

METRO

OFFICE OF BUSINESS DEVELOPMENT

**SMALL BUSINESS/DISADVANTAGED
BUSINESS ENTERPRISE PROGRAM**

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS

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I.

SMALL BUSINESS/DISADVANTAGED BUSINESS PROGRAM POLICY

METRO'S policy is to promote equal opportunity and nondiscrimination in all of its procurement matters in accordance with state and federal laws. Small businesses need opportunities to obtain a fair proportion of METRO's procurement business. METRO's Small Business/Disadvantaged Business Program ("Program") was created to provide additional opportunities for local small businesses to participate in contracting and procurement at METRO. By formalizing existing practices and implementing new procedures, the Program will allow METRO to target more effectively small business participation and create opportunities relating to METRO's contracting and procurement.

METRO's Small Business/Disadvantaged Business Program applies to certain eligible contracts (federally and locally funded). It is a goal-oriented program, requiring contractors who receive contracts from METRO to use good-faith efforts to utilize small businesses.

The Program will not be used to discriminate against any company or groups of companies. However, METRO accepts the premise that special efforts must be made to include small businesses and disadvantaged businesses in METRO's contract and procurement activities. This Small Business/Disadvantaged Business Program is designed to create a level playing field on which small businesses and disadvantaged businesses can compete fairly in all facets of METRO's procurement activities. The Program will operate in a **race and gender neutral** manner. The Program is designed to include all segments of the region's business community and is open to participation without regard to race, color, sex, religion, national or ethnic origin, age or disability. The Program will utilize procedures that promote inclusion and opportunity, while maintaining race and gender neutral measures in their operations.

METRO is committed to ensuring small and disadvantaged firms an equitable opportunity to participate in METRO's procurement process.

Nothing in the Program should be construed to give a bidder or proposer a property interest in a proposal, bid or contract prior to the Board of Directors' award of the contract and compliance with all statutory and legal requirements.

II.

NONDISCRIMINATION MANDATE

METRO maintains a policy of nondiscrimination and equal opportunity. METRO's policy is to prohibit discrimination based on race, color, sex, religion, national or ethnic origin, age or disability. The Small Business/Disadvantaged Business Program shall not be used to discriminate against any person or company or group of persons or companies. Contractors, subcontractors, small businesses and/or disadvantaged businesses that violate METRO's Nondiscrimination Mandate in the operations of the Program will be subject to sanctions.

METRO has a legal obligation to ensure that funds paid by METRO to a bidder/prime contractor are not, in turn, spent by the bidder/prime contractor in a discriminatory manner in its selection of subcontractors. If METRO fails to take steps to prevent such discrimination, METRO becomes a passive participant in that ethnicity or gender discrimination. In a subcontracting market which operates in a non-discriminatory manner, it would be expected that the distribution of subcontracts would generally reflect the availability of qualified and available contractors of various ethnic groups.

III.

DEFINITIONS

Annual Goal(s) – a numerically expressed aspirational goal which METRO seeks to make good-faith efforts to achieve annually for both overall small business participation and disadvantaged business participation.

Annual Report – the report prepared and presented by METRO staff to the Board of Directors on an annual basis showing Small Business and Disadvantaged Business participation.

Appeal Arbitration – an arbitration conducted to hear the appeal of sanctions imposed by a final decision of the President and CEO. Appeal Arbitrations are only available to hear the appeal of final decisions that result in a suspension of a contractor or a small or disadvantaged business. By being a party in an Appeal Arbitration, METRO **does not waive** its immunities.

Appeal Arbitrator – the individual chosen by lottery-style selection with authority limited to determining whether the suspension imposed by the President and CEO for alleged violations of the Program should be upheld.

Arbitrator – a person who is certified by the American Arbitration Association to conduct arbitration hearings and render decisions.

Bidder – any person or entity that submits a bid to provide labor, goods or services to METRO by contract in response to a solicitation by METRO for competitive bids.

Certified Small Business – a small business, as defined herein, whose application to participate in the Program has been received and approved and is eligible for participation in the Program.

Certified Disadvantaged Business –disadvantaged business, as defined herein, whose application to participate in the Program has been received and approved and is eligible for participation in the Program. A Certified Disadvantaged Business must meet the requirements for a Small Business defined herein.

Certified SBE/DBE Business – a small business or disadvantaged business, whose application to participate in the Program has been received and approved and is eligible for participation in the Program.

Commercially Useful Function – a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the small business or disadvantaged business by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the small business or disadvantaged is responsible. A small business or disadvantaged business will not be considered to be

performing a Commercially Useful Function if it subcontracts to non-small or disadvantaged businesses or to other small or disadvantaged businesses more than seventy percent (70%) of a contract being counted toward the applicable participation goal or the small or disadvantaged business subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved. METRO may waive this requirement upon demonstration by the amount of subcontracting proposed is appropriate in relation to the industry standard for the type of work involved.

Compliance Resolution Committee (CRC) – a committee to conduct due process hearings and consider matters related to sanctions and suspensions of contractors, small businesses or disadvantaged businesses related to the operations of the Program.

Contract Goal - a numerically expressed objective which Contractors are encouraged to make a Good-Faith Effort to achieve on individual contracts.

Contractor - any person or business entity that shall enter into a contract with METRO, including all partners and joint ventures of such person or business entity.

Contractor's Utilization Plan or Plan – the plan submitted by a Bidder or Proposer (and maintained and implemented by a Contractor) that demonstrates the proposed and/or actual Small Business/Disadvantaged Business participation and utilization with the discharge of a METRO contract.

Disadvantaged Business or Disadvantaged Business Enterprise (DBE) – a voluntary designation for a for-profit small business concern that is at least 51 percent owned by one or more individuals who are socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more of 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. METRO employs the definition of "socially and economically disadvantaged" as found at 49 Code of Federal Regulations (CFR) Part 26 Section 26.5. To qualify as a Disadvantaged Business, the business entity must necessarily meet the requirements of a Small Business herein. The DBE designation is optional to the qualifying Small Business.

