcontractor. All substitutions are subject to the approval of Metro.
- c. Metro will authorize the substitution of a subcontractor only for the below listed reasons:
  - i. The listed SBE, 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.
  - ii. The listed SBE becomes bankrupt or insolvent.
  - iii. The listed SBE fails or refuses to perform his subcontract or furnish the listed materials.
  - iv. The listed SBE subcontractor fails or refuses to meet the bond requirements of the Contractor.
  - v. The prime contractor demonstrates to Metro, 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.
  - vi. The listed subcontractor is not licensed pursuant to the Contractors License Law.
  - vii. Metro 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.
- d. If substitution with another SBE firm is not viable, the Contractor shall:
  - i. Document its good faith efforts in attempting the substitution with other SBE firms; and
  - ii. Submit this documentation along with the REQUEST FOR SUBSTITUTION WITH OTHER THAN AN SBE to Metro for review and approval.
- e. The prime Contractor shall obtain the written consent of Metro prior to making any substitutions of SBE firms or other Subcontractors.

### 3.8 ATTAINMENT OF THE CONTRACT'S SBE COMMITMENT

- a. The Contractor shall not make any falsification of a Subcontract as to Subcontractor's name, Subcontract amount and/or actual work to be performed by SBE firms.
- b. The Contractor shall use SBEs according to the participation levels committed to at the time of contract award, or be requested to demonstrate an adequate and positive good faith effort to do so throughout the life of the contract.
- c. The dollar amount of Change Orders or any other contract modifications that increase or decrease the scope of work committed to SBEs shall be commensurately added to or subtracted from the total contract amount used to compute actual dollars paid to SBEs.
- d. All contract amounts revised as a consequence of a Change Order or other contract modification shall be reflected in the Contractor's monthly progress reports referenced in the Section entitled SBE CONTRACT COMPLIANCE REPORTING, herein.

Any Contractor's monthly progress report that reflects contract amounts revised as a consequence of Change Order(s) shall be accompanied by a copy of said Change.

- e. Order(s) which the Contractor shall submit the final SBE report within fourteen (14) calendar days of acceptance of the contract work by Metro.
- f. Failure to adhere to any of the requirements of this Section shall constitute a breach of contract and may result in Metro's terminating the contract for default and/or imposing of appropriate sanctions as outlined in the Section entitled REMEDIES FOR BREACH OF SBE REQUIREMENTS.

### 3.9 FINAL REPORTING

The Contractor shall submit the final Form 103 report within 14 calendar days of acceptance of the contract work by Metro.

### 3.10 FAILURE TO COMPLY

Failure to adhere to any of the SBE requirements shall constitute a breach of contract and may result in Metro terminating the contract for default and/or imposition of appropriate sanctions as outlined in the Section entitled POLICY and the Articles entitled, ASSESSMENT FOR SBE NON-COMPLIANCE, of the Compensation and Payment Provisions. The Contract Staff shall review the contractor's monthly progress reports to determine whether the utilization of SBE firms is consistent with the commitment of the contractor as stated in its bid or proposal and/or agreed to at the time of contract award.

Failure to use an SBE that was listed toward the goal is a breach of contract and may result in the imposition of administrative sanction.

If it is determined that the Contractor's SBE utilization is not consistent with the commitment thereto, the contractor shall be requested in writing to submit evidence of its good faith efforts to meet the goal. The contractor shall be given ten (10) working days to submit this documentation. Failure to respond shall place the contractor in non-compliance subject to sanctions provided herein. The contractor's good faith efforts documentation shall then be reviewed for accuracy, sufficiency and internal consistency. Staff shall make a determination as to the adequacy of the contractor's good faith efforts documentation and so inform the contractor. If it is determined that the contractors' good faith efforts documentation is acceptable, the contractor shall be deemed to be in compliance with the SBE utilization goals.

If it is determined that the Contractor's good faith efforts documentation is not acceptable, the Contractor shall be notified and be deemed to be in non-compliance with the SBE utilization goals and/or be requested to correct its non-compliance within a reasonable time frame, and/or may result in the AUTHORITY terminating the contract for default and/or the imposition of other appropriate sanctions. Contracts executed prior to the de-certification of the SBE may remain undisturbed. Neither the prime contract nor the subcontract will be subject to cancellation because of the de-certification, provided there is no culpability on the part of either the prime contractor or the subcontractor which led to the de-certification. The prime contractor for whom the decertified SBE is working receives credit toward the project goal provided the prime contractor acted in good faith in relying on Metro's certification of the firm. However, if the decertified SBE were also found not to have performed a commercially useful function, no credit is to be made to the project goal or Metro's overall goal. The contractor shall replace decertified firms with a SBE firm(s) on contract amendments and/or option year(s).

