

# Central Corridor Light Rail Transit

*Improving  
mobility*

*Easing  
congestion*

*Strengthening  
our communities*

## Disadvantaged Business Enterprise Program DBE Strategic Plan

February 2007

# Table of Contents

INTRODUCTION .....	3
OVERVIEW OF THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM.....	3
VISION .....	4
POLICY STATEMENT .....	4
MISSION .....	5
ORGANIZATIONAL STRUCTURE.....	6
STRATEGIC IMPLEMENTATION PLAN GOALS .....	8
OBJECTIVES .....	8
STRATEGIES.....	9
ACTION PLAN .....	9
CRITICAL SUCCESS FACTORS .....	10
APPENDIX 1: METRO COUNCIL INCLUSION OF DBE POLICY .....	11
APPENDIX 2: METRO COUNCIL GOAL SETTING AND GOOD FAITH EFFORTS PROCEDURE	16
APPENDIX 3: METRO COUNCIL CONTRACTOR COMPLIANCE AND MONITORING FOR DISADVANTAGED BUSINESS PROGRAMS .....	22
APPENDIX 4: METRO COUNCIL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM .....	32
APPENDIX 5: CENTRAL CORRIDOR LLRT EEO/AA/DBE PROJECT COOPERATION AGMT ..	107

---

## **INTRODUCTION**

The purpose of the Central Corridor Light Rail Transit (LRT) Disadvantaged Business Enterprise Program Strategic Plan is to guide the Metropolitan Council and Central Corridor Project Office staff in making procurement decisions.

The Central Corridor LRT line is an exciting opportunity for the Twin Cities metropolitan area to provide a fast, safe, new transportation choice that will help ease traffic congestion and improve access to key destinations along the corridor. It will be built along University Avenue, a heavily traveled thoroughfare connecting downtown St. Paul and downtown Minneapolis.

This project is part of the Metropolitan Council's 2030 plan to expand the bus system and develop a network of bus and rail "transitways" to help improve mobility, build transit ridership and slow congestion growth. These dedicated corridors will give transit a travel time advantage over single-occupant autos, improve transit service reliability and boost the potential for transit-oriented development.

The Central Corridor project has the opportunity to build upon the success of the region's first light rail line. In its first full year of operation, the Hiawatha LRT line attracted 7.8 million riders, exceeding pre-construction estimates by 58 percent. In a 2005 on-board customer survey for Metro Transit, 93 percent of the line's riders expressed satisfaction with its service. Not surprisingly, the Hiawatha line has generated considerable public support for additional rail transit service. In a 2005 survey of metro area residents by the Metropolitan Council, 60 percent of the respondents said they believe expanding the region's commuter and light rail system is "very important" for meeting the region's long-range transportation needs.

The Council is aware of the expectation for the project to provide employment opportunities for socially and economically disadvantaged individuals in the planning, design and construction phases of the project.

## **OVERVIEW OF THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

The Council recognizes its roles as public policy makers in enacting policies that serves to eliminate the effects of illegal discrimination. The Council has previously approved several policies that clearly state its commitment to the prohibition of discrimination in employment and the provision of public services. This policy conveys the Council's commitment to create and support programs that result in the inclusion of women-owned, minority-owned and other small disadvantaged businesses in all its procurement and contracting activities.

The Council will utilize business owned and controlled by socially and economically disadvantaged individuals in the procurement of goods and services, and the award of contracts. The Council will, in accordance with the authority granted by federal regulations, state statute, and local laws and ordinances, act affirmatively to create a level playing field for women-owned, minority-owned and other small disadvantaged business enterprises to achieve the goal of equal opportunity.

---

Whenever subcontracting is possible on a the United States Department of Transportation (US DOT) assisted procurement over \$50,000, the Council will set numeric goals no less than the Council's approved overall DBE Program goal.

The Council recognizes that creating a level playing field for DBE's is in accordance with authority granted by the US DOT regulation to achieve the goal of equal opportunity. The attachments detail the Council's policies and procedures:

- Appendix 1: Metropolitan Council Inclusion of Disadvantaged Business Enterprises Policy
- Appendix 2: Metropolitan Council Goal Setting and Good Faith Efforts Procedure
- Appendix 3: Metropolitan Council Contractor Compliance and Monitoring for Disadvantaged Business Programs
- Appendix 4: Metropolitan Council Disadvantaged Business Enterprise Program
- Appendix 5: Central Corridor Light Rail Transit EEO/AA/DBE Project Cooperation Agreement

In regard to the Central Corridor Light Rail Transit (LRT) Project the vision and mission of the DBE goal achievement will be accomplished through aggressive implementation of this DBE Strategic Plan and the commitment of the Metropolitan Council, the Central Corridor Project Office and all employees and contractors.

## **VISION**

The building of the Central Corridor LRT project provides opportunities for woman-owned, minority-owned and other small disadvantaged contractors, consultants and vendors to participate in the largest public works project in Minnesota.

## **POLICY STATEMENT**

The Metropolitan Council affirms its policy to utilize business owned and controlled by socially and economically disadvantaged individuals in the procurement of goods and services, and the award of contracts in the design and construction of the Central Corridor LRT project. This is in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 Code of Federal Regulations (CFR) Parts 23 and 26, As a condition of receiving USDOT funding assistance for this project, the Council has signed an assurance that it will comply with 49 CFR Parts 23 and 26.

The DBE requirements of 49 CFR Parts 23 and 26 and the Council's DBE Program apply to the Central Corridor LRT construction contracts and to any assignments made to sub recipients, subcontractors, sub consultants or recipients. The Council, its sub recipients, contractors, subcontractors, consultants, and sub consultants shall not discriminate on the basis of race, color, sex, age, national origin, and handicap or disability. It is Council policy to ensure that DBEs have an equal opportunity to receive and participate in USDOT-assisted contracts, as defined in 49 CFR Parts 23 and 26:

- 
- Ensure nondiscrimination in the award and administration of USDOT-assisted contracts as part of the Central Corridor LRT Project,
  - Create a level playing field in which DBEs can compete fairly for USDOT assisted contracts,
  - Ensure that the DBE program is narrowly tailored in accordance with applicable law,
  - Ensure that only firms fully meeting 49 CFR Parts 23 and 26 eligibility standards are permitted to participate as DBEs,
  - Help remove barriers to the participation of DBEs in USDOT-assisted contracts,
  - Assist the development of firms that can compete successfully in the marketplace outside the DBE program, and
  - Provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs

The Council will disseminate its DBE policy to all Central Corridor Project Office (CCPO) staff and to DBE and non-DBE customers. We will use the following methods to disseminate the policy:

- Send it to all DBE and non-DBE firms participating in the Central Corridor LRT bidding and contracting process,
- Publish it in the supportive services newsletter, and
- Publish it on the Council DBE bid information web site at <http://www.metocouncil.org>

Each sub recipient, contractor, subcontractor, consultant, or sub consultant that fails to carry out the requirements set forth in 49 CFR Parts 23 and 26 may constitute a breach of contract and after notification by the Council, may result in termination of the agreement or contract, or such remedy as the Council deems appropriate.

The Chair of the Metropolitan Council has overall responsibility for the DBE program, and performs the role of providing policy leadership regarding the involvement of DBEs in the activities of the Metropolitan Council, including the Central Corridor LRT Project. The Council's Regional Administrator is charged with the overall responsibility for assuring compliance with 49 CFR Parts 23 and 26, including DBE programs delegated to sub recipients. The Metropolitan Council's DBE Liaison Officer is responsible for developing, coordinating, and monitoring the implementation of all aspects of the Council's DBE program on a day-to-day basis. Implementation of the DBE program has the same priority as compliance with all other legal obligations incurred by the Council in its financial assistance agreements with USDOT. The roles and responsibilities as applied to the Central Corridor LRT Project are described in the section of this DBE Strategic Plan titled "Organizational Structure."

## **MISSION**

The Metropolitan Council will ensure non-discrimination in the award and administration of any and all contracts related to the Central Corridor LRT project.

This DBE Strategic Plan will guide all involved in the Central Corridor LRT Project as the Council makes decision, sets priorities, commits resources and measures progress. The Council

will carry out the DBE Strategic Plan working with the community at large and the specific prime and DBE community.

## ORGANIZATIONAL STRUCTURE

The Metropolitan Council's Regional Administrator, is charged with assuring compliance with 49 CFR Parts 23 and 26, including DBE programs delegated to sub recipients. In this role, the Regional Administrator is responsible for establishing a program to promote the Metropolitan Council's DBE program and designating a DBE Liaison Office.

The Council's DBE Liaison Officer (DBELO), as designated by the Regional Administrator, is responsible for maintaining and implementing the DBE Strategic Plan as well as overseeing the staff charged with implementing it. The DBE Liaison Officer communicates regularly with the Regional Administrator concerning DBE program matters. Figure 1 identifies the different positions within the Metropolitan Council responsible for implementing the DBE program.

**Figure 1: DBE Organizational Chart**



The DBE Liaison Officer is responsible for developing, coordinating, and monitoring the implementation of the Council's DBE program on a day-to-day basis. Implementation of the DBE program has the same priority as compliance with all other legal obligations incurred by the Council in its financial assistance agreements with USDOT.

The Central Corridor Project Office will include a **DBE Liaison Specialist Lead** and two **DBE Liaison Specialists**. Specific duties are recorded in the Council's DBE program document in accordance with 49 CFR parts 23 and 26.

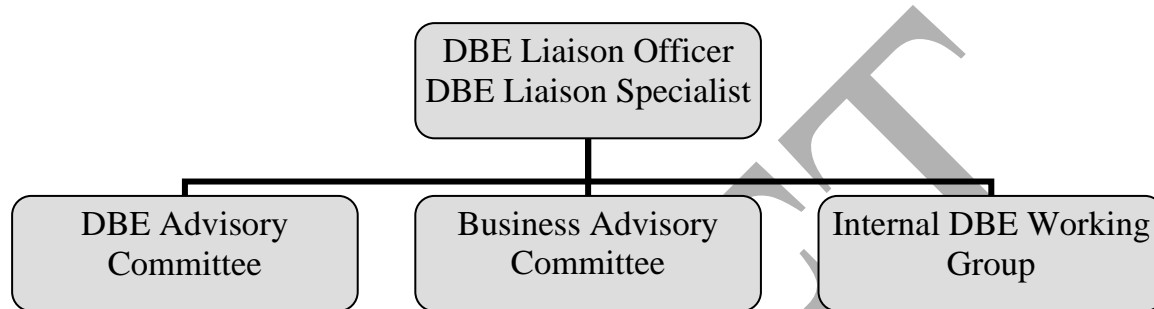
Central Corridor department directors, division directors and managers of operating elements have responsibility for effectively carrying out this policy statement within their respective departments.

---

All other staff, contractors, agency partners and private partners have the responsibility for effectively carrying out the DBE policies and regulations.

Implementation of the DBE Program will require input from internal and external stakeholders. Figure 2 identifies the advisory committees that will advise the DBE Liaison and the CCMC on issues related to the DBE program.

**Figure 2: DBE Involvement Chart**

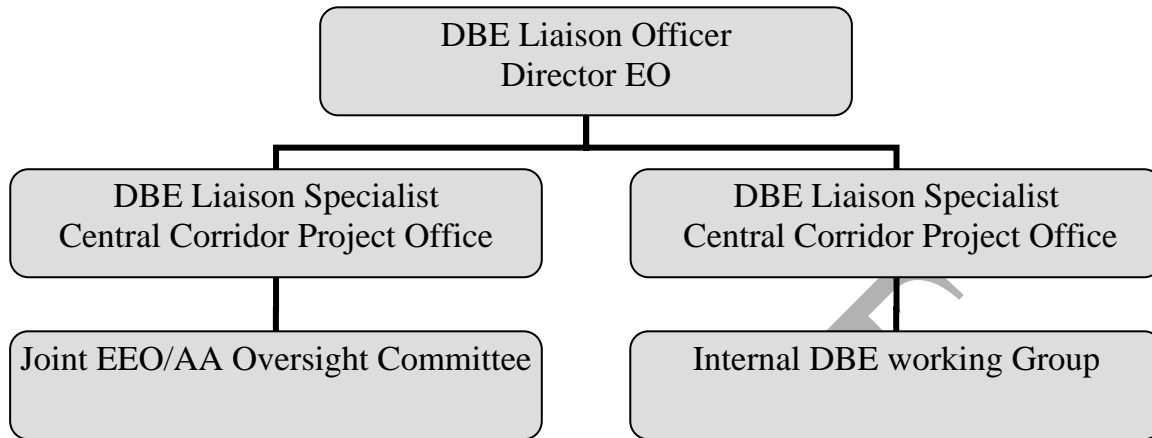


The **DBE Advisory Committee** is made up of women, minority and general contractor groups; community organizations, and other organizations that provide information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs and how to establish a level playing field for the participation of DBEs. The DBE Advisory Committee is chaired by the DBE Liaison Officer.

The **Business Advisory Committee (BAC)** includes representatives of businesses located within the Central Corridor. The BAC provides input to the Central Corridor Management Committee and Central Corridor Project Office via the Central Corridor Partnership on project design and construction mitigation. The BAC also provides an opportunity for the Central Corridor Project Office to share and disseminate information about the project and construction plans.

The **Internal DBE working group** includes representative from the design, construction, community and public involvement, safety and security, and administrative departments within the CCPO. This is the primary avenue for CPPO DBE issues to be resolved. This group will establish subgroups to discuss specific issues. The internal DBE Working Group is chaired by the DBE Liaison Officer or designee.

**Figure 3: DBE Assignments**



The **Joint Equal Employment Opportunity/Affirmative Action (EEO/AA) Oversight Committee** provides a forum for joint decision making, and to streamline reporting requirements, to monitor, enforce, certify and report state contractor compliance with EEO/AA/DBE requirements. Representatives include the prime contractor, DBEs, federal, state and local agencies, and non profit agencies. Each representative organization agrees to attend regular meetings of the Joint EEO/AA Committee. Agenda for these meeting shall include the ongoing evaluation of the joint monitoring efforts, measurement of contractor success in meeting goals, and recommendations for modifications to improve monitoring procedures. Both short and long-term strategies will be developed and implemented.

### **STRATEGIC IMPLEMENTATION PLAN GOALS**

The Central Corridor LRT DBE Strategic Plan focuses on four goals from the Council’s DBE policy statement.

- Non-discrimination
- Public participation
- Removal of barriers
- Technical assistance

In order to achieve the goals of this plan and reach the DBE goals the Office of Diversity and Equal Opportunity will employ multiple strategies and tactics delineated below:

### **OBJECTIVES**

The objectives of the DBE Strategic Plan include:

1. Review lessons learned from the Hiawatha Light Rail project.
2. Ensure all parties involved in contracting and procurement in the Central Corridor Project office receive training and understand the DBE regulations.



- 
3. Secure resources to implement the DBE program.
  4. Define all responsibilities in accordance with 49 CFR parts 23 and 26.
  5. Develop an outreach program that increases DBE involvement and provides training opportunities.
  6. Develop and implement the Joint EEO/AA Committee.
  7. Develop and implement the Internal DBE Working Group.
  8. Set achievable contract goals.
  9. Design and implement a plan for compliance and monitoring for each contract.
  10. Design reporting plan with the Federal Transit Administration (FTA), Council committees, DBE committees, and CCPO.
  11. Design and develop a workforce diversity plan.

## **STRATEGIES**

The strategies the Council will use to achieve the objections include:

1. Training any and all who have a need or want to know the DBE program regulation and policies.
2. Attending any and all community meetings that will provide an opportunity to discuss the opportunities for DBE participation on the Central Corridor LRT.
3. Pursuing strategic alliances with community organizations.
4. Involving DBE Advisory Committee in selection process.
5. Working with procurement regarding de-bundling so that more small business can participate.
6. Using internal and external communication tools and technology to ensure DBE compliance.
7. Working with finance to develop reporting process.

## **ACTION PLAN**

The Office of Diversity and Equal Opportunity (ODEO) has started working to ensure compliance with the DBE program. Public outreach, goal setting and contract evaluation are underway. The Council will take the following steps to ensure compliance with the Council's DBE policies and procedures:

1. Hold lessons learned workshop with DBE's that participated in the Hiawatha LRT project,
2. Work with the Central Corridor LRT Project Office in developing DBE requirements for the Request for Proposal's (RFP) for the project,
3. Work with project partners, stakeholders, educational institutes and nonprofit organizations to provide training opportunities,
4. Provide training to DBE's,
5. Provide technical assistance to DBE's and Primes,
6. Work with appropriate agencies in DBE capacity development, and
7. Work with the City of St Paul regarding the workforce requirements.

---

## CRITICAL SUCCESS FACTORS

In order to achieve the vision and mission of the Central Corridor DBE Program the critical success factors must be addressed. The Central Corridor LRT's DBE critical success factors include:

- Commitment to resources to support the DBE program,
- Ensuring project office staff know and understand the DBE regulation and have a commitment to uphold them,
- Maintaining credibility of the DBE program both internally and externally,
- Staying in touch with customers both internally and externally,
- Monitoring and evaluating the Central Corridor LRT DBE program on a regular basis, and
- Developing a plan to deal with non compliance that is supported by leadership.

Each of the critical success factors can be defined in terms of a controllable variable where the Council can affect the outcome. With dedication to the Central Corridor DBE program the entire listed critical success factors can and will be accomplished.

---

**APPENDIX 1: METROPOLITAN COUNCIL INCLUSION OF DISADVANTAGED  
BUSINESS INTERPRISES POLICY**

DRAFT

## POLICY - INCLUSION OF DISADVANTAGED BUSINESS ENTERPRISES

---

Section/Number: 3-4-6	Total Pages: 4
Dept. Responsible:	Office of Diversity & Equal
Opportunity Effective Date:	1/10/01
Special Note:	Revision No.

---

### I. Policy:

The Council recognizes its role as public policy makers in enacting policy that serve to eliminate the effects of illegal discrimination. The Council has previously approved several policies that clearly state its commitment to the prohibition of discrimination in employment and the provision of public services. This policy conveys the Council's commitment to create and support programs that result in the inclusion of women-owned, minority-owned and other small disadvantaged businesses in all of its procurement and contracting activities.

