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## Agenda

### JOINT MEETING OF THE BOARD OF DIRECTORS

for the  
Metropolitan Transit System,  
San Diego Transit Corporation, and  
San Diego Trolley, Inc.

January 15, 2009

9:00 a.m.

James R. Mills Building  
Board Meeting Room, 10th Floor  
1255 Imperial Avenue, San Diego

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#### ACTION RECOMMENDED

1. Roll Call
2. Approval of Minutes - December 11, 2008 Approve
3. Public Comments - Limited to five speakers with three minutes per speaker. Others will be heard after Board Discussion items. If you have a report to present, please give your copies to the Clerk of the Board.
4. MTS: Election of Vice Chair and Chair Pro Tem and Appointments to Committees for 2009 Elect  
Action would: (1) elect a Vice Chair and a Chair Pro Tem for 2009; and (2) consider the nominating slate proposed by the Ad Hoc Nominating Committee for the appointment of representatives to MTS committees for 2009 and vote to appoint representatives to those committees.

Please turn off cell phones and pagers  
during the meeting



## CONSENT ITEMS

- |     |  |                    |
|-----|--|--------------------|
| 6.  | <u>MTS: Trash Disposal Services (SDTC and SDTI)</u><br>Action would authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. G1209.0-09 with Daily Disposal Services, Inc. for trash disposal services for a period of five years.  | Approve            |
| 7.  | <u>MTS: Amendments to Assignment of Contract for San Diego Association of Governments' On-Call General Transportation Planning Services (IBI Group)</u><br>Action would authorize the CEO to ratify MTS Doc. No. G1135.0-08 and execute Amendment No. 1 to MTS Doc. No. G1135.0-08 with IBI Group as part of the San Diego Association of Governments' (SANDAG's) On-Call General Transportation Planning Service Agreement, which was established as a jobs order contract with MTS. Amendment No. 1 would allow MTS to proceed with evaluating weekend service structure and productivity. | Ratify/<br>Approve |
| 8.  | <u>MTS: Bus Operator Uniforms - Contract Award</u><br>Action would authorize the CEO to execute MTS Doc. No. B0509.0-09 with Kingsbury Uniforms, Inc. for bus operator uniforms for up to a five-year period.  | Approve            |
| 9.  | <u>MTS: Transportation Development Act (TDA) Claim Amendments</u><br>Action would adopt Resolution Nos. 09-1, 09-2, and 09-3 approving the revised FY 2009 Transportation Development Act (TDA) Article 4.0, 4.5, and 8.0 claims.  | Approve            |
| 10. | <u>SDTI: Security Patrol Services - Contract Amendment (Option Years One and Two)</u><br>Action would authorize the CEO to exercise option years 1 and 2 to MTS Doc. No. C.O.066.0-06 with Heritage Security Services/Transit Systems Security for security patrol services pursuant to the original Request for Proposals.  | Approve            |
| 11. | <u>MTS &amp; SDTI: Internal Revenue Service-Required CalPERS Pension Resolutions</u><br>Action would adopt Resolution Nos. 09-5, 09-6, and 09-7 that would allow MTS to continue to make employee pension contributions on a pretax basis.   | Adopt              |

## CLOSED SESSION

- |     |   |                    |
|-----|---|--------------------|
| 24. | a. MTS: CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(a) <u>MTS v. Zurich Insurance</u> , (AAA Case No. 51 195 Y 00164 08)                                      | Possible<br>Action |
|     | b. MTS: CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION Pursuant to California Government Code Section 54956.9(a): <u>Balfour Beatty/Ortiz v. Metropolitan Transit System</u> , (San Diego Superior Court Case No. GIC 868963)                   | Possible<br>Action |
|     | c. MTS: CLOSED SESSION - EXISTING LITIGATION Pursuant to California Government Code Section 54956.9(a): <u>San Diego Public Transit Riders Alliance v. MTS et al.</u> , (San Diego Superior Court Case Nos. 07-2007-0082217-CU-TT-CTL and 37-2008-00086580-CU-TT-CTL) | Possible<br>Action |

d. MTS: CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION Pursuant to California Government Code Section 54956.9(a): Guzman v. SDTC, (GIC 847471) Possible Action

e. MTS: CLOSED SESSION - CONFERENCE WITH LABOR NEGOTIATORS Pursuant to California Government Code Section 54957.6 Possible Action  
Agency-Designated Representative – Jeff Stumbo  
Employee Organization – Transit Enforcement Officers Association

## NOTICED PUBLIC HEARING

25. MTS: Public Hearing - Service Adjustments for Sorrento Valley Coaster Connection Approve  
Action would: (1) conduct a public hearing on the recommended restructuring of the Sorrento Valley Coaster Connection (SVCC) (Routes 89, 971, 972, 973, 974, 975, 976, 977, and 978); and (2) adopt MTS Resolution No. 09-4, "Findings in Support of Exemption Under the California Environmental Quality Act (CEQA) Relating to Proposed Service Adjustments to Sorrento Valley Coaster Connection"; and (3) respond to suggestions made by the public and take action (if any) on the Sorrento Valley Coaster Connection at the next regularly scheduled Board meeting on February 19.

## DISCUSSION ITEMS

30. MTS: Increased Authorization for Legal Services - Law Offices of David C. Skyer Approve/  
Action would authorize the CEO to execute MTS Doc. No. G1108.5-07 with the Law Ratify  
Offices of David C. Skyer for legal services and ratify prior amendments entered into under the CEO's authority.

31. MTS: Fiscal Year 2010 Capital Improvement (CIP) Program Approve  
Action would: (1) approve the fiscal year 2010 Capital Improvement Program (CIP) with the estimated federal and nonfederal funding levels. As the federal appropriation figures are finalized and/or other project funding sources become available, allow the CEO to identify and adjust projects for the adjusted funding levels (any adjustments in excess of \$500,000 will be brought to the Board's attention); (2) recommend that the San Diego Association of Governments (SANDAG) Board of Directors approve the submittal of federal Sections 5307 and 5309 applications for the MTS fiscal year 2010 CIP after the federal appropriations are finalized; (3) approve the \$12.5 million preventative maintenance increase and, in turn, swap Transportation Development Act (TDA) funding from operations to the CIP. There would be no net change to operations or capital; this exercise would simply provide more flexibility in funding within the CIP and would permit the agency to expend federal funding more quickly; (4) approve the transfer of \$1,627,724 from previous CIP projects to the fiscal year 2010 CIP; (5) approve the transfer of \$27,787,888 in nonfederal funding from previous fiscal year CIP projects to fiscal year 2010 Blue Line Rehabilitation (11266) to reflect the receipt of Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA); (6) approve the transfer of \$3.1 million of nonfederal funds currently allocated to the East County Bus Maintenance Facility (ECBMF) in exchange for \$3.1 million of federal funding currently allocated to bus procurement projects in fiscal year 2010; and (7) recommend that the SANDAG Board of Directors approve the amendment of the Regional Transportation Improvement Program (RTIP) in accordance with the fiscal year 2010 CIP recommendations.

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|-----|---|---------|
| 32. | <u>MTS: New Flyer 40-Foot Buses - Contract Amendment</u><br>Action would authorize the CEO to execute MTS Doc. No. G1101.5-07 with New Flyer Industries, Inc. to purchase 38 low-floor, 40-foot, compressed natural gas (CNG) transit buses.  | Approve |
| 33. | <u>MTS: Uniform Report of DBE Awards or Commitments and Payments and Approval of 2008 DBE Program</u><br>Action would receive the Uniform Report of Disadvantaged Business Enterprise (DBE) Awards or Commitments and Payments.   | Receive |
| 34. | <u>MTS: Approval of Design Modifications at the Old Town Transit Center as Mandated and Approved by the California Public Utilities Commission</u><br>Action would consider and approve the proposed design for improvements for the Old Town Transit Center (OTTC) as mandated and approved by the California Public Utilities Commission. | Approve |

#### REPORT ITEMS

- |     |   |             |
|-----|---|-------------|
| 45. | <u>MTS: Year-to-Date Operations Budget Status Report Through October 2008</u><br>Action would receive the MTS Year-to-Date Operations Budget Status Report through October 2008.  | Receive     |
| 46. | <u>MTS: Investment Report - November 2008</u><br>Action would receive a report for information.   | Receive     |
| 60. | <u>Chairman's Report</u>  | Information |
| 61. | <u>Audit Oversight Committee Chairman's Report</u>  | Information |
| 62. | <u>Chief Executive Officer's Report</u>   | Information |
| 63. | <u>Board Member Communications</u>  |             |
| 64. | <u>Additional Public Comments Not on the Agenda</u><br>If the limit of 5 speakers is exceeded under No. 3 (Public Comments) on this agenda, additional speakers will be taken at this time. If you have a report to present, please furnish a copy to the Clerk of the Board. Subjects of previous hearings or agenda items may not again be addressed under Public Comments. |             |
| 65. | <u>Next Meeting Date:</u> February 19, 2009   |             |
| 66. | <u>Adjournment</u>  |             |



# DRAFT

## JOINT MEETING OF THE BOARD OF DIRECTORS FOR THE METROPOLITAN TRANSIT SYSTEM (MTS), SAN DIEGO TRANSIT CORPORATION (SDTC), AND SAN DIEGO TROLLEY, INC. (SDTI)

December 11, 2008

MTS  
1255 Imperial Avenue, Suite 1000, San Diego

### MINUTES

1. Roll Call

Chairman Mathis called the Board meeting to order at 9:04 a.m. A roll call sheet listing Board member attendance is attached.

2. Approval of Minutes

Mr. Ewin moved to approve the minutes of the November 13, 2008, MTS Board of Directors meeting. Mr. Clabby seconded the motion, and the vote was 9 to 0 in favor with Mr. Ovrom abstaining.

3. Public Comments

*Mr. Jim Hervey, U.S. Navy:* Mr. Hervey read a letter of appreciation from Rear Admiral Len Hering addressed to Mr. Paul Jablonski, MTS CEO, expressing his appreciation for MTS's support and dedication in providing Navy and Marine Corps personnel and their families trolley transportation to the Veteran's Day Parade. He also recognized Mr. Rob Schupp, Director of Marketing & Communications, and Joe Martinez, Revenue Supervisor, for developing a plan for transporting over 200 sailors from Pacific Fleet Station to the Santa Fe Depot in time for the parade. He also thanked MTS for providing 200 Day Passes so sailors could return to the base after the parade.

Mr. Jablonski reported that he had met recently with Rear Admiral Hering to discuss his aggressive plan to convert 100,000 trips per day by military personnel to public transportation. He reported that Rear Admiral Hering is also engaged at SANDAG on this same issue. He sent his regards and thanks for the letter to Rear Admiral Hering.

4. MTS: Proposed Amendments to Board Policy No. 22 (Rules of Procedure for the Metropolitan Transit System)

Chairman Mathis advised Board members that they had a list before them of all current committee assignments for Board members. He added that the Ad Hoc Nominating Committee will be meeting in January to develop the slate of nominations for 2009 committee appointments. He asked that Board members indicate to Ms. Gail Williams, Clerk of the Board, any interest they have in serving on committees.

Chairman Mathis then referred to Paragraph 22.7.1 of Policy No. 22, which is being amended to permit former Board members to serve on certain MTS committees. He requested the Board's support of this amendment. Mr. Ewin stated that MTS General Counsel should advise the Ad Hoc Nominating Committee regarding which committees former Board member cannot serve on and specifically mentioned the Executive Committee. Chairman Mathis pointed out that page 2

of the agenda item specifically indicates which committees former Board members can serve on and pointed out that only sitting Board members can serve on the Executive Committee. Mr. Jablonski indicated that Ms. Tiffany Lorenzen, General Counsel, will be present at the Ad Hoc Nominating Committee meeting to provide advice on this matter. In response to a question from Mr. Ewin, Chairman Mathis stated that the nominating slate will be ready for presentation to the Executive Committee at its January 8, 2009, meeting.

Action Taken

Mr. Cunningham moved to approve the proposed revisions to Board Policy No. 22 – Rules of Procedure for the Metropolitan Transit System (Attachment A of the agenda item) at the request of the Chairman. Mr. Ovrom seconded the motion, and the vote was 10 to 0 in favor with Mr. Rindone abstaining.

CONSENT ITEMS:

Chairman Mathis stated that Consent Agenda No. 9, Bus Operator Uniforms Contract Awards, was being pulled due to a protest on that item.

6. MTS: Federal Transit Administration (FTA) 5311 Program of Projects (OPS 950.7)

Recommend that the Board of Directors approve Resolution 08-25 (Attachment A of the agenda item) authorizing the use of \$242,804 of FTA Section 5311 funds for operating assistance in nonurbanized areas.

7. MTS: Audit Report – The Transit Store (LEG 492)

Recommend that the Board of Directors receive a report for information.

8. MTS: Audit Report – Procurement Process (LEG 492)

Recommend that the Board of Directors receive a report on the procurement process.

9. MTS: Bus Operator Uniforms – Contract Award (OPS 960.6)

Recommend that the Board of Directors authorize the CEO to execute MTS Doc. No. B0509.0-09 (in substantially the same format as Attachment A of the agenda item) with Kingsbury Uniforms, Inc. for bus operator uniforms for up to a five-year period.

10. MTS: Weed Abatement Services – Contract Award (OPS 970.6)

Recommend that the Board of Directors authorize the CEO to execute MTS Doc. No. PWL107.0-09 (in substantially the same format as Attachment A of the agenda item) with DeAngelo Brothers, Inc. for weed abatement services for a five-year period.

Action on Recommended Consent Items

Mr. Rindone moved to approve Consent Agenda Item Nos. 6, 7, 8, and 10. Mr. McLean seconded the motion, and the vote was 11 to 0 in favor.

Mr. Ewin stated that his approval of Consent Agenda Item Nos. 7 and 8 (Audit Reports on the Transit Store and Procurement, respectively) was conditional because he felt that additional

discussion with General Counsel is needed regarding the independence of the internal auditor and the relationship of that function to the Audit Oversight Committee. Mr. Jablonski stated that if management disagrees with the internal auditor's recommendation, that matter would be brought to the Audit Oversight Committee. He stated that this issue will be put on the agenda for the next Audit Oversight Committee meeting.

In response to a question from Mr. Faulconer, Mr. Jablonski stated that the internal auditor has a dual reporting relationship with the CEO and the General Counsel. He stated that the Audit Oversight Committee has made it clear that they are available to address any issues the auditor wants to bring directly to them. He stated that the internal audit's purpose is to look at procedures and processes to ensure that MTS is doing things the best way it can. He stated that there is a significant amount of management discussion about how to correct any issues raised by the internal auditor. Mr. Faulconer agreed with Mr. Ewin's earlier statements regarding the relationship between the Committee and the internal auditor and pointed out that the internal auditor also reviews internal controls.

**CLOSED SESSION:**

24. There were no Closed Session items.

**NOTICED PUBLIC HEARINGS**

25. There were no noticed public hearings.

**DISCUSSION ITEMS:**

30. MTS: Uniform Report of DBE Awards or Commitments and Payments (LEG 430)

This report was deferred due to the absence of General Counsel. Chairman Mathis pointed out that this is not a time-sensitive matter.

Action Taken

No action was taken on this item.

31. MTS: FY 2008 Final Budget Comparison (FIN 310.2)

Mr. Tom Lynch, Controller, pointed out that bound copies of the Comprehensive Annual Financial Report (CAFR) had been placed at each member's place. He reported that there were no substantive changes made to the report since the last presentation of the report to the Board. Mr. Lynch reviewed the final year-end budget comparison and reported that MTS is able to commit \$481,000 from FY 2008 operations to the Contingency Reserve. Mr. Lynch advised the Board that Page A-10 of the agenda item provides information on the balances in other MTS reserve accounts.

Mr. Jablonski stated that the CAFR is a major effort and pointed out that the narrative provides good background information on the organization. He also pointed out that last year MTS ended the year in a better position than anticipated (under budget) as a result of 23 revenue-generating and expense-reduction initiatives. He was not optimistic that Fiscal Year 2009 would end the same way. He reported that the State of California has issued a letter stating that no further State Transit Assistance (STA) payments will be made for the remainder of the year. He added that MTS did receive the first-quarter payment. He stated that the funds that will not be

received total \$9 million. He stated that further reductions in STA funds are being discussed by the state legislature and added that the Governor wants to eliminate this funding altogether for next year (a total of \$14 million). He stated that this will have a \$3 million impact on the next three months of operations, and MTS may have to remove funds from its Contingency Reserve account as a result. He further advised the Board that if the state legislature decreases STA by one-half, which has been considered, MTS should be able to manage that shortfall this year. He reminded the Board that decreases in sales tax revenues are affecting Transportation Development Act (TDA) and TransNet revenues as well. Chairman Mathis pointed out that increased ridership as a result of high fuel prices has helped MTS but indicated that the increase in ridership may not continue now that fuel prices are going down.

In response to a question from Mr. Cunningham, Mr. Jablonski reported that STA funding is for operations. He added that state funding, with the exception of State Transportation Improvement Program (STIP) funding, is very flexible in terms of how it can be spent. He added that the State has also taken Spillover funds from transit for the last three or four years, which totaled about \$50 million. He stated that Spillover funds have been used by MTS in the past primarily for capital purposes because of the unreliability of the funding. He stated that the loss of this funding has little short-term impact but does have a long-term impact as infrastructure deteriorates.

Mr. Cunningham stated that this was one of the best CAFRs he had ever seen and expressed his compliments to staff.

#### Action Taken

Mr. Ewin moved to approve applying \$481,000 to the MTS Contingency Reserve. Mr. Ovrom seconded the motion, and the vote was 11 to 0 in favor.

#### REPORT ITEMS:

45. MTS: Annual Service Performance Monitoring Report (SRTP 830)

Ms. Sharon Cooney, Director of Government Affairs and Community Relations, and Interim Director of Planning and Scheduling, advised the Board that this report is presented annually for the fiscal year as outlined in Board Policy No. 42.

Mr. Devin Braun, Senior Transportation Planner, reported that this is the first annual report to reflect a full year of service provided under the Comprehensive Operational Analysis (COA). He reviewed the evaluation criteria as well as productivity and quality statistics including Total Passengers, Average Weekday Passengers, Passengers per Revenue Hour, Passengers per Service Hour, On-Time Performance, Accidents (Preventable and Nonpreventable), and Complaints. He then reviewed statistics for sustainability and efficiency, including In-Service Miles, Peak-Vehicle Requirement, Farebox Recovery Ratio, and Subsidy per Passenger. Mr. Braun reported that the COA has improved productivity, sustainability, and efficiency, while lowering subsidy per passenger and raising farebox recovery ratio.

Ms. Cooney reported that after the implementation of the Day Pass, anomalies were discovered in the program that tracks trolley fare statistics. She reported that SANDAG is using a statistician to validate the numbers and develop a better system. She stated that FY 2009 statistics will be reevaluated.

Mr. Jablonski stated that the COA has had a very positive impact on the system and has put MTS in a position to put resources where they generate the most increased ridership. He stated that because of that, MTS has been able to absorb recent ridership increases without increasing costs. Mr. Rindone stated that the COA was very in depth and thorough. He stated that it was difficult to make some of the decisions necessary to realign service and that it is very heartening to see the good results. He stated that Sacramento should not be cutting transit-related funding at a time when there is a golden opportunity to get more people to use it.

In response to a question from Mr. Young about raising revenues, Mr. Jablonski reported that another fare increase (\$4 increase in the monthly pass) will be implemented in January, and a flat fare for trolley service will be implemented in September. He stated that the Budget Development Committee will be working with staff to identify further ways to increase revenues and decrease expenses. In response to another question from Mr. Young, Mr. Jablonski reported that Planning Department staff members constantly evaluate service and that the statistics included in this report are used as part of that evaluation process. He added that the Planning Department is evaluating what service adjustments should be implemented in the spring.

In response to a question from Mr. McClellan about rural service, Chairman Mathis explained that this is lifeline service, and what remains of that service is substantially less than what was operating before the COA. Mr. Jablonski stated that the cost of this service prior to the COA was \$1.8 million, and, after the COA, the cost is \$.5 million. He added that the cost for this service is primarily covered by a federal grant, and the actual cost to MTS is very minor. He added that some of the service, being provided by minibuses, now operates with a \$10 fare.

In response to a question from Mr. Ewin, Mr. Jablonski stated that MTS does not have any residual requirements as a result of taking over this service from County Transit when it divested. Ms. Cooney stated that MTS had certain requirements until 2007 only. In response to a question from Mr. McClellan, Chairman Mathis stated that riders were surveyed to determine how the service should be provided. Mr. McClellan stated that maybe the fare should be increased again for this service.

#### Action Taken

Mr. Rindone moved to receive a report for information. Mr. McClellan seconded the motion, and the vote was 11 to 0 in favor.

#### 46. MTS: Compass Card Update (CIP 11457)

Mr. Jablonski advised the Board that only 50 percent of the equipment necessary for the implementation of the Compass Card has been installed and even less of the equipment has been activated. He reported that SANDAG hopes to complete the installation of equipment by the end of December. He stated that once the equipment has been installed and activated, it will have to be tested. He stated that only about 85 percent of the tests completed on the installed equipment have been successful. He added that he hoped that, by end of January, testing would show that the equipment is reliable. He added that at its meeting on December 4, the MTS Executive Committee recommended a delay in implementation of the Compass Card until March 1, 2009, which was affirmed by the SANDAG Transportation Committee the next day.

Mr. Jablonski advised the Board that he had some concerns about the impact of rolling passes on revenues. He also stated that it would be extraordinary to have all existing pass holders

change from a calendar-based monthly pass to a rolling 30-day pass. He added that MTS sells about 70,000 passes per month and felt that it might be difficult for pass holders to adjust to rolling passes, which will have expiration dates that change based on the first day the pass is used. He stated that he advocated for offering both calendar-based and rolling passes for that reason and so customers could choose which pass they wanted to purchase. He stated that he also advocated for introducing the different products (14- and 30-day rolling passes as well as stored value passes) in phases so that customers could adapt to the new products gradually. In response to a question from Mr. McClellan, he reported that pass holders can sign up for automatic renewals of their passes. Mr. Clabby, who chairs the Accessible Services Advisory Committee, reported that many of their members are participating in the test group and have reported that they encountered a number of technical problems.

Action Taken

Mr. Clabby moved to receive a status report on development and implementation of the Compass Card fare system. Mr. Ovrom seconded the motion, and the vote was 8 to 0 in favor.

47. MTS: Sorrento Valley Coaster Connection (CIP 10465)

Ms. Cooney discussed the current structure of the Sorrento Valley Coaster Connection service, displayed a route map, and reviewed the history of funding for this service. She also reported on how the implementation of a \$1 fare caused ridership on this route to decrease by one third. Mr. Jablonski reported that this decline in ridership was expected given the \$180 monthly fare on the Coaster, the addition of the \$1 fare, and the decline in fuel prices. Ms. Cooney reported that MTS would need \$435,000 in order to continue providing this service. Ms. Cooney reviewed efforts that were made to gain private-public partnerships to support this service and reported that some employers have started their own shuttles between the Coaster station and their offices. She added that QualComm has stated that, if MTS discontinues this service, they will probably extend their on-campus shuttle to the Coaster station. Ms. Cooney pointed out that the current funding for this service has probably already been expended. She also reported that a letter has been sent to SANDAG requesting that they concur with MTS's plan to hold a public hearing in January for the discontinuation of the Sorrento Valley Coaster Connection.

Ms. Cooney advised the Board that SANDAG staff indicated initially that they concurred with MTS's conclusion regarding the discontinuation of this service and that early indications from North County Transit were also favorable. She stated that North County Transit has since objected, and SANDAG has now suggested that MTS cut service elsewhere to fund the Sorrento Valley service or identify other options for its continuation. Mr. Jablonski reported that SANDAG considers this to be a regional service, and changes need to be affirmed by the SANDAG Transportation Committee. He stated that North County Transit's Acting Executive Director Ray Patchett has asked MTS to delay discontinuation of this service until other options can be studied. Mr. Jablonski stated that MTS should proceed with its public hearing in January and that staff would have adequate time to study alternatives in the interim. He reported that Reed Vickerman of Amylin Pharmaceuticals, who has been organizing the meetings with Sorrento Valley employers, has asked him to make one more presentation to all the employers. Chairman Mathis felt that Sorrento Valley employers would implement service for their employees if MTS discontinued the existing service. He stated that he would be unhappy if SANDAG finds that MTS should cut service elsewhere to fund the Coaster Connection.

Mr. Ewin stated that when the Air Pollution Control District funding for this service ran out, it was decided that the service would be continued temporarily and suggested that MTS proceed with the public hearing. Mr. Ovrom stated that since employers are starting to provide their own

shuttles for employees, this is a case of diminishing return. Mr. Jablonski stated that MTS should encourage employers to pursue this option because MTS does not have the funding to provide service in all cases and locations. He pointed out that QualComm employees constitute a larger percentage of the ridership on the Coaster Connection and reminded Board members that QualComm already operates a shuttle for employees traveling on their grounds. Mr. Ewin requested that this item be discussed at the next Executive Committee meeting.

Action Taken

Mr. Clabby moved to receive a report on the Sorrento Valley Coaster Connection. Mr. McClellan seconded the motion, and the vote was 10 to 0 in favor.

48. SDTI: Padres Baseball 2008 Year-End Summary (OPS 970.12)

Mr. Tom Doogan, Special Events/Operations Coordinator, provided an overview of service provided to Padres baseball games during 2008. He reviewed attendance and ridership statistics, Padres service history, gate percentage by month and day, the methodology used to determine cost recovery, and the results of the cost recovery study for 2008. He reported that MTS realized net operating revenue of \$4,729 per game. He explained for Mr. Young that it is easier to dissect the service with a smaller sample rather than for the entire season, which consists of over 80 games. He summarized stating that while attendance at the games and ridership went down, ridership as a percentage of the gate was up for the second consecutive year. He stated that operating efficiencies offset decreased revenues and resulted in an increase in net operating revenue per game.

In response to a question from Mr. Jones, Mr. Doogan responded that trolley service is at about 80 percent of capacity on average. Mr. Jablonski stated that the trolley could carry 50 percent of the gate if MTS ran enough trolley cars. Mr. Jones suggested that the Family Weekend promotion be expanded to weekday games to make it cheaper for families to go to the games and to increase ridership. He pointed out that for most families it is cheaper to pay for parking. Mr. Doogan confirmed for Mr. Young that MTS did receive full cost recovery for the additional security provided for service to Padres games. Mr. Jablonski stated that economies have been experienced by having crowd-control personnel rather than more highly paid security personnel perform certain functions. Mr. Jablonski informed Mr. Young that the Padres do not subsidize this service – that the revenue for this service exceeds the cost of providing it.

Action Taken

Mr. Young moved to receive a report for information. Mr. Rindone seconded the motion, and the vote was 10 to 0 in favor.

49. MTS: Padres Ticket Programs (MKPC 620.8)

Mr. Schupp reviewed the current programs MTS has entered into with the Padres to encourage ridership on the trolley by both fans and Padres employees, including Transit Tuesdays, which provides MTS riders with a \$6 discount on Padres tickets. He reviewed statistics for the sale of Transit Tuesday tickets. He also reviewed a Season Ticket Program that is being implemented that would give season ticket holders an opportunity to buy Season Transit Tickets.

Mr. Schupp explained to Mr. Cunningham that there would be no type of preferential treatment offered to Season Transit Ticket holders. Mr. Jablonski explained that there are between 25

and 30 trips to each game. He stated that MTS anticipates selling 300 Season Transit Tickets; therefore, separate cars for Transit Season Pass holders would not be filled.

Action Taken

Mr. Young moved to receive a status report on new and existing ticket program between the San Diego Padres and MTS. Mr. McLean seconded the motion, and the vote was 10 to 0 in favor.

50. MTS: Investment Report – October 2008 (FIN 305)

Ms. Linda Musengo, Finance Manager, reviewed the Investment Report for October 2008. She reported that MTS will be increasing the amount that is kept on deposit to maximize interest return in order to offset fees. She pointed out that investment earnings for the Local Agency Investment Fund (LAIF) have declined from 2.779 percent to 2.568 percent but stated that the fair market value has stayed pretty level given the current financial conditions. She explained for Mr. Young that all account balances are “swept” into the Concentration Sweep Account at the end of the day. Ms. Musengo explained that most of the investments consist of liquid treasury instruments, and there are no international instruments being used. She also explained that all interest earned is used for operations. Mr. Cliff Telfer, Chief Financial Officer, explained that if losses continue at the same rate for the rest of the year, approximately \$1 million in investment return would be lost. Mr. Jablonski explained for Mr. Young that investment income appears on the revenue side of MTS’s balance sheet.

In response to a question from Mr. Ewin, Ms. Musengo explained that MTS just entered a banking contract for three years that was competitively bid and with fees that are lower than the fees paid under the previous contract. Mr. Telfer advised Mr. Ewin that there is nothing in the investment policy that requires that the Board be notified when interest returns drop by a certain percentage. Mr. Jablonski stated that any significant change would be reported to the Board as a matter of course. Mr. Ewin stated that this is very important given the Board’s fiduciary responsibilities. Mr. Jablonski stated that the returns are watched on a daily basis for cash flow purposes. Mr. Telfer confirmed for Mr. Cunningham that all funds in investment accounts are insured and advised him that MTS’s investment policy outlines what types of investment instruments can be used.

Action Taken

Mr. McClellan moved to receive a report for information. Mr. Cunningham seconded the motion, and the vote was 10 to 0 in favor.

51. MTS: Year-to-Date Operations Budget status Report Through September 2008 (FIN 310.2)

Mr. Mike Thompson, Assistant Budget Manager, reviewed financial results for FY 2009 through September 30, 2008. He reported that MTS is currently \$2,678,000 under budget for this period. Mr. Telfer pointed out that this does not reflect that the Governor suspended payment of STA funds. Mr. Jablonski stated that being under budget to this degree helps MTS absorb some of the funding shortfalls being experienced. He stated that staff continues to look for other ways to save money until more formal initiatives for increasing revenues and cutting expenses can be identified. In response to a question from Mr. Ovrom, Mr. Jablonski stated that recent price cuts could help MTS reduce its cost for materials and supplies. In response to another question from Mr. Ovrom, Mr. Jablonski stated that Board members will receive notifications as more information is received regarding state funding levels.



Mr. Jablonski stated that it is too late to make service adjustment for January 2009 so the next opportunity will be June 2009. He stated that service adjustments offer the opportunity for the most cost savings. He also stated that service adjustments for contract operations are a bit more flexible in terms of when they can be implemented.

Action Taken

Mr. Young moved to receive the MTS Year-to-Date Operations Budget Status Report through September 2008. Mr. McLellan seconded the motion, and the vote was 10 to 0 in favor.

52. MTS: 4S Ranch Pilot Project – Route 880 Express Service to Sorrento Valley/UTC (OPS 920)

Mr. Brent Boyd, Senior Transportation Planner, provided the Board with background on the 4S Ranch Pilot Project. He provided details on the surveys that were conducted of 4S Ranch residents to determine their preferences. He reported that about one-half of those surveyed preferred express service to downtown San Diego and one-half preferred Sorrento Valley/UTC as a destination. He added that \$709,631 in developer mitigation fees are being used to provide this service. He then reviewed the reasons that Sorrento Valley/UTC was selected as the destination, which included that this is an underserved market, that it will improve regional connections, and that this will provide a good test for evaluating the future alignment of Bus Rapid Transit (BRT) service. He added that there is already express service to downtown San Diego. He then reviewed the service plan, including the number of trips, cost, frequency, routing of the service, and the start date. He advised Committee members that the Rancho Bernardo Station does not open until late January or mid-February; therefore, the Route 880 will not be started until March. He then reviewed the financial plan for this service. Mr. Boyd advised the Board that MTS reserves the right to make adjustments or cancel this service at any time because it is a pilot program.

Ms. Cooney reported that the Executive Committee was concerned that BRT might not be in place at the end of the pilot program and that MTS might be expected to continue providing this service even though developer mitigation fees have been exhausted. Chairman Mathis stated that, despite SANDAG staff assurances that this would not be the case, he was not sure there wouldn't be some review of MTS's decision to discontinue the service. Mr. Ewin stated that the Board should receive the recommendation for discontinuation of this service at least three months prior to the service end date. Mr. Jablonski stated that staff would be making periodic reports to the Board on the performance of this service, and Ms. Cooney stated that a public hearing would be held during which the Board would decide on the future of this service. Mr. Clabby was concerned that this service would end up being similar to the Sorrento Valley Coaster Service and may not be that easy to discontinue. Mr. Jablonski stated that SANDAG understands that these types of actions need to be taken when funding levels fall, and that MTS usually succeeds in discontinuing service that is no longer feasible to provide. He added that the BRT service is projected to start in 2012 and is part of the TransNet Early Action Program. Mr. Ewin suggested that MTS build in safeguards where it can ensure it is able to take action to discontinue service when this type of situation develops.

Action Taken

Mr. Ovrom moved to defer this agenda item to December. Mr. Cunningham seconded the motion, and the vote was 9 to 0 in favor.

32. MTS: Mission Valley East Legal Services – Contract Amendment (CIP 10426.12)  
***(Taken Out of Order)***

Mr. Dennis Wahl, SANDAG Associate Engineer, reported that this amendment will cover attorney fees for the attorneys defending MTS in a lawsuit filed by one of the Mission Valley East contractors.

Action Taken

Mr. Young moved to authorize the CEO to execute Amendment No. 8 to MTS Doc. No. M6655.5-07 with Hecht, Solberg, Robinson, Goldberg, and Bagley, LLP (in substantially the same form as Attachment A of the agenda item) for legal services on the Mission Valley East Light Rail Transit Project. Mr. Rindone seconded the motion, and the vote was 10 to 0 in favor.

60. Chairman's Report

Chairman Mathis made no report.

61. Audit Oversight Committee Chairman's Report

Mr. Ewin, Chairman of the Audit Oversight Committee, made no report.

62. Chief Executive Officer's Report

*SANDAG Transportation Committee:* Mr. Jablonski reported that the first reading of the SANDAG fare ordinance would occur at the Friday, December 12, 2008, SANDAG Transportation Committee meeting. He stated that this amendment to the fare ordinance will delay the implementation of the Compass Card. He stated that the Committee will also be discussing the Sorrento Valley Coaster Connection.

*New Board Members:* Mr. Jablonski stated that an orientation will be held in January for all new MTS Board members, once they have all been appointed by their respective cities.

63. Board Member Communications

There were no Board member communications.

64. Additional Public Comments on Items Not on the Agenda

There were no additional Public Comments.

65. Next Meeting Date

The next regularly scheduled Board meeting is Thursday, January 15, 2009.

66. Adjournment

Chairman Mathis adjourned the meeting at 11:36 a.m.

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Chairperson  
San Diego Metropolitan Transit System

Filed by:

Approved as to form:

---

Office of the Clerk of the Board  
San Diego Metropolitan Transit System

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Office of the General Counsel  
San Diego Metropolitan Transit System

Attachment: A. Roll Call Sheet

[gail.williams/minutes](#)

**METROPOLITAN TRANSIT DEVELOPMENT BOARD  
ROLL CALL**

MEETING OF (DATE): 12/11/08

CALL TO ORDER (TIME): 9:04 a.m.

RECESS: \_\_\_\_\_

RECONVENE: \_\_\_\_\_

CLOSED SESSION: \_\_\_\_\_

RECONVENE: \_\_\_\_\_

PUBLIC HEARING: \_\_\_\_\_

RECONVENE: \_\_\_\_\_

ORDINANCES ADOPTED: \_\_\_\_\_

ADJOURN: 11:36 a.m.

BOARD MEMBER	(Alternate)	PRESENT (TIME ARRIVED)	ABSENT (TIME LEFT)
VACANT - CITY	<input type="checkbox"/> (Hueso) <input type="checkbox"/>		<input checked="" type="checkbox"/>
CLABBY	<input checked="" type="checkbox"/> (Selby) <input type="checkbox"/>		
BOYACK	<input type="checkbox"/> (Cunningham) <input checked="" type="checkbox"/>		
EWIN	<input checked="" type="checkbox"/> (Allan) <input type="checkbox"/>		
FAULCONER	<input checked="" type="checkbox"/> (Hueso) <input type="checkbox"/>		10:09 a.m. during AI 46
VACANT - CITY	<input type="checkbox"/> (Hueso) <input type="checkbox"/>		<input checked="" type="checkbox"/>
MATHIS	<input checked="" type="checkbox"/> (Vacant) <input type="checkbox"/>		
MCCLELLAN	<input checked="" type="checkbox"/> (Hanson-Cox) <input type="checkbox"/>		
MCLEAN	<input checked="" type="checkbox"/> (Bragg) <input type="checkbox"/>		
ORVOM	<input checked="" type="checkbox"/> (Woiwode) <input type="checkbox"/>		
RINDONE	<input checked="" type="checkbox"/> (McCann) <input type="checkbox"/>		
ROBERTS	<input type="checkbox"/> (Cox) <input type="checkbox"/>		<input checked="" type="checkbox"/>
RYAN	<input type="checkbox"/> (B. Jones) <input checked="" type="checkbox"/>		
YOUNG	<input checked="" type="checkbox"/> (Hueso) <input type="checkbox"/>	9:11 a.m. during AI 4	11:24 a.m. during AI 52
ZARATE	<input type="checkbox"/> (Parra) <input type="checkbox"/>		<input checked="" type="checkbox"/>

SIGNED BY THE OFFICE OF THE CLERK OF THE BOARD

CONFIRMED BY OFFICE OF THE GENERAL COUNSEL



1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
619/231-1466  
FAX 619/234-3407

## Agenda

Item No. 4

JOINT MEETING OF THE BOARD OF DIRECTORS  
of the  
Metropolitan Transit System,  
San Diego Transit Corporation, and  
San Diego Trolley, Inc.

ADM 110

January 15, 2009

### SUBJECT:

MTS: ELECTION OF VICE CHAIR AND CHAIR PRO TEM AND APPOINTMENTS TO  
COMMITTEES FOR 2009

### RECOMMENDATION:

That the Board of Directors:

1. elect a Vice Chair and a Chair Pro Tem for 2009; and
2. consider the nominating slate proposed by the Ad Hoc Nominating Committee for the appointment of representatives to MTS committees for 2009 as listed on the attached table (Attachment A) and vote to appoint representatives to those committees.

### Budget Impact

None.

### DISCUSSION:

Public Utilities Code Section 120100 requires the Board of Directors, annually at its first meeting in January, to elect a Vice Chair who shall preside in the absence of the Chair. Policies and Procedures No. 22, "Rules of Procedure," also provides for the election of a Chair Pro Tem to serve in the absence of the Chair and Vice Chair. In 2008, Jerry Rindone served as Vice Chair, and Bob Emery served as Chair Pro Tem.



Metropolitan Transit System (MTS) is a California public agency and is comprised of San Diego Transit Corporation and San Diego Trolley, Inc. nonprofit public benefit corporations, in cooperation with Chula Vista Transit and National City Transit. MTS is the taxicab administrator for eight cities and the owner of the San Diego and Arizona Eastern Railway Company. MTS member agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

The Vice Chairman and Chair Pro Tem nomination and election procedures pursuant to Robert's Rules of Order are as follows:

1. The Chairman of the Board opens the agenda item.
2. The Chairman requests nominations from the floor. Nominations do not require a second.
3. The Chairman closes the nominations.
4. The Chairman invites the candidate(s) to address the Board for 3 minutes.
5. The Chairman asks for any Board discussion.
6. The Chairman calls for the vote on each motion for each candidate.
7. The vote is taken on the motion(s) for each candidate based upon the order in which they were nominated. The vote continues until a candidate is elected.

In addition, each year the Board makes appointments to the various committees, including the Executive Committee, the Budget Committee, the Joint Committee on Regional Transit (JCRT), the Taxicab Committee, the High-Speed Rail Task Force of the San Diego Association of Governments (SANDAG), the Los Angeles-San Diego Rail Corridor Agency (LOSSAN), the Accessible Services Advisory Committee (ASAC), the Ad Hoc Railroad Subcommittee (the Ad Hoc Nominating Committee recommendations discontinuing this subcommittee), the SANDAG Board, and the SANDAG Transportation Committee.

The Ad Hoc Nominating Committee is proposing the attached nominating slate for the 2009 MTS Committees. Board members are asked to consider the slate and vote on the attached appointments.

The nomination and election procedures pursuant to Robert's Rules of Order are as follows:

1. The Chairman of the Board opens the agenda item.
2. The Ad Hoc Nominating Committee makes a report and calls for a motion on the nominating slate.
3. The Chairman requests additional nominations from the floor. Nominations do not require a second.
4. The Chairman closes the nominations.
5. The Chairman invites the candidate(s) to address the Board for 3 minutes.
6. The Chairman asks for any Board discussion.

7. The Chairman calls for the vote on each motion for each candidate. The vote is taken on the motion(s) for each candidate based upon the order in which they were nominated. The vote continues until a candidate is elected.



---

Paul C. Jablenski  
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, [Sharon.Cooney@sdmts.com](mailto:Sharon.Cooney@sdmts.com)

JAN15-09.4.ELECTIONS&COMMITTEEAPPT.SCOONEY.doc

Attachment: A. Slate of MTS Committees and Outside Agency Appointments

## 2009 SLATE OF MTS COMMITTEES AND OUTSIDE AGENCY APPOINTMENTS

Accessible Services Advisory Committee (ASAC)	Thomas Clabby – Chair	May be voted upon by all Representatives
Ad Hoc Airport Regional Policy Committee	Harry Mathis – Committee Representative Jerry Rindone - Alternate	May be voted upon by all Representatives except Harry Mathis May be voted upon by all Representatives except Jerry Rindone
Ad Hoc Public Security Committee	Tony Young – Chair Ernie Ewin – Committee Representative Fred McLean – Committee Representative Harry Mathis – Committee Representative *Request nominations for alternate from the floor	May be voted upon by all Representatives except Tony Young May be voted upon by all Representatives except Ernie Ewin May be voted upon by all Representatives except Fred McLean May be voted upon by all Representatives except Harry Mathis
Ad Hoc Railroad Subcommittee	Recommended for Discontinuation	May be voted upon by all Representatives
Audit Oversight Committee*	Ernie Ewin - Chair Harry Mathis – Committee Representative Sherri Lightner– City of San Diego Representative (Alternate: Tony Young) Lemon Grove, to be appointed 1/20/09– East Cities Representative (Alternate: Hal Ryan) Fred McLean – South Bay Representative (Alternate: Jerry Rindone) Ron Roberts – County Representative (Alternate: Greg Cox) Jerry Rindone – Vice Chair (recommended)	*Appointments are governed by MTS Policy No. 22 except for the Chair's position.
Budget Development Committee	Jerry Rindone – Chair Harry Mathis – Vice Chair Bob McClellan– Committee Representative Ron Roberts – Committee Representative Tony Young – Committee Representative	May be voted upon by all Representatives except Jerry Rindone May be voted upon by all Representatives except Harry Mathis May be voted upon by all Representatives except Bob McClellan May be voted upon by all Representatives except Ron Roberts May be voted upon by all Representatives except Tony Young



Executive Committee  Appointment governed by rotation schedule established in MTS Board Policy No. 22	Harry Mathis – Chair Sherri Lightner– City of San Diego Representative (Alternate: Tony Young) Lemon Grove, to be appointed 1/20/09 – East Cities Representative (Alternate: Hal Ryan) Fred McLean – South Bay Representative (Alternate: Jerry Rindone) Ron Roberts – County Representative (Alternate: Greg Cox) Jerry Rindone – Vice Chair (recommended) (Alternate Chair Pro Tem, Fred McLean recommended)	*Appointments are governed by MTS Policy No. 22.
Joint Committee on Regional Transit (JCRT)	Bob McClellan – Committee Representative Harry Mathis – Committee Representative Ernie Ewin – Committee Representative *Request nominations for alternate from the floor	May be voted upon by all Representatives except Bob McClellan May be voted upon by all Representatives Harry Mathis May be voted upon by all Representatives Ernie Ewin
Los Angeles-San Diego Rail Corridor Agency (LOSSAN)	Jerry Rindone – Committee Representative Harry Mathis – Alternate	May be voted upon by all Representatives except Jerry Rindone May be voted upon by all Representatives except Harry Mathis
SANDAG Board	Harry Mathis - Advisory Representative Ron Roberts - Alternate Ernie Ewin – Second Alternate	May be voted upon by all Representatives except Harry Mathis May be voted upon by all Representatives except Ron Roberts May be voted upon by all Representatives except Ernie Ewin
SANDAG Regional Planning Committee	Ernie Ewin – Committee Representative *Request nominations for alternate from the floor	May be voted upon by all Representatives except Ernie Ewin
SANDAG Transportation Committee*	Harry Mathis – Committee Representative Jerry Rindone - Alternate	*Elected by the Executive Committee at the January 8, 2009, meeting
Taxicab Committee	Todd Gloria – Chair City of San Diego Representatives' Choice - Alternate *Request nominations for alternate from the floor	May be voted upon by all Representatives except Todd Gloria



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FAX 619/234-3407

## Agenda

Item No. 6

JOINT MEETING OF THE BOARD OF DIRECTORS  
for the  
Metropolitan Transit System,  
San Diego Transit Corporation, and  
San Diego Trolley, Inc.

CIP 53710

January 15, 2009

### SUBJECT:

MTS: TRASH DISPOSAL SERVICES (SDTC AND SDTI)

### RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. G1209.0-09 (in substantially the same format as Attachment A) with Daily Disposal Services, Inc. for trash disposal services for a period of five years.

#### Budget Impact

The five-year contract period would begin on February 1, 2009, and end on January 31, 2014. This project would be federally and state funded under the operating budgets of San Diego Transit Corporation (SDTC) and San Diego Trolley, Inc. (SDTI) for a total of \$606,544.00 (FY 09 through FY 13). The operating budgets are comprised of 80% federal and 20% local funds.

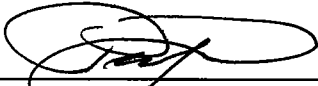
### DISCUSSION:

An Invitation for Bids (IFB) for Trash Disposal Services was issued on September 8, 2008. The project was advertised on August 14, 2008, and a letter of interest was mailed to five contractors on September 8, 2008. A total of four sealed bids were received on October 31, 2008.

An investigation of responsiveness and responsibility was conducted in accordance with MTS Policy No. 52 (Procurement of Goods and Services), which requires a formal competitive bid process for procurements of goods and services exceeding \$100,000, and a bid summary was prepared (Attachment B).



After evaluating the bids and fully reviewing the prices, three bids were found to be responsive and responsible based on the evaluation criteria outlined in the IFB. Further evaluation found that Daily Disposal Services, Inc. provided the lowest responsive and responsible bid. Therefore, staff recommends that MTS award a contract to Daily Disposal Services, Inc. in the amount of \$606,544.00.