Good Faith Efforts – those efforts to achieve METRO's Contract Goal or other requirements of the Program which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Contract Goal or Program requirement. These efforts include the documented steps that describe attempts to include Small Businesses and Disadvantaged Businesses in procurement and contracting opportunities.

Facility Provider – a partnership, corporation, joint venture, consortium, special purchase company or other legal entity or team responsible for providing and installing

the system components of a facility and constructing the associated civil works components.

Hybrid Delivery System – the alternative procurement procedure for certain construction projects provided for in Chapter 451, Subchapter Q of the Texas Transportation Code.

Hybrid Delivery System Contract – a contract with a Facility Provider selected using the Hybrid Delivery System of procurement authorized by Chapter 451, Subchapter Q of the Texas Transportation Code.

Hybrid Delivery System Proposal – a written proposal to METRO from a prospective Proposer to provide both installation of system components and construction services for designated projects identified and requested by METRO.

Joint Development Project – a project wherein METRO and one or more private entities jointly agree to perform certain services and tasks so as to cause the development of a project mutually agreed to.

Joint Venture – an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge.

METRO Nondiscrimination Mandate – the policy of METRO to prohibit discrimination based on race, color, sex, religion, national or ethnic origin, age, or disability. Discriminatory conduct by Contractors or Certified Small Businesses or Disadvantaged Businesses in the operation of the Program violates this mandate.

METRO Small Business/Disadvantaged Business Program or SBE/DBE Program – the goal-oriented program to provide full and fair procurement opportunities to Certified Small Businesses and Certified Disadvantaged Businesses at METRO.

Prime Contractor – a contractor who receives a contract from METRO for goods or services and has the primary responsibility for execution of the contract. The prime contractor may subcontract portions of the work required to subcontractors.

Program - the Small Business/Disadvantaged Business Program of the Metropolitan Transit Authority of Harris County, Texas.

Program Consultants – third party consultants retained by METRO to assist in conducting various aspects of the Program, including outreach and technical assistance.

Program-Eligible Contract – a contract awarded by METRO that is awarded with a Contract Goal and for which Good-Faith Efforts to utilize Small Businesses or Disadvantaged Businesses are required. Specifically, Program-Eligible Contracts are those contracts over \$100,000.00 with subcontracting possibilities for small businesses. Exempt from the definition of Program-Eligible Contracts are contracts that are sole-

source, executed with other governmental entities, exempt by METRO pursuant to Section V, B of the Program or those contracts otherwise exempt by applicable law.

Program Procedures or Procedures – the document entitled *Procedures To Enhance Small Business and Disadvantaged Business Opportunities* as adopted by METRO in conjunction with METRO’s Small Business/Disadvantaged Business Program.

Proposer – any person or entity that submits a proposal to provide labor, goods, or services to METRO by contract in response to a request for proposal, request for qualifications or competitive bid.

Sanctions – punitive actions taken by METRO after notice and opportunity for hearing against a Contractor, Certified Small Business or Certified Disadvantaged Business for failure to adhere to METRO’s Program or Program Procedures or failure to make Good-Faith Efforts to comply to the requirements of the Program. Imposed sanctions may include suspensions, i.e. suspend the right of a business entity to do business with METRO for a defined period of time, or any lesser punitive action.

Significant Local Presence – the required location of a Small Business or Disadvantaged Business in one or more of the counties of Harris, Galveston, Fort Bend, Montgomery, Liberty, Waller, Chambers, or Brazoria, Texas, with one or more of its employees regularly based therein. A location utilized solely as a post office box, mail box, or telephone message center, or any combination thereof, with no substantial work function, shall not be construed to be a significant local presence.

Small Business (SBE) - a firm for which the gross revenues or number of employees averaged over the past three years, inclusive of any affiliates as defined by 13 C.F.R. § 121.103, does not exceed the size standards as defined pursuant to Section 3 of the Small Business Act and for which the net worth of each owner does not exceed \$750,000. Certified Disadvantaged Businesses are defined herein to be a Small Business.

Socially and Economically Disadvantaged Individual – an individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

1. Any individual who METRO finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (a) “Black Americans” which includes persons having origins in any of the Black racial groups of Africa
 - (b) “Hispanic Americans” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race

- (c) "Native American" which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians
- (d) "Asian-Pacific American" which includes persons whose originals are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), or the Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Javalu, Nauru, Federated States of Micronesia, or Hong Kong
- (e) "Subcontinent Asian American" which includes persons whose originals are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka
- (f) "Women"
- (g) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration, at such time as the Small Business Administration designation becomes effective.

Subcontractor – any business providing goods, labor, or services to a contractor if such goods, labor, or services are procured or used in fulfillment of the Contractor's obligations arising from a contract with METRO.

Suspension – a sanction imposed (after due process) on a Contractor, Small Business or Disadvantaged Business that takes away the opportunity to do business with METRO for a defined period of time.

IV.

SCOPE OF PROGRAM

The intent of METRO's Small Business/Disadvantaged Business Program is to provide full and fair opportunities for equal participation by small businesses and disadvantaged businesses at METRO. Therefore, by design, the Program's applicability is sufficiently broad to be able to create opportunities, while requiring competitiveness and quality of work.

As is METRO's policy, the Program will require competitive pricing (where allowed by law), qualifications and demonstrated competencies in the selection of all Contractors and their Subcontractors. The Program requires Contractors to make Good Faith Efforts to use Small Businesses (defined herein to include Disadvantaged Businesses) in the discharge of contracts with METRO.

The Small Business/Disadvantaged Business Program and the accompanying Procedures to Enhance Small Business/Disadvantaged Business Enterprise Opportunities apply to those Program-Eligible Contracts as defined herein, i.e. all contracts valued at over \$100,000.00 with subcontracting possibilities for small businesses, excluding contracts for sole source items, contracts with other governmental entities, contracts exempted by METRO pursuant to the Program, and contracts otherwise exempt by applicable law.

