

DIVERSITY & ECONOMIC OPPORTUNITY DEPARTMENT CONTRACT COMPLIANCE MANUAL (FEDERAL)

SECTION 100 DISADVANTGED BUSINESS ENTERPRISE PROGRAM

100 **FEDERAL OBLIGATION:** The Los Angeles County Metropolitan Transportation Authority (Metro), as a recipient of federal financial assistance, is required to take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts. Consequently, the federal regulatory provisions of 49 Code of Federal Regulation (CFR) Part 26, as amended concerning the utilization of Disadvantaged Business Enterprises (DBE) applies to this contract.

101 **METRO POLICY STATEMENT:** Metro has established a DBE Program in accordance with 49 CFR Part 26. It is the policy of Metro to implement the following steps in the administration of its program to ensure DBEs have an equal opportunity to receive and participate on Metro Department of Transportation (DOT)-assisted contracts:

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

102 **INTERPRETATION:** Any conflict, error, omission or ambiguity which may arise between these instructions and the federal regulations or Metro's DBE Program shall be resolved first in favor of the federal regulation and second metro's DBE program. Metro's DBE Program and 49 CFR Part 26 as amended are hereby incorporated by reference into these instructions.

103 **NON DISCRMINATION:** It is the policy of Metro and the Public Transportation Services Corporation (PTSC) 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 or national origin.

In administering its DBE Program, Metro 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.

104 **QUOTAS:** Metro does not use quotas in any way in the administration of its DBE program.

105 **MISREPRESENTATION:** Suspension or debarment proceedings may be initiated against any firm:

(a) That attempts to participate in a DOT-assisted program as a DBE if the firm does not meet the eligibility criteria stated in the Certification Standards for DBE 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.

(b) That in order to meet its Disadvantaged Business Enterprise Anticipated Level of Participation (DALP) participation or other DBE administrative requirements uses or attempts to use on the basis of false, fraudulent or deceitful statements or representations, another firm that does not meet the DBE eligibility criteria stated in the certification standards.

In either case the DOT may take action itself through its Fraud and Civil Remedies Program or refer the matter to the Department of Justice for prosecution under appropriate criminal statutes.

While DOT may consider that the business, purported to be a certified DBE and was certified by a valid certification authority, certification on false or misleading grounds 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 the DALP percentage may be suspended or debarred.

106 **AUDIT AND INSPECTION:** The Contractor shall maintain records of all subcontracts entered into with DBE firms and records of materials purchases from DBE suppliers. Such records shall show the name and business address of each DBE subcontractor or supplier and the total dollar amount actually paid to each DBE subcontractor or supplier. 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 DALP participation and/or adherence to the DBE program requirements. 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 200 DBE PARTICIPATION

200 **METRO OVERALL DBE GOAL:** As a requirement of compliance with 49 CFR Part 26, Metro has set an overall goal for DBE participation on its federally assisted contracts. The overall goal applies to federal-aid funds Metro expects to expend for the fiscal year. Metro will strive to meet its overall goal through race neutral measures. Metro supports the use of race neutral measures to facilitate participation of DBEs and other small businesses, and encourages prime contractors to subcontract portions of their work that they might otherwise perform with their own forces. To ascertain whether the overall DBE goal is being achieved, Metro will track

the dollar amount paid to all certified DBE firms performing work called for in this contract that is eligible to be credited toward Metro's overall goal.

201 **MONITORING DBE PARTICIPATION:** The Contractor is encouraged to strive to attain the DALP participation by utilizing its listed DBE firms during the performance of the contract. The Contractor's proposed DALP, although purely voluntary, becomes a statement of record in the Special Provisions section of the contract and shall be monitored as described herein.

202 **COMMERCIAL USEFUL FUNCTION (CUF):** A DBE must perform a commercially useful function (CUF) on the contract to be counted. A commercially useful function is performed when the DBE is responsible for the execution of the work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. A DBE prime or subcontractor must perform at least 30% of its listed work with its own workforce or must not subcontract a greater portion of the work than would be expected on the basis of normal industry practices for that type of work.