---

Paul C. Jablonski  
Chief Executive Officer

Key Staff Contacts: Frank Toth, 619.238.0100, Ext. 6511, [frank.toth@sdmts.com](mailto:frank.toth@sdmts.com)  
Vance Williams, 619.595.4978, [vance.williams@sdmts.com](mailto:vance.williams@sdmts.com)

JAN15-09.6.TRASHDISPOSALSVCS.JMILLER.doc

Attachments: A. Draft MTS Doc. No. G1209.0-09  
B. Bid Summary

## STANDARD SERVICES AGREEMENT

MTS Doc. No. G1209.0-09

CONTRACT NUMBER

OPS 920.6

FILE NUMBER(S)

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2009, in the state of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following contractor, hereinafter referred to as "Contractor":

Name: Daily Disposal Services, Inc.Address: 9201 Campo Road

Form of Business: Corporation  
(Corporation, partnership, sole proprietor, etc.)

Spring Valley, CA 91977-1102Telephone: 619-938-1081

Authorized person to sign contracts: Christine Elias  
Name

Sales Manager  
Title

**The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to MTS services and materials, as follows:**

Provide trash disposal services to the Metropolitan Transit System for five years as stipulated in MTS's Invitation for Bids (IFB) for Trash Disposal Services, MTS Document No. G1209.0-09; including Addendum Nos. 1, 2, and 3, MTS's response to written Questions/Clarifications, Federal Requirements, and in accordance with the Standard Services Agreement, including the Standard Conditions Services and Daily Disposal Services, Inc.'s bid dated October 31, 2008. If there are inconsistencies between the IFB and Addendums, Responses to Written Questions/Clarifications, Federal Requirements, Standard Services Agreement, and the Standard Conditions Services, the following order of precedence will govern the interpretation of this contract:

1. MTS's IFB for Trash Disposal Services No. G1209.0-09, including Addendum Nos. 1, 2, and 3, MTS's response to written questions, and Daily Disposal Services, Inc.'s bid dated October 31, 2008.
2. Standard Services Agreement, including Standard Conditions Services and Federal Requirements.

This contract shall be for a five-year base period effective February 1, 2009, through January 31, 2014. The total contract amount for trash disposal services shall not exceed \$606,544.00.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM	CONTRACTOR AUTHORIZATION
By: _____ Chief Executive Officer	Firm: _____
Approved as to form:	By: _____
By: _____ Office of General Counsel	Signature
	Title: _____

AMOUNT ENCUMBERED	BUDGET ITEM	FISCAL YEAR
\$606,544.00	Cost Center 331, 332, 380; Expense Element 53710	09-14

By: \_\_\_\_\_  
Chief Financial Officer  
(\_\_\_\_ total pages, each bearing contract number)

JAN15-08.6.AttA.TRASH DISPOSAL G1209.0-09.JMILLER.Doc

**IFB for Trash Disposal Services  
MTS Doc No. G1209.0-09**

Att. B, AI 6, 1/15/09

**GRAND TOTALS - BASIS OF AWARD:**

	DAILY DISPOSAL SVCS, INC.	WASTE MANAGEMENT	EDCO	ALLIED WASTE SRV.
<b>Year 1:</b>	\$ 106,096.00	\$ 109,277.32	\$ 111,739.46	\$ -
<b>Year 2:</b>	\$ 121,836.00	\$ 124,719.00	\$ 133,014.00	\$ -
<b>Year 3:</b>	\$ 123,972.00	\$ 126,974.04	\$ 212,024.82	\$ -
<b>Year 4:</b>	\$ 126,180.00	\$ 129,295.68	\$ 146,653.68	\$ -
<b>Year 5:</b>	\$ 128,460.00	\$ 131,679.60	\$ 153,992.34	\$ -
	\$ 606,544.00	\$ 621,945.64	\$ 757,424.30	\$ -
				Allied Waste Services' Bid Deemed Nonresponsive - incomplete Buy America Form



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619.231.1466, FAX: 619.234.3407

## Agenda

Item No. 7

JOINT MEETING OF THE BOARD OF DIRECTORS  
for the  
Metropolitan Transit System,  
San Diego Transit Corporation, and  
San Diego Trolley, Inc.

CIP 50451

January 15, 2009

**SUBJECT:**

MTS: AMENDMENTS TO ASSIGNMENT OF CONTRACT FOR SAN DIEGO  
ASSOCIATION OF GOVERNMENTS' ON-CALL GENERAL TRANSPORTATION  
PLANNING SERVICES (IBI GROUP)

**RECOMMENDATION:**

That the MTS Board of Directors authorize the Chief Executive Officer (CEO) to ratify MTS Doc. No. G1135.0-08 (Attachment A) and execute Amendment No. 1 (Attachment B) to MTS Doc. No G1135.0-08 with IBI Group as part of the San Diego Association of Governments' (SANDAG's) On-Call General Transportation Planning Service Agreement, which was established as a jobs order contract with MTS. Amendment No. 1 would allow MTS to proceed with evaluating weekend service structure and productivity.

Budget Impact

The amount of contract Amendment No. 1 (MTS Doc. No. G1135.1-08) would be \$100,000. Of this amount, \$97,205 would be assigned to the weekend service evaluation study to be paid by MTS budget line item 50451. The source of funding would come from a California Department of Transportation (Caltrans) Statewide Transit Planning Studies grant awarded to MTS.

**DISCUSSION:**

On April 13, 2007, SANDAG and MTS conducted and completed a competitive procurement process for general on-call transportation planning services that is available



Metropolitan Transit System (MTS) is a California public agency and is comprised of San Diego Transit Corporation and San Diego Trolley, Inc. nonprofit public benefit corporations, in cooperation with Chula Vista Transit and National City Transit. MTS is the taxicab administrator for eight cities and the owner of the San Diego and Arizona Eastern Railway Company. MTS member agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

to MTS through a job order contract process under SANDAG Contract No. 5000664. The original amount of this contract was \$100,000.

Contract Amendment No. 1 would allow MTS to execute the agreement with IBI Group to assist MTS Planning Department staff with the evaluation of weekend service structure, performance, and productivity as part of a Caltrans' Statewide Transit Planning Studies grant awarded to MTS in the amount of \$97,205.

Therefore, staff recommends ratifying MTS Doc. No. G1135.0-08 (Attachment A) and executing Amendment No. 1 (Attachment B) to MTS Doc. No G1135.0-08 with IBI Group as part of SANDAG's On-Call General Transportation Planning Service Agreement, which would allow MTS to proceed with evaluating weekend service structure and productivity.

  
Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Mike Daney, 619.557.1932, [mike.daney@sdmts.com](mailto:mike.daney@sdmts.com)

JAN15-09.7.IBIGROUP PLANNINGSVCS.MDANEY.doc

Attachments: A. MTS Doc. No. G1135.0-08  
B. MTS Doc. No. G1135.1-08

Project Number: 8000100

SANDAG Contract Number: 5000664

MTS Doc. Number G1135.0-08

**Assignment of Contract For  
San Diego Association of Government's  
On-Call General Transportation Planning Services  
(IBI Group)**

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THIS ASSIGNMENT AND ASSUMPTION OF CONTRACT FOR ON-CALL GENERAL TRANSPORTATION SERVICES, herein after "Assignment," is made and entered into on this 28th day of September 2007, between the San Diego Association of Governments (SANDAG), a public agency (hereinafter "Assignor"), the Metropolitan Transit System (MTS), a public agency (hereinafter "Assignee"), and IBI Group (Contractor).

WHEREAS, Assignor entered into an On-Call General Transportation Services Contract with Contractor on April 13, 2007, for SANDAG Contract Number 5000664; and

WHEREAS, when Assignor procured the On-Call General Transportation Services that are the subject of this Assignment, the solicitation included language permitting assignment to Assignee of a portion of Contract Number 5000664;

NOW THEREFORE, the parties agree as follows:

1. Assignor hereby assigns, transfers, and sets over unto Assignee a \$100,000 portion all of Assignor's interest in its contract for On-Call General Transportation Services, Contract Number 5000664, a copy of which is incorporated herein by reference.
2. Assignee hereby: (i) accepts the partial assignment of Assignor's interest in the On-Call General Transportation Services Contract; (ii) assumes the relevant portion of Assignor's obligations under the Contract arising from and after September 24, 2007; and (iii) agrees to fully and faithfully perform each and every term and condition of Assignor under the On-Call General Transportation Services Contract, arising from and after September 28, 2007, for task or work orders issued by Assignee.
3. Assignor makes no warranty, representation, guarantee, covenant, or averment of any nature whatsoever concerning SANDAG Contract Number 5000664.
4. Should any suit be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions of this Assignment, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney fees and costs of suit.
5. All task or work orders issued by Assignee shall be labeled with a letter or other distinct numbering designation that clearly distinguishes the documents from Task Orders issued by Assignor to Contractor.
6. This Assignment may be executed and delivered by facsimile signature and a facsimile signature shall be treated as an original. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Assignment.

THE EFFECTIVE DATE OF THIS AGREEMENT IS on or after September 28, 2007.

IN WITNESS WHEREOF, Assignor, Assignee, and Contractor have caused this Agreement to be executed and delivered as of the date first set forth above.



**SAN DIEGO ASSOCIATION OF GOVERNMENTS**

By: \_\_\_\_\_  
**Bob Leiter, Director of Planning**

Approved as to form:

By: \_\_\_\_\_  
**Office of General Counsel**

**METROPOLITAN TRANSIT SYSTEM**

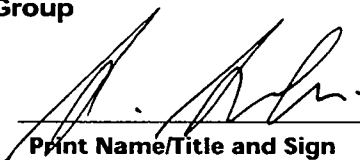
By: \_\_\_\_\_  
**Paul Jablonski, Chief Executive Officer**

Approved as to form:

By: \_\_\_\_\_  
**Office of General Counsel**

Contractor hereby consents to the assignment of \$100,000 of SANDAG Contract Number 5000664 from Assignor to Assignee Consent granted on this 1<sup>st</sup> of OCTOBER 2007.

**IBI Group**

By:  S. SCHIBUOLA, DIRECTOR  
**Print Name/Title and Sign**

ORIGINAL

Project Number: 8000100  
SANDAG Contract Number: 5000664  
MTS Doc. Number G1135.0-08

**Assignment of Contract For  
San Diego Association of Government's  
On-Call General Transportation Planning Services  
(IBI Group)**

---

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACT FOR ON-CALL GENERAL TRANSPORTATION SERVICES, herein after "Assignment," is made and entered into on this 28th day of September 2007, between the San Diego Association of Governments (SANDAG), a public agency (hereinafter "Assignor"), the Metropolitan Transit System (MTS), a public agency (hereinafter "Assignee"), and IBI Group (Contractor).

WHEREAS, Assignor entered into an On-Call General Transportation Services Contract with Contractor on April 13, 2007, for SANDAG Contract Number 5000664; and

WHEREAS, when Assignor procured the On-Call General Transportation Services that are the subject of this Assignment, the solicitation included language permitting assignment to Assignee of a portion of Contract Number 5000664;


NOW THEREFORE, the parties agree as follows:

1. Assignor hereby assigns, transfers, and sets over unto Assignee a \$100,000 portion all of Assignor's interest in its contract for On-Call General Transportation Services, Contract Number 5000664, a copy of which is incorporated herein by reference.
2. Assignee hereby: (i) accepts the partial assignment of Assignor's interest in the On-Call General Transportation Services Contract; (ii) assumes the relevant portion of Assignor's obligations under the Contract arising from and after September 24, 2007; and (iii) agrees to fully and faithfully perform each and every term and condition of Assignor under the On-Call General Transportation Services Contract, arising from and after September 28, 2007, for task or work orders issued by Assignee.
3. Assignor makes no warranty, representation, guarantee, covenant, or averment of any nature whatsoever concerning SANDAG Contract Number 5000664.
4. Should any suit be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions of this Assignment, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney fees and costs of suit.
5. All task or work orders issued by Assignee shall be labeled with a letter or other distinct numbering designation that clearly distinguishes the documents from Task Orders issued by Assignor to Contractor.
6. This Assignment may be executed and delivered by facsimile signature and a facsimile signature shall be treated as an original. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Assignment.

THE EFFECTIVE DATE OF THIS AGREEMENT IS on or after September 28, 2007.

IN WITNESS WHEREOF, Assignor, Assignee, and Contractor have caused this Agreement to be executed and delivered as of the date first set forth above.

**SAN DIEGO ASSOCIATION OF GOVERNMENTS**

By:   
**Bob Leiter, Director of Planning**

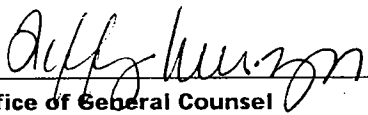
Approved as to form:

By:   
**Office of General Counsel**

**METROPOLITAN TRANSIT SYSTEM**

By:   
**Paul Jablonski, Chief Executive Officer**

Approved as to form:

By:   
**Office of General Counsel**

Contractor hereby consents to the assignment of \$100,000 of SANDAG Contract Number 5000664 from Assignor to Assignee Consent granted on this \_\_\_\_ of \_\_\_\_\_ 2007.

**IBI Group**

By: \_\_\_\_\_  
**Print Name/Title and Sign**



**Amendment No.1 to Assignment No. 1 to MTS  
to SANDAG Agreement No. 5000664**

**I. Amendment Summary**

Contract No.: 5000664			
Amendment No.: 1 to Assignment No. 1 to MTS			
Consultant: IBI Group			
Work Description: Planning On-Call Services			
<b>A. This Amendment Only (Revisions)</b>		<b>B. Original Assignment</b>	<b>D. Revised (Total) Amended Assignment</b>
Revisions to:	Choose One Below	Amount: \$100,000	% Over Original Amount: 100%
<input type="checkbox"/> Scope	<input checked="" type="checkbox"/> Terms & Conditions (T&C)	End Date: 3/31/2012	
	<input type="checkbox"/> Scope of Work (SOW)	<b>C. Current Assignment*</b>	
	<input type="checkbox"/> Both (T&C) and (SOW)		
<input checked="" type="checkbox"/> Amount	Amount: \$100,000	Amount: \$100,000	Amount: \$ 200,000
<input type="checkbox"/> Exp. Date	End Date: List End Date	End Date: 3/31/2012	End Date: 3/31/2010

\* This includes original agreement and all previously approved amendments

**II. Standard Provisions**

- A. Under the Agreement identified by the Contract Number in Article I and any previous amendments thereto (referred to herein as "Agreement") between San Diego Association of Governments ("SANDAG") and Contractor/Consultant identified in Article I of this Amendment (referred to herein as "Consultant"), a portion of the value of Consultant's services under the Agreement has been assigned to the Metropolitan Transit System (MTS) by SANDAG pursuant to Assignment No. 1.
- B. Consultant shall remain bound to the terms of the Agreement, except to the extent the terms of this Amendment conflict with the Agreement or a previous amendment, in which case this Amendment shall supersede. Nothing in this Amendment to Assignment No. 1 relieves the Consultant of its obligation to perform as required by the Agreement or any previous amendment unless expressly stated herein.

**III. Agreement Revisions (See Article I.A – Amendment Summary, if applicable)**

**A. Scope of Work**

SANDAG and Consultant agree that there shall be no change to the scope of the Agreement.

**B. Costs**

1. SANDAG and Consultant agree that the amount of the Agreement assigned to MTS shall be revised. The revised amount of the Assignment is summarized in Article I.A.
2. Consultant shall invoice MTS directly for any work authorized by MTS under Assignment No. 1 and this Amendment. SANDAG shall have no liability or responsibility for overseeing or paying for any services authorized by MTS under the Assignment or any amendments thereto.

C. Schedule of Services/Milestones/Deliverables

SANDAG and Consultant agree that there shall be no change to the termination date of the Agreement.

IV. Signatures

This Amendment may be executed and delivered by facsimile signature and a facsimile signature shall be treated as an original. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Amendment.

IN WITNESS WHEREOF, this Amendment to Assignment No. 1 to MTS has been executed under the provisions of the Agreement between SANDAG and Consultant. By signing below, the parties hereto agree that all terms and conditions of this Amendment and the Agreement and any previous amendments shall be in full force and effect.

The persons below assert that they are authorized to execute this Amendment and have executed it effective as of this \_\_\_\_\_ day of December, 2008.

SAN DIEGO ASSOCIATION OF GOVERNMENTS

IBI GROUP

\_\_\_\_\_  
BOB LEITER  
Director of Planning

\_\_\_\_\_  
Date

\_\_\_\_\_  
STEVE SCHIBUOLA  
Consultant Project Manager

12/09/08

\_\_\_\_\_  
Date

Approved as to form and legality:

\_\_\_\_\_  
Office Of General Counsel

\_\_\_\_\_  
Date

METROPOLITAN TRANSIT SYSTEM

\_\_\_\_\_  
PAUL C. JABLONSKI  
CHIEF EXECUTIVE OFFICER

\_\_\_\_\_  
Date

Approved as to form and legality:

\_\_\_\_\_  
MTS Office Of General Counsel

\_\_\_\_\_  
Date

Attachments:

☐ Scope of Work (Attachment A)

☐ Payments (Attachment B)

☐ Schedule (Attachment C)

☒ No Attachments



1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101  
619.231.1466 Fax: 619.234.3407

## Agenda

## Item No. 8

JOINT MEETING OF THE BOARD OF DIRECTORS  
for the  
Metropolitan Transit System,  
San Diego Transit Corporation and  
San Diego Trolley, Inc.

OPS 960.6

January 15, 2009

### SUBJECT:

MTS: BUS OPERATOR UNIFORMS - CONTRACT AWARD

### RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. B0509.0-09 (in substantially the same format as Attachment A) with Kingsbury Uniforms, Inc. for bus operator uniforms for up to a five-year period.

#### Budget Impact

Kingsbury Uniform Inc.'s bid prices per year are as follows:

➤	Year 1	\$136,976.39
➤	Year 2	\$140,512.01
➤	Year 3	\$142,686.83
➤	Year 4	\$144,003.72
➤	Year 5	\$145,900.06

This contract would cover up to a five-year period, and the total cost would not exceed \$710,079.01. The cost is based on the estimated quantities of uniforms budgeted annually under MTS Bus operations using local funds.

### DISCUSSION:

#### Background

MTS Policy No. 52 governing procurement of goods and services requires a formal competitive bid process for procurements exceeding \$100,000.



On October 9, 2008, MTS issued an Invitation for Bids (IFB) to interested parties for bus operator uniforms. The annual uniform replacement amount is stipulated in the Collective Bargaining Agreement with Amalgamated Transit Union Local 1309 and for the issuance of uniforms for new hires. We anticipate providing uniforms for approximately 540 bus operators every year. This contract would provide the initial provision of three shirts and three pants for approximately 150 new hires per year. It would also include the annual replacement allowance of bus operators at \$200 per full-time bus operator (approximately 524 operators) and \$100 per part-time bus operator (approximately 16 operators).

A total of three bids were received on November 5, 2008 (see Bid Summary – Attachment B)—two responsive bids and one nonresponsive bid. Ace Uniforms submittal was deemed nonresponsive because its bid was incomplete (several pages of the required pricing forms were not submitted). Kingsbury Uniforms, Inc. was the lowest responsive, responsible bidder for the five-year period at \$710,079.01, therefore; pursuant to MTS policy, staff recommends award of the contract to Kingsbury Uniforms, Inc.



---

Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Jim Byrne, 619.238.0100, Ext. 6420, [jim.byrne@sdmts.com](mailto:jim.byrne@sdmts.com)

JAN15-09.8.BUS UNIFORMS.CAQUINO.doc

Attachments: A. Draft Agreement for Kingsbury Uniforms, Inc. (MTS Doc. No. B0509.0-09)  
B. Bid Summary

## STANDARD PROCUREMENT AGREEMENT

DRAFT

B0509.0-09  
 CONTRACT NUMBER  
 OPS 960.2  
 FILE NUMBER(S)

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2009, in the state of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following contractor, hereinafter referred to as "Contractor":

Name: Kingsbury Uniforms, Inc. Address: 112 West 9<sup>th</sup> Street, #301

Form of Business: Corporation Los Angeles, CA 90015  
 (Corporation, partnership, sole proprietor, etc.)

Telephone: 213.623.3386

Authorized person to sign contracts: Catherine Brown President  
 Name Title

The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to MTS services and materials, as follows:

Provide operator uniforms for MTS Bus operations as stipulated in MTS's Invitation for Bid (IFB) for Bus Operator Uniforms, MTS Doc. No. B0509.0-09; including Addendum Nos. 1 and 2, MTS's Responses to Written Questions/Clarifications; and in accordance with the Standard Procurement Agreement, including the Standard Conditions Procurement, Safety Department's Standard Operating Procedure (SOP) (SAF-016), and Kingsbury Uniform, Inc.'s Bid Proposal dated 11/5/08. If there are inconsistencies between the IFB and Addendum, Responses to Questions/Clarifications, Standard Procurement Agreement, and/or the Standard Conditions Procurement, the following order of precedence will govern the interpretation of this contract:

1. MTS's Bus Operator Uniform IFB, Addendum No. 1 and 2, MTS's Responses to Written Questions/Clarifications, and Kingsbury Uniform Inc.'s Bid Proposal dated 11/5/08.
2. Standard Procurement Agreement, including the Standard Conditions Procurement.

This contract shall remain in effect for three full years with two 1-year options exercisable at MTS's sole discretion (January 1, 2009, through December 31, 2013). The total contract amount shall not exceed \$710,079.01.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM		CONTRACTOR AUTHORIZATION
By: _____ Chief Executive Officer	Firm: _____	
Approved as to form:	By: _____ Signature	
By: _____ Office of General Counsel	Title: _____	
AMOUNT ENCUMBERED	BUDGET ITEM	FISCAL YEAR
\$710,079.01	213-52610	09-13
By: _____ Chief Financial Officer	Date	





1255 Imperial Avenue, Suite 1000  
 San Diego, CA 92101-7490  
 619.231.1466, FAX: 619.234.3407

### BID SUMMARY

#### MTS IFB NO. B0509.0-09 BUS OPERATOR UNIFORMS

COMPANY NAME	BID AMOUNT
<b>Kingsbury Uniforms, Inc.*</b> 112 W. 9 <sup>th</sup> Street, #301 Los Angeles, CA 90015	\$ 710,079.01
<b>Ace Uniforms**</b> 633 16 <sup>th</sup> Street San Diego, CA 92101	\$ 681,583.27
<b>Western Pacific Union</b> 1975 Diamond Street San Marcos, CA 92078	\$ 1,243,922.85

\* Lowest responsive, responsible bidder

\*\* Nonresponsive bidder



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San Diego, CA 92101-7490  
619.231.1466 FAX 619.234.3407

## Agenda

Item No. **9**

JOINT MEETING OF THE BOARD OF DIRECTORS  
for the  
Metropolitan Transit System,  
San Diego Transit Corporation, and  
San Diego Trolley, Inc.

FIN 340.2

January 15, 2009

**SUBJECT:**

**MTS: TRANSPORTATION DEVELOPMENT ACT (TDA) CLAIM AMENDMENT**

**RECOMMENDATION:**

That the MTS Board of Directors adopt Resolution Nos. 09-1 (Attachment A), 09-2 (Attachment B), and 09-3 (Attachment C) approving the revised FY 2009 Transportation Development Act (TDA) Article 4.0, 4.5, and 8.0 claims.

**Budget Impact**

The TDA claims amendments would result in the reduction of receipts by \$3,674,833 in TDA Article 4.0 funds and a reduction of \$220,528 in TDA Article 4.5 funds for MTS. The claim for Article 8.0 would remain unchanged. Article 4.0 provides authority for claiming funds for general transit operations and capital. Article 4.5 funds are set aside by the San Diego Association of Governments (SANDAG) for Americans with Disabilities Act (ADA) Access services. Article 8.0 funds are used for the ferry/commuter express.

**DISCUSSION:**

Sales tax revenues have fallen by 1.4% from fiscal year 2007 to 2008, and an estimate by SANDAG projects that they may fall as much as 4.0% from fiscal year 2008 to 2009. As a result of these decreasing revenues, at its November 21, 2008, meeting, the SANDAG Board of Directors approved a reduction in total FY 2009 TDA allocations for MTS by \$3,895,362.

Paul C. Jablonski  
Chief Executive Officer

**Key Staff Contact:** Larry Marinesi, 619.557.4542, [larry.marinesi@sdmts.com](mailto:larry.marinesi@sdmts.com)

JAN15-09.9.TDA CLAIMS.NDALL.doc

**Attachments:** A. Resolution No. 09-1  
B. Resolution No. 09-2  
C. Resolution No. 09-3



Metropolitan Transit System (MTS) is comprised of the Metropolitan Transit Development Board (MTDB) a California public agency, San Diego Transit Corp., and San Diego Trolley, Inc., in cooperation with Chula Vista Transit and National City Transit. MTS is Taxicab Administrator for eight cities. MTDB is owner of the San Diego and Arizona Eastern Railway Company. MTDB Member Agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

RESOLUTION NO. 09-1

Resolution Amending Fiscal Year 2009 Transportation Development Act

WHEREAS, effective August 10, 2000, the MTS-area consolidated Transportation Development Act (TDA) claim process provides that MTS will be responsible for submitting a single claim for each article of the TDA for all MTS operators; and

WHEREAS, consistent with the intent of consolidating all transit funding for MTS-area operators, the San Diego Association of Governments (SANDAG) approved MTS's FY 2009 TDA claim, and

WHEREAS, MTS and SANDAG Boards must approve any alternate use of said balances differing from that for which they were originally claimed; and

WHEREAS, MTS and SANDAG staffs have analyzed this amendment and found it to be warranted pursuant to Section 6659 of Title 21 of the California Code of Regulations (CCR); NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED that the MTS Board of Directors does hereby approve an amendment revising the FY 2009 TDA Article 4.0 decreasing MTS TDA claims by \$3,674,834 to \$68,666,848 as a result of the continuing reduction in sales tax revenues for the San Diego area. The allocation of the newly revised TDA allocation is included in the attached table.

PASSED AND ADOPTED by the Board of Directors this \_\_\_\_\_ day of January 2009 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAINING:

---

Chairperson  
San Diego Metropolitan Transit System

Filed by:

Approved as to form:

---

Clerk of the Board  
San Diego Metropolitan Transit System

---

Office of the General Counsel  
San Diego Metropolitan Transit System

JAN15-09.9.AttA.TDA RESO 09-1.NDALL.doc

Attachment: Table of 4.0 Claim Amounts

TABLE

APPROVED FY 09 TDA ARTICLE 4.0 CLAIM AMOUNTS

Claim Purpose	Claim Amount
MTS Operations	\$58,651,162
MTS ADA Paratransit	\$3,532,851
MTS Capital	<u>\$6,482,835</u>
<b>TOTAL:</b>	<b><u>\$68,666,848</u></b>

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

RESOLUTION NO. 09-2

Resolution Amending Fiscal Year 2009 Transportation Development Act

WHEREAS, effective August 10, 2000, the MTS-area consolidated Transportation Development Act (TDA) claim process provides that MTS will be responsible for submitting a single claim for each article of the TDA for all MTS operators; and

WHEREAS, consistent with the intent of consolidating all transit funding for MTS-area operators, the San Diego Association of Governments (SANDAG) approved MTS's FY 2009 TDA claim, and

WHEREAS, MTS and SANDAG Boards must approve any alternate use of said balances differing from that for which they were originally claimed; and

WHEREAS, MTS and SANDAG staffs have analyzed this amendment and found it to be warranted pursuant to Section 6659 of Title 21 of the California Code of Regulations (CCR); NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED that the MTS Board of Directors does hereby approve an amendment revising the FY 2009 TDA Article 4.5 decreasing MTS TDA claims by \$220,258 to \$3,745,346 as a result of the continuing reduction in sales tax revenues for the San Diego area. The allocation will be used to fund the MTS Access/CTS Paratransit services.

PASSED AND ADOPTED by the Board of Directors this \_\_\_\_\_ day of January 2009, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAINING:

---

Chairperson  
San Diego Metropolitan Transit System

Filed by:

Approved as to form:

---

Clerk of the Board  
San Diego Metropolitan Transit System

---

Office of the General Counsel  
San Diego Metropolitan Transit System

JAN15-09.9.AttB.TDA RESO 09-2.NDALL..doc

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

RESOLUTION NO. 09-3

Resolution Amending Fiscal Year 2009 Transportation Development Act

WHEREAS, effective August 10, 2000, the MTS-area consolidated Transportation Development Act (TDA) claim process provides that MTS will be responsible for submitting a single claim for each article of the TDA for all MTS operators; and

WHEREAS, consistent with the intent of consolidating all transit funding for MTS-area operators, the San Diego Association of Governments (SANDAG) approved MTS's FY 2009 TDA claim, and

WHEREAS, MTS and SANDAG Boards must approve any alternate use of said balances differing from that for which they were originally claimed; and

WHEREAS, MTS and SANDAG staffs have analyzed this amendment and found it to be warranted pursuant to Section 6659 of Title 21 of the California Code of Regulations (CCR); NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED that the MTS Board of Directors does hereby approve an amendment revising the FY 2009 TDA Article 8.0 with no change, and funding levels will remain at \$844,188. The allocation will be used to fund the ferry/commuter express services.

PASSED AND ADOPTED by the Board of Directors this \_\_\_\_\_ day of January 2009, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAINING:



---

Chairperson  
San Diego Metropolitan Transit System

Filed by:

Approved as to form:

---

Clerk of the Board  
San Diego Metropolitan Transit System

---

Office of the General Counsel  
San Diego Metropolitan Transit System

JAN15-09.9.AttC.TDA RESO 09-2.NDALL..doc



1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
619.231.1466 FAX 619.234.3407

## Agenda

Item No. 10

JOINT MEETING OF THE BOARD OF DIRECTORS  
for the  
Metropolitan Transit System,  
San Diego Transit Corporation, and  
San Diego Trolley, Inc.

OPS 970.6, 970.11

January 15, 2009

### SUBJECT:

SDTI: SECURITY PATROL SERVICES - CONTRACT AMENDMENT (OPTION YEARS ONE AND TWO)

### RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to exercise option years 1 and 2 to MTS Doc. No. C.O.066.0-06 with Heritage Security Services/Transit Systems Security for security patrol services pursuant to the original Request for Proposals.

#### Budget Impact

The not-to-exceed amount of \$25,000,000 for these services would come from the FY 09 SDTI operating budget line item 420-53510 (Security Patrol Services). The option years will be funded with the balance of the contract amount. Staff is working on a new procurement.

### DISCUSSION:

On December 2005, the MTS Board of Directors approved a three-year base contract (SDTI Doc. No. C.O.066.0-06) with an option for two single-year extensions for a total cost not to exceed \$25 million for security patrol services. Staff is recommending that option years 1 and 2 be exercised simultaneously to ensure that adequate funds are available to cover expenses in calendar year 2009 and a portion of 2010. The Procurement Department intends to prepare a new Request for Proposals to ensure that there is no lapse in service.



Metropolitan Transit System (MTS) is comprised of the Metropolitan Transit Development Board (MTDB) a California public agency, San Diego Transit Corp., and San Diego Trolley, Inc., in cooperation with Chula Vista Transit and National City Transit. MTS is Taxicab Administrator for eight cities. MTDB is owner of the San Diego and Arizona Eastern Railway Company. MTDB Member Agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

The current contractor, Heritage Security Services/Transit Systems Security, has met its duties and responsibilities in providing security patrol services to SDTI and San Diego Transit Corporation (SDTC). Staff is satisfied with the contractor's performance and would like to continue using its services without interruption for one additional year by exercising the first option year of the contract.

Staff believes that pricing (see Attachment B) for option year one is fair and reasonable and recommends approval of the first option year of this agreement.



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Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: William Burke, 619.595.4947, [bill.burke@sdmts.com](mailto:bill.burke@sdmts.com)

JAN15-09.10.SECURITY SVCS.HERITAGE.MLAWRENCE.doc

Attachments: A. SDTI Doc. No. C.O.066.1-06  
B. Cost Proposal

DRAFT

January 15, 2009

MTS Doc. No. C.O.066.1-06  
OPS 970.06, 970.11

Mr. Lawrence Richman  
Chairman  
Heritage Security Services/Transit Systems Security  
1260 Morena Boulevard, Suite 200  
San Diego, CA 92110

Dear Mr. Richman:

Subject: AMENDMENT NO. 1 TO MTS DOC. NO. C.O.066.0-06; EXERCISE OPTION YEARS ONE AND TWO FOR SDTI SECURITY PATROL SERVICES

This shall serve as Amendment No. 1 to our agreement for San Diego Trolley, Inc. (SDTI) security patrol services as further described below.

#### SCOPE OF SERVICES

Provide SDTI, MTS, and San Diego Transit (SDTC) with security services for two additional years in accordance with the terms and conditions of the Security Patrol Services Agreement.

#### SCHEDULE

This amendment extends the contract term for 24 months until January 31, 2011.

#### PAYMENT

Payment shall be based on the actual cost not to exceed \$10,000,000, as reflected below, without prior written approval from MTS. The total value of this contract, including this amendment, shall not exceed \$25,000,000.

All other conditions remain unchanged. If you agree with the above, please sign below, and return the document marked "Original" to the Contracts Administrator at MTS. The other copy is for your records. MTS recommends that you send a copy of this amendment to your insurance carrier.

Sincerely,

Accepted:

Paul C. Jablonski  
Chief Executive Officer

\_\_\_\_\_  
Lawrence Richman  
Heritage Security Services/Transit Systems Security

JAN15-09.10.AttA.SECURITY SVCS.MLAWRENCE.doc

Date: \_\_\_\_\_

# COST PROPOSAL

## UNARMED Officers @ 2.5% Annual Step Increases

		Hourly Pay	Multiplier	Bill Rate	No. of Unarmed Officers Goal 30	Hourly charge for total number of officers	Annual hours Per Officer	Annual Cost
P		9.00	1.66	14.94	3	44.82	2080	93,225.60 3 mo.
NOW		9.50						
A	1.0125	\$ 9.62	1.66	15.97	13.5	215.56	2080	448,356.87 3 mo.
B		\$ 9.74	1.66	16.17	13.5	218.25	2080	453,961.33 6 mo.
C		\$ 9.86	1.66	16.37	0	0.00	2080	0.00
D		\$ 9.98	1.66	16.57	0	0.00	2080	0.00
E		\$ 10.11	1.66	16.78	0	0.00	2080	0.00
F		\$ 10.24	1.66	16.99	0	0.00	2080	0.00
G		\$ 10.36	1.66	17.20	0	0.00	2080	0.00
H		\$ 10.49	1.66	17.42	0	0.00	2080	0.00
I		\$ 10.62	1.66	17.64	0	0.00	2080	0.00
J		\$ 10.76	1.66	17.86	0	0.00	2080	0.00
					30			995,543.80
					Officers			Includes Annual Increase of 2.5%

## ARMED Officers @ 3.5% Annual Step Increases

		Hourly Pay	Multiplier	Bill Rate	No. of Armed Officers Goal 85	Hourly charge for total number of officers	Annual hours Per Officer	Annual Cost
P		10.50	1.66	17.43	6	104.58	2080	217,526.40 3 mo.
NOW		10.70						
A	1.0175	\$ 10.89	1.66	18.07	21.25	384.05	2080	798,819.31 3 mo.
B		\$ 11.08	1.66	18.39	21.25	390.77	2080	812,798.64 6 mo.
C		\$ 11.27	1.66	18.71	17.5	327.44	2080	681,077.45
D		\$ 11.47	1.66	19.04	8.5	161.83	2080	336,598.21
E		\$ 11.67	1.66	19.37	5.5	106.54	2080	221,610.32
F		\$ 11.87	1.66	19.71	5	98.55	2080	204,989.55
G		\$ 12.08	1.66	20.06	0	0.00	2080	0.00
H		\$ 12.29	1.66	20.41	0	0.00	2080	0.00
I		\$ 12.51	1.66	20.76	0	0.00	2080	0.00
J		\$ 12.73	1.66	21.13	0	0.00	2080	0.00
					85			3,273,419.88
					Officers			Includes Annual Increase of 3.5%

## ARMED Part Time EVENT Officers @ 2.5% Annual Step Increases

		Hourly Pay	Multiplier	Bill Rate	No. of Armed PT EVENT Officers Goal 7	Hourly charge for total number of officers	Annual hours Per Officer	Annual Cost
NOW		10.70						
A	1.0125	\$ 10.83	1.66	17.98	3	53.95	960	51,793.99 6 mo.
B		\$ 10.97	1.66	18.21	3	54.63	960	52,441.42
C		\$ 11.11	1.66	18.44	1	18.44	960	17,698.98
D		\$ 11.25	1.66	18.67	0	0.00	960	0.00
E		\$ 11.39	1.66	18.90	0	0.00	960	0.00
F		\$ 11.53	1.66	19.14	0	0.00	960	0.00
G		\$ 11.67	1.66	19.38	0	0.00	960	0.00
H		\$ 11.82	1.66	19.62	0	0.00	960	0.00
I		\$ 11.97	1.66	19.86	0	0.00	960	0.00
J		\$ 12.12	1.66	20.11	0	0.00	960	0.00
					7			121,934.39
					Officers			Includes Annual Increase of 2.5%

## UNARMED Part Time EVENT Officers @ 2.5% Annual Step Increases

		Hourly Pay	Multiplier	Bill Rate	No. of Unarmed Event Officers Goal 25	Hourly charge for total number of officers	Annual hours Per Officer	Annual Cost
		7.50						
A	1.0125	\$ 7.59	1.68	12.76	11.25	143.52	960	137,781.00 6 mo.
B		\$ 7.69	1.68	12.92	10.75	138.86	960	133,303.12
C		\$ 7.78	1.68	13.08	3	39.24	960	37,665.88
D		\$ 7.88	1.68	13.24	0	0.00	960	0.00
E		\$ 7.98	1.68	13.41	0	0.00	960	0.00
F		\$ 8.08	1.68	13.58	0	0.00	960	0.00
G		\$ 8.18	1.68	13.74	0	0.00	960	0.00
H		\$ 8.28	1.68	13.92	0	0.00	960	0.00
I		\$ 8.39	1.68	14.09	0	0.00	960	0.00
J		\$ 8.49	1.68	14.27	0	0.00	960	0.00
					25			308,750.00
					Officers			Includes Annual Increase of 2.5%

## ARMED Supervisors @ 3.5% Annual Step Increases

		Hourly Pay	Multiplier	Bill Rate	No. of Armed Supvs. Goal 4	Hourly charge for total number of officers	Annual hours Per Officer	Annual Cost
NOW		13.40						
A		13.76	1.62	22.29	1	22.29	2080	46,365.70 6 mo.
B	1.0175	\$ 14.00	1.62	22.68	1	22.68	2080	47,177.10
C		\$ 14.25	1.62	23.08	1	23.08	2080	48,002.69
D		\$ 14.50	1.62	23.48	1	23.48	2080	48,842.74
E		\$ 14.75	1.62	23.89	0	0.00	2080	0.00
F		\$ 15.01	1.62	24.31	0	0.00	2080	0.00
G		\$ 15.27	1.62	24.74	0	0.00	2080	0.00
H		\$ 15.54	1.62	25.17	0	0.00	2080	0.00
I		\$ 15.81	1.62	25.61	0	0.00	2080	0.00
J		\$ 16.09	1.62	26.06	0	0.00	2080	0.00
					4			190,388.23
					Supervisors			Includes Annual Increase of 3.5%

## ARMED Lieutenant @ 3.5% Annual Step Increases

		Hourly Pay	Multiplier	Bill Rate	No. of Armed Lt. Goal 2	Hourly charge for total number of officers	Annual hours Per Officer	Annual Cost
A		15.15	1.4	21.21	1	21.21	2080	44,116.80 6 mo.
B	1.0175	\$ 15.42	1.4	21.58	0	0.00	2080	0.00
C		\$ 15.68	1.4	21.96	0	0.00	2080	0.00
D		\$ 15.96	1.4	22.34	0	0.00	2080	0.00
E		\$ 16.24	1.4	22.73	0	0.00	2080	0.00
F		\$ 16.52	1.4	23.13	0	0.00	2080	0.00
G		\$ 16.81	1.4	23.54	0	0.00	2080	0.00
H		\$ 17.11	1.4	23.95	0	0.00	2080	0.00
I		\$ 17.41	1.4	24.37	0	0.00	2080	0.00
J		\$ 17.71	1.4	24.79	0	0.00	2080	0.00
K		\$ 18.02	1.4	25.23	1	25.23	2080	52,474.48
L		\$ 18.34	1.4	25.67	0	0.00	2080	0.00
					2			96,591.28
					Lieutenants			Includes Annual Increase of 3.5%

# ARMED Captain @ 3.5% Annual Step Increases

ARMED Captain @ 3.5% Annual Step Increases					No. of Armed Cpts. Goal 1	Hourly charge for total number of officers	Att. B, AI 10, 1/15/09 Annual hours Per Officer      Annual Cost	
		Hourly Pay	Multiplier	Bill Rate				
A B C D E F G H I J K L	1.0175				0	0.00	2080	0.00
					0	0.00	2080	0.00
					1	32.34	2080	67,260.45
					0	0.00	2080	0.00
					0	0.00	2080	0.00
					0	0.00	2080	0.00
					0	0.00	2080	0.00
					0	0.00	2080	0.00
					0	0.00	2080	0.00
					0	0.00	2080	0.00
					0	0.00	2080	0.00
					0	0.00	2080	0.00
					0	0.00	2080	0.00
			1				67,260.45	
					Captain	Includes Annual Increase of 3.5%		
6 mo.								

Courier Per Pick Up	13.75	240	<-- est. # of pickups		3,300.00
	Per Mo.	# of Mo./Vehicles			
Equipment	680	12			8,160.00
Contract Admin.	950	12			11,400.00
Auto Insurance	130.45	13	\$130.45/veh/mo	12	20,350.20
Four Line Subtotal					43,210.20

30	Unarmed (Incl 4 CCTV)	995,543.80
85	Armed(Incl 3 Rev/4 Aux Sup)	3,273,419.88
7	Armed Event Part Time	121,934.39
25	Unarmed Event Part Time	308,750.00
4	Armed Supervisors	190,388.23
2	Armed Lieutenants	96,591.28
1	Armed Captain	67,260.45
154	Persons	TOTAL
		5,097,098.23

Upon hire, officers enter at the Probationary (P) wage for a 3-month period (520 hours, not incl. OT/DT). Upon satisfactory performance during Probation, Officers may be moved into Step A for a period of three months, then to Step B for 6 months (1,040 hours, not incl. OT/DT). All other steps are at 6-month (1,040 hours, not incl. OT/DT) intervals and contingent upon satisfactory performance in the officer's current step. For those classifications that do not have Step P, Officers are hired into Step A for a period of six months (1,040 hours, not incl. OT/DT). With the exception of Part-Time Employees, all "time" is based on hours of service.

Fees and all other charges will be billed bimonthly, on the first and sixteenth, and the net amount shall be due at the time of billing. Invoices must include officer name, hire date, and classification date, officer classification and step, part-time or full-time, the classification multiplier, and overtime/double-time charges, and a summary of the number of officers in each step per classification. Invoices must be auditable by MTS staff.

The attached Cost Proposal accounts for 85 armed officers. MTS accepts that the exact number in each classification may not be feasible on the start date of this contract. It is expected, however, that the overall total FTE hours be met without over-time charges to MTS (nonbillable over-time). It is expected that the armed officer classification be increased by twelve (12) officers per year/one (1) per month to reach 85-armed officers by the end of the contract term.

Upon contract approval, officers who have been employed in a full-time status at least three months and have satisfactory performance may be moved into Step A of their classification. Step increases are based on satisfactory officer performance at their current step. All step increases will be effective with the first or sixteenth of each month, whichever date falls after the actual classification anniversary date.





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## Agenda

Item No. 11

JOINT MEETING OF THE BOARD OF DIRECTORS  
for the  
Metropolitan Transit System,  
San Diego Transit Corporation, and  
San Diego Trolley, Inc.

ADM 150.3

January 15, 2009

**SUBJECT:**

**MTS & SDTI: INTERNAL REVENUE SERVICE-REQUIRED CALPERS PENSION  
RESOLUTIONS**

**RECOMMENDATION:**

That the Board of Directors adopt Resolution Nos. 09-5, 09-6, and 09-7 (Attachments A, B, and C, respectively) that would allow MTS to continue to make employee pension contributions on a pretax basis.

**Budget Impact**

None.

**DISCUSSION:**

MTS contracts with the California Public Employees' Retirement (CalPERS) system to provide pension benefits for employees of San Diego Trolley, Inc. and MTS. The CalPERS pension system bifurcates pension contributions into two types—employer contributions and employee contributions. MTS pays ("picks up") the employee contribution for management employees who meet eligibility criteria. All contributions are currently made on a pretax basis, which lessens payroll taxes paid by both employees and MTS.



Metropolitan Transit System (MTS) is a California public agency and is comprised of San Diego Transit Corporation and San Diego Trolley, Inc. nonprofit public benefit corporations, in cooperation with Chula Vista Transit and National City Transit. MTS is the taxicab administrator for eight cities and the owner of the San Diego and Arizona Eastern Railway Company. MTS member agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

The Internal Revenue Service (IRS) revised its guidance on pretax contributions by releasing Revenue Ruling 2006-43. Revenue Ruling 2006-43 requires that employers who pick up employees' contributions:

1. Declare in writing their intention to treat the picked up employee contributions as employer contributions; and
2. Not permit covered employees to opt out of the pickup or receive the contributed amounts directly.

In order to maintain this tax status, CalPERS provided the attached resolutions. These resolutions do not change any existing practice or have any financial impact. Rather, they allow MTS to continue to comply with a technical requirement that the IRS set for pension plans.



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Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Jeff Stumbo, 619.557.4509, [jeff.stumbo@sdmts.com](mailto:jeff.stumbo@sdmts.com)

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Attachments: A. Resolution No. 09-5  
B. Resolution No. 09-6  
C. Resolution No. 09-7

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

RESOLUTION NO. 09-5

A Resolution Approving the Adoption of the  
California Public Employees' Retirement System (CalPERS) Employer  
Pickup Resolution Authorizing the Implementation of a Pretax Payroll Deduction Plan  
for CalPERS Employee Contributions with Time-in-Grade Exceptions

WHEREAS, San Diego Trolley, Inc. has elected to pay all or a part of the normal member contributions to the California Public Employees' Retirement System (CalPERS) pursuant to Government Code section 20691 and applicable labor policies or agreements;

WHEREAS, the governing body of San Diego Trolley, Inc. may elect a time-in-grade exception to said employer-paid member contributions (EPMC) within a given group or class of employees as defined in Government Code section 20636(e)(1) and as specifically authorized in Title 2, California Code of Regulations section 569;

WHEREAS, the governing body of San Diego Trolley, Inc. has identified the following conditions for the application of said exception:

- This exception shall apply to all Management employees (Group 2).
- San Diego Trolley, Inc. elects to pay 3.5% of the employee's total 7% contribution rate toward retirement for the first three years of service within the Management Group.
- For employees with more than three years of service within the Management group, San Diego Trolley, Inc. elects to pay 100% of the employees' contribution rate toward retirement.
- Once a newly hired employee accrues five years of total service (either on a continuous or cumulative basis), s/he shall be entitled to payment of EPMC on the same terms that apply to all other employees in the group or class. In so resolving, the governing body of San Diego Trolley, Inc. agrees to abide by Section 569, the terms of which are incorporated by reference as fully set forth herein.
- The effective date of this Resolution shall be January 15, 2009.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED that the governing body of San Diego Trolley, Inc. elects a time-in-grade exception as set forth above.

PASSED AND ADOPTED by the Board of Directors this \_\_\_\_\_ day of January 2009 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAINING:

---

Chairperson  
San Diego Trolley, Inc.