The Metropolitan Council will utilize business owned and controlled by socially and economically disadvantaged individuals in the procurement of goods and services, and the award of contracts.

The Council will, in accordance with authority granted by federal regulations, state statute, and local laws and ordinances, act affirmatively to create a "level playing field" for woman-owned, minority-owned and other small disadvantaged business enterprises to achieve the goal of equal opportunity.

**Whenever subcontracting is possible on a USDOT-assisted procurement over \$50,000**, the Council will set numerical goals no less than the Council's approved overall Disadvantaged Business Enterprise Program goal. On USDOT-assisted procurements less than \$50,000, the Council will require good faith efforts in the soliciting of bids or proposals from DBE firms.

**Whenever a procurement is funded by the Public Facilities Authority (PFA)**, the bid or proposal solicitation will include a numerical goal no less than the PFA fair-share target percentage for women-owned and minority-owned business participation. The Council will require good faith efforts to meet the fair-share target percentage women-owned and minority-owned business participation.

---

**For procurements not funded with federal monies**, the Council will establish goals, or other incentives, to increase the participation by small targeted group businesses. The Council will set numerical goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses certified by the Commissioner of the Minnesota Department of Administration. The Council will require good faith efforts to meet the goal for target group business participation.

## **II. Purpose of policy:**

This policy and its implementing procedures are intended to establish the following:

- To make it clear to staff, the public and anyone who expects to do business with the Council, that the organization is committed to providing opportunities to disadvantaged business enterprises;
- To provide guidance to staff on the solicitation, evaluation and award of contracts to facilitate the inclusion of disadvantaged business enterprises;
- To give notice to staff and the public that where ever the phrase "good faith efforts" appears in this policy, or its implementing procedures, the Council expects that actions taken are of the amount and scope that would yield participation by disadvantaged businesses; and,
- To ensure that disadvantaged business enterprise are not discriminated against in the award of Council contracts.

## **III. Background and reasons for policy:**

The Metropolitan Council has adopted this policy pursuant to the authority of Chapter 49, Part 26 of the Code of Federal Regulations "*Participation of Disadvantaged Business Enterprises in Department of Transportation Programs*" and Chapter 40, Part 35 of the Code of Federal Regulations which establishes procedures for participation of woman-owned and minority-owned businesses in federally assisted water and waste water programs. Also, Minnesota Statute 473.142 authorizes inclusion of socially and economically "targeted group" disadvantaged businesses in the Council's procurement and contracting efforts.

Disadvantaged business enterprise programs include:

U.S. Department of Transportation Disadvantaged Business Enterprise (DBE) Program - Recipients of USDOT, e.g. Federal Transit Administration, funding assistance who reasonably expect to award \$250,000 or more of prime contracts are required to establish a Disadvantaged Business Program. Key elements of the program are listed below.

- Quotas are prohibited.
- Recipients must set goals based on local evidence of the actual availability of qualified DBEs. An overall program goal must be established. Contract goals may be set on individual contracts based on actual availability of qualified DBEs.

- 
- Recipients must use race-neutral methods (such as outreach and technical assistance) to meet as much as possible of their overall goals.
  - Business owners with a personal net worth of more than \$750,000 (excluding the value of the primary residence and the ownership interest in the business) may not participate in the program.
  - Firms owned by socially and economically disadvantaged white males must be allowed to participate as DBEs.
  - Individual firms must graduate from the program if they exceed the small business size caps or if the firm's owner exceeds the personal net worth cap. The entire DBE program will expire in 2004 unless reauthorized by Congress.

To be eligible to participate in the Council's DBE program, a business must meet the certification standards in 49 CFR 26 and have completed a certification application and on-site review either by the Metropolitan Council, the Metropolitan Airports Commission or the Minnesota Department of Transportation.

U.S. Environmental Protection Agency (Public Facilities Authority) Minority/Women-Owned Business (MWBE) Program - The Metropolitan Council receives funds via the revolving loan program that is administered by the Public Facilities Authority (PFA). Program goals, or "fair share" target percentages for MBE and WBE participation, are established by PFA. Municipalities that receive loan funding must comply with federal requirements concerning utilization of Minority and Women's Business Enterprises. These requirements are designed to encourage loan recipients and prime contractors to utilize MWBEs whenever procurement opportunities occur. Requirements of the MWBE Program are listed below.

- Loan recipients must include as part of their loan application a fair share statement proposing a "fair share" pre-determined target percentage for MBE and WBE participation in the project for which the loan is requested.
- Recipients must take affirmative steps during all project procurement actions to meet the fair share target percentage for MWBE participation.

To be recognized as a MWBE, a firm must be certified as woman- or minority-owned and controlled by any federal or state agency, or be certified as a targeted group business by the Minnesota Department of Administration or the Metropolitan Airports Commission.

Targeted Group Business (TGB) Program - Minnesota Statute 473.142 states that the Metropolitan Council may award up to a six percent preference in the amount bid for specified goods or services to small targeted group businesses designated by the Commissioner of the Minnesota Department of Administration. The Council may designate a purchase of goods or services for award only to small targeted group businesses if the Council determines that at least three small targeted group businesses are likely to bid. The Council, as a condition of awarding a construction contract or approving a contract for consultant, professional, or technical services, may set goals that

---

require the prime contractor to subcontract a portion of the contract to small targeted group businesses. Other elements of the program include the following:

- The Council is encouraged to purchase from small targeted group businesses when making purchases that are not subject to competitive bidding procedures.
- The TGB requirement does not apply to procurement financed in whole or in part with federal funds if the procurement is subject to federal disadvantaged, minority, or women business enterprise regulations.

To be recognized as a TGB, a firm must be certified by the Minnesota Department of Administration under Minnesota Rules Chapter 1230.

#### **IV. Implementation/Accountability:**

All employees are responsible for complying with this policy when involved with purchasing and contracting goods or services on behalf of the Council. The Council's Director, Equal Opportunity is responsible for developing procedures to fulfill the objectives of policy. The Regional Administrator, General Managers and Division Directors are responsible for holding accountable, for adherence to this policy, persons under their supervision who purchase goods and services for the Council, and will ensure that relevant business item submittals to the Council include information on the inclusion of disadvantaged businesses. Approval to deviate from this policy must be documented and authorized by the Regional Administrator, or by other Council staff as delegated by the Regional Administrator in accordance with Council policies and procedures. The Regional Administrator, or his/her designee, will make periodic reports to the Council on the utilization of disadvantaged business enterprises.

#### **Implementing Procedures:**

- Contractor Compliance and Monitoring for Disadvantaged Business and Affirmative Action Programs

---

**APPENDIX 2: METROPOLITAN COUNCIL GOAL SETTING AND GOOD FAITH EFFORTS PROCEDURE**

DRAFT



## PROCEDURE - Goal Setting and Good Faith Efforts

---

Section/Number: 3-4-6a	Total Pages: 4
Dept. Responsible: Office of Diversity & Equal Opportunity	Effective Date: July, 2001
Special Note:	Revision No.

---

### I. Policy:

The Council recognizes its role as public policy makers in enacting policy that serve to eliminate the effects of illegal discrimination. The Council has previously approved several policies that clearly state its commitment to the prohibition of discrimination in employment and the provision of public services. This policy conveys the Council's commitment to create and support programs that result in the inclusion of women-owned, minority-owned and other small disadvantaged businesses in all of its procurement and contracting activities.

The Metropolitan Council will utilize business owned and controlled by socially and economically disadvantaged individuals in the procurement of goods and services, and the award of contracts.

The Council will, in accordance with authority granted by federal regulations, state statute, and local laws and ordinances, act affirmatively to create a "level playing field" for woman-owned, minority-owned and other small disadvantaged business enterprises to achieve the goal of equal opportunity.

**Whenever subcontracting is possible on a USDOT-assisted procurement over \$50,000,** the Council will set numerical goals no less than the Council's approved overall Disadvantaged Business Enterprise Program goal. On USDOT-assisted procurements less than \$50,000, the Council will require good faith efforts in the soliciting of bids or proposals from DBE firms.

**Whenever a procurement is funded by the Public Facilities Authority (PFA),** the bid or proposal solicitation will include a numerical goal no less than the PFA fair-share target percentage for women-owned and minority-owned business participation. The Council will require good faith efforts to meet the fair-share target percentage women-owned and minority-owned business participation.

**For procurements not funded with federal monies,** the Council will establish goals, or other incentives, to increase the participation by small targeted group businesses. The Council will set numerical goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses certified by the Commissioner of the

---

Minnesota Department of Administration. The Council will require good faith efforts to meet the goal for target group business participation.

## II. Procedure:

The purpose of this procedure is to provide guidance on the establishment of subcontracting goals, and to define and discuss good faith effort (GFE) evaluation criteria used to determine the acceptability or unacceptability of contractors, subcontractors, vendors, suppliers or consultants seeking to do business with the Council.

### Goal Setting

U.S. Department of Transportation (USDOT) assisted contracts. **Whenever subcontracting is possible** and the contract is **over \$50,000**, the Council will set numerical goals no less than the Council's approved overall Federal Disadvantaged Business Enterprise Program goal. The Council will require good faith efforts to meet the goal for disadvantaged business enterprise participation.

On USDOT-assisted contracts **less than \$50,000**, the Council will require good faith efforts in the soliciting of bids or proposals from DBE firms.

Public Facilities Authority (PFA) funded contracts. For PFA funded contracts **of any amount** the bid or proposal solicitation will include a numerical goal no less than the PFA fair-share target percentage for women-owned and minority-owned business participation. The Council will require good faith efforts to meet the fair-share target percentage for women-owned and minority-owned business participation.

Non-federally funded contracts. **Whenever subcontracting is possible** and the contract is **over \$50,000**, the Council will establish goals, based on their availability, to increase the participation by small targeted group businesses. The Council will set numerical goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses certified by the Commissioner of the Minnesota Department of Administration. The Council will require good faith efforts to meet the goal for target group business participation. In accordance with the TGB regulation, if the contract is awarded to a TGB prime contractor, the subcontracting goal will be waived.

The Council will establish a **4%** preference on all non-federal **prime contracts over \$50,000 and when there is no opportunity to subcontract**. The preference will be applied only if a targeted group business provides a responsible, responsive bid on the contract. Deviations from this procedure must be approved by the Regional Administrator.

On non-federally funded contracts **less than \$50,000**, the Council will require good faith efforts in the soliciting of bids or proposals from small target group businesses.

When the Council purchases from State contracts, the procedures for inclusion of TGBs, are addressed during the State's procurement process.

---

Procurements less than \$50,000. For micro-purchases, purchases of goods, RAMS, professional services, technical services and construction services under \$50,000, the requestor, Metro Transit Procurement (MTP), or the Contracts and Procurement Unit (CPU) is responsible for soliciting and utilizing disadvantaged business enterprises.

### **Good Faith Efforts**

Whenever a subcontract goal is set, a bidder/proposer must, in order to be responsible, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, by documenting commitments for participation by disadvantaged business enterprises sufficient to meet the numerical goal. Second, even if it doesn't meet the numerical goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took reasonable steps to achieve the contract goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient disadvantaged business enterprise participation, even if they were unsuccessful in achieving the numerical goal.

On contracts where a subcontract goal has been established, the Council's **Office of Diversity & Equal Opportunity** will evaluate whether a bidder who did not meet the numerical goal made reasonable good faith efforts to do so. Factors to consider in this determination are the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain disadvantaged business enterprise participation sufficient to meet the numerical goal.

All **purchasers** (i.e. bidders, contractors, consultants, suppliers and staff) are encouraged to use good faith efforts to use disadvantaged businesses whether or not a subcontract goal is set.

The following is a list of types of actions that will be considered in the evaluation of the purchaser's good faith efforts to obtain disadvantaged business enterprise participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all legitimate disadvantaged businesses that have the capability to perform the work of the contract. The bidder should solicit this interest within sufficient time to allow firms to respond to the solicitation. Bidders should ascertain a firm's interest by taking steps to follow up its initial solicitations.
- Selecting portions of the work to be performed by disadvantaged business enterprises in order to increase the likelihood that the disadvantaged business enterprise goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate disadvantaged business enterprise participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

- 
- Providing interested disadvantaged business enterprises with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
  - Negotiating in good faith with interested disadvantaged business enterprises. It is the bidder's responsibility to make a portion of the work available to disadvantaged business enterprise subcontractors and suppliers and to select those portions of the work or material needs consistent with the available disadvantaged business enterprise subcontractors and suppliers, so as to facilitate disadvantaged business enterprise participation. The bidder/proposer may present documentation that includes: the names, addresses, and telephone numbers of disadvantaged business enterprises that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; or documentation that shows why additional agreements could not be reached for disadvantaged business enterprises to perform the work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including disadvantaged business enterprise subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts.
  - Not rejecting disadvantaged business enterprises as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the goal.
  - Making efforts to assist interested disadvantaged business enterprises in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
  - Making efforts to assist interested disadvantaged business enterprises in obtaining necessary equipment, supplies, materials, or related assistance or services.
  - Effectively using the services of available minority/women community organizations; minority/women contractors' groups; and, local, state, and Federal minority/women business assistance offices; and other organizations.
  - The Council will consider, in its evaluation of Good Faith Efforts, whether, with additional reasonable efforts, the apparent successful bidder could have met the goal, when other bidders were successful in meeting the goal.

### **Additional Resources**

Lists of, or hyperlinks to, businesses certified to participate on USDOT-assisted contracts, PFA-assisted contracts and TGB eligible procurements can be found on the Metropolitan Council's internet home page. Information regarding community organizations, professional organizations and media resources can be obtained by contacting the Council's Office of Diversity & Equal Opportunity.



DRAFT

---

**APPENDIX 3: METROPOLITAN COUNCIL CONTRACTOR COMPLIANCE AND  
MONITORING FOR DISADVANTAGED BUSINESS PROGRAMS**

DRAFT

## PROCEDURE - CONTRACTOR COMPLIANCE AND MONITORING FOR DISADVANTAGED BUSINESS PROGRAMS

---

Section/Number: 3-4-6b	Total Pages: 9
Dept. Responsible:	Office of Diversity & Equal
Opportunity Effective Date:	July, 2001
Special Note:	Revision No. 1

---

### I. Policy:

The Council recognizes its role as public policy makers in enacting policy that serve to eliminate the effects of illegal discrimination. The Council has previously approved several policies that clearly state its commitment to the prohibition of discrimination in employment and the provision of public services. This policy conveys the Council's commitment to create and support programs that result in the inclusion of women-owned, minority-owned and other small disadvantaged businesses in all of its procurement and contracting activities.

The Metropolitan Council will utilize business owned and controlled by socially and economically disadvantaged individuals in the procurement of goods and services, and the award of contracts.

The Council will, in accordance with authority granted by federal regulations, state statute, and local laws and ordinances, act affirmatively to create a "level playing field" for woman-owned, minority-owned and other small disadvantaged business enterprises to achieve the goal of equal opportunity.

**Whenever subcontracting is possible on a USDOT-assisted procurement over \$50,000**, the Council will set numerical goals no less than the Council's approved overall Disadvantaged Business Enterprise Program goal. On USDOT-assisted procurements less than \$50,000, the Council will require good faith efforts in the soliciting of bids or proposals from DBE firms.

**Whenever a procurement is funded by the Public Facilities Authority (PFA)**, the bid or proposal solicitation will include a numerical goal no less than the PFA fair-share target percentage for women-owned and minority-owned business participation. The Council will require good faith efforts to meet the fair-share target percentage women-owned and minority-owned business participation.

**For procurements not funded with federal monies**, the Council will establish goals, or other incentives, to increase the participation by small targeted group businesses. The Council will set numerical goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses certified by the Commissioner of the Minnesota Department of

---

Administration. The Council will require good faith efforts to meet the goal for target group business participation.

## II. Procedure:

The purpose of this procedure is to convey the process used to determine the acceptability or non-acceptability of contractors, subcontractors, vendors, suppliers or consultants in the performance of, and commitment to, the utilization of disadvantaged business enterprises. This document does not consist of rigid steps to be followed, rather, it is intended to provide general guidance to insure actions consistent with Metropolitan Council policy, and applicable federal laws and regulations.

### 1. Definitions

Certification: Statement included in all bid solicitations to be signed by all bidders and contractors indicating agreement to fulfill the Contractor's equal employment opportunity (EEO), disadvantaged business enterprise (DBE) or woman-owned/minority-owned (W/MBE) requirements.

Corrective Action Plan: Programmed, result-oriented procedures for correcting discrepancies between agreed upon and actual disadvantaged business participation.

Good Faith Efforts: Actions, which when taken, may be reasonably expected to achieve the results projected by EEO, DBE and W/MBE plans of goals and timetables.

Disadvantaged Business Enterprise (DBE): A for-profit, small business concern that is at least 51 percent owned and controlled by one or more individuals who are both socially and economically disadvantaged. Stock in a DBE corporation must be 51 percent owned by one or more such individuals.

List of Proposed disadvantaged business enterprises: The form that must be completed by each bidder at the time the bid is submitted to the Council, or at the time specified by the Invitation for Bids or Request for Proposal, to outline the bidder's commitment to utilize DBE, MBE, TGB or WBE firms as joint venture partners, subcontractors, and suppliers.

Minority-Owned Business Enterprise (MBE): A business concern that is at least 51 percent owned by one or more minority persons. In a publicly owned business, the stock must at least 51 percent owned by one or more minority persons, and daily business operations must be managed and directed by one or more of the minority owners.

Targeted Group Business (TGB): A certified business designated by the Minnesota Department of Administration, that is majority owned and operated by



---

a woman, person with a disability, or a specific minority and provides goods, products, or services within purchasing categories designated by the Commissioner of Administration.

Woman-Owned Business Enterprise (WBE): A business concern that is at least 51 percent owned by one or more women. In a publicly owned business, the stock must at least 51 percent owned by one or more women, and daily business operations must be managed and directed by one or more of the women owners.