### 3.11 REMEDIES FOR BREACH OF SBE REQUIREMENTS

All intended Bidders or Proposers and successful Contractors are hereby notified that, should a Contractor be found in violation of any part of Metro SBE requirements during the performance of the Work, such Contractor will be required to "correct" its deficiency or be subject to the Administrative Sanctions listed in this Section.

#### A. ADMINISTRATIVE SANCTIONS

All Contractors deemed to be in non-compliance with any part of the SBE Program requirements shall be informed in writing, by certified mail, that administrative sanctions shall be imposed for non-compliance of the SBE Program requirements and/or failure to provide documentation of good faith efforts as requested.

Administrative Sanctions shall include, but not be limited to:

- (a) A mandatory four (4) hour SBE Training Session (STS) to be attended by at least two decision makers of the Contractor(s) in violation. Metro Contract Compliance Unit will conduct the SBE Training Session. Each contractor attending the STS will be responsible for all associated expenses, including, but not limited to, travel, lodging, meals and etc;
- (b) Penalties, as described in Assessment For SBE Non-Compliance Section;
- (c) Suspension of payment to the Contractor of any monies held by the authority, as retained on the Contract;

(d) Termination of the Contract for default.

### 3.12 APPEAL OF SANCTION DETERMINATION

THE CONTRACTOR SHALL BE GIVEN TEN (10) BUSINESS DAYS FROM THE DATE OF THE NOTICE TO FILE A WRITTEN APPEAL WITH THE DIVERSITY AND ECONOMIC OPPORTUNITY DEPARTMENT'S MANAGER OF CONTRACT COMPLIANCE OR HIS/HER DESIGNEE.

Failure to respond within the ten (10) day period shall constitute a waiver of the Contractor's right to appeal. If the Contractor files an appeal, the Contract Compliance Unit Manager, or his designee, 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 Manager of Contract Compliance or his/her designee, decides to uphold the decision to impose administrative sanctions on the Contractor, the written recommendation shall state the specific sanction(s) to be imposed and inform the Contractor of its right to a hearing on the merits.

### 3.13 CONTRACTOR'S RIGHT TO A HEARING

The Contractor shall be given ten (10) business days from the date of the written recommendation to file a written request for a hearing with the Manager, Contract Compliance Unit, Diversity and Economic Opportunity. Failure to respond within the ten (10) business day period shall constitute a waiver of the Contractor's right to a hearing.

The Contract Compliance Manager, Diversity and Economic Opportunity shall issue a written final determination within five (5) business days of the hearing. There shall be no right of appeal to Metro Board of Directors.

### 3.14 ASSESSMENT FOR SBE NON-COMPLIANCE

Should the Contractor fail to comply with any part of the Contract SBE Program requirements, the Contract payments will be reduced by whichever is the greater

- (1) Five Hundred dollars (\$500) per day from the date the Contractor is found by the EO Department to be in non-compliance with any part of the SBE Program requirements until compliance is either attained, or excused;
- (2) An amount equal to ten percent (10%) of the total contract value including any approved change orders.

## 4.0 AUDITS AND INSPECTIONS

Metro 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 SBE participation and/or adherence to the SBE Program requirement. Contractors and Subcontractors shall permit access to their records at the request of Metro. Notice is hereby given that state, local, and federal authorities may initiate or cooperate with Metro in auditing and inspecting such records.

## **SECTION 2 NON-DISCRIMINATION ANDEQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

### **1.0 POLICY**

The Los Angeles County Metropolitan Transportation Authority (Metro) 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**

- 2.1 Metro 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.
- 2.2 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 Metro or another agency, may follow the federal regulations which implement Executive Order 11246.
- 2.3 The Diversity and Economic Development Department is responsible for implementing the Equal Employment Opportunity program. This office 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).
- 2.4 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 Diversity and Economic Development Department has Metro to determine violations of the nondiscrimination and compliance requirements and recommend possible remedies. In the event of noncompliance by an Metro Contractor or Subcontractor, the Diversity and Economic Development Department will inform the Prime and Contract Administrator of such finding. Metro may pursue such remedies as it deems appropriate, including cancellation, 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 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 Metro 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 Metro 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 Metro the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**5.0 AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY SPECIFICATIONS**

- 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.

