

DIVERSITY & ECONOMIC OPPORTUNITY DEPARTMENT

SBE CONTRACT COMPLIANCE MANUAL (NON- FEDERAL)

SECTION 100 SMALL BUSINESS ENTERPRISE PROGRAM

100 METRO POLICY STATEMENT: The Los Angeles County Metropolitan Transportation Authority (Metro) is the recipient of non-federal funds from state and local funding sources. It is Metro's policy to provide maximum opportunity for Small Business Enterprises(s) to compete and to foster increased SBE participation in its procurement and contracting program. Metro shall take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of with non-federal funds.

- A. To take all reasonable steps to ensure nondiscrimination in the award and administration of non-federally funded contracts.
- B. To create a level playing field on which SBEs can compete fairly for Metro contracts.
- C. To ensure that only firms that fully meet the eligibility requirements of the Metro SBE Program are permitted to participate as SBEs.
- D. To help remove barriers to the participation of SBEs in Metro contracts.
- E. To assist the development of firms that can compete successfully in the marketplace outside the SBE program

101 INTERPRETATION: Any conflict, error, omission or ambiguity which may arise between these instructions, California law and Metro's SBE Program shall be resolved first in favor of California Law and second in favor of Metro's SBE program. Failure of a bidder or its subcontractors, consultants, suppliers or other entities to carry out these requirements may be grounds for Metro to implement administrative penalties or other remedies imposed by Metro.

102 NON DISCRIMINATION: Metro's policy ensures that SBE firms have an equal opportunity to receive and participate on projects that are state and/or locally funded. It is also Metro policy to ensure that there is no discrimination in the award and participation on the basis of race, color, national origin, or sex, in contract competition, award and performance

103 SUSPENSION OR DEBARMENT: Suspension or debarment proceedings may be initiated against any firm when:

- A. Attempts to participate in the Metro SBE Program as a SBE if the firm does not meet the eligibility criteria stated in the Certification Standards for SBE programs and if it attempts to participate on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty.
- B. In order to meet the SBE subcontracting goals or other SBE program requirements uses or attempts to use on the basis of false, fraudulent or deceitful statements or representations, another firm that does not meet the SBE eligibility criteria stated in the certification standards.

In either case, Metro shall take action through the Diversity & Economic Opportunity Department and/or Metro's Office of Inspector General further action and may refer the matter for prosecution under appropriate criminal statutes.

- 104 AUDIT AND INSPECTION:** The Contractor shall maintain records of all subcontracts entered into with SBE firms and records of materials purchases from SBE suppliers. Such records shall show the name and business address of each SBE subcontractor or supplier and the total dollar amount actually paid to each SBE subcontractor or supplier. Metro reserves the right to audit the records and inspect the facilities of its contractors and any subcontractors of any tier for the purpose of verifying the SBE participation and/or adherence to the SBE program requirements. Contractor records shall be maintained for five years from contract completion and be made available upon request for Metro contracting studies. Contractors and subcontractors shall permit access to their records at the request of Metro. Notice is hereby given that state, local, and federal authorities may initiate or cooperate with Metro in auditing and inspecting such records.

SECTION 200 SBE PARTICIPATION

- 200 METRO OVERALL SBE GOAL:** Metro has set an overall goal for SBE participation. The overall SBE goal applies to non-federally funded contracts Metro expects to expend for the fiscal year. Metro will strive to meet its overall goal through race neutral measures. Metro supports the use of race neutral measures to facilitate participation of SBEs and other small businesses, and encourages prime contractors to subcontract portions of their work that they might otherwise perform with their own forces. To ascertain whether the overall SBE goal is being achieved, Metro will track the dollar amount paid to all certified SBE firms performing work called for in this contract that is eligible to be credited toward Metro's overall goal.

- 201 SBE COMMITMENT(S):** After contract award, SBE commitment percentages listed in the bid/proposal will be monitored and enforced from contract inception through contract completion. Failure to meet the SBE commitment may result in penalties and/or administrative sanctions. SBE administrative requirements are referenced in this Contract Compliance Manual (Non-Federal), and incorporated as part of the conformed contract.

- 202 CHANGES IN WORK LISTED TO SBE FIRMS:** If Metro or the Contractor proposes changes for work contracted to an SBE, the Contractor is required to notify the SBE firm in writing within 10 working days prior to execution of the proposed change, reduction, or deletion of any work listed at time of contract award or after contract award.

The dollar amount of changes as a result of contract modifications, change orders, or provisions sums, that increase or decrease the work commitment to a SBE firm(s) will be commensurately added to or subcontracted from the total contract amount used to compute actual dollars paid to SBEs. Failure to comply with Section 205 ("Crediting and Counting SBE Participation") will be cause for non-compliance and assessment of administrative sanctions.

- 203 COMMERCIAL USEFUL FUNCTION (CUF):** To receive SBE participation credit towards the SBE contract commitments, SBE firms must perform a commercially useful

function (CUF). An SBE must perform at least 30% of its listed work with its own workforce or must not subcontract a greater portion of the work than would be expected on the basis of normal industry practices for that type of work. An SBE performs a CUF when the SBE is responsible for a clearly defined and distinct scope of work. SBE firms must be responsible for the execution of the work, is carrying out its responsibilities by actually performing, managing, and supervising the work involved

On-site visit reviews will be used to ascertain whether the SBE is actively performing, managing, and supervising the work. SBE firms shall employ a labor force which is separate and apart from individuals employed by the prime, and independently recruited by the SBE in accordance with standard industry practice.

204 VIOLATION OF COMMERICAL USEFUL FUNCTION : If an investigation reveals that there is a violation of the CUF provisions, that portion of the work found to be in violation will not be counted toward achievement of the SBE contract commitment, nor Metro's overall SBE goal. When a SBE is presumed not to be performing a CUF as described in this section, the SBE may present evidence through the Contractor to Metro to rebut that presumption no later than fifteen (15) days after receipt of notice of violation(s). If after review of the evidence presented by the SBE does not meet the CUF provisions herein, the Contractor will be required to cure deficiencies found. Metro's CUF decisions are not appealable.

205 CREDITING AND COUNTING SBE PARTICIPATION: Metro is only able to count toward the achievement of the SBE commitment percentage the value of actual dollar paid for CUF work actually performed by SBE firms. There will be no credit for work performed by a non-SBE prime and/or subcontractor. SBE participation listed in the bid or proposal must comply with the provisions of this section.

