



Metropolitan Transit Authority of Harris County

## **SMALL BUSINESS ENTERPRISE PROGRAM**

Revised: May 15, 2024



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## I. SMALL BUSINESS PROGRAM POLICY

The METRO policy is to promote equal opportunity and nondiscrimination in all its procurement matters in accordance with state and federal laws. Small Businesses need opportunities to obtain a fair proportion of METRO's procurement business. The METRO Small Business Enterprise (SBE) Program ("Program") was created to provide additional opportunities for 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 contracting and procurement opportunities.

The METRO Small Business Enterprise (SBE) Program applies to certain contracts (federally and locally funded) and expenditures. It is a goal-oriented program, requiring contractors who receive contracts from METRO 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 METRO-certified Small Business Enterprise (SBE) and federally certified Disadvantaged Business Enterprise (DBE) firms in METRO contract and procurement activities. This Program is designed to create a level playing field in which Small Businesses can compete fairly in all facets of the Authority'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 its operation.

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

**The Small Business Enterprise (SBE) Program is a separate program from METRO's Disadvantaged Business Enterprise (DBE) Program, which is administered by the federal government. Please see METRO's Disadvantaged Business Enterprise (DBE) Program for guidelines and rules.**

**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. This policy prohibits discrimination based on race, color, sex, religion, national or ethnic origin, age or disability. The Small Business Enterprise (SBE) 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 the METRO Nondiscrimination Mandate in the operation 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 through its selection of subcontractors. In a subcontracting market that 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 that METRO seeks to achieve annually for overall Small Business participation.

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

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

Commercially Useful Function – a discrete task or group of tasks, the responsibility by which performance shall be discharged via the Small 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 is responsible. A Small 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 based on normal industry practice for the type of work involved. METRO may waive this requirement upon demonstration that the amount of subcontracting proposed is appropriate to the industry standard for the type of work involved.

Compliance Resolution Committee (CRC) - a five (5) member committee chaired by the Deputy Chief Procurement Officer 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 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 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 in 49 Code of Federal Regulations (C.F.R.) Part 26 Section 26.5. Disadvantaged Business Enterprises satisfy METRO Small Business goals. To qualify as a Disadvantaged Business, the business entity must necessarily meet the requirements of a Small Business herein. (See the METRO Disadvantaged Business Enterprise (DBE) Program for guidelines and procedures).

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.

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

Joint Venture – METRO or a Contractor may count toward its Contract goals a portion of the total dollar value of the contract with an eligible Joint Venture equal to the distinct, clearly defined portion of the work of the contract that the Small Business or Disadvantaged Business partner performs with its own forces.

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. This provision will automatically update to reflect changes in both state and federal law.

METRO Small Business Enterprise or SBE Program – the METRO goal-oriented Program to provide full and fair procurement opportunities to Certified Small Business Enterprises.

Non-Program Eligible Contracts – contracts awarded by METRO that do not have a Contract Goal but have Small Business or Disadvantaged Business participation as Prime and/or subcontractor. SBE and DBE participation on Non-Program Eligible contracts counts towards the Annual Goal.

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 Enterprise Program of the Metropolitan Transit Authority of Harris County, Texas (METRO).

Program-Eligible Contract – a contract awarded by METRO that is awarded with a Contract Goal and which requires the utilization of Small Businesses. 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. Notwithstanding these exemptions, these contracts will be evaluated for small business opportunities if appropriate and feasible. In accordance with the U. S. Department of Transportation DBE Program, METRO will establish Small Business goals on all DOT-funded contracts and expenditures that have subcontracting opportunities, without regard to the dollar amount of the contract.

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 qualification or competitive bid.

Sanctions – punitive actions taken by METRO after notice and opportunity to cure against a Contractor or Certified Small Business or Disadvantaged Business for failure to adhere to the METRO Program or failure to comply with the requirements of the Program. Imposed Sanctions may include Suspension, i.e., suspend the right of a business entity to do business with METRO for a defined period or any lesser punitive action.

Small Business Enterprise (SBE) or Small Business – 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 \$2.047 million. Certified Disadvantaged Businesses are defined herein to be a Small Business. The net worth requirement of a small business will automatically be updated to match federal guidelines.

SBE Prime – a firm that meets the definitions of both a Prime and SBE firm.

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 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 origins is 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), the Commonwealth of the Northern Marinas Island, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia or Hong Kong.
  - (e) “Subcontinent Asian American” which includes persons whose origins is 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.