## **2. Responsibilities**

The Council's Director, Equal Opportunity is responsible for providing the oversight for the necessary actions, described herein, to secure WMBE, DBE and TGB compliance from all potential contractors, subcontractors, vendors, suppliers, consultants, lessors, and all others doing business with the Council. The Director will make recommendations to the Regional Administrator regarding contract award and continued eligibility to do business with the Council.

All Council departments and divisions engaged in contracting and procurement are responsible for notifying the Office of Diversity & Equal Opportunity (ODEO) of their intentions to contract, in advance, via the Contract Initiation Memorandum (CIM) to identify the appropriate DBE, WMBE or TBG goal or other pre-solicitation information.

After bids or proposals are evaluated, and prior to contract award, Council departments and divisions are responsible for notifying the ODEO, via the Contractor Selection Memorandum (CSM) of the business selected for contract award.

The Director, Equal Opportunity is responsible for recommending to the General Manager, Division Director or Regional Administrator the approval or disapproval of each contractor based upon compliance with applicable disadvantaged business enterprise requirements.

The Director, Equal Opportunity is responsible for directing staff of ODEO in reviews of DBE, WMBE or TGB legitimacy, DBE, WMBE or TGB contractor performance, and contractor compliance with DBE, WMBE or TGB goals.

Equal Opportunity Consultants & Diversity Specialists are responsible for monitoring and gathering facts regarding contractor compliance with disadvantaged business enterprise requirements and contractor performance.

Every employee, contractor or representative of the Council is expected to adhere to all policies and procedures regarding disadvantaged business program requirements.

---

For micro-purchases, purchases of goods, RAMS, professional services, technical services and construction services under \$50,000, the requestor, Metro Transit Procurement (MTP), or the Contracts and Procurement Unit (CPU) is responsible for soliciting and utilizing disadvantaged business enterprises.

**3. Pre-Award Monitoring**

**Professional/Technical Service Consultants and Contractors**

The following procedure shall be used by the Office of Diversity & Equal Opportunity in issuing a recommendation to approve or dis-approve each proposed professional/technical service consultant or contractor. These procedures are intended to be descriptions of actions to undertake to achieve the Councils equal opportunity objectives.

- a. The Council's Contracts & Procurement Unit is expected to secure, at the time of receipt of a quote, a completed *Affirmative Action Certification Form, List of Proposed DBEs, WMBEs, or TGBs* and *Summary of Good Faith Efforts* from the proposer when applicable.
- b. Any proposal which is not accompanied by a completed *Affirmative Action Certification Form, the List of Proposed DBEs, WMBEs, or TGBs* and the signed *Summary of Good Faith Efforts* shall not be considered eligible for award consideration.
- c. During the proposal evaluation the proposer's compliance with applicable disadvantaged business enterprise goals shall be addressed. Specifically, EO Consultants and Diversity Specialists should evaluate each proposer's disadvantaged business enterprise commitments or good faith efforts at least equal to the contract goals set forth in the request for proposal document.
- d. EO Consultants and Diversity Specialists may request additional clarifying information. Apparent qualified proposers not responding within the appropriate time limitations (normally 3-7 days) shall not be automatically deemed non-responsive. Attempts will be made to secure the appropriate documents.
- e. ODEO staff will evaluate all submitted materials and send a recommendation to the appropriate Division (generally the Contracts & Procurement Unit) for follow-through actions leading to contract award.
- f. Prior to rendering any recommendation to disapprove an apparently qualified proposer, the Office of Diversity will consult with the Office of the General Counsel in order to insure that all reasonable attempts to

---

secure compliance have been made and that all such attempts have been properly documented.

- g. The ODEO will provide documentation of its review of the proposer's disadvantaged business enterprise utilization within two weeks after receipt of the request for review. If ODEO's review cannot be made within this timeframe, an updated deadline will be established and CPU and the appropriate Department/Division will be notified.
- h. After the ODEO has made its recommendation in writing to the Department/Division engaged in contracting, the contract will follow the normal approval process
- i. Once approved as a contractor, each firm doing business with the Council shall be required to submit an updated project progress report each month or as directed by the contract.
- j. Following initial approval of a firm as a Council contractor, ODEO staff will conduct periodic follow-up compliance reviews as deemed necessary by the Director, Equal Opportunity to insure implementation of each contractor's DBE, WMBE or TGB goal and commitments.
- k. Firms doing business with the Council through master contracts with other jurisdictions or other forms of procurement may be reviewed for compliance with the requirements listed above.

Goods, RAMS and Construction Service Contractors

- a. The Council's Contracts & Procurement Unit is expected to secure, at the time of receipt of a bid or a quote, a completed *Affirmative Action Certification Form*, *List of Proposed DBEs, WMBEs, or TGBs* and *Summary of Good Faith Efforts* from the bidder when applicable.
- b. Any bid or proposal which is not accompanied by a completed *Affirmative Action Certification Form*, the *List of Proposed DBEs, WMBEs, or TGBs* and the signed *Summary of Good Faith Efforts* shall not be considered eligible for award consideration.
- c. During the bid evaluation the bidder's compliance with applicable disadvantaged business enterprise goals shall be addressed. Specifically, EO Consultants and Diversity Specialists should evaluate bidder/proposer's disadvantaged business enterprise commitments or good faith efforts at least equal to the contract goals set forth in the invitation for bid or request for proposal.

- 
- d. EO Consultants and Diversity Specialist may request additional clarifying information. Apparent low bidders not responding within the appropriate time limitations (normally 3-7 days or as otherwise specified in the bid document) shall not be automatically deemed non-responsive. Attempts will be made to secure the appropriate documents.
  - e. ODEO staff will evaluate all submitted materials and send a recommendation to the appropriate Division (generally the Contracts & Procurement Unit) for follow-through actions leading to contract award.
  - f. Prior to rendering any recommendation to disapprove an apparent low bidder, the Office of Diversity will consult with the Office of the General Counsel in order to insure that all reasonable attempts to secure compliance have been made and that all such attempts have been properly documented.
  - g. The ODEO will make a recommendation regarding contract award within two weeks after receipt of the request for review of pre-award documentation and information. If ODEO's recommendation cannot be made within this timeframe, an updated deadline will be established and CPU and the appropriate Department/Division will be notified.
  - h. After the ODEO has made its recommendation in writing to the Department/Division engaged in contracting, the contract will follow the normal approval process
  - i. Once approved as a contractor, each firm doing business with the Council shall be required to submit an updated project progress report each calendar quarter or as directed by contract.
  - j. When award is recommended to a TGB based on a preference, CPU and Metro Transit Procurement, in conjunction with ODEO, will prepare a detailed record of actions that led to the contract award.
  - k. The ODEO has sole responsibility for determining the acceptability of all TGB, DBE, or WMBE submittals by potential contractors and subcontractors.
  - l. Firms doing business with the Council through master contracts with other jurisdictions or other forms of procurement are subject to the same requirements as apparent low bidders on Council contract proposals.
  - m. Following initial approval of a prime contractor or subcontractor, the ODEO will conduct periodic follow-up compliance reviews, at least quarterly or as deemed necessary by the Director, Equal Opportunity to

---

insure implementation of each contractor's TGB, DBE, WMBE commitments. Failure by the contractors to carry out the terms of their affirmative action programs or to show good faith efforts may result in cancellation or termination of the contract.

#### **4. Post-Award Monitoring**

##### **Compliance Reviews**

Contract monitoring of DBE, TGB or WMBE participation will be conducted as outlined below:

- a. Review of Compliance Requirements: The ODEO staff will contact the contractor to review specific compliance requirements.
- b. Periodic Compliance Reviews: The ODEO staff will make periodic reviews of the contractor's TGB, DBE, WMBE performance as directed by the Director, Equal Opportunity.
- c. Contractor Notification: The ODEO staff need not provide written notification to the contractor of a pending compliance review. However, if certain documents such as books, records, subcontract documents, payrolls, cancelled checks, etc. are needed for examination, it is recommended that prior, written notice be given. This notification will inform the contractor of the date, time and location of the review. The contractor will ordinarily be expected to have the following available for inspection:
  - (1) Copies of purchase orders and subcontracts containing equal opportunity and disadvantaged business enterprise clauses.
  - (2) Records to indicate the number, names, dollar value of minority subcontractors, the amount and dates, and the schedule times for each minority business enterprise to be on the job site.
  - (3) Records of subcontractor bid or quotes from all that have occurred after contract award. (Note: This information is required for maintenance of the bidders' list.)
  - (4) Any other appropriate documents requested prior to the actual on-site visit.
- d. On-Site Verification and Interviews: This will include, but not be limited to, the following:

- 
- (1) An initial meeting of the ODEO staff representative with the contractor's EEO/DBE/WMBE liaison to explain the objectives of the visit.
  - (2) Review of documents submitted by contractor.
  - (3) Tour of the job site or facility, as applicable.
  - (4) Interviews of subcontractors, suppliers, etc.
- e. On-Site Exit Conference: During ODEO's exit conference with contractor's liaison, the following will be discussed:
- (1) The compliance process and time frame for compliance determination.
  - (2) Suggestions for corrective actions to be taken, if necessary, as a result of the visit.
- f. Compliance Review Information Analysis: Upon completion of the on-site verification phase, the ODEO will review all available information including documents provided by the contractor and obtained from the on-site visit. A report indicating compliance status will be prepared and submitted to the Director, Equal Opportunity.
- g. Compliance: If it is determined that a contractor is in compliance, the Director, EO will send notification of findings to the contractor.
- h. Non-compliance: If it is determined that a contractor is not in compliance, representatives of the Office of Diversity & Equal Opportunity may conduct further review. The Director, EO will notify the contractor of such review results as soon as practical. The contractor and the ODEO Staff and other representative of the Council may meet informally to remedy compliance problems. If the problems are not remedied, the ODEO Staff will inform the Director, Equal Opportunity that the contractor is in non-compliance.
- i. Consequences of non-compliance: The contractor's failure to take corrective action or to make continuing good faith efforts to achieve disadvantaged business objectives will be construed as a breach of contract. Failure to operate in good faith may result in a determination that the contractor be excluded from participating on future Council contracts for a period of at least 5 years.

### **DBE, WMBE or TGB Performance Reviews**

---

ODEO Staff are expected to conduct periodic reviews of performance of DBE, WMBE or TGB prime contractors and subcontractors. Such reviews will be conducted as follows:

- a. Pre-performance Assessment: Assessments of DBE, WMBE or TGB contractors are to be conducted prior to the contract commencement in order to proactively identify barriers to successful DBE, WMBE or TGB contractor performance. Upon completion of such an assessment, information will be forwarded to the Director, Equal Opportunity for technical assistance, as necessary. ODEO Staff are to follow-up with DBE, WMBE or TGB contractors in a timely fashion after providing technical assistance. Reports of follow-up activities are to be made to the Director, Equal Opportunity.
- b. Performance Monitoring: EO Consultants and Diversity Specialists will conduct, at the direction of the Director, Equal Opportunity periodic reviews of DBE, WMBE or TGB contractor and subcontractor performance. Such reviews shall consist of interviews with DBE, WMBE or TGB representatives, as well as interviews with the contracting department and the prime contractor if appropriate. Relevant records also will be reviewed. The Council's contract administrator, project manager or Council's authorized representative also will be interviewed. Reports of DBE, WMBE or TGB contract performance-related problems shall be made to the Director, Equal Opportunity.

---

**APPENDIX 4: METROPOLITAN COUNCIL DISADVANTAGED BUSINESS  
ENTERPRISE PROGRAM**

DRAFT



---

**METROPOLITAN COUNCIL  
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

**1.0 METROPOLITAN COUNCIL DBE POLICY**

- 1.1 Policy Statement
- 1.2 Objectives

**2.0 DBE PROGRAM DEFINITIONS**

**3.0 RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION**

- 3.1 Duties of DBE Liaison Officer
- 3.2 Responsibilities of Support Personnel
- 3.3 Reconsideration Official

**4.0 ADMINISTRATIVE REQUIREMENTS (SUBPART B)**

- 4.1 Financial Institutions
- 4.2 DBE Directory
- 4.3 Over-concentration of DBEs

**5.0 DBE GOALS FOR FEDERALLY-ASSISTED CONTRACTS**

- 5.1 Goal-Setting Methodology
- 5.2 Transit Vehicle Manufacturers (TVMs)
- 5.3 Race-Neutral Measures
- 5.4 Contract Goals
- 5.5 Good Faith Efforts
- 5.6 Counting DBE Participation
- 5.7 Quotas, Set-Asides, and Penalties

**6.0 REQUIRED CONTRACT PROVISIONS**

- 6.1 Assurances
- 6.2 Prompt Payment
- 6.3 Legal and Contract Remedies
- 6.4 Contractor Reporting Requirements

**7.0 CERTIFICATION STANDARDS (SUBPART D)**

- 7.1 Burdens of Proof
- 7.2 Group Membership Determinations
- 7.3 Social and Economic Disadvantage; Statement of Net Worth
- 7.4 Business Size Determinations
- 7.5 Ownership Determinations

- 
- 7.6 Control Determinations
  - 7.7 Considerations

## **8.0 CERTIFICATON PROCEDURES (SUBPART E)**

- 8.1 Unified Certification Program
- 8.2 Initial Certification Procedures
- 8.3 Recertification Procedures
- 8.4 Denials and Re-Application Procedures
- 8.5 De-Certifications
- 8.6 Certification Appeals

## **9.0 RECORD KEEPING, MONITORING AND ENFORCEMENT**

- 9.1 Bidders List
- 9.2 Monitoring Payments to DBEs
- 9.3 Reporting to DOT
- 9.4 Availability of Records
- 9.5 Confidentiality of Information
- 9.6 Cooperation of DBEs
- 9.7 Intimidation and Retaliation Prohibited

## **Appendix**

- A.1 Individuals Responsible for Program Implementation
- A.2 Goal Methodology
- A.3 Public Participation & Outreach

---

## 1.0 METROPOLITAN COUNCIL DBE POLICY

### 1.1 Policy Statement

In accordance with 49 CFR sections 26.3, 26.7, 26.21, and 26.23, the Metropolitan Council hereby affirms its policy to utilize businesses owned and controlled by socially and economically disadvantaged individuals in the procurement of goods and services, and the award of contracts. The Metropolitan Council will, in accordance with authority granted by DOT regulations, other federal, state and local laws and ordinances, act affirmatively to create a “level playing field” for Disadvantaged Business Enterprises (DBEs) to achieve the goal of equal opportunity.

The Metropolitan Council recognizes that creating a “level playing field” for DBEs can only be achieved through the energetic implementation of this plan and the commitment of all Metropolitan Council employees, committees and contractors to the goals of equal opportunity.

This policy statement will be circulated throughout the Metropolitan Council’s organization, and to the DBE and non-DBE business communities that perform work on the Metropolitan Council’s DOT-assisted contracts. It will be printed and made available through the Metropolitan Council’s Regional Data Center and will be mailed free upon request to any individual.

In addition, it is the policy of the Metropolitan Council to not:

1. 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 this program on the basis of race, color, sex, or national origin.
2. In administering the DBE program, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

---

## 1.2 Objectives

In accordance with 49 CFR section 26.1, the objectives of the Metropolitan Council's DBE program are:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Metropolitan Council's financial assistance programs.
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
3. To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law.
4. To ensure that only firms that fully meet this programs eligibility standards are permitted to participate as DBEs.
5. To remove barriers to the participation of DBEs in DOT-assisted contracts.
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE program.
7. To utilize the flexibility accorded by Federal financial assistance to establish and provide opportunities for DBEs.

## 2.0 METROPOLITAN COUNCIL PROGRAM DEFINITIONS

In accordance with 49 CFR section 26.5, the following definitions apply to the Metropolitan Council's DBE program.

**AFFILIATION** As defined in the Small Business Administration (SBA) regulations, 13 CFR part 121:

1. Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
  - a. One concerns controls or has the power to control the other;
  - b. A third party or parties controls or has the power to control both; or
  - c. An identity of interest between or among parties exists such that affiliation may be found.

- 
2. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

**AFFIRMATIVE ACTION** Specific and positive activities undertaken by the Metropolitan Council and its contractors to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve disadvantaged business enterprises fully in contracts and programs funded by the DOT.

**ALASKA NATIVE** A citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

**ALASKA NATIVE CORPORATION** Any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

**APPEAL** A formal filing by a business entity who has been denied certification by the metropolitan council as a disadvantaged business enterprise (DBE).

**APPLICANT** One who submits an application, request, or plan to be approved by a departmental official or by a primary recipient as a condition of eligibility for dot financial assistance; and application means such an application, request, or plan.

**CHALLENGE** A formal filing by a third party to rebut the presumption that a particular business meets the definition of DBE.

**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 in the transaction, i.e., the firm's role is not a superfluous step added in an attempt to obtain credit toward goals. If, in the Metropolitan Council's judgement, 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.

**COMPLIANCE** the condition existing when a recipient or contractor has correctly implemented the requirements of the program.

**CONTRACT** A legally binding relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. [for purposes of this part, a lease is a contract?]

---

**CONTRACTING OPPORTUNITY** Any decision by the Metropolitan Council or its contractors to institute a procurement action to obtain a product or service commercially (as opposed to intergovernmental actions).

**CONTRACTOR** One who participates, through a contract or subcontract (at any tier), in a dot-assisted highway, transit, or airport program covered by this part; and includes lessees.

**DBE DIRECTORY** the metropolitan council's list of certified and denied firms which is used by the metropolitan council and its contractors to identify dbe potential prime and subcontractors and suppliers.

**DEPARTMENT OR DOT** The U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHA), the Federal Transportation Agency (FTA), and the Federal Aviation Administration (FAA).

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)** A for-profit small business concern:

That is at least 51% owned by one or more individuals who are both socially and economically disadvantaged; or in the case of a corporation, in which at least 51% of the stock is owned by one or more such individuals; and

Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**DOT-ASSISTED CONTRACT** any contract or modification of a contract between the metropolitan council and a contractor (at any tier) that is funded for in whole or in part with dot financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

**EQUAL OPPORTUNITY** The requirements of non-discrimination in employment with regard to race, religion, creed, color, national origin, ancestry, physical handicap, medical condition, age, marital status, or sex, and in accordance with Government Code, Section 12490.