5.4 The Contractor's compliance with Executive Order 11246, the regulations in 41 CFR Part 60-4, and Metro'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.

**6.0 STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY  
CONSTRUCTION CONTRACT SPECIFICATIONS**

Pursuant to 41 CFR 60-4.3 (a) and Metro's policy as follows:

6.1 As used in this Manual:

A. "Covered area" (or otherwise termed the "Work") means the area of jurisdiction of the Los Angeles Building and Construction Trades Council.

- B. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, and any person to whom the Director delegates authority.
- C. "Employer Identification Number" means the Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, United States Treasury Department Form 941.
- D. "Minority" includes:
  - 1. Black (all persons having origins in any of the Black African racial groups not of Hispanic origins);
  - 2. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);
  - 3. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, South-East Asia, the Indian Subcontinent, or the Pacific Islands); and
  - 4. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

6.2 Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it shall include in each subcontract in excess of ten thousand dollars (\$10,000) the provisions of these specifications and the notice which contains the applicable goals, for minority and female participation and which is set forth in this Contract.

6.3 If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the Covered Area either individually or through an association, its affirmative action obligations on all work in the Plan Area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to make good faith efforts to achieve the Plan goals and timetables.

6.4 The Contractor shall implement the specific affirmative action standards provided in the Section entitled AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY, paragraphs A through F, herein. The goals set forth in this Contract are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress towards its goals in each craft during the period specified.

- 6.5 Neither the provisions of any collective bargaining agreement, nor the failure by a union, with whom the Contractor has a collective bargaining agreement, to refer either minority persons or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- 6.6 In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
- 6.7 The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these actions fully and implement affirmative action steps at least as extensive as the following:
- A. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - B. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority, and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - C. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a Union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the Union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore; along with whatever additional actions the Contractor may have taken.
  - D. Provide immediate written notification to Metro's Diversity and Economic Development Department and OFCCP's Director when the Union or Unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
  - E. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minority persons and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's

employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under this Section, paragraph G, subparagraph 3.

- F. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- G. Review, at least annually, the Contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- H. Disseminate the Contractor's EEO Policy externally by including it in any advertising in the news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- I. Direct its recruitment efforts both oral and written, to minority, female and community organizations, to schools with minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- J. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- K. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- L. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities, through appropriate training, etc.
- M. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

- N. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- O. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- P. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

6.8 Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations as identified in the Section entitled AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY, paragraphs A through F, herein. The efforts of a Contractor association, joint Contractor-union, Contractor-community, or similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations as identified in the Section entitled AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY, paragraphs A through F, herein, provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minority persons and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and a failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

6.9 A single goal for minority persons and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is under-utilized).

6.10

The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); or, disability (including AIDS, and cancer-related medical condition).

6.11

The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246, as amended by Executive order 11375.

6.12

The Contractor shall carry out such sanctions and for violation of these specifications and of the Equal Opportunity Article, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

6.13

The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in the Section entitled AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY herein, so as to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

6.14

The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade rate of pay, and locations at which the work was performed. (Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.)

6.15

Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

## 7.0 NONCOMPLIANCE

Failure to carry out the requirements of this Section shall constitute a breach of Contract and, after notification to the US Department of Transportation, may result in termination of the Contract by Metro or imposition of other appropriate sanctions. This notice is given pursuant to 49 CFR 23.43(c).

### END OF SECTION 2.0

## APPENDIX A - SMALL BUSINESS DIVERSITY MANUAL DEFINITION OF TERMS

### 49 C.F.R. Part 26 Title 49 Code of Federal Regulations Part 26

These are federal regulations titled, "PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS." They apply to all recipients of any of the types of funds fully described in 49 C.F.R. §26.3. Generally, these include, but are not limited to, certain Federal transit funds and Federal-aid highway funds, in support of contracts performed within the United States, its territories, possessions, Puerto Rico, Guam or the Northern Marianas Islands. Source: 49 C.F.R. Parts 1-99, Rev. 10/2002

### Commercially Useful Function

Work performed by a DBE firm in a particular transaction that in light of industry practices and other relevant considerations, has a necessary and useful role and the firm's role is not a superfluous step added in an attempt to obtain credit toward goals. If, in Metro's judgment, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded.

### Commitment

The level of small business participation the Contractor commits to in its Bid or Proposal.

### Contracting Opportunity

Any decision by Metro or its contractors to institute a procurement action to obtain a product or service commercially (as opposed to intergovernmental actions).

### Department

A functional unit of Metro responsible for management and administration of specific projects included within the capital and operating budget.