## **IV. SCOPE OF THE PROGRAM**

The intent of METRO's Small Business Enterprise Program is to provide full and fair opportunities for equal participation by Small Businesses at METRO. Therefore, by design, the Program's applicability is sufficiently broad 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 use Small Businesses in the discharge of contracts with METRO.

The Small Business Enterprise Program applies 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. Notwithstanding these exemptions these contracts will be evaluated for small business opportunities if appropriate and feasible. In accordance with the U. S. Department of Transportation DBE Program, METRO will establish Small Business goals on all DOT-funded contracts and expenditures that have subcontracting opportunities, without regard to the dollar amount of the contract.

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 in other procurement areas (in addition to the Program Eligible Contracts) whenever possible. METRO encourages the utilization of Small 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 utilize Small Businesses within a specific contract.

### **A. Annual Goal(s)**

The Annual Goals for the Program will be set by the METRO Board of Directors and reviewed each year. Annual Goals are aspirational and designed to inform METRO of its overall progress in utilizing Small Businesses. The Annual Goals as set with the adoption of the Program are 35% for overall Small Business Participation. These goals are set



based on availability and opportunity. The Annual Goals are satisfied by the performance of individual contracts and METRO's overall use of SBEs 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 Office of Economic Business Opportunity, in conjunction with the initiating METRO department. The Office of Economic Business Opportunity (OEBO) will make the final determination on the goal. 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 participation in 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.

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. Contractors are mandated to select subcontractors in a nondiscriminatory manner.

The initiating METRO department may seek permission from the Office of Economic Business Opportunity to **exempt** a Contract from a Contract Goal if it demonstrates 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 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 participation level based on availability would produce negligible or very limited Small Business opportunity.

All Contract Goal exemptions must be approved by the Deputy Chief Procurement Officer or his or her designee.

Contract Goals are applied to all Program-Eligible Contracts, unless the contract is otherwise exempt or goals have been waived. In accordance with the U. S. Department of Transportation DBE Program, METRO will establish Small Business goals on all DOT-funded contracts that have subcontracting opportunities, without regard to the dollar amount of the contract.

### C. Counting Small Business/Disadvantaged Business Participation<sup>1</sup>

Non-Small Business/Disadvantaged Business Primes must meet the Contract Goal by utilizing a certified SBE, DBE or a combination of both subcontractors. Small Business and Disadvantaged Business Primes may meet the Contract Goal by counting self-performance, subcontracting to Small Business and/or Disadvantaged Business subcontractors or a combination of both. SBE/DBE Primes are not allowed to self-perform 100% of Program Eligible contracts and must subcontract at a minimum the Contract Goal percentage. For SBE/DBE Primes, a minimum of fifty percent (50%) of the Contract Goal percentage must be subcontracted to Small Business, Disadvantaged Business or a combination of Small/Disadvantaged Business firms.

Small Business participation is counted as follows:

1. Once a firm is determined to be an eligible Small Business, in accordance with this policy, the total dollar value of the contract or subcontract awarded to the Small Business is counted toward the applicable Contract Goal, 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 SBE/DBE Prime Contractor toward the applicable Contract Goal if the SBE/DBE Prime Contractor subcontracts with other Small or Disadvantaged Businesses to complete 100% of the work. However, if the SBE/DBE Prime Contractor utilizes a Non-Small Business subcontractor, METRO will count the total dollar value of the awarded contract to the SBE/DBE Prime Contractor, minus the dollar amount subcontracted to non-small businesses.
  - (b) If the Small 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.

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<sup>1</sup> METRO originally implemented this provision as part of a pilot program in July 2014. The Pilot Program was in effect from October 1, 2014 – September 30, 2015. The Office of Small Business (currently Office of Economic Business Opportunity) submitted progress reports during FY15. The pilot program was made permanent by Board action in January 2016.

- (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 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 equal to the distinct, clearly defined portion of the work of the contract that the SBE performs with its own forces toward the Contract Goals.
- 3. METRO or a Contractor may count toward its Contract Goal only expenditures to Small Businesses that perform a Commercially Useful Function in the work of a contract. A Small 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 performing, managing, and supervising the work involved. To determine whether a SBE 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 may enter into subcontracts. If an SBE Contractor subcontracts more than seventy percent (70%) of the contract work to another firm, 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 an 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; 100 percent of such expenditures to a SBE or DBE manufacturer and 40 percent to a SBE or DBE distributor 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 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 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 specification 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.

