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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.

December 11, 2008

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 - November 13, 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: Proposed Amendments to Board Policy No. 22 (Rules of Procedure for the Metropolitan Transit System [MTS]) Approve
Action would consider the proposed revisions to Board Policy No. 22 at the request of the Chairman.

Please turn off cell phones and pagers
during the meeting



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.

CONSENT ITEMS

- | | | |
|-----|---|---------|
| 6. | <u>MTS: Federal Transit Administration 5311 Program of Projects</u>
Action would approve Resolution No. 08-25 authorizing the use of \$242,804 of FTA Section 5311 funds for operating assistance in nonurbanized areas. | Approve |
| 7. | <u>MTS: Audit Report - The Transit Store</u>
Action would receive a report for information. | Receive |
| 8. | <u>MTS: Audit Report - Procurement Process</u>
Action would receive a report for information. | Receive |
| 9. | <u>MTS: Bus Operator Uniforms - Contract Award</u>
Action would authorize the CEO to execute MTS Doc. No. B0509.0-09 to Kingsbury Uniforms, Inc. for bus operator uniforms for up to a five-year period. | Approve |
| 10. | <u>MTS: Weed Abatement Services - Contract Award</u>
Action would authorize the CEO to execute a contract with DeAngelo Brothers, Inc. for weed abatement services for a five-year period. | Approve |

CLOSED SESSION

24. None.

NOTICED PUBLIC HEARINGS

25. None.

DISCUSSION ITEMS

- | | | |
|-----|--|---------|
| 30. | <u>MTS: Uniform Report of DBE Awards or Commitments and Payments</u>
Action would receive the Uniform Report of DBE Awards or Commitments and Payments. | Receive |
| 31. | <u>MTS: FY 08 Final Budget Comparison</u>
Action would approve applying \$481,000 to the MTS Contingency Reserve. | Approve |
| 32. | <u>MTS: Mission Valley East Legal Services - Contract Amendment</u>
Action would authorize the CEO to execute Amendment No. 8 to MTS Doc. No. M6655.5-07 with Hecht, Solberg, Robinson, Goldberg, Bagley, LLP for legal services on the Mission Valley East Light Rail Transit (MVE LRT) Project. | Approve |

REPORT ITEMS

- | | | |
|-----|---|-------------|
| 45. | <u>MTS: Annual Service Performance Monitoring Report</u>
Action would receive a report for information. | Receive |
| 46. | <u>MTS: Compass Card</u>
Action would receive a status report on development and implementation of the Compass Card fare system. | Receive |
| 47. | <u>MTS: Sorrento Valley Coaster Connection</u>
Action would receive a report on the Sorrento Valley Coaster Connection. | Receive |
| 48. | <u>MTS: Padres Baseball 2008 Year-End Summary</u>
Action would receive a report for information. | Receive |
| 49. | <u>MTS: Padres Ticket Programs</u>
Action would receive a status report on new and existing ticket programs between the San Diego Padres and MTS. | Receive |
| 50. | <u>MTS: Investment Report - October 2008</u>
Action would receive a report for information. | Receive |
| 51. | <u>MTS: Year-to-Date Operations Budget Status Report through September 2008</u>
Action would receive the MTS Year-to-Date Operations Budget Status Report through September 2008. | Receive |
| 52. | <u>MTS: 4S Ranch Pilot Project - Route 880 Express Service to Sorrento Valley/UTC</u>
Action would receive a report on the plan to establish an express service between 4S Ranch and Sorrento Valley/University Towne Centre (UTC). The route will be a pilot project funded with developer mitigation fees. | 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>
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> January 15, 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)

November 13, 2008

MTS
1255 Imperial Avenue, Suite 1000, San Diego

MINUTES

1. Roll Call

Chairman Mathis called the Board meeting to order at 9:02 a.m. A roll call sheet listing Board member attendance is attached.

2. Approval of Minutes

Mr. Clabby moved to approve the minutes of the October 30, 2008, MTS Board of Directors meeting. Mr. Emery seconded the motion, and the vote was 12 to 0 in favor.

3. Public Comments

Lois Rue: Ms. Rue stated that she is a senior citizen and appealed to the Board to restore a senior round-trip fare. She discussed the different ways that she uses MTS services and the difficulties of not being able to purchase a round-trip senior ticket. She stated that she would not mind an increase in price.

Clive Richard: Mr. Richard discussed the decommissioning of street cars, the advent of buses, and the sale of the transit company to the City of San Diego. He reported that the proposition that authorized the City to buy the transit company 50 years ago promised more frequent service and lower fares. He stated that he would like to eventually see those promises realized. He stated that he would also like to see information on what would happen if transit loses more state funding. He stated that MTS should be open with the public about that. Chairman Mathis stated that MTS will make sure that this information becomes available as soon as the state has made its decisions relating to funding for the year.

4. MTS: Appointment of Ad Hoc Nominating Committee for Recommending Appointments to MTS Committees for 2009

Action Taken

Mr. Rindone moved to nominate Chairman Mathis, Mr. Roberts, and Mr. Ewin to the Ad Hoc Nominating Committee to make recommendations to the Board with respect to the appointment of members of the Board to serve on MTS and non-MTS committees for 2009.

There were no additional nominations from the floor.

The vote was 11 to 0 in favor, with Chairman Mathis, Mr. Roberts, and Mr. Ewin abstaining from voting for themselves.

CONSENT ITEMS:

6. MTS: Increased Authorization for Legal Services – Liebman, Quigley, Sheppard & Soulema, APLC (LEG 491)

Recommend that the Board of Directors authorize the CEO to execute MTS Doc. No. G1087.3-07 (in substantially the same form as Attachment A of the agenda item) with Liebman, Quigley, Sheppard & Soulema, APLC for legal services and ratify prior amendments entered into under the CEO's authority.

7. MTS: KMD Bus Wash Renovation Project (CIP 11207)

Recommend that the Board of Directors authorize the CEO to execute MTS Doc. No. PWB106.0-09 (in substantially the same format as Attachment A of the agenda item) to Telliard Construction for the Kearny Mesa Division Bus Wash Renovation Project.

8. MTS: Rail Profile-Grinding Services – Contract Award (CIP 11206)

Recommend that the Board of Directors authorize the CEO to execute MTS Doc. No. PWL104.0-09 (in substantially the same form as Attachment A) with Advanced Rail Management Corporation for rail profile-grinding services for a five-year period.

9. MTS: Third-Party Administration Services for Workers' Compensation – Contract Award (OPS 960.2, 970.2)

Recommend that the Board of Directors authorize the CEO to execute MTS Doc. No. G1182.00-08 (in substantially the same format as Attachment A of the agenda item) with TRISTAR Risk Management for third-party administration services for workers' compensation for a five-year base period with two 1-year options.

10. MTS: Southland Transit, Inc. – Contract Option Year (OPS 920.6)

Recommend that the Board of Directors authorize the CEO to execute MTS Doc. No. B0449.1-06 (in substantially the same format as Attachment A of the agenda item) for: 1) one 12-month option period for central minibuss fixed-route with Southland Transit, Inc.; and (2) one 12-month option period for Sorrento Valley Coaster Connection with Southland Transit Inc, contingent upon securing sustainable funding for this service.

Action on Recommended Consent Items

Mr. Emery moved to approve Consent Agenda Item Nos. 6, 7, 8, 9, and 10. Mr. Rindone seconded the motion, and the vote was 12 to 0 in favor.

CLOSED SESSION:

24. Closed Session Items (ADM 122)

The Board convened to Closed Session at 9:12 a.m.

- a. MTS: CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION SIGNIFICANT EXPOSURE TO LITIGATION Pursuant to California Government Code section 54956.9(b): (One Potential Case)

The Board reconvened to Open Session at 9:34 a.m.

Oral Report of Final Actions Taken in Closed Session

Ms. Tiffany Lorenzen, MTS General Counsel, reported the following:

- a. The Board received a report from General Counsel.

SPECIAL PRESENTATIONS:

Chairman Mathis pointed out that this would be the last meeting for six Board members. He recognized Chair Pro Tem Mr. Emery who has been on the Board since July 1985, Vice Chair Rindone who has been on the Board since July 1991, Mr. Clabby who has been on the Board since June 1996, Mr. Maienschein who has been on the Board since December 2000, Mr. Monroe who has been on the Board since April 2002, and Ms. Atkins who has been on the Board since 2002. Chairman Mathis stated that the Board is losing a lot of talent and that these members have given many years to transit.

Each of the Board members stated that they appreciated the honor of serving on the MTS Board and thanked their fellow Board members and staff.

NOTICED PUBLIC HEARINGS

25. There were no noticed public hearings.

DISCUSSION ITEMS:

30. MTS: An Ordinance Amending Ordinance No. 4, an Ordinance Establishing an MTS Fare-Pricing Schedule and an Ordinance Amending Ordinance No. 13, an Ordinance Regarding Prohibited Conduct Onboard Transit Vehicles and Prohibited Actions on or About a Transit Facility, Trolley Station, or Bus Stop (ADM 110.3)

No report was given on this item.

Action Taken

Mr. Young moved to waive the second reading of An Ordinance Amending Ordinance No. 4, an Ordinance Establishing an MTS Fare-Pricing Schedule and an Ordinance Amending Ordinance No. 13, an Ordinance Regarding Prohibited Conduct Onboard Transit Vehicles and Prohibited Actions on or About a Transit Facility, Trolley Station, or Bus Stop. Mr. Emery seconded the motion, and the vote was 13 to 0 in favor.

Mr. Young moved to adopt the ordinance entitled "An Ordinance Amending Ordinance No. 4, An Ordinance Establishing a Metropolitan Transit System Fare-Pricing Schedule (Attachment A of the agenda item) and the ordinance entitled "An Ordinance amending Ordinance No. 13, an Ordinance Regarding Prohibited Conduct Onboard Transit Vehicles and Prohibited Actions on or About a Transit Facility, Trolley Station, or Bus Stop (Attachment B of the agenda item); and (2) direct publication of an ordinance summary. This action is necessary to make the MTS ordinances consistent with the San Diego Association of Governments' Regional Comprehensive Fare Ordinance. Mr. McClellan seconded the motion, and the vote was 13 to 0 in favor.

31. MTS: SDTC Site Hardening & Security Project – Contract Award (CIP 11232)

This report on this item was waived.

Action Taken

Mr. Young moved to authorize the CEO to (1) waive the applicable provisions of Policy No. 52 "Procurement of Goods and Services;" and (2) utilize the County of San Diego's Job Order Contracting process to award a contract to Security Systems Techniques (in substantially the same form as Attachment A of the agenda item) for construction on the SDTC Site Hardening & Security Project. Mr. McClellan seconded the motion, and the vote was 13 to 0 in favor.

32. MTS: State Legislative Representation (LEG 470)

No report was given on this item.

Action Taken

Mr. Young moved to authorize the CEO to execute MTS Doc. No. G1204.0-09 (in substantially the same form as Attachment A of the agenda item) with California Strategies and Advocacy, LLC for state legislative representation for up to a five-year period. Mr. Emery seconded the motion, and the vote was 13 to 0 in favor.