### Directory of Certified Firms

Metro's list of Certified Firms which is used by Metro and its contractors to identify potential DBE/MWBE/SBE primes, subcontractors and suppliers.

### Disadvantaged Business Enterprises(DBE)

A DBE firm is one that has demonstrated to a DBE certifying authority, by a preponderance of the evidence, that it meets the requirements of Subpart D of 49 CFR Part 26 concerning group membership or individual disadvantage, business size, ownership and control. It is a firm that is:

- Owned either by members of designated groups identified in §26.67(a) which are rebuttably presumed to be socially and economically disadvantaged or owned by individuals who have proved to the certifying authority, by a preponderance of the evidence, that they are socially and economically disadvantaged within the guidance of Appendix E of 49 CFR Part 26, including proof that their Personal Net Worth (excluding interest in primary residence or applicant business is less than \$750,000);
- An existing small business as defined by SBA standards found at 13 CFR Part 121, appropriate to the type of work the firm seeks to perform in DOT-assisted contracts and has

had average annual gross receipts, as defined by SBA regulations found at 13 CFR 121.402, over the previous three years, not in excess of \$17,420,000;

- At least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals;
- An independent business whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it;
- An organization in business to make a profit; and
- In compliance with other rules affecting certification set forth at §26.73.

#### DOT

The U.S. Department of Transportation.

#### DOT Assisted Contract

Any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with DOT financial assistance.

#### FTA

Federal Transit Administration, an agency of the U.S. Department of Transportation.

#### Goal

A numerically expressed objective which Metro or its contractors are required to make good faith efforts to achieve.

#### Good Faith Efforts

Specific affirmative actions required to be taken by Metro and its contractors and subcontractors to maximize opportunities for DBEs to compete for and perform on contracting opportunities.

#### Metro

The Los Angeles County Metropolitan Transportation Authority.

#### Manufacturer

Means a business that operates, or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.

#### Metro Rail Project

The design, engineering and construction of the high-capacity, high-speed conventional rapid rail system, currently proposed as an 18 mile subway system with multi-car trains, steel rails and at least 16 stations serving the Los Angeles' Regional Core.

#### Non-Compliance

The condition existing when a contractor has failed to implement or meet the requirements of 49 CFR 23 and 26 or Metro policy or procedure pertaining to DBE participation.

### Payroll Form

The State of California WH 347 Dept. of Transportation form for completing the Contractor employee's number of hours worked, hourly rate of pay, employee's classification, name, SSN, address, and fringe benefits paid, etc.

### Pre-Bid/Construction Conference

A meeting held by Metro after award of contract on a particular construction project, but prior to the beginning of any work, at which the prime contractor is advised of its federal compliance obligations and any final technical requirements.

### Pre-Bid/Pre-Proposal Conference

A meeting held by Metro prior to the bid/proposal closing date of a particular project, at which prospective bidders/proposers are advised of Metro specification requirements which include DBE provisions.

### Professional/Technical Services Contract

Contracts for the professional and technical services of accountants, architects, engineers, landscape architects, lawyers, planners, surveyors, title companies, urban designers, appraisers, option negotiators, and other persons performing similar services for Metro.

### Public Works Contract

Contracts for the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

### Secretary

The Secretary of U.S. Department of Transportation or any person whom he/she has designated to act for him/her.

### Small Business Concern

A small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$16.6 million over the previous three fiscal years.

### Small Business Enterprise(SBE)

An SBE firm is one that has demonstrated to satisfaction of the certifying authority at Metro in charge of issuing SBE certifications, that it meets the eligibility requirements of Metro Small Business Enterprise (SBE) Program concerning individual disadvantage, business size, ownership and control. It is a firm that is:

- Owned by individuals who can prove to the satisfaction of the certifying authority that they are socially and economically disadvantaged within the guidance of the Paragraph 7.1(a)(iii) on Page 25 of Metro SBE Program; including personal net worth of not to exceed \$250,000 individually, excluding the value of the owners' personal residence(s), stocks and bonds owned in the applicant business and other interests in applicant business. The Secretary shall adjust this figure from time to time for inflation;

- An existing “small business concern” as defined by SBA, pursuant to section 3 of the Small business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same individual or individuals which has annual average gross receipts in excess of \$17,420,000 over the previous three fiscal years.
- At least 51 percent owned, in the determination of Metro, by one or more economically disadvantaged individuals;
- An independent business whose management and daily business operations are controlled by one or more of the socially disadvantaged persons who own the firm;
- An organization in business to make a profit;
- In compliance with other rules affecting certification set forth in Section 7 of the SBE Manual, Pages 25 through Page 30.