The Program's most common application will be to those contracts with subcontracting opportunities for small businesses. The Program will also be applied to Hybrid Delivery System Contracts and Joint Development Projects with the appropriate modifications (if required). METRO encourages the consideration and utilization of Small Businesses and Disadvantaged Businesses in other procurement areas (in addition to the Program Eligible Contracts) whenever possible. METRO encourages the utilization of Small Businesses and Disadvantaged Businesses as Prime Contractors whenever possible and in accordance with applicable law.

V.

PROGRAM GOALS

The Program has two different types of goals: (1) Annual Goals which are aspirational and established to measure the overall impact of the Program on a year to year basis; and (2) Contract Goals which require Contractors to use Good-Faith Efforts to utilize small businesses within a specific contract.

A. Annual Goal(s)

The Annual Goals for the Program will be set by METRO's Board of Directors and reviewed each year. Annual Goals are aspirational in nature, designed to inform METRO of its overall progress in utilizing small businesses and disadvantaged businesses. The Annual Goals as set with the adoption of the Program are 35% for overall Small Business Participation and 21% for Disadvantaged Business Participation. These goals are set based on availability and prior METRO utilization of small businesses and disadvantaged businesses. The Annual Goals are satisfied by the performance of individual contracts and METRO's overall use of SBEs and DBEs in all procurement areas throughout the year.

B. Contract Goal(s)

Each Program-Eligible Contract will have an individual Contract Goal for small business participation. METRO will set Contract Goals on a contract-by-contract basis. All Program Eligible Contracts will be evaluated for subcontracting potential, small business availability and price competitiveness. These individual Contract Goals may be **higher or lower** than the Annual Goal. Individual Contract Goals are set by the initiating METRO department, in conjunction with Office of Small Business. The criteria used to set Contract Goals shall include small business capacity, small business availability, nature of the contract, METRO's past experiences with small business or disadvantaged business participation with similar contracts, available certified companies, price competitiveness, and subcontracting opportunities in the performance of the contract. All Contract Goals will be determined prior to the issuance of a notice of bid, request for proposals or request for qualifications. No quotas or set-asides will be issued in implementing the Program. Contract Goals are for small business participation and may be satisfied by utilizing SBEs or DBEs or a combination of both. **No separate Contract Goals** will be required for Disadvantaged Businesses. However, Contractors are mandated to select Subcontractors in a nondiscriminatory manner.

The initiating METRO department may **exempt** an otherwise Program Eligible Contract from a Contract Goal if it determines that one or more of the following is present:

1. A public or administrative emergency exists that requires the goods or services to be provided with unusual immediacy; or

2. The goods or services requested are of such a specialized, technical, or unique nature as to require METRO to be able to select its contractor without application of provisions; or
3. The application of SBE/DBE provisions would impose an unwarranted economic burden or risk on METRO, would unduly delay acquisition of the goods or services, or would otherwise not be in the best interest of METRO; or
4. The possible small business/disadvantaged business participation level based on availability would produce negligible or very limited small business opportunity.

All Contract Goal exemptions must be approved by the Director of Small Business Development or his or her designee.

Contract Goals are applied to all Program-Eligible Contracts unless the contracts otherwise exempt or goals have been waived. All Prime Contractors, including Small Business or Disadvantaged/Business Prime Contractors, must make Good Faith Efforts to meet the Contract Goal.

C. Counting Small Business/Disadvantaged Business Participation

Small Business and Disadvantaged Business participation is counted as follows:

1. Once a firm is determined to be an eligible Small Business or Disadvantaged Business, in accordance with this policy, the total dollar value of the contract or subcontract awarded to the Small Business or Disadvantaged Business is counted toward the applicable Contract Goals, subject to the following:
 - (a) If the Small Business or Disadvantaged Business is the Prime Contractor, METRO will count small business participation in two separate ways (depending on the utilization of a Small Business Subcontractor). METRO will count the total dollar value of the contract awarded to the Certified Prime Contractor Small Business or Certified Prime Contractor Disadvantaged Business toward applicable Contract Goals if the Prime Contractor Small Businesses or Disadvantaged Business does 100% of the work itself or subcontracts with other Certified Small Business or Disadvantaged Business to complete 100% of the work. However, if the Prime Contractor Small Business or Disadvantaged Business utilizes a non-small business subcontractor, METRO will count the total dollar value of the awarded contract to the Prime Contractor Small Business or Disadvantaged Business, minus the dollar amount subcontracted to non-small businesses.

- (b) If the Small Business or Disadvantaged Business is a Subcontractor, METRO or a Contractor may count toward its Contract Goal the portion of the total dollar value of a contract that is subcontracted to a Small Business or Disadvantaged Business.
 - (c) In situations involving second tier subcontracting, METRO or a Contractor may not count toward its Contract Goal the portion of the total dollar value of a contract that is subcontracted to a Small Business or Disadvantaged Business that further subcontracts the work to a non SBE or non DBE.
- 2. METRO or a Contractor may count toward its Contract goals a portion of the total dollar value of a contract with an eligible Joint Venture equal to the percentage of the ownership and contract of the Small Business or Disadvantaged Business partner in the Joint Venture.
- 3. METRO or a Contractor may count toward its Small Business/ Disadvantaged Business goal only expenditures to Small Businesses or Disadvantaged Businesses that perform a Commercially Useful Function in the work of a contract. A Small Business or Disadvantaged Business is considered to perform a Commercially Useful Function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a SBE or DBE is performing a Commercially Useful Function, METRO or a contractor shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.
- 4. Consistent with normal industry practices, a Small Business or Disadvantaged Business may enter into subcontracts. If a SBE or DBE contractor subcontracts more than seventy percent (70%) of the contract work to non-small businesses or non disadvantaged businesses, the Small Business or Disadvantaged Business shall be presumed not to be performing a Commercially Useful Function. The SBE or DBE may present evidence to rebut this presumption to METRO. If a SBE or DBE is not performing a Commercially Useful Function, none of its work will be counted toward satisfaction of the Contract Goal.
- 5. METRO or a Contractor may count toward its Contract Goals 60 percent of its expenditures for materials and supplies obtained from Small Business or Disadvantaged Business regular dealers and 100 percent of such expenditures to a manufacturer, provided that the Small or Disadvantaged Businesses assume the actual and contractual responsibility for the provision of the materials and supplies as follows:
 - (a) For purpose of this section, 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 by the specifications.