33. MTS: 2009 Legislative Program (LEG 410)

Ms. Sharon Cooney, Director of Government Affairs and Community Relations, provided a review of 2008 legislative activities and a review of priorities for 2009 as well as an approach for advocacy efforts.

Ms. Cooney reviewed funding received by MTS through the Transit Security Grant Program and reported on the passage of the Rail Safety Act of 2008. She added that work remains to be done to clarify some ambiguity in the language of the Act. She also briefly discussed economic stimulus packages, efforts to get funding for transit services to military facilities, and other legislation related to energy security and climate change that did not get enacted. She advised the Board that former earmark funding for transit will probably be part of the next economic stimulus program.

Ms. Cooney also reported that MTS worked with the Federal Transit Administration (FTA) on charter regulations as they apply to MTS Chargers Service. She stated that MTS was allowed to operate its Chargers Express Service this year after many discussions with the FTA, but will face the same difficulties next year unless the regulations are amended to allow these types of services. Ms. Cooney advised the Board that an effort is also being made to get transit a higher priority for funding in the reauthorization of the Surface Transportation Act. She stated that funding will be sought specifically for the Mid Coast LRV project. She added that they will be seeking recognition that agencies such as MTS have as much need for infrastructure funding as some of the older agencies.

Ms. Cooney also reviewed a recent ruling issued by the IRS that states that entities cannot use transactions strictly to avoid paying taxes. She stated that some organizations that entered into sale/leaseback transactions are being required by the IRS to pay back their tax benefits. She reported that MTS has not been contacted by the IRS about its sale/leaseback transactions.

Ms. Cooney then reviewed the state budget for 2008 and the funding that MTS received through Proposition 1B. She reported that MTS has received its 1st quarter payment of State Transit Assistance (STA) funding but reported that no more will be received. She added that the State of California is considering eliminating STA fund altogether. She stated that the Governor is considering allocating \$800 million of Proposition 1B funding for capital projects instead.

Ms. Cooney advised the Board that the state legislature has passed regulations to inhibit the theft of copper wire. She reported that salvage yards are now required to report their copper wire purchases, there is a three-day delay before payment can be made to the seller, and the salvage yard must take a picture and thumbprint and get the address of the seller.

Ms. Cooney reviewed 2009 federal and legislative priorities as well as advocacy approaches that will be used. She stated that the Executive Committee discussed this matter and recommended that Board members assist with advocacy efforts. She stated that she will focus on this a great deal next year.

Public Comment

Margot Tanguay: Ms. Tanguay stated to Page C-1 of the agenda item references staff's plan to seek legislation that would allow agencies to pass an ordinance allowing national criminal background checks for taxicab operators. She stated that she was in favor of this effort. She added that access to the Automated Regional Justice Information System (ARJIS) will be needed.

Action Taken

Mr. Rindone moved to (1) receive a report on 2008 legislative and intergovernmental activities; (2) accept the proposed MTS 2009 Federal Legislative Program; (3) accept the proposed MTS 2009 State Legislative Program; and (4) authorize the CEO to direct MTS's Sacramento and Washington representatives to advocate the state and federal legislative programs. Mr. Ewin seconded the motion, and the vote was 13 to 0 in favor.

REPORT ITEMS:

49. MTS: Fiscal Year 2008 Comprehensive Annual Financial Report (ADM 110.12)
(Taken Out of Order)

Mr. Cliff Telfer, Chief Financial Officer, advised Board members that a revised Comprehensive Annual Financial Report (CAFR) along with a report detailing the changes that were made were distributed prior to the start of the meeting. He stated that the revised CAFR contains corrected supplemental schedules. Mr. Ewin, Chairman of the Audit Oversight Committee (AOC), stated that he also distributed a handout prior to the start of the meeting that provided four questions Board members should consider as they hear the report on this item. He then read the questions out loud.

Mr. Gary Caporicci, Senior Partner at Caporicci & Larson, stated that they had seen a significant improvement in the accounting and financial reporting for MTS over the last three years. He stated that these reports are now being prepared in an enterprise format with comparative information. He stated that they have also seen an improvement in internal controls and that interactions with the AOC have been good. He reported that Caporicci and Larson was reviewed as part of a triennial peer review at the end of 2007 was given the highest opinion.

Mr. Ken Pun, Partner at Caporicci & Larson, reviewed the background for their firm, their audit approach, scope of the work performed, management responsibilities, and auditor responsibilities. He then reported that they have issued an Unqualified Opinion to MTS. He stated that there were no disagreements with management, no material errors or irregularities were discovered, and no significant deficiencies or material weaknesses were determined. He then provided an overview of the financial statement sections. Mr. Caporicci pointed out that supplementary schedules are not required. He added that MTS has included them while most agencies elect not to. He stated they are usually separately bound for internal use only.

Mr. Caporicci reviewed the risk areas, which included a subsequent-event note (note 16) regarding the financial credit crisis. He also reported that the SDTI pension plan was 90.26 percent funded at 06-30-08, and the SDTC pension plan was 86.11 percent funded on that same date. He stated that \$3,910,000 in unfunded liabilities is now reflected in the balance sheet as Other Postemployment Benefits (primarily health insurance) and reviewed the liability levels for self insurance and claims litigation. He then reviewed the new General Accounting Standards Board pronouncements. Mr. Ewin thanked AOC members for their assistance this year, and, in particular, Ms. Atkins for her insights based on her experience with these types of matters.

Following are questions asked by Mr. Ewin and answers given by Mr. Caporicci:

Q: Was any audit work not performed due to any limitations placed on you by management – example, in the area scoped out by management or any restriction on fees that limited the scope of your work? A: No limit on scope whatsoever.

Q: Explain the process your firm goes through to ensure that all of your engagement personnel are independent and objective with respect to our audit. Do any of the nonaudit services performed for the organization or its related entities affect the work that you do or the manner in which the engagement teams or others are compensated? A: Part of the process in the external peer review process, which I mentioned earlier, is looking at our quality of service. He stated that the peer review also confirms their independence, with everyone in the firm, including the administration people, annually. He stated that this review was conducted and that Caporicci got a totally clean opinion.

Q: Was the audit performed in accordance with Generally Accepted Auditing Standards or Generally Accepted Government Audit Standards? If not, why? A: It was performed in accordance with both. A separate audit report, which we refer to as a single audit, to review Government Auditing Standards for the federal grants is still in process.

Q: Do the financial statements contain any deviations from Generally Accepted Accounting Principles (GAAP)? A: There are no deviations.

Q: Were there any new accounting principles adopted, were there any changes made or did you recommend any changes in the accounting policies used or their applications? A: New principles were adopted this year, particularly GASB 45 for Other Postemployment Benefits.

Q: Were there any significant accounting adjustments effecting the financial statements – prior year as well as current year? A: There were none.

Q: Are there any areas of the financial statements, including the notes, in which you believe we could be more explicit or transparent to provide more clarity to help a user better understand our

financial statements? A: I don't believe so. They work a great deal at editing and reviewing and we review and make recommendations as well to try to clarify and make it better.

Q: Have you expressed any concerns or comments to management with respect to how our presentation, including the notes or management discussion and analysis could be improved?

A: Yes, we discussed that. The working relationship we have with MTS is very good. We review the CAFR from cover to cover, unfortunately, more than one time. We do it a number of times.

Q: Based upon your audit procedures, do you have any concerns as to whether management may be attempting to commit management override? Have you noticed any biases as a result of your audit test with respect to accounting estimates made by management? A: Have not.

Q: Did you encounter any difficulties in dealing with management in performing the audit including any disagreements with management regarding any accruals, estimates, reserves, or accounting principles? Did you have the full cooperation of management and staff? A: 100 percent cooperation.

Q: Were there any accounting issues which you sought the advice of other audit firms or regulatory bodies? A: None

Q: Describe any difficulties you encountered while performing the audit. For example, delays by management in allowing you to begin the audit, lack of access to information, unreasonable time tables, unavailability of personnel. A: We had no delays as you described.

Q: Discuss your impressions of the performance of the organization's management in terms of completeness, accuracy, and faithfulness of the financial reporting process. A: I think it is completely faithful, and I think the AOC has even reemphasized and enhanced that.

Q: Describe any situation in which you believe management has attempted to circumvent the spirit of GAAP principles but has complied with it. A: No intention, no circumvention whatsoever.

Q: Would you characterize management's application of GAAP as conservative, aggressive, or somewhat in between. A: Conservative.

Q: Are there any new pronouncements or any areas of potential financial risk affecting future financial statements of which the AOC should be aware? A: There are none. The only risks, such as the financial crisis, have already been discussed.

Q: How would you compare the organization's financial reporting to that of comparable entities with which you are familiar? A: Excellent.

Q: Please explain the significance of the reportable conditions or material weaknesses referenced in your letter or report dealing with the organization's internal controls. A: Under SAS 112, we are required to put in writing all significant deficiencies and material weaknesses. We have determined none.

Q: Are there any questions we have not asked that should have been asked? If so, what are those questions? A: I think that the interaction in AOC meetings, which meets six times a year, is very good and everything is forthright. This year, the Finance Department gave you drafts early and tried to keep you informed about changes. I think it's just been excellent. There are no questions that I can think of that you should have asked but didn't.

Mr. Ewin thanked the outside auditors for helping the AOC understand its responsibilities.

In response to a question from Ms. Atkins, staff stated that its report would consist of reviewing corrections to the supplemental information to the CAFR. Ms. Atkins asked Mr. Telfer, Ms. Lorenzen, and Mr. Jablonski if they had any information that had not been publicly disclosed or disclosed to the Board, AOC, and Executive Committee related to the CAFR that should be disclosed at this time. All three individuals responded that they did not. Ms. Atkins complimented Mr. Ewin on the good job he's done of leading the AOC.

Mr. Jablonski stated that it is an extensive and sometimes difficult process to prepare the CAFR in the timeframe provided, and that an error was discovered in the supplemental budget comparison information. He added that the auditors have been briefed, and the issue has been discussed with the AOC Chair as well as the Chair of the Board. He added that the information was prepared and faxed to each Board member as well as placed before the Board members today explaining what the issue is. He stated that the discovery of this error was made after the last AOC meeting. He explained that these are not changes to the financial statements, which are subject to the audit, but are changes to the supplemental information, which is not required as part of the CAFR.

Mr. Telfer stated that MTS financial statements are prepared on an accrual basis while the budget is prepared on a modified cash basis. He stated that this is what caused the error to occur. Mr. Lynch provided a brief overview of the specific error, which resulted in a \$2.7 million change in the favorable budget variance. He reported that staff will be making a budget-related report to the Board that will provide more detail. In response to a question from Mr. Ewin, Mr. Telfer reported that "Draft" will be removed from the report once the Board receives it. Mr. Ewin thanked staff for doing a great job and stated that he appreciated their diligence.

Action Taken

Mr. Emery moved to receive the Fiscal Year 2008 Comprehensive Annual Financial Report. Mr. McLean seconded the motion, and the vote was 11 to 0 in favor.