An on-site visit review will be used to ascertain whether the DBE is actively performing, managing, and supervising the work. It shall employ a labor force which is separate and apart from that employed by the prime, and which is independently recruited by the DBE in accordance with standard industry practice.

203 **THE DBE (AND NOT SOME OTHER BUSINESS ENTITY) SHALL ACTUALLY PERFORM THE SUBCONTRACT:** The DBE's utilization of labor, supervisory personnel, equipment and material in the performance of the subcontract, shall be consistent with industry standards and shall demonstrate that the DBE and not some other business entity is actually performing the subcontract. For example, if a DBE associates itself too closely with another business entity or entities, in acquiring labor force, supervisors, equipment or materials to an extent inconsistent with industry standards, the DBE can no longer be said to be actually performing the subcontract.

204 **DBE'S WORK FORCE:** The DBE shall solicit, hire, place on its payroll, direct, and control all workers performing work under its contract. The DBE owner or its superintendent shall, on a full-time basis, supervise and control the work of the contract. The DBE may with the prior written consent of Metro augment its work force with personnel of another firm. Metro shall approve the request in writing only when specialized skills are required and the use of such personnel is for a limited time period.

205 **COUNTING DALP PARTICIPATION:** Metro is only able to count toward the achievement of the DALP percentage the value of payments made for CUF work actually performed by DBE firms during the performance of the Contract. There will be no credit for DBE work performed by a non-DBE prime or subcontractor. Metro and the Contractor are governed by the provisions of 49 CFR Part 26.55(c) on questions of commercially useful functions as it affects the work. Specific counting guidelines are provided in 49 CFR Part 26.55, the provisions of which govern over the summary contained herein.

1. **DBE as the Prime Contractor:** 100% DALP credit for that portion of the work performed by the DBE's own forces, including the cost of materials and supplies. Work that a DBE prime subcontracts to a non-DBE firm does not count toward the DALP.
2. **DBE as a Joint Venture Contractor:** 100% DALP credit for that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work performed by the DBE's own forces.
3. **DBE as a Subcontractor:** 100% DALP credit for the work of the subcontract performed by the DBE's own forces, including the cost of materials and supplies, excluding the purchase of materials and supplies or the lease of equipment by the DBE subcontractor from the prime contractor or its affiliates. Work that a DBE subcontractor in turn subcontracts to a non-DBE firm does not count toward the DBE DALP.
4. **DBE as a Material Supplier or Broker:**
 - a) 60% DALP credit for the cost of the materials or supplies purchased from a DBE regular dealer.
 - b) 100% DALP credit for the cost of materials or supplies obtained from a DBE manufacturer.
 - c) 100% DALP credit for the value of reasonable fees and commissions for the procurement of materials and supplies if not a regular dealer or manufacturer.
5. **DBE as a Trucker:** 100% DALP credit for trucking participation provided the DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible. At least one truck owned, operated, licensed and insured by the DBE must be used on the contract. Credit will be given for the full value of all such DBE trucks operated using DBE employed drivers. DALP credit will be limited to the value of the reasonable fee or commission received by the DBE if trucks are leased from a non-DBE company. Metro uses the following six (6) factors in determining whether to count expenditures to a DBE trucking firm, to determine if it is performing a commercially useful function:
 - a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - b) The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
 - c) 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.
 - d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases the trucks from

another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

- e) The DBE may also lease trucks from a non-DBE, 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 a DBE.
- f) For the purposes of determining whether a DBE trucking company is performing a commercially useful function, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the 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.

206 **VIOLATION OF COMMERCIAL USEFUL FUNCTION** : If an investigation reveals that there has been a violation of the CUF provisions, that portion of the work found to be in violation can not be counted toward the DALP achievement for the contract or Metro's overall goal. When a DBE is presumed not to be performing a CUF as described in this section, the DBE may present evidence through the Contractor to Metro to rebut that presumption no later than fifteen (15) days after receipt of notice of violation(s). If after review of the evidence presented by the DBE does not meet the CUF provisions herein, the Contractor will be required to cure deficiencies found. Metro's decisions on CUF matters are not administratively appealable to the DOT.