**GOAL** The annual percentage of DOT-assisted dollars intended to be awarded to DBEs. The annual overall DBE goal is achieved through a combination of race-neutral and race-conscious measures, including contract-specific goals.

**GOOD FAITH EFFORTS** Efforts to achieve a DBE goal or other requirement of the program, which by their scope, intensity, and appropriateness to the objective, can be expected to fulfill the program requirement.

---

**IMMEDIATE FAMILY MEMBER** Father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

**INDIAN TRIBE** Any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in these definitions.

**JOINT DEVELOPMENT** the planning and implementation of an income producing real estate development which is adjacent to or physically related to an existing or proposed public transportation facility (e.g. Transit station, park and ride, or bus facility).

**JOINT VENTURE** an association of a dbf firm and one or more other firms to carry out a single for profit business enterprise, for which the parties contribute their property, capital, efforts, skills, and knowledge, and in which the dbes responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital, contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**LESSEE** A business or person that leases, or is negotiating to lease, property from a recipient or the department on the recipient’s or department’s facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

**LEVEL PLAYING FIELD** The objective of the DOT and Metropolitan Council DBE program; wherein an environment is created to achieve the level of participation by DBEs that would reasonably be expected in the absence of discrimination.

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

**MINORITY** A person who is a u.s. citizen or lawful permanent resident of the u.s. and who is a:

- a. “Black American”, which includes persons having origins in any of the black racial groups of Africa.
- b. “Hispanic American”, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.
- c. “Native American”, which includes persons that are American Indians, Eskimos, Aleuts or Native Hawaiians.

---

d. “Asian-Pacific American”, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; or

e. “Asian-Indian American”, which includes persons whose origins are from India, Pakistan, and Bangladesh.

**NATIVE HAWAIIAN** Any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

**NATIVE HAWAIIAN ORGANIZATION** Any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered under the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

**NONCOMPLIANCE** the condition existing when a recipient or contractor has not correctly implemented the requirements of the program.

**OPERATING ADMINISTRATION OR OA** any of the following parts of the dot: the federal aviation administration (faa), federal highway administration (fhwa), and federal transit administration (fta). The “administrator” of an operating administration includes his or her designees.

**PERSONAL NET WORTH** The net value of the assets of an individual remaining after total liabilities are deducted. An individual’s personal net worth does not include the individual’s ownership interest in an applicant or participating DBE firm; or the individual’s equity in his or her primary place of residence. An individual’s personal net worth includes only his or her own share of assets held jointly or as community property with the individual’s spouse.

**PRE-BID/PRE-PROPOSAL CONFERENCE** A meeting held by the Metropolitan Council, prior to the bid/proposal closing date of a particular project, at which prospective bidders/proposers are advised of Metropolitan Council specification requirements, which include DBE provisions.

**PRE-BID/PRE-CONSTRUCTION CONFERENCE** A meeting held by the metropolitan council prior to solicitation at which the prospective prime contractors are advised of its federal compliance obligations and other technical & administrative requirements.

**PREPONDERANCE OF THE EVIDENCE** The standard of evidence used in DBE eligibility criteria. Pertains to the total context of factual submissions.

**PRIMARY INDUSTRY CLASSIFICATION** The four-digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a



---

firm. The SIC code designations are described in the Standard Industry Classification Manual.

**PRIMARY RECIPIENT** A recipient who received dot financial assistance and passes some or all of this assistance on to another recipient.

**PRINCIPAL PLACE OF BUSINESS** The business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

**PROGRAM** any undertaking by a recipient to use dot financial assistance, and includes the entire activity any part of which receives dot financial assistance.

**RACE-CONSCIOUS MEASURE OR PROGRAM** One that is focused specifically on assisting only DBEs, including women-owned DBEs.

**RACE-NEUTRAL MEASURE OR PROGRAM** One that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

**REBUTTABLE PRESUMPTION** A fact related to DBE eligibility criteria that is held to meet the standards of eligibility unless proven otherwise.

**RECIPIENT** any entity, public or private, to which dot financial assistance is extended, whether directly or through another recipient, through the programs of the faa, fhwa, or fta, or who has applied for such assistance.

**REGULAR DEALER** A firm that owns, operates or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this definition.

**RELATIVE AVAILABILITY** the percentage of available dbe firms in light of local circumstances and the number of total available firms.

**SECRETARY** The secretary of transportation or his/her designee.

**SET-ASIDE** A contracting practice restricting eligibility for the competitive award of a contract solely to dbe firms.

---

**SMALL BUSINESS ADMINISTRATION OR SBA** The United States Small Business Administration.

**SMALL BUSINESS CONCERN** (with respect to firms seeking to participate as dbes in dot-assisted contracts) a small business as defined pursuant to section 3 of the small business act (13 cfr 121), and regulations implementing it, that does not exceed the cap on gross receipts specified in 49 CFR 26.65(6).

**SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS** (for purposes of dot-assisted projects) any individual who is a citizen (or lawfully admitted permanent resident) of the united states, and who is:

- a. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis;
- b. Women (regardless of race, ethnicity or origin); or
- c. Individuals found to be socially and economically disadvantaged by the U.S. SBA pursuant to Section 8(a) of the Small Business Act.

The Metropolitan Council will make a rebuttable presumption that individuals in the above groups are socially and economically disadvantaged. The Metropolitan Council may, on a case-by-case basis, determine or accept the determination by another DOT recipient, individuals who are socially and economically disadvantaged in accordance with 49 CFR 23, Subpart D, Appendix C.

**TRANSIT VEHICLE MANUFACTURER** A manufacturer of vehicles used by FTA recipients for the primary program purpose of public mass transportation (e.g. buses, railcars, vans). The term does not apply to firms that rehabilitate old vehicles or to manufacturers of locomotives or ferryboats. The term refers to distributors of or dealers in transit vehicles with respect to requirements of 49 CFR part 23.67 of the regulations.

**TRIBALLY-OWNED CONCERN** Any concern that at least 51% owned by an Indian tribe as defined in these definitions.

**U.S. DOT REGULATIONS (49 CFR PART 23 AND PART 26)** federal rules and regulations published in the federal register dated march 31, 1980; amended april 27, 1981; july 21, 1983; october 21, 1987; and march 4, 1999; by the department of transportation, office of the secretary; entitled "participation by [minority business enterprise] in department of transportation programs" and codified at title 49, code of federal regulations, part 23.

**DBE LIAISON OFFICER** the official designated by the head of the department element to have overall responsibility for promotion of dbe participation.

---

### **3.0 RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION**

1. The Chair of the Metropolitan Council has overall responsibility for the DBE program, and performs the role of providing policy leadership regarding the involvement of DBEs in the activities of the Metropolitan Council.
2. The Regional Administrator has responsibility for establishing and maintaining a program to promote the Metropolitan Council's DBE program. This responsibility will be carried out in conjunction with the DBE Liaison Officer.
3. In accordance with 49 CFR section 26.25, the Metropolitan Council has designated its Manager, Office of Diversity and Equal Opportunity as its DBE Liaison Officer, responsible for implementing all aspects of the DBE program. The DBE Liaison Officer shall have direct and independent access to, and direct communication with, the Regional Administrator concerning DBE program matters.
4. Department directors, division directors and managers of operating elements have responsibility for effectively carrying out this policy within their particular departments. The manager of each program shall work in cooperation with the DBE Liaison Officer for the promotion of DBEs in his or her department. Each department director will include DBE contracting efforts as a factor in regular contract review activities.

#### **3.1 Duties of DBE Liaison Officer**

The responsibilities of the DBE Liaison Officer include:

1. Providing information and recommendations to the Regional Administrator of the Metropolitan Council regarding its obligations for compliance with current applicable federal and state law, regulations and local ordinances.
2. Provide information and recommendations directly to the General Manager. This includes:
  - a. Analyzing and revising the DBE Program policies and procedures as necessary.
  - b. Surveying the DBE community for development of goal-setting data and conducting outreach in order to increase business opportunities to DBEs.
  - c. Analyzing Metropolitan Council contract opportunities available of DBEs, and developing annual DBE goals.

- 
- d. Establishing contract-specific goals.
    - e. Conducting periodic training of Metropolitan Council managers on DBE responsibilities.
  3. Maintaining and updating the Metropolitan Council's DBE directory as provided for in Section 4.2 of this program.
  4. Implementing DBE outreach activities as described in Section 5.3 of this program.
  5. Monitoring contractor/grantee compliance with DBE commitments, maintaining accurate records, demonstrating DBE efforts and accomplishments, and determining compliance. This includes:
    - a. Issuing periodic reports to the Metropolitan Council's Contracts & Procurement Unit concerning DBE compliance or non-compliance of contractors and staff with the requirements of this program.
    - b. Attending meetings of the Metropolitan Council at which time these matters are considered; and responding to queries from Metropolitan Council members.
    - c. Compiling DBE statistical and narrative reports for the DOT, the Metropolitan Council, and other public agencies.
    - d. Analyzing and recommending revisions to the DBE policies and procedures for granting and denying DBE certification; monitoring contractors' compliance with DBE requirements; and recommending sanctions for violation of these requirements.
    - e. Reviewing contractor's good faith efforts to meet the DBE goal committed to in the bid or proposal throughout the performance of the contract.
    - f. Reviewing and recommending to the Council's Authorized Representative (CAR) and Project Manager the approval or disapproval of a prime contractor's request to substitute a DBE.
    - g. Reviewing contractor's violation of DBE utilization requirements; recommending any appropriate administrative sanctions to be imposed

---

in accordance with 49 CFR part 26; and coordinating imposition of administrative sanctions with the Metropolitan Council's General Counsel, Contracts & Procurement Unit/Procurement Unit, and CAR.

6. Coordinating development and implementation of policies and procedures for DBE participation on joint development projects with the Metropolitan Council's Community Development Department and participating in the proposal evaluation process.
7. Participating on Proposal/Bid Evaluation Teams (PETs).
8. Evaluating bids and proposals for compliance with DBE requirements, including bidder's good faith efforts.
9. Monitoring contractor's compliance with DBE utilization goals.
10. Coordinating dispute resolution through process established in partnering workshops with contract representatives, vendors and others regarding DBE program.
11. Ensuring the placement of legal and public notices of the Metropolitan Council's annual DBE goals pursuant to Section 5.1 of this program.

### **3.2 Responsibilities of Support Personnel**

Metropolitan Council personnel from other Departments share the responsibility for ensuring the effective implementation of the DBE program. They shall give their full cooperation and active support to the DBE Liaison and his/her designee(s) in this effort. The performance of all personnel in support of the DBE Program will be evaluated by their superiors as part of their annual performance appraisal. The following are the support personnel.

- Legal-General Counsel
- Director of Finance/Controller
- Director of Internal Audit

- 
- ❑ Grants Manager
  - ❑ Contract & Procurement Unit
  - ❑ Procurement Unit
  - ❑ Council Authorized Representative
  - ❑ Metropolitan Council Project Managers

### **3.2.1 Legal-General Counsel**

The responsibilities of the Legal-General Counsel in support of the DBE Program include:

1. Addressing legal matters relating to DBE program implementation.
2. Rendering legal opinions regarding the interpretation of DBE bid specifications and contract provisions.
3. Advising the DBE Liaison Officer and the Contract & Procurement Unit/Procurement Unit regarding matters dealing with imposition of administrative sanctions against contractors who violate DBE provisions.
4. Representing the Metropolitan Council in all litigation matters involving DBE issues.
5. Providing the DBE Liaison Officer with legal opinions relevant to DBE certification.

### **3.2.2 Director of Finance/Controller**

The responsibilities of the Director of Finance/Controller in support of the DBE Program include:

1. Ensuring the submittal of data to the DBE Liaison Officer to assist in the establishment of contract-specific goals.
2. Conferring with the DBE Liaison Officer to maximize investment of Metropolitan Council funds with DBE financial institutions, and periodically report the progress to the Metropolitan Council.
3. Assisting the DBE Liaison Officer in compiling data to develop the federal funding base for calculation of the annual DBE goals pursuant to Section 5.1 of this program.

- 
4. Ensuring maximum participation by DBE financial advisors, investment bankers, and bond counsel through the sale of Revenue Anticipation Notes, Equipment Trust Certificates, and other investment instruments.

### **3.2.3 Director of Internal Audit**

The responsibilities of Director of Internal Audit in support of the DBE Program include:

1. Providing audit or investigation assistance to the Manager, Office of Diversity and Equal Opportunity in particularly complex or difficult cases involving potential fraud or false statements on the part of certified DBEs in order to obtain certification.
2. Providing audit or investigation assistance to the Manager, Office of Diversity and Equal Opportunity in particularly complex or difficult cases involving potential fraud or false statements on the part of Metropolitan Council contractors and subcontractors in carrying out their DBE contract obligations.

### **3.2.4 Grants Manager**

The responsibilities of the Grants Manager in support of the DBE Program include:

1. Ensuring the submittal of data to the DBE Liaison Officer to assist in the establishment of contract-specific goals.
2. Ensuring that DBE Liaison Officer is notified when DOT programs or funding levels are revised.

### **3.2.5 Contract Procurement Unit**

The responsibilities of the Contract Documents Unit in support of the DBE Program include:

1. Ensuring the timely forward of data to the DBE Liaison Officer to assist in the establishment of contract-specific goals, and the monitoring of contractors' DBE obligations.
2. Maintaining the Bidders List of prime and subcontractors in accordance with 49 CFR section 26.11 and Section 9.1 of this program.

- 
3. Ensuring that the Contract Initiation Memo (CIM) from the requesting department has been properly routed to the DBE Liaison Officer for determination of contract-specific DBE goals.
  4. Providing the DBE Liaison Officer with draft scopes of work for Invitations to Bid (IFBs), Requests for Proposals (RFPs), and Requests for Invitations for Qualifications (RFIQs) to enable goal-setting, outreach and, where applicable, development of appropriate DBE language.
  5. Providing the DBE Liaison Officer with copies of all final IFBs, RFPs, RFIQs, purchase orders (POs), mailing lists and advanced notices.
  6. Incorporating DBE goals and appropriate DBE and contract compliance language into IFBs, RFPs, and RFIQs.
  7. Informing the DBE Liaison Officer of any changes to IFBs, RFPs, RFIQs and POs prior to solicitation.
  8. Sending IFBs, RFPs, RFIQs and POs to DBEs referred by the DBE Liaison Officer.
  9. Placing IFB, RFP, RFIQ, and PO notices in minority-focused newspapers.
  10. Notifying the DBE Liaison Officer of scheduled pre-bid, pre-proposal and pre-construction conferences.
  11. Maintaining a computerized vendor listing by commodity codes, race, ethnicity and gender data to assist Procurement and DBE staff in identifying potential DBE vendors/contractors.
  12. Ensuring that the DBE Liaison Officer's designee serves on all formal Proposal/Bid Evaluation Teams.
  13. Forwarding copies of bids/proposals to the DBE Liaison Officer for evaluation of compliance with DBE requirements.
  14. Incorporating analysis prepared by the DBE Liaison Officer concerning bidders' and proposers' conformance with DBE requirements into Metropolitan Council executive summaries (business items) for all contracts or procurements with DBE goals.
  15. Maintaining computerized data on purchase orders and contracts to enable compilation of quarterly DOT and other DBE progress reports.



- 
16. Allocating appropriate resources (budget and staff) to participate with Office of Diversity and Equal Opportunity representatives at trade fairs targeted for DBEs.
  17. Ensuring that all department staff:
    - a. Receive adequate orientation on DBE policies and procedures.
    - b. Refer all potentially eligible vendors to apply for DBE certification.
    - c. Utilize the Metropolitan Council's DBE Directory to seek potential vendors.
    - d. Solicit quotes from at least one DBE (in commodities or services where DBEs are identified) for informal procurements.
  18. Incorporating applicable DBE provisions into all contracts.
  19. Ensuring that RFPs, RFIQs, and IFBs do not contain requirements that may unnecessarily restrict or eliminate DBEs from competing.
  20. Facilitating release to DBEs of public documents that provide non-proprietary information on prior winning bids and proposals.
  21. Notifying DBE Liaison Officer when the project scope, funding or other changes affecting the attainment of a DBE goal, is made.

### **3.2.6 Procurement Units**

The responsibilities of the Procurement Unit in support of the DBE Program include:

1. Ensuring the timely submittal of data to the DBE Liaison Officer to assist in the establishment of contract-specific goals, and the monitoring of contractors' DBE obligations.
2. Maintaining Bidders List of prime and subcontractors in accordance with 49 CFR section 26.11 and Section 9.1 of this program.
3. Ensuring that the Contract Initiation Memo (CIM) from the requesting department has been properly routed to the DBE Liaison Officer for determination of contract-specific DBE goals.
4. Providing the DBE Liaison Officer with draft scopes of work for Invitations to Bid (IFBs), Requests for Proposals (RFPs), and Requests for Invitations for Qualifications

---

(RFIQs) to enable goal-setting, outreach and, where applicable, development of appropriate DBE language.