- (b) 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 or leased to the public in the usual course of business.

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.

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 here, if the person both owns and operates distribution equipment for the products.

- 6. METRO or a Contractor may count toward its Program goals the following expenditures to SBE/DBE firms that are not manufacturers or regular dealers:

- (a) The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by METRO to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (b) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by METRO to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (c) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by METRO to be reasonable and not excessive as compared with fees customarily allowed for similar services.

7. METRO **will not count** the participation of a SBE or DBE toward satisfaction of the Prime Contractor's goal **until** the amount being counted toward the Contract Goal has been paid to the SBE or DBE.

In calculating the **Annual Goal**, METRO will count work done by all Certified SBEs and DBEs (as Subcontractors and/or Prime Contractors) for contracts that are non Program-Eligible Contracts and contracts that are Program-Eligible Contracts.

The Program is intended to provide opportunities to Small Businesses (defined herein to include Disadvantaged Businesses). The Program assumes and requires the active participation of Small Businesses in discharging contractual obligations. Consistent with the discussions herein, Small Businesses and Disadvantaged Businesses may not be used as front businesses for large firms and must be actively involved in the operations of the business and the work on METRO's contract.

VI.

ELIGIBLE FIRMS

A. Requirements for Eligibility as Small Business (SBE)

To be eligible for certification as a Small Business, each applicant must:

1. Demonstrate that the firm's gross revenues or number of employees averaged over the past three years, inclusive of any affiliates as defined by 13 C.F.R. §121.103, does not exceed the size standards as defined pursuant to Section 3 of the Small Business Act;
2. Submit a certification of the net worth of each owner of the firm;
3. Demonstrate that the net worth of each owner does not exceed \$750,000, exclusive of principal residence and the value of the Small Business.

B. Requirements for Eligibility as Disadvantaged Business (DBE)

To be eligible for certification as a Disadvantaged Business, each applicant must:

1. Demonstrate that the applicant meets all of the Requirements of Eligibility as Small Business stated above, in Section A. A Disadvantaged Business must necessarily **qualify as a Small Business**.
2. Demonstrate that at 51 percent of the business is owned by one or more individuals who are both socially and economically disadvantaged as defined herein and at 49 Code of Federal Regulations (CFR) Part 26 Section 26.5; or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
3. Demonstrate that management and daily activities of the business are **controlled** by one or more of the socially and economically disadvantaged individuals who own it.

The designation that a Small Business is also a Disadvantaged Business is **optional and voluntary** with the Program applicant. **No additional credits or incentives** will be given for a designation of Disadvantaged Business status.

C. Certification Process

1. A business seeking certification as a Small Business or Disadvantaged Business must submit an application to METRO on the prescribed form, affirming under penalty of perjury that the business qualifies as a Small Business or Disadvantaged Business.

2. If requested by METRO, the applicant must provide any and all materials and information necessary to demonstrate active participation in the control, operation, and management of the business.
3. METRO will certify the applicant as a Small Business or Disadvantaged Business or provide the applicant with written justification of its denial of certification within 90 days after the date METRO receives a satisfactorily completed application from the applicant.
4. METRO's staff will review and evaluate applications, and may reject an application based on one or more of the following:
 - (a) the application is not satisfactorily completed;
 - (b) the applicant does not meet the requirements of the definition of a Small Business or Disadvantaged Business;
 - (c) the application contains false information;
 - (d) the applicant does not provide required information in connection with the certification review conducted by METRO.
5. METRO may reject any application for certification or terminate the certification of any Disadvantaged Business if it determines that the actual management and daily activities of the business are not controlled by one or more of the socially and economically disadvantaged individuals who own the business.

D. Reciprocal Certification

METRO has developed partnerships with other government agencies and with private organizations to utilize a process of reciprocal certification. Therefore, certifications with certain other government agencies and private agencies that employ the same criteria to determine small business or disadvantaged business status may be utilized in applying for certification with METRO, i.e. Texas United Certification Program, Small Business Administration, Port of Houston Authority, etc. Any governmental agency certification that relies solely on race, ethnicity or sex for eligibility may not be used for reciprocal certification.

E. Protests

An applicant may protest METRO's denial of its application for certification by filing a written protest with METRO within 30 days after the date of the notice of the disposition to the applicant. METRO staff will then prepare a recommendation for review by the President & CEO. The decision of the President & CEO is final.

F. Recertification

1. The certification is valid for a three-year period beginning on the date METRO certified the applicant as a Small Business or Disadvantaged Business.
2. Upon expiration of the three-year period, a business that desires recertification must:
 - (a) return a completed recertification form as provided by METRO; and
 - (b) comply with the requirements specified in this section which apply to the certification process.

G. Revocation

METRO shall revoke the certification of a business if it is determined that a business does not meet the definition of a Small Business or Disadvantaged Business or that business fails to provide requested information in connection with a certification review conducted by METRO. Prior to taking formal action, METRO staff shall provide the business with written notice of the proposed revocation. METRO staff shall then prepare a recommendation regarding the proposed revocation for review by the President & CEO. The decision of the President & CEO is final.

H. Certification Reviews

1. METRO will conduct random certification reviews of certified businesses by auditing them to verify that the information submitted by a business is accurate, and that the business remains eligible after certification has been granted. Certification is subject to revocation if it is determined that a business does not qualify as a METRO Small Business or Disadvantaged Business under the terms of this program. Certification reviews may be conducted for any business for which METRO determines a certification review is warranted.
2. Businesses subject to certification reviews must provide METRO with any information requested to verify the certification eligibility of the business.