Filed by:

Approved as to form:

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Clerk of the Board  
San Diego Trolley, Inc.

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Office of the General Counsel  
San Diego Trolley, Inc.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

RESOLUTION NO. 09-6

Resolution Approving the Adoption of the California Public Employees' Retirement System (CalPERS) Employer Pickup Resolution Authorizing the Implementation of a Pretax Payroll Deduction Plan for (CalPERS) Employee Contributions Under Internal Revenue Code Section 414(H)(2) for all Employee Groups

WHEREAS, San Diego Trolley, Inc. has the authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code (IRC); and

WHEREAS, the Board of Administration of the Public Employees' Retirement System adopted its resolution regarding section 414(h)(2) IRC on September 18, 1985; and

WHEREAS, the Internal Revenue Service has stated in December 1985 that the implementation of the provisions of section 414(h)(2) IRC pursuant to the Resolution of the Board of Administration would satisfy the legal requirements of section 414(h)(2) IRC; and

WHEREAS, San Diego Trolley, Inc. has determined that even though the implementation of the provisions of section 414(h)(2) IRC is not required by law, the tax benefit offered by section 414(h)(2) IRC should be provided to its employees who are members of the Public Employees' Retirement System:

NOW, THEREFORE, BE IT RESOLVED, ORDERED, AND DETERMINED:

- I. That San Diego Trolley, Inc. will implement the provisions of section 414(h)(2) Internal Revenue Code by making employee contributions pursuant to California Government Code section 20691 to the Public Employees' Retirement System on behalf of its employees who are members of the Public Employees Retirement System. "Employee contributions" shall mean those contributions to the Public Employees' Retirement System, which are deducted from the salary of employees and are credited to individual employee's accounts pursuant to California Government Code section 20691.
- II. That the contributions made by San Diego Trolley, Inc. to the Public Employees' Retirement System, although designated as employee contributions, are being paid by San Diego Trolley, Inc. in lieu of contributions by the employees who are members of the Public Employees' Retirement System.
- III. That employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by San Diego Trolley, Inc. to the Public Employees' Retirement System.
- IV. That San Diego Trolley, Inc. shall pay to the Public Employees' Retirement System the contributions designated as employee contributions from the same source of funds as used in paying salaries.
- V. That the amount of the contributions designated as employee contributions and paid by San Diego Trolley, Inc. to the Public Employees' Retirement System on behalf of an employee shall be the entire contribution required of the employee by the Public Employees' Retirement Law (California Government Code sections 20000, et seq.).

- VI. That the contributions designated as employee contributions made by San Diego Trolley, Inc. to the Public Employees' Retirement System shall be treated for all purposes, other than taxation, in the same way that member contributions are treated by the Public Employees' Retirement System.

PASSED AND ADOPTED by the Board of Directors this \_\_\_\_\_ day of January 2009 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAINING:

\_\_\_\_\_  
Chairperson  
San Diego Trolley, Inc.

Filed by:

Approved as to form:

\_\_\_\_\_  
Clerk of the Board  
San Diego Trolley, Inc.

\_\_\_\_\_  
Office of the General Counsel  
San Diego Trolley, Inc.

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SAN DIEGO METROPOLITAN TRANSIT SYSTEM

RESOLUTION NO. 09-7

Resolution Approving the Adoption of the California Public Employees'  
Retirement System (CalPERS) Employer-Paid Member Contributions Authorizing the  
Implementation of Government Code section 20691

WHEREAS, the San Diego Metropolitan Transit System has the authority to implement the Government Code section 20691;

WHEREAS, the governing body of the San Diego Metropolitan Transit System has an agreement, which specifically provides for the normal member contributions to be paid by the employer;

WHEREAS, one of the steps in the procedures to implement section 20691 is the adoption by the governing body of the San Diego Metropolitan Transit System of a resolution to commence said Employer Paid Member Contributions (EPMC);

WHEREAS, the governing body of the San Diego Metropolitan Transit System has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all employees of San Diego Metropolitan Transit System.
- This benefit shall consist of paying 100% of the normal member contributions as EPMC.
- The effective date of this resolution shall be January 15, 2009.

PASSED AND ADOPTED, DETERMINED, AND ORDERED this \_\_\_\_\_ day of January 2009 by the following vote.

AYES:

NAYS:

ABSENT:

ABSTAINING:

\_\_\_\_\_  
Chairperson  
San Diego Metropolitan Transit System

Filed by:

Approved as to form:

\_\_\_\_\_  
Clerk of the Board  
San Diego Metropolitan Transit System

\_\_\_\_\_  
Office of the General Counsel  
San Diego Metropolitan Transit System



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## Agenda

Item No. 25

JOINT MEETING OF THE BOARD OF DIRECTORS  
for the  
Metropolitan Transit System,  
San Diego Transit Corporation, and  
San Diego Trolley, Inc.

SRTP 830

January 15, 2009

**SUBJECT:**

**MTS: PUBLIC HEARING – SERVICE ADJUSTMENTS FOR SORRENTO  
VALLEY COASTER CONNECTION**

**RECOMMENDATION:**

That the Board of Directors:

1. conduct a public hearing on the recommended restructuring of the Sorrento Valley Coaster Connection (SVCC) (Routes 89, 971, 972, 973, 974, 975, 976, 977, and 978); and
2. adopt MTS Resolution 09-4, "Findings in Support of Exemption Under the California Environmental Quality Act (CEQA) Relating to Proposed Service Adjustments to Sorrento Valley Coaster Connection" (Attachment A); and
3. respond to suggestions made by the public and take action (if any) on the Sorrento Valley Coaster Connection at the next regularly scheduled Board meeting on February 19.

**Budget Impact**

None with this action.

**DISCUSSION:**

MTS Policy No. 42 states that any service change affecting more than 25 percent of a route's weekly in-service miles or hours is considered a "major service change" and requires a properly noticed public hearing prior to Board action. In accordance with this policy, staff noticed today's hearing on proposed changes to SVCC.





MTS has provided connecting service to employment centers in Sorrento Valley and University Towne Center for North County Transit District (NCTD) Coaster patrons since 1997. The Sorrento Valley Coaster Connection (SVCC) operates on Routes 971-978 and Route 89 during peak commute times—combined, these services carried an estimated 980 passengers a day at the close of fiscal year 2008. Fiscal year 2008 was the last year that MTS received funding (\$539,000) for this service from the Air Pollution Control District (APCD) and MTS, NCTD, and the San Diego Association of Governments (SANDAG) agreed to seek additional funding sources as a replacement.

MTS budgeted \$1,045,598 for this service for fiscal year 2009 with the understanding that the agency would only support the service using fare revenue, \$300,000 in MTS Transportation Development Act (TDA) funding, \$130,000 in Coaster fare share revenue assigned to these routes by MTS, and any additional funding sources that could be found. A \$1 per-passenger fare was established to partially offset the lost APCD subsidy, and actual subsidy cost to operate the service dropped from \$1,037,500 in fiscal year 2008 to a projected annual subsidy of \$875,300. In addition to initiating a fare, MTS staff began an effort to seek funding from employers that benefit from the service.

After implementation of the SVCC fare and an increase in the Coaster fare (September, 2008), ridership on these routes has dropped 37% to 554 average daily passengers in November 2008. Subsidy per passenger has risen since fiscal year 2008 to \$6.16 per passenger. As anticipated, the funding that MTS assigned to cover the cost of these routes was expended prior to January 1, and efforts to seek additional subsidies for the routes failed.

#### Recommendations for Service Adjustment

MTS staff has identified two alternatives for adjusting SVCC routes to address budgetary shortfalls.

- Alternative 1: Complete Elimination of SVCC

Routes 89, 971, 972, 973, 974, 975, 976, 977, and 978 would be eliminated following Board approval and as soon as operationally feasible. These routes are among the poorest performers in the MTS system and combined have a significant subsidy per passenger. In addition, they all have a lower-than-average passenger per-revenue-hour rate as compared to MTS's fixed-route services and as compared to the average for other similar circulator routes.

- Alternative 2: Elimination of Routes 89, 975, 976, and 977, retention of adjusted Routes 971, 972, and 978, restructuring of Routes 973 and 974, and discontinuation of all trips before 6:30 a.m.

Some of the SVCC routes are significantly more productive than others, although they all fall amongst the lowest productivity routes in the MTS system. If MTS were to retain some of the service, four routes could accommodate over 60% of the SVCC ridership while costing \$282,474 in subsidy per year based on November passenger loads. (See the route map in Attachment B.) Two of those routes, Routes 971 and 972, predominantly serve Qualcomm, a business that has its own campus shuttle service. If Qualcomm were to retain its own private operator

between the station and its offices, performance on these routes would likely decline significantly, and the cost to MTS would increase.

SANDAG and NCTD staffs are continuing to assist MTS in finding additional funding to help subsidize the service at least through fiscal year 2009. Without this funding, MTS would need to pay for retaining these four routes within its existing 2009 budget. Complicating any effort to find funding in MTS's budget to cover even this diminished SVCC service is the fiscal emergency that MTS is facing because of the lower-than-projected sales tax revenues, and the state's intention to decrease the State Transit Assistance allocation this year and in the future.

#### Finding of Fiscal Emergency

Pursuant to California Public Resources Code (PRC) section 21080.32, subdivisions (d)(1) and (2), MTS staff has determined that a fiscal emergency exists that is caused by the failure of MTS revenues to adequately fund agency programs and facilities within the meaning of PRC section 21080.32(d)(1). Details of the findings are related in Attachment A. MTS will respond to suggestions made by the public at this hearing at the next regularly scheduled MTS Board meeting on February 19.

#### Title VI Analysis

- Alternative 1

The proposed discontinuation of all SVCC routes would not negatively impact low-income and minority (LIM) populations more than non-LIM populations.

- Alternative 2

The proposed discontinuation of some SVCC routes and reduction of service on other SVCC routes would not negatively impact LIM populations more than non-LIM populations.

See Attachment C for complete Title VI analysis.

#### Next Steps

The Board will take action (if any) on the SVCC service adjustments at its February 19 meeting. Staff will prepare responses to all public comments received at today's hearing for the Board's review and consideration.



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Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, [sharon.cooney@sdmts.com](mailto:sharon.cooney@sdmts.com)

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Attachments: A. MTS Resolution 09-4  
B. Map of Alternative 2 Routes  
C. Title VI Analysis

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**

**RESOLUTION NO. 09-4**

Findings in Support of Exemption Under the California Environmental Quality Act (CEQA)  
Relating to Proposed Service Adjustments to the Sorrento Valley Coaster Connection

WHEREAS, the Metropolitan Transit System (MTS) is proposing the implementation of service adjustments, including a reduction and/or elimination of transit services, to the Sorrento Valley Coaster Connection (SVCC) to bridge a \$2.5 million to \$6.5 million funding deficit in the MTS FY 2009 budget and a \$10.5 million to \$17.5 million funding deficit in the MTS FY 2010 budget; and

WHEREAS, MTS, as a publicly owned transit agency, finds that a "fiscal emergency" exists as a result of a failure of agency revenues to adequately fund agency programs and facilities within the meaning of California Public Resources Code section 21080.32, subdivision (d)(1) and (2); and

WHEREAS, MTS is providing connecting public transportation services to employment centers in the Sorrento Valley to North County Transit District (NCTD) Coaster patrons using Routes 971-978 and Route 89 during peak-commute times; and

WHEREAS, MTS has budgeted \$1,045,598 to operate the aforementioned Sorrento Valley Coaster Connection (SVCC) for FY 2009; and

WHEREAS, MTS previously received funding for the SVCC from the Air Pollution Control District (APCD) in an amount of \$539,000 for FY 2008, and APCD has eliminated said funding and will no longer subsidize the service effective July 1, 2008; and

WHEREAS, MTS, NCTD, and the San Diego Association of Governments (SANDAG) engaged in a combined but unsuccessful effort to obtainment replacement funding from alternative sources, including, but not limited to, private employers benefiting from the SVCC; and

WHEREAS, MTS is forced to fund the SVCC using fare revenue and MTS Transportation Development Act (TDA) funding while remaining state funds have been drastically reduced by approximately 50 percent for FY 2009 and FY 2010 based on statewide budget deficits and shortfalls; and

WHEREAS, SVCC ridership dropped 31 percent as a result of MTS's implementation of a \$1 per-passenger fare to partially offset the lost APCD subsidy; and

WHEREAS, MTS renders written findings in support of the determination that the service reductions to the SVCC do not require an environmental impact report before MTS approves the transit service reductions; and

WHEREAS, if a project falls within a category exempt by administrative regulation under the California Environmental Quality Act (CEQA), no further agency evaluation of environmental impact is required; and

WHEREAS, a project defined in California Public Resources Code section 21065, subdivision (a) or (b), which reduces or eliminates the availability of an existing publicly owned transit service is exempt from CEQA Guidelines where the publicly owned transit agency has made a finding that there is a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities, and after the publicly owned transit agency has held a public hearing to consider those actions as enunciated in Public Resources Code section 21080.32, subdivision (d)(1); and

WHEREAS, it has been established and made clear in the reports and prior public meetings that a fiscal emergency exists based on MTS's projections to have negative working capital within one (1) year of the date that MTS has made the finding that there is a fiscal emergency pursuant to Public Resources Code section 21080.32, subdivisions (d) (1) and (2); and

WHEREAS, it has been established and made clear in the reports and prior public hearings that MTS has inadequate funds to operate the SVCC insofar as: (1) the APCD has eliminated its subsidy (\$539,000) to the service effective July 1, 2008; (2) MTS has received less than 50 percent of projected state funds as a result of statewide budget restrictions and deficits; (3) MTS's implementation of a \$1 per-passenger fare to partially offset the lost APCD subsidy has resulted in a 31 percent reduction in ridership and an increase in required subsidy per passenger to \$5.18 per passenger for FY 2009; (4) MTS, NCTD, and SANDAG have been unsuccessful in combined efforts to generate alternative funding from private sources and employers who benefit from the service; and (5) MTS is confronted with a \$4.0 million to \$6.5 million budget deficit for FY 2009 and a \$10.5 million to \$17.5 million budget deficit for FY 2010.

WHEREAS, it has been established and made clear in the reports and prior public hearings that MTS must take immediate action to remediate the budget shortfall and to address the lack of funding to operate the SVCC; NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED that MTS makes the following findings:

1. MTS has determined that a fiscal emergency exists, which is caused by the failure of MTS revenues to adequately fund agency programs and facilities within the meaning of California Public Resources Code section 21080.32, subdivision (d)(1).
2. MTS is projected to have negative working capital within one year from the date of the instant finding of a fiscal emergency as determined by adding together all unrestricted cash, unrestricted short-term investments, and unrestricted short-term accounts receivable and then subtracting unrestricted accounts payable. Employee retirement funds, including Internal Revenue Code section 457 deferred compensation plans, and Section 401(k) plans, health insurance reserves, bond-payment reserves, and workers' compensation reserves are not factored into the formula for working capital as specified in Public Resources Code section 21080.32, subdivision (d)(2).
3. The MTS Finance Department has reviewed these findings and validated that a fiscal emergency exists.
4. MTS has scheduled a public hearing to occur on **January 15, 2009, at 9:00 a.m., at Metropolitan Transit System located at 1255 Imperial Avenue, 10<sup>th</sup> Floor, San Diego, California 92101**. MTS shall consider service adjustments to Routes 971-

978 and Route 89, including, but not limited to, the reduction and/or elimination of the aforementioned routes based on the existing fiscal emergency and absence of funding for the SVCC. The public hearing is being conducted in compliance with Public Resources Code section 21080.32, subdivision (d) (1).

4. MTS shall respond to suggestions made by the public at its next regularly scheduled public meeting as mandated in Public Resources Code section 21080.32, subdivision (d)(1).

PASSED AND ADOPTED, DETERMINED, AND ORDERED this \_\_\_\_\_ day of January 2009 by the following vote.

AYES:

NAYS:

ABSENT:

ABSTAINING:

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Chairperson  
San Diego Metropolitan Transit System

Filed by:

Approved as to form:

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Clerk of the Board  
San Diego Metropolitan Transit System  
System

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Office of the General Counsel  
San Diego Metropolitan Transit

JAN15-09.25.AttA.RESO 09-4.SVCC.SCOONEY.DOC





**San Diego Metropolitan Transit System Title VI, Environmental Justice,  
and Limited-English Proficiency Analysis of Proposed Discontinuation  
of Sorrento Valley Coaster Connection Services**

The San Diego Metropolitan Transit System (MTS) is proposing full or partial discontinuation of Sorrento Valley Coaster Connection (SVCC) services.

This Title VI analysis addresses the proposed changes and will be presented to the MTS Board of Directors on January 15, 2009.

**1) What service and/or fare changes does MTS propose? Please describe the nature of the change, the basis or rationale for the change, the modes of service impacted, and the communities affected by the change.**

The SVCC routes are shuttle bus routes designed to meet Coaster commuter train trips (operated by North County Transit District [NCTD]) at the Sorrento Valley Coaster Station. The routes primarily serve the business districts within Sorrento Valley and University Towne Center (UTC). The vast majority of riders are transferring to the services from the Coaster, and most of those passengers are coming from the North County coastal communities of Oceanside, Carlsbad, and Encinitas.

There are two alternatives that the MTS Board of Directors will consider:

- Alternative #1: Complete elimination of SVCC (Routes 89, 971, 972, 973, 974, 975, 976, 977, and 978)
- Alternative #2: Elimination of Routes 975, 976, 977, and sweeper route. Routes 973 and 974 will be combined into one route. All trips before 6:30 a.m. will be discontinued.

This Title VI analysis will analyze both alternatives.

Nature of Change: Complete or partial discontinuation of SVCC services.

Basis for Change: MTS has provided connecting service to employment centers in Sorrento Valley for NCTD Coaster patrons since 1997. The SVCC carried an average of 980 passengers a day in fiscal year 2008. Fiscal year 2008 was the last year that MTS received funding (\$539,000) for this service from the Air Pollution Control District (APCD) and MTS, NCTD, and the San Diego Association of Governments (SANDAG) agreed to seek additional funding sources as a replacement.

MTS budgeted \$1,045,598 for this service for fiscal year 2009 with the understanding that the agency would only support the service using fare revenue, \$300,000 in MTS Transportation Development Act (TDA) funding, and any additional funding sources that could be found. A \$1 per-passenger fare was established to partially offset the lost APCD subsidy, and the actual subsidy cost to operate the service dropped from \$1,037,500 in fiscal year 2008 to a projected annual subsidy of \$875,300. However, after implementation of the SVCC fare and an increase in the Coaster fare, ridership on these routes dropped to an average daily ridership of 554 in November 2008, and subsidy per passenger has risen since fiscal year 2008 to \$6.16 per passenger (much higher than other MTS services).

In addition to initiating a fare, MTS staff began an effort to seek funding from employers that benefit from the service. These efforts to seek additional subsidy for the routes have not resulted in any additional funds.

Mode of Service Impacted: Motorbus

Communities Affected: Sorrento Valley and University Towne Center, although the vast majority of passengers are coming from North County coastal communities (Oceanside, Carlsbad, and Encinitas).

## 2) What are the impacts of the service changes on minority and/or low-income communities?

An analysis was completed to assess the potential impacts on low-income and minority communities by comparing the percentage of census tracts considered low-income and minority (2000 U.S. Census) through which the route will travel to the entire MTS service area average. The results are shown in the figure below. A map is included as an attachment.

**Figure 1: The proposed discontinuation of service will not negatively impact minority and low-income (LIM) populations more than non-LIM populations.**

LOW-INCOME AND/OR MINORITY (LIM) TOTAL						
	CENSUS TRACTS SERVED			LIM POPULATION IN CENSUS TRACTS SERVED		
	LIM	TOTAL	PCT LIM	LIM	TOTAL	PCT LIM
Alternative #1 - Discontinue Entire SVCC	3	6	50%	14,098	29,224	48%
Alternative #2	2	4	50%	8,078	16,625	49%
MTS SERVICE AREA	205	452	45%	1,045,459	2,017,735	52%

Figure 1 details the demographics of the census tracts where the SVCC routes operate. Overall, there is a smaller percentage of low-income and minority (LIM) residents within the census tracts served by the proposed discontinued services than there is in the MTS service area as a whole.

However, since the SVCC serves a heavy-employment area, residential locations of SVCC riders were also considered. A survey administered by SANDAG in May 2008 showed that 88 percent of all SVCC riders boarded the Coaster train at one of the following stations: Oceanside, Carlsbad Village, Carlsbad Poinsettia, or Encinitas. Consequently, the census tracts near those locations were also analyzed.

Given that a large percentage of Coaster riders drive to the train stations, census tracts containing Coaster stations within one, two, and five miles of those Coaster stations were all analyzed.

Figure 2 shows that the percentage of low-income and minority residents is much lower near Coaster stations than it is in the MTS service area (the Coaster stations are all within NCTD's service area).

**Figure 2: Low-Income and Minority Populations Near Coaster Stations with Heavy SVCC Origins**

LOW-INCOME AND/OR MINORITY (LIM) TOTAL						
	LIM	TOTAL	PCT LIM	LIM	TOTAL	PCT LIM
Census tracts containing Coaster stations*	1	4	25%	1,948	15,946	12%
Census tracts within one mile of Coaster stations*	2	21	10%	7,250	88,395	8%
Census tracts within two miles of Coaster stations*	5	35	14%	13,756	152,337	9%
Census tracts within five miles of Coaster stations*	13	65	20%	31,432	344,674	9%
MTS SERVICE AREA	205	452	45%	1,045,459	2,017,735	52%

\*Oceanside, Carlsbad Village, Carlsbad Poinsettia, and Encinitas



Finally, SANDAG's 2004 Onboard Transit Passenger Survey of the San Diego Region shows that Coaster passengers (and consequently SVCC riders) had much higher incomes and were much more unlikely to be minorities than the typical rider in San Diego County. Of Coaster riders, 26 percent were minorities (compared to 63 percent of riders from throughout the County), and only eight percent of Coaster riders had household incomes under \$20,000 (compared to 51 percent of riders from throughout the County). This is further proof that discontinuing SVCC services will not have a higher impact on LIM populations than non-LIM populations.

**3) What are the transit alternatives available for riders who would be impacted by proposed service changes?**

For discontinued services, there will be no public transit alternatives from the Sorrento Valley Coaster station. The University of California, San Diego has expanded its transit services to the Coaster station, and a number of private employers have begun shuttles as well. It is expected that more private shuttles will be operated in the future.

**4) What, if any, measures would MTS take to avoid, minimize, or mitigate any adverse effects of the service and/or fare change on minority and low-income populations? What, if any enhancements or offsetting benefits would MTS implement in conjunction with the service and/or fare change?**

MTS has already tried to minimize and mitigate impacts by working with nearby business to develop a public-private solution. These discussions have not succeeded, yet MTS has continued to operate the service beyond the existing budgeted funding.

**5) Would the proposed service and/or fare change have a disproportionately high and adverse effect on minority and low-income populations?**

No.

**6) What steps does MTS plan to take to seek out and consider the viewpoints of minority and low-income populations in the course of conducting public outreach and involvement activities?**

MTS will hold a public hearing on January 15, 2009. MTS has published notices in the newspaper regarding the public hearing. Members of the public may call the Planning Hotline or submit comments via e-mail. Take Ones have also been distributed on all SVCC buses. The CEO has also personally met with the heads of major employers in the Sorrento Valley area.

**7) Does MTS believe that it is necessary to disseminate information on the service changes/fare increases that is accessible to limited English-proficient persons? If so, what steps to provide information in languages other than English does MTS propose?**

Due to the high percentage of Spanish-speaking persons that use MTS services, MTS finds it necessary to publish all public materials in English and Spanish. All public information materials related to these proposals will be published and provided in both English and Spanish. The information will also be on the MTS Web site ([www.sdmts.com](http://www.sdmts.com)) in English and Spanish.



1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
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## Agenda

Item No. 30

JOINT MEETING OF THE BOARD OF DIRECTORS  
for the  
Metropolitan Transit System,  
San Diego Transit Corporation, and  
San Diego Trolley, Inc.

LEG 490

January 15, 2009

**SUBJECT:**

MTS: INCREASED AUTHORIZATION FOR LEGAL SERVICES – LAW OFFICES OF  
DAVID C. SKYER

**RECOMMENDATION:**

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. G1108.5-07 (in substantially the same form as Attachment A) with the Law Offices of David C. Skyer for legal services and ratify prior amendments entered into under the CEO's authority.

Budget Impact

Not to exceed \$70,000 for the Law Offices of David C. Skyer. The recommended amounts are contained within the proposed midyear fiscal year 2009 budget.

**DISCUSSION:**

On January 18, 2007, the Board approved a list of qualified attorneys for general liability and workers' compensation for use by MTS, San Diego Trolley, Inc. (SDTI), and San Diego Transit Corporation (SDTC) (hereinafter referred to as the Agencies) staffs on an as-needed basis. Thereafter, MTS began to contract with approved attorneys for various amounts depending upon current and anticipated needs.

Pursuant to Board Policy No. 52 (Procurement of Goods and Services), the CEO may enter into contracts with service providers for up to \$100,000. The Board must approve all agreements in excess of \$100,000. All attorneys listed have multiple cases that are

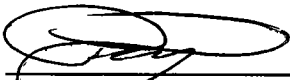


Metropolitan Transit System (MTS) is comprised of the Metropolitan Transit Development Board (MTDB) a California public agency, San Diego Transit Corp., and San Diego Trolley, Inc., in cooperation with Chula Vista Transit and National City Transit. MTS is Taxicab Administrator for eight cities. MTDB is owner of the San Diego and Arizona Eastern Railway Company. MTDB Member Agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

scheduled to proceed to trial, and the total cost of their legal services will exceed the CEO's authority.

The Law Offices of David C. Skyer is currently under contract with the Agencies for \$255,000. Attorney David Skyer has successfully defended the Agencies in a number of tort liability matters. Pending invoices for recent and current services are anticipated to exceed current contract authority due to legal defense costs.

The CEO has approved contracts up to the \$100,000 authority level. Staff is requesting Board approval of MTS Doc. No. G1108.5-07 with the Law Offices of David C. Skyer for legal services and ratification of prior contracts/amendments entered into under the CEO's authority.



Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: James Dow, 619.557.4562, [jim.dow@sdmts.com](mailto:jim.dow@sdmts.com)

JAN15-09.30.LEGALSVCS DSKYER.JDOW.doc

Attachment: A. MTS Doc. No. G1108.5-07

DRAFT

January 15, 2009

MTS Doc. No. G1108.5-07  
LEG 491 (PC 50633)

Mr. David Skyer  
Law Offices of David C. Skyer  
401 West A Street, Suite 1740  
San Diego, CA 92101-7994

Dear Mr. Skyer:

Subject: AMENDMENT NO. 5 TO MTS DOC. NO. G1108.0-07: LEGAL SERVICES – GENERAL  
LIABILITY

This letter will serve as Amendment No. 5 to MTS Doc. No. G1108.0-07. This contract amendment authorizes additional costs not to exceed \$70,000 for professional services. The total value of this contract, including this amendment, is \$325,000. Additional authorization is contingent upon MTS approval.

If you agree with the above, please sign below and return the document marked "Original" to the Contracts Specialist at MTS. The other copy is for your records.

Sincerely,

Accepted:

Paul C. Jablonski  
Chief Executive Officer

\_\_\_\_\_  
Mr. David Skyer  
Law Offices of David C. Skyer

Date: \_\_\_\_\_

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## Agenda

Item No. 31

JOINT MEETING OF THE BOARD OF DIRECTORS  
for the  
Metropolitan Transit System,  
San Diego Transit Corporation, and  
San Diego Trolley, Inc.

FIN 310.1 (PC 50601)

January 15, 2009

**SUBJECT:**

MTS: FISCAL YEAR 2010 CAPITAL IMPROVEMENT (CIP) PROGRAM

**RECOMMENDATION:**

That the Board of Directors:

1. approve the fiscal year 2010 Capital Improvement Program (CIP) with the estimated federal and nonfederal funding levels (Attachments A and B). As the federal appropriation figures are finalized and/or other project funding sources become available, allow the Chief Executive Officer (CEO) to identify and adjust projects for the adjusted funding levels (any adjustments in excess of \$500,000 will be brought to the Board's attention);
2. recommend that the San Diego Association of Governments (SANDAG) Board of Directors approve the submittal of federal Sections 5307 and 5309 applications for the MTS fiscal year 2010 CIP (shown in Attachment A) after the federal appropriations are finalized;
3. approve the \$12.5 million Preventative Maintenance increase and, in turn, swap Transportation Development Act (TDA) funding from operations to the CIP. There would be no net change to operations or capital; this exercise would simply provide more flexibility in funding within the CIP and would permit the agency to expend federal funding more quickly;
4. approve the transfer of \$1,627,724 from previous CIP projects to the fiscal year 2010 CIP;
5. approve the transfer of \$27,787,888 in nonfederal funding from previous fiscal year CIP projects to fiscal year 2010 Blue Line Rehabilitation (11266) to reflect



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the receipt of Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA);

6. approve the transfer of \$3.1 million of nonfederal funds currently allocated to the East County Bus Maintenance Facility (ECBMF) in exchange for \$3.1 million of federal funding currently allocated to bus procurement projects in fiscal year 2010; and
7. recommend that the SANDAG Board of Directors approve the amendment of the Regional Transportation Improvement Program (RTIP) in accordance with the fiscal year 2010 CIP recommendations.

#### Budget Impact

Pending final approval by the SANDAG Board of Directors, the fiscal year 2010 MTS CIP would be included in the regional 5307 Urbanized Area Formula and Section 5309 grant applications (total federal formula program estimated at \$68.1 million including local match). Additional federal formula funds from prior years totaling \$4.1 million, including local match, have been added to the 2010 CIP. MTS also received a federal earmark for the East County Bus Maintenance Facility totaling \$129,488, including matching funds.

A final review of previous year's Job Access and Reverse Commute Program (JARC) and Congestion Mitigation and Air Quality (CMAQ) funding has provided for an additional \$78,540 and \$70,646 (including required local match), respectively.

As a result of the Transportation Security Grant Program (TSGP), funding projections of \$1.5 million for federal fiscal year 2008 have been applied to this year's CIP.

The Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA), authorized by California Proposition 1B (2006), provides an allocation for calendar year 2008 totaling \$27.8 million, and another \$15.6 million is projected for receipt in calendar year 2009. The \$27.8 million replaces the same amount of nonfederal dollars budgeted for bus replacements in previous year's CIPs thereby freeing up those funds for allocation to Blue Line Rehabilitation in the fiscal year 2010 CIP.

Also created by Proposition 1B, the Transit System Safety, Security, and Disaster Response Account (TSSSDRA) resulted in allocations for 2008 and 2009 that is expected to provide \$5,479,400 for safety and security projects in the 2010 CIP.

The State of California's final TDA revision for 2008 resulted in a surplus of \$98,000 in funding that is included in the fiscal year 2010 CIP.

The Federal Transit Administration (FTA) funding that MTS receives is structured on a reimbursement basis (after expenses are incurred). Local funding (TDA/TransNet) that MTS receives is scheduled at the beginning of the fiscal year and is received monthly. In many situations, funds are received before expenses are incurred. The FTA allows federal recipients to move federal dollars to operations to fund the organization's Preventative Maintenance. Since fiscal year 2003, the current policy has shifted \$29 million of federal funding into operations (supporting preventative maintenance). MTS, as a policy decision, has frozen the level at \$29 million since 2004. In terms of cash flow, MTS has the ability to draw down the full \$29 million right after the new fiscal year

begins as these funds support the previous fiscal year's expenses. (See Attachment C for more detail.)

Prior to finalizing the recommendation, all previously budgeted capital projects were reviewed to identify certain projects that may have been delayed or completed under budget to be sure that deserving new projects do not go unfunded while prior year capital programming remains tied up and unused. As a result of this review, we identified and transferred \$1,627,724 to the fiscal year 2010 CIP.

The total estimated funding for fiscal year 2010 is \$137.2 million. (Attachment D) After the utilization of \$41.5 million in Preventative Maintenance (fiscal year 2009 operating budget) and funding of planning studies for SANDAG totaling \$857,751, \$94.8 million is available for capital projects.

## DISCUSSION:

### Availability of Section 5307 and Section 5309 Funds

The fiscal year 2010 recommended MTS CIP (Attachment A) would serve as the basis for the federal formula grant applications. The FTA requires submission of grant applications to obligate annual appropriations under Section 5309 (Rail Modernization and Fixed-Guideway New Starts) and Section 5307 (Urbanized Area Formula Assistance).

The Section 5307 and Section 5309 funding levels as indicated within Attachment A are estimates. We have currently estimated the federal funding levels as an approximate 6.5 percent increase compared to fiscal year 2009.

Traditionally, SANDAG has apportioned the formula funds between MTS and the North County Transit District (NCTD) based on population with MTS receiving approximately 70 percent and NCTD receiving approximately 30 percent of the Section 5307 funds after the off-the-top funds are programmed for the regional vanpool program. Section 5307 and Section 5309 funds can generally be used to provide 80 percent of the cost of capital projects and the cost of preventive maintenance activities, which is an operating cost. The ratio increases to 83 percent for the "clean-fuel" buses and vehicles meeting the Americans with Disabilities Act (ADA) requirements.

The Section 5307 Urbanized Area Formula Program is a block grant program in which each urbanized area over 50,000 in population receives financial assistance to provide public transit. The formula for determining each metropolitan area's share of funds is based on an urbanized area's population, population density, levels of existing fixed-guideway service, and levels of existing bus service and ridership. The Section 5307 program is designed to meet routine capital needs. Section 5307 Formula funds may not be used for operating assistance; however, the Transportation Equity Act for the 21st Century (TEA-21) expanded the definition of capital to include preventive maintenance, thereby, in effect, mitigating the relative lack of federal assistance for operations. The estimated allocation for the MTS Section 5307 program is \$40.1 million, which would be matched with local funds of \$10 million. This program would provide an estimated \$50.1 million to fund fiscal year 2010 capital projects.

The Fixed-Guideway Modernization (also known as Rail Mod) Program is one of three categories of funding under the Section 5309 Capital Investment Program, which also includes the Bus Capital and Fixed-Guideway New Starts Programs. Unlike the Section 5309 Bus Capital and Fixed-Guideway New Starts Programs, which are designed to assist in meeting extraordinary capital needs and are awarded generally at the discretion of Congress or the FTA, Section 5309 Rail Mod funds are allocated on a formula basis to rail systems that have been in operation for at least seven years. Eligible projects include the modernization of existing fixed-guideway systems, including rolling stock. For fiscal year 2010, the Section 5309 funds estimated allocation to MTS is \$14.4 million and would be matched with local funds of \$3.6 million. The program would provide an estimated \$18 million to fund fiscal year 2010 capital projects.

#### Local Match

The local match for CIP projects will come from the pooled transit finances for the MTS region. While it is likely that the actual funds used would be TDA funds, final decisions on the matching source would be made during the fiscal year 2010 CIP implementation process in order to maximize the availability and flexibility of funding.

#### Preventative Maintenance and Operations Funding Swap

As indicated within Attachment C, MTS has the capacity to increase the Preventative Maintenance amount from \$29 million to \$41.5 million. Staff recommends that the Board approve the \$12.5 million Preventative Maintenance increase and, in turn, swap TDA from operations to the CIP. There is no net change to operations or capital; this exercise simply provides more flexibility in the funding within the CIP. Some benefits of this funding swap include improved cash flow with the ability to draw federal funds at the beginning of the fiscal year, assistance in compliance of FTA grant closeout, ability to earn interest on the TDA funds, and increased flexibility with the TDA funds in the CIP.

#### Development of the MTS Fiscal Year 2010 CIP

The CIP process began in July 2009 with the call for projects. The recommended CIP assumes \$41.5 million for PM and \$857,751 in SANDAG Planning Studies. The remaining projects compete for the balance of available funding. A meeting of the Capital Projects Review Committee (CPRC) was held to review the project list and to develop a CIP recommendation for fiscal year 2010. In accordance with the Capital Projects Selection Process, the CPRC is comprised of representatives from MTS Bus, MTS Rail, MTS Administration, Chula Vista Transit (CVT), and SANDAG. Each CPRC member was responsible for submitting the capital requests for its division, agency, or city. The CPRC reviewed and approved the prioritization of those capital requests.

The capital project list (Attachment A) represents the five-year, unconstrained need for the MTS operators. Each MTS agency submitted its capital project requests in priority order and the lists were consolidated for review by the CPRC. The CPRC reviewed the projects in the context of their impact on operations and determined the most critical projects to fund this year. The remaining projects were deferred; however, it is recognized that the continued deferral of some projects could have negative impacts on system infrastructure in future years.

As an organization, MTS is in critical need of buses and rail infrastructure. In the fiscal year 2008 CIP, the procurement of buses began to rectify this problem. In the fiscal year 2009 and 2010 CIPs, MTS continues to address this organizational need and



recommends allocation of significant available funds to continue the schedule of the procurement of vehicles and to address the need for rail infrastructure rehabilitation.

The California electorate's approval of the PTMISEA as part of Proposition 1B in November 2006 provided a potentially significant source of funding for the rehabilitation of MTS's oldest rail lines. That account provided funding by formula to State Transit Assistance (STA)-eligible transit agencies for use on capital projects. It was estimated that through the life of the account, MTS would receive \$164 million, contingent upon annual appropriations by the state legislature, and that that funding would be used as a match for the TransNet funding for the Blue and Orange Line Trolley Rehabilitation Project. Appropriations already approved by the state provide an eligible allocation for calendar years 2008 and 2009 totaling \$43.4 million to MTS. Due to the timing of the initial appropriation, PTMISEA funding was not reflected in CIPs in prior years. The agency received an allocation for fiscal year 2008 totaling \$27 million. Due to the requirement that projects receiving this money be "ready to go", staff applied for all of its funding in fiscal year 2008 to purchase new buses, which left an equal amount of nonfederal funding available for transfer to the fiscal year 2010 CIP for the Trolley rehabilitation project as needed. It is staff's recommendation that MTS continue this practice with the fiscal year 2009 PTMISEA allocation, if and when that allocation is permitted by the State Treasurer's office.

Another funding source authorized in Proposition 1B was the Transit System Safety, Security, and Disaster Response Account (TSSDRA). MTS's total allocations under this program are anticipated to total \$5.5 million, and this subsidy is reflected in the fiscal year 2010 CIP.

Of the \$94.8 million available after Preventative Maintenance and SANDAG Planning Studies, \$16.0 million, or 16.8 percent, would be dedicated to the procurement of buses. This allocation would fund approximately 38 40-foot compressed natural gas (CNG) vehicles. With approval of the recommended CIP, a total of 165 buses will have received funding in fiscal years 2008, 2009, and 2010.

The table below is a summary of the CPRC recommendations, the major categories that are proposed to be funded, and the percentage of total available funding.

Project	FY10 Funding	% of Total
40 foot CNG Vehicles (38 vehicles [13 years old])	15,950.0	16.8%
Rail Infrastructure (Blue/Orange Line Project)	43,441.6	45.8%
Other Rail Infrastructure (Catenary, Traction Motors, Other)	6,000.0	6.3%
Major Facility & Construction Projects	14,644.6	15.4%
LRV Components (Tires, Body Rehab, Other)	5,325.0	5.6%
Security Projects	7,315.4	7.7%
Other Facility and Operating Equipment	1,638.5	1.7%
Miscellaneous Operating Capital	500.0	0.5%
Total Project Funding Available	<u>\$94,815.2</u>	100.0%

The fiscal year 2010 funding levels represent 85 percent of the total project needs after funding Preventative Maintenance and SANDAG Planning Studies.

#### Five-Year Capital Program Projections

Attachment B summarizes a high-level look at the five-year capital program. The federal 5307 and 5309 funding levels are projected to increase by 6.5 percent for fiscal year 2010 and by 4 percent through 2014. Based on staff recommendation, PM has been increased to \$41.5 million offset by additional TDA totaling \$12.5 million in our future projections.

Total capital needs for fiscal year 2010 and beyond exceed the available projected funding levels. The fiscal year 2010 capital needs total \$111.6 million, and the available funding for the year is 85.0 percent of total project needs. The disparity between funding levels and capital needs will continue in future years without the identification of additional revenue sources. Total project needs over the five-year term are projected to be \$662.7 million. Projected deficits from fiscal year 2010 to fiscal year 2014 total \$386.9 million. The ratio of total funding to total capital needs over the five-year term is projected at 41.6 percent.

There are several unknowns that could impact fiscal year 2010 and future capital funding. Discussions at the federal level indicate interest in funding capital infrastructure as a way to spur economic growth. SANDAG has submitted a list of projects to Caltrans for potential economic stimulus funding that includes several MTS capital projects. Use of these funds would be contingent on the region's ability to deliver the projects quickly. In addition, the state's budget crisis could impact MTS's available transit funding. Several proposals have been discussed that would eliminate or significantly curtail future funding of transit through the STA, while the state's continued inability to fix its budgetary deficit has made it difficult to gain the bond funding necessary to continue to fund the PTMISEA and TSSSDRA.