5. Providing the DBE Liaison Officer with copies of all final IFBs, RFPs, RFIQs, purchase orders (POs), mailing lists and advanced notices.
6. Incorporating DBE goals and appropriate DBE and contract compliance language into IFBs, RFPs, and RFIQs.
7. Informing the DBE Liaison Officer of any changes to IFBs, RFPs, RFIQs and POs prior to solicitation.
8. Sending IFBs, RFPs, RFIQs and POs to DBEs referred by the DBE Liaison Officer.
9. Placing IFB, RFP, RFIQ, and PO notices in minority-focused newspapers.
10. Notifying the DBE Liaison Officer of scheduled pre-bid, pre-proposal and pre-construction conferences.
11. Maintaining a computerized vendor listing by commodity codes, race, ethnicity and gender data to assist Procurement and DBE staff in identifying potential DBE vendors/contractors.
12. Ensuring that the DBE Liaison Officer's designee serves on all formal Proposal/Bid Evaluation Teams.
13. Forwarding copies of bids/proposals to the DBE Liaison Officer for evaluation of compliance with DBE requirements.
14. Incorporating analysis prepared by the DBE Liaison Officer concerning bidders' and proposers' conformance with DBE requirements into Metropolitan Council executive summaries (business items) for all contracts or procurements with DBE goals.
15. Maintaining computerized data on purchase orders and contracts to enable compilation of quarterly DOT and other DBE progress reports.
16. Allocating appropriate resources (budget and staff) to participate with Office of Diversity and Equal Opportunity representatives at trade fairs targeted for DBEs.
17. Ensuring that all department staff:

- 
- a. Receive adequate orientation on DBE policies and procedures.
  - b. Refer all potentially eligible vendors to apply for DBE certification.
  - c. Utilize the Metropolitan Council's DBE Directory to seek potential vendors.
  - d. Solicit quotes from at least one DBE (in commodities or services where DBEs are identified) for informal procurements.
18. Incorporating applicable DBE provisions into all contracts.
  19. Ensuring that RFPs, RFIs, and IFBs do not contain unnecessary requirements that could unduly restrict or eliminate DBEs from competing.
  20. Facilitating release to DBEs of public documents that provide non-proprietary information on prior winning bids and proposals.

### **3.2.7 Council's Authorized Representative (CAR)**

The responsibilities of Council's Authorized Representative (CAR) in support of the DBE Program include:

1. Becoming familiar with the Metropolitan Council's DBE policies and procedures, including but not limited to, attending orientation sessions conducted by the Office of Diversity and Equal Opportunity and Contract Documents Unit/Procurement Unit staff concerning contract procurement and administration, and DBE policies and procedures.
2. For contracts with DBE goals, ensuring that:
  - a. DBEs maintain current DBE certification by verifying their status with the contract compliance function of the Office of Diversity and Equal Opportunity.
  - b. DBEs are utilized in accordance with the terms of the contract.
  - c. Potential DBE utilization problems are immediately referred to the DBE Liaison Officer.
  - d. The prime contractor continues to outreach to DBEs for additional business opportunities that result during the performance of the contract.

- 
- e. Referring all requests for DBE substitution to the DBE Liaison Officer and conferring with him or her in granting or denying the request.

### **3.2.8 Metropolitan Council Project Managers**

The responsibilities of Project Managers in support of the DBE Program include:

1. Ensuring the timely submittal of data to the DBE Liaison Officer to assist in the establishment of contract-specific goals, and the monitoring of contractors' DBE obligations.
2. Becoming familiar with the Metropolitan Council's DBE policies and procedures, including but not limited to, attending orientation sessions conducted by the Office of Diversity and Equal Opportunity and Contract & Procurement Unit/Procurement Unit staff concerning contract procurement and administration, and DBE policies and procedures.
3. Providing the Contracts Documents Unit with a completed Contract Initiation Memo, and providing the Procurement Unit with a completed Purchase Requisition, as required.
4. Utilizing the DBE directory to search for potential DBE vendors.
5. Providing maximum opportunity to DBEs by initiating informal competitive procurement procedures for DBEs to compete for contracts within their respective areas that do not require solicitation of formal, public bids or proposals.
6. Referring all potentially eligible firms to apply for DBE certification.
7. For contracts with DBE goals, ensuring that:
  - a. DBEs maintain current DBE certification by verifying their status with the contract compliance function of the Office of Diversity and Equal Opportunity.
  - b. DBEs are utilized in accordance with the terms of the contract.
  - c. Potential DBE utilization problems are immediately referred to the DBE Liaison Officer.

- 
- d. The prime contractor continues to outreach to DBEs for additional business opportunities that result during the performance of the contract.
  - e. Referring all requests for DBE substitution to the DBE Liaison Officer and conferring with him or her in granting or denying the request.
8. Packaging individual contracts in a manner to maximize the ability of DBEs to compete favorably and ensuring that RFPs, RFIs, and IFBs do not contain unnecessary requirements that could unduly restrict or eliminate DBEs from competing.
  9. Informing the DBE Liaison Officer of the scheduled pre-construction conference.
  10. Informing the DBE Liaison Officer of any potential problems concerning DBE utilization during contract administration.

### **3.2.9 Chief Information Officer**

The responsibilities of the Director of Information System Management in support of the DBE

Program are:

1. Ensuring the development of long and short range information management strategies to meet DBE recordkeeping and reporting requirements.
2. Designing and developing technical systems and processes to support vendor utilization tracking and agency progress towards attainment of its DBE goal.

### **3.3 Reconsideration Official**

In accordance with the reconsideration process pursuant to 49 CFR section 26.53, and described in Section 5.5 of this program, the Metropolitan Council will, when appropriate, appoint a person to serve as its reconsideration official. The reconsideration official will be:

- 
- a. Familiar with the Metropolitan Council's DBE program and its requirements; and
  - b. Not have any involvement in any decisions that a bidder's good faith efforts were inadequate for which they are serving as reconsideration official.

## **4.0 ADMINISTRATIVE REQUIREMENTS**

### **4.1 Financial Institutions**

The Metropolitan Council has thoroughly investigated the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its community.

The Metropolitan Council has identified one minority owned bank in the state of Minnesota. Two branches of the bank are located adjacent to the region served by the Metropolitan Council. The Metropolitan Council will encourage prime contractors to use the services of these institutions by communicating their existence prior to contract award. These institutions are:

Woodlands National Bank  
PO Box 190  
Hinkley, Minnesota 55037

Woodlands National Bank  
PO Box 187  
Sturgeon Lake, MN 55783

The surveys offered by these institutions include checking and savings accounts, certificates of deposits, individual retirement accounts and loans.

In accordance with 49 CFR section 26.27, the Metropolitan Council will continue to investigate the full extent of services offered by, and making reasonable efforts to use, financial institutions owned and controlled by socially and economically disadvantaged individuals in our community as they are identified.

### **4.2 DBE Directory**

1. In accordance with 49 CFR section 26.31, the Metropolitan Council will maintain a current directory of DBE firms certified to do work with the Metropolitan

---

Council. The directory will include the following minimum information for each firm:

- a. Name.
  - b. Address.
  - c. Phone number/fax number/e-mail.
  - d. Types of work certified to perform.
  - e. SIC, ethnicity & certification dates
2. Only those firms certified as DBEs in accordance with the procedures specified in Section VII of this program will be included in the DBE directory. The DBE directory will be made available to the public electronically, on the Internet, and in print format. Electronic formats will be updated as appropriate; and the entire directory will be updated at least annually.
  3. The DBE Directory shall serve as a source list to help in identifying DBEs with capabilities relative to contracting solicitations. The directory will be available to bidders and proposers during normal business hours to assist in their efforts to meet DBE requirements. The directory will be categorized by type of firm to facilitate identifying businesses with capabilities relative to a particular specification.

#### **4.3 OVERCONCENTRATION OF DBEs.**

- a. If Metropolitan Council determines that DBE firms are so over-concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, Metropolitan Council will devise appropriate measures to address this over-concentration.
- b. Metropolitan Council governing board may, either alone or in concert with other recipients, institute additional measures which by way of example may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designated to assist DBEs in performing work outside of the specific field in which Metropolitan Council has determined that non-DBEs are unduly burdened. Metropolitan Council may also consider varying its use of contract goals, to the extent consistent with § 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

- 
- c. Metropolitan Council will obtain the approval of the DOT's administering agency for Metropolitan Council's determination of over-concentration and the measures Metropolitan Council devises to address it. Once approved, the measures become part of the Plan.

## **5.0 DETERMINING, MEETING AND COUNTING OVERALL ANNUAL DBE GOALS FOR FEDERALLY-ASSISTED CONTRACTS**

### **5.1 Goal-Setting Methodology**

Pursuant to 49 CFR section 26.45, the Metropolitan Council will establish an annual overall DBE goal through a two-step process consisting of (a) establishing a base figure; and (b) adjusting the base figure. (See Appendix A2)

1. *The following departments will assist the DBE Liaison Officer in the development of the annual goal by providing budget, financial, procurement, and other relevant information which will be used to develop the federal funding base against which the annual DBE goals are calculated:*
  - a. Offices of the Director of Finance and the Controller.
  - b. Grants Manager.
  - c. Offices of the Contract & Procurement Unit and the Procurement Unit.
  - d. All departments that intend to purchase goods and services during the reporting period.
2. Data sources used to develop the annual overall DBE goal may include, but not be limited to, the following:
  - a. The Metropolitan Council's fiscal year budget.
  - b. Grant-funded capital lists, specific Capital Projects, Financial Plan and Schedule.



- 
- c. Past results of contracting agencies such as the Metropolitan Council with similar contracting opportunities, and the reasons for the level of such results.
  - d. Demographics and business activity of the geographical area in which the Metropolitan Council will solicit bids or proposals.

FTA assistance used in transit vehicle procurements will not be included in the base amount from which the annual overall goal is calculated.

3. The Metropolitan Council will conduct public participation in setting the overall goal. This participation will include the following:
  - a. Consultation with women, minority and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Metropolitan Council's efforts to establish a level playing field for the participation of DBEs.
  - b. A published notice announcing the Metropolitan Council's proposed overall goal, informing the public that the proposed goal, and its rationale are available for inspection during normal business hours at the Metropolitan Council's principal office for 30 days following the date of the notice, and informing the public that the Metropolitan Council and the DOT will accept comments on the goals for 45 days from the date of the notice. The notice will include the addresses to which comments may be sent, and will be published in general circulation media and available minority-focused media and trade association publications.

### **5.1.1 Establishing the DBE Base Figure**

1. The Base Figure will reflect the "relative availability" of DBEs based on demonstrable evidence of ready, willing and able DBEs relative to all ready, willing and able firms available to participate in DOT-assisted contracts. The Metropolitan Council will establish the Base Figure through the use of one of the following five options:
  - a. DBE directories and Census Data.
  - b. Bidders Lists.
  - c. Data from Disparity Studies.

- 
- d. Goals of other recipients.
  - e. As calculated through alternative means, subject to review and approval by the Operating Administration.

### **5.1.2 Adjusting the DBE Base Figure**

1. In order to consider additional evidence to narrowly tailor the DBE program, the Metropolitan Council will conduct a survey of available data to determine what evidence is available to use in adjusting the Base Figure that demonstrates the capacity of available firms to work on DOT-assisted projects for the Metropolitan Council.
2. The annual overall DBE goal will provide for participation by all certified DBEs and not be subdivided into group-specific goals.
3. The overall goal will include a calculation of the percentage of the goal that will be made through race-neutral measures and through contract-specific goals.

### **5.1.3 Reporting Goals**

1. Pursuant to 49 CFR section 26.45, the Metropolitan Council's annual overall DBE goal will be submitted to the FTA for approval 60 days prior to. The overall goal submission will include the following:
  - a. A description of the methodology used to establish the goal, including the Base Figure and the evidence by which it was calculated.
  - b. A description of the adjustments made to the Base Figure and the evidence relied on for the adjustments, including a summary of the relevant available evidence in the Metropolitan Council's jurisdiction. Where applicable, this will include an explanation of why the Metropolitan Council did not use that evidence in adjusting the Base Figure.

- 
- c. A projection of the relative portions of the overall goal that the Metropolitan Council expects to meet through race-neutral and race-conscious means.
  2. The annual goals will be submitted to the Metropolitan Council for approval and will become part of all DOT financial assistance agreements.
  3. Concurrent with DBE goal submittal, the Metropolitan Council will publish a notice in majority and minority-focused newspapers announcing the goals, and providing the public an opportunity to review the annual goals and submit comments to the Metropolitan Council and/or the DOT.

## **5.2 Transit Vehicle Manufacturers (TVMs) Participation and Certification**

In accordance with 49 CFR section 26.45, the Metropolitan Council requires that each transit vehicle manufacturer (TVM) certify, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements that it has complied with the requirements of this section. FTA assistance used in transit vehicle procurements will not be included in the base amount from which the annual overall goal is calculated.

## **5.3 Race-Neutral Measures**

In accordance with 49 CFR section 26.51, the Metropolitan Council will use the following guidelines for the utilization of race-neutral measures to attain the annual overall DBE goal, and contract-specific goals. Race-neutral measures to attain the overall DBE goal, as allowed by state and local law, may include, but not be limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate the participation of DBEs and other small businesses. For example:
  - a. Unbundling large projects to make them more accessible to small businesses.
  - b. Requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own work forces.

- 
- c. Ensuring that contract solicitations do not contain unnecessarily restrictive requirements.
  - d. Waiving or allowing incremental bonding.
  - e. Providing assistance to overcome limitations such as the inability to obtain bonding or financing.
  - f. Providing services to help DBEs, and other small businesses, to obtain bonding and financing; and the administration of a surety bond guarantee and working capital loan program for DBE prime contractors and subcontractors.
2. Providing technical assistance and other services, including but not limited to:
    - a. Assisting potentially eligible firms in applying to the contract compliance function of the Office of Diversity and Equal Opportunity for DBE certification.
    - b. Referring DBEs to appropriate minority business development centers for more in-depth “hands on” technical and financial assistance (i.e. preparing bids, proposals, business plans, financial statements, and accessing working capital and bonding).
    - c. Assisting in preparation of bid submissions to assure bids are technically correct.
    - d. Explaining terms, conditions and specifications of bidding documents and procurement regulations that may apply.
    - e. Providing instructions on job performance requirements to those DBEs contacted to submit proposals.
  3. Carrying out information and communications programs on contracting procedures and specific contract opportunities, including but not limited to:
    - a. Ensuring the inclusion of DBEs and other small businesses on the Metropolitan Council’s mailing lists for bidders.

- 
- b. Ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors.
  - c. Providing for the provision of information in languages other than English, where appropriate.
  - d. Publishing and distributing a comprehensive guide which contains information about the Metropolitan Council's DBE procurement policies and procedures, name and telephone numbers of key contact persons, and a listing of all Metropolitan Council types of goods and services they may purchase.
  - e. Linking interested DBEs with appropriate buyers, contract administrators and project managers to inquire about short and long-range needs of the Metropolitan Council for procurement of goods and services within their areas of specialization.
  - f. Ensuring adequate lead-time in advertisements to allow DBE firms sufficient opportunity to develop bid packages.
  - g. opportunities in written form by direct mail to those DBE firms that are certified with the Metropolitan Council and organizations that work in support of DBE firms.
4. Conducting outreach to DBEs to inform them of upcoming contract opportunities through the following methods:
- a. Trade fairs
  - b. Newsletters
  - c. Seminars
  - d. One-on-one
  - e. Minority and women business associations
  - f. Business development centers
  - g. Vendor relations programs
  - h. Advertisements in minority and majority publications
5. Ensuring distribution of the Metropolitan Council's DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

### **5.3.1 Supportive Services**

- 
1. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses. This may include but not be limited to facilitating the debriefing of unsuccessful DBE proposer by his/her proposal evaluation team to discuss strengths and weaknesses of his/her proposal.
  2. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency. This may include but not be limited to encouraging consortiums and co-ventures of businesses owned and controlled by DBEs.
  3. Establishing a program to assist new, start-up firms, and particularly in fields in which DBE participation has historically been low.
  4. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

#### **5.4 Contract Goals**

In order to achieve the percentage of the annual overall DBE goal not attainable by race-neutral means, the Metropolitan Council will set contract-specific goals as follows:

1. The DBE Liaison Officer will receive from the requesting department a Contract Initiation Memo (CIM) for each purchase requisition over \$25,000.
2. The DBE Liaison Officer will consult with the requester, CAR, project manager and Contracts & Procurement Unit/Procurement Unit, to determine the level and type of subcontracting opportunities for goal setting.
3. The DBE Liaison Officer will conduct an in-depth analysis of the DBE availability within the identified contract.
4. The DBE Liaison Officer will recommend the contract-specific goal to the Contract & Procurement Unit/Procurement Unit, and the requestor, for incorporation into the appropriate solicitation documents.

#### **5.5 Good Faith Efforts**

In accordance with 49 CFR section 26.53 and Appendix A thereto, the following guidelines will apply to good faith efforts.

- 
1. For all contracts where goals are set, regardless of contract size, prime contractors will be required to propose the participation of specific DBEs to either (a) meet the goal; or (b) demonstrate good faith efforts to meet the goal in their bid or proposal.
  2. Bidders must submit with their bids/proposals, written confirmation of their commitment to use DBEs subcontractor(s), whose participation it submits to meet a contract-specific goal; and identify in their Bid (on the List of Proposed DBEs) all DBEs proposed to participate in the contract, regardless of their percent of participation. The List of Proposed DBEs will include:
    - a. A description of how DBE firms will participate in this contract. The DBE goal may be satisfied by a commitment to DBE participation in the contract as a prime contractor, joint venture partner, subcontractor, trucker, or supplier.
    - b. The name and address of each DBE prime contractor, joint venture partner, subcontractor, trucker or supplier that the bidder intends to credit toward the DBE goal. The complete legal business name as used for DBE certification shall be identified on the form.
    - c. A description of the work to be performed or materials to be supplied by each DBE.
    - d. The estimated dollar value of each DBEs participation in the contract.
    - e. The estimated percent of the total bid for each DBE. The percentage allocated for each DBE must be in accordance with the provisions for performing a commercially useful function, as required by 49 CFR section 26.55, and described in Section 5.6 of this program.
  3. ALL BIDDERS MUST SUBMIT IN THEIR BID/PROPOSAL WRITTEN CONFIRMATION FROM THE DBE(S) PARTICIPATING IN THE CONTRACT AS PROVIDED IN THE PRIME CONTRACTOR'S COMMITMENT.
  4. If the List of Proposed DBEs does not demonstrate meeting the contract-specific goal, bidders must complete and submit a Good Faith Efforts Summary form (Exhibit B) with the bid/proposal.
  5. The DBE Liaison Officer will determine whether a contractor made sufficient good faith efforts to meet the goal in accordance with the guidelines set forth in 49 CFR section 26.53, and Appendix A thereto. The bidder must show that they took all necessary and reasonable steps to achieve a DBE goal or other requirement of 49 CFR Part 26 which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. Compliance

---

will be determined on a case-by-case basis, based on a review of documentation of the following types of activities:

- a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- d. Negotiating in good faith with interested DBEs. The bidder has the responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- e. A bidder using good business judgement would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- f. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee



---

status) are not legitimate causes for rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

- g. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- h. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
- i. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal offices of minority/women business assistance; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- j. The performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts; the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

6. Any of the following conditions will constitute failure to meet the goal:

- a. The total percentage participation by DBE firms reflected on the List of Proposed DBEs is less than the DBE goal set forth in the procurement.
- b. Firms on the List of Proposed DBEs whose participation are being credited toward meeting the DBE goal, but are not certified by the Metropolitan Council as DBEs as of the execution of the contract.