- (c) For this section, a distributor is a firm that is permitted to drop-ship from manufacturers if the firm has a distributorship agreement or assumes all responsibility for the materials after point of origin. The distributor is not required to have a warehouse or inventory of products.

6. METRO or a Contractor may count toward its Contract Goal the following expenditures to SBE 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 toward satisfaction of the Prime Contractor's Contract Goal **until** the amount being counted toward the Contract Goal has been paid to the SBE.

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 may not be used as front businesses for large firms and must be actively involved in the operation of the business and the work on METRO contract.

## **VI. ELIGIBLE FIRMS**

### **A. Requirements for Eligibility as a Small Business Enterprise (SBE)**

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

1. Demonstrate 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 in the firm;
3. Demonstrate the net worth of each owner does not exceed \$2.047 million, exclusive of principal residence and the value of the Small Business. (To be adjusted in accordance with federal guidelines);
4. Demonstrate that the firm has been in operation for at least one (1) year;
5. Demonstrate that the firm had at least \$5,000 in revenue for the last 12 months; and
6. Submit one (1) year of business tax returns.

### **B. Certification Process**

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

2. If requested by METRO, the applicant must provide 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 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 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;
  - (c) The application contains false information;
  - (d) The applicant does not provide the required information in connection with the certification review conducted by METRO within the specified timeframe.

C. Reciprocal Certification

METRO has developed partnerships with other government agencies and 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 Unified Certification Program, Small Business Administration, Port of Houston Authority, etc. Any governmental agency or private entity certification that relies solely on race, ethnicity or sex for eligibility may not be used for reciprocal certification.

D. Protests

An applicant may protest a METRO denial of its application for certification by filing a written protest with the Authority 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 Deputy Chief Procurement Officer. The decision of the Deputy Chief Procurement Officer is final.

E. Recertification

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

F. 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 that the 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 Deputy Chief Procurement Officer. The decision of the Deputy Chief Procurement Officer is final.

G. 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 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 requested information to verify the certification eligibility of the business.

H. 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 this Program after its gross receipts or number of employees exceeds the size standards and/or personal net worth limits established by the Program.

I. Changes in Certification Status

1. If a Small 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 all 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.

#### J. Graduation Process

METRO may graduate a Small 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 in new contracts will not be counted toward satisfaction of any Annual or Contract Goals. A firm's participation will continue to count towards any Annual or Contract Goals if the firm graduates from the Small Business Program while in the performance of the contract.

1. A business will graduate from the Program when any owner having a 5% or more interest exceeds the federal Disadvantaged Business Enterprise (DBE) personal net worth standard or if it has maintained gross receipts or total employment levels averaged over three (3) consecutive years, which exceed the standards as set forth in 13 C.F.R., Part 121 – “Size Standards Used to Define Small Business Concerns” for the Small Business Administration (SBA). (Note: Size standards are updated by the SBA periodically, therefore please refer to the Small Business Administration (SBA) website for the most recent update.)
2. Firms that have achieved the size standards pursuant to the most recent SBE-defined standards 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 one (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 in 13 C.F.R., Part 121 – “Size Standards Used to Define Small Business Concerns” for the Small Business Administration (SBA) will be reviewed on a case-by-case basis.
  5. Businesses may apply for recertification after one year, based on the presentation of substantive evidence that it now qualifies for recertification based on SBA standards.
- K. Decisions by METRO regarding certification, revocation, limitations or graduation are subject to review in accordance with Section D herein.
- L. Notification Regarding Certification

Certification is not a guarantee of nor grants any rights to a present or future contract opportunity with METRO.

## **VII. 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 subcontracting opportunities for Small Businesses.

The Office of Economic Business Opportunity’s role in the procurement process includes reviewing scopes of work for Small Business opportunities and goal establishment, reviewing the solicitations for inclusion of Small Business forms as applicable, participating in pre-bid/proposal conferences and bid/proposal evaluations for contracts with Contract Goals.

The Office of Economic Business Opportunity will establish Contract Goals on contracts with subcontracting opportunities and where Small Business capacity exists. During the evaluation process, the Office of Economic Business Opportunity will verify the receipt of required Small Business forms, the acceptable certifications of the Bidder/Proposer’s subcontractors and the commitment to the Contract Goal.

### **Pre-Solicitation:**

METRO shall indicate in its solicitations whether a particular procurement will have a Contract Goal for the utilization of Small Businesses. The Office of Economic Business Opportunity reviews METRO solicitations that are federally funded or have an estimated cost of \$100,000 or greater for Small Business subcontracting opportunities. Small Business Contract Goals will be assigned to those contracts whose scope of work demonstrates Small Business subcontracting opportunities and where Small Business capacity is found in the METRO Small Business database. Small Business Contract

Goals can be satisfied by Small Business Enterprises, Disadvantaged Business Enterprises or a combination of both.