  
Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Lisa Fowler, 619.557.4510, [lisa.fowler@sdmts.com](mailto:lisa.fowler@sdmts.com)

JAN15-09.31.CIP FY 2010.LFOWLER..doc

Attachments: A. Fiscal Year 2010 Detailed CIP  
B. Fiscal Year 2010 Capital Improvement Program Summary  
C. Preventative Maintenance Recommended Policy Change  
D. Revenue Detail

File	Funding Description	Grant	FY10	FY11	FY12	FY13	FY14
5307 80% Funding Estimate			40,101.0	41,705.0	43,373.2	45,108.2	46,912.5
TDA Local Match (5307) 20%			10,025.3	10,426.3	10,843.3	11,277.0	11,728.1
5307 80%- carryover			1,661.0				
TDA Local Match (5307- carryover) 20%			415.3				
5309 Rail Mod 80% Funding Estimate			14,383.0	14,958.3	15,556.7	16,178.9	16,826.1
TDA Local Match (5309) 20%			3,595.8	3,739.6	3,889.2	4,044.7	4,206.5
5309 Rail Mod 80%- carryover			1,653.0				
TDA Local Match (5309- carryover) 20%			413.3				
5311 f - El Cajon Transit Center			114.6				
TDA Local Match (5311 f)			14.9				
JARC for HASTOPS	Federal		62.8				
JARC match	TDA		15.7				
CMAQ for Buses	X051		62.5				
CMAQ match (11.47%)	TDA		8.1				
TSGP- FFY08 Rail & Bus	TSGP		1,500.0				
Security- Prop 1B Rail (FFY08)	State		1,500.0				
Security- Prop 1B Bus (FFY08)	State		1,200.0				
Proposition 1B (FFY08)	State		27,787.9				
Security- Prop 1B Bus & Rail (FFY09)	State		2,779.4				
Proposition 1B (FFY09)	State		15,653.7				
FY08 TDA Unallocated	TDA		98.0				
TDA (increase PM to \$41.5M)	TDA		12,500.0	12,500.0	12,500.0	12,500.0	12,500.0
Project Transfer #11199-Misc capital	Y474, 0206, Y350		477.0				
Project Transfer #11199- Misc capital match	MATCH		119.24				
Project Transfer #11215- non federal	STA		151.3				
SANDAG Project Transfer #1108400	5309 CA-03-0690		286.3				
SANDAG Project Transfer #108400- match	MATCH		71.6				
Project Transfer #11217- station improv.	5309-0220		29.0				
Project Transfer #11217- station improv. match	MATCH		33.8				
Project Transfer #11221- low volt wiring	5309-0233		140.0				
Project Transfer #11221- low volt wiring match	MATCH		35.0				
Project Transfer #11226-Special Event	5307-Y677		27.2				
Project Transfer #11226- special event match	MATCH		6.8				
Project Transfer #11202-Non revenue Vehicles	5309-0206/307-Y677		200.4				
Project Transfer #11202- Non revenue Vehicles	MATCH		50.1				
SANDAG Planning Study			(857.8)	(892.1)	(927.7)	(964.9)	(1,003.4)
Preventive Maintenance			(41,500.0)	(41,500.0)	(41,500.0)	(41,500.0)	(41,500.0)
Available Funding for FY 10 Capital Program			94,815.2	40,937.1	43,734.6	46,644.0	49,669.8

Submittal Number	Division	Category	FY 2010 Priority	Project Number	Project Description	Funded thru FY09	FY10 Funded Projects	FY10 Unfunded	FY11	FY12	FY13	FY14	BUDGET FY10 - FY14
44	SDTI	LRV Rehab	1.0	11266	Blue Line Rehabilitation	-	43,441.6	-	48,000.1	64,000.0	121,712.0	122,500.0	399,653.7
32	MTS Bus	Buses	1.0	11239	40 Ft. CNG Buses (97)	37,754.8	15,000.0	-	27,500.0	-	-	-	42,500.0
33	MTS Bus	Facilities	1.1	11239	South Bay Facility - Land Acquisition	10,432.9	9,252.0	-	28,748.0	7,000.0	-	-	45,000.0
11	SDTI	Rail infra.	1.1	1142000	Overhead Catenary Wire Replacement	7,422.0	4,000.0	-	-	3,000.0	2,000.0	3,000.0	12,000.0
34	MTS Bus	Facilities	1.1	11237	ECBMF	5,672.3	3,647.1	-	6,890.0	25,000.0	-	-	35,537.1
53	MTS	Security	1.0	11184	Security Prop 1B	-	2,779.4	-	-	-	-	-	2,779.4
39	MTS	Security	1.0	11184	CCTV Bus- On Board Security Prop 1B	2,188.7	1,950.0	-	-	-	-	-	1,950.0
15	SDTI	LRV rehab.	1.0	11214	SD100 HVAC Unit Rehab/Retirofit	453.5	1,775.0	-	1,248.0	1,248.0	1,248.0	1,248.0	6,767.0
12	SDTI	LRV rehab.	1.0	11251	SDTI-U2 SD100 Gear Box Rehab	500.0	1,500.0	-	1,000.0	1,000.0	1,000.0	1,000.0	5,500.0
40	MTS	Security	1.0	11166	CCTV Rail- In Station Security Prop 1B	1,029.4	1,500.0	-	-	-	-	-	1,500.0
45	MTS	Security	1.0	11271	LRV On Board Cameras (match only)	1,068.0	1,068.0	-	-	-	-	-	1,068.0
57	MTS Bus	Facilities	1.1	1048500	SBMF Site Prep	-	1,000.0	-	-	-	-	-	1,000.0
25	CVT	Buses	1.0	11250	CVT 40 FT. CNG Buses	2,460.0	950.0	-	-	-	-	-	950.0
43	SDTI	Rail infra.	1.5	1129300	System Grade Crossing Replacements	780.0	900.0	-	900.0	1,000.0	1,100.0	1,100.0	5,000.0
4	SDTI	Equipment	1.8	1142800	OGS Strain Insulator Replacement	1,186.0	780.0	-	-	-	-	-	780.0
7	SDTI	Rail infra.	1.3	11255	Broadway Wye Switch Machines	100.0	750.0	-	-	-	-	-	750.0
13	SDTI	LRV rehab.	1.7	11165	LRV Body & Paint Rehab	2,160.0	550.0	-	550.0	-	-	-	1,100.0
54	MTS	Admin	1.0	11200	Misc Capital (Non Federal)	542.1	500.0	-	500.0	500.0	500.0	500.0	2,500.0
17	SDTI	LRV rehab.	1.2	11167	LRV Tires	1,626.4	491.0	-	545.5	589.2	636.3	687.2	2,949.2
20	SDTI	LRV Rehab.	1.4	11254	SD100 Brake Rehabilitation	125.0	350.0	-	-	-	-	-	350.0
10	SDTI	Rail infra.	1.6	11206	Rail Profile Grinding	973.0	350.0	-	350.0	350.0	350.0	350.0	1,750.0
51	SANDAG	Construction	1.0	1128300	H street Trolley & Bus ADA improvements	115.0	327.0	-	-	-	-	-	327.0

18	SDTI	LRV rehab.	1.0	11219	Pilot Motor Control Unit Drive Rehab	200.0	284.0	-	284.0	284.0	284.0	1,420.0
24	SDTI	Equipment	1.0	11183	SDTI Cross Tie Procurement	-	280.0	-	280.0	290.0	300.0	1,440.0
50	SANDAG	Construction	1.0	1128400	Configuration Management	100.0	200.0	-	-	-	-	200.0
19	SDTI	LRV rehab.	1.0	11252	SD100 Blower Motor Conversion	290.0	100.0	-	-	-	-	100.0
52	SANDAG	Construction	1.0	1128300	Old town Trolley & Bus ADA Improvements	115.0	89.0	-	-	-	-	89.0
46	MTS	Admin	1.0		Hestop module for Planning Hastus Program	-	78.5	-	-	-	-	78.5
XX	MTS Bus	Facilities	1.0		El Cajon Transit Center	-	129.5	-	-	-	-	129.5
21	SDTI	LRV rehab.	1.1		SD100 Traction Motor Disconnects	-	275.0	-	275.0	275.0	275.0	1,375.0
23	SDTI	Equipment	1.1		SDTI Ticket Vending Equipment (TVM)	-	500.0	-	500.0	868.8	-	1,868.8
37	MTS Bus	Equipment	1.1	1049000	MCS - AVL/MDT Technology on 370 Buses (RTMS)	-	-	5,500.0	-	4,200.0	-	12,700.0
56	SANDAG	Construction	1.5	1049700	Grossmont Pedestrian Enhancement	4,700.0	-	3,095.0	-	-	-	3,200.0
47	SANDAG	Construction	1.5	1095600	San Ysidro Slope	135.0	-	2,080.0	-	-	-	2,080.0
49	SANDAG	Construction	1.5	1128100	Mainline Drainage Improvements	260.0	-	645.0	-	-	-	645.0
48	SANDAG	Construction	1.5		Trolley Platform Repairs	-	342.9	-	-	-	-	342.9
27	CVT	Security	1.5		CVT Bus Security Cameras	-	277.5	-	-	-	-	277.5
55	MTS	Admin	1.5		Enterprise Planning System	-	150.0	-	-	-	-	150.0
35	MTS Bus	Equipment	1.5	11198	MTS Bus Fare box Support Equipment	424.7	-	100.0	-	-	-	100.0
30	MTS Bus	Equipment	1.5		MTS Bus Fleet watch Data Logger Installation	-	-	95.0	-	-	-	95.0
36	MTS Bus	Equipment	1.5		SPMF/ECBMF Heavy Duty Lifts	-	-	75.0	145.0	150.0	160.0	685.0
38	MTS Bus	Equipment	1.5		MTS Bus Service Trucks	-	-	55.0	270.0	650.0	-	975.0
31	MTS Bus	Equipment	1.5		MTS Bus Regional Transit IT	-	-	45.0	-	-	-	45.0
38	MTS Bus	Equipment	1.5		MTS Bus Regional Transit IT	-	-	45.0	-	-	-	45.0
31	MTS Bus	Equipment	1.5		MTS Bus Regional Transit IT	-	-	45.0	-	-	-	45.0
14	SDTI	Construction	3.4	1128600	LRV Car Wash	100.0	-	1,184.7	-	-	-	1,184.7
3	SDTI	Rail infra.	2.2		Substation Retrofit Modifications	-	-	1,000.0	1,000.0	1,200.0	1,500.0	6,200.0
3	SDTI	Rail infra.	2.2		Substation Retrofit Modifications	-	-	1,000.0	1,000.0	1,200.0	1,500.0	6,200.0
2	SDTI	Equipment	2.7	11186	Crane Truck	-	-	400.0	-	-	-	400.0
8	SDTI	Equipment	2.7	11186	Crane Truck	-	-	400.0	-	-	-	400.0
8	SDTI	Rail infra.	3.8	1142800	Catenary Catch Cable Restoration	390.0	-	390.0	-	-	-	390.0
5	SDTI	Rail infra.	3.6		SDTI VMS Sign Replacement	-	-	375.0	-	-	-	750.0
1	SDTI	Rail infra.	2.8		Signal System Design/ Schematic Updates	-	-	250.0	250.0	-	-	500.0
22	SDTI	LRV rehab.	3.3	11216	Electronic Control Circuit U2 Rehab	230.3	-	250.0	250.0	250.0	-	1,000.0
6	SDTI	Facilities	2.9	11228	SDTI Yard Facilities Building Repair	135.0	-	175.0	-	-	-	175.0
16	SDTI	LRV rehab.	3.5		U2 LRV Interior Rehab	-	-	100.0	100.0	100.0	-	400.0
9	SDTI	Facilities	3.7		Old Town Station Building Repairs	-	-	75.0	-	-	-	75.0
28	MTS Bus	Security	3.0	11212	Transit Store Security Improvements	69.0	-	50.0	-	-	-	50.0
41	MTS	Security	3.0	11258	DVR Replacement	24.0	-	36.0	36.0	36.0	36.0	180.0
29	MTS Bus	Equipment	2.0		MTS Bus IAD Roof & HVAC Repairs	-	-	35.0	915.0	-	-	950.0
26	CVT	Admin	3.0		CVT AVL & APC System	-	-	-	-	-	-	-
42	SANDAG	Equipment	3.0	1049000	RTMS	16,774.0	-	-	-	-	-	-
	SDTI	Equipment			Transformer Rewinding	-	-	200.0	-	-	-	200.0
	SDTI	Construction			Fashion Valley Station Improvements	-	-	400.0	-	-	-	400.0
	SDTI	Equipment			Station Lighting Electrical Usage Improvements	-	-	125.0	125.0	-	-	250.0
	SDTI	LRV Rehab			Signal Cases & Relay Replacement	-	-	960.0	-	-	-	960.0
	SDTI	LRV Rehab			Curve Rehabilitation	-	-	2,100.0	2,100.0	2,100.0	-	6,300.0
	SDTI	Equipment			ROW Drainage improvements	-	-	2,600.0	1,200.0	1,200.0	1,200.0	5,000.0
	SDTI	Construction			Station Parking Lots	-	-	300.0	300.0	-	-	600.0
	SDTI	Equipment			Power Switch Replacement	-	-	275.0	-	-	-	275.0
	SDTI	LRV Rehab			Street Running Track Replacement	-	-	1,200.0	1,200.0	1,200.0	1,200.0	3,600.0
	SDTI	Equipment			Switches 1.3.9 & 1.1	-	-	1,500.0	-	-	-	250.0
	SDTI	Construction			ROW Fence Replacement	-	-	1,295.0	-	-	-	1,295.0
	SDTI	Equipment			Substation Isolation Switches	-	-	-	-	-	-	200.0
	SDTI	Equipment			Commercial Street Frt. Switch removal	-	-	-	-	-	-	500.0
	SDTI	Equipment			System Station Repairs	-	-	-	-	-	-	75.0
	SDTI	Construction			Substation Building Improvements	-	-	-	-	-	-	1,863.0
	MTS Bus	Equip			AVI/MDT Technology ADA Para transit Buses	-	-	1,863.0	-	-	-	1,863.0
	MTS Bus	Buses			Mid size Buses (14)	-	-	-	-	-	-	4,500.0
	MTS Bus	Buses			45ft. Commuter Buses (26)	-	-	-	5,400.0	-	-	5,400.0
	MTS Bus	Buses			ADA Buses (120)	8,519.6	-	-	-	-	-	12,500.0
	MTS Bus	Buses			Minibuses (26)	3,243.7	-	-	-	-	-	3,600.0

**TOTAL**      112,239.3      94,815.2      16,781.0      131,164.6      130,640.9      142,631.3      146,715.2      662,748.3  
**ANNUAL DEFICIT**      0.0      (16,781.0)      (90,227.5)      (86,906.3)      (95,987.3)      (97,045.4)      (386,947.5)

San Diego Metropolitan Transit System  
Capital Improvement Program  
Fiscal Years 2010 - 2014  
CIP Forecast

	Proposed FY10	Projected FY11	Projected FY12	Projected FY13	Projected FY14	FY10 to FY14
<b>Total Revenues</b>						
Recurring Dedicated Federal CIP Revenues	68,105.0	70,829.2	73,662.4	76,608.9	79,673.2	368,878.6
Recurring TDA for Preventative Maintenance Increase	12,500.0	12,500.0	12,500.0	12,500.0	12,500.0	62,500.0
Other Non Recurring Revenues	56,567.9	-	-	-	-	56,567.9
<b>Total Capital Revenues</b>	<b>137,172.9</b>	<b>83,329.2</b>	<b>86,162.4</b>	<b>89,108.9</b>	<b>92,173.2</b>	<b>487,946.6</b>
<b>Less: "Off the Top" Expenses</b>						
SANDAG Planning Studies	(857.8)	(892.1)	(927.7)	(964.9)	(1,003.4)	(4,645.9)
Preventative Maintenance	(41,500.0)	(41,500.0)	(41,500.0)	(41,500.0)	(41,500.0)	(207,500.0)
<b>Total "Off The Top" Expenses</b>	<b>(42,357.8)</b>	<b>(42,392.1)</b>	<b>(42,427.7)</b>	<b>(42,464.9)</b>	<b>(42,503.4)</b>	<b>(212,145.9)</b>
<b>Adjusted Available CIP Revenues</b>	<b>94,815.2</b>	<b>40,937.1</b>	<b>43,734.6</b>	<b>46,644.0</b>	<b>49,669.8</b>	<b>275,800.7</b>
<b>Total Project Needs</b>	<b>111,596.2</b>	<b>131,164.6</b>	<b>130,640.9</b>	<b>142,631.3</b>	<b>146,715.2</b>	<b>662,748.3</b>
<b>Total Deficit</b>	<b>(16,781.0)</b>	<b>(90,227.5)</b>	<b>(86,906.3)</b>	<b>(95,987.3)</b>	<b>(97,045.4)</b>	<b>(386,947.5)</b>
<b>% of Funding / Needs</b>	<b>85.0%</b>	<b>31.2%</b>	<b>33.5%</b>	<b>32.7%</b>	<b>33.9%</b>	<b>41.6%</b>
<b>Accumulated Deficit</b>	<b>(16,781.0)</b>	<b>(107,008.5)</b>	<b>(193,914.8)</b>	<b>(289,902.1)</b>	<b>(386,947.5)</b>	
<b>Accumulated % Funding / Needs</b>	<b>85.0%</b>	<b>55.9%</b>	<b>48.1%</b>	<b>43.8%</b>	<b>41.6%</b>	

# Preventative Maintenance Policy Change

	Capital Budget	Increase PM to Ops	Adj Cap Budget	Operating Budget	Incr PM to Ops	Adj Oper Budget
CIP Revenues	123,815	-	123,815	39,638	-	39,638
Federal PM	(23,200)	(10,000)	(33,200)	23,200	10,000	33,200
TDA Match PM	(5,800)	(2,500)	(8,300)	5,800	2,500	8,300
TDA Transfer	-	12,500	12,500	64,869	(12,500)	52,369
Total CIP Revenues	94,815	-	94,815	133,507	-	133,507

**San Diego Metropolitan Transit System  
Capital Improvement Program  
Fiscal Years 2010 - 2014  
Estimated Revenue Detail**

<b>Revenue Source</b>	<b>Proposed FY 2010</b>
Federal Funding Levels (includes local match)	68,105.0
Federal Funding - FY08 Carry Forward (includes local match)	4,272.0
* <b>CMAQ &amp; JARC Funding</b>	<b>149.2</b>
* <b>Transit Security Grant Program (TSGP)</b>	<b>1,500.0</b>
* <b>Proposition 1B- Security Funding (TSSSDRA)</b>	<b>5,479.4</b>
* <b>Proposition 1B- FY09 Funding (PTMISEA)</b>	<b>27,787.9</b>
* <b>Proposition 1B- FY10 Funding (PTMISEA)</b>	<b>15,653.7</b>
FY08 TDA Final Carry Forward	98.0
Capital Project Transfers	1,627.7
Transportation Development Act (TDA)	12,500.0
Total Funding Available	<u><u>\$ 137,172.9</u></u>
<b>*Restricted revenues total</b>	<b>\$ 50,570.3</b>
Unrestricted CIP funds	\$ 86,602.7
Preventative Maintenance	(41,500.0)
SANDAG Planning Studies	(857.8)
<b>Net Unrestricted CIP Funds</b>	<u><u>\$ 44,244.9</u></u>



1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
619.231.1466, FAX 619.234.3407

## Agenda

Item No. 32

JOINT MEETING OF THE BOARD OF DIRECTORS  
for the  
Metropolitan Transit System,  
San Diego Transit Corporation, and  
San Diego Trolley, Inc.

CIP 11239

January 15, 2009

### SUBJECT:

MTS: NEW FLYER BUSES - CONTRACT AMENDMENT

### RECOMMENDATION:

That the MTS Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. G1101.5-07 (in substantially the same format as Attachment A) with New Flyer Industries, Inc. (New Flyer) to purchase 38 low-floor, 40-foot, compressed natural gas (CNG) transit buses.

#### Budget Impact

Encumber \$14,608,327.16 to MTS Capital Improvement Project (CIP) *40-Foot CNG Low-Floor Buses* (CIP 11239-1300) and \$1,070,917 to the Franchise Tax Board for sales tax to *40-Foot CNG Buses* (CIP 11239-1300). Encumber \$815,462.62 to *Chula Vista 40-Foot CNG Low-Floor Buses* (CIP 11250-1300) and \$59,800 to the Franchise Tax Board for sales tax to CIP 11250-1300. This would leave a balance of approximately \$30,000 remaining in the procurement line item for CIP 11239 and approximately \$10,000 for CIP 11250.

### DISCUSSION:

MTS has 97 CNG-powered buses that were purchased in 1995. This group of buses has CNG tanks that expire in 2010 or a maximum certified life of 15 years. MTS Bus and MTS Contract Services need to replace these buses during the next two years. The replacement of the fleet of 97 buses is being programmed as part of the CIP process. On October 16, 2008, the Board awarded an amendment to purchase 37 buses. Funds



Metropolitan Transit System (MTS) is comprised of the Metropolitan Transit Development Board (MTDB) a California public agency, San Diego Transit Corp., and San Diego Trolley, Inc., in cooperation with Chula Vista Transit and National City Transit. MTS is Taxicab Administrator for eight cities. MTDB is owner of the San Diego and Arizona Eastern Railway Company. MTDB Member Agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.




from the FY 10 CIP program will be available to purchase 38 additional buses, including 36 for the MTS South Bay Division and 2 for Chula Vista Transit operations.

In February 2008, MTS awarded a contract to New Flyer for 35-foot and 40-foot low-floor transit coaches with options available on an as-needed basis for a period of five years. MTS staff is ready to award a contract amendment for 38 additional new 40-foot, low-floor buses. Following award of the contract, it is expected that the buses would be delivered within 12 months (approximately fall/winter 2009).

The contract amendment also includes a budget estimate for manuals, training, and support diagnostic tools that would be finalized as part of the preproduction meetings.

In accordance with federal regulations, the MTS Internal Auditor is conducting the preaward audit. This audit confirms that New Flyer, the manufacturer of the buses, meets all Buy America and Federal Motor Vehicle Safety Standards compliance requirements.



---

Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Claire Spielberg, 619.238.0100, Ext. 6400, [Claire.Spielberg@sdmts.com](mailto:Claire.Spielberg@sdmts.com)

JAN15-09.33 NEWFLYER BUSES REV.EHURWITZ

Attachment: A. Draft MTS Doc. No. G1101.5-07

DRAFT

January 15, 2009

MTS Doc. No. G1101.5-07  
CIPs 11239, 11250

Mr. Paul Smith  
Executive Vice President Sales and Marketing  
New Flyer Industries, Inc.  
711 Kernaghan Avenue  
Winnipeg, Manitoba  
R2C 3T4 Canada

Dear Mr. Smith:

Subject: AMENDMENT NO. 5 TO MTS DOC. NO. G1101.0-07 FOR 38 40-FOOT BUSES

In accordance with Article 2, "Changes," of the Standard Conditions of MTS Doc. No. G1101.0-07, MTS amends the Agreement to order 38 year 2, 40-foot, low-floor, compressed natural gas (CNG) buses, manuals, training, and support tools and to make minor changes to the options and pricing (as detailed below).

This amendment shall consist of the following for the 36 buses (CIP 11239):

	<u>Unit Price</u>	<u>Total (36 buses)</u>
Base price of bus (includes wheelchair equip. & delivery)	\$389,560.31	\$14,024,171.16
Adjustments:	\$ 13,171.00	\$ 474,156.00
<b>TOTAL BUS COSTS</b>	<b>\$402,731.31</b>	<b>\$14,498,327.16</b>
 Manuals, Training and Tools		 <u>\$ 110,000.00</u>
 <b>GRAND TOTAL 36 BUSES</b>		 <b>\$14,608,327.16</b>

This amendment shall consist of the following for the 2 Chula Vista buses (CIP 11250):

	<u>Unit Price</u>	<u>Total (2 buses)</u>
Base price of bus (includes wheelchair equip. & delivery)	\$389,560.31	\$ 779,120.62
Adjustments:	\$ 13,171.00	\$ 26,342.00
<b>TOTAL BUS COSTS</b>	<b>\$402,731.31</b>	<b>\$ 805,462.62</b>
 Manuals, Training and Tools		 \$ 10,000.00
 <b>GRAND TOTAL 2 BUSES</b>		 <u><b>\$ 815,462.62</b></u>

**TOTAL AMENDMENT NO. 5** ~~\$14,608,327.16~~ **\$15,423,789.78**

Mr. Paul Smith  
January 15, 2009  
Page 2 of 2

Pricing Form

Add the revised pricing forms to include minor technical and price changes and the cost of the 38 buses to the agreement (Attachments A and B).

Schedule

Delivery of the 36 buses shall be to: MTS South Bay Division, 3650A Main Street, Chula Vista, CA 91911 in accordance with New Flyer's schedule. Delivery of the two Chula Vista buses shall be to: Chula Vista Maxwell Division, 1800 Maxwell Drive, Chula Vista, CA 91911, in accordance with New Flyer's schedule.

Payment

Page 1 (Standard Procurement Agreement cover page) shall be amended to change the total contract amount from \$44,914,003.08 to a revised amount \$60,337,792.86. Sales tax up to a maximum of \$1,130,717 shall be paid by MTS directly to the State of California Franchise Tax Board.

All other conditions remain unchanged. If you agree with the above, please sign below and return the document marked "Original" to the Contracts Specialist at MTS. The other copy is for your records.

Sincerely,

Agreed:

Paul C. Jablonski  
Chief Executive Officer

\_\_\_\_\_  
Paul Smith  
Executive, VP Sales and Marketing

JAN15-09.32.AttA.NEWFLYERAMD5.EHURWITZ.doc

Date: \_\_\_\_\_

Attachments: Revised Pricing Form 36 Buses CIP 11239 (1/15/09)  
Revised Pricing Form 2 Chula Vista Buses CIP 11250 (1/15/09)

# MTS - BUS ORDER FEBRUARY 2009 - 36 BUSES - BUS 2838 - 2873

Options From MTS Bus Order - Contract No. G1101.5.07

NEW FLYER OF AMERICA, INC.

Price Change Detail

Property: MTS - SOUTH BAY DIVISION  
 Quantity: Thirty-six  
 Bus Type: C40LF

Price Per Coach							Total Per Bus	Total Contract
Price Change Type	Ref. No.	Option No.	Option Group	Description				
Base Bus	3	PPI	Producer Price Index	Final adjustment amount to be determined based on updated PPI index (shown as maximum 4% per contract)			\$15,490.00	\$557,640.00
Price Change	4	205	Tires	Change to NF supplied tires - same as San Diego			\$2,684.03	\$96,625.08
	5	246	Air, Brake, & Lev System	Change to metal "Pull to Apply" park brake instructions			\$4.76	\$171.36
	6	470	Destination Signs	Remove AVM system			\$ (855.77)	\$ (30,807.72)
	7	526	Seating and Stanchions	Add 2 handhold straps to change to requested qty of 6			\$38.70	\$1,393.20
	8	600	Customer Options	Change farebox pedestal to be reinforced for standard mounting			\$35.35	\$1,272.60
	8	600	Customer Options	Change farebox pedestal to be reinforced for standard mounting			\$95.00	\$3,420.00
	9	600	Customer Options	Remove APC system			\$ (3,821.07)	\$ (137,558.52)
	X		Warranty	Warranty Credit for Camera System not installed			\$ (500.00)	\$ (18,000.00)
Base Bus Price Change Total							\$13,171.00	\$474,156.00
Base Bus Price (Includes WC Equipment and Delivery)							\$389,560.31	\$14,024,171.16
<b>Grand Bus Total (excluding manuals, training and tools)</b>							<b>\$402,731.31</b>	<b>\$14,498,327.16</b>
	Y		Manuals and Training	Manuals and training quantities to be determined prior to contract execution. A lump sum amount is shown for budget purposes at this time for this order (36 buses) plus the previous (37 bus) order under Amendment #4.				\$60,000.00
	Z		Tools	Diagnostic and specialized tools. List to be finalized prior to contract execution. A lump sum amount is shown for budget purposes at this time for this order.				\$50,000.00
<b>GRAND TOTAL</b>								<b>\$14,608,327.16</b>

# MTS - BUS ORDER FEBRUARY 2009 - 2 CHULA VISTA BUSES - BUS 7301-7302

Options From MTS Bus Order - Contract No. G1101.5.07  
NEW FLYER OF AMERICA, INC.

## Price Change Detail

Property: MTS - CHULA VISTA MAXWELL DIVISION

Quantity: Two

Bus Type: C40LF

Price Per Coach								
Price Change Type	Ref. No.	Option No.	Option Group	Description	Total Per Bus	Total Contract		
Base Bus	3	PPI	Producer Price Index	Final adjustment amount to be determined based on updated PPI index (shown as maximum 4% per contract)	\$15,490.00	\$30,980.00		
Price Change	4	205	Tires	Change to NF supplied tires - same as San Diego	\$2,684.03	\$5,368.06		
	5	246	Air, Brake, & Lev System	Change to metal "Pull to Apply" park brake instructions	\$4.76	\$9.52		
	6	470	Destination Signs	Remove AVM system	\$(855.77)	\$(1,711.54)		
	7	526	Seating and Stanchions	Add 2 handhold straps to change to requested qty of 6	\$38.70	\$77.40		
	8	600	Customer Options	Change farebox pedestal to be reinforced for standard mounting	\$35.35			
	8	600	Customer Options	Change farebox pedestal to be reinforced for standard mounting	\$95.00			
	9	600	Customer Options	Remove APC system	\$(3,821.07)	\$(7,642.14)		
	X		Warranty	Warranty Credit for Camera System not installed	\$(500.00)	\$(1,000.00)		
Base Bus Price Change Total					\$13,171.00	\$26,342.00		
Base Bus Price	(Includes WC Equipment and Delivery)				\$389,560.31	\$70.70		
Grand Bus Total					\$190.00	\$805,462.62		
	Y	Manuals and Training		Manuals and training quantities to be determined prior to contract execution. A lump sum amount is shown for budget purposes at this time for the original 5 buses (under Amendment #2) plus the two new buses under Amendment #5.			\$5,000.00	
	Z	Tools		Diagnostic and specialized tools. List to be finalized prior to contract execution. A lump sum amount is shown for budget purposes at this time for this order.			\$5,000.00	
GRAND TOTAL						\$815,462.62		



1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
619.231.1466, FAX: 619.234.3407

## Agenda

Item No. 33

JOINT MEETING OF THE BOARD OF DIRECTORS  
for the  
Metropolitan Transit System,  
San Diego Transit Corporation, and  
San Diego Trolley, Inc.

LEG 430 (PC 50121)

January 15, 2009

### SUBJECT:

MTS: UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS  
AND APPROVAL OF 2008 DBE PROGRAM

### RECOMMENDATION:

That the Board of Directors receive the Uniform Report of Disadvantaged Business Enterprise (DBE) Awards or Commitments and Payments (Attachment A).

#### Budget Impact

None.

### DISCUSSION:

#### History

The Federal Transit Administration's (FTA's) DBE Program was originally created to ensure nondiscrimination in the award and administration of Department of Transportation (DOT)-assisted contracts. The DBE Program required that on all federally funded contracts, a contract-specific DBE goal be established and met by the successful bidder. In order to qualify as a DBE, a company has to be certified by the grantee or designated state agency. Award of all federally funded contracts was conditioned upon meeting the DBE goal. If a firm was unable to meet the DBE goal, the firm was required to demonstrate that it made a good-faith effort to find a DBE subcontractor.



Metropolitan Transit System (MTS) is a California public agency and is comprised of San Diego Transit Corporation and San Diego Trolley, Inc. nonprofit public benefit corporations, in cooperation with Chula Vista Transit and National City Transit. MTS is the taxicab administrator for eight cities and the owner of the San Diego and Arizona Eastern Railway Company. MTS member agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

In 2005, the Ninth Circuit Court of Appeals published an opinion specifying that the State of Washington's contract-specific goal for a paving contract was unconstitutional. In that case, a bidder had submitted the lowest bid for the project but failed to meet the DBE goal. The state awarded the contract to a minority-owned company whose bid was higher. The low bidder then sued the FTA, the State of Washington, and the City of Vancouver claiming its constitutional rights had been violated. After several years of litigation and appeals, the federal Ninth Circuit Court of Appeals ruled that on its face, the premise behind the FTA's DBE Program was constitutional but, as applied to this particular bidder, its constitutional rights had been violated. The court based its decision on the fact that the State of Washington had not conducted a disparity study to determine whether any discrimination was occurring in the award of its contracts; the state had simply ordered all contracts to have a DBE goal.

On December 21, 2005, in response to the Ninth Circuit's ruling, the nine states affected by the decision (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) were required by DOT to submit proof of discrimination in their respective contracting opportunities. The California Department of Transportation (Caltrans) took the lead for gathering this evidence for all transportation agencies within California. Caltrans considered past disparity studies, comments, and written evidence received during a 90-day public comment period ending on March 20, 2006. While there was some indirect evidence of discrimination contained in the information received, Caltrans concluded that the data lacked sufficient evidence to continue with a race-conscious DBE Program. In order to comply with the Ninth Circuit ruling, Caltrans then issued a directive that all federal transportation assistance subrecipients would implement a DBE Race-Neutral Program until a comprehensive state-wide disparity study was completed. MTS is still awaiting the results of the final study.

In addition, MTS is currently participating in a Southern California DBE Disparity Study, which will take about 12 more months to complete. In summary, the DBE Program has changed from a contract-specific program (where goals are set for each federally funded contract) to a DBE availability program (DBE goals are set for the year and attainment is monitored). During this time, MTS will continue to comply with all DBE requirements.

#### Second Semiannual Report for 2008

MTS is a subrecipient of FTA funds and, as such, must report on DBE participation in its contracting opportunities. Twice yearly, subrecipients must submit a completed Awards/Commitments and Actual Payments spreadsheet.

The DBE reporting methodology is set by federal statute; MTS may only count participation from vendors who are registered as DBEs doing business in the State of California whose contracts were awarded. The second semiannual report was submitted by MTS to Caltrans' program representative and the FTA on November 13, 2008, for the reporting period of April 1, 2008, through October 31, 2008 (Attachment A). Staff is requesting that the Board review and receive the second semiannual report for 2008.

#### 2008 DBE Program Update

The FTA requires all grant recipients to maintain a DBE Program, which complies with Title 49 of the Code of Federal Regulations, Part 26.5 and ensures that DBEs have an equal opportunity to receive and participate in FTA-funded projects. Every three years,

MTS is required to update its program and submit the Board-approved program to the FTA. The program was last updated in 2005.

A copy of the proposed changes to the 2008 DBE Program is included with this agenda item as Attachment B. Highlights include:

- Updates to the North American Industrial Classification System, which describes the categories of work for DBEs;
- Minor modifications to ensure consistency between the MTS Program and Title 49, Code of Federal Regulations, Part 26;
- Updates to the contact information for financial institutions that are minority-owned and willing to assist DBEs;
- Changes to reflect the current DBE goals for 2008; and
- Addition of exhibit from Caltrans regarding contract-specific goal-setting.

#### Recent DBE Outreach Efforts

On October 15, 2008, two members from MTS attended DOT's Office of Small and Disadvantaged Business Utilization's (DOT OSDBU's) Matchmaking Event in San Diego. This meeting facilitated personal 15-minute sessions with potential vendors and MTS staff so that vendors could learn about doing business with MTS.

Staff followed up with the 16 vendors who visited the MTS booth and provided them with a bidder's information sheet, which allows vendors to register with MTS and be placed on its bidders list for future procurement opportunities. MTS has received a total of 16 responses.

In addition, MTS has contacted (by voice mail and correspondence) the San Diego Urban League about potential business opportunities for its members. Staff is still waiting to hear back from this organization at this time.

In January, MTS will host an open house with members of the Procurement Department for interested small and DBE vendors to meet with staff and learn about future contracting opportunities.



---

Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Tiffany Lorenzen, 619.557.4512, [tiffany.lorenzen@sdmts.com](mailto:tiffany.lorenzen@sdmts.com)

JAN15-09.33.UNIFORM DBE RPT.TLOREN.doc

Attachments: A. List of Contracts  
B. Semiannual DBE Report  
C. 2008 DBE Program **(Board Only Due to Volume—Available on Web Site)**



MTS FTA FY07- 08 BUDGETED CONTRACTS		
PROJECT NO.	PROJECT DESCRIPTION	FY07-08 BUDGET
<b>MINOR CONSTRUCTION</b>		
11146	CVT ADA Bus Stop Improvements	32,000
11191	IAD/KMD Vacuum Replacement	398,240
11194	KMD Steam Rack Retrofitting	234,000
11183	Blue Line Tie Replacement	280,000
11182	Blue Line Station Improvements	341,280
	<b>Total Construction</b>	<b>1,285,520</b>
<b>PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES</b>		
11212	Transit Store Security Improvements	55,600
11190	IAD Main Entrance Security Project	64,000
11187	CVT Bus Stop Security Improvements	40,000
	<b>Total Services</b>	<b>159,600</b>
<b>WHOLESALE DURABLE GOODS</b>		
11162	Organizational Desktops	240,000
11163	Network Servers	60,000
11195	MCS ADA Paratransit Computer Equipment	40,000
11198	MCS South Bay Main Misc. Equipment	80,000
	<b>Total Wholesale Durable Goods</b>	<b>420,000</b>
	<b>Total Budgeted Contracts FY07-08</b>	<b>1,865,120</b>

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM  
REPORTING REQUIREMENTS  
AWARDS/COMMITMENTS**

**Att. B, AI 33, 1/15/09**

**A. Subrecipient/Agency:** San Diego Metropolitan Transit System

**B. DBE Liaison Officer and Phone:** Tiffany Lorenzen 619-557-4512

**C. Date:** November 13, 2008

**D. [ ] Report due April 15 for the period October 1 to March 31 [X] Report due November 14 for the period April 1 to Sept 30**

<b>E. Contractor/Subcontractor</b>	<b>F. Type of Contract</b>	<b>G. DBE Y/N</b>	<b>H. DBE Cert Number</b>	<b>I. Amount</b>	<b>Prime or Subcontractor</b>
SANDAG	Service	N		10000	P
SIEMENS ENERGY & AUTOMATION	Service	N		64515	P
GIRO, INC	Goods & Commodities	N		15290	P
TRANSP MGMT & DESIGN, INC	Service	N		145000	P
SANDAG	Service	N		200000	P
ELECTRO SPECIALTY SYSTEMS	Service	N		12901.65	P
TELLIARD CONSTRUCTION	Construction	N		4519.78	P
WASHINGTON GROUP INTERNATIONAL	Service	N		266654	P
NORTH AMERICAN BUS INDUSTRIES	Goods & Commodities	N		20480888	P
NELECO, INC	Goods & Commodities	N		90000	P
HECHT, SOLBERG, ROBINSON, ETAL	Service	N		90000	P
RADIO SUPPLY CORP	Goods & Commodities	N		37605.29	P
KIRKPATRICK AND LOCKHART PREST	Service	N		15000	P
SANDAG	Goods & Commodities	N		340000	P
SANDAG	Service	N		250000	P
FIRST TRANSIT	Service	N		110000	P
BUS WEST	Goods & Commodities	N		3266259.5	P
FUSION STORM	Service	N		29460	P
COMPLETE COACH WORKS	Goods & Commodities	N		348580.35	P
SELECT TRANSIT PRODUCTS	Service	N		36500.25	P
CREATIVE BUS SALES	Goods & Commodities	N		910000	P
VEHICLE TECHNICAL CONSULTANTS	Service	N		36400	P
VEHICLE TECHNICAL CONSULTANTS	Service	N		25200	P
MICHELIN NORTH AMERICA, INC.	Goods & Commodities	N		93711.75	P
CARLOS GUZMAN, INC	Service	N		507000	P
CARLOS GUZMAN, INC	Service	N		458280	P
RADIO SUPPLY	Goods & Commodities	N		39582.83	P
ELECTRO SPECIALTY SYSTEMS	Service	N		8357.74	P
SIEMENS TRANSPORTATION	Goods & Commodities	N		462965.12	P
SIEGEL, MORENO & STETTLER, APC	Service	N		25000	P
MIRAMAR TRUCK CENTER	Goods & Commodities	N		80000	P
DAPCO TECHNOLOGIES	Service	N		20360	P
ELECTRO SPECIALTY SYSTEMS	Goods & Commodities	N		97931.39	P
KOCH ARMSTRONG INC	Construction	N		26700	P
PATRIOT ENVIRONMENTAL SVCS	Service	N		30000	P
IPKEYS	Service	N		85316.52	P
COMSEC INCORPORATED	Service	N		870.32	P
DANIEL TIRE SERVICE	Goods & Commodities	N		60000	P
VECOM USA, LLC	Goods & Commodities	N		203841.45	P
NABI	Goods & Commodities	N		-51743.7	P
CARLOS GUZMAN, INC	Services	N		\$160,000.00	P
BUREAU VERITAS	Services	N		\$8,673.00	P
BUREAU VERITAS	Services	N		\$902.00	P
BUREAU VERITAS	Services	N		\$0.00	P

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM  
REPORTING REQUIREMENTS  
AWARDS/COMMITMENTS**

E. Contractor/Subcontractor	F. Type of Contract	G. DBE Y/N	H. DBE Cert Number	I. Amount	Prime or Subcontractor
BUREAU VERITAS	Services	N		\$15,754.00	P
PGH WONG ENG	Services	N		\$8,092.06	P
PGH WONG (S)	Services	Y	25423	\$30,000.00	S
SELECT ELECTRIC	Services	N		\$22,300.00	P
SELECT ELECTRIC	Services	N		\$6,100.00	P
SELECT ELECTRIC	Services	N		\$10,000.00	P
SELECT ELECTRIC	Services	N		\$19,767.00	P
SELECT ELECTRIC	Services	N		\$9,500.00	P
SELECT ELECTRIC	Services	N		\$1,774.76	P
BUREAU VERITAS	Services	N		\$8,811.00	P
SELECT ELECTRIC	Services	N		\$10,000.00	P
SELECT ELECTRIC	Construction	N		\$30,043.50	P
SELECT ELECTRIC	Construction	N		\$32,405.00	P
SELECT ELECTRIC	Construction	N		\$12,500.00	P
SELECT ELECTRIC	Construction	N		(\$73,814.50)	P
SELECT ELECTRIC	Construction	N		\$28,070.00	P
SELECT ELECTRIC	Construction	N		\$1,969.40	P
SELECT ELECTRIC	Construction	N		\$30,707.94	P
SELECT ELECTRIC	Goods & Commodities	N		\$11,240.00	P
BUREAU VERITAS/BERRYMAN & HENI	Services	N		\$18,389.00	P
BUREAU VERITAS/BERRYMAN & HENI	Services	N		\$42,761.00	P
BUREAU VERITAS	Services	N		\$7,634.00	P
VEHICLE TECHNICAL CONSULTANTS	Goods & Commodities	N		\$29,750.00	P
THE PINNACLE GROUP	Goods & Commodities	N		\$16,633.87	P
CDW GOVERNMENT INC	Goods & Commodities	N		\$99,882.57	P
AA EQUIPMENT	Goods & Commodities	N		\$9,234.07	P
THE PINNACLE GROUP	Goods & Commodities	N		\$5,847.06	P
SOFTCHOICE CORPORATION	Goods & Commodities	N		\$9,107.03	P
THE PINNACLE GROUP	Goods & Commodities	N		\$8,012.30	P
COM-SEC INC.	Goods & Commodities	N		\$4,235.19	P
SCS FLOORING	Construction	N		\$18,293.70	P
INC. ACCO ENGINEERED SYSTEMS	Construction	N		\$5,941.00	P
DAY WIRELESS SYSTEMS	Goods & Commodities	N		\$1,502.34	P
CART MART INC.	Goods & Commodities	N		\$16,507.30	P
CART MART INC.	Goods & Commodities	N		\$23,543.38	P
B&B DIVERSIFIED MATERIALS	Goods & Commodities	N		\$80,597.43	P
THE PINNACLE GROUP	Goods & Commodities	N		\$5,603.00	P
DELL COMPUTER GROUP	Goods & Commodities	N		\$29,243.23	P
INC. DSR DOOR SERVICE & REPAIR	Goods & Commodities	N		\$19,019.00	P
CLEANING SYSTEM	Goods & Commodities	N		\$13,156.02	P
SAFETY KLEEN	Goods & Commodities	N		\$18,257.56	P
QUALITY LIFT TRUCKS	Services	N		\$2,322.88	P
JOHNSON LIFT	Services	N		\$4,171.63	P
ELECTRIC SPECIALTY SYSTEMS	Construction	N		\$2,208.00	P
PROCHEM SPECIALTY PRODUCTS INC	Goods & Commodities	N		\$9,817.41	P
COMPRESSED AIR SYSTEMS ENG	Construction	N		\$49,166.12	P
JOHNSON LIFT/HYSTER	Goods & Commodities	N		\$30,335.93	P
IACCESS INC	Goods & Commodities	N		\$2,032.60	P
THE PINNACLE GROUP	Goods & Commodities	N		\$44,351.80	P

# DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REPORTING REQUIREMENTS

## ACTUAL PAYMENTS

Subrecipient/Agency: San Diego Metropolitan Transit System

B. DBE Liaison Officer and Phone: Tiffany Lorenzen (619)557-4512 C. Date: 11/13/08  
D. [ ] Report due April 15 for the period October 1 to March 31 [ X ] Report due November 14 for the period April 1 to Sept 30

E. Contractor/Subcontractor	F. Type of Contract	G. DBE Y/N	H. DBE Cert Number	I. Amount	Prime or Subcontractor
Neleco, Inc. (P)	Goods & Commodities	N		576,000	P
Telliard Construction (P)	Construction	N		26,184	P
SANDAG (P)	Service	N		25,000	P
Telliard Construction (P)	Construction	N		4,519	P
Add-On's Inc. (P)	Service	N		30,000	P
Fuel Solutions, Inc. (P)	Sole Source	N		83,074	P
Select Electric (P)	Construction	N		542,058	P
Siemens Energy & Automation (P)	Service	N		63,318	P
Orthopaedic Hospital (P)	Service	N		417,000	P
Asbury Environmental Service (P)	Service	N		41,650	P
Creative Bus Sales (P)	Goods & Commodities	N		2,256,773	P
Washington Group International (P)	Service	N		168,082	P
Orthopedic Hospital (P)	Service	N		297,790	P
Lakeside Paint Bodyshop (P)	Service	N		323,669.08	P

# DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REPORTING REQUIREMENTS

## ACTUAL PAYMENTS

E. Contractor/Subcontractor	F. Type of Contract	G. DBE Y/N	H. DBE Cert Number	I. Amount	Prime or Subcontractor
Giro, Inc. (P)	Service	N		47,363.00	P
Siemens Energy & Automation (P)	Service	N		64,515	P
DAPCO Technologies (P)	Service	N		20,360	P
SANDAG (P)	Service	N		10,000	P
Radio Supply Corp (P)	Goods & Commodities	N		37,605	P
Fusion Storm (P)	Service	N		29,460.00	P
First Transit (P)	Service	N		110,000	P
Carlos Guzman (P)	Service	N		480,000	P
Radio Supply Corp (P)	Goods & Commodities	N		39,582	P
SANDAG (P)	Service	N		200,000	P
IPKeys (P)	Service	N		83,316	P
LAN ENGINEERING CORP	Services	N		\$2,764.24	P
BERRYMAN & HENNIGAR	Services	N		\$5,020.00	P
BUREAU VERTAS	Services	N		\$13,000.00	P
CARLOS GUZMAN, INC	Services	N		\$160,000.00	P



1255 Imperial Avenue, Suite 1000  
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(619) 231-1466 • FAX (619) 234-3407

November 13, 2008

LEG 430

Mr. Derrin Jourdan  
Civil Rights Officer  
Federal Transit Administration  
201 Mission Street, Suite 1650  
San Francisco, CA 94105

Dear Mr. Jourdan:

RE: UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

Please find enclosed the Semiannual Uniform Report of DBE Awards or Commitments and Payments. If you have any questions regarding this report, please feel free to contact me at 619.557.4512 or via e-mail at [tiffany.lorenzen@sdmts.com](mailto:tiffany.lorenzen@sdmts.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Tiffany Lorenzen', is written over the printed name and title.

Tiffany Lorenzen  
General Counsel & DBE Liaison Officer

JGardetto/  
L-DJOURDAN.DBE AWARDS.TLOREN.doc

Enclosure



Metropolitan Transit System

1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
(619) 231-1466 • FAX (619) 234-3407

November 13, 2008

LEG 430

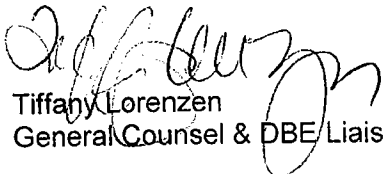
Ms. Annie Gottwig  
Associate Transportation Planner  
Caltrans District 11, Planning Division  
4050 Taylor Street, MS-240  
San Diego, CA 92110-2737

Dear Ms. Gottwig:

RE: UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

Please find enclosed the Uniform Report of DBE Awards or Commitments and Payments for MTS's Federal Transit Administration-funded operating and capital contracts. Please note that MTS did not receive any Federal Highway Administration monies for this reporting period. If you have any questions regarding this report, please feel free to contact me at 619.557.4512 or via e-mail at [tiffany.lorenzen@sdmts.com](mailto:tiffany.lorenzen@sdmts.com).

Sincerely,



Tiffany Lorenzen  
General Counsel & DBE Liaison Officer

JGardetto/  
L-AGOTTWIG.DBE AWARDS.TLOREN.doc

Enclosure

SAN DIEGO METROPOLITAN TRANSIT SYSTEM  
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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## DEFINITION OF TERMS

The terms used in this program have the meanings defined in Title 49, Code of Federal Regulations (CFR), part 26.5. Some of the most common terms are:

1. Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121.
  - a. Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:
    - (i) one concern controls or has the power to control the other; or
    - (ii) a third party or parties controls or has the power to control both; or
    - (iii) an identity of interest between or among parties exists such that affiliation may be found.
  - b. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the Disadvantaged Business Enterprise (DBE) program.
2. Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The terms includes in the absence of proof of a minimum blood quantum, any citizen whom a native village or native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.
3. Alaska Native Corporation (ANC) means any regional corporation, village corporation, urban corporation, or group corporation organized under the laws of the state of Alaska in accordance with the Alaska Native Claims Settlement Act as amended (43 U.S.C. 1601, et seq.).
4. Compliance means that a recipient has correctly implemented the requirements of this part.
5. Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.
6. Contractor means one who participates, through a contract or subcontract (at any tier), in a Department of Transportation (DOT)-assisted highway, transit, or airport program.
7. Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

8. Disadvantaged business enterprise (DBE) means a for-profit small business concern:
  - a. that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
  - b. whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
9. DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.
10. Good faith efforts means efforts to achieve a DBE goal or other requirement of this part that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
11. Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.
12. Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians or is recognized as such by the state in which the tribe, band, nation, group, or community resides. See definition of "tribally owned concern" in this section.
13. Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise for which the parties combine their property, capital, efforts, skills, and knowledge and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
14. Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the state of Hawaii.
15. Native Hawaiian Organization means any community service organization serving Native Hawaiians in the state of Hawaii, which is a not-for-profit organization chartered by the state of Hawaii, is controlled by native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.
16. Noncompliance means that a recipient has not correctly implemented the requirements of this part.
17. Operating Administration (OA) means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.
18. Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: the individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her

primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

19. Primary industry classification means the four-digit Standard Industrial Classification (SIC) code designation that best describes the primary business of a firm. The SIC code designations are described in the SIC Manual. As the North American Industrial Classification Systems (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS Manual and applicable codes. The SIC Manual and NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, Virginia 22261). NTIS also makes materials available through its Wweb site at [www.ntis.gov/naics](http://www.ntis.gov/naics) the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual--United States, 1997 which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.
20. Primary recipient means a recipient who receives DOT financial assistance and passes some or all of it on to another recipient.
21. Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE Program purposes.
22. Program means any undertaking on a recipient's part to use DOT financial assistance authorized by the laws to which this part applies.
23. Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned businesses.
24. Race-neutral measure or program is one that is or can be used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.
25. Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.
26. Secretary means the Secretary of Transportation or his or her designee.
27. Set aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.
28. Small Business Administrator (SBA) means the United States Small Business Administration.
29. Small business concern, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it that also does not exceed the cap on average annual gross receipts, specified in Sec. 26.65(b), as defined by SBA regulations, ~~over the firm's previous three fiscal years, in excess of \$16.6 million.~~

30. Socially and economically disadvantaged individual means any individual who is a citizen of the United States, or lawfully admitted permanent resident of the United States, ~~or any other individual determined on a case-by-case basis to be socially and economically disadvantaged (providing an individual's personal net worth does not exceed \$750,000 who the recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis, excluding that individual's ownership interests in the small business concern and his/her primary residence),~~ and any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
- a. Asian-Pacific Americans, which includes persons whose origins are from Brunei, Burma (Myanmar), Cambodia (Kampuchea), China, the Commonwealth of the Northern Marianas Islands, the Federated States of Micronesia, Fiji, Guam, Hong Kong, Indonesia, Japan, Juvalu, Kirbati, Korea, Laos, Macao, Malaysia, Nauru, the Philippines, Samoa, Taiwan, Thailand, Tonga, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), or Vietnam;
  - b. Black Americans, which includes persons having origins in any of the Black racial groups of Africa;
  - c. Hispanic Americans, which includes persons of Central or South American, Cuban, Dominican, Mexican, Puerto Rican, or other Spanish or Portuguese culture or origin, regardless of race;
  - d. Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - e. Subcontinent Asian Americans, which includes persons whose origins are from Bangladesh, Bhutan, India, the Maldives Islands, Nepal, Pakistan, or Sri Lanka;
  - f. Women; or
  - g. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.
31. Tribally owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

#### OBJECTIVES/POLICY STATEMENT

The San Diego Metropolitan Transit System (MTS) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. MTS has received federal financial assistance from the DOT, and, as a condition of receiving this assistance, MTS has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of MTS to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also MTS policy:

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

Tiffany Lorenzen, General Counsel, has been delegated as the DBE Liaison Officer. In that capacity, Tiffany Lorenzen is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by MTS in its financial assistance agreements with the DOT.