- A. **SBE as the Prime Contractor:** 100% SBE credit for that portion of the work performed by the SBE's own forces, including the cost of materials and supplies. Work that a SBE prime subcontracts to a non-SBE firm will not count toward the SBE commitment.
- B. **SBE as a Joint Venture Contractor:** 100% SBE credit for that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work performed by the SBE's own forces.
- C. **SBE as a Subcontractor:** 100% SBE credit for the work of the subcontract performed by the SBE's own forces, including the cost of materials and supplies, excluding the purchase of materials and supplies or the lease of equipment by the SBE subcontractor from the prime contractor or its affiliates. Work that a SBE subcontractor in turn subcontracts to a non-SBE firm does not count toward the SBE commitment.
- D. **SBE as a Material Supplier or Broker:**
 - 1) 60% SBE credit for the cost of the materials or supplies purchased from a SBE regular dealer.

- 2) 100% SBE credit for the cost of materials or supplies obtained from a SBE manufacturer.
 - 3) 100% SBE credit for the value of reasonable fees and commissions for the procurement of materials and supplies if not a regular dealer or manufacturer.
- E. **SBE as a Trucker:** 100% SBE credit for trucking participation provided the SBE is responsible for the management and supervision of the entire trucking operation for which it is responsible. At least one truck owned, operated, licensed and insured by the SBE must be used on the contract. Credit will be given for the full value of all such SBE trucks operated using SBE employed drivers. SBE credit will be limited to the value of the reasonable fee or commission received by the SBE if trucks are leased from a non-SBE company. Metro uses the following six (6) factors in determining whether to count expenditures to a SBE trucking firm, to determine if it is performing a commercially useful function:
- 1) The SBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract and there cannot be a contrived arrangement for the purpose of meeting SBE goals.
 - 2) The SBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract
 - 3) The SBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - 4) The SBE may lease trucks from another SBE firm, including an owner-operator who is SBE certified. The SBE who leases the trucks from another SBE receives credit for the total value of the transportation services the lessee SBE provides on the contract.
 - 5) SBE firms that lease trucks from non-SBE firms are entitled to credit only for the fee or commission it receives from the lease arrangement. SBE firms are not eligible to receive full credit for the total value of transportation services.
 - 6) To perform a commercially useful function reference Section 203 ("Commercial Useful Function") an SBE trucking company shall have exclusive use of and control of the day-to-day trucking operation. This does not preclude the leased truck from working for others during the term of the lease with the consent of the SBE, so long as the lease gives the SBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the SBE firm.
 - 7) SBE firms that leases trucks from a prime contractor during the performance of contract, is considered a violation of the commercial useful function requirement.

- 206 **THE SBE (AND NOT OTHER BUSINESS ENTITIES) SHALL ACTUALLY PERFORM THE SUBCONTRACT:** The SBE's utilization of labor, supervisory personnel, equipment and material in the performance of the subcontract, shall be consistent with industry standards and shall demonstrate that the SBE, and not some other business entity is actually performing the subcontract. If a SBE associates itself too closely with another business entity or entities, in acquiring labor force, supervisors, equipment, or materials to an extent inconsistent with industry standards, the SBE can no longer be said to be actually performing a commercially useful function (reference §203)the subcontract.
- 207 **SBE CONTRACTOR'S WORK FORCE:** The SBE shall solicit, hire, place on its payroll, direct, and control all workers performing work under its contract. The SBE owner or its superintendent shall, on a full-time basis, supervise and control the work of the contract. The SBE may, with Metro's prior written consent, augment its work force with personnel of another firm. Metro shall approve the request in writing only when specialized skills are required and the use of such personnel is for a limited duration.

SECTION 300 - CONTRACT COMPLIANCE MONITORING

- 300 **REVIEW AND MONITORING SYSTEM:** This section describes the review and monitoring system to ensure that all contractors, subcontractors, consultants, vendors, suppliers, dealers, brokers and other sources, and all Metro departments comply with the SBE requirements and all other contract provisions related to SBE participation.

Non-compliance by the Contractor with the SBE contract requirements or federal regulations constitutes a breach of contract, and requires, at a minimum, a written explanation and documented description of the contractor's GFE. Failure to comply may result in: (1) mandatory participation in a SBE Program Training Session, reviewing the performance, accountability, record keeping and reporting aspects of the SBE Program, and/or (2) termination of the contract, and/or (3) administrative sanctions, and/or (4) other appropriate remedies.

- 301 **CREATE A LEVEL PLAYING FIELD OF OPPORTUNITY TO PARTICIPATE:** Contractors shall ensure that SBEs have a level playing field to successfully perform the responsibilities of their contract in order to meet its SBE contract commitment. These efforts include, but are not limited to the following:

- A. Negotiate in good faith to attempt to finalize subcontract and supply agreements with SBEs listed in its bid.
- B. Continue to provide assistance to SBE Subcontractors or Suppliers in obtaining bonding, lines of credit, or other capital financing.
- C. Contractors who failed to meet the SBE goals established for the contract, but who were determined by Metro to have fulfilled the good faith effort requirements to meet the goal, shall make additional documented efforts to seek out and utilize additional first-tier SBE Subcontractors and Suppliers to increase SBE participation, during the life of the contract.

- D. Contractor shall immediately inform DEOD of any problems anticipated or concerns in achieving the SBE commitment agreed upon at the time of award.
- E. Issue the SBE(s) a written Cure Notice of any potential problem and provide a reasonable time frame for the SBE to cure the problem. The Contractor shall, concurrently with the issuance of the Cure Notice to the SBE, send a copy of the Cure Notice by First Class mail, postage prepaid, to the assigned Contract Compliance Officer, DEOD Contract Compliance Manager and to the Contract Administrator. In instances where the SBE fails to cure, the Contractor is then obligated to take the steps outlined in the section herein RESOLUTION OF SBE DISPUTES BETWEEN CONTRACTOR AND SBE SUBCONTRACTORS before formally requesting approval from Metro to substitute a SBE.

302 NOTIFICATION OF REPORTING REQUIREMENTS: For SBE contracting requirements, Contractors shall refer to the SBE Contract Compliance Manual, the General Conditions and the Special Provisions sections of the executed contract. Contractors are advised of prompt payment provisions and retention covering all SBE and Non SBE subcontracts, implemented pursuant to the California Business and Professions Code 7108.5.