48. MTS: Pension Investment Status (OPS 960.10)
(Taken Out of Order)

Mr. Bruno Grimaldi, RV Kuhn, provided the Board with an overview of the pension investment performance for SDTC's Employee Retirement Plan as of September 30, 2008. Mr. Bret van Roden, also of RV Kuhn, provided with Board with an historic perspective on the recent financial crisis in the stock market. Mr. Grimaldi provided the Board with a comparison of the decline in the various indexes for the respective types of investment managers in the pension portfolio as well as the asset allocation for these investments. He reported that the portfolio has 13 managers in 8 different asset classes. He then reviewed the performance of each of the investment managers compared to their respective index since inception, for one year, and for the 1st quarter. For year to date, the portfolio experienced a negative return of 13.02 compared to the aggregate index return, which experienced a negative return of 9.07 percent. For the first quarter, the returns were negative 9.61 and 5.30, respectively.

Mr. Monroe asked how these results will affect the pension plan. Mr. Telfer stated that the actuary is in the process of performing an actuarial review and will be presenting the results sometime after the beginning of the year.

Action Taken

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

47. MTS: Route 28 Service on Shelter Island (SRTP 830)
(Taken Out of Order)

Mr. Mark Thomsen, Senior Transportation Planner, provided the Board with information on Route No. 28. He reported that a resident of Le Rondolet Condominium complex has requested that this bus be rerouted because of the noise that is created as the bus accelerates from the stop sign that is located on the corner by their complex. He reported that this particular route serves 76 passengers per day and reminded the Board that this topic had been brought up during public comment in a previous Board meeting. Mr. Thomsen displayed the routing and discussed the frequency of service for this route. He then reviewed the requests of the resident as well as the three alternatives for addressing this issue, including the rerouting Route No. 28 off Anchorage Lane and the relocation of the terminal stop. He added that MTS has requested that the Port District remove the stop sign at this location as requested by the resident and has instructed operators to accelerate more slowly from this particular stop sign in an effort to reduce the noise in this area.

Chairman Mathis stated that he understood that installation of a stop sign at this location was requested by the residents of the complex to make it easier for residents to get in and out of their parking lot. Mr. Thomsen stated that the rerouting option would be studied and prioritized along with other service changes being considered for the future.

Public Comment

Bill Heard, Resident of Le Rondolet Condominium Complex: Mr. Heard stated that the bus service in this area starts at 5:25 a.m. every weekday and ends after 11:00 p.m. He stated that they hear the noise from the buses at this location twice an hour or 40 times per day. He stated that they would like to see the bus rerouted so it no longer passes by their building. He pointed out that rerouting these buses down Shelter Island Drive to the roundabout would provide service to the employees and visitors of the hotels, restaurants, marinas, and boat yards on Shelter Island and would cost only \$62,800 per year according to staff's report.

In response to a question from Mr. Monroe, Mr. Thomsen explained that timed connections with Route No. 84 need to be maintained. Mr. Paul Jablonski, CEO, explained that, while \$62,800 doesn't seem like a lot of money, MTS is facing a loss of \$10 million in funding this year and \$14 million every year after that, which represents 25 percent of MTS's budget. He stated that loss equates to the expense for 60 buses, 125 operators, and 25 mechanics. He added that MTS will continue to work with the Port to have the stop sign removed, and this issue can be revisited at a future date.

Action Taken

Mr. Roberts moved to receive a report for information. Mr. McLean seconded the motion, and the vote was 9 to 0 in favor.

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

Action Taken

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

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

Action Taken

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

60. Chairman's Report

Committee Assignments for 2009: Chairman Mathis asked that Board members review the Committee list attached to Agenda Item No. 4 and advise Mr. Jablonski or Gail Williams, Clerk of the Board, if they are interested in serving on a particular committee.

61. Audit Oversight Committee Chairman's Report

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

62. Chief Executive Officer's Report

Mr. Jablonski made no report.

63. Board Member Communications

Los Angeles-San Diego-San Luis Obispo Rail Corridor Agency (LOSSAN): Mr. Rindone reported on discussions at the recent LOSSAN meeting, which he attended as a representative of the MTS Board. He reported that Proposition 1A sets aside funding to provide high-speed train service in California and double tracking in places where there is still single tracking. Mr. Rindone reported that the funding will not be available until the bonds are sold. He also reported that Orange County Transit is planning service expansions that could negatively impact Amtrak and Coaster service in the middle link of the LOSSAN corridor. He stated that Orange County was asked to make a report to both North County Transit and MTS, which may also be affected, regarding this matter.

Fuel Surcharge for Taxis: In response to a question from Mr. Roberts, Mr. Jablonski reported that the fuel surcharge is in the process of being removed. Ms. Lorenzen reported that this issue is on the agenda for the next Taxicab Committee meeting.

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, December 11, 2008.

66. Adjournment

Chairman Mathis adjourned the meeting at 11:37 a.m.

Chairperson
San Diego Metropolitan Transit System

Filed by:

Approved as to form:

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

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): 11/13/08

CALL TO ORDER (TIME): 9:02 a.m.

RECESS: _____

RECONVENE: _____

CLOSED SESSION: 9:12 a.m.

RECONVENE: 9:34 a.m.

PUBLIC HEARING: _____

RECONVENE: _____

ORDINANCES ADOPTED: _____

ADJOURN: 11:37 a.m.

BOARD MEMBER	(Alternate)	PRESENT (TIME ARRIVED)	ABSENT (TIME LEFT)
ATKINS	<input checked="" type="checkbox"/> (Hueso) <input type="checkbox"/>	9:13 a.m. during AI 24	
CLABBY	<input checked="" type="checkbox"/> (Selby) <input type="checkbox"/>		
EMERY	<input checked="" type="checkbox"/> (Cafagna) <input type="checkbox"/>		
EWIN	<input checked="" type="checkbox"/> (Allan) <input type="checkbox"/>		
FAULCONER	<input type="checkbox"/> (Hueso) <input type="checkbox"/>		<input checked="" type="checkbox"/>
MAIENSCHIN	<input checked="" type="checkbox"/> (Hueso) <input type="checkbox"/>		10:13 a.m. during AI 33
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"/>		
MONROE	<input checked="" type="checkbox"/> (Downey) <input type="checkbox"/>		
RINDONE	<input checked="" type="checkbox"/> (McCann) <input type="checkbox"/>		
ROBERTS	<input checked="" type="checkbox"/> (Cox) <input type="checkbox"/>		
RYAN	<input type="checkbox"/> (B. Jones) <input checked="" type="checkbox"/>		11:07 a.m. during AI 48
YOUNG	<input checked="" type="checkbox"/> (Hueso) <input type="checkbox"/>		10:12 a.m. during AI 34
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
for the
Metropolitan Transit System,
San Diego Transit Corporation, and
San Diego Trolley, Inc.

ADM 110.2

December 11, 2008

SUBJECT:

MTS: PROPOSED AMENDMENTS TO BOARD POLICY NO. 22 (RULES OF
PROCEDURE FOR THE METROPOLITAN TRANSIT SYSTEM [MTS])

RECOMMENDATION:

That the Board consider the proposed revisions (Attachment A) to Board Policy No. 22
at the request of the Chairman.

Budget Impact

None.

DISCUSSION:

At the request of the Chairman, staff was asked to prepare proposed modifications to
MTS Board Policy No. 22 for the Board's consideration relative to allowing former MTS
Board Members to sit on MTS Committees.

Currently, Board Policy No. 22 provides as follows:

- 22.7.1 On or before the Board's first meeting in November, the Board shall
appoint less than a quorum of members to an Ad Hoc Nominating
Committee. The Ad Hoc Nominating Committee shall review the list of
MTS committees and make recommendations to the Board with respect
to the appointment of members of the Board to serve on each committee.

Traditionally, the Ad Hoc Nominating Committee has appointed members of the existing
MTS Board to sit on the MTS Committees at the Board's first meeting in January. Some
interest has been expressed in allowing former MTS Board members who are no longer
in office following the November 4, 2008, election to sit on MTS Committees.



In addition, Board Policy No. 22 and California Public Utilities Code section 120050.5 provide as follows:

22.1.3 Any person who is a member of the Board may be appointed by his or her appointing authority to continue to serve as a member of the Board after the termination of his or her term of office for a period not to exceed four years after the date of termination of his or her term of elected office.

In addition, the bylaws for the Los Angeles – San Luis Obispo - San Diego Rail Corridor Agency (LOSSAN) allow for the appointment of a former MTS Board member to act as the representative for MTS:

A member appointed by the San Diego Metropolitan Transit Development Board selected from its own membership or former membership.

The attached proposed modifications to Board Policy No. 22 would allow for former MTS Board members to sit on the following MTS Committees¹:

Accessible Services Advisory Committee
Budget Development Committee
Ad Hoc Railroad Subcommittee
LOSSAN Committee
Taxicab Committee

The proposed changes would not apply to non-MTS committees, which require an MTS Board member to act as the representative (such as the San Diego Association of Governments [SANDAG] Transportation Committee).

Board members may wish to discuss imposing a time limit on the years of service following the end of a Board member's term on the MTS Board.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Tiffany Lorenzen, 619.557.4512, Tiffany.Lorenzen@sdmts.com

DEC11-08.4.POLICY22AMENDMTS.TLOREN.doc

Attachment: A. Proposed Revisions to Policy No. 22

¹ Excludes MTS Executive Committee and Audit Oversight Committee whose composition is determined by sections 22.8 and 22.9 of MTS Policy No. 22.



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Att. A, AI 4, 12/11/08

DRAFT

Policies and Procedures

No. 22

Board Approval: 2/21/08

SUBJECT:

RULES OF PROCEDURE FOR THE METROPOLITAN TRANSIT SYSTEM (MTS)

PURPOSE:

To define and clarify Board Rules of Procedure and incorporate them in Board Policy.

BACKGROUND:

In 1977, the Board adopted Rules of Procedure by resolution and from time to time amendments have been adopted. The Rules shall be contained in Board Policy for ease of reference and periodic updating.

22.1 Membership and Organization

- 22.1.1 Membership in this Board is established by Division 11, Chapter 1, Section 120050 through 120051.6 of the California Public Utilities Code.
- 22.1.2 The Board consists of 15 members selected as follows:
 - a. One member of the County of San Diego Board of Supervisors appointed by the Board of Supervisors.
 - b. Four members of the City Council of the City of San Diego, one of whom may be the mayor, appointed by the City Council.
 - c. One member of each city council appointed individually by the City Councils of the Cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, and Santee.



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.

- d. One person, a resident of San Diego County, elected by a two-thirds vote of the Board, a quorum being present, who shall serve as chairperson of the Board.
- 22.1.3 Any person who is a member of the Board may be appointed by his or her appointing authority to continue to serve as a member of the Board after the termination of his or her term of office for a period not to exceed four years after the date of termination of his or her term of elected office.
- 22.1.4 Alternate members of the Board shall be appointed as follows:
- a. The County of San Diego Board of Supervisors shall appoint any other county supervisor who qualifies for appointment to serve as an alternate member.
 - b. The City Council of the City of San Diego shall appoint a member of the City Council not already appointed to serve as an alternate member.
 - c. The City Councils of the Cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, and Santee shall each individually appoint a member of their respective city councils not already appointed to serve as an alternate member.
- 22.1.5 This Board shall exercise all powers authorized by the laws of the State of California.
- 22.1.6 Only the duly selected official representative, or in his or her absence his or her duly selected alternate, shall be entitled to represent a member agency in the deliberations of the Board.
- 22.1.7 Names of the official representatives and alternates shall be communicated in writing to the Board by each participating member agency and shall thereafter be annually communicated or reaffirmed prior to the February meeting of the Board and at such other times as changes in representation are made by member agencies.
- 22.1.8 The Board shall have the authority to appoint committees or subcommittees and may provide for the appointment of alternates to these committees or subcommittees.
- 22.1.9 Standing committees shall be appointed by the Board as may be required to carry out general and continuing functions and shall be abolished only upon specific action by the Board.
- 22.1.10 Ad hoc specialized subcommittees may be appointed by the Board as the need arises to accomplish specific tasks. Upon

completion of its assignment, each ad hoc subcommittee shall disband.