The Office of Economic Business Opportunity will conduct outreach efforts, including targeted outreach, to inform potentially eligible businesses of procurement opportunities at METRO and will provide training programs for Small Business and Disadvantaged Business Enterprises.

The Office of Economic Business Opportunity reviews the solicitation documents with Small Business Contract Goals to confirm the inclusion of the Small Business Contract Goal and the Small Business contract language. The solicitation requires Bidders/Proposers to submit Small Business and Disadvantaged Business participation information to METRO and will be informed that the award of the contract will be conditioned, in part, upon satisfaction of the requirements established by METRO. Bidders/Proposers shall submit, at the time of the bid/proposal submittal, the required Small Business forms with their bid/proposal. Failure to submit the required forms may result in a bid/proposal being deemed non-responsive or result in a reduction of the firm's score during the procurement process.

**Contractor's Utilization Plan (CUP)** describes the utilization of Small Business Enterprises (SBE) to fulfill the Small Business Contract Goal. METRO requires that every Proposer submit a Contractor's Utilization Plan (CUP) when submitting its bid, proposal or response to a request for qualifications for solicitations with Small Business Contract Goals. The CUP should set forth how the Small Business Contract Goal for the proposed project is to be met. The CUP will be used by METRO as a factor in evaluating whether a Proposer has complied with the requirements of the Program to satisfy the Contract Goal.

The CUP should provide a full description of the proposed participation of SBEs and/or DBEs in the event the Proposer is awarded a contract. The CUP 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 CUP must also include a detailed statement of the dollar value and/or percentage amount for each Small Business or Disadvantaged Business Enterprises subcontractor. When requested, the CUP should provide a time schedule showing the proposed utilization of SBEs and/or DBEs during the contract.

The CUP must set forth:

1. The name, tax identification number and contact information of **all** the firms (Prime and subcontractors) that will participate in the contract;
2. The description of the work each firm will perform;
3. Indicate the SBE/DBE certification status of each firm;

4. The dollar and/or percentage amount of participation by each firm as applicable to the type of solicitation;
5. The classification of subcontractors, supply manufactures or dealers; and
6. A timeline for performance by SBE and/or DBE Subcontractors.

The Bidder/Proposer **must adhere to the CUP** submitted. Any changes in the CUP regarding the proposed use of Small Business Enterprises in discharging the contract duties must have prior approval by the Office of Economic Business Opportunity. Any changes to the CUP regarding the proposed use of Disadvantaged Business Enterprises must adhere to U. S. Department of Transportation 49 C.F.R., Part 26.

Non-Small/Disadvantaged Business Enterprise Bidders/Proposers are **prohibited from multiple submissions** of bids or proposals, i.e., submitting as a Prime Contractor in one submission and as a Subcontractor in another submission for the same project. Such multiple submissions may result in the disqualification of all submissions where the Bidder/Proposer is listed.

Small/Disadvantaged Business Enterprise Bidders/Proposers may submit as a Prime Contractor in one submission and as a subcontractor in **one (1)** other submission for the same project.

Non-Prime SBEs and DBEs are limited to submitting as subcontractors on only **four (4)** bid/proposal submissions for the same project. Failure to adhere to this four (4) bid/proposal limit may result in the disqualification of the offending SBE or DBE from all bids/proposals.

Agreements between a Bidder/Proposer and a Small Business or Disadvantaged Business Enterprise in which the SBE or DBE promises not to provide subcontracting quotations to other bidders/proposers shall be prohibited.

**Letter of Intent (LOI)** demonstrates the agreement between the Bidder/Proposer and all subcontractors/suppliers to participate in the performance of the contract should the Bidder/Proposer be awarded the contract. At a minimum, the Letter of Intent must set forth:

1. The Bidder/Proposer's name and business information;
2. Project name and period of performance;
3. Subcontractor/supplier's names and contact information;
4. Subcontractor/suppliers' Small Business and/or Disadvantaged Business certification status

5. Description of proposed materials or services to be performed under the agreement with the subcontractor/suppliers; and
6. Signature of the subcontractor/suppliers and Bidder/Proposer.