303 KICK-OFF MEETING: Contractors and subcontractor(s) or designees shall be notified of the scheduled project kick-off meeting, prior to or immediately after Notice to Proceed is issued. The Contractor shall be responsible for informing the SBE subcontractors requirements

304 CONTRACT COMPLIANCE SUBMITTALS – REPORTING SBE PARTICIPATION

- A. **SUMMARY OF CONTRACTORS PAID REPORT (Form 103):** Contractor shall submit timely and complete monthly progress reports of SBE utilization and payment to the Diversity & Economic Opportunity Department (DEOD) the FORM 103, SUMMARY OF SUBCONTRACTORS PAID REPORT. These reports shall include information through the end of the previous month. Failure to submit the FORM 103 reports by the 15th of each month may result in the imposition of a penalty of \$1,000 per day for each report overdue.

The FORM 103, Summary of Subcontractors Paid Report, includes the following information:

- 1) Name, address, and phone number of each SBE Subcontractor
- 2) General work assignment of each SBE Subcontractor
- 3) The specific portion of work performed by each SBE Subcontractor during the reporting period
- 4) SBE Subcontractor the dollars commitments (including identifying changes/modifications)
- 5) Dollars paid to each SBE Subcontractor during the reporting period.
- 6) Dollars paid to date for each SBE Subcontractor.
- 7) Dollars paid to the SBE as a result of a change order or other cost modification.
- 8) Dollars paid to date as a percentage of the total commitment to each SBE.
- 9) Date of last progress payment
- 10) Invoice number, date and amount

- 11) Invoice number corresponding to last payment to subcontractor
- 12) Task Order or Contact Work Order number and amount. (If applicable)

B. CONTRACTOR MONTHLY SBE PROGRESS REPORT (Design/Build Only):

The Contractor shall submit timely and complete monthly progress report summarizing the overall status of commitments to SBE firms, attainments to SBE firms, and prompt payment/retainage for all firms (SBE and non-SBE firms) performing on this contract.

The monthly progress report shall be submitted to Metro by the 15th day following the reporting month. The monthly report shall provide, at a minimum, the following information:

- 1) The following general contract value information must be provided:
 - a. Original Contract Amount
 - b. Running Total of Change Order Amount
 - c. Current Contract Amount
 - d. Amount Paid to Contractor during the each month
 - e. Amount Paid to Contractor from inception to Date
 - f. SBE Contract Goal
 - g. Total Dollar Amount of SBE Commitment
 - h. SBE Commitment as Percentage of Current Contract Amount
- 2) The following general information shall be prepared for the Contractor and each subcontractor (at every tier level): Name, address, phone, SBE status, contact person, contractor(s), name, date contract agreement signed, scope of work, anticipated first date of performance and anticipated last date of performance
- 3) Supplemental Reports (Design/Build Only)

Prime contractors shall submit, each month (unless otherwise instructed by Metro's). Contractor may develop their own reporting format (subject to Metro's approval) to meet the following supplemental report requirements:

- a. SBE Attainment and Commitment Report, a monthly listing of SBE and non-SBE subcontractors with current and anticipated participation. This report shall include a current SBE attainment and commitment tallies from each subcontractor (at any tier) listing of all its subcontractors.
- b. Prompt Payment" Report listing its immediate subcontractors and the "Prompt Payment" activity from each subcontractor subcontracting at each tier listing their immediate subcontractors, to the Contract Compliance Officer, documenting the status of each subcontractor's retainage account with the Prime Contractor engaged in subcontracting and their compliance with the return of the retainage regulations.

- c. The Prime Contractor's "Prompt Payment and Retainage" Report for the month (or the period of time designated by DEOD), listing its immediate subcontractors and the prompt payment and retainage activity from each subcontractor (at any tier).

C. MONTHLY EXPENDITURE PLAN (FOR CONSTRUCTION WORK ONLY):

An expenditure plan in calendar format for each of its approved SBE Subcontractors/Suppliers shall be submitted 14 working days after the Contractor executes a contract or purchase order with Metro, and submitted each month thereafter. The planned expenditures shall equal the dollars committed to each SBE Subcontractor/Supplier and shall be developed according to the approved project schedule.

The plan shall be updated to incorporate any schedule changes and executed Changed Notices and Work Authorization Change Notices affecting the SBE's work. The original plan must be approved and each revision must be approved by the, "Construction Manager's Resident Engineer," prior to being submitted to the assigned Contract Compliance Officer and the Contract Administrator. Revised plans shall be submitted within 30 days from the incorporation of the change.

D. SBE TRUCKING VERIFICATION REPORT

When trucking is listed to be performed, the Contractor shall provide to Metro, by the fifth (5th) day of each month, the preceding month's trucking activity. The Contractor shall submit documentation showing the amount paid to SBE trucking companies listed to perform on the contract. This monthly documentation shall indicate the portion of revenue paid to SBE trucking companies which is claimed toward SBE participation. The Contractor shall also obtain and submit documentation to the DEOD showing the amount paid by SBE trucking companies to all firms, including owner-operators, for the leasing of trucks. The SBE who leases trucks from a non-SBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The records must confirm that the amount of credit claimed toward SBE participation conforms to Subsection 205, referenced above.

The Contractor shall also obtain and submit documentation showing the truck number, owner's name, California Highway Patrol CA number and if applicable, the SBE certification letter of the owner of the truck for all trucks used during that month for which SBE participation will be claimed. The Contractor shall promptly pay SBE trucking companies in accordance with the prompt payment provisions prescribed in Section 300, Subsections 304 through 312.

E. EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY STATEMENT:

Contractor shall submit a copy of its EEO Policy Statement. Each construction contractor is covered under Executive Order 11246, as amended if the contract amount exceeds \$10,000 and must submit a copy of its Equal Employment Opportunity (EEO) Policy. The EEO policy must also be included in the Contractor's subcontracts. The policy shall state that the contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices covering all provisions of this nondiscrimination clause.

Construction contractors will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

- F. **EXECUTED SBE SUBCONTRACT AGREEMENTS:** The Contractor shall submit copies of all executed SBE subcontract agreements and/or SBE purchase orders (PO) within 14 days (working) after the Contractor executes their contract or PO with Metro. Failure to comply with this section will be cause for non-compliance and assessment of administrative sanctions, and may include, imposing a special assessment against the Contractor.

The SBE subcontract or PO should be sent to the attention of the assigned Contract Compliance Officer. The Contractor shall incorporate the SBE Program document and this SBE Contract Compliance Manual into each PO and into each Subcontract issued under this DOT-assisted contract and each subcontractor, consultant, dealer, broker, vendor or other source shall agree to the terms and conditions. The Contractor shall immediately notify DEOD in writing, within the 14-day timeframe mentioned above, of any problems it may have in obtaining the subcontract agreements from listed SBE firms within the specified time. Failure to notify DEOD may deem the Contractor in non-compliance with this requirement and subject to imposed administrative sanctions. Contractor must document all efforts taken to with subcontractor to executive subcontract agreements.