I. Limitations

Notwithstanding any other provision of this program, except upon a finding of good cause by METRO, a firm is no longer eligible to participate in the Program after its gross receipts or number of employees exceed the size standards established by this program.

J. Changes in Certification Status

1. If a Small Business or Disadvantaged Business has used a reciprocal certification to apply to METRO and it experiences any change in its certification status with its non-METRO certifying agency (i.e. amendments, termination, graduation), the business is required to immediately notify METRO. Failure to notify or undue delay in notifying METRO shall be grounds for sanctions by METRO from participation in the Program. At its discretion, METRO may require the certifying agency to provide any relevant information regarding the change in certification status of the Small Business or Disadvantaged Business.
2. If a certifying agency (non-METRO) decertifies or removes the reciprocal certification from a Certified Small Business or Disadvantaged Business participant in the Program, that business shall be disqualified from further participation in the Program until recertified or certified by another agency. Disqualification will occur sixty (60) days after the certifying agency decertifies or removes its certification.

K. Graduation Procedures

METRO may graduate a Small Business or Disadvantaged Business from eligibility in the Program. If so graduated, a business may still compete for METRO work as a Bidder or Proposer and is still eligible to contract to work on METRO Projects. However, its participation will not be counted toward satisfaction of any Contract Goals.

1. A business will be graduated from the Program when it has maintained gross receipts or total employment levels averaged over three (3) consecutive years which exceed the following schedule.

METRO defines "small business" as set forth in 13 CFR, Part 121 - "Size Standards Used to Define Small Business Concerns" for the Small Business Administration (SBA). If a particular industry is not listed below, please refer to the SBA standards.

Industry	Size Standard (Millions \$)
Accounting, Auditing and Bookkeeping	6.0
Architecture Services	4.0
Computer Integrated Systems Design	21.0
Computer Programming Services	21.0
Construction - Special Trade Contractors	12.0
Detective, Guard and Armored Car Service	10.5
Engineering Services	4.0
Finance, Insurance & Real Estate	6.0
Fire, Marine & Casualty Insurance	1,500 employees
General Construction	28.5
Heavy Construction, Non Building	28.5
Real Estate Agents & Managers	1.50
Security Systems Services	10.5
Services (Not elsewhere classified)	6.0
Surveying Services	4.0
Tire Retreading and Repair Shop	6.0
Travel Agencies	3.0
Wholesale Trade	100 employees

2. Firms which have achieved the size standards identified in subsection (1) above will be deemed to have reached a competitive status. METRO shall review as part of the certification or recertification process the financial revenue or relevant data of firms to determine whether the size standards identified in subsection (1) have been met.
3. Businesses that have graduated from the Small Business Program in accordance with this section or have been decertified may not be included in future small business development incentive programs.
4. Industries not included on the table above will be reviewed on a case-by-case basis.
5. Businesses may appeal, after one year, based on presentation of substantive evidence that it now qualifies based on SBA standards.
6. A business will also be graduated from the Program after nine (9) years of certification. Upon graduation based on length of time in the Program, a business may petition METRO's Office of Small Business for a limited recertification upon a showing of good cause.

Decisions by METRO regarding certification, revocation, limitations or graduation are subject to the dispute resolution procedures of Section XI, C herein.

VII.

CONTRACTOR'S UTILIZATION PLAN

METRO requires that every Proposer submit a Contractor's Utilization Plan (the "Contractor's Utilization Plan" or the "Plan") when submitting its bid or Proposal or response to request for qualifications. The Plan should set forth how the Contract Goal for the proposed project is to be met. The Plan will be used by METRO as a factor in evaluating whether a Proposer has complied with the requirements of the Program and has made Good-Faith Efforts to satisfy the Contract Goal.

The Plan should provide a full description of the proposed participation of SBEs and/or DBEs with the Proposer in the event the Proposer is awarded a contract. The Plan must include a list of Certified SBE/DBE Businesses proposed as Subcontractors and suppliers, and a description of the scope of work to be performed. The Plan must also include a detailed statement of the dollar value and percentage amount for each Small Business or Disadvantaged Business Subcontractor. When requested, the Plan should provide a time schedule showing the proposed utilization of SBEs and/or DBEs during the contract.

In addition to the above, METRO requires the following in each Plan:

A. Competitive Bids

1. A Plan submitted as a part of a competitive bid should be a simple, straight-forward statement outlining SBE/DBE participation, inclusive of scope, responsibilities and percentage of work. Failure to submit a completed Plan will result in a bid being deemed non-responsive.
2. A Plan must include letters of intent or executed subcontracts for each listed Small Business or Disadvantaged Business.
3. A Plan must include a pledge of prompt payment to the SBE and DBE Subcontractors.
4. An affirmative statement by the Bidder that it has adhered to METRO's Nondiscrimination Mandate and has not discriminated against any Small or Disadvantaged Business in considering subcontracting opportunities on the basis of race, color, sex, religion, national or ethnic origin, age or disability.

B. Request For Proposals (other than Hybrid Delivery System or Joint Development Projects)

1. A Utilization Plan submitted in response to a request for proposal or request for qualifications (other than Hybrid Delivery System or Joint

Development Project as discussed below) shall be responsive to the instructions and requirements for the Contractor's Utilization Plan as set out in the request for proposal or request for qualifications.

2. The submitted Utilization Plan is required to provide the same information required of competitive bids (as stated above) as well as any additional information specified in the request.