207 **CHANGES IN WORK LISTED TO DBE FIRMS**: In such instances where Metro changes, reduces, or deletes work contracted to a DBE firm(s) at time of contract award, the Contractor is not required to replace the work but is encouraged to do so. If the Contractor proposes changes for work contracted to a DBE firm(s), the Contractor is required to notify the DBE firm of the proposed change, reduction, or deletion of any work listed at time of contract award prior to executing the change. The dollar amount of changes or any other contract modifications that increase or decrease the work listed to a DBE firm(s) will be commensurately added to or subtracted from the total contract amount used to compute actual dollars paid to DBEs.

SECTION 300 ADMINISTRATIVE REQUIREMENTS

300 **ADMINISTRATIVE REQUIREMENTS**: This Manual describes DBE Program reporting and other administrative requirements in which the Contractor is requested to cooperate in fulfilling during the performance of the contract. Metro will monitor, track and report DALP percentage the Contractor strives to achieve on this contract as a means to fulfill its federal funding and reporting requirements as a condition of receiving federal assistance.

NOTE: The administrative requirements noted by an (√) are mandatory.

301 **BID FORMS (√)**: If the Contractor lists DALP participation in its Bid/Proposal and did not complete the DBE Bid Forms at time of bid, the Contractor and its subcontractors are required to submit completed DBE Bid Forms prior to contract award. Form to be completed are Forms 1 and 3 – Contractor only and Forms 3 and 4 all Subcontractors. Form 5 is optional. DEOD will credit DALP participation as prescribed in *Section 205 Counting DALP Participation*.

302 **PRE-CONSTRUCTION (KICK-OFF) MEETING**: Both the Contractor and the Subcontractor(s) or a representative of each firm is encouraged to attend the kick-off meeting concerning the DBE administrative requirements and other matters, prior to or immediately after Notice to Proceed is issued. The Contractor is responsible for informing the Subcontractors of all DBE requirements as specified by Metro herein.

303 **SUMMARY OF CONTRACTORS PAID REPORT (Form 103) (√)**: The Contractor is required to complete and submit monthly Summary of Subcontractors Paid Reports (Form 103) by the 15th of each month reporting payments to subcontractors for work completed through the end of the previous month. The participation of DBE Contractor or Subcontractors will not be credited towards the Contractor's DALP achievement or Metro's overall goal, until the amount being counted toward the DALP and any retainage held by the Contractor has been paid. The Form 103 report includes the following:

1. Name of each DBE Subcontractor.
2. General work assignment of each DBE Subcontractor.
3. The specific portion of work executed by each DBE Subcontractor dollars paid during the reporting period.
4. The original dollars listed to each DBE Subcontractor.
5. The dollars paid to each DBE Subcontractor during the reporting period.
6. The dollars paid to date for each DBE Subcontractor.
7. The dollars paid to the DBE as a result of a change order or other cost modification.
8. The dollars paid to date as a percentage of the total dollars listed to each DBE.
9. Date of last progress payment
10. Invoice amount & Invoice Date
11. Invoice number corresponding to last payment to subcontractor

304 **FINAL REPORTING (√)**: The Contractor is required to submit a final Form 103 report after 14 calendar days from the receipt of final payment and retention from Metro. This report shall capture final payment and retention paid to listed DBE firms. DBE participation will not be credited towards the Contractor's DALP achievement or Metro's overall DBE goal, until the amount being counted toward the DALP, and any retainage held by the Contractor has been paid to the DBE firm.

305 **EXECUTED DBE SUBCONTRACT AGREEMENTS (√)**: The Contractor shall submit to Metro copies of all executed DBE subcontracts and/or DBE purchase orders (PO) within fourteen (14) working days after the Contractor executes its subcontract or PO with the DBE firm. The Contractor shall include in all executed DBE and non-DBE subcontracts the below Contractor Assurance nondiscrimination statement and must include the Prompt Payment provisions provided in *Section 306 Prompt Payment*:

Contractor 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 recipient deems appropriate.