The Contractor shall include the following language in each subcontract agreement the Contractor signs with a SBE subcontractor:

- G. **CONTRACT ASSURANCE:** The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable SBE requirements in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

305 **PROMPT PAYMENT:**

The prime contractor is required to incorporate the Prompt Payment Clause referenced in Section 302 above, in all subcontract, broker, dealer, vendor, supplier or other source agreements or Purchase Orders (at all tiers) issued to both SBE and non-SBE firms. Contractor shall reference the following contract clauses: General Terms and Conditions concerning Prompt Payment to Subcontractors and Prompt Payment of Withheld Funds to Subcontractors.

- 306 PROGRESS PAYMENTS:** Prompt Payment and Progress Payment language must included in all non-SBE and SBE subcontract agreements verbatim. Pursuant to the California Business and Professions Code Section 7108.5, the Contractor shall pay each subcontractor under this Contract for satisfactory performance of its subcontract work no later than seven (7) days after its receipt of each Progress Payment from Metro.
- 307 FINAL PAYMENT TO SUBCONTRACTOR (RETAINAGE):** The Contractor and all subcontractors shall pay to each subcontractor all amounts it has retained from payments under the Subcontract within seven (7) days after the Subcontractor's Work is satisfactorily completed.

Prompt Payment of Retention to Subcontractors (Required in all SBE and non-SBE subcontract agreements verbatim):

With respect to retention that Metro withholds from the Contractor, Metro shall make prompt and regular incremental inspection(s) and upon approval of the Contractor's work at various stages of the Project, Metro shall pay a percentage of retention to the Contractor. The Contractor shall, within 30 days after Metro has made such payment, promptly pay all retention owed to Subcontractor(s) who has satisfactorily completed all of its work and whose work is covered by Metro inspection(s) and approval(s). For the purposes of this section, a subcontractor's work is satisfactorily completed when the Contractor certifies to Metro that all the tasks called for in the subcontract have been satisfactorily accomplished and that subcontractor's retention may now be paid. Any delay or postponement of prompt release of retention beyond the 30 day time limit shall be for good cause, and only upon prior written approval by Metro.

- 308 WORK SATISFACTORILY COMPLETED:** Satisfactory completion of a subcontractor's work is when all the tasks called for in the subcontract have been accomplished and documented as required by Metro.
- 309 DELAY OR POSTPONEMENT OF PAYMENT:** Any delay or postponement of payment beyond the 7-day time limit shall take place only for good cause, and only upon prior written approval of Metro.
- 310 NON—PROGRESS OR RETAINAGE PAYMENT INQUIRIES:** If Subcontractor (at any tier) is not paid within 7 days according to prompt payment and or retainage. The subcontractor must notify the prime contractor in writing within 30 calendar days from the time payment should have been received. The subcontractor shall copy the Metro DEOD Representative and Contract Administrator. The prime contractor (or lower tier direct subcontractor) has 7 calendar days to respond in writing back to the inquiring subcontractor. The prime contractor shall also copy the Metro DEOD Representative and Contract Administrator.

- 311 VIOLATION OF PROMPT PAYMENT:** The Contractor and all subcontractors, consultants and suppliers shall comply with all prompt payment requirements in the Contract. Any violation of the prompt payment provision shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor.
- 312 FAILURE TO COMPLY WITH PROMPT PAYMENT:** If it is determined that the contractor is non-compliant with prompt payment provisions, the contractor will receive written notification from Metro with details of this deficiency. If additional clarification is required, the contractor must respond to the request within five (5) working days. Failure to comply may result in the assessment of appropriate administrative sanctions and/or penalties. Failure of the Contractor and/or its listed subcontractors to comply with any part of the mentioned may result in non-compliance determination and administrative sanctions may be imposed as prescribed in SBE Assessment of Non-compliance and Administrative Sanctions.
- 313 FINAL REPORTING:** Contractor shall submit to Metro, along with invoice for final payment, a signed and notarized statement that the Contractor will pay all outstanding payments including retention 10 days after it receives final payment from Metro. Please see General Terms and Conditions concerning "Prompt Payment to Subcontractors and Prompt Payment of Withheld Funds to Subcontractors." The Contractor shall submit the final Form 103 report within 14 calendar days of final payment.
- 314 ASSESSMENT FOR SBE NON-COMPLIANCE:** If the Contractor fails to comply with the SBE Program requirements, contract payments shall be reduced by one or more of the following methods:
- A. A penalty of five thousand dollars (\$5,000) per day, from the date the Contractor is determined to be in non-compliance with the SBE Program requirements until compliance is determined.
 - B. Penalties of ten percent (10%) of the total contract value, including any approved change orders, for failure to meet SBE commitments or to demonstrate good faith efforts.
 - C. Penalties may be deducted from payments due the Contractor, from any funds retained.
- 315 DISPUTE RESOLUTION:** The Contractor must include in its SBE Subcontract Agreement(s) the Dispute Resolution provisions in Section 5.0 of the Contract Compliance Manual (non-Federal) for disputes arising out of or related to this contract between Contractor and any lower tier Subcontractors which cannot be settled by discussions between the parties involved. The Contractor and Subcontractor, in the event of a dispute to their contract, agree to proceed through informal meetings, mediation, or arbitration, or any combination thereof.

SECTION 400 - RESOLUTION OF DISPUTES BETWEEN METRO CONTRACTOR AND SUBCONTRACTORS

- 400** **DISPUTES:** Disputes between the Contractor and any lower tier SBE subcontractors, which cannot be settled by discussions between the parties involved, shall be settled as described herein. Contractor shall notify Metro of such dispute within ten 10 days of failure to resolve through written cure notice process described above.

These provisions shall not apply to disputes between the Contractor and Metro. These provisions do not alter in any way or waive compliance with any provisions in Section GC36 "Submittal of Claims" included in the Contract Documents.

The Contractor and Subcontractors shall include the dispute resolution provision in their contract. Both parties shall agree to proceed through informal meetings, mediation, or arbitration, or any combination thereof. Dispute submittals shall include terms and timeframes and the service or assistance to be employed.

- 401** **INFORMAL MEETINGS:** The Diversity and Economic Opportunity Department will coordinate informal meeting requests, to assist in the resolution of disputes between Contractor and subcontractor. The assigned Diversity and Economic Opportunity Representative will conduct the informal meetings with parties in dispute. All parties must agree to the procedure.