- 22.1.11 Board members serving on such subcommittees shall be compensated as provided by Board ordinance. The Chief Executive Officer is authorized to enter into agreements to compensate individuals who were Board members at the time of their appointments to such subcommittees and who continue to serve on such subcommittees after their terms of office as Board members, subject to the same limitations as exist for compensation of Board members, and subject to replacement by the Board.

22.2 Meetings

- 22.2.1 On or before the first regular meeting of the Board in December of each year, the Board shall adopt a schedule of its meetings by date, time, and location for the coming year. The Board shall conduct at least one regular meeting in each of the subsequent twelve months. The schedule of the meetings shall be published in the local newspaper of general circulation prior to the next regular meeting.

- 22.2.2 The Board may, when necessary, change the time and place of regular meetings. Notice of such change shall be posted pursuant to the Ralph M. Brown Act.

- 22.2.3 The Clerk of the Board shall forward written notice of the annual schedule of regular meetings and any changes thereto stating the dates, times, and locations to each member's agency and to the respective members and alternates of the Board and the standing committees.

- 22.2.4 Special meetings may be called and noticed under the provisions of the Ralph M. Brown Act as applicable and, specifically, Section 54956 of the California Government Code. The call and notice shall be posted in an area accessible to the public at least 24 hours prior to the meeting.

Special meetings normally shall be called by a majority of the Board or Executive Committee only upon a finding that extraordinary circumstances require Board action prior to the next scheduled Board meeting, such as to discuss a work stoppage or significant litigation, or that a special meeting is necessary to hold a workshop, a joint meeting with another agency, or for other special purposes at a future date beyond the next Board meeting. The Chair may call such meetings only when such extraordinary circumstances arise after the last Board or Executive Committee meeting and Board action is required prior to the next regularly scheduled Board or Executive Committee meeting.

- 22.2.5 A majority of the members of the Board shall constitute a quorum for the transaction of business, and all official acts of the Board shall require the affirmative vote of a majority of the members of the Board.
- 22.2.6 Parliamentary procedure at all meetings shall be governed by Robert's Rules of Order Newly Revised except as otherwise modified herein.
- 22.2.7 Prior to each regular meeting, the Clerk of the Board shall forward a copy of the agenda to each member in accordance with the schedule adopted by the Board. The agendas shall also be mailed to each person or entity previously requesting such in writing. The Clerk shall post the agenda in an area accessible to the public at least 72 hours before the meeting in accordance with the Ralph M. Brown Act. Agenda materials shall be available as public record in accordance with the Ralph M. Brown Act and, specifically, Section 54957.5 of the California Government Code.
- 22.2.8 The Board may take action on items of business not appearing on the posted agenda in accordance with the Ralph M. Brown Act.
- 22.2.9 Requests for Board action may be initiated by any member of the Board or any staff officer.
- 22.2.10 Communication requests may be initiated by an individual and submitted to the Clerk by letter or on forms provided by the Clerk and must state the subject matter and the action which the writer wishes the Board to take. The Clerk shall review all communication requests so received and shall list them on the Board's docket under those items which the Clerk deems to be proper areas of discussion or action by the Board. When a Communications item is listed on the docket, it is not debatable and must be referred to an appropriate committee, other public agency, or to staff to prepare a report or response.
- 22.2.11 Any permanent rule of the Board as set forth herein and unless otherwise established by law may be suspended temporarily by a two-thirds vote of the members present.

22.3 Amendments

- 22.3.1 The Board shall be responsible for making all amendments to these rules.
- 22.3.2 Proposed amendments may be originated by the Board, or any member of such, or by the Chief Executive Officer.
- 22.3.3 Each proposed amendment shall be considered by the Board and a copy thereof forwarded by the Clerk of the Board to the official representative of each member agency.

22.4 Ordinances

- 22.4.1 Every ordinance shall be signed by the Chairman of the Board and attested by the Clerk of the Board.
- 22.4.2 On the passage of all ordinances, the votes of the several members of the Board shall be entered on the minutes.
- 22.4.3 Ordinances shall not be passed within five days of their introduction nor at other than a regular meeting or at an adjourned regular meeting. However, an urgency ordinance may be passed immediately upon introduction either at a regular or special meeting. Except when, after reading the title, further reading is waived by regular motion adopted by unanimous vote of the Board members present, all ordinances shall be read in full either at the time of introduction or passage. When ordinances, other than urgency ordinances, are altered after introduction, they shall be passed only at a regular or at an adjourned regular meeting held at least five days after alteration. Corrections of typographical or clerical errors are not alterations within the meaning of this section.
- 22.4.4 The Clerk of the Board shall cause a proposed ordinance or proposed amendment to an ordinance, and any ordinance adopted by the Board, to be published at least once, in a newspaper of general circulation published and circulated in the Board's area of jurisdiction.
- 22.4.5 The publication of an ordinance, as required by subdivision, may be satisfied by either of the following actions:
- a. The Board may publish a summary of a proposed ordinance or proposed amendment to an ordinance. The summary shall be prepared by the Clerk of the Board and General Counsel. The summary shall be published and a certified copy of the full text of the proposed ordinance or proposed amendment shall be posted in the office of the Clerk of the Board at least five (5) days prior to the Board meeting at which the proposed ordinance or amendment is to be adopted. Within 15 days after adoption of the ordinance or amendment, the Board shall publish a summary of the ordinance or amendment with the names of those Board members voting for and against the ordinance or amendment, and the Clerk of the Board shall post in the office of the clerk a certified copy of the full text of the adopted ordinance or amendment along with the names of those Board members voting for and against the ordinance or amendment.
 - b. If the person designated by the Board determines that it is not feasible to prepare a fair and adequate summary of the

proposed ordinance or amendment, and if the Board so orders, a display advertisement of at least one-quarter of a page in a newspaper of general circulation in the Board's area of jurisdiction shall be published at least five (5) days prior to the Board meeting at which the proposed ordinance or amendment is to be adopted. Within 15 days after adoption of the ordinance or amendment, a display advertisement of at least one-quarter of a page shall be published. The advertisement shall indicate the general nature of, and provide information regarding, the adopted ordinance or amendment, including information sufficient to enable the public to obtain copy of the complete text of the ordinance or amendment and the name of those Board members voting for and against the ordinance amendment.

- 22.4.6 Ordinances shall take effect thirty days after their final passage. An ordinance takes effect immediately, if it is an ordinance for the immediate preservation of the public peace, health, or safety, containing a declaration of the facts constituting the urgency and is passed by a four-fifths vote of the Board.

22.5 Public Comment

- 22.5.1 At a public hearing of the Board, persons wishing to provide comment and testimony shall be permitted to address the Board after submitting a written request to speak to the Clerk identifying the person and the subject agenda item. The Chairman may limit the time for each presentation and may permit additional time to speakers representing a group of individuals or organizations to avoid duplicative testimony. Ordinarily, each speaker will be allowed no more than three minutes.
- 22.5.2 Persons wishing to comment on agenda items other than a public hearing must submit a written request to speak in advance to the Clerk identifying the person and the subject agenda item. Comments must be limited to issues relevant to the particular agenda item. The Chairman may limit the time for each presentation and may permit additional time to speakers representing a group of individuals or organizations to avoid duplicative testimony. Ordinarily, each speaker will be allowed no more than three minutes.
- 22.5.3 Public comment on matters not on the agenda will be permitted on items of interest to the public that are within the subject matter jurisdiction of the Board. Persons wishing to comment must submit a written request in advance to the Clerk identifying the person and subject matter. The Chairman may limit the time for each speaker. Ordinarily, each speaker will be allowed no more than three minutes.

22.6 Chairperson

Prior to the expiration of a Chairperson's term, the Executive Committee shall make a recommendation to the Board on whether to reelect the current Chairperson. In the event that the Board does not reelect a chairperson, or in the event of a vacancy in the position of Chairperson, the Executive Committee shall create an ad hoc nominating committee that shall, by whatever means it deems appropriate, recommend to the Board a candidate or candidates for the position of Chairperson. The Board shall then vote to elect a Chairperson.

22.7 Election of Board Officers and Appointments to Committees

22.7.1 On or before the Board's first meeting in November, the Board shall appoint less than a quorum of members to an Ad Hoc Nominating Committee. The Ad Hoc Nominating Committee shall review the list of MTS committees and make recommendations to the Board with respect to the appointment of members of the Board or former Board members to serve on each MTS committee.

22.7.2 The Ad Hoc Nominating Committee shall also review the list of outside boards and/or committees and make recommendations to the Board with respect to the appointment of members of the Board to represent MTS on each outside board or committee, except for the Board representative appointed to the San Diego Association of Governments (SANDAG) Transportation Committee, which shall be appointed by the Executive Committee.

22.7.3 The Ad Hoc Nominating Committee shall also make a recommendation to the Board with respect to the appointment of the Vice Chairman and the Chair Pro Tem and any other board officers.

22.7.4 The Ad Hoc Nominating Committee shall forward its recommendations for appointments of officers and committee members on or before the first Board meeting in January.

22.7.5 At its first meeting in January, the Board shall elect a Vice Chairman and a Chair Pro Tem from amongst its members. The Vice Chairman shall preside in the absence of the Chairman. In the event of the absence or inability to act by the Chairman and Vice Chairman, the Chair Pro Tem shall preside.

22.7.6 The Board shall then vote on the recommendations made by the Ad Hoc Nominating Committee with respect to all other committee appointments.

22.7.7 In the event that a Board member vacates his or her position on the Board, at the next meeting, the Chairperson shall take nominations from the floor to fill any opening in any Committee positions vacated by that Board member.

22.8 Executive Committee

22.8.1 The Executive Committee of the Board shall consist of the Chairman, the Vice Chairman (if he or she is not already a voting member) a member from the County of San Diego, a member from the City of San Diego, the Transportation Committee Representative (if he or she is not already a voting member), one member who represents the cities of Chula Vista, National City, Coronado, and Imperial Beach (the "South Bay Cities' representative"), and one member who represents the cities of Lemon Grove, La Mesa, El Cajon, Poway, and Santee (the "East County Cities' representative"). The South Bay Cities' representative and the East County Cities' representative shall serve as members of the Executive Committee for a term of two years each. The terms of these two members shall be staggered so as to avoid replacement of both members at the same time.

22.8.2 The East County and South Bay representatives shall serve in the following order:

East County: El Cajon, La Mesa, Lemon Grove, Santee, Poway—each serving a two year term.