306 **PROMPT PAYMENT (√):**

Progress Payments: The Contractor and all subcontractors shall pay each subcontractor under this Contract for satisfactory performance of its subcontract no later than ten (10) days after its receipt of each Progress Payment from Metro.

Final Payment to Subcontractor (Retainage): The Contractor and all subcontractors shall pay to each subcontractor all amounts it has retained from payments under the Subcontract within ten (10) days after the Subcontractor's Work is satisfactorily completed.

- (1) **Work Satisfactorily Completed:** Satisfactory completion of a subcontractor's work is when all the tasks called for in the subcontract have been accomplished and documented as required by Metro.

- (2) **Delay or Postponement of Payment:** Any delay or postponement of payment beyond the ten (10) day time limit shall take place only for good cause, and only upon prior written approval of Metro.

- (3) **Violation of Prompt Payment:** The Contractor and all subcontractors shall comply with all other prompt payment requirements in the Contract. Any violation of the prompt payment provision shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

The Contractor is required to 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

307 **TERMINATION OR SUBSTITUTION OF A DBE FIRM (√) :** The Contractor and all subcontractors (all tiers) shall notify Metro in writing prior to terminating or substituting a DBE firm. The Contractor and all Subcontractors shall comply with Public Contract Code, Section 4107 when requesting substitution of a DBE firm. When substituting a DBE firm, the Contractor or Subcontractor will be encouraged to replace the DBE firm with another DBE firm. The Contractor and all Subcontractors shall comply with all other substitution requirements in the contract.

308 **AFFIRMATIVE ACTION NON-DISCRIMINATION PLAN** (√): The Contractor is required to submit a copy of its Affirmative Action Non-Discrimination Plan within fourteen (14) days after contract award.

SECTION 400 FAIR AND REASONABLE TREATMENT OF SUBCONTRACTORS

400 **OPPORTUNITY TO PERFORM:** The Contractor is encouraged to ensure that DBEs are given every reasonable opportunity to successfully perform their contract responsibilities. These efforts may include, but are not limited to, the following:

1. Negotiate in good faith to attempt to finalize subcontract and supply agreements with DBEs listed in its bid.
2. Provide assistance to DBE Subcontractors or Suppliers in obtaining bonding, lines of credit, or other capital financing through referral to the DOT Bond Assistance Program (800) 532-1169.
3. During the life of the contract, the Contractor is encouraged to inform Metro's Diversity and Economic Opportunity Department (DEOD), of any problems anticipated or concerns regarding the utilization of DBEs or the Contractor's efforts to achieve its DALP.

END OF SECTION

SECTION 2 NON-DISCRIMINATION AND EQUAL 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

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.

2.1 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 Metro or another agency, may follow the federal regulations which implement Executive Order 11246.

2.2 The Diversity and Economic Opportunity 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).

2.3 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 Diversity and Economic Opportunity Department determine violations of nondiscrimination and compliance requirements and recommend possible remedies. In the event of noncompliance by an Metro Contractor or Subcontractor, the Diversity Economic Opportunity 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 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.

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 the failure by any covered Contractor or Subcontractor 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 obligations of the Contractor 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, each individual must be an employee of 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 Office of Small Business Diversity and Labor Compliance 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 that expressly includes 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.)

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 – DIVERSITY AND ECONOMIC OPPORTUNITY MANUAL (FEDERAL) DEFINITIONS

Change Order (CO): A written order by Metro's Contracting Officer directing Changed Work.

Changed Work (or Change): Additions, deletions or other revisions to the Work within the general scope of the Contract. Changed Work must be directed by Metro by a Change Order or agreed to by the parties in an Amendment or other Modification. Includes Work that does not involve an adjustment in the Contract Price and/or Contract Time. Does not include Work performed or time spent by Contractor to correct any Deficiency.

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.

Contractor: The individual, firm, partnership, corporation, joint venture, or combination thereof, which may also be referred to by the term "it", that has entered into the Contract with Metro. Includes Contractor's successors, assigns, employees, officers, Contractor's Representatives, and agents. In context may also include Subcontractors, Suppliers and any other persons for whom the Contractor may be legally or contractually responsible.