- 402** **MEDIATION:** The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third party organizations. Metro's Diversity and Economic Opportunity Department is considered an independent third party. Submission to informal mediation is voluntary; is not binding and offers advisory opinions.

- 403** **ARBITRATION:** Should the parties fail to resolve any SBE related dispute arising out of or related to the contract via informal meetings or mediation, the parties are contractually obligated to submit the claims for arbitration within 120 days from date Metro is notified of dispute. Arbitration conducted pursuant to the contract shall be binding upon all parties to the arbitration. All arbitration is to be conducted in a manner consistent with section 1020 et seq. of the Public Contract Code and Section 1296 of Code of Civil Procedure.

Available mediation and arbitration services include:

The American Arbitration Association (213) 362-1900
Dispute Resolution Center (818) 793-7174

The Contractor shall incorporate this Section into each SBE subcontract related to work arising under this contract and shall not incorporate by reference.

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

- 404** **TIMELINESS:** Should the parties proceed to arbitration, moneys due, if any, shall be placed in a trust account. Such funds shall be released to the appropriate party within five (5) working days of a determination being issued by the arbitrator.

NOTE: Arbitration findings are binding upon the parties. However, the findings do not in any way relieve the contractor of its obligation to meet the SBE goals.

SECTION 500 - ADDING OR SUBSTITUTING OR TERMINATING A SBE

Contractors shall obtain written approval from DEOD prior to adding, substituting, or terminating SBE subcontractors.

- 500 ADDING SBE SUBCONTRACTORS:** If contractors determine that there are additional opportunities for SBEs not originally listed, they may exercise good faith efforts by requesting to add SBE firm(s) to their contract. Metro shall authorize the addition of SBE subcontractor(s) for credit toward the contract commitment upon verification of certification. Prior to adding SBE subcontractors, written requests must be submitted to DEOD and Contract Administration for approval. This request must include scope of work, dollar amount, period of performance, and a SBE certification letter.

After formal approval by Metro, the contractor may add the subcontractor to the Form 103 and must provide a copy of the Subcontract Agreement.

- 501 SUBSTITUTING OR TERMINATING SBE SUBCONTRACTORS:** Pursuant to 49 Code of Federal Regulations (CFR) Part 26 and the California Public Contract Code Section 4100, no contractor at any tier may terminate a SBE subcontractor for convenience and then perform that work with its own workforce or that of its affiliate. The contractor shall provide written request to DEOD to substitute a SBE subcontractor.

- A. Metro shall only authorize the substitution of a subcontractor for one or more of the following reasons:
1. The listed SBE, after having had a reasonable opportunity, fails or refuses to execute a written contract.
 2. The listed SBE becomes bankrupt or has credit unworthiness.
 3. The listed SBE fails or refuses to perform his subcontract with normal industry standard.
 4. The listed SBE subcontractor, after having had a reasonable opportunity, fails or refuses to meet the contractor's non-discriminatory bond requirements.
 5. The prime contractor demonstrates to Metro, pursuant to Public Contract Code, Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.
 6. The listed subcontractor is not licensed pursuant to the Contractors License Law.
 7. It was determined that the work performed by the listed subcontractor is substantially unsatisfactory and is not in accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work
 8. The SBE is ineligible to work because of suspension and debarment.
 9. It has been determined that the SBE is not a responsible contractor.

10. The SBE voluntarily withdraws, with written notification, from the contract.
 11. The SBE is ineligible to receive credit for the type of work required.
 12. The SBE owner dies or becomes disabled resulting in the inability to perform the work on the contract.
 13. Other documented compelling reasons.
- B. DEOD shall send written notice to the listed SBE subcontractor of the Contractor's request for substitution, including the reasons for the request. The SBE subcontractor shall have five (5) working days to submit written objections to the substitution to DEOD. Failure to respond to a written objection may constitute the listed SBE subcontractor's consent for substitution.
- Contractor(s) shall replace a SBE subcontractor with another SBE firm, after following dispute resolution procedures, pursuant to the provisions of the California Public Contracts Code.
- C. If written objections are filed by a SBE subcontractor, Metro shall give written notification within at least five (5) working days, to the prime contractor and the listed subcontractor of an informal mediation regarding the request for substitution.
- D. If no written objections are filed by the SBE subcontractor, the prime's request to substitute shall be approved. A new SBE listing shall include the commitment amount and the type of work covered by each Subcontractor. All substitutions and additions are subject to Metro's approval.
- E. If substitution with another SBE firm is not viable, the Contractor shall submit a written request for a substitution with a non-SBE. This request must include documentation of good faith efforts demonstrating the contractor's attempt to substitute the SBE firm with another SBE firm for Metro's review and approval.

The Contractor shall obtain the written consent prior to making any substitutions. If adding SBE firms for credit toward the goal, verification of certification is required prior to receiving credit toward the contract specific goal. SBEs must be certified at the time of the substitution or addition.

Failure to comply with this or any other SBE requirement may result in assessment of appropriate administrative sanctions.

SECTION 600 - GOAL ATTAINMENT DURING LIFE OF CONTRACT

- A. The Contractor shall not make any falsification of subcontractor information, up to and including Subcontractor's name, subcontract amount and/or actual work to be performed by SBE firms.
- B. The Contractor shall utilize SBEs according to the participation levels committed to at the time of contract award, and demonstrate an adequate and positive good faith effort to do so throughout the life of the contract.

- C. The dollar amount of change orders, contract modifications, or provisions sums for design, construction, operations and maintenance, that increases or decreases the scope of work committed to SBEs, shall be commensurately added to or subtracted from the total contract amount used to compute actual dollars paid to SBEs regardless of who performed the work.
- D. All contract amounts revised as a consequence of a change order, contract modification or provisional sum, shall be reflected in the Contractor's monthly referenced herein in Diversity and Economic Opportunity Submittals, herein.
- E. All submittal forms, containing any contract value, revised as a consequence of a Change Order, contract modification, provisional sums shall be accompanied with copy of relevant support documentation.
- F. The Contractor shall submit the final SBE report within 14 calendar days of final payment, retention, and acceptance of the contract work by the Metro as prescribed in Section 3.6.
- G. Listed first-tier subcontractors shall enter into subcontract agreements with the Contractor within the specified time frame of fourteen (14) working days following NTP. Failure to execute subcontract agreements in a timely manner shall be considered a violation of the SBE Program requirements.
- H. When a SBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward SBE goals only if the SBE's subcontractor is itself a SBE. Work that a SBE subcontracts to a non-SBE firm does not count toward SBE goals.
- I. When a SBE performs in a joint venture, only the percentage of the SBE joint venture is eligible for credit. Work must be performed by the SBEs own work forces.
- J. Failure to adhere to any of the requirements of this Section shall constitute a breach of contract and may result in the Metro's terminating the contract for default and/or imposing appropriate sanctions as outlined in the section entitled Remedies for Breach of SBE Requirements.