7. If the Metropolitan Council determines that the apparent successful bidder has failed to meet the Good Faith Efforts requirements of this program, it will, before contract award, provide the bidder an opportunity for administrative reconsideration. The bidder will have the opportunity to:

- a. Provide a written documentation or argument concerning the issue of whether the bidder met the goal or made adequate good faith efforts to do so.

---

b. Meet in person with the Metropolitan Council or its reconsideration official (as required in Section 3.3 of this program) to discuss the issue of whether the bidder met the goal or made adequate good faith efforts to do so.

8. The Metropolitan Council will send the bidder a written decision on its reconsideration, explaining the basis of whether it met the goal or made adequate good faith efforts to do so.

9. In accordance with 49 CFR section 26.53, the result of the Metropolitan Council's reconsideration process is not subject to administrative appeal to the Department of Transportation.

10. In "design-build" or "turnkey" contracting situations where the Metropolitan Council lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, the Metropolitan Council will set a goal for the project. The master contractor then must establish contract-specific goals, as appropriate, for all subcontracts it lets. The Metropolitan Council will monitor the master contractor's activities to ensure that they are consistent with the requirements of the program.

11. The Metropolitan Council requires that prime contractors not terminate for convenience a DBE subcontractor listed on the List of Proposed DBEs (or an approved substitute DBE) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without prior written consent of the Metropolitan Council's DBE Liaison Officer.

12. If a DBE subcontractor is terminated or fails to complete its work on a contract for any reason, the prime contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts must be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract-specific goal.

13. These good faith efforts requirements also apply to DBE bidders/proposers for prime contracts. The work proposed to be performed with its own work force as well as work committed to DBE subcontractors and suppliers will count toward the contract-specific goal.

## **5.6 Counting DBE Participation**

In accordance with 49 CFR section 26.55, the Metropolitan Council will utilize the following guidelines in determining the percentage of DBE participation that will be counted toward the overall DBE goal:

- 
1. If a firm is not currently certified as a DBE in accordance with the standards of subpart D of the regulations at the time of the execution of the contract, the firm's participation toward any DBE goals will not be counted, except as provided in 49 CFR section 26.87(I).
  2. The dollar value of work performed under a contract with a firm after it has ceased to be certified will not be counted toward the overall goal.
  3. The participation of a DBE subcontractor toward the prime contractor's DBE achievements or the overall goal will not be counted until the amount being counted toward the goal has been paid to the DBE.
  4. When a DBE participates in a contract, the value of the work actually performed will be counted as follows:
    - a. The entire amount of that portion of a construction contract (or other contract not covered by paragraph 49 CFR part 26.55 that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies, and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
    - b. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided that the Metropolitan Council determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
    - c. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontract work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goals.
  5. When a DBE performs as a participant in a joint venture, the Metropolitan Council will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
  6. The Metropolitan Council will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract:
    - a. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out it

---

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

- b. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.
  - c. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.
  - d. When a DBE is presumed not to be performing a commercially useful function as provided in this program, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
  - e. The Metropolitan Council's decisions on matters of whether a DBE performs a commercially useful functions are subject to review by the concerned operating administration, but is not subject to an administrative appeal to DOT.
7. The Metropolitan Council will use the following factors in determining whether a DBE trucking company 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 its 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 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 firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
  - f. For purposes of this section, 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 the use of the leased truck. Leased trucks must display the name and identification number of the DBE.
8. The Metropolitan Council will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
    - a. The Metropolitan Council will count 100% of the cost of the materials or supplies toward DBE goals if the materials or supplies are obtained from a DBE manufacturer. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described in the specifications.
    - b. The Metropolitan council will count 60% of the cost of the materials or supplies toward DBE goals if the materials or supplies are purchased from a DBE regular dealer. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold to or leased to the public in the usual course of business.

- 
9. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
  10. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in 49 CFR section 26.55(e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease and not on an ad hoc or contract-by-contract basis.
  11. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of 49 CFR section 26.55(e)(2).
  12. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the Metropolitan Council will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided that the Metropolitan Council has determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The Metropolitan Council will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

## **5.7 Quotas, Set-Asides and Penalties**

1. Pursuant to 49 CFR section 26.43, the Metropolitan Council will utilize the following guidelines for use of quotas and set-asides:
  - a. The Metropolitan Council will not use quotas for DBEs on DOT-assisted contracts subject to the regulations of 49 CFR Part 26.
  - b. The Metropolitan Council has the discretion to use set-aside contracts only in limited and extreme circumstances, when no other method could be reasonably expected to redress egregious instances of discrimination.
2. In accordance with 49 CFR section 26.47, the Metropolitan Council will not be penalized or be held in non-compliance with the regulations because DBE

---

participation falls short of its overall goal, unless the Metropolitan Council has failed to administer its program in good faith.

3. If the Metropolitan Council does not have an approved DBE program or overall goal, or if it fails to implements its program in good faith, it will be considered to be in non-compliance with the regulations.

## **6.0 REQUIRED CONTRACT PROVISIONS**

### **6.1 Assurances**

1. In accordance with 49 CFR section 26.13, each financial assistance agreement that the Metropolitan Council signs with a DOT operating administration (or a primary recipient) must include the following assurance:

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

2. In accordance with 49 CFR section 26.13, each contract the Metropolitan Council signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following 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.

### **6.2 Prompt Payment**

In accordance with 49 CFR section 26.29, the Metropolitan Council has established:

- 
1. A contract clause requiring prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 5 days from receipt of each payment that the Metropolitan Council makes to the prime contractor. This clause requires the return of retainage payments from the prime contractor to the subcontractor within 10 days after the contractor receives payment from the Metropolitan Council. This clause also provides for:
    - a. Appropriate penalties for failure to comply, in accordance with terms and conditions set by the Metropolitan Council.
    - b. That any delay or postponement of payment among the parties may take place only for good cause, with the Metropolitan Council's prior written approval.
  2. The Metropolitan Council has also established as part of its DBE program, the following additional mechanisms to ensure prompt payment:
    - a. A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes as referred to in Section 3.1 of this program.
    - b. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
  3. The Metropolitan Council may, consistent with the regulations and applicable state and local law, implement other mechanisms at its discretion, to ensure that DBEs and other contractors are fully and promptly paid.

### **6.3 Legal and Contract Remedies**

1. In accordance with 49 CFR section 26.37, the Metropolitan Council will implement appropriate mechanisms to ensure compliance by all participants with program requirements, including that DBE commitments are actually performed by DBEs. This monitoring includes the review of monthly Summary of Subcontract Awards and Paid Report (Exhibit C), and a provision that DBE participation is counted toward overall or contract goals only when payments are actually made to DBEs. The Metropolitan Council will apply all legal and contract remedies available under Federal, state, and local law as described in Section 6.3.1 of this program.



- 
2. The contract compliance function of the Office of Diversity and Equal Opportunity will implement the monitoring aspect of the DBE program.
  3. Non-compliance by the contractor with the requirements of the DBE regulations constitute a breach of contract and may result in termination of the contract, liquidated damages or other appropriate remedy as set forth in Section 6.3.1 of this program.
  4. Prior to execution of all contracts containing DBE goals the prime contractor will be directed to the contract specification for the Metropolitan Council's specific DBE reporting and record keeping requirements, as described in Section 6.4 of this program.

### **6.3.1 Administrative Sanctions**

1. All contractors deemed to be in non-compliance will be informed in writing, by certified mail, by the **[Contracts & Procurement Unit/Procurement Unit]** that sanctions shall be imposed for failure to meet DBE utilization goals and/or submit documentation of good faith efforts. The Contractor will be given five (5) working days from the date of the notice to file a written appeal to the Regional Administrator. Failure to respond within the five- (5) day period shall constitute a waiver of appeal. The notice will state the specific sanction to be imposed.
2. The Regional Administrator or designee, at his or her sole discretion, may schedule a hearing to gather additional facts and evidence and shall issue a final determination on the matter within five (5) working days of receipt of the written appeal. There shall be no right of appeal to the Metropolitan Council.
3. Sanctions may include, but not be limited to:
  - a. Liquidated damages;
  - b. Suspension of payment to the contractor of any monies held by Metropolitan Council as retained on the contract;
  - c. The denial to the contractor (including its principal and key personnel) of the right to participate in future contracts of the Metropolitan Council for a period of up to three years; and
  - d. Contract termination.
  - e. The DBE Liaison Officer will recommend which sanction to apply.

---

## 6.4 Contractor Reporting Requirements

1. During the term of the contract, the contractor will continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform in the contract, and that the contractor meets its DBE goal. These efforts shall include but not be limited to the following:
  - a. Negotiating in good faith to attempt to finalize a subcontract agreement with DBEs committed to prior to contract award;
  - b. Continuing to provide assistance to DBE subcontractors or suppliers in obtaining bonding, lines of credit, etc., if required by the contract;
  - c. Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting Metro Metropolitan Council approval to substitute the DBE;
  - d. As with all subcontractors, timely payment of all monies due and owing to DBE subcontractors and suppliers;
  - e. Timely submittal of complete and accurate DBE monthly reports in accordance with paragraph 3 below; and
  - f. Informing the Metropolitan Council's contract compliance function within the Office of Diversity and Equal Opportunity in a timely manner of any problems anticipated in attaining the DBE participation goal committed to in the bid.
2. If a contractor requests a substitution of DBE subcontractors or suppliers, the contractor must exert good faith efforts to replace a DBE subcontractor with another DBE subcontractor subject to the approval of Metropolitan Council.
3. The contractor will submit monthly progress reports to the Metropolitan Council, in conformance with the currently approved schedule, reflecting its DBE participation. A Summary Subcontracts Award and Paid Report (Exhibit C) shall be submitted to comply with this reporting requirement. Failure to submit this report in a timely manner will result in the imposition of administrative sanctions pursuant to Metropolitan Council's DBE policy and DOT regulations.
4. Staff will review the contractor's monthly progress reports to monitor and determine whether the utilization of DBE firms is consistent with the commitment of the contractor as stated in its bid or proposal.
5. If it is determined that the contractor's DBE utilization during performance of the contract is not consistent with the commitment thereto, the contractor will 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 as provided in the section on Administrative Sanctions below.

6. The contractor's good faith efforts documentation will 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 contractor's good faith efforts documentation is acceptable, the contractor will be deemed to be in compliance with the DBE utilization goals. If it is determined that the contractor's good faith efforts documentation is not acceptable, the contractor will be notified and be deemed to be in non-compliance with the DBE utilization goals.

7. The dollar amount of Change Orders or any other contract modifications that increase or decrease the work area in which DBEs participation has been committed to in the bid, will be commensurately added to or subtracted from the total contract base figure used to compute actual dollars paid to DBEs. Revised total contract dollar values shall be reflected in the monthly progress report submitted to Metropolitan Council and referenced above.

8. Failure to carry out these requirements constitutes a breach of contract and, after notification to the U.S. Department of Transportation, may result in termination of the contract by Metropolitan Council or imposition of other appropriate sanctions. This notice is given pursuant to 49 CFR section 23.43(c). For purposes of this section, timely submittal means received in the contract compliance function of the Office of Diversity and Equal Opportunity by the close of business on the fifteenth (15th) of the following month.

## **7.0 CERTIFICATION STANDARDS (SUBPART D)**

### **7.1 Burdens of Proof**

In accordance with 49 CFR section 26.61, the Metropolitan Council will apply the following standards to determine DBE eligibility:

1. The firm seeking certification has the burden of demonstrating to the Metropolitan Council, by a preponderance of the evidence, that it meets the requirements of 49 CFR Part 26, Subpart D (sections 26.61-26.73) concerning group membership or individual disadvantage, business size, ownership, and control.
2. The Metropolitan Council will rebuttably presume that members of the designated groups identified in 49 CFR section 26.67(a) are socially and economically

---

disadvantaged. This means that they do not have the burden of proving to the Metropolitan Council that they are socially and economically disadvantaged. However, applicants have the obligation to provide the Metropolitan Council information concerning their economic disadvantage.

3. Individuals who are not presumed to be socially and economically disadvantaged, and individuals whose presumption of disadvantage has been rebutted, have the burden of proving to the Metropolitan Council, by a preponderance of evidence, that they are socially and economically disadvantaged in accordance with Appendix B of 49 CFR Part 26.
4. The Metropolitan Council will determine whether individuals and firms have met their burden of demonstrating group membership, business size, individual disadvantage, ownership, and control by considering all the facts in the record, viewed as a whole.

## **7.2 Group Membership Determinations**

In accordance with 49 CFR section 26.63, the Metropolitan Council will utilize the following guidelines to determine group membership status for purposes of DBE eligibility.

1. If there is reason to question whether an individual is a member of a group that is presumed to be socially and economically disadvantaged, the Metropolitan Council will require the individual to demonstrate, by a preponderance of evidence, that he or she is a member of the group.
2. In making such a determination, the Metropolitan Council will consider whether the person has held him or herself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. The Metropolitan Council may require the applicant to produce appropriate documentation of group membership.
3. If the Metropolitan Council determines that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis in accordance with the guidelines of Section 7.3.4 of this program.
4. The Metropolitan Council's decisions concerning membership in a designated group are subject to the certification appeals procedure of 49 CFR part 26.89, and as described in Section 8.6 of this program.

---

### **7.3 Social and Economic Disadvantage; Statement of Net Worth**

In accordance with 49 CFR section 26.67, the Metropolitan Council will utilize the following guidelines to determine social and economic disadvantage for purposes of DBE eligibility.

#### **7.3.1 Presumption of disadvantage**

1. The Metropolitan Council will rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. The Metropolitan Council will require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.
2. The Metropolitan Council requires each individual applying to participate as a DBE whose ownership and control are relied upon for DBE certification to submit a signed, notarized statement of personal net worth, with appropriate supporting documentation.
3. In determining net worth, the Metropolitan Council will exclude an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). Furthermore, contingent liability will not reduce an individual's net worth for these purposes. The personal net worth of an individual claiming to be an Alaska Native will include assets and income from other than an Alaska Native Corporation and exclude any of the following which the individual receives from any Alaska Native Corporation:
  - a. Cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum;
  - b. Stock (including stock issued or distributed by an ANC as a dividend or distribution on stock);
  - c. A partnership interest;
  - d. Land or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock); and

- 
- e. An interest in a settlement trust.

### **7.3.2 Rebuttal of presumption of disadvantage**

1. If the statement of personal net worth that an individual submits under paragraph III-C above shows that the individual's personal net worth exceeds \$750,000, the individual's presumption of economic disadvantage is rebutted. The Metropolitan Council is not required to have a proceeding in order to rebut the presumption of economic disadvantage in such cases.
2. If the Metropolitan Council has a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged, the Metropolitan Council may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Such proceedings will follow the procedures of 49 CFR part 26.87, as described in Section 8.5 of this program.
3. In such proceedings, the Metropolitan Council has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. The Metropolitan Council may, at its discretion, require the individual to produce information relevant to the determination of his or her disadvantage.
4. When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this program unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$750,000, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

### **7.3.3 SBA 8(a) and SDB Firms**

1. If a firm applying for certification has a current, valid certification from or is recognized by the SBA under the 8(a) or small and disadvantaged business (SDB) program (except an SDB certification based on the firm's self-certification as an SDB), the Metropolitan Council may accept the firm's 8(a) or SDB certification in lieu of conducting its own certification proceeding. The Metropolitan Council may, at its discretion, accept the certification of another DOT recipient for this purpose.

---

### **7.3.4 Individual determinations of social and economic disadvantage**

1. Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. The Metropolitan Council will make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a review, the applicant firm has the burden of demonstrating to the Metropolitan Council, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$750,000 shall not be deemed to be economically disadvantaged. In making these determinations, the Metropolitan Council will use the guidelines found in Appendix E of 49 CFR part 26; and the Metropolitan Council will require that applicants provide sufficient information to permit determinations under the guidelines referenced herein.

### **7.4 Business Size Determinations**

In accordance with 49 CFR section 26.65, the Metropolitan Council will utilize the following guidelines to determine business size for purposes of DBE eligibility.

1. An eligible DBE (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. The Metropolitan Council will apply current SBA business size standards found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform on DOT-assisted contracts.
2. Even if the firm meets these requirements, a firm will not be certified as an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA standards, in excess of \$16.6 million.

### **7.5 Ownership Determinations**

In accordance with 49 CFR section 26.69, the Metropolitan Council will utilize the following guidelines to determine social and economic disadvantage for purposes of DBE eligibility:

1. Eligible DBE firms must be at least 51% owned by socially and economically disadvantaged individuals, as follows:

- 
- a. In a corporation, eligible individuals must own at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding.
  - b. In a partnership, 51% of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.
  - c. In a limited liability company, at least 51% of each class of member interest must be owned by socially and economically disadvantaged individuals.
2. The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. To be eligible, the disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
  3. All securities that constitute ownership of a firm must be held directly by disadvantaged persons. Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of ownership of a firm, if:
    - a. The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or
    - b. The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the disadvantaged individual is the sole grantor, beneficiary, and trustee.
  4. The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other institutions that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.