C. Hybrid Delivery System and Joint Development Projects

1. The Plan shall contain a full and detailed description of the involvement of proposed SBEs or DBEs with the project.
2. The Plan must set forth the name, title and business relationship of all SBEs or DBEs that the Proposer plans to utilize.
3. The Plan must describe with significant specificity the proposed work to be done by the SBEs and DBEs, including scope and percentage of work to the total contract dollar value.
4. The Plan should identify and discuss any specific assignments given to SBEs or DBEs not mentioned previously.
5. The Plan should discuss the Proposer's use of any recommended small business enhancement features, i.e. mentoring program, bonding and insurance assistance, joint venture, specialized training, etc.
6. The Plan must include letters of intent or executed subcontracts for each listed Small Business or Disadvantaged Business.
7. The Plan must include a pledge of prompt payment for the SBE/DBE Subcontractors.
8. The Plan must include an affirmative statement by the Proposer that it has adhered to METRO's Nondiscrimination Mandate and has not discriminated against any small or disadvantaged business in considering subcontracting opportunities based on race, color, sex, religion, national or ethnic origin, age or disability.

Where allowed by law, METRO may require a Proposer to include only those businesses with a **Significant Local Presence** in its Contractor's Utilization Plan.

The Proposer **shall adhere to the Plan** submitted unless a waiver is received from the Director of the Office of Small Business Development. Any changes in the Plan regarding the proposed use of SBEs or DBEs in discharging the contract duties must be approved by the Small Business Development Director. The approval of the Small Business Development Director will not be unreasonably withheld upon a showing of good cause to make the change.

If the Proposer is unable to meet the Contract Goal, the Proposer must submit documentation of Good-Faith Efforts to meet the Contract Goal. Such documentation shall be presented to the Office of Small Business Development Director for review. Good Faith Efforts are more fully described in the accompanying Procedures.

METRO may **terminate the contract** of any Contractor who has failed to make Good-Faith Efforts to meet a Contract Goal or **suspend** any Prime Contractor or Subcontractor who fails to adhere to the requirements of the Program.

Prior to being issued a Notice to Proceed or other notification to begin the work, the successful Proposer shall execute written contracts with all of its SBE/DBE subcontractors. Prior to award, the Contractor shall designate a SBE/DBE contact person who will administer the Contractor's Utilization Plan and who shall be responsible for maintenance of records of Good-Faith Efforts to comply with the Program.

After award, the Contractor shall do the following: (1) submit METRO's Utilization Reports to the Office of Small Business Development; (2) report to METRO any requested changes in the implementation of the Contractor's Utilization Plan, including the utilization of identified SBEs or DBEs; (3) submit all disputes with SBEs and DBEs that are unable to be resolved by the Small Business Development Director to mediation; and (4) make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of the contract. Disputes relating to payment of SBEs or DBEs shall be submitted to mediation in the same manner as any other dispute.

In the event a Certified SBE/DBE is suspended or displaced for any reason, the Contractor shall make a Good-Faith Effort to replace that business with another Small Business or Disadvantaged Business.

METRO will utilize language in its contracts to require Contractors to make Good-Faith Efforts to adhere to its submitted Plan. Failure to do so may be deemed a default and grounds for termination of the contract.

After award, METRO may conduct random interim audits of a Contractor's Utilization Plan and the manner that it is being administered. The audit may include verification of SBE/DBE utilization as reported, examination of scope of SBE/DBE utilization, and timeliness of performance.

After award, METRO may conduct random interim audits of contract payments to SBEs and DBEs. The audit will review payments to SBE/DBE Subcontractors to ensure that the actual amount paid to SBE/DBE Subcontractors equals or exceeds the dollar amounts stated in the Plan or Utilization Reports.

VIII.

PROCEDURES TO ENHANCE SMALL BUSINESS/DISADVANTAGED BUSINESS ENTERPRISE OPPORTUNITIES

As part of its Small Business/Disadvantaged Business Program, METRO has adopted its *Procedures to Enhance METRO's Small Business/Disadvantaged Business Enterprise Opportunities* ("Program Procedures" or "Procedures"). These Procedures are designed to provide full or fair opportunities for Small Businesses and Disadvantaged Businesses to be able to do work with METRO. The Procedures are an integral operational component of the Program. All Program participants (Contractors, Small Businesses, and Disadvantaged Businesses) are required to adhere to the requirements of the Program as set forth. Therefore, the Procedures are incorporated herein for all purposes. All defined terms herein apply to the Procedures.

IX. ACCOUNTABILITY MEASURES

The effectiveness of the Program will be measured by a review of data indicating prime and subcontract awards to Small Businesses and Disadvantaged Businesses. Program effectiveness measurements will also include efforts by METRO staff to provide **prime contracting opportunities** for Small Businesses and Disadvantaged Businesses. At the end of each contract, the Program staff will prepare a report on the utilization of firms in the Program. Data in this report will include information on the gross income size of the firms participating on each contract and information on the utilization of Small Businesses and Disadvantaged Businesses with each contract. Each project manager and procurement officer will continuously maintain and compile monthly information relating to the department's use of Small Businesses and Disadvantaged Businesses, including information regarding utilization of Small Businesses and Disadvantaged Businesses as Prime Contractors and Subcontractors and attainment toward the Contract Goals.

At the end of a contract, METRO shall require a Contractor to report to the agency the identity and the amount paid to each Small Business or Disadvantaged Business to whom the Contractor has awarded a subcontract for the purchase of supplies, materials and equipment.

METRO shall prepare a consolidated report based on a compilation and analysis of the reports submitted by each project manager and procurement officer and information provided by the Accounting Department. This record-keeping system will include the submittal of the Progress Assessment Report of Work Subcontracted that identifies and assesses Small Business/Disadvantaged Business contract awards, Prime Contractors' progress in achieving Small Business/Disadvantaged Business Contract Goals, and other Small Business/Disadvantaged Business development and contracting efforts. Specifically, METRO will maintain records showing:

1. Outreach efforts by METRO, including targeted outreach, to inform potentially eligible businesses of procurement opportunities at METRO.
2. Awards to Small Businesses and Disadvantaged Businesses, including names of Contractors and Subcontractors, nature of the work/services performed, and the percentage of SBE/DBE participation per contract. To assist, METRO will obtain regular reports from Prime Contractors on their progress in meeting contractual SBE/DBE commitments;
3. Specific efforts to identify and award contracts to Small Businesses and Disadvantaged Businesses;
4. Copies of direct mailings to Small Businesses and Disadvantaged Businesses;

5. Pre-bid conference information as it relates to METRO's Small Business/Disadvantaged Business Program;
6. Requests for assistance from Small Businesses/Disadvantaged Businesses interested in bidding/proposing on METRO contracts and subcontracts;
7. Workshops, seminars and training programs conducted for Small Businesses/Disadvantaged Businesses; and
8. Efforts to assist Small Businesses/Disadvantaged Businesses in acquiring bonding and insurance.