MTS has disseminated this policy statement to the MTS Board of Directors and all the components of its organization. MTS has distributed this statement to DBE and non-DBE business communities that perform work for MTS on DOT-assisted contracts by mailing to contractor associations, local community groups and organizations, and by publishing this statement in general circulation, minority-focused, and trade-associated publications.

#### NONDISCRIMINATION (26.7)

MTS will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE Program, MTS will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

#### DBE PROGRAM UPDATES (26.21)

MTS will continue to carry out this program until MTS has established a new goal-setting methodology or until significant changes to this DBE Program are adopted. MTS will provide DOT updates representing significant changes in the program.

#### QUOTAS (26.43)

MTS will not use quotas or set-asides in any way in the administration of this DBE Program.

DBE LIAISON OFFICER (DBELO) (26.25)

MTS has designated the following individual as its DBE liaison officer:

Tiffany Lorenzen, General Counsel  
1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
619.557.4512; [Tiffany.Lorenzen@sdmts.com](mailto:Tiffany.Lorenzen@sdmts.com)

In that capacity, Tiffany Lorenzen is responsible for implementing all aspects of the DBE Program and ensuring that MTS complies with all provisions of 49 CFR Part 26. This is available on the Internet at [www.osdbuweb.dot.gov/main.cfm](http://www.osdbuweb.dot.gov/main.cfm). Tiffany Lorenzen has direct, independent access to Paul Jablonski, Chief Executive Officer, concerning DBE Program matters. The DBELO has a staff of one professional employee assigned to the DBE Program. An organization chart displaying the DBELO's position in the organization is found in Attachment E to this program.

The DBELO is responsible, through staff, for developing, implementing, and monitoring the DBE Program, in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third-party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (~~both using~~ both using race-neutral methods and contract-specific goals) and monitors results.
6. Analyzes MTS's progress toward goal attainment and identifies ways to improve progress.
7. Participates in prebid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Participates with the project manager to determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids and obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Acts as liaison to the Uniform Certification Process in California.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. ~~Maintains MTS's updated directory on certified DBEs.~~

# FEDERAL FINANCIAL ASSISTANCE AGREEMENT ASSURANCE (26.13)

MTS- will sign the following assurance applicable to all DOT-assisted contracts and their administration as part of the program supplement agreement for each project:

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

## DBE FINANCIAL INSTITUTIONS (26.27)

It is MTS's policy to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. The following such institutions have been identified in the local community:

~~San Diego Community Bank~~  
~~318 Fourth Avenue~~  
~~Chula Vista, CA 91919~~  
~~Contact: David Keely, Senior Vice President~~  
~~Tele: 619.425.5000~~  
~~Fax: 619.476.3283~~  
Neighborhood National Bank  
3511 National Ave.  
San Diego, CA 92113  
(619) 239-3360  
Contact: Marketing and Community Relations: 619.789.4430  
e-mail: [wwilliams@mynnb.com](mailto:wwilliams@mynnb.com)  
[www.mynnb.com](http://www.mynnb.com)

~~First Metro United Bank~~  
~~7320 Clairemont Mesa Boulevard~~  
~~San Diego, CA 92111~~  
~~Contact: Cora A. McKnight, Senior Vice President~~  
~~Tele: 858.496.3800~~  
~~Fax: 858.496.3808~~

Borrego Springs Bank, N.A.  
7777 Alvarado Road, Suite 114

La Mesa, CA 91941  
Contact: Anne-Marie Tweed, Branch Manager  
Tele: 619.668.5159, Ext. 400  
Fax: 619.668.8150  
www.borregospringsbank.com

#### DIRECTORY (26.31)

~~MTS maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. MTS utilizes the Caltrans Directory or, until such date availability is made, the Unified Certification Program (UCP) Directory to confirm the active status of all DBEs and updates its mailing list from the Web site quarterly maintains a bidder's list for each NAICS code designation. MTS makes the Directory bidder's list available as follows:~~

MTS  
1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
619.231.1466

#### OVERCONCENTRATION (26.33)

MTS has not identified overconcentration.

#### BUSINESS DEVELOPMENT PROGRAMS (26.35)

MTS participates in business development programs of the Contracting Opportunities Center located at 3443 Camino Del Rio South, Suite 116, San Diego, CA 92108. MTS also participates in a variety of outreach programs within the community including Caltrans, the San Diego Unified Port District, the City of San Diego, and the San Diego Association of Governments.

#### REQUIRED CONTRACT CLAUSES (26.13, 26.29)

##### 1. Contract Assurance

MTS will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

*The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.*

##### 2. Prompt Payment



MTS ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

*The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted, including incremental acceptances of portions of the contract work by the agency. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.*

**OR this**

*A prime contractor or subcontractor shall pay any subcontractor no later than ten days from the receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The ten days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. 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, noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.*

**OR this**

*No retainage will be held by the agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with MTS's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specific 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 prime contractor, or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.*

## MONITORING AND ENFORCEMENT MECHANISMS (26.37)

MTS will assign a project manager or resident engineer assigns a Labor Compliance Consultant to monitor and track actual DBE participation through contractor and subcontractor reports of payments in accordance with the following.

### 1. After Contract Award

After contract award, MTS will review the award documents for the portion of items each DBE and first-tier subcontractor will be performing and the dollar value of the work. With these documents, the project manager/resident engineer consultant will be able to determine the work to be performed by the DBEs or subcontractors listed.

### 2. Preconstruction Conference

A preconstruction conference will be scheduled between the project manager/resident engineer and the contractor (or their representative) to discuss the work that each DBE subcontractor will perform.

Before work can begin on a subcontract, the local agency MTS will require the contractor to submit a completed "Subcontracting Request," Exhibit 16-B of the Local Assistance Procedures Manual (LAPM) (Attachment B) or equivalent. When the project manager/resident engineer receives the completed form, it will be checked for agreement of the first tier subcontractors and DBEs. The project manager/resident engineer will not approve the request when it identifies someone other than the DBE or first-tier subcontractor listed in the previously completed Local Agency Bidder DBE Information to the LAPM Exhibit 15-G to the LAPM (Attachment A). The subcontracting request will not be approved until all discrepancies are resolved. If an issue cannot be resolved at that time or there is some other concern, the project manager/resident engineer will require the contractor to eliminate the subcontractor in question before signing the subcontracting request. A change in the DBE or first-tier subcontractor may be addressed during a substitution process at a later date.

Suppliers, vendors, or manufacturers listed on the "Local Agency Bidder DBE Information" will be compared to those listed in the completed Exhibit 16-I of the LAPM (Attachment D) or equivalent. Differences must be resolved by either making corrections or requesting a substitution.

Substitutions will be subject to the Subletting and Subcontracting Fair Practices Act (FPA). MTS will require contractors to adhere to the provisions within Subletting and Subcontracting Fair Practices Act (State Law) Sections 4100-4144. FPA requires the contractor to list all subcontractors in excess of half of 1 percent (0.05%) of the contractor's total bid or \$10,000, whichever is greater. The statute is designed to prevent bid shopping by contractors. The FPA explains that a contractor may not substitute a subcontractor listed in the original bid except with the approval of the awarding authority.

The project manager/resident engineer will give the contractor a blank Exhibit 17-F, "Final Report Utilization of Disadvantaged Business Enterprises, First-Tier Subcontractors" (Attachment C) and will explain to them that the document will be required at the end of the project, for which payment can be withheld, in conformance with the contract.

3. Construction Contract Monitoring

The project manager/resident engineer will ensure that the project managers/resident engineer's staff knows what items of work each DBE is responsible for performing. Staff will notify the project manager immediately of apparent violations.

When a firm other than the listed DBE subcontractor is found performing the work, the project manager/resident engineer will notify the contractor of the apparent discrepancy and potential loss of payment. Based on the contractor's response, the project manager/resident engineer will take appropriate action: the DBE liaison officer will perform a preliminary investigation to identify any potential issues related to the DBE subcontractor performing a commercially useful function. Any substantive issues will be forwarded to the California Department of Transportation (Caltrans) Disadvantaged Business Enterprise Program. If the contractor fails to adequately explain why there is a discrepancy, payment for the work will be withheld, and a letter will be sent to the contractor referencing the applicable specification violation and the required withholding of payment.

If the contract requires the submittal of a monthly truck document, the contractor will be required to submit documentation to the project manager/resident engineer showing the owner's name; California Highway Patrol CA number; and the DBE certification number of the owner of the truck for each truck used during the month for which DBE participation will be claimed. The trucks will be listed by California Highway Patrol CA number in the daily diary or on a separate piece of paper for documentation. The numbers are checked by inspectors regularly to confirm compliance.

Providing evidence of DBE payment is the responsibility of the contractor.

4. Substitution

When a DBE substitution is requested, the project manager/resident engineer will request a letter from the contractor explaining why substitution is needed. The project manager/resident engineer must review the letter to be sure names and addresses are shown, dollar values are included, and reason for the request is explained. If the project manager/resident engineer agrees to be substituted, the project manager/resident engineer will notify, in writing, the DBE subcontractor in accordance with the Subletting and Subcontracting Fair Practices Act. If the contractor is not meeting the contract goal with this substitution, the contractor must provide the required good faith effort to the program manager/resident engineer for MTS's consideration. The project manager/resident engineer may contact the District Local Assistance Engineer (DLAE) for assistance and direction.

5. Record Keeping and Final Report Utilization of Disadvantaged Business Enterprises

The contractor shall maintain records showing the name and address of each first-tier subcontractor. The records shall also show the following:

- a. The name and business address, regardless of tier, of every DBE subcontractor, DBE

vendor of materials, and DBE trucking company.

- b. The date of payment and the total dollar figure paid to each of the firms.
- c. The DBE prime contractor shall also show the date of work performed by their own forces along with the corresponding dollar value of the work claimed toward DBE goals.

When a contract has been completed, the contractor will provide a summary of the records stated above. The DBE utilization information will be documented on the form "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors," Exhibit 17-F to the LAPM (Attachment C) and will be submitted to the DLAE attached to the Report of Expenditures. The project manager/resident engineer will compare the completed Exhibit 17-F to the contractor's completed Local Agency Bidder-DBE-Information," Exhibit 15-G to the LAPM (Attachment A) and, if applicable, to the completed Subcontracting Request Exhibit 16-B to the LAPM (Attachment B). The DBEs shown on the completed Exhibit 17-F should be the same as those originally listed unless an authorized substitution was allowed or the contractor used more DBEs, and they were added. The dollar amount should reflect any changes made in planned work done by the DBE. The contractor will be required to explain in writing why the names of the subcontractors, the work items, or dollar figures are different from what was originally shown on the completed Exhibit 15-G when:

- a. There have been no changes made by the project manager/resident engineer.
- b. The contractor has not provided a sufficient explanation in the comments section of the completed Exhibit 17-F.

The explanation will be attached to the completed Exhibit 17-F for submittal. The project manager/resident engineer will file this in the project records.

MTS's liaison officer (or his or her designee) will keep track of the DBE certification status on the Internet at [www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep) and keep the project manager/resident engineer informed of changes that affect the contract. The project manager/resident engineer will require the contractor to act in accordance with existing contractual commitments regardless of decertification.

The DLAE will use the Plans, Specifications, and Estimate (PS&E) checklist to monitor MTS's commitment to require bidders' list information to be submitted to MTS from the awarded prime and subcontractors as a means to develop a bidders' list. This monitoring will only take place if the bidders' list information is required to be submitted as stipulated in the special provisions.

MTS will bring to the attention of the DOT through the DLAE any false, fraudulent, or dishonest conduct in connection with the program so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Part 26.109. MTS also will consider similar action under its own legal authorities, including responsibility determinations on future contracts.

## OVERALL GOALS (26.45)

- 1. Amount of Goal

We have established an Annual Anticipated DBE Participation Level (AADPL) of 3.6% for the Federal Fiscal Year 2007-2008, beginning on June 1, 2007 and ending in May 31, 2008. MTS's overall goal for the FTA fiscal year 2005 is the following: 13.8% of the federal financial assistance in DOT-assisted contracts. Of this 13.8% federal financial assistance, 41.63.2% is for construction/special trades, 2.2.1% for professional, scientific, technical services, and .30% for wholesale durable goods. This overall goal is broken down into 5.5% race-conscious and 8.3% race-neutral components.

MTS's overall goal for the federal highway administration (FHWA) fiscal year FY 2008<sub>5</sub> is the following: 8.2% of the federal financial assistance in DOT-assisted professional, scientific, technical, and construction service contracts. Of this 8.2% federal financial assistance, 17% is for professional, scientific, and technical service contracts, and 6.5% is for construction contracts. The overall goal is broken down into 0% race-conscious and 8.2% race-neutral components was zero as MTS did not receive any FHWA funding.

## 2. Methodology

The UCP DBE directory was used to determine the MTS FY07-08 AADPL. The 2005 Census Bureau's County Business Patterns database for the San Diego area was also utilized. We identified a total of \$1,865,120.00 for FTA assisted projects. The overall 3.6% AADPL was based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on the MTS Federal Transit Administration (FTA) assisted contracts. To achieve the AADPL, a two-step process was used.

The overall annual goal will be determined by developing base figures for the relative availability of DBEs in specific areas of expertise (construction/special trades; professional, scientific and technical services; and wholesale durable goods) and weighing those availability figures by the contract dollars to be expended in each SIC code. If necessary, an adjustment will be made to the base figure to narrowly tailor the base figures to the MTS market.

The overall goal methodology is a two-step process as described in 49 CFR Part 26, Section 26.45. The first step is determining a base figure for the relative availability of DBEs that are ready, willing, and able to participate in the federal-aid contracting program. MTS will determine this base figure as follows:

- a. Determine the number of ready, willing and able DBEs in the MTS market from MTS's DBE directory;
- b. Using the Census Bureau's County Business Pattern (CBP) database, determine the number of all ready, willing and able businesses available in the MTS market that perform work in the same SIC codes; and
- c. Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in the MTS market.

MTS will examine the evidence available in its jurisdiction to determine what adjustments, if any, will be needed to narrowly tailor the base figures to MTS's marketplace, such as:

- a. actual DBE participation of MTS federally assisted contracts of recent years;
- b. MTS's DBE Directory to determine the availability and willingness of DBEs to work with MTS.
- d. recent interviews with minority, women's, and general contractor groups to acquire information concerning the availability of disadvantaged and nondisadvantaged businesses;
- e. latest disparity study conducted by the ~~City of San Diego~~ Caltrans; and
- d. ~~the goal of another U.S. DOT grantee.~~

3. Breakout of Estimated Race-Neutral and Race-Conscious Participation

To achieve the maximum feasible portion of the DBE overall annual goal through race-neutral means, MTS will include, but will not be limited to, the following:

- a. Assure that bidding and contract requirements facilitate participation by DBEs and other small businesses (e.g., unbundling large contracts to make them more accessible to small businesses and encouraging prime contractors to subcontract portions of the work that they might otherwise perform themselves);
- b. Provide assistance in overcoming limitations such as inability to obtain bonding or financing, technical assistance, and other services;
- c. Carry out information and communications programs and other support services to facilitate consideration of DBEs and other small businesses;
- d. ~~Ensure distribution of MTS's DBE directory and a~~ Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic technology;
- e. Advise prospective contractors regarding new contracts and the areas for possible subcontracting and of the availability of ready, willing, and able subcontractors, including DBE firms, to perform such work; and
- f. Monitor progress during the course of the year and continue with its contract-specific goals.

4. Process

MTS submits its overall goal to DOT on August 1 of each year and to Caltrans' DLAE on June 1 for FHWA-assisted contracts.

Before establishing the overall goal each year, MTS will consult with its DBE consultant and community organizations to obtain information concerning the availability of disadvantaged and nondisadvantaged businesses and the effects of discrimination on opportunities for DBEs. A listing of contacted community organizations and publishers can be obtained from the DBE liaison officer.

Following this consultation, MTS will publish a notice of the proposed overall goal informing the public that the proposed goal and its rationale are available for inspection during normal business hours at MTS's principal office for 30 days following the date of the notice, and informing the public that MTS and DOT will accept comments on the goals for 45 days from the date of the notice. The notice will be published in general circulation media, available minority-focused media, and trade association publications. Normally, MTS will issue this notice by June 1 of each year. The notice will include addresses to which comments may be sent and addresses (including offices and Web sites) where the proposal may be reviewed.

At the conclusion of the public comment period, the overall annual goals will be submitted to the Board of Directors for adoption. MTS's overall goal submission to DOT will include a summary of information and comments received during this public participation process and MTS's responses.

MTS will begin using its overall goal and specific project goals on October 1 of each year unless MTS has received other instructions from DOT.

#### CONTRACT GOALS (26.51)

MTS is not currently setting individual contract goals based upon direction from the DOT through Caltrans. If MTS is directed to beginning setting contract specific goals again, MTS will use contract goals to meet any portion of the overall goal that MTS does not project being able to meet using race-neutral means. Contract goals ~~are~~ would be established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of MTS's overall goal that is not projected to be met through the use of race-neutral means.

MTS ~~will~~ would establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. MTS need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). The contract work items will be compared with eligible DBE contractors willing to work on the project. A determination will also be made to decide which items are likely to be performed by the prime contractor and which ones are likely to be performed by the subcontractor(s). The goal ~~will~~ would then be incorporated into the contract documents. MTS will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

##### 1. Transit Vehicle Manufacturers (26.51)

MTS will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this 49 CFR Part 26, Section 49. Alternatively, MTS may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

#### GOOD FAITH EFFORTS (26.53)

##### 1. Information to be Submitted

MTS treats bidder/offers' compliance with good faith efforts requirements as a matter of responsibility and responsiveness. ~~Each~~ Any solicitation for which a contract goal has been established will require the bidders/offers to submit the following information:

- a. The names and addresses of DBE firms that will participate in the contract;
- b. A description of the work that each DBE firm will perform;
- c. The dollar amount of the participation of each DBE firm participating;
- d. ~~The age of each DBE firm;~~
- ~~e. The annual gross receipts of each DBE firm;~~
- ~~f. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;~~
- g. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- h. If the contract goal is not met, evidence of good faith efforts.

The bidder agrees to make a good faith effort so that DBEs shall have the opportunity to participate in the performance of a contract. The bidder is expected and obligated to use the good faith effort to not only meet but to exceed the above-minimum goal to the fullest extent possible as determined by MTS. Part of a bidder's responsibility to be considered responsive is to list all DBEs (on the respective DBE form included in the bid package), that it would utilize if it were the successful bidder on a contract. A bidder unable to meet a DBE goal for a project must, in order to be considered responsive, within three working days following written notification, submit proof of good faith efforts, taken prior to the bid opening, to meet or exceed the DBE goal set forth for a project. Bidders should document their good faith efforts taken whether they apparently meet or exceed the DBE goal. Should MTS determine that the bidder did not make a good faith effort, their bid will be considered nonresponsive.

## 2. Demonstration of Good Faith Efforts

The obligation of the bidder/offers is to make good faith efforts. The bidder/offers can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are listed below and also found in Appendix A of Part 26.

Based on the Code of Federal Regulations, MTS defines good faith efforts as "those that, given all relevant circumstances, a competitor actively and aggressively seeking to meet the goals would make. Efforts that are merely pro forma are not good faith efforts to meet the goals, even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of participation sufficient to meet the goals."

In order to be responsive, any bidder who does not meet the goals shall submit evidence of having made a good faith effort to meet them. In determining whether a contractor has made good faith efforts, it is important to look not only at the different kinds of efforts that the contractor has made, but also at the quantity and intensity of these efforts. Information necessary to demonstrate good faith efforts for federal-funded projects include the following:



- a. Attendance at Prebid Meetings. Name and title of person(s) attending the prebid meetings held to inform contractors of the DBE contracting and subcontracting provisions contained in the specifications. If the contractor attended a prebid meeting within the previous quarter, provide name, title, date, and project involved.
- b. Newspaper Advertisements. Names, phone numbers, and dates of advertisements for each general circulation newspaper, trade publication, and minority-focused newspaper in which requests for DBE participation for this project were placed by the bidder (provide copies of advertisements).

3. Written Solicitations

Names, contact persons, addresses, phone numbers and dates of notices of all DBE firms solicited and by what means (e.g., letter, fax, phone call, etc.); include copy of solicitation letter. Only properly certified DBE firms will be taken into consideration for this criteria. Determination of an adequate number of DBEs to be contacted will depend on the number of certified subcontractors in the general local contracting area for each work category identified in No. 5 below:

DBE Firms	Minimum Contact
5 or less	All
6 to 10	5
11 to 50	50 percent
51+	25

4. Solicitation Follow-ups

The names, contact persons, phone numbers, dates, and methods used for following up on initial solicitations to determine with certainty whether the DBEs were interested (provide copies of telephone logs/correspondence).

Contractors are expected to follow up with a minimum of 75 percent of the initial solicitations for work categories identified in No. 5 below.

5. Selected Work Categories

The items of work for which the bidder requested subbids or materials to be supplied by DBEs and any breakdown of items of work into economically feasible units that would increase the likelihood of achieving that goal.

In order to meet the goal, work that is normally performed by the bidder should be taken into consideration.

6. Providing DBEs with Information on Specifications

Names, contacts, phone numbers, and dates with a brief description of assistance the bidder has extended to DBEs in providing information about plans, specifications, and requirements of the contract.

This brief description of assisting the bidder with information about plans, specifications, and requirements of the contract can be included in the Letter of Solicitation.

7. Negotiating in Good Faith

Submit names, addresses, and telephone numbers of DBEs that submitted bids but were not selected, a summary of the bidder's discussions and/or negotiations with them, the name of the subcontractor or supplier that was selected for that portion of the work, and the reasons for the bidder's choice. If the reason was price, give the price bid by the rejected DBE and the price bid by the selected subcontractor or supplier.

Negotiations are conversations held to seriously discuss the terms of actual participation of a firm as a subcontractor.

8. Bonding, Lines of Credit, and Insurance Assistance

Names, contacts, phone numbers, and dates with a brief description of assistance the bidder has extended to DBEs in obtaining bonding, lines of credit, or insurance required. This brief description of assisting the bidder with the above-mentioned items should be included in the Letter of Solicitation.

9. Utilization of Minority Community Organizations Services

Names of organizations/groups, dates, contacts, and telephone numbers bidder contacted to request assistance in the recruitment and placement of DBEs, copies of correspondence/telephone logs, and follow-up methods used.

10. Board Determination

The Board of Directors, upon the recommendation of the Chief Executive Officer, is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as sufficient.

MTS will ensure that all information is complete and accurate and adequately document the bidder/offeror's good faith efforts before it commits to the performance of the contract by the bidder/offeror.

As part of this determination, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to appear in person with the MTS Board to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The result of the determination process is not administratively appealable to DOT.

11. Administration Reconsideration

In the event that the Board determines that the apparent low bidder has not met the contract-specific goal and has not demonstrated good faith efforts, MTS will notify the bidder in writing. The notification shall include the reasons for the determination and a statement that the bidder has the right to submit further written documentation or appear before the Review Committee for reconsideration prior to the time that a recommendation for award of contract is presented to the

MTS Board of Directors. The Review Committee shall provide the bidder with a written decision on reconsideration explaining the basis for its determination. The result of the reconsideration process is not administratively appealable to DOT.

12. Good Faith Efforts When a DBE is Replaced on a Contract

MTS will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE to the extent needed to meet the contract goal. MTS will require the prime contractor to notify the DBE liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, MTS will require the prime contractor to obtain MTS's prior approval of the substitute DBE and to provide copies of new or amended subcontracts or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the MTS contracting officer will withhold all or part of payment until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

A contractor cannot terminate for convenience a DBE subcontractor that had been included in its bid submittal form or an approved substitute DBE firm and then perform the work of the terminated subcontract with its own forces or those of an affiliate without prior written consent from MTS.

COUNTING DBE PARTICIPATION (26.55)

MTS will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

CERTIFICATION (26.61 - 26.91)

MTS will use the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. MTS will make its certification decision based on the facts as a whole.

1. Process

The Uniform Certification Application form and documentation requirements for the Unified Certification Program are found in Attachment F to this program.

For information about the certification process or to apply for certification, firms should contact:

Contracts Specialist  
MTS  
1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
619.557.4540

2. Unified Certification Program

MTS utilizes the State of California UCP as the certifying agent for MTS's DBE Program. MTS has joined other local public agencies as a signatory to a Memorandum of Agreement to improve coordination in the DBE certification process.

3. Certification Appeals

Any firm or complainant may appeal the State of California UCP's decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation  
Office of Civil Rights Certification Appeals Branch  
400 7th Street, SW, Room 2104  
Washington, DC 20590

MTS will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that the State of California UCP's denial of its application was erroneous).

4. Recertifications

MTS will request the UCP certifying agency to review the eligibility of DBEs that it certified under former Part 23 to ensure they meet the standards of Subpart D of Part 26. MTS will request the UCP certifying agency to complete this review no later than three years from the most recent certification date of each firm.

5. UCP Annual Declaration and Notices of Change

The UCP requires all DBEs to submit a written affidavit to their certifying agency of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership, or control criteria of 49 CFR Part 26 or of any material changes in the information provided with DBE's application for certification within 30 days of occurrence of the change(s).

The UCP requires all owners of DBEs to submit, on the anniversary date of their certification, an annual declaration and supplemental questionnaire affirming that there have been no changes to the DBE firm's circumstances affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. DBEs will also be required to declare whether they continue to meet the Small Business Administration criteria for being a small business concern and the three-year average gross receipts cap. DBEs will be notified of this obligation in writing by their certifying agency and, upon receipt of such notification, must complete and return the required declaration notice with required information within 30 days from the date of the notification.

6. Personal Net Worth

All disadvantaged owners of applicants applying for certification will be required to submit a statement of personal net worth.

## INFORMATION COLLECTION AND REPORTING

### 1. Bidders' List

MTS will create a bidders' list consisting of information on all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders' list approach in calculating overall goals.

MTS will collect the information for its bidders' list by requiring all prime contractors bidding on U.S. DOT-assisted contracts to submit, at the time of bid opening, the following information pertaining to the prime contractor, and subcontractors who provided a bid or were contacted by the prime contractor: firm's name, address, age of firm, annual gross receipts of firm, type of work, and firm's status as a DBE and non-DBE.

### 2. Monitoring Payments to DBEs

MTS will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of MTS or DOT. This reporting requirement also extends to any certified DBE subcontractor.

For major contracts, MTS will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

MTS will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

### 3. Reporting to DOT

MTS will report DBE participation to DOT and Caltrans as follows:

MTS will report DBE participation on a semiannual basis, or as required by DOT, ~~using DOT Form 4630 or as revised by DOT.~~ These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

MTS's final utilization of DBE participation for construction project will be reported to the DLAE using Exhibit 17-F of the Caltrans' LAPM.

### 4. Confidentiality

MTS will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information consistent with federal, state, and local law.

Notwithstanding any contrary provisions of state or local law, MTS will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

\_\_\_\_\_  
Paul C. Jablonski

\_\_\_\_\_  
Date

Chief Executive Officer

This Disadvantaged Business Enterprise Program is accepted by:

\_\_\_\_\_  
DLAE

\_\_\_\_\_  
Date

| JAN15-09.33.AttC.DBE.TLOREN.doc

Attachments:   A. DBE Bidder Information  
                  B. Subcontracting Request  
                  C. Final Utilization of DBE Participation  
                  D. Notice of Materials to Be Used  
                  E. MTS Organization Chart  
                  F. Uniform Certification Program Application  
                  G. DOT Federal Register 49 CFR Part 26  
                  H. Letter from Caltrans regarding contract goals



**INSTRUCTIONS - LOCAL AGENCY BIDDER-DBE (CONSTRUCTION CONTRACTS)**  
**INFORMATION FORM (Revised 11/06)**

The form requires specific information regarding the construction contract: Agency, Location, Project Descriptions, Contract Number (assigned by local agency), Federal Aid Project Number (assigned by Caltrans-Local Assistance), Total Dollar Contract Amount, Bid Date, and Bidder's Name .

The form has a column for the Contract Item Number (or Item No's) and Item of Work and Description or Services to be Subcontracted or Materials to be provided by DBEs. The DBE should provide a certification number to the Contractor. Notify the Contractor in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of DBE certified contractors to perform the work (must be certified on the date bids are opened and include DBE address and phone number).

There is a column for the total DBE dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your bid pursuant to the Special Provisions. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.)

Exhibit 15-G must be signed and dated by the person bidding. Also list a phone number in the space provided and print the name of the person to contact.



The successful bidder must execute and return the LOCAL AGENCY BIDDER – DBE INFORMATION form, even if no DBE participation will be reported.

AGENCY: \_\_\_\_\_ LOCATION: \_\_\_\_\_  
PROJECT DESCRIPTION: \_\_\_\_\_  
CONTRACT NUMBER: \_\_\_\_\_  
FEDERAL-AID PROJECT NUMBER: \_\_\_\_\_  
TOTAL CONTRACT AMOUNT: \$ \_\_\_\_\_  
FEDERAL SHARE (For local agency to complete): \$ \_\_\_\_\_  
BID DATE: \_\_\_\_\_  
BIDDER'S NAME: \_\_\_\_\_

[illegible]

Local Agency Bidder - DBE Information (Rev 5/01/06)

**Distribution:** (1) Copy - Fax immediately to the Caltrans District Local Assistance Engineer (DLAE) upon award.  
(2) Copy - Include in award package to Caltrans District Local Assistance  
(3) Original – Local agency files



Back

## INSTRUCTIONS FOR COMPLETING SUBCONTRACTING REQUEST FORM

*All First-tier subcontractors must be included on a subcontracting request.*

Submit in accordance with Section 8-1.01 of the Standard Specifications. Type or print requested information. Information copy is to be retained by the contractor. Submit other copies to project's Resident Engineer. After approval, the original will be returned to the contractor.

When an entire item is subcontracted, the value to be shown is the contractor's bid price.

When a portion of an item is subcontracted, describe the portion, and show the % of bid item and value.

## THIS FORM IS NOT TO BE USED FOR SUBSTITUTIONS.

Prior to submittal of a DC-CEM-1201 involving a replacement Subcontractor, submit a separate written request for approval to substitute a listed subcontractor. Section 4107 of the Government Code covers the conditions for substitution.

NOTE: For contractors who will be performing work on railroad property, it is necessary for the contractor to complete and submit the Certificate of Insurance (State Form DH-OS-A10A) naming the subcontractor as insured. *No work shall be allowed which involves encroachment on railroad property until the specified insurance has been approved.*

FRONT

**See Instructions  
On Back**

							REQUEST NUMBER	
CONTRACTOR NAME					COUNTY		ROUTE	
BUSINESS ADDRESS					CONTRACT NO.			
CITY/STATE			ZIP CODE		FEDERAL AID PROJECT NO. (From Special Provisions)			
SUBCONTRACTOR (Name, Business Address, Phone)		BID ITEM NUMBER(S)	% OF BID ITEM SUBBED	CHECK IF: (See Categories Below) (1) (2) (3)			DESCRIBE WORK WHEN LESS THAN 100% OF WORK IS SUBBED	\$ AMOUNT BASED ON BID \$ AMOUNT
<b>Categories:</b> 1) Specialty                      2) Listed Under Fair Practices Act                      3) Certified DBE								

**I Certify That:**

- The Standard Provisions for labor set forth in the contract apply to the subcontracted work.
- If applicable, (Federal Aid Projects only) Section 14 (Federal Requirements) of the Special Provisions have been inserted in the subcontracts and shall be incorporated in any lower-tier subcontract. Written contracts have been executed for the above noted subcontracted work.

CONTRACTOR'S SIGNATURE	DATE
------------------------	------

**NOTE:** This section is to be completed by the Resident Engineer

1.	Total of bid items.....		\$	_____
2.	Specialty items (previously requested) .....	\$	_____	
3.	Specialty items (this request).....	\$	_____	
4.	Total (lines 2+3) .....	\$	_____	
5.	Contractor must perform with own forces (lines 1 minus 4) x _____	%	\$	_____
6.	Bid items previously subcontracted .....	\$	_____	
7.	Bid items subcontracted ( this request) .....	\$	_____	
8.	Total (lines 6+7) .....	\$	_____	
9.	Balance of work Contractor to perform (lines 1 minus 8).....	\$	\$	_____

RESIDENT ENGINEER'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

CEM-1201 (HC-46 REV. 4/94)

**COPY DISTRIBUTION:**

1. Original - Contractor    2. Copy - local agency Resident Engineer  
3. Copy - local agency Labor Compliance Officer    4. Contractor's Information Copy

**EXHIBIT 17-F**  
**Final Report of Utilization of Disadvantaged Businesses**

**Chapter 17**  
**Project Completion**

Form CP-CEM 2402(F) (Rev. 08/04)  
 FINAL REPORT – UTILIZATION OF DISADVANTAGED BUSINESS  
 ENTERPRISES (DBE), FIRST-TIER SUBCONTRACTORS (FEDERALLY FUNDED PROJECTS)

The form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles, a box to check that the project is indeed a Federal Aid Project, the Administering Agency, the Contract Completion Date and the Estimated Contract Amount. It requires the Prime Contractor's name and Business Address. The focus of the form is to describe who did what by contract item numbers and descriptions, asking for specific dollar values of item work completed broken down by subcontractors who performed the work, both DBE and non-DBE work forces. DBE prime contractors are required to show the date of work performed by their own forces along with the corresponding dollar value of work.

The form has a column to enter the Contract Item No (or Item No's) and Description of work performed or Materials provided, as well as a column for the Subcontractor's Name and Business Address. For firms who are DBE, there is a column to enter their DBE Certification No. The DBE should provide their Certification Number to the Contractor and notify the Contractor in writing with the date of the decertification if their status should change during the course of the project.

The form has five columns for the dollar value to be entered for the item work performed by the subcontractor.

The Non-DBE Column is used to enter the dollar value of work performed for firms who are not certified DBE.

The decision of which column to be used for entering the DBE dollar value is based on what Program(s) the firm is Certified. This Program status is determined by the Civil Rights Certification Unit based on ethnicity, gender, ownership and control issues at time of certification. The certified firm is issued a certificate by the Civil Rights Unit that states their program status as well as the firms Expiration Date. DBE Program status may be obtained by accessing the Civil Rights website ([www.dot.ca.gov/hq/bep/](http://www.dot.ca.gov/hq/bep/)) and downloading the Calcert Extract or by calling (916) 227 2207. Based on this DBE Program status, the following table depicts which column to be used:

DBE Program Status	Column to be used
If program status shows DBE only with no other programs listed	DBE
If program status shows DBE, SDBE	DBE Minority
If program status shows DBE, SDBE, SWBE	DBE (Minority Women)
If program status shows DBE, SWBE	DBE (Non-Minority Women)

If a contractor performing work as a DBE on the project becomes decertified, and still performs work after their decertification date, enter the total dollar value performed by this contractor on Form 2402(F) under the appropriate DBE Program Status (include all work performed after decertification) and complete and submit Form CEM-2403(F) as appropriate. Any comments to be made on the Form 2402(F) are to be explained on the reverse side of the Form. Indicate in the Comment section that Form CEM 2403(F) is being submitted.

If a contractor performing work as a Non-DBE on the project becomes certified as a DBE enter the dollar value of all work performed as a DBE on CEM-2402(F) and CEM-2403(F). Any comments to be made on the Form 2402(F) are to be explained on the reverse side of the Form. Indicate in the Comment section that Form CEM 2403(F) is being submitted.

There is a space provided on the CEM-2402(F) where the TOTAL is entered for these five columns.

There is a column on the CEM-2402(F) to enter the Date Work Complete as well as a column to enter the Date of Final Payment, which is an indicator of when the Prime Contractor made the "final payment" to the subcontractor for the portion of work listed as being completed.

The Original DBE Commitment area on the CEM-2402(F) is based on information at Award time of the project and is the total dollar value of those subcontractors listed at Award based on the above table.

The CEM-2402(F) has an area at the bottom where the Contractor and the Resident Engineer sign and date that the information provided is complete and correct.

EXHIBIT 17-F FINAL REPORT UTILIZATION OF DISADVANTAGED BUSINESSES



STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
LOCAL ASSISTANCE - FEDERAL - FINAL REPORT - UTILIZATION OF  
DISADVANTAGED BUSINESS ENTERPRISES (DBE), FIRST-TIER  
SUBCONTRACTORS

Revised 8/04

CONTRACT NUMBER		COUNTY	LOCATION	PROJECT DESCRIPTION	FEDERAL AID PROJECT NO.	ADMINISTERING AGENCY		CONTRACT COMPLETION DATE	
PRIME CONTRACTOR/CONSULTANT				BUSINESS ADDRESS		FEDERAL SHARE (For local agency to complete)		FINAL CONTRACT AMOUNT	
						FEDERAL SHARE \$			
CONTRACT ITEM No.	DESCRIPTION OF WORK PERFORMED AND MATERIAL PROVIDED	SUBCONTRACTOR NAME AND BUSINESS ADDRESS	DBE CERT. NUMBER & EXP. DATE	CONTRACT PAYMENTS			DBE (MINORITY)	DBE (NON- MINORITY WOMEN)	DBE (MINORITY WOMEN)
				NON-DBE	DBE	DBE			
				TOTAL PAYMENTS \$					
				Original DBE %					
<p>ORIGINAL DBE COMMITMENT</p> <p>List all First Tier Subcontractors and all Disadvantaged Business Enterprises (DBEs) regardless of tier, whether or not the firms were originally listed for goal credit. If actual DBE utilization (or item of work) was different than that approved at time of award, provide comments on the back of the form. List actual amount paid to each of the DBE even if different than originally listed for goal credit.</p>									
CONTRACTOR/CONSULTANT REPRESENTATIVE'S SIGNATURE				BUSINESS PHONE NUMBER		DATE			
RESIDENT PROJECT ENGINEERS SIGNATURE				BUSINESS PHONE NUMBER		DATE			
AGENCY									

**EXHIBIT 16-I**  
**Notice of Materials To Be Used (Form CEM-3101)****Local Assistance Procedures Manual**

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**NOTICE OF MATERIALS TO BE USED**  
DC-CEM-3101 (OLD HC-30 REV. 10/92) 7541-3511-1

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**INSTRUCTIONS TO CONTRACTOR**

Section 6 of the Standard Specifications states that, "Promptly after the approval of the Contract, the Contractor shall notify the Engineer of the proposed sources of supply of all materials to be furnished by him, using a form which will be supplied by the Engineer upon request."

In order to avoid delay in approval of materials, the Department of Transportation must receive notice as soon as possible.

Please comply with the following as closely as possible:

The Contract number and job limits should be the same as appears on the Special Provisions.

The column headed "Contract Item No." should show all the item numbers for which the material is to be used.

The column headed "Material Type" should be a description of the material and not necessarily the name of the contract item.

The column headed "Name and Address of Inspection Site" should be that of the actual source of supply and not subcontractor or jobber.

If the sources of all materials are not known at the beginning of a Contract, report those known. Supplemental "Notices of Materials to Be Used" should be submitted for the others as soon as possible thereafter. Do not delay submitting the original notice until all information is known.

All changes in kinds and/or sources of materials to be used should be reported on supplemental "Notices of Materials to Be Used" immediately.

Retain your copy and mail all other copies to the Resident Engineer.

Note: When placing orders for materials that required inspection prior to shipment, be sure to indicate on your order that State inspection is required.

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
NOTICE OF MATERIALS TO BE USED

Date: \_\_\_\_\_ 19\_\_\_\_

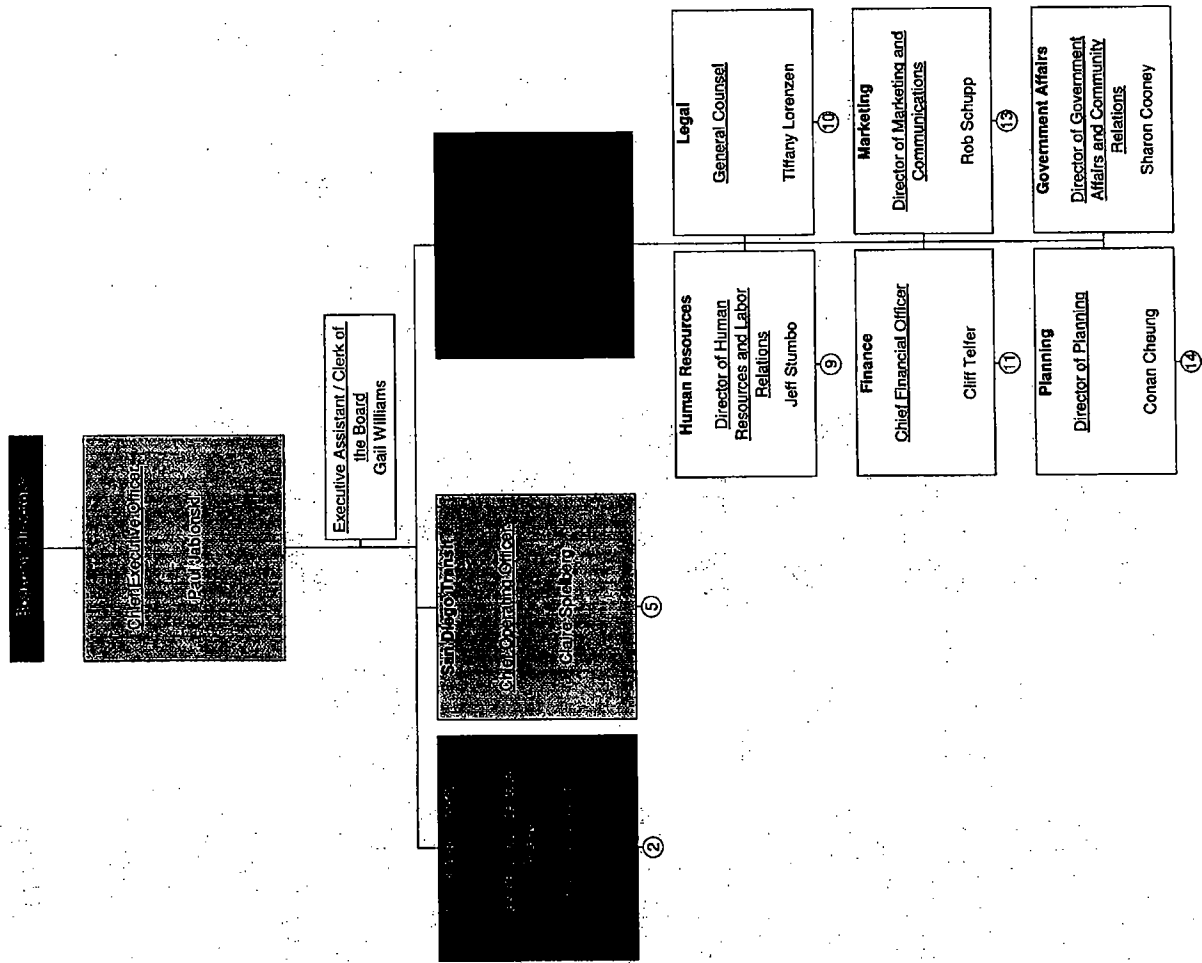
for construction of \_\_\_\_\_

will be obtained from sources herein designated.

It is requested that you arrange for sampling, testing and inspection of materials prior to delivery in accordance with Section 6 of the Standard Specifications where the same is practicable and in accord with your policy. It is understood that source inspection does not relieve me of the full responsibility for incorporating in the work materials that comply in all respects with the contract plans and specifications, nor does it preclude the subsequent rejection of materials found to be unsuitable.

Phone No. ( ) - \_\_\_\_\_

# Metropolitan Transit System



# CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)



Dear Business Owner:

Thank you for your interest in participating in the California Unified Certification Program (CUCP) for Disadvantaged Business Enterprises (DBEs). As mandated by the United States Department of Transportation (U.S. DOT) in the DBE Program, Final Rule 49 Code of Federal Regulations (CFR), Part 26, all U.S. DOT recipients of federal financial assistance must participate in a statewide UCP by March 2002. The UCP is a "One-Stop Shopping" certification procedure that eliminates the need for DBE firms to obtain certifications from multiple agencies within the State.

The CUCP is charged with the responsibility of certifying firms and compiling and maintaining the Database of certified DBEs for U.S. DOT grantees in California, pursuant to 49 CFR Part 26. The Database is intended to expand the use of DBE firms by maintaining complete and current information on those businesses and the products and services they can provide to all grantees of California.

Please complete the attached application and supplemental questionnaire if you wish to be considered for DBE certification and your business meets the following general guidelines:

- a) The firm must be at least 51% owned by one or more socially and economically disadvantaged individuals.
- b) The firm must be an independent business, and one or more of the socially and economically disadvantaged owners must control its management and daily operations.
- c) Only existing for-profit "Small Business Concerns," as defined by the Small Business Act and Small Business Administration (SBA) regulations may be certified. DBE applicants are first subject to the applicable small business size standards of the SBA. Second, the average annual gross receipts for the firm (including its affiliates) over the previous three fiscal years must not exceed U.S. DOT's cap of \$20.41 million.

***For firms applying for Airport Concession DBE certification:*** The Average annual gross receipts for the firm (including its affiliates) over the previous three fiscal years must not exceed \$47.78 million.

- d) The Personal Net Worth (PNW) of each socially and economically disadvantaged owner must not exceed \$750,000, excluding the individual's ownership interest in the applicant firm and the equity in his/her primary residence.



Socially and economically disadvantaged individual means any individual who is a citizen of the United States (or lawfully admitted permanent resident) and who is a member of the following groups: Black American, Hispanic American, Native American, Asian-Pacific American, Subcontinent Asian American, or Women,

or

Any individual found to be socially and economically disadvantaged on a case-by-case basis by a certifying agency pursuant to the standards of the U.S. DOT 49 CFR Part 26.

In order to avoid unnecessary delays, please complete all portions of the application and supplemental questionnaire, placing "N/A" next to items that are not applicable. Include all copies of documents requested on the application, and have the *Affidavit of Certification* notarized. Additional documentation may be requested if it is considered necessary to make a certification determination. Incomplete applications/supplemental questionnaires or applications/supplemental questionnaires without all the required documents will not be evaluated until such documents are submitted. We recommend keeping a copy of all submitted documents for your records.