South Bay: Chula Vista, Coronado, Imperial Beach, National City—each serving a two year term; however, the representative must have been the primary Board member for two years in order to serve as the Executive Committee representative. In the event that the South Bay representative has not been the primary Board member for two years, the rotation schedule shall be adjusted so that the next city in the rotation serves as the representative, and the city whose member has not yet served two years as the primary Board member would serve the term immediately thereafter; i.e., if Imperial Beach lacked two years of experience, National City would serve first, then Imperial Beach and then the rotation would continue on as set forth above. The requirement for two years of service as the primary Board member shall only apply to the South Bay representative.

After each member has served as either the East County or South Bay representative, the rotation schedule shall repeat.

22.8.3 The alternates to the Executive Committee members shall be as follows:

22.8.3.1 The alternate for the County of San Diego shall be the alternate appointed by the County of San Diego to serve as the alternate for the Board.

2.8.3.2 The alternate for the City of San Diego shall be selected from amongst the three remaining City of San Diego Board members.

- 2.8.3.3 The alternates for the East County Cities' and the South Bay Cities' representatives shall be the representative from the city that is next in the rotation order set forth in section 22.8.3 above (for example, if the City of El Cajon is currently the primary Executive Committee member, then the City of La Mesa member shall be the alternate Executive Committee member). Alternates shall be appointed for a term of two years or such lesser term as necessary to coincide with the term of the member for whom the alternate is appointed.
- 22.8.4 The Vice Chairman shall attend each Executive Committee meeting as a voting member. The Vice Chairman shall serve as the alternate to the Chairman in his or her absence and as a second alternate at large for any of the Executive Committee representatives and shall be a voting member when serving in this capacity.
- 22.8.5 On or before its first meeting in January, the Executive Committee shall appoint one of its members to serve as the representative and one of its members to serve as the alternate to the San Diego Association of Governments (SANDAG) Transportation Committee to serve for a term of one year. In the event that the Executive Committee feels a member of the Board who does not serve on the Executive Committee is their preferred representative or alternate for the SANDAG Transportation Committee, the Executive Committee shall have the ability to select the representative or alternate from the full Board. In that instance, the SANDAG Transportation Committee representative, or the alternate in his or her absence, shall attend the Executive Committee meetings as a voting member. .
- 22.8.6 The primary purpose of the Executive Committee shall be to review and recommend consent items for the agenda of the next MTS Board of Directors meeting; add or delete items as appropriate; and provide input and direction on emerging policies, plans, and issues, in advance, for Board consideration. The Executive Committee shall have the authority to create ad hoc subcommittees for purposes of carrying out its duties and responsibilities.
- 22.8.7 Three members shall constitute a quorum of the Executive Committee, and a majority vote of the members present shall be required to approve any item. In the absence of a quorum, the Chairman may review and recommend consent items for the agenda, establish the order of items, and add or delete items.
- 22.8.8 The Executive Committee shall adopt operating procedures as are necessary for the conduct of its business.

22.9 Audit Oversight Committee

- 22.9.1 The Audit Oversight Committee shall be comprised of the same members that make up the Executive Committee. The Chairman of the Audit Oversight Committee shall be appointed from amongst its members at the first meeting held during each calendar year. The Chairman of the Audit Oversight Committee shall be another member other than the member who serves as the Executive Committee Chairman. Additional members of the MTS Board may be appointed on an annual basis at the first MTS Board meeting in January at the discretion of the MTS Board. The Board may appoint individuals who are not members of the Board to serve as non-voting advisory members to the Audit Oversight Committee.
- 22.9.2 No additional compensation shall be paid to the members of the Audit Oversight Committee unless a meeting takes place on a day other than a regularly scheduled MTS Board meeting or MTS Executive Committee meeting. Compensation shall be paid to any additional members of the MTS Board who are appointed to serve on the Audit Oversight Committee meeting. No compensation shall be paid to any non-voting advisory member appointed by the MTS Board.
- 22.9.3 The primary duties and responsibilities of the Audit Oversight Committee shall be to ensure that management is maintaining a comprehensive framework of internal control, to ensure that management's financial reporting practices are assessed objectively, and to determine to its own satisfaction that the financial statements are properly audited and that any problems disclosed in the course of the audit are properly resolved.
- 22.9.4 The tasks to be performed by the Audit Oversight Committee shall be as follows:
- a. Review the appropriate scope of the annual independent audit and any other audit the committee feels is appropriate.
 - b. Review the appropriate scope of nonaudit services to be performed by the independent auditor.
 - c. Oversee the procurement of outside auditor services with final approval by the Board.
 - d. Review and oversee the preparation of annual financial statements, the annual financial reporting process, internal controls, and independent auditors using an appropriate degree of professional skepticism.
 - e. Assess the performance of any independent auditors.

- f. Provide a forum for MTS internal auditors to report findings.
- g. Provide at least an annual written and oral report to the Board on how the committee discharged its duties and responsibilities.
- h. Establish a procedure for receipt, retention, and treatment of complaints regarding accounting, internal controls, or auditing matters.

22.9.5

The annual scheduled functions to be performed by the Audit Oversight Committee shall be as follows:

- a. In June of each year or as soon as reasonably practicable, review the independent audit engagement letter.
- b. In March or April of each year or as soon as reasonably practicable, establish a plan for review of the audits with independent auditor.
- c. In September of each year or as soon as reasonably practicable, receive report on the status of any audit(s).
- d. In October of each year or as soon as reasonably practicable, receive a report on the preliminary audit findings.
- e. In December of each year or as soon as reasonably practicable, receive a report and provide feedback on financial and compliance statements to Board, and provide the annual report to the Board on the committee's activities.
- f. In March of each year or as soon as reasonably practicable, review the management letter and management's response to the letter.

22.9.6

On a periodic basis the Audit Oversight Committee shall perform the following functions:

- a. Establish procedure for handling complaints.
- b. Receive reports from MTS internal auditor.
- c. Report to the Board in addition to annual report.
- d. Review the appropriate scope of any nonaudit services recommended for performance by the independent auditor.

- e. Review the procurement of independent auditor services and make a recommendation to the Board.
- f. Request procurement of outside independent advisor(s) with Board concurrence.
- g. Meet with the independent auditor without MTS management present.

22.9.7

At a minimum, the Audit Oversight Committee shall ask the following questions of MTS Staff, the Internal Auditor and/or the independent auditors:

- a. What is the name of the audit firm performing the audit, and how long has such firm been under contract to perform such audits?
- b. Was the audit performed in accordance with generally accepted auditing standards (AICPA GAAS standards) or generally accepted government-auditing standards (GAO GAGAS)? If not, why?
- c. Has the independent auditor(s) prepared an unqualified opinion regarding the financial statements? If not, what type of opinion was issued and why?
- d. Was the audit performed independently? The Audit Oversight Committee should ask how the audit firm maintained its independence during the course of the audit.
- e. The Audit Oversight Committee should have the independent auditor(s) describe, in general, the audit procedures performed.
- f. The Audit Oversight Committee should have the independent auditor(s) discuss whether any new accounting principles were adopted, whether any changes were made, or whether the independent auditor(s) recommends any changes in the accounting policies used or their application. In particular, the relevant issue is whether the audit applied best or merely permissible principles.
- g. The Audit Oversight Committee should have the independent auditor(s) describe any significant accounting adjustments affecting the financial statements (prior year as well as current year).

- h. Did the independent auditor(s) encounter any difficulties in dealing with management in performing the audit, including whether there were any disagreements with management regarding any accruals, estimates, reserves, or accounting principles? Did the independent auditor(s) have the full cooperation of MTS management and staff?
- i. The Audit Oversight Committee should ask the audit firm about the quality of the component unit's accounting, internal controls, and the competency of staff. Did the independent auditor(s) issue a management letter? What nonmaterial weaknesses or reportable conditions has the independent auditor(s) noted?
- j. Were there any accounting issues on which the audit firm sought the advice of other audit firms or regulatory bodies?
- k. The Audit Oversight Committee should ask the audit firm whether there are new pronouncements and/or areas of potential financial risk affecting future financial statements of which the Audit Oversight Committee should be aware.

- 22.9.8 Three members shall constitute a quorum of the Audit Oversight Committee, and a majority vote of the members present shall be required to approve any item. In the absence of a quorum, the Chairman may review and recommend consent items for the agenda, establish the order of items, and add or delete items.
- 22.9.9 The Audit Oversight Committee shall adopt operating procedures as are necessary for the conduct of its business.

22.10 Board Member Standards of Conduct

- 22.10.1 The purpose of this policy is to emphasize that each Board member occupies a position of public trust that demands the highest moral and ethical standard of conduct.
- 22.10.2 This policy shall be supplemental and in addition to the Conflict of Interest Code of the Board and is not intended to supersede such Code or any provisions thereof.
- 22.10.3 Board members shall not engage in any business or transaction or have a financial or other personal interest, actual, potential, or apparent, which is incompatible with the proper discharge of his or her official duties or would tend to impair his or her independence of judgment or action in the performance of such duties. Such business, transaction, or interest shall constitute a conflict of interest.

- 22.10.4 No Board member shall engage in any enterprise or activity that shall result in any of the following:
- a. Using the prestige or influence of the Board office for private gain or advantage of the member or another person.
 - b. Using time, facilities, equipment, or supplies of the Board for the private gain or advantage of the member or another person.
 - c. Using official information not available to the general public for private gain or advantage of the member or another person.
 - d. Receiving or accepting money or other consideration from anyone other than the Board for the performance of acts done in the regular course of duty.
 - e. Receiving or accepting, directly or indirectly, any gift or favor from any one doing business with the Board under circumstances from which it could reasonably be inferred that such was intended to influence such person in such person's duties or as a reward for official action.
 - f. Soliciting any gift or favor in such person's official capacity, either directly or indirectly, when such solicitation might reasonably be inferred as to have a potential effect on such person's duties or decision, or when the individual's position as a Board member would in any way influence the decision of the person being solicited.
 - g. Engaging in or accepting private employment or rendering services for private interest, direct or indirect, which may conflict with such person's responsibility or duty, or which, because of that person's position, may influence a decision to the benefit of the organization in which such person has an interest.
- 22.10.5 If a Board member has an actual, potential, or apparent conflict of interest in the subject of an agenda item, and the Board will make a decision regarding this agenda item during an open session meeting, the Board member must recuse himself or herself or, in the case of uncertainty, request a binding determination from the Board's General Counsel. If the Board member has a conflict, he or she may observe, but not participate, in the decision-making process.
- 22.10.6 If a Board member has an actual, potential, or apparent conflict of interest in the subject of an agenda item to be discussed during a closed session meeting, the Board member shall be disqualified

and not present during such discussion so as not to make, participate in making, or in any way attempt to use his or her official position to influence the discussion or decision. In such case, the Board member must recuse himself or herself or, in the case of uncertainty, request a binding determination from the Board's General Counsel. In accordance with the Brown Act, the Board member would be entitled to any information that is publicly reported. The Board member would not, however, be privy to any confidential or privileged information or communications pertaining to the closed session agenda item.