SECTION 700 – SANCTIONS FOR SBE PROGRAM VIOLATIONS

- A. Failure to Comply
 - 1. Failure to adhere to any of the SBE Program requirements shall constitute a breach of contract and may result in Metro terminating the contract for default and/or imposition of appropriate sanctions as outlined in this section.
 - 2. Staff shall review the contractor's monthly progress reports to determine whether the utilization of SBE firms is consistent with the contractor's commitment at the time of contract award.

3. Failure to utilize a SBE as listed toward the goal is a breach of contract and may result in the imposition of administrative sanction.
4. If it is determined that the Contractor's SBE utilization is not consistent with the commitment, the contractor shall be required to submit written evidence of its good faith efforts (GFE) within ten (10) working days. For failure to respond, the contractor will be deemed non-compliant and subject to administrative sanctions.
5. If it is determined that the contractor's good faith efforts documentation is acceptable, the contractor shall be deemed to be in compliance with the requirements of the SBE program.
6. If it is determined that the contractor's good faith efforts documentation is not acceptable, the contractor will receive written details of any deficiencies. If additional clarification is required, the contractor must respond to the request within five (5) working days. Failure to comply may result in the assessment of appropriate administrative sanctions and/or penalties.
7. If it is determined that the contractor is in non-compliance with prompt payment provisions, the contractor will receive written details of this deficiency. If additional clarification is required, the contractor must respond to the request within five (5) working days. Failure to comply may result in the assessment of appropriate administrative sanctions and/or penalties.

B. Remedies for Breach of SBE Requirements

Contractor(s) found in violation of Metro's SBE program requirements, during the performance of the contract, shall be required to "correct" its deficiency or be subject to the Administrative Sanctions listed in this Section. Being subject to appropriate administrative remedies or sanctions does not preclude Metro from invoking other contract and/or legal remedies available under federal, state or local law

C. Appropriate Administrative Remedies

Appropriate administrative remedies will be imposed on Contractors deemed non-compliant to the SBE Program requirements. Contractors' failure to provide documentation of good faith efforts, as requested, will also be subject to appropriate administrative remedies. Contractor notifications shall be made by certified mail.

The appropriate administrative remedies shall include, but is not limited to the following:

1. Mandatory SBE Training Session(s) for Contractor(s) found in violation of SBE program requirements (SBE Training will be coordinated by DEOD, and all associated expenses, including, but not limited to, travel, lodging, meals and etc., will be the responsibility of the Contractor.)

2. Penalties as described in the, "Assessment for SBE Non-Compliance," (referenced in Sub-Section D)
3. Suspension of payment(s) to the Contractor Metro
4. Termination of the Contract for default.
5. Debarment (49 CFR 107).

D. Assessment for SBE Non-Compliance

If the Contractor fails to comply with the SBE Program requirements, contract payments shall be reduced by one or more of the following methods:

1. A penalty of five thousand dollars (\$5,000) per day, from the date the Contractor is determined to be in non-compliance with the SBE Program requirements until compliance is determined.
2. Penalties of ten percent (10%) of the total contract value, including any approved change orders, for failure to meet SBE commitments or to demonstrate good faith efforts.
3. Penalties may be deducted from payments due the Contractor, from any funds retained.

SECTION 800 - SMALL BUSINESS ENTERPRISE CERTIFICATION

800 CERTIFICATION REQUIREMENTS

A firm only holding a current certification as an eligible Metro SBE may participate in the Metro SBE Program. Firms listed by Bidders to meet an established SBE subcontracting goal must be certified by bid due date. Metro has a responsibility to ensure that eligible SBE firms participate in Metro contracting. If not, that firm's participation may not be counted as SBE participation in the contract. Bidders shall ensure SBE firms are certified in the North American Industry Classification System (NAICS) codes for the work in which the SBE firm is listed to perform and for which the Bidder seeks SBE credit towards its SBE commitment. Certifications as a Metro SBE firm, means the firm met the SBE certification requirements and eligibility standards described in Metro's SBE Program.

801 SBE CERTIFICATION STANDARDS

Metro follows the standards and procedures defined by Metro SBE Program Subpart E to determine whether an applicant is eligible for SBE certification. These standards and procedures are described in detail in the Certification Instructions, provided with the Application for Certification. Interested individuals or companies will start the process by obtaining a copy of the SBE Application and SBE Certification Instructions.

END OF SECTION

SECTION 2 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

1.0 POLICY

The Los Angeles County Metropolitan Transportation Authority (Metro) will not do business with any employer who discriminates on the basis of: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); disability (including AIDS, and cancer-related medical condition) or covered veteran status.

2.0 IMPLEMENTATION

Metro has adopted the Construction Industry Compliance Program procedures for compliance reviews of construction contractors and subcontractors including those involved in federally assisted construction to determine whether they are complying with requirements prohibiting discrimination and requiring affirmative action to ensure equal employment opportunity without regard to race, color, religion, national origin, sex, disability, or covered veteran status.

2.1 Any Contractor, who is performing work financed in whole or in part by an agency of the federal government, whether on a project sponsored by Metro or another agency, may follow the federal regulations which implement Executive Order 11246.

2.2 The Diversity and Economic Opportunity Department is responsible for implementing the Equal Employment Opportunity program. This office shall collect all reports and related information, and conduct all monitoring and enforcement activities as outlined in the regulations. Any Contractor who is performing work as described in paragraph B of this Section is also required to submit reports and related information to the regional office of the U.S. Department of Labor Employment Standards Administration, Office of Federal Contract Compliance Program (OFCCP).

2.3 A Contractor is covered under Executive Order if the contract exceeds \$ 10,000 and Section 503 if the amount is more than \$2,500; and under 38 U.S.C. 4212 if the amount exceeds \$10,000 or more. Federal Assisted construction contracts and subcontracts in excess of \$10,000 are covered under Executive Order 11246 only and not under 503 or 38 U.S.C. 4212. Contractors meeting the threshold criteria in this paragraph are required to include the following clause in their contract:

- A. During the performance of this Contract, the Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); or, disability (including AIDS, and cancer-related medical condition). Contractors and Subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and Subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) The applicable regulations of the Fair Employment and Housing implementing Government Code, Section 12900, set forth in Chapter 5 of Division 4 of Title 2 of the

California Administrative Code are incorporated into this Contract by reference and made a part hereof as if set forth in full. The Contractor and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- B. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform Work under the Contract.