**Contractor Utilization Plan Pledge (Pledge)** demonstrates the Bidder/Proposer's commitment to prompt payment, disputed invoice notification, non-discrimination practices, the release of retainage and to include these clauses in its subcontractor agreements. The Pledge must set forth:

1. A pledge that all subcontractors will be paid within five (5) business days from the Bidder/Proposer receiving payment from METRO for amounts previously invoiced;
2. An affirmative statement by the Bidder/Proposer that it has adhered to METRO's Nondiscrimination Mandate;
3. A pledge to notify subcontractors, in writing, within 5 business days of either receiving a disputed invoice from the subcontractor or receiving notice from METRO of a disputed invoice and to resolve the disputed issue(s) in a timely manner.
4. For construction contracts only, retainage will be released to all subcontractors within 30 days after satisfactory completion and approval of work performed.
5. Confirmation that the Bidder/Proposer will include the above clauses in their subcontractor agreements and submit copies of the executed agreements to METRO within 15 days of contract award or the addition of new subcontractors to the CUP.

**Business Assurance Statement (BAS)** confirms the Bidder/Proposer's Small Business Contract Goal commitment, non-discrimination procurement practices, understanding of sanctions due to misrepresented or false statements and include these clauses in its subcontractor agreements. The Business Assurance Statement must set forth:

1. The Bidder/Proposer agreed to be bound by Small Business provisions set forth in the solicitation;
2. The Bidder/Proposer certifies they are legally authorized to make statements and representations in this solicitation and that the statements and representations are true and accurate;
3. The Bidder/Proposer certifies that the firm has not discriminated in its procurement practices;

4. The Bidder/Proposer understands false statements or representations or failure to implement commitments will be subject to termination and possible sanctions; and
5. Confirmation that the Bidder/Proposer will include the above clauses in their subcontractor agreements and submit copies of the executed agreements to METRO within 15 days of contract award or the addition of new subcontractors to the CUP.

#### **During Solicitation:**

The Office of Economic Business Opportunity will participate in pre-bid/proposal conferences and bid/proposal evaluation committees for all contracts with Small Business Contract Goals. The Office of Economic Business Opportunity will confirm the receipt of the required Small Business forms, the acceptable certifications and commercially useful function of proposed subcontractors, and commitment to Small Business Contract Goal.

The Office of Economic Business Opportunity will conduct outreach efforts, including targeted outreach, to inform potentially eligible businesses of procurement opportunities at METRO.

#### **Contract Award/Post-Award:**

Prior to award, Notice to Proceed or other notification to begin the work, the successful Proposer shall execute written contracts with all its subcontractors and include the clauses listed in the Business Assurance Statement and Contractor Utilization Plan Pledge. The Contractor shall designate a contact person who will administer the Contractor's Utilization Plan, online compliance system requirements, and who shall be responsible for the maintenance of records to comply with the Program.

During contract progress, the Contractor shall (1) utilize the METRO online compliance system to report all payments to subcontractors; (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) seek to resolve all disputes with SBEs and DBEs, that are unable to be resolved by the Office of Economic Business Opportunity, as expeditiously as possible; and (4) make timely payments to all persons and entities supplying labor, materials or equipment for the performance of the contract.

In the event a Certified SBE is suspended or displaced for any reason, the Contractor shall replace that business with another Small Business. Termination of a DBE team member or subcontractor shall be conducted in accordance with 49 C.F.R. Part 26.

METRO will utilize language in its contracts to require Contractors to adhere to its submitted CUP. To comply, the Contractor shall discharge its contractual duties consistent with its Contractor Utilization Plan as submitted during the bid/proposal process. If a Contractor fails to adhere to its Plan, it may be subject to the appropriate actions by METRO, including withholding retention and/or contract payment or a

declaration of contract default and termination by METRO. METRO may terminate the contract of any Contractor who has failed to meet a Contract Goal or suspend any Prime Contractor or subcontractor who fails to adhere to the requirements of the Program.

During the contract period, the Office of Economic Business Opportunity will work with the Project Managers and Contract Administrators to monitor the Contractor's Small Business Contract Goal achievement and will request a corrective action plan from Contractors who are not meeting their Contract Goal. The Office of Economic Business Opportunity will document any actions taken by METRO, the Contractor and/or the subcontractors that negatively impact the Small Business Contract Goal achievement. The Office of Economic Business Opportunity will also monitor contracts for prompt payment to subcontractors and will perform random Commercially Useful Function audits.