METRO staff will submit quarterly Small Business/Disadvantaged Business participation reports to the METRO Board. These reports shall include:

1. The number of contracts awarded to Small Businesses and Disadvantaged Businesses;
2. A description of the general categories of contracts awarded to Small Businesses and Disadvantaged Businesses;
3. The dollar value of contracts awarded to Small Businesses and Disadvantaged Businesses;
4. The percentage of the dollar value of all contracts awarded to Small Businesses and Disadvantaged Businesses during the preceding quarter;
5. An indication of whether or not and the extent to which the percentage was a reasonable representation of Small Business/Disadvantaged Business utilization for the region; and
6. The dollar value and number of contracts awarded to Small Businesses and Disadvantaged Businesses as Prime Contractors.

An Annual Report will be made to the Board of Directors of METRO addressing the number of contracts awarded to Small Businesses and Disadvantaged Businesses, general categories of contracts awarded to Small Businesses and Disadvantaged Businesses, dollar value of contracts awarded and an indication of the Small Business participation during the reporting period in meeting Contract Goals and the overall participation of Small Businesses and Disadvantaged Businesses in meeting the Annual Goals.

X.

SANCTIONS AND SUSPENSIONS

METRO has authorized the imposition of sanctions against Contractors, Small Businesses and Disadvantaged Businesses who violate the Program or its Program Procedures. Contractors may also be sanctioned for failure to make Good-Faith Efforts to utilize Small Businesses or comply with its submitted Plan to utilize such businesses. Small Businesses and Disadvantaged Businesses that participate in the Program may be sanctioned for failing to comply with the Program's procedures or failing to make Good-Faith Efforts when acting as a Prime Contractor.

METRO has delegated authority to the Compliance Resolution Committee (CRC) to hear allegations of misconduct regarding the Program and to issue sanctions, including suspensions, if appropriate. No suspension shall be imposed by the CRC except upon evidence of specific conduct on the part of a business that demonstrates actions inconsistent with, or in direct contravention of, specific applicable requirements for good-faith efforts.

A. Suspensions

Sanctions may include a suspension from doing business with METRO for a designated time period. Suspensions will be imposed only after the appropriate due process, i.e. notice and an opportunity to be heard.

1. Suspensions may be for any length of time not to exceed five (5) years.

Suspensions in excess of one year shall be reserved for cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in contravention of applicable requirements, violations of METRO's nondiscrimination policy, cases in which the business has been previously suspended or reprimanded, violations of local, federal or state law or regulations of a governmental body, or other similarly egregious conduct.

2. In determining the length of any Suspension, the CRC shall consider the following factors:
 - (a) Whether the failure to comply with applicable requirements involved misconduct or whether it may be reasonably concluded that the failure to comply resulted from a misunderstanding on the part of the business of the duties imposed on it by the Policy and Procedures of METRO's Program;
 - (b) The number of specific incidences of failure to comply by the business;

- (c) Whether the business has been previously suspended or reprimanded in any manner;
 - (d) Whether the business has failed or refused to provide the CRC with any information requested by the CRC or required to be submitted to the CRC;
 - (e) Whether the business has materially misrepresented any applicable facts in any filing or communication to the CRC;
 - (f) Whether the business has violated METRO's Nondiscrimination Mandate;
 - (g) Whether any subsequent restructuring of the subject business or other action has been undertaken to cure the deficiencies in meeting applicable requirements; and
 - (h) Whether the business has violated local, federal or state law or ordinances or regulations of a governmental body.
3. Before considering a possible Suspension based on an allegation of discrimination in the selection of a Subcontractor, METRO will consider the outcome and findings of the arbitration between the Prime Contractor and Subcontractor as required by Section XI, B or any other relevant judicial proceeding involving the Parties.

B. Due Process Procedures

1. Compliance Resolution Committee.

A decision to implement a suspension may be taken after notice and an opportunity for a hearing before the CRC. The CRC will be comprised of two Office of Business Development ("OBD") staff persons, one Procurement/Contracts person and one disinterested party.

2. Notice

- (a) Prior to the imposition of any suspension, the business shall receive notice setting forth the grounds for the proposed suspension and setting a date, time, and place to appear before the CRC for a hearing on the matter.
- (b) Any notice required or permitted to be given hereunder to any business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to its most recent address as specified in METRO records or in the contract.

3. Hearing Procedures

Proceedings before the CRC shall be conducted informally, provided that each party may be represented by counsel and may present evidence and cross-examine witnesses. The decision shall be reduced to writing, detailing findings and conclusions. A copy of the draft decision shall be provided to the parties for an opportunity to review and comment to the CRC. The CRC shall thereafter review any comments received and issue a recommendation to the Senior Director of Business Development. The Senior Director will issue a written notice of the decision to the affected party and offer an opportunity and timeline to appeal.

C. Appeals

1. Appeals from a decision imposing sanctions shall be initiated by filing a written notice of appeal with the Sr. Director of Business Development no later than fifteen (15) days following the mailing of notice of the decision to the CRC.
2. The appeal hearing is to take place as soon as possible. The Sr. Director of Business Development's authority is limited to determining whether the sanctions imposed should be upheld based on the evidence presented at the initial hearing. The Senior Director will prepare a recommendation to the President and CEO. The President and CEO will make the final decision regarding an appeal from a decision to impose sanctions.