Small Business Diversity Section

The staff that oversees and monitors labor standards activities for applicability to the State of California Labor Code and, where applicable, Title 8 of the California code of Regulations.

State

State of California.

Statement of Compliance

The statement on the back of Payroll Form WH 347, whereby the Contractor declares how the fringes are paid whether by cash or through a bona fide fringe program.

U.S. Department of Transportation Regulation (49 CFR Part 26)

Federal rules and regulations published in the Federal Register dated February 2, 1999; by the Department of Transportation, Office of the Secretary; entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," and codified at Title 49, Code of Federal Regulations, Part 26.

Wages

The basic hourly rate of pay, any contribution made pursuant to, or cost anticipated to provide, a bona fide fringe benefit plan, fund or program.

## APPENDIX B - COMPLIANCE SUBMITTAL FORMS



LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY  
SUMMARY OF SMALL BUSINESS ENTERPRISE (SBE) SUBCONTRACTORS PAID REPORT

REPORTING PERIOD (MONTH/YEAR): \_\_\_\_\_

Project Name:	Report No.:	Signature:
Project Location	Contract No.:	Prepared by:
Prime Contractor:	Original Award Amount:	Company:
Address	Current Contract Value	Area Code/Phone #:
	% of project complete	Contact Person:
City, State, Zip	Date of last progress payment rec'd from Metro:	Area Code/Phone #:
Contract Award Date	Total \$ Paid-to-date to Prime *	
SBE (committed) Goal:	SBE \$	

SUBCONTRACTOR/SUPPLIER		Dollars Paid This Month	Dollar Amount Paid To Date	(Construction Only) Schedule Activity I.D.	Type Of Work Performed	Original Dollar Amount Committed	Dollar +/- Resulting From Change Order Activity
NAME							
ADDRESS							
(Area Code) Phone							
CONTACT:							
SUBCONTRACTOR/SUPPLIER #1							
NAME							
ADDRESS							
(Area Code) Phone							
CONTACT:							
SUBCONTRACTOR/SUPPLIER #2							
NAME							
ADDRESS							
(Area Code) Phone							
CONTACT:							
SUBCONTRACTOR/SUPPLIER #3							
NAME							
ADDRESS							
(Area Code) Phone							
CONTACT:							

**Special Instructions:** The Prime shall make prompt payment of all monies due and owed to DBE and non-DBE firms within 10 business days upon receipt of payment from Metro as per contract agreement The Prime shall make prompt payment of all monies due and owing to DBE and Non-DBE firms within 10 business days of receipt of payment from Metro as per contract agreement and Prompt Payment Act. Payment of retention shall be made to all DBE and non DBE subcontractors within 30 days after satisfactory completion of the subcontracted work.



**MONTHLY EMPLOYMENT UTILIZATION REPORT**

**U. S. Department of Labor**

Employment Standards Administration

Office of Federal Contract Compliance Program

This report is required by Executive Order 11246, Sec. 203. Failure to report can result in contracts

being cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts.

1. Covered area:

2. Employer's I.D. #

OMB No. 1215-0163

Expires:

3. Current Goals Minority: 28.3% Female: 6.9%

4. Reporting period From: To:

Name and Location of Contractor

Federal Funding Agency

Project Name and Number

Location of Project

**6. TOTAL FEDERAL & NON-FEDERAL CONSTRUCTION WORK HOURS**

Construction Trade	Classification	6a. Total All Employees By Trade		6b. Black (Not of Hispanic Origin)		6c. Hispanic		6d. Asian or Pacific Islander		6e. American Indian or Alaskan Native		7. Minority Percentage	8. Female Percentage	9. Total Number of Employees		10. Total Number of Minority Employees	
		M	F	M	F	M	F	M	F	M	F			M	F		
	Journeyworkers																
	Apprentices																
	Trainees																
	Subtotal																
	Journeyworkers																
	Apprentices																
	Trainees																
	Subtotal																
	Journeyworkers																
	Apprentices																
	Trainees																
	Subtotal																
	Journeyworkers																
	Apprentices																
	Trainees																
	Subtotal																
	Journeyworkers																
	Apprentices																
	Trainees																
	Subtotal																
	Total Journeyworkers																
	Total apprentices																
	Total Trainees																
	Grand Total																

11. Company Official's Signature & Title

12. Area Code & Phone Number

13. Date Signed

Page \_\_\_\_ of \_\_\_\_