To ensure that all obligations under contracts with Small Business Contract Goals are met, METRO may conduct random interim audits of a Contractor's Utilization Plan and how it is being administered. The audit may include verification of SBE utilization as reported, examination of the scope of SBE utilization, and timeliness of performance and payments. Payment audits will review payments to SBE subcontractors to ensure that the actual amount paid to SBE subcontractors equals or exceeds the dollar amounts stated in the Plan. The Contractor shall bring to the attention of METRO any situation in which regularly scheduled progress payments are not made to SBE subcontractors.

Regular reviews of invoices and individual contract status will be performed to ensure that SBE's are being utilized consistent with the Contractor's Utilization Plan, and that they are being promptly paid.

At the end of the contract, the Office of Economic Business Opportunity will report the Small Business Contract Goal achievement to Procurement for close-out purposes. The Office of Economic Business Opportunity will prepare detailed monthly, quarterly and end-of-year reports demonstrating Small Business Annual Goal and Contract Goal participation, Prime and subcontractor. The Office of Economic Business Opportunity will also prepare required FTA and ARRA reports to report Disadvantaged Business Enterprise participation in keeping with 49 C.F.R. Part 26.

METRO's Small Business Enterprise Program will be incorporated into all contracts with Small Business Contract Goals. Compliance with METRO's Program is a legal obligation, and a Prime Contractor's failure to carry out its terms shall be treated as a violation of its contract with METRO. Further, future procurements will consider a firm's past compliance with the Small Business Program. Any material breach of contract may result in the termination of a Prime Contractor's contract and may subject the Contractor to all legal remedies available under all applicable laws, as deemed appropriate by METRO.

## VIII. SANCTIONS AND SUSPENSIONS

METRO has authorized the imposition of Sanctions against Contractors, Small Businesses and Disadvantaged Businesses who violate the Program. Contractors may also be sanctioned for failure to comply with its submitted Plan to utilize such businesses. Small Businesses that participate in the Program may be sanctioned for failing to comply with the Program's procedures or failing to comply with the Plan 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 of the Program.

### A. Suspensions

Sanctions may include a Suspension from doing business with METRO for a designated 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 of more than 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 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 matter;

- (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 the METRO Nondiscrimination Mandate;
  - (g) Whether any subsequent restructuring of the subject business or other action that 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 any action between the Prime Contractor and subcontractor as required by Section IX, 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. In addition to the Deputy Chief Procurement Officer, the CRC will be comprised of one representative from the following METRO departments: (1) Procurement; (2) Audit; (3) Legal and one representative named by the Chief Administrative Officer.

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 the contract.



### 3. Hearing Procedures

Proceedings before the CRC shall be conducted informally provided that each party may be represented by counsel and present evidence and cross-examine witnesses. The decision shall be reduced to writing and 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. The Office of Economic Business Opportunity 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 Deputy Chief Procurement Officer 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 Deputy Chief Procurement Officer's authority is limited to determining whether the Sanctions imposed should be upheld based on the evidence presented at the initial hearing. The Deputy Chief Procurement Officer 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.

## **IX. 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 a dispute, the Deputy Chief Procurement Officer, or his or her designee, may make inquiries of the nature of the dispute to the parties, individually or jointly. The Deputy 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 and all federally funded contracts with subcontracting goals. 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 determined among the parties.

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

Disputes between the Prime Contractor and SBEs or DBEs regarding allegations of discrimination in the selection of subcontractors or the operation of any Program requirements will be required to be submitted to arbitration (after voluntary mediation if such mediation is desired by the parties). METRO 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 cost 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. 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 taken by METRO for an alleged violation of its Non-discrimination Mandate.

## **X. SMALL BUSINESS DIRECTORY**

METRO will create a Small Business Directory that lists Small 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). The North American Industrial Classification System (NAICS) will be identified for each company. The directory will be continuously updated and maintained online. In compiling this directory, METRO will identify and certify as many Small Businesses as possible that have the potential to do business with METRO. For information regarding certified Disadvantaged Businesses, METRO will utilize the directory of Disadvantaged Business Enterprises developed and distributed by the Texas Unified Certification Program (TUCP).

The TUCP directory identifies certified Disadvantaged Business Enterprises by name, address, phone number and includes the NAICS codes for the type(s) of work each firm has been certified to perform.

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 solicitation. METRO will make the directory and source list(s) available to Bidders and Proposers in their efforts to meet the Small Business Directory Requirements.

Please Forward Any Questions to:  
Office of Economic Business Opportunity  
Metropolitan Transit Authority of Harris County  
1900 Main Street, P.O. Box 61429  
Houston, TX 77208-1429