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:

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 Enterprise (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:

- (1) Owned either by members of designated groups identified in §26.67(a) which are rebuttably presumed to be socially and economically disadvantaged or by individuals who can prove 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;
- (2) 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 \$19.57 million.

- (3) 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;
- (4) 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;
- (5) An organization in business to make a profit; and
- (6) In compliance with other rules affecting certification set forth at §26.73

Disadvantaged Business Enterprise Anticipated Levels of Participation (DALP)

The level of DBE participation the Contractor listed in its Bid in which it will strive to achieve by providing DBE firms a maximum opportunity to perform during the performance of the Contract. The Contractor has no contractual obligation to meet the DALP.

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.

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 26, as amended 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 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.

Subcontract: Any contract, including contracts of any tier, to furnish Work, Goods or Equipment between the Contractor and/or any Subcontractor or Supplier.

Subcontractor: Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor that enters into a legal agreement with the Contractor or any Subcontractor to furnish Work, Construction Equipment or Goods. Unless otherwise specified, Subcontractor includes a Subcontractor of any tier.

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

Federal rules and regulations published in the Federal Register dated February 2, 1999; as amended 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 - DIVERSITY AND ECONOMIC OPPORTUNITY MANUAL (FEDERAL)
SUBMITTAL FORMS**

(Please Print or Type)



LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
SUMMARY OF DISADVANTAGED BUSINESS ENTERPRISE (DBE) SUBCONTRACTORS PAID REPORT - DALP
Reporting Period (Month/Year): _____

1) Project Name:		2) Report No.:		3) Prime:	
4) Project Location:		5) Contract No.:		6) Prepared by:	
7) Prime Contractor:		8) Original Award Amount:		9) Area Code/Phone #:	
10) Address:		11) Relevant Contract Value:		12) Email Address:	
13) City, State, Zip:		14) Current Contract Value		15) Contact Person:	
16) Contract Award Date:		17) Metro Payment this month:		18) Area Code/Phone #:	
19) DBE Anticipated Level of Participation (DALP) %:		20) Total \$ Paid-to-date to Prime		21) Signature:	
22) % of Project Complete:		23) Date of last progress payment rec'd from Metro:		24) Title:	

25) DBE SUBCONTRACTORS/SUPPLIERS	26) DOLLARS PAID THIS MONTH	27) DOLLAR AMOUNT PAID TO DATE	28) SCOPE OF WORK COMPLETED FOR DOLLARS PAID THIS MONTH	29) LISTED PROJECT SCOPE	30) ORIGINAL LISTED DOLLAR AMOUNT	31) 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:						
SUBCONTRACTOR/SUPPLIER #4						

Special Instructions: The Prime is required to 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 and Prompt Payment Act. Payment of retention shall be made to all DBE and non-DBE subcontractors within 10 days after satisfactory completion of the subcontracted work. The Form 103 is due to Metro by the 15th of each month and should reflect all payments made to subs through the last day of the previous month. The Prime is required to report monthly, even if the sub(s) did not perform any work for the previous month. Please forward signed original documents by e-mail and/or fax. Always mail the original each month to: Metro, One Gateway Plaza, Los Angeles, 90012-2952 – ATTENTION: (99-13-02)

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	M	F	
	Journey workers																	
	Apprentices																	
	Trainees																	
	Subtotal																	
	Journey workers																	
	Apprentices																	
	Trainees																	
	Subtotal																	
	Journey workers																	
	Apprentices																	
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	Subtotal																	
	Journey workers																	
	Apprentices																	
	Trainees																	
	Subtotal																	
	Journey workers																	
	Apprentices																	
	Trainees																	
	Subtotal																	
	Total Journey workers																	
	Total apprentices																	
	Total Trainees																	
	Grand Total																	

11. Company Official's Signature & Title _____ 12. Area Code & Phone Number _____ 13. Date Signed _____ Page ____ of ____