- 22.10.7 No Board member shall disclose to any person, other than members of the Board and other Board staff designated to handle such confidential matters, the content or substance of any information presented or discussed during a closed session meeting unless the Board authorizes such disclosure by the affirmative vote by a majority of the Board.
- 22.10.8 No Board member may disclose confidential or privileged information or communications to any person other than a Board member, General Counsel to the Board, or other Board staff designated to handle such matters, unless disclosure is mandated by law or the Board authorizes such disclosure by the affirmative vote of a majority of the Board.
- 22.10.9 A Board member shall not be privy to confidential or privileged information or communications concerning threatened, anticipated, or actual litigation affecting the Board where the Board member has an actual, potential, or apparent conflict of interest. In the case of uncertainty as to whether a conflict of interest exists, the Board's General Counsel shall issue a binding determination.
- 22.10.10 No Board member shall represent a position on an issue to be the Board's unless the Board has formally adopted such position at a public meeting.
- 22.10.11 Any violation of this policy shall constitute official misconduct if determined by an affirmative vote of the majority of the Board in an open and public meeting. The Board may elect to censure the Board member and the violation may be subject to criminal and/or civil penalties as provided for by applicable law.

FEB21-08.31.AttB.POLICY 22.TLOREN.doc

Original Policy approved on 4/5/84.
Policy revised on 1/12/84.
Policy revised on 7/11/85.
Policy revised on 1/8/87.
Policy revised on 1/11/90.

Policy revised on 8/23/90.
Policy revised on 1/10/91.
Policy revised on 3/24/94.
Policy revised on 1/14/99.
Policy revised on 6/14/01.
Policy revised on 1/10/02.

Policy revised on 1/24/02.
Policy revised on 5/8/03.
Policy revised 2/26/04.
Policy revised 1/12/06.
Policy revised 3/9/06.
Policy revised 3/23/06.

Policy revised 6/14/07.
Policy revised 7/19/07.
Policy revised 2/21/08.



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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.

OPS 950.7 (PC 50451)

December 11, 2008

SUBJECT:

MTS: FEDERAL TRANSIT ADMINISTRATION 5311 PROGRAM OF PROJECTS

RECOMMENDATION:

That the Board of Directors approve Resolution No. 08-25 (Attachment A) authorizing the use of \$242,804 of FTA Section 5311 funds for operating assistance in nonurbanized areas.

Budget Impact

None at this time.

DISCUSSION:

The Federal Transit Administration (FTA) provides funds for capital and operating assistance to agencies providing rural transportation through the Section 5311 Nonurbanized Area Formula Program. These funds do not come directly to the region but are apportioned to the states. The California Department of Transportation (Caltrans), on behalf of the state, in turn reapportions the funds to the region based solely on the regional rural population as a share of the state total rural population. San Diego Association of Governments (SANDAG) allocates the funds to both North County Transit District (NCTD) and MTS. As shown within Attachment A, FTA 5311 funding would provide \$242,804 in operating assistance for MTS.

Recommendation

Grant requirements include submission of a resolution by the Board of Directors authorizing its submittal and project programming. Therefore, staff recommends



that the Board approve, by resolution, submission of a grant application and project programming. Caltrans requires that SANDAG certify that it would amend the Regional Transportation Improvement Program in the event of a grant award.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Nancy Dall, 619.557.4537, nancy.dall@sdmts.com

DEC11-08.6.FTA 5311.NDALL.doc

Attachment: A. Resolution No. 08-25

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

RESOLUTION NO. 08-25

Resolution Authorizing Federal Funding Under FTA Section 5311
(49 U.S.C. Section 5311) with the California Department of Transportation

WHEREAS, the U.S. Department of Transportation is authorized to make grants to states through the Federal Transit Administration (FTA) to support capital and operating assistance projects for nonurbanized public transit services under Section 5311 of the Federal Transit Act; and

WHEREAS, the California Department of Transportation has been designated by the Governor of the State of California to administer Section 5311 grants for public transportation projects; and

WHEREAS, MTS desires to apply for said financial assistance to operate rural transit service in San Diego County; and

WHEREAS, MTS has, to the maximum extent feasible, coordinated and consulted with other transportation providers and users in the region, including consultation with San Diego County Health and Human Services; NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED that MTS does hereby authorize the Chief Executive Officer, or designated representative, to file and execute any actions necessary on behalf of MTS with the California Department of Transportation to aid in financing operating or capital assistance projects pursuant to Section 5311 of the Federal Transit Act of 1964, as amended.

1. General Counsel, or designated representative, is authorized to execute and file all assurances or any other documents required by the California Department of Transportation.

2. The Chief Financial Officer, or designated representative, is authorized to provide additional information as the California Department of Transportation may require in connection with the application for Section 5311 projects.

PASSED AND ADOPTED, by the Board of Directors this _____ day of ____ 2008, 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

G:\Agenda_Items\AI Attachments\AI Attachments -
2008\DEC11-08.6AttA.FTA 5311.NDALL.doc



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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.

LEG 492

December 11, 2008

SUBJECT:

MTS: AUDIT REPORT - THE TRANSIT STORE

RECOMMENDATION:

That the Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

During August 2008, the MTS Internal Auditor performed a review of internal controls and operational procedures at The Transit Store. The objective of the review was to assess the adequacy of internal controls over The Transit Store's operations. As a result of the review, two recommendations were made for management's consideration. Management has accepted the recommendations and is taking action to address the issues noted.

A handwritten signature in black ink, appearing to read 'Paul C. Jablonski', is written over a horizontal line.

Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Mark Abbey, 619.557.4573, mark.abbey@sdmts.com

DEC11-08.7.TRANSITSTOREAUDIT.MABBEY.doc

Attachment: A. The Transit Store Audit Report (Unredacted Copy is Board Only)





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

Memorandum

DATE: October 27, 2008

LEG 492 (PC 50121)

TO: Mark Lowthian
Olivette Burties

FROM: Mark Abbey

SUBJECT: AUDIT REPORT: THE TRANSIT STORE

EXECUTIVE SUMMARY

I have completed a review of The Transit Store's (Store's) internal control procedures. The audit was performed in accordance with the approved audit plan.

Audit Objectives and Scope

The objectives of the audit were to review controls in place to manage Store activities and to assess corrective action taken since the 2006 internal audit.

I reviewed Store controls in the following areas:

- Consignment sales
- Cash-handling controls
- Exchanges and storage of fare media
- Lost and found
- Physical security
- Promotions and promotional items

Observations and Recommendations

Progress has been made in strengthening control procedures over the areas mentioned in the 2006 internal audit report. To further improve controls over Store processes, the following recommendations are offered for management's consideration.

•



- [REDACTED]

A more detailed explanation of these recommendations is provided in "Detailed Observations" below. I wish to thank Store personnel for their cooperation and assistance during the course of this review.

BACKGROUND

The Store is located at 102 Broadway in downtown San Diego. Staff consists of one supervisor and four full-time clerks. Store hours are Monday through Friday from 9 a.m. to 5 p.m. Fare media is consigned to the Store by the San Diego Association of Governments (SANDAG) and North County Transit District (NCTD). Items sold at the Store include the following:

- Monthly passes for MTS and NCTD
- Semimonthly passes for MTS
- Universal tokens
- MTS Access and County Transit Services (CTS) paratransit passes
- Day Tripper tickets
- MTS merchandise
- Gift certificates

Customers pay for media and merchandise by cash, check, federal vouchers, credit and debit cards, or purchase orders. Recent monthly sales have been averaging about \$430,000; approximately 65 percent of the sales are in cash.

The Store reports to the Passenger Services Department of San Diego Transit Corporation (SDTC). Monthly sales reports are forwarded to SANDAG, MTS, and NCTD by the Store. SANDAG and NCTD invoice SDTC monthly for media sold during the preceding month. MTS's Accounting Department reviews monthly Store reports and compares these reports to SANDAG's and NCTD's invoices. MTS's Accounting Department also compares bank deposits reported by the Store against deposits reported by the bank.

Since the 2006 audit, a new security camera system has been installed, which provides greatly enhanced camera coverage. In addition, plans have been approved to install bulletproof glass to separate cashiers from the public.

DETAILED OBSERVATIONS

Cash-Handling Procedures

During my review, the cashier's cash was [REDACTED]

Recommendation

Ensure that cashiers [REDACTED]
[REDACTED].

Management Response

We will ensure closer adherence to the SOP.

Daily Bank Deposit Procedures

In observing procedures followed for the daily bank deposits, I noted that the clerk [REDACTED]
[REDACTED].

Recommendation

Keep [REDACTED].

Management Response

This is the SOP at The Transit Store. We have instituted more rigid controls to ensure adherence to the policy. New cameras and equipment were strategically installed throughout at The Transit Store for added security in December 2007. A camera was placed in the second office specifically for the purpose of overseeing the bank deposit process. The camera is angled to clearly see the cash being handled as well as anyone entering or leaving the office. In addition, the recommendation that the door to the office to be closed and locked whenever cash is left unattended has been added to The Transit Store's SOP as standard procedure. We have discussed with staff the importance of adhering to this policy—violations will be subject to disciplinary action.

JGardetto/
M-FINAL.TRANSIT STORE 08.MABBEY.doc
9/23/08

cc: Paul Jablonski, Tiffany Lorenzen, Cliff Telfer - MTS
Claire Spielberg - SDTC



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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.

LEG 492

December 11, 2008

SUBJECT:

MTS: AUDIT REPORT - PROCUREMENT PROCESS

RECOMMENDATION:

That the Board of Directors receive a report on the procurement process.

Budget Impact

None.

DISCUSSION:

During September 2008, the MTS Internal Auditor performed a review of the procurement process. The objective of the review was to assess the adequacy of internal controls over procurement. As a result of the review, five recommendations were made for management's consideration. Management has accepted the recommendations and is taking action to address the issues noted.



Paul G. Jablonski
Chief Executive Officer

Key Staff Contact: Mark Abbey, 619.557.4573, mark.abbey@sdmts.com

DEC11-08.8.PROCUREMENT AUDIT.MABBEY.doc

Attachment: A. Procurement Audit Report



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.



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

Memorandum

DATE: October 23, 2008
TO: Cliff Telfer
FROM: Mark Abbey
SUBJECT: AUDIT REPORT: MTS PROCUREMENT

LEG 492

EXECUTIVE SUMMARY

I have completed a review of internal controls over the procurement process at MTS. The review was performed in accordance with the approved audit plan.

Audit Objectives and Scope

The objective of the review was to assess the adequacy of controls over the procurement process in the following areas:

- Requisitioning
- Bidding
- Ordering
- Receiving
- Procurement card process

Background

The MTS Procurement Department consists of an approved staff complement of 11 positions (3 of which were vacant at the time of this review). The Procurement Department is responsible for the procurement of MTS materials, parts, supplies, and services as supported by the annual operating and capital budgets.

Requisitions for the bus and rail divisions are initiated and approved by various departmental managers utilizing the Ellipse system. Purchase requisition approvals are made on-line by managers based on assigned approval dollar limits consistent with MTS Policy No. 41. MTS administrative staff generates manual requisitions that are approved in writing and processed using the IFAS system.