- 
5. The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership; the owner's expertise must be:
    - a. In a specialized field;
    - b. Of outstanding quality;
    - c. In area's critical to the firm's operations;
    - d. Indispensable to the firm's potential success;
    - e. Specific to the type of work the firm performs; and
    - f. Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
  6. The individual whose expertise is relied upon must have a significant financial investment in the firm.
  7. For purposes of determining ownership, all interests in a business or other assets obtained by the individual in the following manners will be considered as held by a socially and economically disadvantaged individual:
    - a. As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
    - b. Through inheritance, or otherwise because of the death of the former owner.
  8. For purposes of determining ownership, the Metropolitan Council does not count all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is:
    - a. Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
    - b. Involved in the same or a similar line of business; or
    - c. Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.
  9. To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to the Metropolitan Council, by clear and convincing evidence, that:

- 
- a. The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
  - b. The disadvantaged individual actually controls the management, policy and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

10. The Metropolitan Council will apply the following rules in situations in which marital assets form a basis for ownership of a firm:

- a. When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.
- b. A copy of a document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

11. The Metropolitan Council may consider the following factors in determining the ownership of a firm. However, the Metropolitan Council will not regard a contribution of capital as failing to be real or substantial, or find a firm ineligible, solely because –

- a. A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph 7 above.
- b. There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
- c. Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, the Metropolitan Council will give close and

---

careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

## **7.6 Control Determinations**

In accordance with 49 CFR part 26.71, the Metropolitan Council will utilize the following guidelines to determine control for purposes of DBE eligibility:

1. Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms. In considering the independence of the potential DBE, the Metropolitan Council will:
  - a. Scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
  - b. Consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.
  - c. Examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.
  - d. Consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.
2. A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in 49 CFR section 26.69(j)(2).
3. The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make

---

day-to-day as well as long-term decisions on matters of management, policy and operations.

- a. A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
  - b. In a corporation, disadvantaged owners must control the board of directors.
  - c. In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.
4. Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operations of the firm.
5. The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the Metropolitan Council can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.
6. The eligible owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The eligible owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. However, the eligible owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions about the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.
7. If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and/or control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to

---

own and/or control a firm, the Metropolitan Council will not deny certification solely on the ground that the person lacks the license or credential. However, the Metropolitan Council may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

8. The Metropolitan Council will consider differences in the remuneration between the eligible owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practices concerning reinvestment of income, and any other explanations for the differences proffered by the firm. The Metropolitan Council may determine that a firm is controlled by its eligible owner although that owner's remuneration is lower than that of some other participants in the firm.

In a case where a non-eligible individual formerly controlled the firm, and an eligible individual now controls it, the Metropolitan Council may consider a difference between the remuneration of the former and current person who controls the firm as a factor in determining who controls the firm, particularly when the non-eligible individual remains involved with the firm and continues to receive greater compensation than the eligible individual.

9. In order to be viewed as controlling a firm, an eligible owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time that it is operating.

10. An eligible individual may control a firm even though one or more of the individual's immediate family members (who themselves are not eligible individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this section, the Metropolitan Council will make a judgement about the control the eligible owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

If the Metropolitan Council cannot determine that the eligible owners- as distinct from the family as a whole- control the firm, then the eligible owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

11. Where a firm was formerly owned and/or controlled by a non-eligible individual (whether or not an immediate family member), ownership and/or control were transferred to an eligible individual, and the non-eligible individual remains involved with

---

the firm in any capacity, the eligible individual now owning the firm must demonstrate, by clear and convincing evidence, that:

- a. The transfer of ownership and/or control to the eligible individual was made for reasons other than obtaining certification as a DBE; and
- b. The eligible individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-eligible individual who formerly owned and/or controlled the firm.

12. In determining whether a firm is controlled by its eligible owners, the Metropolitan Council may consider whether the firm owns equipment necessary to perform its work. However, the Metropolitan Council will not determine that a firm is not controlled by eligible owners solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

13. The Metropolitan Council will grant certification to a firm only for specific types of work in which the eligible owners have the ability to control the firm. To become certified in an additional type of work, the firm must demonstrate to the Metropolitan Council that its eligible owners are able to control the firm with respect to that type of work. The Metropolitan Council will not, in this situation, require that the firm be re-certified or submit a new application for certification, but must verify the eligible owner's control of the firm in the additional type of work.

14. A business operating under a franchise or license agreement may be certified as a DBE if it meets the standards in 49 CFR Part 26, Subpart D and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliations exists, the Metropolitan Council will generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

15. In order for a partnership to be controlled by eligible individuals, any non-eligible partners must not have the power, without the specific written concurrence of the eligible partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

---

16. The eligible individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the eligible individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

## 7.7 Other Considerations

In accordance with 49 CFR section 26.73, the Metropolitan Council will utilize the following additional guidelines to determine DBE eligibility:

1. Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in this section, the Metropolitan Council will not consider commercially useful function issues in making decisions about whether to certify a firm as a DBE.
2. The Metropolitan Council may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating involvement in attempts to evade or subvert the intent or requirements of the DBE program.
3. The Metropolitan Council will evaluate the eligibility of a firm on the basis of present circumstances. The Metropolitan Council will not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by eligible individuals at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor will the Metropolitan Council refuse to certify a firm solely on the basis that it is a newly formed firm.
4. DBE firms and firms seeking DBE certification must cooperate fully with requests by the Metropolitan Council and DOT for information relevant to the certification process. Failure or refusal to provide such information is grounds for a denial or removal of certification.
5. Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by eligible individuals, are not eligible to be certified as DBEs.
6. An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm- even a DBE firm- cannot be an eligible DBE.
  - a. If eligible individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with

---

industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, the Metropolitan Council may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

- b. The Metropolitan Council may certify such a subsidiary only if there is cumulatively 51% ownership of the subsidiary by eligible individuals.
7. Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by eligible individuals.
8. A firm that is owned by an Indian tribe, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians, as individuals, may be eligible for certification. Such a firm must meet the size standards of Section 26.65, and such a firm must be controlled by eligible individuals, as provided in Section 26.71.

## **8.0 CERTIFICATION PROCEDURES (SUBPART E)**

### **8.1 Unified Certification Program**

In accordance with 49 CFR section 26.81, the Metropolitan Council will participate with other DOT recipients in Minnesota in a Unified Certification Program (UCP) as follows.

1. The Metropolitan Council and other recipients in Minnesota will sign an agreement establishing the UCP for Minnesota and submit the agreement to the Secretary for approval no later than March 4, 2002. The Secretary may, on the basis of extenuating circumstances shown by the recipients in Minnesota, extend this deadline for no more than one additional year.
2. The UCP agreement must provide for the establishment of a UCP that meets all the requirements of 49 CFR section 26.81, and as summarized in this section. The agreement must specify the following:
  - a. That the UCP will follow all certification procedures and standards of this part, on the same basis as recipients;
  - b. That the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations;



- 
- c. That the UCP shall implement DOT directives and guidance concerning certification matters; and
    - d. Commit UCP participants to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.
  3. Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.
  4. The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement that is not disapproved or remanded within 180 days of its receipt by the Secretary will be deemed to be accepted.
  5. If the Metropolitan Council and other Minnesota recipients fail to meet the deadlines set forth in this section, they will have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond the control of the Minnesota recipients. If the Minnesota recipients fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct them to complete the required action by a date certain. If the Metropolitan Council and the other Minnesota recipients fail to carry out this direction in a timely manner, they will be collectively in noncompliance with this part.
  6. The UCP shall make all certification decisions on behalf of all DOT recipients in Minnesota with respect to participation in the DOT DBE Program. Specifically:
    - a. Certification decisions by the UCP shall be binding on all DOT recipients within the state.
    - b. The UCP shall provide “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.
    - c. All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

- 
7. All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
  8. The Minnesota UCP will not be required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The “home state” UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm’s application.
  9. Subject to DOT approval as provided in 49 CFR section 26.81, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.
  10. Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by 49 CFR section 26.81. The Minnesota UCP may also grant reciprocity to other recipient’s certification decisions.
  11. The Minnesota UCP will maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this section), the information required by 49 CFR part 26.31. The UCP will make the directory available to the public electronically, on the internet, as well as in print; and will update the electronic version of the directory by including additions, deletions, and other changes routinely.
  12. Except as otherwise specified in this section, all provisions of this 49 CFR Part 26, Subpart E and subpart D of this part pertaining to recipients also applies to UCPs.

## **8.2 Initial Certification Procedures**

In order to ensure that only firms certified as eligible DBEs under 49 CFR Part 26, Subpart D participate as DBEs in its program. the Metropolitan Council will determine the eligibility of firms as DBEs consistent with the standards of 49 CFR Part 26, Subpart D. When a UCP is formed, the UCP must meet all the requirements of 49 CFR Part 26, Subpart D and Subpart E that recipients are required to meet.

The Metropolitan Council will take all the following steps in determining whether a DBE firm meets the standards of 49 CFR Part 26, Subpart D as follows.

- 
1. Require potential DBEs to complete and submit an appropriate application form. The Metropolitan Council will make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States. Subject to the approval of the concerned operating administration as part of the its DBE program, the Metropolitan Council may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.
  2. The Metropolitan Council will review all information on the form prior to making a decision about the eligibility of the firm. This review will include the following:
    - a. Perform an on-site visit to the offices of the firm. The Metropolitan Council must interview the principal officers of the firm and review their resumes and/or work histories; and must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. The Metropolitan Council may rely upon the site visit report of any other recipient with respect to a firm applying for certification.
    - b. If the firm is a corporation, analyze the ownership of stock in the firm.
    - c. Analyze the bonding and financial capacity of the firm.
    - d. Determine the work history of the firm, including contracts it has received and work it has completed.
    - e. Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any.
    - f. Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program.
  3. When another DOT recipient has certified a firm, the Metropolitan Council has the discretion to take any of the following actions:
    - a. Certify the firm in reliance on the certification decision of the other recipient;
    - b. Make an independent certification decision based on documentation provided by the other recipient, augmented by any additional

---

information the Metropolitan Council requires the applicant to provide;  
or

- c. Require the applicant to go through the Metropolitan Council's application process without regard to the action of the other recipient.
4. When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information that the Metropolitan Council has obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), the Metropolitan Council will promptly make the information available to the other recipient.
5. The Metropolitan Council must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.
6. Once the Metropolitan Council has certified a DBE, it shall remain certified for a period of at least three years unless and until its certification has been removed through the procedures of 49 CFR section 26.87. The Metropolitan Council may not require DBEs to reapply for certification as a condition of continuing to participate in this program during this three-year period, unless the factual basis on which the certification was made changes.
7. DBEs must inform the Metropolitan Council or UCP in writing of any change in the circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26, Subpart D or any material change in the information provided in the Metropolitan Council's application form.
  - a. Changes in management responsibility among members of a limited liability company are covered by this requirement.
  - b. DBEs must attach supporting documentation describing in detail the nature of such changes.
  - c. The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The DBE must provide the written notification within 30 days of the occurrence of such change. If the DBE fails to make timely notification of such a change, they will be deemed to have failed to cooperate under Section 26.109(c).
8. DBEs must provide to the Metropolitan Council every year on the anniversary date of its certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration

---

executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which the DBE has notified the Metropolitan Council such as those described in this section. The affidavit shall specifically affirm that the DBE firm continues to meet SBA business size criteria and the overall gross receipts cap of 49 CFR Part 26, Subpart D, documenting this affirmation with supporting documentation of the firm's size and gross receipts. If a DBE fails to provide this affidavit in a timely manner, they will be deemed to have failed to cooperate under 49 CFR section 26.109(c).

9. The Metropolitan Council will make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. This time period may be extended once, for no more than 60 days, upon written notice to the firm, explaining fully and specifically reasons for the extension. Failure by the Metropolitan Council to make a decision by this deadline will be deemed a constructive denial of the application, on the basis of which the applicant firm may appeal to DOT under 49 CFR section 26.89.

### **8.3 Recertification Procedures**

Firms that are certified as DBEs by the Metropolitan Council may renew their certification by applying for recertification and demonstrating their continued eligibility.

1. Not less than 3 months prior to expiration of the initial certification date, the Metropolitan Council will send a letter to the DBE firm notifying it of its responsibility to submit an application for recertification.
2. The Metropolitan Council may, at its discretion, require any and all documentation required of an initial certification in order to recertify a firm as a DBE.
3. All other procedures for recertification shall be the same as those for initial certification.

### **8.4 Denials and Re-Application Procedures**

1. When the Metropolitan Council denies a request by a firm not currently certified with the Metropolitan Council to be certified as a DBE, the Metropolitan Council will provide the firm a written explanation of the reason for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based will be made available to the applicant, on request.

- 
2. When the Metropolitan Council denies a firm DBE certification, it may reapply after one year. The time period for reapplication begins to run on the date the explanation required by paragraph 1 above is received by the firm.
  3. When the Metropolitan Council makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under 49 CFR section 26.89.

## **8.5 Decertifications**

### **8.5.1 Ineligibility complaints**

1. Any person may file with the Metropolitan Council a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. The Metropolitan Council is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainant's identities must be protected as provided in 49 CFR section 26.109(b).
2. The Metropolitan Council will review its records concerning the firm, any material provided by the firm, and the complainant, and other available information. The Metropolitan Council may request additional information from the firm or conduct any other investigation that it deems necessary.
3. If the Metropolitan Council determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, the Metropolitan Council will provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If the Metropolitan Council determines that such reasonable cause does not exist, it will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issues of reasonable cause must specifically reference the evidence in the record on which each reason is based.

### **8.5.2 Recipient-initiated proceedings**

1. If, based on notification by the firm of a change in its circumstances or other information that comes the attention of the Metropolitan Council, it determines that there

---

is reasonable cause to believe that a currently certified firm is ineligible, the Metropolitan Council will provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

### **8.5.3 DOT directive to initiate proceeding**

1. If the concerned operating administration determines that information in the Metropolitan Council's certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm that the Metropolitan Council certified does not meet the eligibility criteria of this part, the concerned operating administration may direct the Metropolitan Council to initiate a proceeding to remove the firm's certification.
2. The concerned operating administration will provide the Metropolitan Council and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.
3. The Metropolitan Council will immediately commence and prosecute a proceeding to remove eligibility as provided in this section.

### **8.5.4 Hearing**

1. When the Metropolitan Council notifies a firm that there is reasonable cause to remove its eligibility, as provided in this section, the Metropolitan Council will give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.
2. In such proceeding, the Metropolitan Council shall bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.
3. The Metropolitan Council will maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under 49 CFR part 26.89, the Metropolitan Council will provide a transcript of the hearing to DOT and, on request, to the firm. The Metropolitan Council will retain the original record of the hearing; and may charge the firm only for the cost of copying the record.

---

4. The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, the Metropolitan Council will bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as it would during a hearing.

### **8.5.5 Separation of functions**

1. The Metropolitan Council will ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.
2. The decision-maker must be an individual who is knowledgeable about the certification requirements of the Metropolitan Council's DBE program and of the requirements of 49 CFR Part 26.

### **8.5.6 Grounds for decision**

1. The Metropolitan Council will not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of certification of the firm. The Metropolitan Council may base such a decision only on one or more of the following:
2. Changes in the firm's circumstances since the certification of the firm by the Metropolitan Council that renders the firm unable to meet the eligibility standards of this part.
  - a. Information or evidence not available to the Metropolitan Council at the time the firm was certified.
  - b. Information that was concealed or misrepresented by the firm in previous certification actions by the Metropolitan Council.
  - c. A change in the certification standards or requirements of the Department since the Metropolitan Council certified the firm.
  - d. A documented finding that the Metropolitan Council's determination to certify the firm was factually erroneous.

### **8.5.7 Notice of decision**



- 
1. Following its decision, the Metropolitan Council will provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice will inform the firm of the consequences of the Metropolitan Council's decision and of the availability of an appeal to the Department of Transportation under 49 CFR part 26.89. The Metropolitan Council will send copies of the notice to the complainant or the concerned operating administration that had directed the Metropolitan Council to initiate the proceeding.

#### **8.5.8 Status of firm during proceeding**

1. A firm remains an eligible DBE during the time that the Metropolitan Council's proceeding to remove its eligibility is pending.
2. The firm does not become ineligible until the issuance of the notice provided for in this section.

#### **8.5.9 Effects of removal of eligibility**

When it removes a firm's eligibility, the Metropolitan Council will take the following action:

1. When a prime contractor has made a commitment to using the ineligible firm, or the Metropolitan Council has made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in this section, the ineligible firm does not count toward the contract goal or overall goal. The Metropolitan Council will direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so, in accordance Section V.
2. If a prime contractor has executed a subcontract with the firm before the Metropolitan Council has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where the Metropolitan Council has let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the Metropolitan Council issued the notice of its ineligibility shall not count toward the Metropolitan Council's overall goal, but may count toward the contract goal.

---

### **8.5.10 Exception**

1. If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the Metropolitan Council may continue to count its participation on that contract toward overall and contract goals.

### **8.5.11 Availability of Appeal**

1. When the Metropolitan Council finalizes an administrative removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under 49 CFR section 26.89.

## **8.6 Certification Appeals**

1. Firms denied certification or whose eligibility is removed by a recipient, may make an administrative appeal to the Department.
  - a. A complainant in an ineligibility complaint to the Metropolitan Council (including the concerned operating administration in the circumstances provided in 49 CFR section 26.87(c), may appeal to the Department if the Metropolitan Council does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.
  - b. Appeals should be sent to: Department of Transportation, Office of Civil Rights, 400 7th Street, SW, Room 2401, Washington, D.C. 20590.
2. Pending the Department's decision in the matter, the Metropolitan Council's decision remains in effect. The Department does not stay the effect of the Metropolitan Council's decision while it is considering an appeal.
3. If a firm wants to file an appeal, it must send a letter to the Department within 90 days of the date of the Metropolitan Council's final decision, including information and arguments concerning why the Metropolitan Council's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.
  - a. An appellant who is a firm that has been denied certification, whose certification has been removed, whose owner is determined not to be a

---

member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, must include in its letter the name and address of any other recipient which currently certifies the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under 49 CFR section 26.109(c).