**REMEMBER: It is no longer necessary to apply at more than one agency. If your firm meets the criteria for certification, it will be entered into the Database of DBEs for all U.S. DOT grantees in California. Only firms currently certified as eligible DBEs may participate in the DBE programs of U.S. DOT grantees of California. If you wish to be considered for Airport Concession DBE certification only, you will need to complete the Airport Concession DBE Certification Application Package, which can be accessed at <http://bca.lacity.org> or [www.dot.ca.gov/hq/bep/business\\_forms.htm](http://www.dot.ca.gov/hq/bep/business_forms.htm).**

The CUCP has established two Regional DBE Certification Clusters throughout the State to effectively facilitate statewide DBE certification activities. Please forward your completed certification packet to one of the agencies serving the county where your firm has its principal place of business. (See enclosed Roster of Certifying Agencies.)

***For Out-of-State Firms:*** The CUCP will not process a new application for DBE certification from a firm having its principal place of business in another state unless the firm has already been certified in that state. If your firm is located outside of California and is certified as a DBE at its home state, please forward your completed certification packet, along with a copy of your DBE certificate, to the California Department of Transportation. (See page 2 of the enclosed Roster of Certifying Agencies.)

CALIFORNIA UNIFIED  
CERTIFICATION PROGRAM

**INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
PROGRAM UNIFORM CERTIFICATION APPLICATION**

**NOTE:** If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

**Section 1: CERTIFICATION INFORMATION**

**A. Prior/Other Certifications**

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

**NOTE:** If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

**B. Prior/Other Applications and Privileges**

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

**Section 2: GENERAL INFORMATION**

**A. Contact Information**

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's website address, if any.
- (8) State the street address of your firm (i.e. the physical location of its offices -- not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

**B. Business Profile**

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.

- (4) State the date on which you and/or each other owner took ownership of the firm.

- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.

- (6) Check the appropriate box that indicates whether your firm is "for profit."

**NOTE:** If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation. If you checked "Other," briefly explain in the space provided.

- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.

- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.

- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

**C. Relationships with Other Businesses**

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.

- (2) Check the appropriate box that indicates whether at present, or at any time in the past:

- (a) Your firm has been a subsidiary of any other firm;
- (b) Your firm consisted of a partnership in which one or more of the partners are other firms;
- (c) Your firm has owned any percentage of any other firm; and
- (d) Your firm has had any subsidiaries of its own.

- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

- (4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

**D. Immediate Family Member Businesses**

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

**Section 3: OWNERSHIP**

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

**A. Background Information**

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.
- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

**B. Ownership Interest**

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.

- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's title or function held in that business.

- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's title or function held in that business. Briefly describe the nature of the business relationship in the space provided.

**C. Disadvantaged Status**

**NOTE:** You only need to complete this section for each owner that is applying for DBE qualification (i.e. for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

**Section 4: CONTROL**

**A. Identify your firm's Officers and Board of Directors:**

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

**B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:**

- (1) Making of financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
  - (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
  - (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
  - (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
  - (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
  - (6) Office management;
  - (7) Marketing and sales;
  - (8) Purchasing of major equipment;
  - (9) Signing company checks (for any purpose); and
  - (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
  - (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
  - (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.
- C. Indicate your firm's inventory in the following categories:**
- (1) Equipment**  
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
  - (2) Vehicles**  
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
  - (3) Office Space**  
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
  - (4) Storage Space**  
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.
- D. Does your firm rely on any other firm for management functions or employee payroll?**  
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.
- E. Financial Information**
- (1) Banking Information**
    - (a) State the name of your firm's bank.
    - (b) Give the main phone number of your firm's bank branch.
    - (c) Give the address of your firm's bank branch.
  - (2) Bonding Information**
    - (a) State your firm's Binder Number.
    - (b) State the name of your firm's bond agent and/or broker.
    - (c) Give your agent's/broker's phone number.
    - (d) Give your agent's/broker's address.
    - (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.
- F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:**  
State the name and address of each source, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.
- G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:**  
Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.
- H. List current licenses/permits held by any owner or employee of your firm.**  
List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.
- I. List the three largest contracts completed by your firm in the past three years, if any.**  
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.
- J. List the three largest active jobs on which your firm is currently working.**  
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

#### **AFFIDAVIT & SIGNATURE**

Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**  
**49 C.F.R. PART 26**

***UNIFORM CERTIFICATION APPLICATION***

**ROADMAP FOR APPLICANTS**

**① Should I apply?**

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$20.41 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

**② Is there an easier way to apply?**

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form.

**NOTE:** You must still meet the requirements for the DBE program, including undergoing an on-site review.

**③ Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**

**④ Where can I find more information?**

- U.S. DOT – <http://osdbuweb.dot.gov/DBEProgram/index.cfm> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – <http://www.sba.gov/services/contractingopportunities/sizestandardtopics/index.html> (provides listing of NAICS codes and Table of size standards)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Updated 2/19/08

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

## Section 1: CERTIFICATION INFORMATION

### A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? <i>(If Yes, check appropriate box(es))</i>	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit?
		<input type="checkbox"/> Yes, on ____ / ____ / ____ State: _____ <input type="checkbox"/> No
	<input type="checkbox"/> 8(a) <input type="checkbox"/> SDB	<input checked="" type="checkbox"/> <b>STOP!</b> If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.

### B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? <input type="checkbox"/> Yes, on ____ / ____ / ____ <input type="checkbox"/> No If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:
--

## Section 2: GENERAL INFORMATION

### A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:		
(3) Phone #:	(4) Other Phone #:	(5) Fax #:		
(6) E-mail:		(7) Website <i>(if have one)</i> :		
(8) Street address of firm <i>(No P.O. Box)</i> :		City:	County/Parish:	State:      Zip:
(9) Mailing address of firm <i>(if different)</i> :		City:	County/Parish:	State:      Zip:

### B. Business Profile

(1) Describe the primary activities of your firm:		(2) Federal Tax ID (if any):	
(3) This firm was established on ____ / ____ / ____		(4) I/We have owned this firm since: ____ / ____ / ____	
(5) Method of acquisition <i>(check all that apply)</i> : <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other <i>(explain)</i>			
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No		<input checked="" type="checkbox"/> <b>STOP!</b> If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.	

(7) Type of firm <i>(check all that apply)</i> : <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other, Describe: _____		
(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain: _____		
(9) Number of employees: Full-time _____	Part-time _____	Total _____
(10) Specify the gross receipts of the firm for the last 3 years:		
Year _____	Total receipts \$ _____	
Year _____	Total receipts \$ _____	
Year _____	Total receipts \$ _____	

**C. Relationships with Other Businesses**

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity? <input type="checkbox"/> Yes <input type="checkbox"/> No  If Yes, identify: Other Firm's name: _____ Explain nature of shared facilities: _____													
(2) At present, or at any time in the past, has your firm:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">(a) been a subsidiary of any other firm?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">(b) consisted of a partnership in which one or more of the partners are other firms?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">(c) owned any percentage of any other firm?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">(d) had any subsidiaries?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>	(a) been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(b) consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(c) owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(d) had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No				
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(c) owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No												
(d) had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No												
(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? <input type="checkbox"/> Yes <input type="checkbox"/> No													
(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each <i>(attach extra sheets, if needed)</i> :													
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; padding: 2px;"><u>Name</u></th> <th style="text-align: left; padding: 2px;"><u>Address</u></th> <th style="text-align: left; padding: 2px;"><u>Type of Business</u></th> </tr> </thead> <tbody> <tr><td style="padding: 2px;">1.</td><td></td><td></td></tr> <tr><td style="padding: 2px;">2.</td><td></td><td></td></tr> <tr><td style="padding: 2px;">3.</td><td></td><td></td></tr> </tbody> </table>	<u>Name</u>	<u>Address</u>	<u>Type of Business</u>	1.			2.			3.			
<u>Name</u>	<u>Address</u>	<u>Type of Business</u>											
1.													
2.													
3.													

**D. Immediate Family Member Businesses**

Do any of your immediate family members own or manage another company? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If Yes, then list <i>(attach extra sheets, if needed)</i> :				
<u>Name</u>	<u>Relationship</u>	<u>Company</u>	<u>Type of Business</u>	<u>Own or Manage?</u>
1.				
2.				

### Section 3: OWNERSHIP

**Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below** *(If more than one owner, attach separate sheets for each additional owner):*

#### A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address <i>(street and number)</i> : _____ City: _____ State: _____ Zip: _____		
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership <i>(Check all that apply)</i> : <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other <i>(specify)</i> _____	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No		
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No		

#### B. Ownership Interest

(1) Number of years as owner:	<table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">(2) Initial investment to</th> <th style="text-align: left;">Type</th> <th style="text-align: left;">Dollar Value</th> </tr> <tr> <td>acquire ownership</td> <td>Cash</td> <td>\$</td> </tr> <tr> <td>interest in firm:</td> <td>Real Estate</td> <td>\$</td> </tr> <tr> <td></td> <td>Equipment</td> <td>\$</td> </tr> <tr> <td></td> <td>Other</td> <td>\$</td> </tr> </table>	(2) Initial investment to	Type	Dollar Value	acquire ownership	Cash	\$	interest in firm:	Real Estate	\$		Equipment	\$		Other	\$
(2) Initial investment to		Type	Dollar Value													
acquire ownership		Cash	\$													
interest in firm:	Real Estate	\$														
	Equipment	\$														
	Other	\$														
(3) Percentage owned:																
(4) Familial relationship to other owners:																
(5) Shares of Stock:																
<u>Number</u>	<u>Percentage</u>	<u>Class</u>														
<u>Date acquired</u>	<u>Method Acquired</u>															
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No																
If Yes, identify: Name of Business: _____ Function/Title: _____																
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm <i>(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)</i> ? <input type="checkbox"/> Yes <input type="checkbox"/> No																
If Yes, identify: Name of Business: _____ Function/Title: _____																
Nature of Business Relationship: _____																

#### C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e. for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? <i>(Use and attach the Personal Financial Statement form at the end of this application; attach additional sheets if more than one owner is applying)</i>
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain <i>(attach additional sheets if needed)</i> :



## Section 4: CONTROL

**A. Identify your firm's Officers & Board of Directors** (If additional space is required, attach a separate sheet):

	Name	Title	Date Appointed	Ethnicity	Gender
<b>(1) Officers of the Company</b>	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
<b>(2) Board of Directors</b>	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify for each: Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Business: \_\_\_\_\_ Function: \_\_\_\_\_

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? ☐ Yes ☐ No

If Yes, identify for each: Firm Name: \_\_\_\_\_ Person: \_\_\_\_\_  
 Nature of Business Relationship: \_\_\_\_\_

**B. Identify your firm's management personnel who control your firm in the following areas** (If more than two persons, attach a separate sheet):

	Name	Title	Ethnicity	Gender
<b>(1) Financial Decisions</b> (responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)	a.			
	b.			
<b>(2) Estimating and bidding</b>	a.			
	b.			
<b>(3) Negotiating and Contract Execution</b>	a.			
	b.			
<b>(4) Hiring/firing of management personnel</b>	a.			
	b.			
<b>(5) Field/Production Operations Supervisor</b>	a.			
	b.			
<b>(6) Office management</b>	a.			
	b.			
<b>(7) Marketing/Sales</b>	a.			
	b.			

(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			
(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify for each: Person: _____ Title: _____ Business: _____ Function: _____				
(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? <input type="checkbox"/> Yes <input type="checkbox"/> No  If Yes, identify for each: Firm Name: _____ Person: _____ Nature of Business Relationship: _____				

C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Does your firm rely on any other firm for management functions or employee payroll? ☐ Yes ☐ No

If Yes, explain:

**E. Financial Information****(1) Banking Information:**

(a) Name of bank: \_\_\_\_\_ (b) Phone No: (    ) \_\_\_\_\_  
(c) Address of bank: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**(2) Bonding Information:** If you have bonding capacity, identify: (a) Binder No: \_\_\_\_\_

(b) Name of agent/broker \_\_\_\_\_ (c) Phone No: (    ) \_\_\_\_\_

(d) Address of agent/broker: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

(e) Bonding limit: Aggregate limit \$ \_\_\_\_\_ Project limit \$ \_\_\_\_\_

**F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:**

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

**G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):**

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

**H. List current licenses/permits held by any owner and/or employee of your firm (e.g. contractor, engineer, architect, etc.)(attach additional sheets if needed):**

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

**I. List the three largest contracts completed by your firm in the past three years, if any:**

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

**J. List the three largest active jobs on which your firm is currently working:**

<b>Name of Prime Contractor and Project Number</b>	<b>Location of Project</b>	<b>Type of Work</b>	<b>Project Start Date</b>	<b>Anticipated Completion Date</b>	<b>Dollar Value of Contract</b>
1.					
2.					
3.					

**DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST**  
 In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

**All Applicants**

- ☐ Work experience resumes (that include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- ☐ Personal Financial Statement (form available with this application)
- ☐ Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- ☐ Your firm's tax returns (gross receipts) and all related schedules for the past three years
- ☐ Documented proof of contributions used to acquire ownership for each owner (*e.g. both sides of cancelled checks*)
- ☐ Your firm's signed loan agreements, security agreements, and bonding forms
- ☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ☐ List of equipment leased and signed lease agreements
- ☐ List of construction equipment and/or vehicles owned and titles/proof of ownership
- ☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- ☐ Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet
- ☐ All relevant licenses, license renewal forms, permits, and haul authority forms
- ☐ DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- ☐ Bank authorization and signatory cards
- ☐ Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ☐ Trust agreements held by any owner claiming disadvantaged status, if any

**Partnership or Joint Venture**

- ☐ Original and any amended Partnership or Joint Venture Agreements

**Corporation or LLC**

- ☐ Official Articles of Incorporation (*signed by the state official*)
- ☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ☐ Shareholders' Agreement
- ☐ Minutes of all stockholders and board of directors meetings
- ☐ Corporate by-laws and any amendments
- ☐ Corporate bank resolution and bank signature cards
- ☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

**Trucking Company**

- ☐ Documented proof of ownership of the company
- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Title(s) and registration certificate(s) for each truck owned or operated by your firm
- ☐ List of U.S. DOT numbers for each truck owned or operated by your firm

**Regular Dealer**

- ☐ Proof of warehouse ownership or lease
- ☐ List of product lines carried
- ☐ List of distribution equipment owned and/or leased

**NOTE:** The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required. (See Supplemental Document Checklist)

# CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)



## *Supplemental Document Checklist*

**Firm Name:** \_\_\_\_\_

**In order to complete your application for DBE certification, you must also attach copies of all of the following documents:**

- ☐ Documentation of Group Membership. Please comply with one of the following: (1) For each owner seeking social disadvantaged status on the basis of Ethnic membership, please provide a document (e.g., birth certificate, U.S. Passport, Green Card, parents' birth certificate, etc.) evidencing Ethnic heritage or similar document evidencing Ethnic community affiliation. (2) For each owner seeking social disadvantaged status on the basis of Gender, please provide a document evidencing gender (e.g., birth certificate, driver's license, etc.). (3) For each owner seeking an individual showing of social disadvantage, please provide documents you deem appropriate for consideration.
- ☐ Documentation of U.S. citizenship or lawful permanent residence, e.g., U.S. birth certificate, Green Card, etc.

## *Supplemental Questionnaire*

1. Is the firm's principal place of business in California? Yes \_\_\_\_\_ No \_\_\_\_\_

If no, please include a copy of the firm's DBE certificate issued in its home state. (The CUCP will not process a new application for DBE certification from a firm having its principal place of business in another state unless the firm has already been certified in that state.)

2. Is the firm authorized to do business in the State of California? Yes \_\_\_\_\_ No \_\_\_\_\_

3. List all office locations in California: \_\_\_\_\_

4. Has the firm ever done business with any U.S. DOT Grantees of California? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please indicate the agency name(s) and latest year(s):

Agency	Latest Year

Agency	Latest Year

5. Is there an upcoming project in which the firm is interested and therefore, would need to be certified prior to a specific date in order to be counted toward DBE participation? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide the following information:

Agency letting contract: \_\_\_\_\_

Contract Number and Name: \_\_\_\_\_ Bid Opening date or Request for Proposal due date: \_\_\_\_\_

6. Indicate areas where you prefer to do your work.

- |  |   |                                       |   |   |                                      |
|--|---|---------------------------------------|---|---|--------------------------------------|
| <input type="checkbox"/> 01 Alameda      | <input type="checkbox"/> 11 Glenn       | <input type="checkbox"/> 21 Marin     | <input type="checkbox"/> 31 Placer          | <input type="checkbox"/> 41 San Mateo     | <input type="checkbox"/> 51 Sutter   |
| <input type="checkbox"/> 02 Alpine       | <input type="checkbox"/> 12 Humboldt    | <input type="checkbox"/> 22 Mariposa  | <input type="checkbox"/> 32 Plumas          | <input type="checkbox"/> 42 Santa Barbara | <input type="checkbox"/> 52 Tehama   |
| <input type="checkbox"/> 03 Amador       | <input type="checkbox"/> 13 Imperial    | <input type="checkbox"/> 23 Mendocino | <input type="checkbox"/> 33 Riverside       | <input type="checkbox"/> 43 Santa Clara   | <input type="checkbox"/> 53 Trinity  |
| <input type="checkbox"/> 04 Butte        | <input type="checkbox"/> 14 Inyo        | <input type="checkbox"/> 24 Merced    | <input type="checkbox"/> 34 Sacramento      | <input type="checkbox"/> 44 Santa Cruz    | <input type="checkbox"/> 54 Tulare   |
| <input type="checkbox"/> 05 Calaveras    | <input type="checkbox"/> 15 Kern        | <input type="checkbox"/> 25 Modoc     | <input type="checkbox"/> 35 San Benito      | <input type="checkbox"/> 45 Shasta        | <input type="checkbox"/> 55 Tuolumne |
| <input type="checkbox"/> 06 Colusa       | <input type="checkbox"/> 16 Kings       | <input type="checkbox"/> 26 Mono      | <input type="checkbox"/> 36 San Bernardino  | <input type="checkbox"/> 46 Sierra        | <input type="checkbox"/> 56 Ventura  |
| <input type="checkbox"/> 07 Contra Costa | <input type="checkbox"/> 17 Lake        | <input type="checkbox"/> 27 Monterey  | <input type="checkbox"/> 37 San Diego       | <input type="checkbox"/> 47 Siskiyou      | <input type="checkbox"/> 57 Yolo     |
| <input type="checkbox"/> 08 Del Norte    | <input type="checkbox"/> 18 Lassen      | <input type="checkbox"/> 28 Napa      | <input type="checkbox"/> 38 San Francisco   | <input type="checkbox"/> 48 Solano        | <input type="checkbox"/> 58 Yuba     |
| <input type="checkbox"/> 09 El Dorado    | <input type="checkbox"/> 19 Los Angeles | <input type="checkbox"/> 29 Nevada    | <input type="checkbox"/> 39 San Joaquin     | <input type="checkbox"/> 49 Sonoma        |                                      |
| <input type="checkbox"/> 10 Fresno       | <input type="checkbox"/> 20 Madera      | <input type="checkbox"/> 30 Orange    | <input type="checkbox"/> 40 San Luis Obispo | <input type="checkbox"/> 50 Stanislaus    |                                      |

### **AFFIDAVIT OF CERTIFICATION**

*This form must be signed and notarized for each owner upon which disadvantaged status is relied.*

**A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.**

I \_\_\_\_\_ (full name printed), swear or affirm under penalty of law that I am \_\_\_\_\_ (title) of applicant firm \_\_\_\_\_ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its places(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female

Black American

Hispanic American

Native American

Asian-Pacific American

Subcontinent Asian American

Other (specify) \_\_\_\_\_

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on \_\_\_\_\_ (Date)

Signature \_\_\_\_\_  
(DBE Applicant)

**NOTARY CERTIFICATE**





OMB APPROVAL NO. 3245-0188  
EXPIRATION DATE: 3/31/2008

## PERSONAL FINANCIAL STATEMENT

U.S. SMALL BUSINESS ADMINISTRATION

As of \_\_\_\_\_, \_\_\_\_\_

Complete this form for: (1) each proprietor, or (2) each limited partner who owns 20% or more interest and each general partner, or (3) each stockholder owning 20% or more of voting stock, or (4) any person or entity providing a guaranty on the loan.

Name

Business Phone

Residence Address

Residence Phone

City, State, & Zip Code

Business Name of Applicant

ASSETS	(Omit Cents)	LIABILITIES	(Omit Cents)
Cash on hand & in Banks.....	\$ _____	Accounts Payable .....	\$ _____
Savings Accounts.....	\$ _____	Notes Payable to Banks and Others.....	\$ _____
IRA or Other Retirement Account .....	\$ _____	(Describe in Section 2)	
Accounts & Notes Receivable.....	\$ _____	Installment Account (Auto) .....	\$ _____
Life Insurance-Cash Surrender Value Only .....	\$ _____	Mo. Payments \$ _____	
(Complete Section 8)		Installment Account (Other) .....	\$ _____
Stocks and Bonds .....	\$ _____	Mo. Payments \$ _____	
(Describe in Section 3)		Loan on Life Insurance .....	\$ _____
Real Estate.....	\$ _____	Mortgages on Real Estate .....	\$ _____
(Describe in Section 4)		(Describe in Section 4)	
Automobile-Present Value .....	\$ _____	Unpaid Taxes.....	\$ _____
Other Personal Property .....	\$ _____	(Describe in Section 6)	
(Describe in Section 5)		Other Liabilities .....	\$ _____
Other Assets .....	\$ _____	(Describe in Section 7)	
(Describe in Section 5)		Total Liabilities .....	\$ _____
Total .....	\$ _____	Net Worth .....	\$ _____
		Total .....	\$ _____

### Section 1. Source of Income

Salary .....

Net Investment Income .....

Real Estate Income .....

Other Income (Describe below)\* .....

### Contingent Liabilities

As Endorser or Co-Maker .....

Legal Claims & Judgments .....

Provision for Federal Income Tax.....

Other Special Debt .....

Description of Other Income in Section 1.

\*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

### Section 2. Notes Payable to Banks and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Name and Address of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

**Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).**

Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

**Section 4. Real Estate Owned.**

(List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)

	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

**Section 5. Other Personal Property and Other Assets.** (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency)**Section 6. Unpaid Taxes.** (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)**Section 7. Other Liabilities.** (Describe in detail.)**Section 8. Life Insurance Held.** (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries)

I authorize SBA/Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of either obtaining a loan or guaranteeing a loan. I understand FALSE statements may result in forfeiture of benefits and possible prosecution by the U.S. Attorney General (Reference 18 U.S.C. 1001).

Signature: Date: Social Security Number:

Signature: Date: Social Security Number:

**PLEASE NOTE:**

The estimated average burden hours for the completion of this form is 1.5 hours per response. If you have questions or comments concerning this estimate or any other aspect of this information, please contact Chief, Administrative Branch, U.S. Small Business Administration, Washington, D.C. 20416, and Clearance Officer, Paper Reduction Project (3245-0188), Office of Management and Budget, Washington, D.C. 20503. PLEASE DO NOT SEND FORMS TO OMB.

**Instructions to Assist in Completing the  
Personal Financial Statement (SBA Form 413)  
for the California Unified Certification Program**



Please do not make adjustments to your figures pursuant to U.S. Department of Transportation (U.S. DOT) regulations 49 CFR Part 26. The agency that you apply to will use the information provided on your completed Personal Financial Statement to determine your *Personal Net Worth According to 49 CFR Part 26*. An individual's *Personal Net Worth According to 49 CFR Part 26* includes only his or her own share of assets held jointly or as community property with the individual's spouse and excludes the following:

- Individual's ownership interest in the applicant firm;
- Individual's equity in his or her primary residence;
- Tax and interest penalties that would accrue if retirement savings or investments (e.g., pension plans, Individual Retirement Accounts, 401(k) accounts, etc.) were distributed at the present time.

If your *Personal Net Worth According to 49 CFR Part 26* exceeds the \$750,000 cap and you, individually, or you and other individuals are the majority owners of an applicant firm, the firm is not eligible for DBE certification. If the *Personal Net Worth According to 49 CFR Part 26* of the majority owner(s) exceeds the \$750,000 cap at any time after your firm is certified, the firm is no longer eligible for certification. Should that occur, it is your responsibility to contact your certifying agency in writing to advise the firm no longer qualifies.

**General Instructions**

- You must fill out all line items on the Personal Financial Statement (SBA Form 413) to the best of your ability.
- On the form, above the *Personal Financial Statement* heading, indicate if financial information is for a "married couple" or "single individual."
- On a separate sheet, identify all property that is not held jointly or as community property, and include values and ownership.
- If necessary, use additional sheet(s) of paper to report all information and details.
- If you have any questions about completing this form, please contact one of the certifying agencies on the Roster of Certifying Agencies.

**Specific Instructions**

**DATE AND CONTACT INFORMATION**

Be sure to include the date in the upper right corner of the first page and your contact information.

**ASSETS**

All assets must be reported at their current fair market values as of the date of your statement. **Assessor's assessed value for real estate, for example, is not acceptable.** Assets held in a trust generally should be included.

**Cash on hand & in Banks:** Enter the total amount of cash on-hand and in bank accounts other than savings.

**Savings Accounts:** Enter the total amount in all savings accounts.

**IRA or other Retirement Account:** Enter the total present value of all IRAs and other retirement accounts, including any deferred compensation and pension plans.

**Accounts & Notes Receivable:** Enter the total value of all monies owed to you personally, if any. This should include shareholder loans to the applicant firm, if any.

**Life Insurance-Cash Surrender Value Only:** Enter the value of any life insurance policies. This amount should be cash surrender value only, not the amount a beneficiary would receive upon your death, also known as face value. A complete description is required in Section 8.

**Stocks and Bonds:** Enter the current market value of your stocks and bonds. A complete listing and description is required in Section 3.

**Real Estate:** Enter the current fair market value of all real estate owned. A complete listing and description of all real estate owned is required in Section 4. The amount must correspond with the total "Present Market Value" amounts listed in Section 4.

**Automobile-Present Value:** Enter the current fair market value of all automobiles owned.

**Other Personal Property:** Enter the current fair market value of all other personal property owned, but not included in the previous entries. A complete description of these assets is required in Section 5.

**Other Assets:** Enter the current fair market value of all other assets owned, but not included in the previous entries. A complete description of these assets is required in Section 5.

**LIABILITIES**

**Accounts Payable:** Enter the total value of all unpaid accounts payable that is your responsibility.

**Notes Payable to Bank and Others:** Enter the total amount due on all notes payable to banks and others. This should not, however, include any mortgage balances. A complete description of all notes payable to banks and others is required in Section 2.

**Installment Account (Auto):** Enter amount of the present balance of the debt that you owe for auto installment account. Please be sure to indicate the total monthly payment in the space provided.

**Installment Account (Other):** Enter amount of the present balance of the debt that you owe for other installment account. Please be sure to indicate the total monthly payment in the space provided. For example, include the balances of all credit card debts in this line.

**Loans on Life Insurance:** Enter the total value of all loans due on life insurance policies.

**Mortgages on Real Estate:** Enter the total balance on all mortgages payable on real estate. A complete breakdown of all mortgages on real estate is required in Section 4. The amount must correspond with the total of the mortgage balances amounts listed in Section 4.

**Unpaid Taxes:** Enter the total amount of all taxes that are currently due, but are unpaid. Contingent tax liabilities or anticipated taxes for current year should not be included. A complete description is required in Section 6.

**Other Liabilities:** Enter the total value due on all other liabilities not classified in the previous entries. A complete description is required in Section 7.

**Net Worth:** To compute Net Worth, add all liabilities and put that figure in the Total Liabilities line. Then subtract Total Liabilities from Total Assets to get your Net Worth. To check your figures, add Total Liabilities and Net Worth and the sum must equal Total Assets. If your figures do not match, your form will be returned to you to correct and complete again.

## SECTION 1. SOURCE OF INCOME

**Salary:** Enter the amount of your total annual salary. This includes any salary from the applicant firm and if applicable, any salary from outside employment.

**Net Investment Income:** Enter the total amount of all investment income (i.e. dividends, interest, etc.).

**Real Estate Income:** Enter the total amount of all real estate income received from the sale, rental, lease, etc. of real estate held.

**Other Income:** Enter the total amount of all other income received (i.e. alimony, social security, pension, etc.). Please be sure to describe the source of the other income in the space provided below in this section.

## CONTINGENT LIABILITIES

Contingent liabilities are liabilities that belong to you only if an event(s) should occur. For example, if you have co-signed on a relative's loan, but you are not responsible for the debt until your relative defaults, that is a contingent liability. Contingent liabilities do not count toward your net worth until they become actual liabilities.

**As Endorser or Co-Maker:** Enter the total potential liabilities due as a result of being a co-signer for a loan or other commitments.

**Legal Claims and Judgments:** Enter the potential liabilities due as a result of legal claims from judgments, lawsuits, etc.

**Provisions for Federal Income Tax:** Enter the total amount of all federal taxes for which you are potentially liable due to an anticipated gain on the pending sale of an asset or other circumstances, such as pending disputes or litigation which could possibly result in a personal tax liability.

**Other Special Debt:** Enter the total amount due on all remaining potential debts not accounted for.

## SECTION 2. NOTES PAYABLE TO BANKS AND OTHERS

Enter the name and address of note holder(s), original balance, current balance, payment amount, frequency, and how secured for each note payable as entered in the "Liabilities" column. Do not include loans for your business or mortgages for your properties.

## SECTION 3. STOCKS AND BONDS

Enter the number of shares, names of securities, cost, fair market value, and the date of fair market value for all shares of stock and bonds held. You may attach recent copies of your stock account listings. Do not include stock in your business.

## SECTION 4. REAL ESTATE OWNED

Starting with your primary residence (be sure to identify it as your primary residence), enter the type of property, address, date of purchase, original cost, present fair market value, name and address of mortgage holder, mortgage account number, mortgage balance, amount of payment, and status of mortgage for all real estate held. Please ensure that this section contains all real estate owned, including rental properties, vacation properties, commercial properties, etc.

Total "Present Market Value" amounts should correspond with the "Real Estate" amount listed in the "Assets" column. Additionally, total "Mortgage Balance" amounts should correspond with the "Mortgages on Real Estate" amount listed in the "Liabilities" column. Attach additional sheets if needed.

## SECTION 5. OTHER PERSONAL PROPERTY AND OTHER ASSETS

Itemize and describe in detail other personal property and other assets owned as listed in the "Assets" column. For other personal property, include boats, trailers, jewelry, furniture, household goods, collectibles, clothing, etc. For other assets, include equity interest in other businesses, trusts, investments, etc.

## SECTION 6. UNPAID TAXES

Describe in detail as to the type, to whom payable, when due, amount, and to what property, if any, the tax lien attaches. Please refer to the unpaid taxes listed in the "Liabilities" column. If none, state "NONE." This section should not include the contingent tax liabilities or anticipated taxes owed for the current year. For any unusually large amounts, you must include documentation, such as tax liens, to support the amounts.

## SECTION 7. OTHER LIABILITIES

Describe in detail any other liabilities as referenced by the value listed in the "Liabilities" column. If none, state "NONE." For any unusually large amounts, you must include documentation, such as bills, to support the amounts.

## SECTION 8. LIFE INSURANCE HELD

Describe all life insurance policies held. Please be sure to include the face amount of the policies, name of insurance company and beneficiaries and cash surrender values of the policies.

## EXECUTION OF STATEMENT

Be sure to sign, date, and include your social security number at the end of the statement.

# CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)



## *NAICS Codes*

The California Unified Certification Program adopted the 2002 North American Industry Classification System (NAICS), an updated federal classification system, on October 27, 2003. Please indicate below areas of expertise that you prefer to perform in order of importance. Enclosed is a partial list of NAICS codes for your convenience. For a full list of NAICS codes and assistance in locating appropriate NAICS codes and determining if your firm meets U.S. Small Business Administration (SBA) and U.S. DOT size standards, a search tool is available on the SBA web site at: <http://www.sba.gov/size/index.html>. DBE applicants are first subject to the applicable small business size standards of the Small Business Administration (SBA). Second, the average annual gross receipts for the firm (including its affiliates) over the previous three fiscal years must not exceed the U.S. Department of Transportation's cap of \$20.41 million, as amended pursuant to SAFETEA-LU. Please note that size standards are subject to change at any time by the SBA. If you do not have Internet access or need assistance, please contact one of the certifying agencies on the enclosed Roster.

<u>NAICS Code</u>	<u>Description of Work/Service</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**CALIFORNIA UNIFIED CERTIFICATION PROGRAM**

**List of NAICS Codes (partial)**

<b>110000</b>	<b>Agriculture, Forestry, Fishing and Hunting</b>
111000	Crop Production
112000	Animal Production
113000	Forestry and Logging
114000	Fishing, Hunting and Trapping
115000	Support Activities for Agriculture and Forestry
<b>210000</b>	<b>Mining</b>
211000	Oil and Gas Extraction
212000	Mining (except Oil and Gas)
213000	Support Activities for Mining
<b>220000</b>	<b>Utilities</b>
221110	Hydroelectric, Fossil Fuel, Nuclear and Other Electric Power Generation
221120	Electric Power Transmission, Control and Distribution
221310	Water Supply and Irrigation Systems
<b>230000</b>	<b>Construction*</b>
236000	<i>Construction of Buildings</i>
236115	New Single-Family Housing Construction (except Operative Builders)
236116	New Multifamily Housing Construction (except Operative Builders)
236117	New Housing Operative Builders
236118	Residential Remodelers
236210	Industrial Building Construction
236220	Commercial and Institutional Building Construction
237000	<i>Heavy and Civil Engineering Construction</i>
237110	Water and Sewer Line and Related Structures Construction
237120	Oil and Gas Pipeline and Related Structures Construction
237130	Power and Communication Line and Related Structures Construction
237210	Land Subdivision
237310	Highway, Street, and Bridge Construction
237990	Other Heavy and Civil Engineering Construction
237990	Dredging and Surface Cleanup Activities
238000	<i>Specialty Trade Contractors</i>
238110	Poured Concrete Foundation and Structure Contractors
238120	Structural Steel and Precast Concrete Contractors
238130	Framing Contractors
238140	Masonry Contractors
238150	Glass and Glazing Contractors
238160	Roofing Contractors
238170	Siding Contractors
238190	Other Foundation, Structure, and Building Exterior Contractors
238210	Electrical Contractors
238220	Plumbing, Heating, and Air-Conditioning Contractors
238290	Other Building Equipment Contractors
238310	Drywall and Insulation Contractors
238320	Painting and Wall Covering Contractors
238330	Flooring Contractors
238340	Tile and Terrazzo Contractors
238350	Finish Carpentry Contractors
238390	Other Building Finishing Contractors
238910	Site Preparation Contractors
238990	All Other Specialty Trade Contractors
238990	Building and Property Specialty Trade Services

<b>310000</b>	<b>Manufacturing</b>
310000	<i>Food Manufacturing</i>
312000	<i>Beverage and Tobacco Product Manufacturing</i>
313000	<i>Textile Mills</i>
314000	<i>Textile Product Mills</i>
315000	<i>Apparel Manufacturing</i>
315211	Men's and Boys' Cut and Sew Apparel Contractors
315212	Women's, Girls', and Infants' Cut and Sew Apparel Contractors
315220	Men's and Boys' Cut and Sew Apparel Manufacturing
315230	Women's and Girls' Cut and Sew Apparel Manufacturing
315299	All Other Cut and Sew Apparel Manufacturing
315999	Other Apparel Accessories and Other Apparel Manufacturing
316000	<i>Leather and Allied Product Manufacturing</i>
316211	Rubber and Plastics Footwear Manufacturing
316213	Men's Footwear (except Athletic) Manufacturing
316214	Women's Footwear (except Athletic) Manufacturing
316219	Other Footwear Manufacturing
321000	<i>Wood Product Manufacturing</i>
322000	<i>Paper Manufacturing</i>
323000	<i>Printing and Related Support Activities</i>
323110	Commercial Lithographic Printing
323111	Commercial Gravure Printing
323112	Commercial Flexographic Printing
323113	Commercial Screen Printing
323114	Quick Printing
323115	Digital Printing
323116	Manifold Business Forms Printing
323117	Books Printing
323118	Blankbook, Loose-leaf Binder and Device Manufacturing
323119	Other Commercial Printing
323121	Tradebinding and Related Work
323122	Prepress Services
324000	<i>Petroleum and Coal Products Manufacturing</i>
324121	Asphalt Paving Mixture and Block Manufacturing
324122	Asphalt Shingle and Coating Materials Manufacturing
325000	<i>Chemical Manufacturing</i>
326000	<i>Plastics and Rubber Products Manufacturing</i>
326211	Tire Manufacturing (except Retreading)
326212	Tire Retreading
326220	Rubber and Plastics Hoses and Belting Manufacturing
326291	Rubber Product Manufacturing for Mechanical Use
326299	All Other Rubber Product Manufacturing
327000	<i>Nonmetallic Mineral Product Manufacturing</i>
331000	<i>Primary Metal Manufacturing</i>
332000	<i>Fabricated Metal Product Manufacturing</i>
332116	Metal Stamping
332322	Sheet Metal Work Manufacturing
332323	Ornamental and Architectural Metal Work Manufacturing
332710	Machine Shops
332721	Precision Turned Product Manufacturing
332996	Fabricated Pipe and Pipe Fitting Manufacturing
333000	<i>Machinery Manufacturing</i>
333120	Construction Machinery Manufacturing
333311	Automatic Vending Machine Manufacturing
333313	Office Machinery Manufacturing

\*Note: evidence of State or other licensing is required in order to be classified in this industry, if applicable.

(Rev. 8/06)

(This document contains a partial list of NAICS codes. For a complete list of NAICS codes, please visit [www.sba.gov/size/index/tafofsize.html](http://www.sba.gov/size/index/tafofsize.html))

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**California Unified Certification Program**  
**List of NAICS Codes (partial)**

333414	Heating Equipment (except Warm Air Furnaces) Manufacturing	336411	Aircraft Manufacturing
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing	336510	Railroad Rolling Stock Manufacturing
333514	Special Die and Tool, Die Set, Jig and Fixture Manufacturing	336611	Ship Building and Repairing
333613	Mechanical Power Transmission Equipment Manufacturing	336991	Motorcycle, Bicycle and Parts Manufacturing
333618	Other Engine Equipment Manufacturing	336999	All Other Transportation Equipment Manufacturing
333911	Pump and Pumping Equipment Manufacturing	337000	<i>Furniture and Related Product Manufacturing</i>
333921	Elevator and Moving Stairway Manufacturing	337127	Institutional Furniture Manufacturing
333922	Conveyor and Conveying Equipment Manufacturing	337211	Wood Office Furniture Manufacturing
333923	Overhead Traveling Crane, Hoist and Monorail System Manufacturing	337214	Office Furniture (Except Wood) Manufacturing
333924	Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing	337215	Showcase, Partition, Shelving, and Locker Manufacturing
334000	<i>Computer and Electronic Product Manufacturing</i>	337920	Blind and Shade Manufacturing
334111	Electronic Computer Manufacturing	339000	<i>Miscellaneous Manufacturing</i>
334112	Computer Storage Device Manufacturing	339111	Laboratory Apparatus and Furniture Manufacturing
334113	Computer Terminal Manufacturing	339950	Sign Manufacturing
334119	Other Computer Peripheral Equipment Manufacturing	339991	Gasket, Packing, and Sealing Device Manufacturing
334210	Telephone Apparatus Manufacturing		
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	<b>420000</b>	<b><i>Wholesale Trade</i></b>
334290	Other Communications Equipment Manufacturing	423000	<i>Merchant Wholesalers, Durable Goods</i>
334310	Audio and Video Equipment Manufacturing	423110	Automobile and Other Motor Vehicle Merchant Wholesalers
334417	Electronic Connector Manufacturing	423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers
334418	Printed Circuit Assembly (Electronic Assembly) Mfg	423130	Tire and Tube Merchant Wholesalers
334419	Other Electronic Component Manufacturing	423140	Motor Vehicle Parts (Used) Merchant Wholesalers
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing	423210	Furniture Merchant Wholesalers
334512	Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use	423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables	423320	Brick, Stone, and Related Construction Material Merchant Wholesalers
334514	Totalizing Fluid Meter and Counting Device Manufacturing	423330	Roofing, Siding, and Insulation Material Merchant Wholesalers
334518	Watch, Clock, and Part Manufacturing	423390	Other Construction Material Merchant Wholesalers
334519	Other Measuring and Controlling Device Manufacturing	423410	Photographic Equipment and Supplies Merchant Wholesalers
334611	Software Reproducing	423420	Office Equipment Merchant Wholesalers
334612	Prerecorded Compact Disc (except Software), Tape, and Record Reproducing	423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers
334613	Magnetic and Optical Recording Media Manufacturing	423440	Other Commercial Equipment Merchant Wholesalers
335000	<i>Electrical Equipment, Appliance and Component Manufacturing</i>	423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers
336000	<i>Transportation Equipment Manufacturing</i>	423490	Other Professional Equipment and Supplies Merchant Wholesalers
336112	Light Truck and Utility Vehicle Manufacturing	423510	Metal Service Centers and Other Metal Merchant Wholesalers
336120	Heavy Duty Truck Manufacturing	423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers
336211	Motor Vehicle Body Manufacturing	423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers
336212	Truck Trailer Manufacturing	423690	Other Electronic Parts and Equipment Merchant Wholesalers
336311	Carburetor, Piston, Piston Ring and Valve Manufacturing	423710	Hardware Merchant Wholesalers
336312	Gasoline Engine and Engine Parts Manufacturing	423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers
336321	Vehicular Lighting Equipment Manufacturing	423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers
336322	Other Motor Vehicle Electrical and Electronic Equipment Manufacturing	423740	Refrigeration Equipment and Supplies Merchant Wholesalers
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing	423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers
336340	Motor Vehicle Brake System Manufacturing	423820	Farm and Garden Machinery and Equipment Merchant Wholesalers
336350	Motor Vehicle Transmission and Power Train Parts Manufacturing	423830	Industrial Machinery and Equipment Merchant Wholesalers
336360	Motor Vehicle Seating and Interior Trim Manufacturing	423840	Industrial Supplies Merchant Wholesalers
336370	Motor Vehicle Metal Stamping	423850	Service Establishment Equipment and Supplies Merchant Wholesalers
336391	Motor Vehicle Air-Conditioning Manufacturing	423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers
336399	All Other Motor Vehicle Parts Manufacturing	423930	Recyclable Material Merchant Wholesalers
		423940	Other Miscellaneous Durable Goods Merchant Wholesalers

\*Note: evidence of State or other licensing is required in order to be classified in this industry, if applicable.

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**California Unified Certification Program**  
**List of NAICS Codes (partial)**

424000	<i>Merchant Wholesalers, Nondurable Goods</i>
424110	Printing and Writing Paper Merchant Wholesalers
424120	Stationary and Office Supplies Merchant Wholesalers
424130	Industrial and Personal Service Paper Merchant Wholesalers
424210	Drugs and Druggists' Sundries Merchant Wholesalers
	Piece Goods, Notions, and Other Dry Goods Merchant
424310	Wholesalers
	Men's and Boys' Clothing and Furnishings Merchant
424320	Wholesalers
	Women's, Children's, and Infants' Clothing and Accessories
424330	Merchant Wholesalers
424340	Footwear Merchant Wholesalers
424410	General Line Grocery Merchant Wholesalers
424420	Packaged Frozen Food Merchant Wholesalers
424490	Other Grocery and Related Products Merchant Wholesalers
	Plastics Materials and Basic Forms and Shapes Merchant
424610	Wholesalers
424690	Other Chemical and Allied Products Merchant Wholesalers
424710	Petroleum Bulk Stations and Terminals
	Petroleum and Petroleum Products Merchant Wholesalers
424720	(except Bulk Stations and Terminals)
424920	Book, Periodical, and Newspaper Merchant Wholesalers
	Flower, Nursery Stock, and Florists' Supplies Merchant
424930	Wholesalers
424940	Tobacco and Tobacco Product Merchant Wholesalers
424950	Paint, Varnish, and Supplies Merchant Wholesalers
	Other Miscellaneous Nondurable Goods Merchant
424990	Wholesalers
425000	Wholesale Electronic Markets and Agents and Brokers
425110	Business to Business Electronic Markets
425120	Wholesale Trade Agents and Brokers
<b>440000</b>	
	<b>Retail Trade</b>
<b>459999</b>	
441000	<i>Motor Vehicle and Parts Dealers</i>
441110	New Car Dealers
441120	Used Car Dealers
441221	Motorcycle Dealers
441222	Boat Dealers
441229	All Other Motor Vehicle Dealers
441229	Aircraft Dealers, Retail
441310	Automotive Parts and Accessories Stores
441320	Tire Dealers
442000	<i>Furniture and Home Furnishings Stores</i>
442110	Furniture Stores
442210	Floor Covering Stores
442291	Window Treatment Stores
442299	All Other Home Furnishings Stores
443000	<i>Electronics and Appliance Stores</i>
443111	Household Appliance Stores
443112	Radio, Television and Other Electronics Stores
443120	Computer and Software Stores
443130	Camera and Photographic Supplies Stores
444000	<i>Building Material and Garden Equipment and Supplies Dirs</i>
444110	Home Centers
444120	Paint and Wallpaper Stores
444130	Hardware Stores
444190	Other Building Material Dealers
444210	Outdoor Power Equipment Stores
444220	Nursery and Garden Centers
445000	<i>Food and Beverage Stores</i>

446000	<i>Health and Personal Care Stores</i>
447000	<i>Gasoline Stations</i>
448000	<i>Clothing and Clothing Accessories Stores</i>
448110	Men's Clothing Stores
448120	Women's Clothing Stores
448130	Children's and Infants' Clothing Stores
448140	Family Clothing Stores
448150	Clothing Accessories Stores
448190	Other Clothing Stores
448210	Shoe Stores
448320	Luggage and Leather Goods Stores
451000	<i>Sporting Good, Hobby, Book and Music Stores</i>
451211	Book Stores
451212	News Dealers and Newsstands
452000	<i>General Merchandise Store</i>
453000	<i>Miscellaneous Store Retailers</i>
453110	Florists
453210	Office Supplies and Stationery Stores
453220	Gift, Novelty and Souvenir Stores
453310	Used Merchandise Stores
454000	<i>Nonstore Retailers</i>
454111	Electronic Shopping
454112	Electronic Auctions
454113	Mail-Order Houses
454210	Vending Machine Operators
454311	Heating Oil Dealers
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers
454319	Other Fuel Dealers
454390	Other Direct Selling Establishments
<b>480000</b>	
	<b>Transportation</b>
<b>499999</b>	
481000	<i>Air Transportation</i>
481111	Scheduled Passenger Air Transportation
481112	Scheduled Freight Air Transportation
481211	Nonscheduled Chartered Passenger Air Transportation
481212	Nonscheduled Chartered Freight Air Transportation
481219	Other Nonscheduled Air Transportation
482000	<i>Rail Transportation</i>
483000	<i>Water Transportation</i>
484000	<i>Truck Transportation</i>
484110	General Freight Trucking, Local
484121	General Freight Trucking, Long-Distance, Truckload
	General Freight Trucking, Long-Distance, Less Than
484122	Truckload
484210	Used Household and Office Goods Moving
484220	Specialized Freight (except Used Goods) Trucking, Local
	Specialized Freight (except Used Goods) Trucking, Long-
484230	Distance
485000	<i>Transit and Ground Passenger Transportation</i>
485111	Mixed Mode Transit Systems
485112	Commuter Rail Systems
485113	Bus and Motor Vehicle Transit Systems
485119	Other Urban Transit Systems
485210	Interurban and Rural Bus Transportation
485310	Taxi Service
485320	Limousine Service
485410	School and Employee Bus Transportation
485510	Charter Bus Industry

\*Note: evidence of State or other licensing is required in order to be classified in this industry, if applicable.