3.0 NONCOMPLIANCE

The Diversity and Economic Opportunity Department determine violations of nondiscrimination and compliance requirements and recommend possible remedies. In the event of noncompliance by a Metro Contractor or Subcontractor, the Diversity Economic Opportunity Department will inform the Prime and Contract Administrator of such finding. Metro may pursue such remedies as it deems appropriate, including cancellation, termination or suspension of the Contract, declaring the Contractor ineligible to bid on future contracts for a specified period of time, or such other sanctions which shall take into account the severity of the violation or violations.

4.0 EQUAL EMPLOYMENT OPPORTUNITY

- 4.1 The Contractor shall not discriminate against any employee or applicant for employment because of: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); or, disability (including AIDS, and cancer-related medical condition). The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); or, disability (including AIDS, and cancer-related medical condition). Such actions shall include but not be limited to the following: employment, upgrading, demotion, and transfer; recruitment and recruitment advertising; layoff and termination; rates of pay and other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post notices to be provided, setting forth the conditions of this Section, in conspicuous places available to employees and applicants for employment. The Contractor shall insert a similar condition in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
- 4.2 The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); or, disability (including AIDS, and cancer-related medical condition).
- 4.3 The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided, advising the said labor union or workers' representatives of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 4.4 The Contractor shall comply with all provisions of Executive Order 11246, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 4.5 The Contractor shall furnish information and reports required by Executive Order 11246, as amended, and by rules, regulations, and orders of the Secretary of Labor or pursuant thereto and shall permit access to its books, records and accounts by Metro and the Secretary of Labor, for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 4.6 In the event of the Contractor's noncompliance with the nondiscrimination conditions of the Contract or with any of the said rules, regulations, or orders, the Contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts, in accordance with procedures authorized in Executive Order 11246, as amended; and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 4.7 The Contractor shall include the conditions of this Section in every subcontract of any tier or purchase order, unless exempted by rules, regulations, or orders of the Secretary of Labor, issued pursuant to Section 204 of Executive Order 11246, as amended, so that such conditions shall be binding upon each Subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as Metro may direct, as a means of enforcing such conditions, including sanctions for noncompliance, provided, however, that, if a Contractor becomes involved in or is threatened with litigation with a Subcontractor or vendor as a result of such direction by Metro the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

5.0 AFFIRMATIVE ACTION REQUIREMENTS AND EQUAL EMPLOYMENT OPPORTUNITY

- 5.1 Requirements for Affirmative Action to Ensure Equal Employment Opportunity pursuant to Executive Order 11246, as amended, apply to this Contract.
- 5.2 The Contractor shall comply with the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth herein.
- 5.3 The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the Los Angeles County Area are as follows:

A. Goals and Timetables for Female Participation

TIMETABLE	TRADE GOAL
From April 7, 1978 extended indefinitely	All 6.9%

B. Goals and Timetables for Minority Participation

TIMETABLE	TRADE GOAL
Until further notice by the Office of Federal Contract Compliance Programs (OFCCP)	All 28.3%

These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside the covered area, it shall apply the goals established for such geographical area where the work is generally performed. With regard to this second area, the Contractor is also subject to the goals for both its federally involved and non-federally involved construction.

- 5.4 The Contractor's compliance with Executive Order 11246, the regulations in 41 CFR Part 60-4, and Metro's Equal Employment Opportunity Policy shall be based on its implementation of this Section, specific affirmative action obligations set forth in 41 CFR 60-4.3 (a) and its efforts to meet the goals established for the Los Angeles County geographical area where the Work is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor must demonstrate a good faith effort to employ minority persons and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goal shall be a violation of the Contract, Executive Order 11246, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.
- 5.5 The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days after award of any construction subcontract in excess of ten thousand dollars (\$10,000) at any tier for construction work under the Contract. The notification shall list the name, address, and telephone number of each subcontractor and employer identification number; estimated dollar amount of subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
- 5.6 As used in the Contract, the "covered area" (or otherwise termed the "Work") is the area of jurisdiction of the Los Angeles Building and Construction Trades Council.

6.0 STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

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

6.1 As used in this Manual:

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

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

6.3 If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the Covered Area either individually or through an association, its affirmative action obligations on all work in the Plan Area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in

which it has employees. The overall, "Good Faith," performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse the failure by any covered Contractor or Subcontractor to make "Good Faith" efforts to achieve the Plan goals and timetables.

- 6.4 The Contractor shall implement the specific affirmative action standards provided in the Section entitled AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY, paragraphs A through F, herein. The goals set forth in this Contract are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress towards its goals in each craft during the period specified.
- 6.5 Neither the provisions of any collective bargaining agreement, nor the failure by a union, with whom the Contractor has a collective bargaining agreement, to refer either minority persons or women shall excuse the obligations of the Contractor under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- 6.6 In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, each individual must be an employee of the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
- 6.7 The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these actions fully and implement affirmative action steps at least as extensive as the following:
 - A. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - B. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority, and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - C. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female

referral from a Union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the Union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore; along with whatever additional actions the Contractor may have taken.

- D. Provide immediate written notification to Metro's Office of Small Business Diversity and Labor Compliance and OFCCP's Director when the Union or Unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- E. Develop on-the-job training opportunities and/or participate in training programs for the area that expressly includes minority persons and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under this Section, paragraph G, subparagraph 3.
- F. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- G. Review, at least annually, the Contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- H. Disseminate the Contractor's EEO Policy externally by including it in any advertising in the news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- I. Direct its recruitment efforts both oral and written, to minority, female and community organizations, to schools with minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any

recruitment sources, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- J. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- K. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- L. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities, through appropriate training, etc.
- M. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- N. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- O. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- P. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

- 6.8 Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations as identified in the Section entitled AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY, paragraphs A through F, herein. The efforts of a Contractor association, joint Contractor-union, Contractor-community, or similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations as identified in the Section entitled AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY, paragraphs A through F, herein, provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minority persons and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The

obligation to comply, however, is the Contractor's and a failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

- 6.9 A single goal for minority persons and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is under-utilized).
- 6.10 The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); or, disability (including AIDS, and cancer-related medical condition).
- 6.11 The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246, as amended by Executive order 11375.
- 6.12 The Contractor shall carry out such sanctions and for violation of these specifications and of the Equal Opportunity Article, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- 6.13 The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in the Section entitled AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY herein, so as to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- 6.14 The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade rate of pay, and locations at which the work was performed. (Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.)