- b. An appellant other than one described above, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in the paragraph above. Failure to provide this information may be deemed a failure to cooperate under 49 CFR section 26.109(c).
4. When it receives an appeal, the Department will request a copy of the Metropolitan Council's complete administrative record in the matter. The Metropolitan Council will provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of the Metropolitan Council's showing of good cause. To facilitate the Department's review of a recipient's decision, such administrative records must be well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to the Metropolitan Council be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.
5. The Department will make its decision based solely on the entire administrative record. The department will not make a *de novo* review of the matter, nor conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General: Federal, state, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.
6. When the Metropolitan Council provides supplementary information to the Department, it will also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.
  - a. The Department affirms the Metropolitan Council's decision unless it determines, based on the entire administrative record, that its decision is unsupported by substantial evidence or inconsistent with the

---

substantive or procedural provisions of this part concerning certification.

- b. If the Department determines, after reviewing the entire administrative record, that the Metropolitan Council's decision was unsupported by substantial evidence or procedural provisions of this part concerning certification, the Department will reverse the Metropolitan Council's decision and directs it to certify the firm or remove its eligibility, as appropriate. The Metropolitan Council is required to take the action directed by the Department's decision immediately upon receiving written notice of it.
- c. The Department will not be required to reverse the Metropolitan Council's decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.
- d. If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to the Metropolitan Council with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to the Metropolitan Council for further proceedings consistent with Department instructions concerning the proper application of provisions of this part.
- e. The Department does not uphold the Metropolitan Council's decision based on grounds not specified in your decision.
- f. The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.
- g. The Department provides written notice of its decision to the Metropolitan Council, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.
- h. The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

- 
7. All decisions under this section are administratively final, and are not subject to petitions for reconsideration.
  8. If the Metropolitan Council's action is subject to an appeal under Section 26.89 is taken, the decision is binding. It is not binding on other recipients.
  9. If it is subject to a DOT determination under 49 CFR section 26.89, the Metropolitan Council must the following action:
    - a. If the Department determines that the Metropolitan Council erroneously certified a firm, it must remove the firm's eligibility on receipt of that determination, without further proceedings on the Metropolitan Council's part. Effective on the date of the Metropolitan Council's receipt of the Department's determination, the consequences of a removal of eligibility set forth in 49 CFR section 26.87(l) take effect.
    - b. If the Department determines that the Metropolitan Council erroneously failed to find reasonable cause to remove the firm's eligibility, it must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in 49 CFR section 26.87.
    - c. If the Department determines that the Metropolitan Council erroneously declined to certify or removed the eligibility of the firm, it must certify the firm, effective on the date of your receipt of the written notice of Department's determination.
    - d. If the Department determines that the Metropolitan Council erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, it must take appropriate corrective action as determined by the Department.
    - e. If the Department affirms the Metropolitan Council's determination, no further action is necessary.
  10. Where DOT has upheld the Metropolitan Council's denial of certification to or removal of eligibility from a firm or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under 49 CFR section 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility of a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

---

## 9.0 RECORD KEEPING, MONITORING AND ENFORCEMENT

### 9.1 Bidders List

1. Pursuant to 49 CFR section 26.11(c), the Metropolitan Council will create and maintain a bidder's list, consisting of firms bidding on prime contracts and bidding or quoting subcontracts on DOT-assisted projects. The Bidders List will include the following minimum information for each firm:
  - a. Firm name;
  - b. Firm address;
  - c. Firm's status as a DBE or non-DBE;
  - d. The age of the firm; and
  - e. The annual gross receipts of the firm.

### 9.2 Monitoring Payments to DBEs

1. In accordance with the requirements of Section 6.3 of this program, the Metropolitan Council will require all prime contractors to submit on a monthly basis, evidence of actual payments to each DBE listed on the contract.
2. This evidence shall take the form of the Summary Subcontracts Award and Paid Report.
3. The Metropolitan Council will review and monitor the amount actually paid to each DBE and non-DBE in accordance with the requirements of Section 6.3 of this program.

### 9.3 Reporting to DOT

1. The Metropolitan Council will continue to provide data on its DBE program to the Department as directed by the DOT Operating Administration. The Metropolitan Council shall submit a quarterly report by the last day in January, April, July and October describing the activities undertaken toward progress achieved in meeting the goal of greater DBE participation in its procurement and financial

---

assistance programs during the preceding federal quarter. These reports shall discuss at least the following:

2. Data on the level of DBE participation in contracting and subcontracting activities of the Metropolitan Council and recipients of financial assistance both in terms of number of DBE contracts awarded and the identities of DBEs and the dollar value of work being so contracted.
3. A statistical breakdown and methods of awards to DBEs, for example, open competition, small business set-aside, competitive DBE set-asides, and subcontracts.
4. Data reported by prime contractors under subcontracting as required by federal procurement regulations.
5. A description of any participation or attendance in seminars, conferences, or workshops on DBEs by the Metropolitan Council.
6. A brief description of any problems encountered in the general area of DBEs, or specific contracts or projects.
7. Specific efforts to identify and award contracts to DBEs.
8. A summary of the extent to which percentages have been met.
9. All reports and records will be categorized separately by type of work (by Primary Industry Classification code) for all DBE and other firms. Reports will be made available to the public and DBE reports will be submitted to the Metropolitan Council's board.

#### **9.4 Availability of Records**

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program where not prohibited by Federal law.

The Metropolitan Council will safeguard against disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with Federal, State, and local law.

#### **9.5 Confidentiality of information**

---

The identity of complainants will be kept confidential, at their election. If such confidentiality hinders an investigation, proceeding, or hearing, or will result in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving the privilege. Complainants are advised that, in some cases, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows procedures of 14 CVR Part 16 with respect to confidentiality of information in complaints.

#### **9.6 Cooperation of DBEs**

All participants in the DBE program are required to cooperate fully and promptly with DOT and Metropolitan Council compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so will be grounds for appropriate action against the party involved.

#### **9.4 Intimidation and Retaliation Prohibited**

The Metropolitan Council, its contractors, and other program participants must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under the program. Violation of this prohibition will be deemed as noncompliance.



**METROPOLITAN COUNCIL  
DBE PROGRAM SECTION-TO-REGULATIONS REFERENCE**

Section	Regulatory Basis
<b>1.0 METROPOLITAN COUNCIL DBE POLICY</b>	
1.1 Policy Statement	26.3; 26.7; 26.21; 26.23
1.2 Objectives	26.1
<b>2.0 DBE PROGRAM DEFINITIONS</b>	26.5
<b>3.0 RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION</b>	
3.1 Duties of DBE Liaison Officer	26.25
3.2 Responsibilities of Support Personnel	
3.3 Reconsideration Official	26.53(d)(2)
<b>4.0 ADMINISTRATIVE REQUIREMENTS (SUBPART B)</b>	
4.1 Financial Institutions	26.27
4.2 DBE Directory	26.31
<b>5.0 DBE GOALS FOR FEDERALLY-ASSISTED CONTRACTS</b>	
5.1 Goal-Setting Methodology	26.45
5.2 Transit Vehicle Manufacturers (TVMs)	26.49
5.3 Race-Neutral Measures	26.51
5.4 Contract Goals	26.51
5.5 Good Faith Efforts	26.53; Appendix A
5.6 Counting DBE Participation	26.55
5.7 Quotas, Set-Asides, and Penalties	26.43; 26.47
<b>6.0 REQUIRED CONTRACT PROVISIONS</b>	
6.1 Assurances	26.13
6.2 Prompt Payment	26.29
6.3 Legal and Contract Remedies	26.37; Appendix B
6.4 Contractor Reporting Requirements	26.55 (counting)

Section	Regulatory Basis
<b>7.0 CERTIFICATION STANDARDS (SUBPART D)</b>	
7.1 Burdens of Proof	26.61
7.2 Group Membership Determinations	26.63
7.3 Social and Economic Disadvantage; Statement of Net Worth	26.67; Appendix E
7.4 Business Size Determinations	26.65
7.5 Ownership Determinations	26.69
7.6 Control Determinations	26.71
7.7 Other Considerations	26.73
<b>8.0 CERTIFICATON PROCEDURES (SUBPART E)</b>	
8.1 Unified Certification Program	26.81
8.2 Initial Certification Procedures	26.83
8.3 Recertification Procedures	26.83
8.4 Denials and Re-Application Procedures	26.85
8.5 De-Certifications	26.87
8.6 Certification Appeals	26.89; 26.91
<b>9.0 RECORD KEEPING, MONITORING AND ENFORCEMENT</b>	
9.1 Bidders List	26.11
9.2 Monitoring Payments to DBEs	26.37
9.3 Reporting to DOT	26.11
9.4 Availability of Records	
9.5 Confidentiality of Information	
9.6 Cooperation of DBEs	
9.7 Intimidation and Retaliation Prohibited	

To comment on the Council's proposed DBE program, you can:

- e-mail your comments to: [data.center@metc.state.mn.us](mailto:data.center@metc.state.mn.us)
- call your comments in to Velma Korbelt at 651-602-1042
- fax your comments to Velma at 651-602-1031, or
- mail them to: Velma Korbelt, Office of Diversity, Metropolitan Council, 230 E. 5th Street, St. Paul, MN 55101.

Comments will be accepted until August 31, 1999.

---

**APPENDIX 5: CENTRAL CORRIDOR LIGHT RAIL TRANSIT EEO/AA/DBE  
PROJECT COOPERATION AGREEMENT**

DRAFT

---

**CENTRAL CORRIDOR LIGHT RAIL TRANSIT  
EEO/AA/DBE PROJECT COOPERATION AGREEMENT**

This is a Cooperation Agreement (“Cooperation Agreement”), effective on the date of execution by all of the parties and appropriate state officials, made and entered into by and between the State of Minnesota through its Commissioner of Transportation (“MNDOT”), Metropolitan Council (“The Council”), Hennepin County (“H County”), Minneapolis Department of Human Rights (“Minneapolis”), St Paul Department of Civil Rights (“St. Paul”), Ramsey County (“R County”), Minnesota Department of Human Rights (“MDHR”), the University of Minnesota (“the U”) and the U.S. Department of Labor, Office of Federal Contract Compliance Programs (“OFCCP”), collectively referred to as “Parties.”

The purpose of this Cooperation Agreement is to ensure compliance with Affirmative Action (“AA”), Equal Employment Opportunity (“EEO”) and Disadvantaged Business Enterprise (“DBE”) monitoring, enforcement, certification, oversight and reporting requirements for the construction and operation of the Central Corridor Light Rail Transit Project (“LRT Project” or “Project”) by establishing a Joint Committee which shall provide oversight, monitoring and enforcement of all EEO/AA/DBE concerns on this Project.

## **BACKGROUND RECITALS**

1. The LRT Project will run the 11-mile long Central Corridor linking downtown St. Paul and downtown Minneapolis..

2. The Met Council \_\_\_\_\_ have entered into a Light Rail Master Cooperation Agreement (\_\_\_\_\_) for the Project with the

---

which sets for the responsibilities agreed to be undertaken between and among the Parties with respect to the planning, implementation, design, construction, ownership and operation of the Project.

3. The Council and MDHR have entered into a non-binding Memorandum of Understanding (“MOU”) \_\_\_\_\_, to ensure state contractor compliance with AA/EEO requirements which will create and maximize opportunities for women, minority and disabled individuals. Each party has committed:

- a. To a comprehensive coordination of contract compliance monitoring and enforcement.
- b. To developing strategies that will enhance the level of service provided to its prospective customers and to the citizens of the State of Minnesota.
- c. To the exchange of innovative quality responses to common issues.

---

4. This agreement attempts to build on the MOU by setting forth the responsibilities to be undertaken by all the parties to ensure compliance with EEO/AA/DBE monitoring, enforcement, certification, oversight and reporting requirements.

NOW, THEREFORE, for mutual valuable consideration, the sufficiency of which has been agreed to by the Parties, Met Council, Hennepin County, Minneapolis, Ramsey County, St. Paul, MnDOT, University of Minnesota, MDHR, and OFCCP agree as follows:

I  
JOINT COMMITTEE

To facilitate the interagency relationship, to provide a forum for joint decision making, and to streamline reporting requirements, the Parties agree to establish a joint committee (“Joint Committee”) to monitor, enforce, certify and report state contractor compliance with EEO/AA/DBE requirements. Each agency agrees to attend regular meetings of the Joint EEO/AA Committee. Agenda for these meeting shall include the ongoing evaluation of the joint monitoring efforts, development of computer systems for monitoring compliance, measurement of contractor success in meeting goals, and recommendations for modifications to improve monitoring procedures. Both short and long-term strategies will be developed and implemented.

II  
COORDINATION

1. Met Council shall be responsible for creating contract language incorporating the joint contractor compliance on this Project. This shall include all elements of the monitoring and review process required under MDHR and OFCCP requirements, including the development of a pre-construction package.

2. Met Council shall function as the Project leader, and shall serve as the head of the Joint Committee.

3. Met Council shall convene meetings of the Joint Committee once a month. It is the responsibility of the Joint Committee to:

- a. Create and institute a joint pre-construction meeting requirement package.
- b. Select contractors for joint EEO/AA/DBE review;
- c. Schedule and perform joint EEO/AA/DBE reviews;
- d. Receive recommendations for compliance or non-compliance status from the review team;
- e. Approve voluntary corrective actions recommended by the review team;

- 
- f. Determine final compliance/noncompliance status of reviewed contractors; and
  - g. Recommend the appropriate agency for administering sanctions for non-compliance status.
  - h. Report.
4. Met Council shall:
    - a. Provide leadership of the Joint Committee, convening regular meetings.
    - b. Coordinate the joint review process for the Joint Committee.
    - c. Accept EEO Form 13 in place of any other monthly reporting data.
    - d. Report all relevant information to the Central Corridor LRT Project Board and Corridor Management Committee.
    - e. Accept firms certified by the Unified Certification Program as DBEs participate on the project.
  5. The Joint Committee shall have full access to all information and documentation generated by the review process.
  6. \_\_\_\_\_ shall:
    - a. Collect monthly employment forms (EEO Form 13) from each contractor working on the LRT Project, review the accuracy of and computerize the data and disseminate cumulative Project data as necessary; and require direct submission of copies of the Form 13 to the MDHR and OFCCP by the project engineers.
    - b. Maintain case files on all reviews, providing access to \_\_\_\_\_, MDHR and OFCCP upon notice.
    - c. Attend Joint Committee meetings.
    - d. Assist in the selection of projects for review, determinations of compliance status, designations of appropriate agency for administering sanctions, and all other processes of the joint reviews.
    - e. Forward, for timely review, all relevant information to the Metropolitan Council.

- 
- f. Accept firms certified as DBEs by Metropolitan Airports Commission and Metropolitan Council to work on the Central Corridor LRT project.
7. The University of Minnesota, Mn/DOT, Hennipen and Ramsey Counties and Minneapolis and St Paul shall:
    - a. Attend Joint Committee meetings.
    - b. Assist in the selection of projects for review, determinations of compliance status, designations of appropriate agency for administering sanctions, and all other processes of the joint reviews.
    - c. Provide copies of compliance documents to the Joint Committee in the form and frequency agreed to by members of the Joint Committee.
  8. OFCCP shall:
    - a. Accept EEO Form 13 in place of any other monthly reporting data.
    - b. Attend Joint Committee meetings.
    - c. Assist in the selection of projects for review, determinations of compliance status, designations of appropriate agency for administering sanctions, and all other processes of the joint reviews.
  9. \_\_\_\_\_ shall gather and share monthly employment data using its EEO Form 13, Monthly Employment Compliance Report. MDHR and OFCCP agree to accept the EEO Form 13 as a substitute for required employment data under the MDHR or OFCCP programs.

### III

## GENERAL PROVISIONS

1. Cooperation. The parties to this Cooperation Agreement agree that their overall goal is the successful design, construction, implementation and operation of the Central Corridor LRT Project, and to that end each Party agrees to cooperate with all other Parties and their consultants and to cooperate and coordinate with the Project Manager, Design Construction Committee and the Central Corridor LRT Board in order to ensure timely completion of this Project.

2. Applicable Provisions of Law. The Parties agree to comply with applicable provisions of federal law, Minnesota state law, and of any applicable local ordinances which shall be considered a part of this Agreement as though fully set forth herein.

3. Entire Agreement. It is understood and agreed that the entire Agreement between the Parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the Parties relating to the subject matter hereof. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties hereto.

4. Severability. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to the Parties. One or more waivers by said Party of any provision, term, condition or covenant shall not be construed by the other Parties as a waiver of a subsequent breach of the same by other Parties.

5. Governing Law. This Agreement is entered into in and under the laws of the state of Minnesota and shall be interpreted in accordance therewith.

6. Contract Administration. In order to coordinate the activities of the Parties so as to accomplish the purposes of this Agreement, the following individuals, or their designees or successors shall manage this Agreement on behalf of the Parties.

Metropolitan Council	Director of Equal Opportunity
MnDOT	Director of Civil Rights
Hennepin County	_____
City of Minneapolis	Director of Civil Rights
Ramsey County	_____
City of St. Paul	Director of Civil Rights
University of Minnesota	_____

7. Availability of Records. The Parties agree that each Party hereto, the Legislative Auditor, the State Auditor, or any of their duly authorized representatives at any time during normal business hours, and as often as they reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, or records, which are pertinent to the accounting practices and procedures of the other party hereto and involve transactions relating to this Agreement for a minimum of six years from the expiration of this Agreement.

8. Data Privacy. The Parties agree to abide by all applicable state and federal laws and regulations and confidential information concerning individuals and/or data including, but not limited to, information made non-public by such laws or regulations.

IN TESTIMONY WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.



Metropolitan Council  
MnDOT  
Hennepin County  
City of Minneapolis  
Ramsey County  
City of St. Paul  
University of Minnesota

Director of Equal Opportunity  
Director of Civil Rights

\_\_\_\_\_  
Director of Civil Rights

\_\_\_\_\_  
Director of Civil Rights

Metropolitan Council

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

Minnesota Department of Transportation

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

Hennepin County

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

City of Minneapolis

Its \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Ramsey County

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

City of St. Paul

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

University of Minnesota

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

DRAFT