**California Unified Certification Program**  
**List of NAICS Codes (partial)**

485991	Special Needs Transportation
485999	All Other Transit and Ground Passenger Transportation
486000	<i>Pipeline Transportation</i>
487000	<i>Scenic and Sightseeing Transportation</i>
488000	<i>Support Activities for Transportation</i>
488111	Air Traffic Control
488119	Other Airport Operations
488190	Other Support Activities for Air Transportation
488210	Support Activities for Rail Transportation
488310	Port and Harbor Operations
488320	Marine Cargo Handling
488390	Other Support Activities for Water Transportation
488410	Motor Vehicle Towing
488490	Other Support Activities for Road Transportation
488510	Freight Transportation Arrangement
488991	Packing and Crating
488999	All Other Support Activities for Transportation
491000	<i>Postal Service</i>
492000	<i>Couriers and Messengers</i>
492110	Couriers
492210	Local Messengers and Local Delivery
493000	<i>Warehousing and Storage</i>
493110	General Warehousing and Storage
493120	Refrigerated Warehousing and Storage
493190	Other Warehousing and Storage
<b>510000</b>	<b>Information</b>
511000	<i>Publishing Industries (except Internet)</i>
511110	Newspaper Publishers
511120	Periodical Publishers
511130	Book Publishers
511140	Directory and Mailing List Publishers
511199	All Other Publishers
511210	Software Publishers
512110	Motion Picture and Video Production
512191	Teleproduction and Other Postproduction Services
512199	Other Motion Picture and Video Industries
512210	Record Production
512220	Integrated Record Production/Distribution
512240	Sound Recording Studios
512290	Other Sound Recording Industries
515000	<i>Broadcasting (except Internet)</i>
515111	Radio Networks*
515112	Radio Stations*
515120	Television Broadcasting*
515210	Cable and Other Subscription Programming
516000	<i>Internet Publishing and Broadcasting</i>
516110	Internet Publishing and Broadcasting
517000	<i>Telecommunications</i>
517110	Wired Telecommunications Carriers
517211	Paging
517212	Cellular and Other Wireless Telecommunications
517310	Telecommunications Resellers
517410	Satellite Telecommunications
517510	Cable and Other Program Distribution
517910	Other Telecommunications
518000	<i>Internet Service Providers, Web Search Portals, and Data Processing Services</i>
518111	Internet Service Providers

518112	Web Search Portals
518210	Data Processing, Hosting, and Related Services
519000	<i>Other Information Services</i>
519110	News Syndicates
519120	Libraries and Archives
519190	All Other Information Services
<b>520000</b>	<b>Finance and Insurance*</b>
522000	<i>Credit Intermediation and Related Activities</i>
522220	Sales Financing
522291	Consumer Lending
522292	Real Estate Credit
522298	All Other Non-Depository Credit Intermediation
522310	Mortgage and Nonmortgage Loan Brokers
522320	Financial Transactions Processing, Reserve, and Clearing House Activities
522390	Other Activities Related to Credit Intermediation
523000	<i>Financial Investments and Related Activities</i>
523110	Investment Banking and Securities Dealing
523120	Securities Brokerage
523130	Commodity Contracts Dealing
523140	Commodity Contracts Brokerage
523910	Miscellaneous Intermediation
523920	Portfolio Management
523930	Investment Advice
523991	Trust, Fiduciary and Custody Activities
523999	Miscellaneous Financial Investment Activities
524000	<i>Insurance Carriers and Related Activities</i>
524113	Direct Life Insurance Carriers
524114	Direct Health and Medical Insurance Carriers
524126	Direct Property and Casualty Insurance Carriers
524127	Direct Title Insurance Carriers
524128	Other Direct Insurance (except Life, Health and Medical) Carriers
524130	Reinsurance Carriers
524210	Insurance Agencies and Brokerages
524291	Claims Adjusting
524292	Third Party Administration of Insurance and Pension Funds
524298	All Other Insurance Related Activities
525000	<i>Funds, Trusts and Other Financial Vehicles</i>
525110	Pension Funds
525120	Health and Welfare Funds
525190	Other Insurance Funds
525910	Open-End Investment Funds
525920	Trusts, Estates, and Agency Accounts
525930	Real Estate Investment Trusts
525990	Other Financial Vehicles
<b>530000</b>	<b>Real Estate and Rental and Leasing</b>
531000	<i>Real Estate</i>
531120	Lessors of Nonresidential Buildings (except Minlwarehouses)
531130	Lessors of Miniwarehouses and Self Storage Units
531190	Lessors of Other Real Estate Property
531210	Offices of Real Estate Agents and Brokers*
531312	Nonresidential Property Managers
531320	Offices of Real Estate Appraisers*
531390	Other Activities Related to Real Estate
532000	<i>Rental and Leasing Services</i>
532111	Passenger Car Rental
532112	Passenger Car Leasing

\*Note: evidence of State or other licensing is required in order to be classified in this industry, if applicable.

**California Unified Certification Program**  
**List of NAICS Codes (partial)**

532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing
532210	Consumer Electronics and Appliances Rental
532299	All Other Consumer Goods Rental
532310	General Rental Centers
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing
532420	Office Machinery and Equipment Rental and Leasing
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)

**540000 Professional, Scientific and Technical Services**

541110	Offices of Lawyers*
541191	Title Abstract and Settlement Offices
541199	All Other Legal Services
541211	Offices of Certified Public Accountants*
541213	Tax Preparation Services*
541214	Payroll Services
541219	Other Accounting Services
541310	Architectural Services*
541320	Landscape Architectural Services*
541330	Engineering Services*
541340	Drafting Services
541340	Map Drafting
541350	Building Inspection Services
541360	Geophysical Surveying and Mapping Services*
541370	Surveying and Mapping (except Geophysical) Services*
541380	Testing Laboratories
541410	Interior Design Services
541420	Industrial Design Services
541430	Graphic Design Services
541490	Other Specialized Design Services
541511	Custom Computer Programming Services
541512	Computer Systems Design Services
541513	Computer Facilities Management Services
541519	Other Computer Related Services
541611	Administrative Management and General Management Consulting Services
541611	Human Resources and Executive Search Consulting Services
541612	Marketing Consulting Services
541613	Process, Physical Distribution and Logistics Consulting Services
541614	Other Management Consulting Services
541618	Environmental Consulting Services
541690	Other Scientific and Technical Consulting Services
541710	Research and Development in the Physical, Engineering, and Life Sciences
541710	Research and Development in the Social Sciences and Humanities
541720	Advertising Agencies
541820	Public Relations Agencies
541830	Media Buying Agencies
541840	Media Representatives
541850	Display Advertising
541860	Direct Mail Advertising
541870	Advertising Material Distribution Services

541890	Other Services Related to Advertising
541910	Marketing Research and Public Opinion Polling
541922	Commercial Photography
541930	Translation and Interpretation Services
541990	All Other Professional, Scientific and Technical Services

**550000 Management of Companies and Enterprises**

551111	Offices of Bank Holding Companies
551112	Offices of Other Holding Companies

**560000 Administrative and Support Services**

561000	Administrative and Support Services
561110	Office Administrative Services
561210	Facilities Support Services
561210	Base Maintenance
561310	Employment Placement Agencies
561320	Temporary Help Services
561330	Employee Leasing Services
561410	Document Preparation Services
561421	Telephone Answering Services
561422	Telemarketing Bureaus
561431	Private Mail Centers
561439	Other Business Service Centers (including Copy Shops)
561440	Collection Agencies
561450	Credit Bureaus
561491	Repossession Services
561492	Court Reporting and Stenotype Services
561499	All Other Business Support Services
561510	Travel Agencies
561520	Tour Operators
561599	All Other Travel Arrangement and Reservation Services
561611	Investigation Services
561612	Security Guards and Patrol Services*
561613	Armored Car Services
561621	Security Systems Services (except Locksmiths)
561622	Locksmiths
561710	Exterminating and Pest Control Services*
561720	Janitorial Services
561730	Landscaping Services*
561740	Carpet and Upholstery Cleaning Services
561790	Other Services to Buildings and Dwellings
561910	Packaging and Labeling Services
561920	Convention and Trade Show Organizers
561990	All Other Support Services
562000	Waste Management and Remediation Services
562111	Solid Waste Collection
562112	Hazardous Waste Collection*
562119	Other Waste Collection
562211	Hazardous Waste Treatment and Disposal*
562219	Other Nonhazardous Waste Treatment and Disposal
562910	Remediation Services
562910	Environmental Remediation Services
562920	Materials Recovery Facilities
562998	All Other Miscellaneous Waste Management Services

**610000 Educational Services**

611410	Business and Secretarial Schools
611420	Computer Training
611430	Professional and Management Development Training
611512	Flight Training

\*Note: evidence of State or other licensing is required in order to be classified in this industry, if applicable.

**California Unified Certification Program**  
**List of NAICS Codes (partial)**

611513	Apprenticeship Training
611519	Other Technical and Trade Schools
611630	Language Schools
611691	Exam Preparation and Tutoring
611692	Automobile Driving Schools
611699	All Other Miscellaneous Schools and Instruction
611710	Educational Support Services

**620000 Health Care and Social Assistance\***

621000	<i>Ambulatory Health Care Services</i>
621110	Offices of Physicians
621210	Offices of Dentists
621310	Offices of Chiropractors
621320	Offices of Optometrists
621330	Offices of Mental Health Practitioners (except Physicians)
621330	Offices of Physical, Occupational and Speech Therapists and Audiologists
621340	Offices of Podiatrists
621399	Offices of All Other Miscellaneous Health Practitioners
621410	Family Planning Centers
621420	Outpatient Mental Health and Substance Abuse Centers
621492	Kidney Dialysis Centers
621493	Freestanding Ambulatory Surgical and Emergency Centers
621498	All Other Outpatient Care Centers
621511	Medical Laboratories
621512	Diagnostic Imaging Centers
621610	Home Health Care Services
621910	Ambulance Services
621999	All Other Miscellaneous Ambulatory Health Care Services
622000	<i>Hospitals</i>
623000	<i>Nursing and Residential Care Facilities</i>
624000	<i>Social Assistance</i>
624110	Child and Youth Services
624120	Services for the Elderly and Persons with Disabilities
624190	Other Individual and Family Services
624210	Community Food Services
624221	Temporary Shelters
624229	Other Community Housing Services
624230	Emergency and Other Relief Services
624310	Vocational Rehabilitation Services
624410	Child Day Care Services

**710000 Arts, Entertainment and Recreation**

711000	Performing Arts, Spectator Sports and Related Industries
712000	Museums, Historical Sites and Similar Institutions
713000	Amusement, Gambling and Recreation Industries

**720000 Accommodation and Food Services**

721000	<i>Accommodation</i>
722000	<i>Food Services and Drinking Places</i>
722110	Full-Service Restaurants
722211	Limited-Service Restaurants
722212	Cafeterias
722213	Snack and Nonalcoholic Beverage Bars
722310	Food Service Contractors
722320	Caterers
722330	Mobile Food Services
722410	Drinking Places (Alcoholic Beverages)

<b>810000</b>	<b>Other Services</b>
811000	<i>Repair and Maintenance</i>
811111	General Automotive Repair
811112	Automotive Exhaust System Repair
811113	Automotive Transmission Repair
811113	Other Automotive Mechanical and Electrical Repair and Maintenance
811118	Automotive Body, Paint and Interior Repair and Maintenance
811121	Automotive Glass Replacement Shops
811122	Automotive Oil Change and Lubrication Shops
811191	Car Washes
811192	All Other Automotive Repair and Maintenance
811198	Consumer Electronics Repair and Maintenance
811211	Computer and Office Machine Repair and Maintenance
811212	Communication Equipment Repair and Maintenance
811213	Other Electronic and Precision Equipment Repair and Maintenance
811219	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance
811310	Home and Garden Equipment Repair and Maintenance
811411	Appliance Repair and Maintenance
811412	Reupholstery and Furniture Repair
811420	Footwear and Leather Goods Repair
811430	<i>Personal and Laundry Services</i>
812000	Drycleaning and Laundry Services (except Coin-Operated)
812320	Linen Supply
812331	Industrial Launderers
812332	Photo Finishing Laboratories (except One-Hour)
812921	One-Hour Photo Finishing
812922	Parking Lots and Garages
812930	Religious, Grantmaking, Civic, Professional and Similar Organizations
813000	

\*Note: evidence of State or other licensing is required in order to be classified in this industry, if applicable.

# CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)



## *Roster of Certifying Agencies*

**Note:** If you received this information on hard copy, the California Unified Certification Program Application Package is available on the website at [http://www.dot.ca.gov/hq/bep/business\\_forms.htm](http://www.dot.ca.gov/hq/bep/business_forms.htm).

If the firm has its principal place of business in another state and is currently certified in that state, please contact the California Department of Transportation in the Northern Cluster.

<b><i>Southern Cluster</i></b>		
<b>Area</b>	<b>Counties</b>	<b>Certifying Agencies</b>
<b>Riverside, Imperial &amp; San Diego (RIS)</b>	Imperial Riverside San Diego	<b><u>SUBMIT APPLICATION PACKAGE TO:</u></b> > CITY OF LOS ANGELES > LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY <b><u>OR</u></b> > CALIFORNIA DEPARTMENT OF TRANSPORTATION <b>SEE CONTACT INFORMATION BELOW.</b>
<b>Los Angeles Area</b>	Kern Los Angeles Orange San Bernardino San Luis Obispo Santa Barbara Ventura	<div> <b>CITY OF LOS ANGELES</b>              Bureau of Contract Admin.              Centralized Certification Section              1149 S. Broadway, Ste 300              Los Angeles, CA 90015              Phone: (213) 847-2684              Fax: (213) 847-2777  <a href="http://bca.lacity.org">http://bca.lacity.org</a> </div> <div> <b>LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (METRO)</b>              Diversity and Economic              Opportunity Department              One Gateway Plaza, MS 99-13-5              Los Angeles, CA 90012              Phone: (213) 922-2600              Fax: (213) 922-7660  <a href="http://www.metro.net">www.metro.net</a> </div>

\* List of agencies subject to change

<b>Northern Cluster</b>				
<b>Area</b>	<b>Counties</b>		<b>Certifying Agencies</b>	
<b>Bay Area/ Central Valley</b>	Alameda		<b>S.F. BAY AREA RAPID TRANSIT DISTRICT (BART)</b>	<b>SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)</b>
	Amador		Office of Civil Rights	Contract Compliance Office
	Calaveras		300 Lakeside Drive	1 South Van Ness Ave, 3rd Floor
	Contra Costa		18 <sup>th</sup> Floor	San Francisco, CA 94103
	Fresno		Oakland, CA 94612	Phone: (415) 701-4443
	Kings		Phone: (510) 464-6195	Fax: (415) 701-4347
	Madera		Fax: (510) 464-7587	<a href="http://www.sfmuni.com">www.sfmuni.com</a>
	Marin		<a href="http://www.bart.gov">www.bart.gov</a>	
	Mariposa		<b>CITY OF FRESNO</b>	<b>SAN MATEO COUNTY TRANSIT DISTRICT (SAMTRANS)/ PENINSULA CORRIDOR JOINT POWERS BOARD (JPB)</b>
	Merced		DBE Program	DBE Office
	Monterey		2101 G Street, Building A	1250 San Carlos Avenue
	Napa		Fresno, CA 93706	San Carlos, CA 94070
	San Benito		Phone: (559) 621-1153	Phone: (650) 508-7939
	San Francisco		Fax: (559) 488-1069	Fax: (650) 508-7738
	San Joaquin		<a href="http://www.fresno.gov">www.fresno.gov</a>	<a href="http://www.samtrans.com">www.samtrans.com</a>
	San Mateo		<b>SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA)</b>	
	Santa Clara		Office of Small & Disadvantaged Businesses	
	Santa Cruz		3331 North First Street, Bldg. A	
	Solano		San Jose, CA 95134-1906	
	Sonoma		Phone: (408) 321-5962	
	Stanislaus		Fax: (408) 955-9729	
	Tulare		<a href="http://www.vta.org">www.vta.org</a>	
	Tuolumne		<b>CENTRAL CONTRA COSTA TRANSIT AUTHORITY (CCCTA)</b>	
			Office of Civil Rights	
			2477 Arnold Industrial Way	
			Concord, CA 94520-5327	
			Phone: (925) 676-1976	
			Fax: (925) 686-2630	
			<a href="http://www.cccta.org">www.cccta.org</a>	
<b>Northern California</b>	Alpine	Nevada	<b>CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS)</b>	<b>YOLO COUNTY TRANSPORTATION DISTRICT (YOLOBUS)</b>
	Butte	Placer	Civil Rights MS 79	DBE Programs
	Colusa	Plumas	1823 - 14 <sup>th</sup> Street	350 Industrial Way
	Del Norte	Sacramento	Sacramento, CA 95814	Woodland, CA 95776
	El Dorado	Shasta	Phone: (916) 324-1700 or (866)	Phone: (530) 661-0816
	Glenn	Sierra	810-6346	Fax: (530) 661-1732
	Humboldt	Siskiyou	Fax: (916) 324-1862	<a href="http://www.volobus.org">www.volobus.org</a>
	Inyo	Sutter	<a href="http://www.dot.ca.gov">www.dot.ca.gov</a>	
	Lake	Tehama		
	Lassen	Trinity		
	Mendocino	Yolo		
	Modoc	Yuba		
	Mono			

Updated 08/25/08

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## Electronic Code of Federal Regulations

**e-CFR**

TM

**e-CFR Data is current as of December 1, 2008**

### **Title 49: Transportation**

#### **PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS**

[Browse Next](#)

### **Subpart A—General**

#### **§ 26.1 What are the objectives of this part?**

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

#### **§ 26.3 To whom does this part apply?**

(a) If you are a recipient of any of the following types of funds, this part applies to you:

- (1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.
- (2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178.
- (3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

## **§ 26.5 What do the terms used in this part mean?**

*Affiliation* has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

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

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

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

*Compliance* means that a recipient has correctly implemented the requirements of this part.

*Contract* means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

*Contractor* means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

*Department* or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

*Disadvantaged business enterprise* or *DBE* means a for-profit small business concern—

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

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

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*DOT-assisted contract* means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

*DOT/SBA Memorandum of Understanding or MOU*, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

*Good faith efforts* means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

*Immediate family member* means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

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

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

*Native Hawaiian* means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

*Native Hawaiian Organization* means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

*Noncompliance* means that a recipient has not correctly implemented the requirements of this part.

*Operating Administration or OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

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

*Primary industry classification* means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

*Primary recipient* means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

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



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purposes.

*Program* means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

*Race-conscious* measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

*Race-neutral* measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

*Recipient* is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

*Secretary* means the Secretary of Transportation or his/her designee.

*Set-aside* means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

*Small Business Administration* or *SBA* means the United States Small Business Administration.

*SBA certified firm* refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

*Small business concern* means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

*Socially and economically disadvantaged individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) "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;
  - (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - (vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

*Tribally-owned concern* means any concern at least 51 percent owned by an Indian tribe as defined in this section.

*You* refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003]

## **§ 26.7 What discriminatory actions are forbidden?**

(a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.

(b) In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

## **§ 26.9 How does the Department issue guidance and interpretations under this part?**

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 express the official positions and views of the Department of Transportation or any of its operating administrations.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

[72 FR 15617, Apr. 2, 2007]

## **§ 26.11 What records do recipients keep and report?**

(a) [Reserved]

(b) You must continue to provide data about your DBE program to the Department as directed by DOT operating administrations.

(c) You must create and maintain a bidders list.

(1) The purpose of this list is to provide you as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.

(2) You must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:

(i) Firm name;

(ii) Firm address;

(iii) Firm's status as a DBE or non-DBE;

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit ( e.g., less than \$500,000; \$500,000–\$1 million; \$1–2 million; \$2–5 million; etc.) rather than requesting an exact figure from the firm.

(3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches ( e.g., collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000]

### **§ 26.13 What assurances must recipients and contractors make?**

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

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

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

### **§ 26.15 How can recipients apply for exemptions or waivers?**

(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

## Electronic Code of Federal Regulations:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;

(ii) Conditions in your jurisdiction are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:

(i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in §26.49;

(ii) Your level of DBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of your modified program; and

(iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

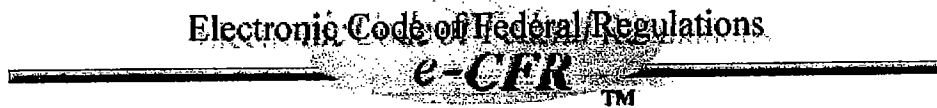
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**Title 49: Transportation**

**PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS**

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**Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting**

**§ 26.21 Who must have a DBE program?**

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA recipients receiving funds authorized by a statute to which this part applies;

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding \$250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000]

**§ 26.23 What is the requirement for a policy statement?**

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

**§ 26.25 What is the requirement for a liaison officer?**

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

**§ 26.27 What efforts must recipients make concerning DBE financial institutions?**

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

**§ 26.29 What prompt payment mechanisms must recipients have?**

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

**§ 26.31 What requirements pertain to the DBE directory?**

You must maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE. You must revise your directory at least annually and make updated information available to contractors and the public on request.

**§ 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?**

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with §26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

**§ 26.35 What role do business development and mentor-protégé programs have in the DBE program?**

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a "mentor-protégé" program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

**§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?**

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(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

(c) This mechanism must provide for a running tally of actual DBE attainments ( e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

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**Title 49: Transportation**

**PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS**

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**Subpart C—Goals, Good Faith Efforts, and Counting**

**§ 26.41 What is the role of the statutory 10 percent goal in this program?**

- (a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.
- (b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.
- (c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

**§ 26.43 Can recipients use set-asides or quotas as part of this program?**

- (a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.
- (b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

**§ 26.45 How do recipients set overall goals?**

- (a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.
- (2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in §26.1.
- (b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, [www.census.gov/epcd/cbp/view/cbpview.html](http://www.census.gov/epcd/cbp/view/cbpview.html).) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another DOT recipient.* If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment

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must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming fiscal year;

(2) If you are an FTA or FAA recipient, as a percentage of all FTA or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the forthcoming fiscal year. In appropriate cases, the FTA or FAA Administrator may permit you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects.

(f)(1) If you set overall goals on a fiscal year basis, you must submit them to the applicable DOT operating administration for review on August 1 of each year, unless the Administrator of the concerned operating administration establishes a different submission date.

(2) If you are an FTA or FAA recipient and set your overall goal on a project or grant basis, you must submit the goal for review at a time determined by the FTA or FAA Administrator.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see §26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with the your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

(g) In establishing an overall goal, you must provide for public participation. This public participation must include:

(1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

(2) A published notice announcing your proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and the Department will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent, and you must publish it in general circulation media and available minority-focused media and trade association publications.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into

group-specific goals.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 68 FR 35553, June 16, 2003]

#### **§ 26.47 Can recipients be penalized for failing to meet overall goals?**

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

#### **§ 26.49 How are overall goals established for transit vehicle manufacturers?**

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal. In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying §26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will perform during the fiscal year in question. You must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) As a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.

(d) As a recipient, you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

#### **§ 26.51 What means do recipients use to meet overall goals?**

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

(b) Race-neutral means include, but are not limited to, the following:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses,

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obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year.

*Example to Paragraph(f)(1):* Your overall goal for Year I is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year I.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

*Example to Paragraph(f)(2):* In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

*Example to Paragraph(f)(3):* Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

*Example to Paragraph(f)(4):* In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (i.e., from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two consecutive years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in §26.11.

**§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?**

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(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders/offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

(i) The names and addresses of DBE firms that will participate in the contract;

(ii) A description of the work that each DBE will perform;

(iii) The dollar amount of the participation of each DBE firm participating;

(iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

(v) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

(vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part); and

(3) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—

(i) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or

(ii) At any time before you commit yourself to the performance of the contract by the bidder/offeror, as a matter of responsibility.

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.

(d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.

(1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

(2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.

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(3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

(4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

(5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.

(e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

(f)(1) You must require that a prime contractor not terminate for convenience a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without your prior written consent.

(2) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.

(3) You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.

(g) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

### **§ 26.55 How is DBE participation counted toward goals?**

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a



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commercially useful function on that contract.

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

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

*Example to this paragraph(d)(5):* DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with

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Firm Z.

(6) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), 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.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) 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.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in §26.87(i).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

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**Title 49: Transportation**

**PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS**

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**Subpart D—Certification Standards**

**§ 26.61 How are burdens of proof allocated in the certification process?**

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups identified in §26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in §26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage ( see §26.67).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)

(e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

**§ 26.63 What rules govern group membership determinations?**

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see §26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate §26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

### **§ 26.65 What rules govern business size determinations?**

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$20.41 million.

(c) The Department adjusts the number in paragraph (b) of this section using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment. The Department issues a final rule by August 10 of each year making this adjustment.

[72 FR 15617, Apr. 2, 2007]

### **§ 26.67 What rules determine social and economic disadvantage?**

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2) (i) You must require each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$750,000.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

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(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documentation supporting it to any third party without the written consent of the submitter. *Provided*, that you must transmit this information to DOT in any certification appeal proceeding under §26.89 in which the disadvantaged status of the individual is in question.

(b) *Rebuttal of presumption of disadvantage.* (1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$750,000, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of §26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$750,000, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

(c) [Reserved]

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$750,000 shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of Appendix E of this part.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35554, June 16, 2003]

### § 26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.

(b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

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(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

(1) The owner's expertise must be—

(i) In a specialized field;

(ii) Of outstanding quality;

(iii) In areas critical to the firm's operations;

(iv) Indispensable to the firm's potential success;

(v) Specific to the type of work the firm performs; and

(vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual—

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided

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that no term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

(h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—

(i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(ii) Involved in the same or a similar line of business; or

(iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—

(i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because—

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

**§ 26.71 What rules govern determinations concerning control?**

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in §26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.



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(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

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

(k)(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

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(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You may not, in this situation, require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

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

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

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

### **§ 26.73 What are other rules affecting certification?**

(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor must you refuse to certify a firm solely on the basis that it is a newly formed firm.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though

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controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

*Example 1:* Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

*Example 2:* Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

*Example 3:* Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

*Example 4:* Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

*Example 5:* Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

*Example 6:* The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of §26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a DBE firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

(h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of §26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in §26.71.

(i) The following special rules apply to the certification of firms related to Alaska Native Corporations

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(ANCs).

(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form ( see Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program ( e.g., information that would appear in your DBE Directory).

(3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003]

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**Title 49: Transportation**

**PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS**

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**Subpart E—Certification Procedures**

**§ 26.81 What are the requirements for Unified Certification Programs?**

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

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(2) The UCP shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

(3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

(c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

(e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.

(g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this section), the information required by §26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

### **§ 26.83 What procedures do recipients follow in making certification decisions?**

(a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

(b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.

(c) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their résumés and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(2) If the firm is a corporation, analyze the ownership of stock in the firm;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including contracts it has received and work it has completed;

(5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

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(6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(7) Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.

(i) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.

(ii) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(iii) You must review all information on the form prior to making a decision about the eligibility of the firm.

(d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.

(e) When another DOT recipient has certified a firm, you have discretion to take any of the following actions:

(1) Certify the firm in reliance on the certification decision of the other recipient;

(2) Make an independent certification decision based on documentation provided by the other recipient, augmented by any additional information you require the applicant to provide; or

(3) Require the applicant to go through your application process without regard to the action of the other recipient.

(f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

(g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

(h) Once you have certified a DBE, it shall remain certified for a period of at least three years unless and until its certification has been removed through the procedures of §26.87. You may not require DBEs to reapply for certification as a condition of continuing to participate in the program during this three-year period, unless the factual basis on which the certification was made changes.

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to

have failed to cooperate under §26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003]

#### **§ 26.84 How do recipients process applications submitted pursuant to the DOT/SBA MOU?**

(a) When an SBA-certified firm applies for certification pursuant to the DOT/SBA MOU, you must accept the certification applications, forms and packages submitted by a firm to the SBA for either the 8(a) BD or SDB programs, in lieu of requiring the applicant firm to complete your own application forms and packages. The applicant may submit the package directly, or may request that the SBA forward the package to you. Pursuant to the MOU, the SBA will forward the package within thirty days.

(b) If necessary, you may request additional relevant information from the SBA. The SBA will provide this additional material within forty-five days of your written request.

(c) Before certifying a firm based on its 8(a) BD or SDB certification, you must conduct an on-site review of the firm ( see §26.83(c)(1)). If the SBA conducted an on-site review, you may rely on the SBA's report of the on-site review. In connection with this review, you may also request additional relevant information from the firm.

(d) Unless you determine, based on the on-site review and information obtained in connection with it, that the firm does not meet the eligibility requirements of Subpart D of this part, you must certify the firm.

(e) You are not required to process an application for certification from an SBA-certified firm having its principal place of business outside the state(s) in which you operate unless there is a report of a "home state" on-site review on which you may rely.

(f) You are not required to process an application for certification from an SBA-certified firm if the firm does not provide products or services that you use in your DOT-assisted programs or airport concessions.

[68 FR 35555, June 16, 2003]

#### **§ 26.85 How do recipients respond to requests from DBE-certified firms or the SBA made pursuant to the DOT/SBA MOU?**

(a) Upon receipt of a signed, written request from a DBE-certified firm, you must transfer to the SBA a copy of the firm's application package. You must transfer this information within thirty days of receipt of the request.



(b) If necessary, the SBA may make a written request to the recipient for additional materials ( e.g., the report of the on-site review). You must provide a copy of this material to the SBA within forty-five days of the additional request.

(c) You must provide appropriate assistance to SBA-certified firms, including providing information pertaining to the DBE application process, filing locations, required documentation and status of applications.

[68 FR 35555, June 16, 2003]

#### **§ 26.86 What rules govern recipients' denials of initial requests for certification?**

(a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.

(b) When you deny DBE certification to a firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

(c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm.

(d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under §26.89.

[64 FR 5126, Feb. 2, 1999. Redesignated and amended at 68 FR 35555, June 16, 2003]

#### **§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?**

(a) *Ineligibility complaints.* (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in §26.109(b).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(b) *Recipient-initiated proceedings.* If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) *DOT directive to initiate proceeding.* (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating

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administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.

(2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

(3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) *Hearing.* When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

(1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under §26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

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

(e) *Separation of functions.* You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

(1) Your method of implementing this requirement must be made part of your DBE program.

(2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.

(3) Before a UCP is operational in its state, a small airport or small transit authority (i.e., an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) *Grounds for decision.* You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;

(4) A change in the certification standards or requirements of the Department since you certified the firm; or

(5) A documented finding that your determination to certify the firm was factually erroneous.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision

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and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

(h) When you decertify a DBE firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

(i) *Status of firm during proceeding.* (1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

(3) *Exception:* If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

(k) *Availability of appeal.* When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

### **§ 26.89 What is the process for certification appeals to the Department of Transportation?**

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms applying pursuant to the DOT/SBA MOU, you may make an administrative appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in §26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(3) Send appeals to the following address: Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of

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the recipient's final decision, including information and arguments concerning why the recipient's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.

(1) If you are an appellant who is a firm which has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).

(2) If you are an appellant other than one described in paragraph (c)(1) of this section, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in paragraph (c)(1) of this section. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

(e) The Department makes its decision based solely on the entire administrative record. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

(f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

(1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

(2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding ( see paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35556, June 16, 2003; 73 FR 33329, June 12, 2008]

## **§ 26.91 What actions do recipients take following DOT certification appeal decisions?**

(a) If you are the recipient from whose action an appeal under §26.89 is taken, the decision is binding. It is not binding on other recipients.

(b) If you are a recipient to which a DOT determination under §26.89 is applicable, you must take the following action:

(1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in §26.87(i) take effect.

(2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in §26.87.

(3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

(4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.

(5) If the Department affirms your determination, no further action is necessary.

(c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under §26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

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**Title 49: Transportation**

**PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF  
TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS**

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**Subpart F—Compliance and Enforcement**

**§ 26.101 What compliance procedures apply to recipients?**

(a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

(b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

**§ 26.103 What enforcement actions apply in FHWA and FTA programs?**

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

(a) *Noncompliance complaints.* Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in §26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

(b) *Compliance reviews.* The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(c) *Reasonable cause notice.* If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.

(d) *Conciliation.* (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.

(3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.

(4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) *Enforcement actions.* (1) Enforcement actions are taken as provided in this subpart.

(2) Applicable findings in enforcement proceedings are binding on all DOT offices.

#### **§ 26.105 What enforcement actions apply in FAA programs?**

(a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

(b) The provisions of §26.103(b) and this section apply to enforcement actions in FAA programs.

(c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

#### **§ 26.107 What enforcement actions apply to firms participating in the DBE program?**

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

(d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

(e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

**§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?**

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

(2) Notwithstanding any provision of Federal or state law, you must not release information that may be reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, you must transmit this information to DOT in any certification appeal proceeding under §26.89 in which the disadvantaged status of the individual is in question.

(b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

(c) *Cooperation.* All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

(d) *Intimidation and retaliation.* If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

**Appendix A to Part 26—Guidance Concerning Good Faith Efforts**

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e.,



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obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the

apparent successful bidder having made good faith efforts.

## Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

### INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

1. Indicate the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.
2. If you are an FAA recipient, indicate the relevant AIP Number covered by this report. If more than one, attach a separate sheet.
3. Specify the Federal fiscal year (i.e., October 1 – September 30) in which the covered reporting period falls.
4. State the date of submission of this report.
5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. If this report is due June 1, data should cover October 1 – March 31. If this report is due December 1, data should cover April 1 – September 30. If this report is due to the FAA, data should cover the entire year.
6. Name of the recipient.
7. State your annual DBE goal(s) established for the Federal fiscal year of this report to be submitted to and approved by the relevant OA. Your Overall Goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral Goals (both of which include gender-conscious/neutral goals). The Race Conscious Goal portion should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a Race Conscious measure. The Race Neutral Goal portion should include programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.
- 8-9. The amounts in items 8(A)-9(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.
- 8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(B). Provide the total number of all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded to certified DBEs during this reporting period.
- 8(D). From the total number of prime contracts awarded in item 8(B), specify the number awarded to certified DBEs during this reporting period.
- 8(E). From the total dollars awarded in 8(C), provide the dollar amount awarded to DBEs through the use of Race Conscious methods. See the definition of Race Conscious Goal in item 7 and the explanation of project types in item 8 to include in your calculation.
- 8(F). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Conscious methods.
- 8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral Goal in item 7 and the explanation of project types in item 8 to include.
- 8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Neutral methods.
- 8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.
- 9(A)-9(I). Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.
- 10(A)-11(I). For all DBEs awarded prime contracts and awarded or committed subcontracts as indicated in 8(C)-(D) and 9(C)-(D), break the data down further by total dollar amount as well as the number of all contracts going to each ethnic group as well as to non-minority women. The "Other" category includes those DBEs who are not members of the presumptively disadvantaged groups already listed, but who are determined eligible for the DBE program on an individual basis (e.g. a Caucasian male with a disability). The TOTALS value in 10(I) should equal the sum of 8(C) plus 9(C), and similarly, the TOTALS value in 11(I) should equal the sum of 8(D) plus 9(D). Column I should only be filled out if this report is due on December 1, as indicated in item 5. The values for this column are derived by adding the values reported in column H in your first report with the values reported in this second report.
- 12(A). Provide the total number of prime contracts completed during this reporting period that had Race Conscious goals. Race Conscious contracts are those with contract goals or another Race Conscious measure.
- 12(B). Provide the total dollar value of prime contracts completed this reporting period that had Race Conscious goals.
- 12(C). Provide the total dollar amount of DBE participation on all Race Conscious prime contracts completed this reporting period that was necessary to meet the contract goals on them. This applies only to Race Conscious prime contracts.
- 12(D). Provide the actual total DBE participation in dollars on the race conscious prime contracts completed this reporting period.
- 12(E). Of all the prime contracts completed this reporting period, calculate the percentage of DBE participation. Divide the actual total dollar amount in 12(D) by the total dollar value provided in 12(B) to derive this percentage. Round to the nearest tenth.
- 13(A)-13(E). Items 13(A)-13(E) are derived in the same manner as items 12(A)-12(E), except these figures should be based on Race Neutral prime contracts (i.e. those with no race conscious measures).
- 14(A)-14(E). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.
15. Name of the Authorized Representative preparing this form.
16. Signature of the Authorized Representative.
17. Phone number of the Authorized Representative.
18. Fax number of the Authorized Representative.

\*\*Submit your completed report to your Regional or Division Office.

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[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

## Appendix C to Part 26—DBE Business Development Program Guidelines

(A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.

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criteria contained in part 26.

(C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.

(D) The business plan should contain at least the following:

(1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.

(2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.

(3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;

(4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and

(5) Such other information as the recipient may require.

(E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

(1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;

(2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;

(3) The types of contract opportunities being sought, based on the firm's primary line of business; and

(4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary

in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.

(J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.

(K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:

- (1) Profitability;
- (2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
- (3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;
- (4) Ability to obtain bonding;
- (5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and
- (6) Good management capacity and capability.

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

(M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

#### **Appendix D to Part 26—Mentor-Protégé Program Guidelines**

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such

services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

## **Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage**

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

### **Social Disadvantage**

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) *Education.* Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) *Employment.* Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) *Business history.* The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities

have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

#### Economic Disadvantage

(A) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) *Submission of narrative and financial information.*

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) *Factors to be considered.* In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.*

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]

## Appendix F to Part 26—Uniform Certification Application Form

### INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM UNIFORM CERTIFICATION APPLICATION

**NOTE:** If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

#### Section 1: CERTIFICATION INFORMATION

##### A. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

**NOTE:** If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

##### B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

#### Section 2: GENERAL INFORMATION

##### A. Contact Information

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's website address, if any.
- (8) State the street address of your firm (i.e., the physical location of its offices — not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

##### B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.

- (4) State the date on which you and/or each other owner took ownership of the firm.

- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.

- (6) Check the appropriate box that indicates whether your firm is "for profit."

**NOTE:** If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation or charter. If you checked "Other," briefly explain in the space provided.

- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.

- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.

- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

##### C. Relationships with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.

- (2) Check the appropriate box that indicates whether at present, or at any time in the past:

- (a) Your firm has been a subsidiary of any other firm;
- (b) Your firm consisted of a partnership in which one or more of the partners are other firms;
- (c) Your firm has owned any percentage of any other firm; and
- (d) Your firm has had any subsidiaries of its own.

- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

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- (4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

**D. Immediate Family Member Businesses**

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

**Section 3: OWNERSHIP**

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

**A. Background Information**

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.
- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

**B. Ownership Interest**

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.

- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function or title held in that business.

- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's function or title held in that business. Briefly describe the nature of the business relationship in the space provided.

**C. Disadvantaged Status**

**NOTE:** You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

**Section 4: CONTROL**

**A. Identify your firm's Officers and Board of Directors:**

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

**B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:**

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- (1) Making financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
  - (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
  - (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
  - (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
  - (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
  - (6) Office management;
  - (7) Marketing and sales;
  - (8) Purchasing of major equipment;
  - (9) Signing company checks (for any purpose); and
  - (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
- (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.
- C. Indicate your firm's inventory in the following categories:
- (1) **Equipment**  
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
  - (2) **Vehicles**  
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
  - (3) **Office Space**  
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
  - (4) **Storage Space**  
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.
- D. Does your firm rely on any other firm for management functions or employee payroll?  
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered
- "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.
- E. **Financial Information**
- (1) **Banking Information**
    - (a) State the name of your firm's bank.
    - (b) State the main phone number of your firm's bank branch.
    - (c) State the address of your firm's bank branch.
  - (2) **Bonding Information**
    - (a) State your firm's Binder Number.
    - (b) State the name of your firm's bond agent and/or broker.
    - (c) State your agent's/broker's phone number.
    - (d) State your agent's/broker's address.
    - (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.
- F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:  
State the name and address of each source, the name of the person securing the loan, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.
- G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:  
Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.
- H. List current licenses/permits held by any owner or employee of your firm.  
List the name of each person in your firm who holds a professional license or permit, the type of license or permit, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.
- I. List the three largest contracts completed by your firm in the past three years, if any.  
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.
- J. List the three largest active jobs on which your firm is currently working.  
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.
- AFFIDAVIT & SIGNATURE**  
Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

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DISADVANTAGED BUSINESS ENTERPRISE PROGRAM  
49 C.F.R. PART 26

**UNIFORM CERTIFICATION APPLICATION**

**ROADMAP FOR APPLICANTS**

① **Should I apply?**

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$17.42 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

② **Is there an easier way to apply?**

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form.  
**NOTE:** You must still meet the requirements for the DBE program, including undergoing an on-site review.

③ **Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**

④ **Where can I find more information?**

- U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/index/tableofsize.html> (provides a listing of NAICS codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

**Section 1: CERTIFICATION INFORMATION****A. Prior/Other Certifications**

Is your firm currently certified for any of the following programs? (If Yes, check appropriate box(es))	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit?
		<input type="checkbox"/> Yes, on / / State: <input type="checkbox"/> No
	<input type="checkbox"/> 8(a) <input type="checkbox"/> SDB	<b>STOP!</b> If you checked either the 8(a) or SDB box, you may not have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.

**B. Prior/Other Applications and Privileges**

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?

☐ Yes, on / / ☐ No

If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

**Section 2: GENERAL INFORMATION****A. Contact Information**

(1) Contact person and Title:		(2) Legal name of firm:	
(3) Phone #:	(4) Other Phone #:	(5) Fax #:	
(6) E-mail:		(7) Website (if have one):	
(8) Street address of firm (No P.O. Box):	City:	County/Parish:	State: Zip:
(9) Mailing address of firm (if different):	City:	County/Parish:	State: Zip:

**B. Business Profile**

(1) Describe the primary activities of your firm:		(2) Federal Tax ID (if any):
(3) This firm was established on / /		(4) I/We have owned this firm since: / /
(5) Method of acquisition (check all that apply): <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other (explain)		
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No		<b>STOP!</b> If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.

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(7) Type of firm (check all that apply):		
<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other, Describe: _____		
(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain: _____		
(9) Number of employees: Full-time	Part-time	Total
(10) Specify the gross receipts of the firm for the last 3 years: Year _____		Total receipts \$ _____
Year _____		Total receipts \$ _____
Year _____		Total receipts \$ _____

**C. Relationships with Other Businesses**

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Other Firm's name: _____ Explain nature of shared facilities: _____	
(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No
	(b) consisted of a partnership in which one or more of the partners are other firms? <input type="checkbox"/> Yes <input type="checkbox"/> No
	(c) owned any percentage of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No
	(d) had any subsidiaries? <input type="checkbox"/> Yes <input type="checkbox"/> No
(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? <input type="checkbox"/> Yes <input type="checkbox"/> No	
(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (attach extra sheets, if needed):	
<u>Name</u>	<u>Address</u> <u>Type of Business</u>
1.	
2.	
3.	

**D. Immediate Family Member Businesses**

Do any of your immediate family members own or manage another company? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If Yes, then list (attach extra sheets, if needed):				
<u>Name</u>	<u>Relationship</u>	<u>Company</u>	<u>Type of Business</u>	<u>Own or Manage?</u>
1.				
2.				

**Section 3: OWNERSHIP**

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (If more than one owner, attach separate sheets for each additional owner):

**A. Background Information**

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address (street and number):		City: State: Zip:
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership (Check all that apply):	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American	
(8) Lawfully Admitted Permanent Resident:	<input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian	
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Other (specify):	

**B. Ownership Interest**

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned:		Cash	\$
(4) Familial relationship to other owners:		Real Estate	\$
		Equipment	\$
		Other	\$
(5) Shares of Stock:      Number      Percentage      Class      Date acquired      Method Acquired			
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business:      Function/Title:			
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business:      Function/Title:			
Nature of Business Relationship:			

**C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged).**

(1) What is the Personal Net Worth (PNW) of this owner(s) applying for DBE qualification? (Use and attach the Personal Net Worth calculator form at the end of this application; attach additional sheets if more than one owner is applying)
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No
If Yes, explain (attach additional sheets if needed):

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**Section 4: CONTROL****A. Identify your firm's Officers & Board of Directors** *(If additional space is required, attach a separate sheet(s))*

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify for each: Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Business: \_\_\_\_\_ Function: \_\_\_\_\_

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? ☐ Yes ☐ No

If Yes, identify for each: Firm Name: \_\_\_\_\_ Person: \_\_\_\_\_  
 Nature of Business Relationship: \_\_\_\_\_

**B. Identify your firm's management personnel who control your firm in the following areas** *(If more than two persons, attach a separate sheet(s))*

	Name	Title	Ethnicity	Gender
(1) Financial Decisions (responsibility for acquisition of loans of credit, surety bonding, supplies, etc.)	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

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(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? ☐ Yes ☐ No  
 If Yes, identify for each: Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Business: \_\_\_\_\_ Function: \_\_\_\_\_

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investment, equipment, leases, personnel sharing, etc.)?  
☐ Yes ☐ No

If Yes, identify for each: Firm Name: \_\_\_\_\_ Person: \_\_\_\_\_  
 Nature of Business Relationship: \_\_\_\_\_

**C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):**

**(1) Equipment**

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

**(2) Vehicles**

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

**(3) Office Space**

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

**(4) Storage Space**

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

**D. Does your firm rely on any other firm for management functions or employee payroll? ☐ Yes ☐ No**

If Yes, explain:

**E. Financial Information**

**(1) Banking Information:**

(a) Name of bank: \_\_\_\_\_ (b) Phone No: ( ) \_\_\_\_\_  
 (c) Address of bank: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_



(2) Bonding Information: If you have bonding capacity, identify: (a) Binder No: \_\_\_\_\_  
 (b) Name of agent/broker \_\_\_\_\_ (c) Phone No: ( ) \_\_\_\_\_  
 (d) Address of agent/broker: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 (e) Bonding limit: Aggregate limit \$ \_\_\_\_\_ Project limit \$ \_\_\_\_\_

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (e.g., contractor, engineer, architect, etc.) (attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

Electronic Code of Federal Regulations:

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

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**DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST**  
In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

**All Applicants**

- ☐ Work experience resumes (include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- ☐ Personal Financial Statement (form available with this application)
- ☐ Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- ☐ Your firm's tax returns (gross receipts) and all related schedules for the past three years
- ☐ Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- ☐ Your firm's signed loan agreements, security agreements, and bonding forms
- ☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ☐ List of equipment leased and signed lease agreements
- ☐ List of construction equipment and/or vehicles owned and titles/proof of ownership
- ☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- ☐ Year-end balance sheets and income statements for the past three years (or life of firm, if less than three years); a new business must provide a current balance sheet
- ☐ All relevant licenses, license renewal forms, permits, and haul authority forms
- ☐ DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- ☐ Bank authorization and signatory cards
- ☐ Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ☐ Trust agreements held by any owner claiming disadvantaged status, if any

**Partnership or Joint Venture**

- ☐ Original and any amended Partnership or Joint Venture Agreements

**Corporation or LLC**

- ☐ Official Articles of Incorporation (signed by the state official)
- ☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ☐ Shareholders' Agreement
- ☐ Minutes of all stockholders and board of directors meetings
- ☐ Corporate by-laws and any amendments
- ☐ Corporate bank resolution and bank signature cards
- ☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

**Trucking Company**

- ☐ Documented proof of ownership of the company
- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Title(s) and registration certificate(s) for each truck owned or operated by your firm
- ☐ List of U.S. DOT numbers for each truck owned or operated by your firm

**Regular Dealer**

- ☐ Proof of warehouse ownership or lease
- ☐ List of product lines carried
- ☐ List of distribution equipment owned and/or leased

**NOTE:** The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.

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**AFFIDAVIT OF CERTIFICATION**

*This form must be signed and notarized for each owner upon which disadvantaged status is relied.*

**A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.**

I \_\_\_\_\_ (full name printed), swear or affirm under penalty of law that I am \_\_\_\_\_ (title) of applicant firm \_\_\_\_\_ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female      Black American      Hispanic American  
Native American      Asian- Pacific American  
Subcontinent Asian American  
Other (specify) \_\_\_\_\_

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## Electronic Code of Federal Regulations:

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on \_\_\_\_\_ (Date)

Signature \_\_\_\_\_  
(DBE Applicant)

### NOTARY CERTIFICATE

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[68 FR 35559, June 16, 2003]

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**DEPARTMENT OF TRANSPORTATION**

District 11, MS -132  
4050 Taylor Street  
San Diego, CA 92110  
PHONE (619) 278-3756  
FAX (619) 220-5432



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Be energy efficient!*

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JUL 11 2008

MTS

July 7, 2008

Mr. Paul Jablonski  
MTS  
1255 Imperial Avenue Ste. 1000  
San Diego, CA 92101

Dear Mr. Jablonski,

RE: FEDERAL-AID CONTRACTS WITH DISADVANTAGED BUSINESS  
ENTERPRISE (DBE) GOALS

The purpose of this letter is to remind local agencies that awarding federal-aid contracts with DBE goals and/or good faith effort requirements under the current Race Neutral DBE Program renders those projects **ineligible** for federal reimbursement.