Based on requisitions received, the Procurement Department generates purchase orders. Orders are generated in compliance with MTS's procurement policy with respect to approvals and competitive bidding requirements. All goods and services received are performed by bus and rail warehouse personnel.



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.

Procurement procedures are conducted in conformance with MTS Policy No. 52. Purchase requisition approval dollar limits are governed by MTS Policy No. 41. The Procurement Department has a comprehensive Procurement Manual, which explains how procurement procedures are to be conducted with specific direction on federal requirements, emergency orders, etc.

Observations and Recommendations

Overall, adequate controls are in place over the MTS procurement process. To further improve controls over procurement, the following recommendations are offered for management's consideration:

- Minimize the use of standing purchase orders.
- Ensure all monthly procurement card transactions are approved in writing by employees' managers.
- Incorporate the procurement card procedures into the MTS Procurement Manual.
- Finance should review all Ellipse purchase requisition approval limits and ensure limits are consistent with MTS Policy No. 41.
- The MTS Chief Financial Officer should provide a written delegation of authority to the Senior Buyer to approve fuel purchase orders.

A detailed explanation of these recommendations is provided in *Detailed Observations* below.

I wish to thank Procurement Department personnel for their cooperation and assistance during the course of this review.

DETAILED OBSERVATIONS

1.0 Standing Purchase Orders

Both the bus and rail divisions frequently use "standing purchase orders." Standing purchase orders are used to facilitate the purchase of smaller items and routine services, which may be of a repetitive nature. For example, a tree-cutting or janitorial service may be procured using a standing purchase order. One purchase order is generated for the entire year. Monthly invoices are paid by the Finance Department based on one purchase order number.

At the time of this audit, San Diego Trolley, Inc. had a total of 108 standing purchase orders while San Diego Transit Corporation had 41 standing purchase orders. The major concern is that these standing purchase orders do not necessarily require the same level of controls as formal contracts.

Efforts should be made to minimize the use of these standing purchase orders and, where appropriate, formal contracts should be used in their place.

Recommendation

Minimize the use of standing purchase orders.

Management Response

Agree. Procurement Department staff has been directed to consolidate previous standing purchase orders into longer-term contracts where feasible. This process started in May 2008 and will continue. Our goal is to consolidate 10% of the remaining standing purchase orders per year until at least 50% of the current standing purchase orders are consolidated.

1.1 Procurement Cards

MTS has assigned Bank of America Visa cards to a total of 11 employees. The purpose of the cards is to facilitate smaller purchases without the need to go through a formal procurement process. Most of the purchases are made for small amounts. Monthly dollar limits are placed on the cards, and each card has a set credit limit. Only specific categories of purchases are allowed. Each month, the bank invoices the MTS Finance Department for each cardholder's transactions. MTS has written procedures that require each cardholder to complete a log of every transaction completed. This log must be approved in writing by the employee's manager and turned into MTS's Finance Department. The Finance Department matches the log to the bank statement prior to paying the bill.

During my review of recent transactions, I noted that one cardholder was approving his own transaction log. An independent manager should be approving these transactions in order to provide satisfactory control and to comply with procedures.

I also noted that the procurement card procedures are not incorporated into the MTS Procurement Manual.

Recommendations

- Ensure that all monthly procurement card transactions are approved in writing by employees' managers.
- Incorporate the procurement card procedures into the MTS Procurement Manual.

Management Response

- Changes to the current purchase card procedures are now in progress. One of the proposed changes would create a new responsible position of Approving Official (AO). Every card holder would have an AO responsible for giving initial purchase authorization and subsequent review and certification of purchase card purchases. This change should improve controls.
- Changes to the procurement manual have been proposed, which would reference the purchase card procedures. These changes are under review. Administratively, it is more efficient to have a separate procurement card procedure manual as it will require frequent updates as the program expands.

1.2 Ellipse Purchase Requisition Approval Dollar Limits

MTS Policy No. 41.2 sets out "authorized signatories on purchase requisitions" for MTS supervisory and management staff. I compared the dollar limits established in Policy No. 41.2 with the limits set up in the Ellipse system. My review revealed a number of inconsistencies between the two; for example, the Chief Operating Officer-Bus Division has an approval limit in

Ellipse of \$99,000 while Policy 41.2 shows only \$50,000. The General Manager of Trolley has an approval limit in Ellipse of \$99,000 while the policy shows only \$50,000.

The Finance Department needs to review all approval limits established within Ellipse and ensure that they are consistent with MTS's policy. The risk exists that staff could approve purchases outside of their established authority limits.

Recommendation

The Finance Department should review all Ellipse purchase requisition approval limits and ensure that limits are consistent with MTS Policy No. 41.

Management Response

We will work with the Human Resources Department to correct the approval levels and how to maintain monitoring of the system in the future.

1.3 Purchase Order Approvals

The Senior Buyer performs weekly procurements of diesel fuel. These purchases may amount to about \$30,000. A purchase order is created and is signed by the Senior Buyer. The Senior Buyer does not have formal authority to sign purchase orders of this amount. A formal written delegation of signing authority needs to be arranged by the MTS Chief Financial Officer delegating sufficient signing authority to the Senior Buyer.

The risk exists that employees without adequate authority can approve procurements without authorization. I was advised that the delegation given by the MTS CFO had been verbal.

Recommendation

The MTS Chief Financial Officer should provide a written delegation of authority to the Senior Buyer to approve fuel purchase orders.

Management Response

Agree. There should be a written documentation of authority in MTS Board Policy No. 41 designating the Manager of Procurement with the authority to purchase fuel with the power of redelegation to subordinate staff.

DEC11-08.8.Atta.PROCUREMTAUDIT.MABBEY.doc

cc: Paul Jablonski, Tiffany Lorenzen, Procurement Manager



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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.

OPS 960.6

December 11, 2008

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) to 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

DEC11-08.9.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 _____ 2008, 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 9th 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 _____



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

* Lowest responsive, responsible bidder

** Nonresponsive bidder



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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

December 11, 2008

SUBJECT:

MTS: WEED ABATEMENT SERVICES – CONTRACT AWARD

RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute a contract (in substantially the same form as Attachment A – MTS Doc No. PWL107.0-09) with DeAngelo Brothers, Inc. for weed abatement services for a five-year period.

Budget Impact

This contract would be for a five-year period with a total cost not to exceed \$210,575.00. Funding would come from San Diego Trolley, Inc.'s (SDTI's) operating budget (FY 09 through FY 13) comprised of 80% federal and 20% local funds.

DISCUSSION:

Background

MTS Policy No. 52 (Procurement of Goods and Services) requires a formal competitive bidding process for procurements exceeding \$100,000. MTS issued an Invitation for Bids on October 10, 2008, for weed abatement services for a five-year period to conduct an annual roadbed and right-of-way herbicide program for SDTI. A total of three responsive bids were received on November 5, 2008 (see Bid Summary – Attachment B). DeAngelo Brothers, Inc. was the lowest responsive, responsible bidder for the five-year period at \$210,575.00; therefore, pursuant to MTS policy, staff recommends award of the contract to DeAngelo Brothers, Inc.

Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Marco Yniguez, 619.557.4576, marco.yniguez@sdmts.com

DEC11-08.10.WEED ABATEMT.MYNIGUEZ.doc

Attachments: A. Draft MTS. Doc. No. PWL107.0-09
B. Bid Pricing



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.

STANDARD SERVICES AGREEMENT

DRAFT

PWL107.0-09
 CONTRACT NUMBER
 OPS 970.2
 FILE NUMBER(S)

THIS AGREEMENT is entered into this _____ day of _____, 2008, 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: DeAngelo Brothers, Inc. Address: 4863 Cheyenne Way

Form of Business: Corporation Chico, California 91710
 (Corporation, partnership, sole proprietor, etc.)

Telephone: 909.590.1529

Authorized person to sign contracts: Kevin Scrivner General Manager
 Name Title

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

Provide weed abatement services for San Diego Trolley, Inc. (SDTI) right-of-way, including furnishing equipment, materials and labor as stipulated in MTS's Invitation for Bids (IFB), MTS Doc No. PWL107.0-09, including Responses to Approved Equals/Clarifications; and in accordance with the Standard Services Agreement, including the Standard Conditions Services, Federal Requirements, MTS's Safety Program, and DeAngelo Brother, Inc.'s bid proposal dated November 5, 2008 (hereinafter "Contract Documents"). The Contractor shall pay prevailing wages as required by the California Labor Code and the federal Davis-Bacon Act. If there are any inconsistencies between the contract documents, the following order of precedence will govern the interpretation of the contract:

1. MTS's Weed Abatement IFB, MTS's Responses to Approved Equals/Clarifications, MTS's Safety Program, and DeAngelo Brother, Inc.'s bid proposal dated November 5, 2008.
2. Standard Services Agreement, including the Standard Conditions Services and Federal Requirements.

This contract shall be for a five-year base period effective January 1, 2009, through December 31, 2013. The total contract amount shall not exceed \$210,575.00.

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
\$210,575.00	371-53710	09-13

By: _____
 Chief Financial Officer Date

BID SUMMARY

WEED ABATEMENT SERVICES IFB

DeAngelo Brothers, Inc.	\$210,575.00*
Allied Weed Control	\$265,250.00
Quality Sprayers	\$291,250.00

*Lowest Responsive and Responsible Bidder



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

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 430 (PC 50121)

December 11, 2008

SUBJECT:

MTS: UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

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.

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



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.

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

DEC11-08.30.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
MINOR CONSTRUCTION		
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
	Total Construction	1,285,520
PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES		
11212	Transit Store Security Improvements	55,600
11190	IAD Main Entrance Security Project	64,000
11187	CVT Bus Stop Security Improvements	40,000
	Total Services	159,600
WHOLESALE DURABLE GOODS		
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
	Total Wholesale Durable Goods	420,000
	Total Budgeted Contracts FY07-08	1,865,120

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

Att. B, AI 30, 12/11/08

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 ☒ 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
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**

Att. B, AI 30, 12/11/08

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

Att. B, AI 30, 12/11/08

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

Att. B, AI 30, 12/11/08

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



Att. B, AI 30, 12/11/08
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.

Sincerely,

Tiffany Lorenzen
General Counsel & DBE Liaison Officer

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

Enclosure



Att. B, AI 30, 12/11/08

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

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.