D. Arbitration In Matters Relating To Suspensions

An arbitration may be requested after a final decision of the President and CEO on any matter wherein a Suspension has been imposed.

1. Appeals from a final decision imposing a Suspension shall be initiated by filing a written notice of appeal with the President and CEO no later than fifteen (15) days following the mailing of notice of the final decision of the President and CEO. The appeal notice shall request an Appeal Arbitration and shall name three arbitrators that the appellant would be willing to have conduct a final and binding arbitration. The President and CEO shall also name three Arbitrators to conduct the arbitration. The names of all six selected Arbitrators shall be placed in a container, and one is to be picked randomly by lottery-style selection. The lottery-style selection shall be made in the presence of the two parties or their representatives, if requested. The Arbitrator selected must conduct the Appeal Arbitration in Harris County, Texas using the Commercial Arbitration Rules of the American Arbitration Association. Each party to the Appeal Arbitration will share equally the cost of the arbitration.
2. The Appeal Arbitration is to take place as soon as possible after the selection of an arbitrator. The Appeal Arbitrator's authority is limited to

determining whether the Suspension imposed should be upheld based on the evidence presented at the initial hearing. By being a party in an appeal arbitration, METRO ***does not waive its immunities***. The arbitration decision shall be in writing, detailing all findings and agreements by the parties, and is to be issued within fifteen (15) business days from the date of the arbitration. The arbitration decision is a nonbinding order, appealable by any party.

XI.

DISPUTE RESOLUTION

METRO seeks to amicably resolve disputes relating to the operation of the Program. Mediation and grievance procedures will be employed for dispute resolution.

A. Mediation of Prime Contractor and Small Business Disputes

Where there are disputes between a Prime Contractor and its SBE or DBE Subcontractors, the parties are requested to utilize dispute resolution procedures. Upon notification of dispute, the Sr. Director of Business Development may make inquiries of the nature of the dispute to the parties, individually or jointly. The Sr. Director of Business Development may direct the parties to mediation before a neutral third party to attempt to resolve their dispute. Mediation procedures shall be incorporated by reference in all Program-Eligible Contracts. METRO shall not be a party to the mediation. No decision or agreement resulting from the mediation between the Contractor and the SBE or DBE shall be binding on METRO. The costs of mediation will be divided equally among the parties.

B. Arbitration of Discrimination Disputes Between Prime Contractor and Small Business or Disadvantaged Business

Disputes between Prime Contractor and SBEs or DBEs regarding allegations of discrimination in the selection of Subcontractors or the operations of any Program requirements will be required to be submitted to arbitration (after voluntary mediation if such mediation is desired by the parties). METRO's contracts with its Contractors shall require arbitration of disputes with SBEs and DBEs relating to allegations of discrimination based on race, color, sex, religion, national or ethnic origin, age or disability. METRO shall not be a party to the arbitration. The costs of the arbitration will be divided equally among the parties unless otherwise assessed by the Arbitrator as part of the Arbitrator's award. The parties to the arbitration may mutually agree on the selection of an Arbitrator or use a lottery-style selection method similar to the one described in Section X, D, 1. No decision, award, or agreement resulting from the arbitration between the Contractor and the SBE or DBE shall be binding on METRO. However, METRO shall take into consideration the result and findings of such arbitration in consideration of any Suspension action by METRO for an alleged violation of its Nondiscrimination Mandate.

C. Grievance Procedure for Small Business Development Director Decisions

Any Contractor, SBE, DBE, or other business directly aggrieved by a decision of the Small Business Development Director or his or her designees may initiate a grievance hearing by filing written notice with the Small Business Development Director. The grievance notice shall set forth clearly and concisely the matters about which the aggrieved person complains and shall specify the name, mailing address, street

address, and telephone number of each person having a particular interest in the dispute.

1. Notice

Upon receipt of a grievance notice, the Small Business Development Director may, when appropriate, attempt to resolve informally the matter during a period not to exceed thirty (30) days if the parties are not already at an impasse on the issues presented. Failing informal resolution, a Grievance Officer shall be selected by the President and CEO who shall arrange for a date, time, and place for a grievance hearing. Notice of the date, time, and place of the hearing shall be delivered by the Small Business Development Director to the aggrieved person by certified mail.

2. Hearings

Grievance hearings shall be informal. Participants shall include the Small Business Development Director or his or her designees and the aggrieved person or a representative of the aggrieved person. The Grievance Officer may continue hearings or schedule additional hearings or informal conferences if the parties mutually agree to such additional meetings.

3. Resolution

The Grievance Officer shall, following the conclusion of the proceedings, issue a report and recommendation to the President and CEO, who shall cause a copy thereof to be transmitted to the aggrieved person, which shall include any suggestions or recommendations from the President and CEO for resolving the dispute between the parties. The report and recommendation are not binding upon any party and are not subject to appeal. However, the President and CEO may ultimately uphold or reject the Grievance Officer's report and issue a final report.

XII.

SMALL BUSINESS DIRECTORY

METRO will create a Small Business Directory that lists Small Businesses and Disadvantaged Businesses categorized by types of firms to facilitate identifying businesses with capabilities relevant to a particular specification. Each business listing will contain the business name, contact person, address, phone number, legal structure of the business, and details concerning the company's business specialty(ies). North American Industrial Classification System (NAICS) will be identified for each company. The directory will be continuously updated and maintained on the computer and on hard copy. In compiling this directory, METRO will identify and certify as many Small Businesses and Disadvantaged Businesses as possible that have the potential of doing business with METRO.

METRO will maintain and have available an updated Small Business Directory and source list(s) per bid/proposal solicitation to facilitate identifying Small Businesses and Disadvantaged Businesses with capabilities relevant to general contracting requirements and to particular solicitations. METRO will make the directory and source list(s) available to Bidders and Proposers in their efforts to meet the Small Business requirements.