The Department of Transportation (Caltrans) and local agencies have been implementing a Race Neutral DBE Program since May 1, 2006. The Race Neutral DBE Program requires implementing only Race Neutral measures to meet the annual overall goal. To ensure that you and your staff are familiar with the Race Neutral implementation, refer to the latest version of the Local Assistance Procedures Manual (LAPM), specifically Chapters 9, 10 and 12 located at:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm>

Awarding federal-aid contracts with DBE goals and requiring good faith efforts on the part of bidders to meet the DBE goal are Race Conscious measures and are prohibited under the current DBE Race Neutral Program. Where local agencies have awarded federal-aid contracts that include DBE contract goals and/or good faith effort requirements after May 1, 2006, those projects are ineligible for federal reimbursement. Violations will result in de-obligation of all federal funds for the phase of work in which the violation occurred. Any expended funds must be returned.

Public Works Directors/ City Engineers  
July 7, 2008,  
Page 2

If a local agency completes a local disparity study, the results will apply to contracts that are funded solely with local funds.

The appropriate race neutral construction contract specifications must be used in all federal-aid contracts at this time. To ensure that your local agency uses the latest construction contract specifications available, always refer to the construction contract specifications online located at the Caltrans, Division of Local Assistance website at:

[http://www.dot.ca.gov/hq/LocalPrograms/sam\\_boil/sam\\_boil.htm](http://www.dot.ca.gov/hq/LocalPrograms/sam_boil/sam_boil.htm)

For federal-aid consultant contracts, please refer to Chapter 10 of the LAPM, Exhibits 10-I *Notice to Bidders/Proposers Disadvantaged Business Enterprise Information*, and 10-J *Standard Agreement for Subcontractor/DBE Participation*.

Timely reporting of DBE participation both at award and at the completion of the contract is still required—even if there is zero percent participation. If you have any questions, please call Barbara Balch DBE Coordinator, at (619) 220-5337.

Sincerely,



ERWIN GOJUANGCO, CHIEF  
District Local Programs

c: (Disadvantaged Business Enterprise Liaison Officers)



1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
619.231.1466, FAX: 619.234.3407

## Agenda

Item No. 34

JOINT MEETING OF THE BOARD OF DIRECTORS  
for the  
Metropolitan Transit System,  
San Diego Transit Corporation, and  
San Diego Trolley, Inc.

January 15, 2009

### SUBJECT:

MTS: APPROVAL OF DESIGN MODIFICATIONS AT THE OLD TOWN TRANSIT CENTER AS MANDATED AND APPROVED BY THE CALIFORNIA PUBLIC UTILITIES COMMISSION

### RECOMMENDATION:

That the Board consider and approve the proposed design for improvements at the Old Town Transit Center (OTTC) as mandated and approved by the California Public Utilities Commission (CPUC).

#### Budget Impact

The engineer's estimate for the construction of the proposed improvements is approximately \$323,000.

### DISCUSSION:

OTTC is a four-track, multimodal facility that provides regional transportation access to MTS rail and bus and the North County Transit District (NCTD) Coaster. Other transportation providers use the tracks at OTTC but do not make service stops, including Amtrak Surfliner and Burlington Northern Santa Fe (BNSF) freight services. While all trolley and Coaster services make station stops at the Taylor Street crossing in both directions, Amtrak and BNSF temporarily operate through the station at speeds of approximately 40 miles per hour. This is an improvement over the prior 65 and 45 mph maximum speed limit at which these respective operators were traversing OTTC. The PUC supports slower speeds but has stated that it does not have authority to mandate slower speeds for rail operators in the Federal Railroad Administration's jurisdiction.



Metropolitan Transit System (MTS) is a California public agency and is comprised of San Diego Transit Corporation and San Diego Trolley, Inc. nonprofit public benefit corporations, in cooperation with Chula Vista Transit and National City Transit. MTS is the taxicab administrator for eight cities and the owner of the San Diego and Arizona Eastern Railway Company. MTS member agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.



In March of 2006, staff began participating with regional services and regulatory agencies to improve pedestrian and vehicular flow at the station. As part of this group, an evaluation of the station was conducted and submitted to all participants for review and comments. Various design elements were discussed during this process including:

1. Adding additional signage directing pedestrians to an underground tunnel rather than crossing the sidewalk along Taylor Street;
2. Relocating the pull in location for Coaster and trolley services to redirect the pedestrian flow;
3. Installing pedestrian swing gates;
4. Redesigning the bus entrance to the westerly parking lot to redirect pedestrian flow;
5. Permanent slow order for all heavy rail trains; and
6. Installing additional warning devices and fencing.

In July of 2006, MTS forwarded comments to the PUC's Rail Transit and Crossing Branch's (RTCB) OTTC Task Force regarding the Task Force's draft report on safety at the transit center. Several rounds of comments from MTS, the City of San Diego, the California Department of Transportation (Caltrans), and North County Transit District (NCTD) followed this report. Over the next six months the Chairman and CEO of MTS participated in several meetings with the Chairman and staff of the PUC. The purpose of the meetings was to discuss the best design options for the improvements at OTTC.

The recommendations contained in the RTCB's July 2006 "Taylor Street Crossing Rail Safety Task Force" and the various reports prepared by the PUC focus on pedestrian controls. Although MTS urges speed control as an important part of the solution, it also recognizes that improved pedestrian controls are required. MTS has already implemented some of the pedestrian controls suggested by the RTCB Task Force and the PUC.

In addition, MTS commissioned a study by DMJM Harris, a transportation and infrastructure engineering firm, to analyze and evaluate the service dynamics, pedestrian flows (transit and nontransit), transit and bus patron transfer activity, pedestrian circulation, visibility and obstacle constraints, and train activity in and around OTTC, including the Taylor Street Warning System activation times and pedestrian accident patterns and history. Moreover, DMJM Harris analyzed and evaluated issues, design options, and modifications that had been raised by the PUC. DMJM Harris' objectives were to evaluate existing physical and operational conditions and characteristics, to make field observations regarding pedestrian volumes in and around the facility, "risky behavior" tendencies by pedestrians, as well as typical train arrival and departure characteristics. Finally, DMJM was to identify mitigation measures for any observed deficiencies based on the facility's accident history.

On January 14, 2008, DMJM Harris issued its "Old Town Transit Center Taylor Street Crossing Evaluation" final report ("DMJM Harris Report"). A copy of this study is attached to the agenda item as Attachment A. The DMJM Harris Report reached a number of conclusions (Section 5.5 at p. 63) and made a series of recommendations (Section 5.6 at p. 65).

The DMJM Harris Report was transmitted to the PUC for evaluation and review. In addition, in a letter to the PUC dated April 24, 2008, MTS further explained those proposed safety measures contained in the DMJM Harris Report. A copy of that letter is

attached to the agenda item as Attachment B. MTS is required to obtain PUC approval of its proposed safety modifications at OTTC.

On, June 19, 2008, the PUC issued comments and recommendations (Attachment C) for modifications to those measures recommended in the DMJM Harris Report. Among the recommendations in that letter was that MTS:

1. relocate the existing bus entrance located on Taylor Street to a point approximately 50 feet west of the current location while still providing an adequate turning radius for MTS buses to turn right off of Pacific Highway and enter the parking lot bus area without drivers engaging in an unsafe wide swing; and
2. close the existing opening to the bus boarding area from Taylor Street located just west of the existing crossing-protection equipment.

The proposed design for these improvements is included with this agenda item as Attachment D.

MTS and the PUC continued to discuss those safety measures detailed in the DMJM Harris Report and MTS's April 24, 2008, letter and recommended and/or mandated by the PUC. These discussions are memorialized in letters from the PUC dated September 16, 2008, and October 7, 2008, copies of which are attached to this agenda item as Attachments E and F.


As demonstrated in the October 7, 2008, letter from the PUC to MTS, the PUC and MTS reached an agreement on those safety measures that should be implemented at the Taylor Street crossing and OTTC. Specifically, MTS and the PUC agreed *"to implement and support all MTS-proposed safety measures with RTCB-recommended modifications, except for installation of pedestrian gates and swing gates at the Taylor Street crossing."* The PUC required immediate implementation of a few of the key safety measures as follows:

1. Permanently close the center platform access way to Taylor Street to shift the majority of pedestrian traffic to the pedestrian tunnel thereby reducing pedestrian traffic accessing Taylor Street by approximately 70%.
2. Install fencing modifications on the center platform including: extending fencing along the center platform to further deter pedestrian trespassing onto the NCTD tracks as a means to access Taylor Street but to allow MTS to retain use of the eastern half of the platform when running longer train consists during special events; and extending fencing along the western edge of the center platform from the existing fence thereby closing access to the Taylor Street access way south toward the first kiosk.
3. Close existing openings in the fence along Taylor Street to the bus boarding area in west parking lot from Taylor Street located west of crossing warning devices to the west platform (Amtrak Platform) from the Taylor Street sidewalk.
4. Modify existing Standard No. 8 (Flashing Light Signals as described in General Order 75-D) warning devices. In addition, MTS installed one pair of back flashers onto the existing Standard No. 8 located on the south Taylor Street sidewalk just east of the MTS tracks and aimed them east. Lastly, MTS installed one pair of back flashers onto the existing Standard No. 8 on the north Taylor Street sidewalk just west of the heavy rail tracks and aimed them east. These modifications enhanced the visibility of the pedestrian warning devices at the Taylor Street crossing.

With the agreement and approval of the PUC in hand as evidenced by the PUC's October 7, 2008 letter, MTS asked DMJM Harris to review again the overall design of those safety measures proposed for OTTC and Taylor Street. This design included those original DMJM Harris Report recommendations, with RTCB recommended modifications, and PUC agreed and mandated modifications. This design did not include the installation of pedestrian gates and swing gates at the Taylor Street crossing as originally proposed in the DMJM Harris Report. DMJM Harris reviewed the overall design and concluded on January 7, 2009, that the design *"should be implemented as quickly as possible. Implementation of corrective actions to curtail pedestrian risky behavior and reduce the incident potential of the at-grade crossing is moving in the right direction and would be in best interest of patrons."* DMJM's letter to that effect is included with this agenda item as Attachment G.

In abundance of caution and to ensure the proposed design modifications as recommended by DMJM Harris with RTCB-recommended modifications and PUC agreed and mandated modifications are reasonable, MTS's Russ Desai, P.E. reviewed the proposed design. Mr. Desai is MTS's in-house engineer who has worked on trolley construction projects for 28 years. Mr. Desai has prepared a memorandum to the Board outlining his review of the project and his conclusions that the overall current proposed design is reasonable. Mr. Desai's memorandum is included in the agenda packet as Attachment H.

Staff is therefore recommending that the Board of Directors approve the proposed design for improvements at the Old Town Transit Center as recommended by DMJM Harris, with RTCB recommended modifications, as agreed to, approved, and mandated by the CPUC. The next steps would be for MTS to issue an Invitation for Bids to award a construction contract for the completion of the improvements. That contract would be brought back to the Board for award and approval in approximately three to four months.



Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Tiffany Lorenzen, 619.557.4512, [Tiffany.Lorenzen@sdmts.com](mailto:Tiffany.Lorenzen@sdmts.com)

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Attachments: A. DMJM Harris Report  
B. April 24, 2008, Letter from MTS to PUC  
C. June 19, 2008, Letter from PUC to MTS  
D. Proposed Design  
E. September 16, 2008, letter from PUC to MTS  
F. October 7, 2008, Letter from PUC to MTS  
G. January 7, 2009, Letter from DMJM Harris to MTS  
H. Memorandum from P.E. Desai

**Board Only  
(Due to Volume)**



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## Agenda

Item No. 45

JOINT MEETING OF THE BOARD OF DIRECTORS  
for the  
Metropolitan Transit System,  
San Diego Transit Corporation, and  
San Diego Trolley, Inc.

FIN 310.2 (PC 50601)

January 15, 2009

### SUBJECT:

MTS: YEAR-TO-DATE OPERATIONS BUDGET STATUS REPORT THROUGH  
OCTOBER 2008

### RECOMMENDATION:

That the Board of Directors receive the MTS Year-to-Date Operations Budget Status  
Report through October 2008.

#### Budget Impact

None at this time.

### DISCUSSION:

This report summarizes MTS's year-to-date operating results through October 2008 compared to the Board approved budget. Attachment A-1 combines the operations, administration, and other activities results through October 2008. Attachment A-2 details the year-to-date October 2008 combined operations results, and Attachments A-3 to A-8 present budget comparisons for each MTS operation. Attachment A-9 details budget comparisons for MTS Administration, and A-10 provides year-to-date October 2008 results for MTS's other activities (Taxicab/San Diego and Arizona Eastern Railway Company).

### MTS NET-OPERATING SUBSIDY RESULTS

As indicated within Attachment A-1, the year-to-date October 2008 MTS net-operating subsidy favorable variance totaled \$3,207,000 (7.3%). Operations produced a



Metropolitan Transit System (MTS) is comprised of the Metropolitan Transit Development Board (MTDB) a California public agency, San Diego Transit Corp., and San Diego Trolley, Inc., in cooperation with Chula Vista Transit and National City Transit. MTS is Taxicab Administrator for eight cities. MTDB is owner of the San Diego and Arizona Eastern Railway Company. MTDB Member Agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

\$3,523,000 (7.9%) favorable variance, and the administrative/other activities areas were unfavorable by \$316,000.

## MTS COMBINED RESULTS

### Operating Revenues

Year-to-date combined operating revenues through October 2008 were \$32,657,000 compared to the year-to-date budget of \$29,805,000, which represents a \$2,852,000 favorable variance. This is due to higher passenger revenues (\$3,369,000) primarily within transit services (\$1,121,000) and contracted fixed-route services (\$1,029,000). Consolidated other operating revenues were unfavorable by \$517,000 due primarily to unfavorable variances in interest income and advertising revenue.

### Expenses

Year-to-date combined expenses through October 2008 were \$73,316,000 compared to the year-to-date budget of \$73,670,000, which resulted in a \$355,000 (0.5%) favorable variance.

Personnel Costs. Year-to-date personnel-related costs totaled \$33,469,000 compared to a year-to-date budgetary figure of \$34,163,000 producing a favorable variance of \$694,000 (2.0%). This is primarily due to favorable variances within operator wages and other fringe benefits within transit services.

Outside Services and Purchased Transportation. Total outside services year-to-date expenses totaled \$24,299,000 compared to a budget of \$24,950,000, resulting in a year-to-date favorable variance of \$651,000 (2.6%). This is primarily due to purchased transportation within contracted fixed-route services.

Materials and Supplies. Total year-to-date materials and supplies expenses totaled \$2,756,000 compared to a budgetary figure of \$2,524,000, which resulted in an unfavorable expense variance of \$232,000 (-9.2%). This is primarily due to materials and supplies costs within transit services and rail operations.

Energy. Total year-to-date energy costs were \$11,101,000 compared to the budget of \$10,359,000, which resulted in a year-to-date unfavorable variance of \$742,000 (-7.2%). This unfavorable variance is primarily due to compressed natural gas (-\$417,000) and diesel (-\$252,000). Year-to-date compressed natural gas prices averaged \$1.652 per therm compared to the budgetary rate of \$1.470 per therm. Year-to-date diesel prices averaged \$3.752 per gallon compared to a budgetary rate of \$3.290 per gallon.

Although energy is unfavorable through October year-to-date, the month had a favorable variance of \$112,000, and staff foresees a positive favorable variance for the remainder of the fiscal year.

Risk Management. Total year-to-date expenses for risk management were \$1,195,000 compared to the year-to-date budget of \$1,198,000, which resulted in a favorable variance totaling \$3,000 (0.3%).

General and Administrative. Year-to-date general and administrative costs, including vehicle and facilities leases, were \$19,000 (-4.1%) unfavorable to budget totaling \$497,000 through October 2008 compared to a year-to-date budget of \$477,000.

#### YEAR-TO-DATE SUMMARY

The October 2008 year-to-date net-operating subsidy totaled a favorable variance of \$3,207,000 (7.3%) and was produced by several factors. These factors include favorable variances in passenger revenue, personnel costs, and outside services, which were partially offset by energy expenses.



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Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Larry Marinesi, 619.557.4542, [Larry.Marinesi@sdmts.com](mailto:Larry.Marinesi@sdmts.com)

JAN15-09.45.OCT OPS BUDGET RPT.MTHOMPSON.doc

Attachment: A. Comparison to Budget

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**

**MTS**

Att. A, AI 45, 1/15/09

**CONSOLIDATED**

**COMPARISON TO BUDGET - FISCAL YEAR 2009**

**OCTOBER 31, 2008**

**(in \$000's)**

	<b>YEAR TO DATE</b>			
	<b>ACTUAL</b>	<b>BUDGET</b>	<b>VARIANCE</b>	<b>% VARIANCE</b>
Passenger Revenue	\$ 30,327	\$ 26,959	\$ 3,369	12.5%
Other Revenue	2,329	2,846	(517)	-18.2%
<b>Total Operating Revenue</b>	<b>\$ 32,657</b>	<b>\$ 29,805</b>	<b>\$ 2,852</b>	<b>9.6%</b>
Personnel costs	\$ 33,469	\$ 34,163	\$ 694	2.0%
Outside services	24,299	24,950	651	2.6%
Transit operations funding	-	-	-	-
Materials and supplies	2,756	2,524	(232)	-9.2%
Energy	11,101	10,359	(742)	-7.2%
Risk management	1,195	1,198	3	0.3%
General & administrative	386	290	(96)	-33.3%
Vehicle/facility leases	110	187	77	41.1%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	0	(0)	(0)	701.4%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 73,316</b>	<b>\$ 73,670</b>	<b>\$ 355</b>	<b>0.5%</b>
<b>Operating income (loss)</b>	<b>\$ (40,659)</b>	<b>\$ (43,866)</b>	<b>\$ 3,207</b>	<b>7.3%</b>
<b>Total public support and nonoperating revenues</b>	<b>125</b>	<b>459</b>	<b>(334)</b>	<b>-72.7%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (40,534)</b>	<b>\$ (43,406)</b>	<b>\$ 2,872</b>	<b>-6.6%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**CONSOLIDATED OPERATIONS**  
**COMPARISON TO BUDGET - FISCAL YEAR 2009**  
**OCTOBER 31, 2008**  
**(in \$000's)**

	<b>YEAR TO DATE</b>			
	<b>ACTUAL</b>	<b>BUDGET</b>	<b>VARIANCE</b>	<b>% VARIANCE</b>
Passenger Revenue	\$ 30,327	\$ 26,959	\$ 3,369	12.5%
Other Revenue	182	207	(25)	-12.0%
<b>Total Operating Revenue</b>	<b>\$ 30,510</b>	<b>\$ 27,166</b>	<b>\$ 3,344</b>	<b>12.3%</b>
Personnel costs	\$ 30,091	\$ 30,538	\$ 447	1.5%
Outside services	23,147	23,790	643	2.7%
Transit operations funding	-	-	-	-
Materials and supplies	2,748	2,521	(227)	-9.0%
Energy	10,983	10,241	(742)	-7.2%
Risk management	1,035	1,057	22	2.1%
General & administrative	156	123	(34)	-27.4%
Vehicle/facility leases	110	180	70	38.7%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	3,089	3,089	-	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 71,359</b>	<b>\$ 71,538</b>	<b>\$ 179</b>	<b>0.2%</b>
<b>Operating income (loss)</b>	<b>\$ (40,849)</b>	<b>\$ (44,372)</b>	<b>\$ 3,523</b>	<b>7.9%</b>
<b>Total public support and nonoperating revenues</b>	<b>998</b>	<b>1,332</b>	<b>(334)</b>	<b>-25.1%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (39,851)</b>	<b>\$ (43,040)</b>	<b>\$ 3,188</b>	<b>-7.4%</b>



**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**TRANSIT SERVICES (SAN DIEGO TRANSIT CORPORATION)**  
**COMPARISON TO BUDGET - FISCAL YEAR 2009**  
**OCTOBER 31, 2008**  
**(in \$000's)**

	<b>YEAR TO DATE</b>			
	<b>ACTUAL</b>	<b>BUDGET</b>	<b>VARIANCE</b>	<b>% VARIANCE</b>
Passenger Revenue	\$ 9,114	\$ 7,993	\$ 1,121	14.0%
Other Revenue	36	3	33	981.9%
<b>Total Operating Revenue</b>	<b>\$ 9,150</b>	<b>\$ 7,996</b>	<b>\$ 1,153</b>	<b>14.4%</b>
Personnel costs	\$ 18,992	\$ 19,562	\$ 570	2.9%
Outside services	588	680	92	13.6%
Transit operations funding	-	-	-	-
Materials and supplies	1,640	1,525	(115)	-7.5%
Energy	3,677	3,138	(539)	-17.2%
Risk management	437	481	44	9.2%
General & administrative	52	58	6	10.4%
Vehicle/facility leases	28	62	34	55.4%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	1,561	1,561	-	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 26,974</b>	<b>\$ 27,067</b>	<b>\$ 93</b>	<b>0.3%</b>
<b>Operating income (loss)</b>	<b>\$ (17,824)</b>	<b>\$ (19,070)</b>	<b>\$ 1,246</b>	<b>6.5%</b>
<b>Total public support and nonoperating revenues</b>	<b>(1,477)</b>	<b>(1,143)</b>	<b>(334)</b>	<b>29.2%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (19,302)</b>	<b>\$ (20,214)</b>	<b>\$ 912</b>	<b>-4.5%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**RAIL OPERATIONS (SAN DIEGO TROLLEY, INCORPORATED)**  
**COMPARISON TO BUDGET - FISCAL YEAR 2009**  
**OCTOBER 31, 2008**  
**(in \$000's)**

	<b>YEAR TO DATE</b>			
	<b>ACTUAL</b>	<b>BUDGET</b>	<b>VARIANCE</b>	<b>%</b>
Passenger Revenue	\$ 11,889	\$ 11,063	\$ 826	7.5%
Other Revenue	125	204	(79)	-38.8%
<b>Total Operating Revenue</b>	<b>\$ 12,014</b>	<b>\$ 11,267</b>	<b>\$ 746</b>	<b>6.6%</b>
Personnel costs	\$ 10,614	\$ 10,454	\$ (160)	-1.5%
Outside services	3,157	3,162	5	0.2%
Transit operations funding	-	-	-	-
Materials and supplies	1,107	990	(117)	-11.8%
Energy	3,172	3,077	(95)	-3.1%
Risk management	598	576	(22)	-3.8%
General & administrative	78	59	(19)	-32.4%
Vehicle/facility leases	29	68	40	58.0%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	1,210	1,210	-	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 19,964</b>	<b>\$ 19,596</b>	<b>\$ (368)</b>	<b>-1.9%</b>
<b>Operating income (loss)</b>	<b>\$ (7,950)</b>	<b>\$ (8,328)</b>	<b>\$ 378</b>	<b>4.5%</b>
<b>Total public support and nonoperating revenues</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (7,950)</b>	<b>\$ (8,328)</b>	<b>\$ 378</b>	<b>-4.5%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**MULTIMODAL OPERATIONS (FIXED ROUTE)**  
**COMPARISON TO BUDGET - FISCAL YEAR 2009**  
**OCTOBER 31, 2008**  
**(in \$000's)**

	<b>YEAR TO DATE</b>			
	<b>ACTUAL</b>	<b>BUDGET</b>	<b>VARIANCE</b>	<b>% VARIANCE</b>
Passenger Revenue	\$ 7,316	\$ 6,287	\$ 1,029	16.4%
Other Revenue	21	-	21	-
<b>Total Operating Revenue</b>	<b>\$ 7,337</b>	<b>\$ 6,287</b>	<b>\$ 1,050</b>	<b>16.7%</b>
Personnel costs	\$ 144	\$ 119	\$ (25)	-21.2%
Outside services	13,575	14,114	540	3.8%
Transit operations funding	-	-	-	-
Materials and supplies	0	-	(0)	-
Energy	3,042	2,821	(222)	-7.9%
Risk management	-	-	-	-
General & administrative	27	2	(25)	-1058.5%
Vehicle/facility leases	54	49	(5)	-9.8%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	261	261	-	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 17,103</b>	<b>\$ 17,366</b>	<b>\$ 263</b>	<b>1.5%</b>
<b>Operating income (loss)</b>	<b>\$ (9,766)</b>	<b>\$ (11,079)</b>	<b>\$ 1,313</b>	<b>11.9%</b>
<b>Total public support and nonoperating revenues</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (9,766)</b>	<b>\$ (11,079)</b>	<b>\$ 1,313</b>	<b>-11.9%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**MULTIMODAL OPERATIONS (PARATRANSIT)**  
**COMPARISON TO BUDGET - FISCAL YEAR 2009**  
**OCTOBER 31, 2008**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	% VARIANCE
Passenger Revenue	\$ 595	\$ 561	\$ 35	6.2%
Other Revenue	-	-	-	-
<b>Total Operating Revenue</b>	<b>\$ 595</b>	<b>\$ 561</b>	<b>\$ 35</b>	<b>6.2%</b>
Personnel costs	\$ 36	\$ 67	\$ 31	46.6%
Outside services	3,608	3,609	2	0.0%
Transit operations funding	-	-	-	-
Materials and supplies	-	-	-	-
Energy	812	873	60	6.9%
Risk management	-	-	-	-
General & administrative	0	2	2	97.0%
Vehicle/facility leases	-	1	1	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	10	10	-	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 4,466</b>	<b>\$ 4,561</b>	<b>\$ 95</b>	<b>2.1%</b>
<b>Operating income (loss)</b>	<b>\$ (3,870)</b>	<b>\$ (4,000)</b>	<b>\$ 130</b>	<b>3.2%</b>
<b>Total public support and nonoperating revenues</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (3,870)</b>	<b>\$ (4,000)</b>	<b>\$ 130</b>	<b>-3.2%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**CONSOLIDATED CHULA VISTA TRANSIT OPERATIONS**  
**COMPARISON TO BUDGET - FISCAL YEAR 2009**  
**OCTOBER 31, 2008**  
**(in \$000's)**

	<b>YEAR TO DATE</b>			
	<b>ACTUAL</b>	<b>BUDGET</b>	<b>VARIANCE</b>	<b>% VARIANCE</b>
Passenger Revenue	\$ 1,414	\$ 1,054	\$ 359	34.1%
Other Revenue	-	-	-	-
<b>Total Operating Revenue</b>	<b>\$ 1,414</b>	<b>\$ 1,054</b>	<b>\$ 359</b>	<b>34.1%</b>
Personnel costs	\$ 117	\$ 148	\$ 31	20.7%
Outside services	2,015	2,019	4	0.2%
Transit operations funding	-	-	-	-
Materials and supplies	-	5	5	-
Energy	279	332	53	16.1%
Risk management	-	-	-	-
General & administrative	0	3	3	97.1%
Vehicle/facility leases	-	-	-	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	48	48	-	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 2,459</b>	<b>\$ 2,555</b>	<b>\$ 96</b>	<b>3.7%</b>
<b>Operating income (loss)</b>	<b>\$ (1,046)</b>	<b>\$ (1,501)</b>	<b>\$ 455</b>	<b>30.3%</b>
<b>Total public support and nonoperating revenues</b>	<b>2,414</b>	<b>2,414</b>	<b>-</b>	<b>0.0%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ 1,369</b>	<b>\$ 914</b>	<b>\$ 455</b>	<b>49.8%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**CORONADO FERRY**  
**COMPARISON TO BUDGET - FISCAL YEAR 2009**  
**OCTOBER 31, 2008**  
**(in \$000's)**

	<b>YEAR TO DATE</b>			
	<b>ACTUAL</b>	<b>BUDGET</b>	<b>VARIANCE</b>	<b>% VARIANCE</b>
Passenger Revenue	\$ -	\$ -	\$ -	-
Other Revenue	-	-	-	-
<b>Total Operating Revenue</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>-</b>
Personnel costs	\$ -	\$ -	\$ -	-
Outside services	49	49	-	0.0%
Transit operations funding	-	-	-	-
Materials and supplies	-	-	-	-
Energy	-	-	-	-
Risk management	-	-	-	-
General & administrative	-	-	-	-
Vehicle/facility leases	-	-	-	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	-	-	-	-
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 49</b>	<b>\$ 49</b>	<b>\$ -</b>	<b>0.0%</b>
<b>Operating income (loss)</b>	<b>\$ (49)</b>	<b>\$ (49)</b>	<b>\$ -</b>	<b>0.0%</b>
<b>Total public support and nonoperating revenues</b>	<b>61</b>	<b>61</b>	<b>-</b>	<b>0.0%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ 12</b>	<b>\$ 12</b>	<b>\$ -</b>	<b>0.0%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**ADMINISTRATION**  
**CONSOLIDATED**  
**COMPARISON TO BUDGET - FISCAL YEAR 2009**  
**OCTOBER 31, 2008**  
**(in \$000's)**

	<b>YEAR TO DATE</b>			
	<b>ACTUAL</b>	<b>BUDGET</b>	<b>VARIANCE</b>	<b>% VARIANCE</b>
Passenger Revenue	\$ -	\$ -	\$ -	-
Other Revenue	2,015	2,521	(506)	-20.1%
<b>Total Operating Revenue</b>	<b>\$ 2,015</b>	<b>\$ 2,521</b>	<b>\$ (506)</b>	<b>-20.1%</b>
Personnel costs	\$ 3,214	\$ 3,460	\$ 245	7.1%
Outside services	1,126	1,106	(20)	-1.8%
Transit operations funding	-	-	-	-
Materials and supplies	6	2	(5)	-273.5%
Energy	115	112	(3)	-2.4%
Risk management	148	129	(19)	-14.5%
General & administrative	193	132	(61)	-46.4%
Vehicle/facility leases	-	7	7	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	(3,104)	(3,104)	-	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 1,698</b>	<b>\$ 1,843</b>	<b>\$ 145</b>	<b>7.9%</b>
<b>Operating income (loss)</b>	<b>\$ 317</b>	<b>\$ 678</b>	<b>\$ (361)</b>	<b>53.2%</b>
<b>Total public support and nonoperating revenues</b>	<b>(873)</b>	<b>(873)</b>	<b>-</b>	<b>0.0%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (556)</b>	<b>\$ (195)</b>	<b>\$ (361)</b>	<b>185.0%</b>

# SAN DIEGO METROPOLITAN TRANSIT SYSTEM

## OTHER ACTIVITIES

### CONSOLIDATED

#### COMPARISON TO BUDGET - FISCAL YEAR 2009

OCTOBER 31, 2008

(in \$000's)

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	% VARIANCE
Passenger Revenue	\$ -	\$ -	\$ -	-
Other Revenue	132	118	14	11.9%
<b>Total Operating Revenue</b>	<b>\$ 132</b>	<b>\$ 118</b>	<b>\$ 14</b>	<b>11.9%</b>
Personnel costs	\$ 164	\$ 165	\$ 1	0.9%
Outside services	26	54	28	52.3%
Transit operations funding	-	-	-	-
Materials and supplies	2	2	(0)	-11.8%
Energy	3	7	3	52.4%
Risk management	12	11	(1)	-5.4%
General & administrative	37	35	(2)	-5.2%
Vehicle/facility leases	-	-	-	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	15	15	-	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 259</b>	<b>\$ 289</b>	<b>\$ 31</b>	<b>10.6%</b>
<b>Operating income (loss)</b>	<b>\$ (127)</b>	<b>\$ (171)</b>	<b>\$ 45</b>	<b>26.1%</b>
<b>Total public support and nonoperating revenues</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (127)</b>	<b>\$ (171)</b>	<b>\$ 45</b>	<b>-26.1%</b>





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619.231.1466 FAX 619.234.3407

## Agenda

Item No. 46

JOINT MEETING OF THE BOARD OF DIRECTORS  
for the  
Metropolitan Transit System,  
San Diego Transit Corporation, and  
San Diego Trolley, Inc.

FIN 300

January 15, 2009

### SUBJECT:

MTS: INVESTMENT REPORT – NOVEMBER 2008

### RECOMMENDATION:

That the Board of Directors receive a report for information.

#### Budget Impact

None.

### DISCUSSION:

Attachment A is a report of MTS's investments as of November 2008. The first column provides details about investments restricted for capital support and debt service. The majority of these investments are restricted for debt service related to the 1995 lease and leaseback transactions.

The second column (unrestricted investments) reports the working capital for MTS operations for employee payroll and vendors' goods and services. This column includes the investment in San Diego Transit Corporation (SDTC) pension obligation bonds (POBs) that were repurchased and represents an asset that is not currently available to fund operations. When market conditions improve, the bonds will be remarketed, which will liquidate this asset.

Cash balances have declined during the past month largely due to payments made to purchase buses.



Metropolitan Transit System (MTS) is a California public agency and is comprised of San Diego Transit Corporation and San Diego Trolley, Inc. nonprofit public benefit corporations, in cooperation with Chula Vista Transit and National City Transit. MTS is the taxicab administrator for eight cities and the owner of the San Diego and Arizona Eastern Railway Company. MTS member agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

Interest earnings in the Bank of America concentration account have declined to 0.01%. The average monthly yield in the Local Agency Investment Funds has decreased from 2.779% to 2.57% between August and November 2008.

The funds restricted for debt service are structured investments with fixed returns that do not vary with marked fluctuations if held to maturity. These investments are held in trust and will not be liquidated in advance of the scheduled maturities.

Other restricted funds are designated for various capital improvement projects.



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Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Tom Lynch, 619.557.4538, [tom.lynch@sdmts.com](mailto:tom.lynch@sdmts.com)

JAN15-09.INVESTRPT NOV08.LMUSENGO.doc

Attachment: A. Investment Report

**San Diego Metropolitan Transit System  
Investment Report  
November 30, 2008**

	<u>Restricted</u>	<u>Unrestricted</u>	<u>Total</u>	<b>Average rate of return</b>
<b>Cash and Cash Equivalents</b>				
Bank of America - concentration sweep account	\$ 9,620,774	\$ 9,063,716	\$ 18,684,490	0.01%
<b>Total Cash and Cash Equivalents</b>	<u>9,620,774</u>	<u>9,063,716</u>	<u>18,684,490</u>	
<b>Cash - Restricted for Capital Support</b>				
US Bank - retention trust account	3,086,081	-	3,086,081	N/A *
US Bank - retention trust account	2,515,455	-	2,515,455	N/A *
Bank of America - Proposition 1B TS GP grant funds	2,700,139	-	2,700,139	N/A *
<b>Total Cash - Restricted for Capital Support</b>	<u>8,301,675</u>	<u>-</u>	<u>8,301,675</u>	
<b>Investments - Working Capital</b>				
Local Agency Investment Fund (LAIF)	8,801,567	17,686,639	26,488,206	2.57%
Bank of New York Money Market POB interest	-	308	308	
<b>Total Investments - Working Capital</b>	<u>8,801,567</u>	<u>17,686,947</u>	<u>26,488,514</u>	
<b>Investments - Restricted for Debt Service</b>				
US Bank - Treasury Strips - market value (Par value \$39,474,000)	32,257,288	-	32,257,288	
Rabobank - Payment Undertaking Agreement	86,247,213	-	86,247,213	7.69%
<b>Total Investments Restricted for Debt Service</b>	<u>118,504,501</u>	<u>-</u>	<u>118,504,501</u>	
<b>Investment in SDTC Pension Obligation Bonds</b>				
Bank of America custodial account	-	35,657,695	35,657,695	
<b>Total Investment in SDTC Pension Obligation Bonds</b>	<u>-</u>	<u>35,657,695</u>	<u>35,657,695</u>	
<b>Total cash and investments</b>	<u>\$ 145,228,517</u>	<u>\$ 62,408,358</u>	<u>\$ 207,636,875</u>	

N/A\* - Per trust agreements, interest earned on retention accounts is allocated to trust beneficiary (contractor)



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## Agenda

Item No. 62

Chief Executive Officer's Report

ADM 121.7 (PC 50101)

January 15, 2009

In accordance with Board Policy No. 52, Procurement of Goods and Services, attached are listings of contracts, purchase orders, and work orders that have been approved within the CEO's authority (up to and including \$100,000) for the period December 2, 2008, through January 5, 2009.

[gail.williams/agenda item 62](#)



Metropolitan Transit System (MTS) is comprised of the Metropolitan Transit Development Board (MTDB) a California public agency, San Diego Transit Corp., and San Diego Trolley, Inc., in cooperation with Chula Vista Transit and National City Transit. MTS is Taxicab Administrator for eight cities. MTDB is owner of the San Diego and Arizona Eastern Railway Company. MTDB Member Agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway,

**CONTRACTS - Expense**

Doc #	Organization	Subject	Amount	Day
G1165.1-08	OPPER & VARCO LLP	LEGAL SERVICES ENVIRONMENTAL LAW	\$25,000.00	12/2/2008
G1234.0-09	JACOBS CENTER FOR NEIGH INNOV	HOLIDAY MUSIC ENTERTAINMENT TROLLEY STA	\$5,000.00	12/4/2008
G1139.2-08	TROVILLION INVEISS PONTICELLO	LEGAL SERVICES WORKERS COMPENSATION	\$30,000.00	12/8/2008
M6655.7-07	HECHT, SOLBERG, ROBINSON, GOLD	LEGAL SERVICES CONSTRUCTION CONTRACTS	\$95,000.00	12/11/2008
S200-09-387	ENVIROAPPLICATIONS, INC	SOIL BORINGS & MONITORING WELLS	\$0.00	12/11/2008
G1111.4-07	WHEATLEY BINGHAM & BAKER	LEGAL SERVICES GENERAL & TORT LIABILITY	\$40,000.00	12/15/2008
L4587.0-09	CCDC	BAYSIDE JOINT ENCROACHMENT LICENSE	\$0.00	12/15/2008
.L0876.0-09	JACOBS CENTER	TROLLEY HOLIDAY ENTERTAINMENT 2008	\$0.00	12/18/2008
M6655.8-07	HECHT, SOLBERG, ROBINSON, GOLD	AMEND 8 FOR LEGAL SERVICES MVE	\$100,000.00	12/18/2008
PWL109.0-09	ELECTRO SPECIALTY SYSTEMS	CCTV SURVEILLANCE PARK & MARKET STATION	\$36,828.42	12/18/2008
G1238.0-09	NOSSAMAN, LLP	LEGAL SERVICES - PENSION OBLIGATION BOND	\$100,000.00	12/24/2008
B0469.2-07	ARC OF SAN DIEGO	MONTH TO MONTH EXTENSION FOR BUS CLEANING	\$48,000.00	12/24/2008
B0512.0-09	BRENCO OPERATING	PURCHASE OF SPARK PLUGS FOR BUSES	\$90,000.00	12/24/2008
G1108.4-07	LAW OFFICES OF DAVID SKYER	LEGAL SERVICES - GENERAL AND TORT LIABIL	\$45,000.00	12/24/2008
B0511.0-09	VEHICLE TECHNICAL CONSULTANTS	IN PLANT INSPECTIONS FOR BUSES	\$23,630.00	1/5/2009
G1183.2-08	NABI	MOD STENCIL APPLICATION ON 7 BUSES	\$99,950.00	1/5/2009
B0506.1-08	VEHICLE TECHNICAL CONSULTANTS	AMENDMENT ADD 332 HRS OF INSPECTION SVC	\$11,620.00	1/5/2009
G1067.2-07	MCDUGAL LOVE ECKIS SMITH BOEH	LEGAL SERVICES GENERAL & TORT LIABILITY	\$40,000.00	1/5/2009
PWB106.1-09	TELLIARD CONSTRUCTION	CONTRACT AMENDMENT FOR EXTRA WORK	\$11,614.50	1/5/2009

**PURCHASE ORDERS**

DATE	Organization	Subject	AMOUNT
12/2/2008	GFI GENFARE	SPARE PARTS & KEYS ODYSSEY FAREBOX	\$35,839.58
12/2/2008	CUMMINS ALLISON CORP	COIN COUNTER MACHINE	\$15,486.99
12/2/2008	ANDERSON & BRABANT	PRELIMINARY APPRAISAL EL CAJON BUS	\$1,750.00
12/2/2008	PRIMARY GENERAL INC	NEW LOBBY SECURE SVC COUNTER SDTC	\$19,449.00
12/4/2008	FOUNTAIN MEDIA GROUP	1/2 PG COLOR ADS 880 PREMIUM EX RTE	\$1,590.00
12/8/2008	JMI REALTY INCORPORATED	BUS SHELTER ELECT SVC 1/09-12/09	\$10,000.00
12/8/2008	ALLEGRA PRINT & IMAGING	ENVELOPES, LETTERHEAD, MAILING PREP	\$5,428.28
12/8/2008	SBC DATACOMM INC.	ANNUAL SUPPORT MAINT AGREE NORTEL	\$21,433.38
12/8/2008	DELL COMPUTER CORP	DELL OPTIPLEX 960 DESKTOP QUAD DUO	\$26,798.05

**PURCHASE ORDERS**

DATE	Organization	Subject	AMOUNT
12/8/2008	DELL COMPUTER CORP	DELL ULTRASHARP 1908FP FLAT PANEL	\$5,083.22
12/8/2008	COAST GRAPHICS	MTS/NCTD EMPLOYEE TRANSIT DECALS	\$763.48
12/15/2008	VISIBLE INK	VINYL BUS DECALS FOR FAREBOXES	\$2,155.00
12/15/2008	PRESSNET EXPRESS	SPRING 2009 4/C COLLEGE POSTERS	\$635.73
12/15/2008	SAN DIEGO VOICE AND VIEWPOINT	1/4 PG AD MARTIN L KING 2009 SPL	\$625.00
12/15/2008	REGISTER TAPE NETWORK	GROCERY STORE COUPONS/REC ADS	\$2,160.00
12/15/2008	ELECTRO SPECIALTY SYSTEMS	ACCESS CTL PROJECT OLD TOWN	\$7,904.86
12/15/2008	AFFORDABLE SHARED ADVERTISING	DOOR HANGER DIST NABI BUS ADS	\$4,500.00
12/24/2008	INNOVATION FIRST INC.	COMPUTER SUPPLIES AND KEYBOARD	\$2,470.92
12/24/2008	GOVPLACE	COMPUTER SUPPLIES	\$2,812.23
12/24/2008	SAN DIEGO BUSINESS JOURNAL	BANNER ADD	\$1,249.00
12/24/2008	FINEST CITY BROADCASTING	RADIO ADS ON XTRA, 91X AND Z 90	\$2,400.00
12/24/2008	VISIBLE INK	STUFF THE BUS BANNERS	\$969.75
12/24/2008	PRESSNET EXPRESS	HOLIDAY BOWL COMMEMORATIVE PASS	\$948.02
12/24/2008	ZONES CORPORATE SOLUTIONS	COMPUTER EQUIPMENT AND SUPPLIES	\$5,529.79
12/24/2008	SAN DIEGO CITYBEAT	ADVERTISING	\$1,600.00

**WORK ORDERS**

Doc #	Organization	Subject	Amount	Day
G1127.0-08.05.02	BUREAU VERITAS	IMPROVE PLAN FOR EL CAJON TRANSIT	\$4,982.00	12/15/2008
G1127.0-08.17.01	BUREAU VERITAS	TIME EXT AMEND NO CHANGE IN COST	\$42,761.00	12/15/2008
G1130.0-08.01.01	KIMLEY-HORN	AMEND 1 GRAL ENG SVCS FOR MTS ROW	\$50,000.00	12/18/2008
G1130.0-08.02.01	KIMLEY-HORN & ASSOCS	AMEND 1 GRAL ENG SVCS FOR SD&AE ROW	\$50,000.00	12/18/2008
G1127.08.14.02	BUREAU VERITAS	GEC SERVICES RECORD OF SURVEY MVE	\$0.00	12/24/2008

**CONTRACTS - Revenue**

Doc #	Organization	Subject	Amount	Day
G1198.1-09	HOTEL DEL CORONADO	ECO PASS RENEWAL	(\$56,640.00)	12/2/2008
L0872.0-09	PUREFITNESS RUN FOR THE HUNGRY	ROE PERMIT TO CROSS RR TRACKS	(\$1,460.00)	12/2/2008
L5232.0-09	SDG&E	ROE PERMIT UNDERGROUND UTILITY CUYAMACA/	(\$1,500.00)	12/2/2008

**CONTRACTS - Revenue**

Doc #	Organization	Subject	Amount	Day
L5698.0-09	TW TELECOM	LIC TO TIME WARNER AERIAL CROSS JUNIPER	(\$825.00)	12/11/2008
S200-09-385	NOLTE ASSOC INC	ROE PERMIT POTHOLE SURVEY SDG&E	(\$900.00)	12/18/2008
G1239.0-09	CORRECTIONAL ALTERNATIVES INC.	ECO PASS	(\$65,932.80)	12/24/2008
L0877.0-09	MALCOM DRILLING COMPANY INC.	ROE PERMIT FOR THOMAS JEFFERSON LAW SCH	(\$1,500.00)	1/5/2009
L5700.0-09	PROJECT DESIGN CONSULTANTS	JOINT ROE PERMIT FOR LAND SURVEY SPAWAR	(\$500.00)	1/5/2009
S200-09-386	3-D ENTERPRISES INC	ROE PERMIT MARINA WAY STORM DRAIN NATL	(\$2,050.00)	1/5/2009
S200-09-388	HP COMMUNICATIONS	ROE PERMIT OH CABLE-COX FIBER OPTIC	(\$1,400.00)	1/5/2009