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

7.0 NONCOMPLIANCE

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

END OF SECTION 2.0

APPENDIX A – DIVERSITY AND ECONOMIC OPPORTUNITY MANUAL DEFINITIONS

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

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

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

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

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

Department: Functional unit of Metro, responsible for management and administration of specific projects included within the capital and operating budget.

Small Business Enterprise (SBE):

A SBE firm is, generally, one that has demonstrated to Metro, by a preponderance of the evidence, that it meets the requirements of Metro's Small Business Enterprise Program, Subpart E, " Certification Standards and Procedures," concerning Business Size, Owners Economic Disadvantage(Personal Net Worth), Quality of Ownership and Ownership Discretion and Control. It is a firm that:

- (1) Is owned by Individuals who can demonstrate, by a preponderance of the evidence, that they are economically disadvantaged. It requires an individual's personal net worth (PNW) to be within the SBE Program PNW Limits. Currently limits on PNW are defined as an average of less than \$1.32 million over the previous three years, excluding individual applicant owner's interest in their primary residence and the PNW of the applicant business);
- (2) Has had average annual gross receipts (over the previous three years) , under the SBE Small Business Size Table amounts, as defined by SBA regulations (13 CFR 121.402), according to the industry in which the firm actively does business, or average gross receipts are not greater than \$22.4 million over the previous three years.
- (3) Is at least 51 percent owned by one or more such economically disadvantaged individuals, or in the case of any business organized as a corporation, at least 51 percent of the shares are held by one or more economically disadvantaged individuals;

- (4) Is an independent business whose management and daily business operations are controlled by one or more of the economically disadvantaged individuals who own it;
- (5) Is a for profit business.

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

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

Metro: The Los Angeles County Metropolitan Transportation Authority

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

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

Non-Compliance:

The condition existing when a contractor has failed to implement or meet the requirements of 49 CFR 26, as amended or Metro policy or procedure pertaining to SBE participation.

Payroll Form:

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

Pre-Bid/Construction Conference:

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

Pre-Bid/Pre-Proposal Conference:

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

Professional/Technical Services Contract:

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

Public Works Contract:

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

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

Labor Compliance Section:

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

State: State of California.

Statement of Compliance:

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

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

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

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

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

Wages:

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

**APPENDIX B - DIVERSITY AND ECONOMIC OPPORTUNITY MANUAL (Non-FEDERAL)
SUBMITTAL FORMS**



SUMMARY OF SMALL BUSINESS ENTERPRISE (SBE) SUBCONTRACTORS PAID REPORT

Reporting Period (Month/Yr) :
 Report No:

FORM 103
(Please Print or Type)

1) Project Name:		7) MTA Payment this month:	\$	14) Prime Contractor:		
2) Contract No:		8) Total \$ Paid to-date to Prime:	\$	15) Address:		
3) Contract Award Date:		9) Total \$ Paid to-date to SBE Subs	\$	16) City, State, Zip Code:		
4) Original Award Amount	\$	10) Current SBE Attainment:	%	17) Contact Name/Title:		
5) Current Contract Value:	\$	11) Current SBE Participation:	%	18) Telephone #		
6) Date of last progress paym't rec'd from MTA:		12) SBE Commitment:	%	19) Email Address:		
		13) % of project complete:	%	20) Signature:		

METROPOLITAN TRANSPORTATION AUTHORITY (LACMTA) 21) SUBCONTRACTOR/SUPPLIER	22) DOLLARS PAID THIS MONTH	23) DOLLAR AMOUNT PAID-TO-DATE	24) Activity I.D. Construction Only	24) TYPE OF WORK PERFORMED	25) CUMULATIVE COMMITTED DBE DOLLARS	26) Dollar +/-resulting from Change order activity
NAME						
ADDRESS						
(Area Code) PHONE						
CONTACT	\$	\$			\$	\$

SUBCONTRACTOR/SUPPLIER #1						
NAME						
ADDRESS						
(Area Code) PHONE						
CONTACT	\$	\$			\$	\$

SUBCONTRACTOR/SUPPLIER #2						
NAME						
ADDRESS						
(Area Code) PHONE						
CONTACT	\$	\$			\$	\$

SUBCONTRACTOR/SUPPLIER #3						
NAME						
ADDRESS						
(Area Code) PHONE						
CONTACT	\$	\$			\$	\$

Special Instructions: The Prime shall make prompt payment of all monies due and owed to SBE and non-SBE firms within 10 business days upon receipt of payment from the Metro as per contract agreement and Prompt Payment Act. Payment of retention shall be made to all SBE and non-SBE subcontractors within 10 days after satisfactory completion of the subcontracted work. The Form 103 is due to the Metro by the 15th of each month and should reflect all payments made to subs through the last day of the previous month. The Prime must report monthly for the life of the contract, even if the sub(s) did not perform any work for the previous month. You may send this document by e-mail each month to: DEODForm103su@metro.net. Also, copy the contract compliance officer.

REPORTING PERIOD (Month/Year):

FORM 103 (Page 2)

Invoice Payment History				SBE SUBCONTRACTORS/SUPPLIES				Total Amount Paid for this Invoice
Prime Contractor				Sub/Supplier #1:	Sub/Supplier #2:	Sub/Supplier#3:	Sub/Supplier #4:	
Invoice and Task Order Number (if applicable)	Invoice Date	Invoice Paid Date	Amount Paid	Amount Paid	Amount Paid	Amount Paid	Amount Paid	
			\$	\$	\$	\$	\$	\$
								\$
								\$
								\$
								\$
								\$
								\$
								\$
								\$
								\$
								\$
								\$
								\$
								\$
								\$
		GRAND TOTAL (paid-to-date)	\$	\$	\$	\$	\$	\$

REPORTING PERIOD (Month/Year):					TASK ORDER FORM 103 (Page 2)				
				Prime Contractor	SBE SUBCONTRACTORS/SUPPLIES				Total Amount For Each Task Order
					Sub/Supplier #1:	Sub/Supplier #2:	Sub/Supplier #3:	Sub/Supplier #4:	
Task Order Number	Period of Performance	Award Date	Award Amount	Task Order Amount	Task Order Amount	Task Order Amount	Task Order Amount	Task Order Amount	
									\$
									\$
									\$
									\$
									\$
									\$
									\$
									\$
									\$
									\$
									\$
									\$
									\$
									\$
									\$
GRAND TOTAL (paid-to-date)				\$	\$	\$	\$	\$	\$