Sincerely,

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

Tiffany Lorenzen
General Counsel & DBE Liaison Officer

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

Enclosure

**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.



Local Agency Bidder-DBE (Construction Contracts)-Information

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: _____

CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED ²	DBE Cert. No. AND EXPIRATION DATE	NAME OF DBEs ¹ (Must be certified on the date bids are opened - include DBE address and phone number)	DOLLAR AMOUNT DBE ¹
<p>IMPORTANT: Identify all DBE firms being participating in the project, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid. Provide copies of the DBEs' quotes, and if applicable, a copy of joint venture agreements pursuant to the Subcontractors Listing Law and the Special Provisions.</p> <p>1. Enter DBE prime and subcontractors certification number. Prime contractors shall indicate all work to be performed by DBEs including work performed by its own forces.</p> <p>2. If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE.</p> <p>3. See Section "Disadvantaged Business Enterprise (DBE)," of the Special Provisions (construction contracts); to determine how to count the participation of DBE firms.</p>			Total Claimed Participation	\$ _____ %
			Signature of Bidder	
			Date	(Area Code) Tel. No.
			Person to Contact	(Please Type or Print)

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.*

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTING REQUEST
DC-CEM-1201 (REV. 4/94) (OLD HC-45) CT# 7541-3514-7

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
Categories: 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

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

APPROVED	
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/) 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	
						\$	\$	
CONTRACT ITEM No.	DESCRIPTION OF WORK PERFORMED AND MATERIAL PROVIDED	SUBCONTRACTOR NAME AND BUSINESS ADDRESS	DBE CERT. NUMBER & EXP. DATE	CONTRACT PAYMENTS			FEDERAL SHARE \$	
				NON-DBE	DBE (MINORITY)	DBE (NON- MINORITY WOMEN)	DBE (MINORITY WOMEN)	DATE WORK COMPLETE
				TOTAL PAYMENTS \$	\$	\$	DBE GOAL ATTAINMENT	
ORIGINAL DBE COMMITMENT				Original DBE %				
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.								
CONTRACTOR/CONSULTANT REPRESENTATIVE'S SIGNATURE				BUSINESS PHONE NUMBER			DATE	
RESIDENT PROJECT ENGINEERS SIGNATURE				BUSINESS PHONE NUMBER			DATE	
AGENCY								

Distribution: (1) Original plus one copy included in the Report of Expenditures - DLAE
(2) Copy - Local Agency files

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 USEDDC-CEM-3101 (OLD HC-30 REV. 10/92) 7541-3511-1

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____

in Dist. _____, Co. _____, Rte. _____, P.M. _____,
will be obtained from sources herein designated.

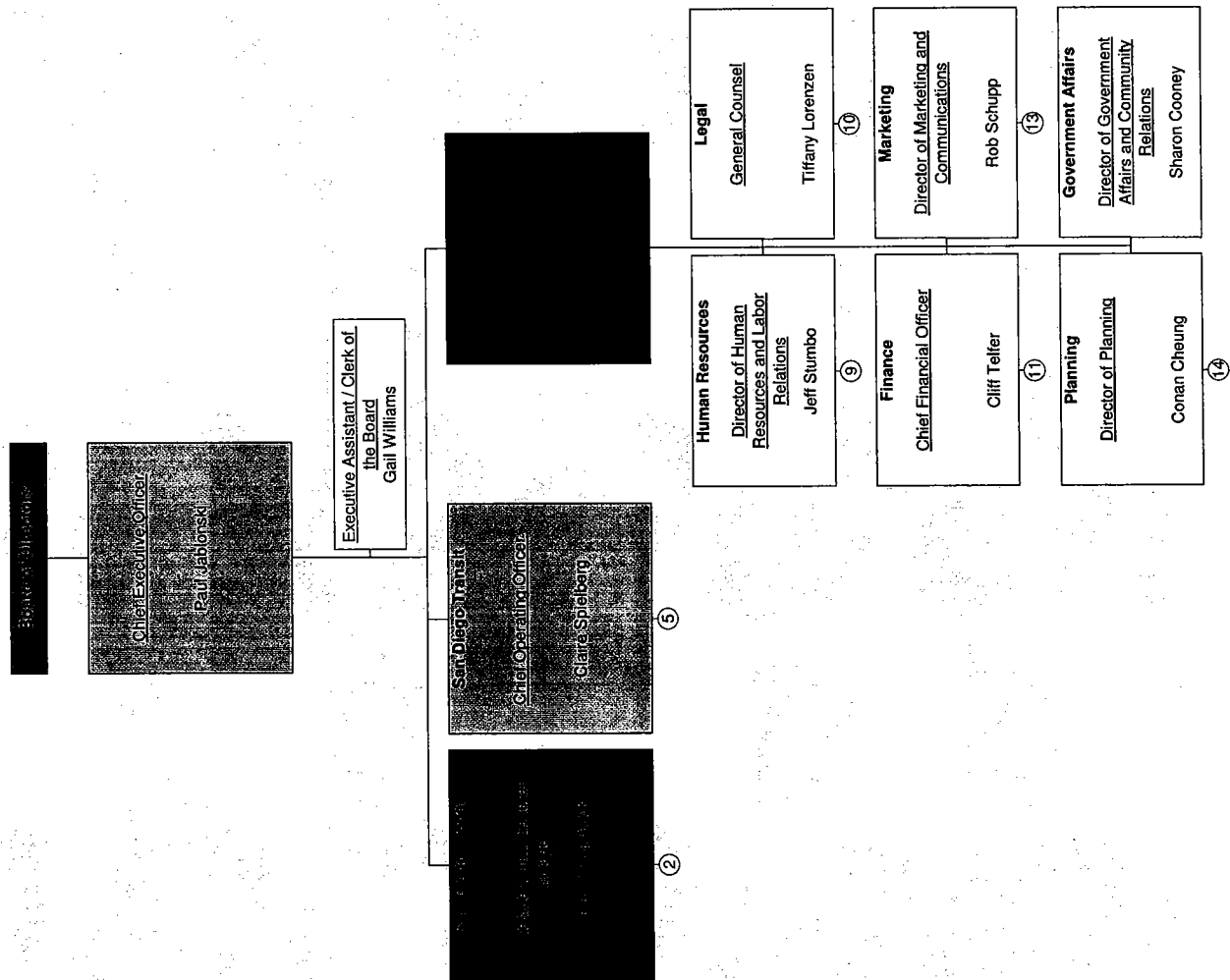
[illegible]

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.

Blue District

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.

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/sizestandardstopics/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)	⊗ STOP! 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.
<input type="checkbox"/> SDB		

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 <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	⊗ STOP! 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
(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 <i>(attach extra sheets, if needed)</i> :									
<u>Name</u> 1. _____ 2. _____ 3. _____	<table style="width: 100%;"> <tr> <td style="width: 33%;"><u>Address</u></td> <td style="width: 33%;"><u>Type of Business</u></td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </table>	<u>Address</u>	<u>Type of Business</u>						
<u>Address</u>	<u>Type of Business</u>								

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> :	
(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 <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other <i>(specify)</i> _____	
(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> <td style="width: 60%;"></td> <td style="text-align: center;"><u>Type</u></td> <td style="text-align: center;"><u>Dollar Value</u></td> </tr> <tr> <td>(2) Initial investment to acquire ownership interest in firm:</td> <td style="text-align: center;">Cash</td> <td style="text-align: center;">\$</td> </tr> <tr> <td></td> <td style="text-align: center;">Real Estate</td> <td style="text-align: center;">\$</td> </tr> <tr> <td></td> <td style="text-align: center;">Equipment</td> <td style="text-align: center;">\$</td> </tr> <tr> <td></td> <td style="text-align: center;">Other</td> <td style="text-align: center;">\$</td> </tr> </table>		<u>Type</u>	<u>Dollar Value</u>	(2) Initial investment to acquire ownership interest in firm:	Cash	\$		Real Estate	\$		Equipment	\$		Other	\$
		<u>Type</u>	<u>Dollar Value</u>													
(2) Initial investment to acquire ownership interest in firm:		Cash	\$													
	Real Estate	\$														
	Equipment	\$														
	Other	\$														
(3) Percentage owned:																
(4) Familial relationship to other owners:																
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">(5) Shares of Stock:</td> <td style="width: 15%; text-align: center;"><u>Number</u></td> <td style="width: 15%; text-align: center;"><u>Percentage</u></td> <td style="width: 15%; text-align: center;"><u>Class</u></td> <td style="width: 15%; text-align: center;"><u>Date acquired</u></td> <td style="width: 20%; text-align: center;"><u>Method Acquired</u></td> </tr> </table>			(5) Shares of Stock:	<u>Number</u>	<u>Percentage</u>	<u>Class</u>	<u>Date acquired</u>	<u>Method Acquired</u>								
(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
(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):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions (responsibility for acquisition of lines 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.			
(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: _____	(c) Phone 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 Transferred	Whom To Transferred	Whom 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:

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.					

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

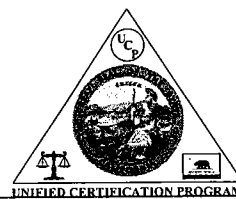
- ☐ Documented proof of ownership of the company
- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Title(s) and registration certificate(s) for each truck owned or operated by your firm
- ☐ List of U.S. DOT numbers for each truck owned or operated by your firm

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



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\$ _____ (Describe in Section 2)
IRA or Other Retirement Account\$ _____	Installment Account (Auto)\$ _____ Mo. Payments \$ _____
Accounts & Notes Receivable.....\$ _____	Installment Account (Other)\$ _____ Mo. Payments \$ _____
Life Insurance-Cash Surrender Value Only\$ _____ (Complete Section 8)	Loan on Life Insurance\$ _____
Stocks and Bonds\$ _____ (Describe in Section 3)	Mortgages on Real Estate\$ _____ (Describe in Section 4)
Real Estate.....\$ _____ (Describe in Section 4)	Unpaid Taxes.....\$ _____ (Describe in Section 6)
Automobile-Present Value\$ _____	Other Liabilities\$ _____ (Describe in Section 7)
Other Personal Property\$ _____ (Describe in Section 5)	Total Liabilities\$ _____
Other Assets\$ _____ (Describe in Section 5)	Net Worth\$ _____
Total\$ _____	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:
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Signature:	Date:	Social Security Number:
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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/size.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)

110000	Agriculture, Forestry, Fishing and Hunting
111000	Crop Production
112000	Animal Production
113000	Forestry and Logging
114000	Fishing, Hunting and Trapping
115000	Support Activities for Agriculture and Forestry
210000	Mining
211000	Oil and Gas Extraction
212000	Mining (except Oil and Gas)
213000	Support Activities for Mining
220000	Utilities
221110	Hydroelectric, Fossil Fuel, Nuclear and Other Electric Power Generation
221120	Electric Power Transmission, Control and Distribution
221310	Water Supply and Irrigation Systems
230000	Construction*
236000	Construction of Buildings
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	Heavy and Civil Engineering Construction
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	Specialty Trade Contractors
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

310000	Manufacturing
312000	Food Manufacturing
313000	Beverage and Tobacco Product Manufacturing
314000	Textile Mills
315000	Textile Product Mills
315211	Apparel Manufacturing
315212	Men's and Boys' Cut and Sew Apparel Contractors
315220	Women's, Girls', and Infants' Cut and Sew Apparel Contractors
315230	Men's and Boys' Cut and Sew Apparel Manufacturing
315299	Women's and Girls' Cut and Sew Apparel Manufacturing
315999	All Other Cut and Sew Apparel Manufacturing
316000	Other Apparel Accessories and Other Apparel Manufacturing
316211	Leather and Allied Product Manufacturing
316213	Rubber and Plastics Footwear Manufacturing
316214	Men's Footwear (except Athletic) Manufacturing
316219	Women's Footwear (except Athletic) Manufacturing
316219	Other Footwear Manufacturing
321000	Wood Product Manufacturing
322000	Paper Manufacturing
323000	Printing and Related Support Activities
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	Petroleum and Coal Products Manufacturing
324121	Asphalt Paving Mixture and Block Manufacturing
324122	Asphalt Shingle and Coating Materials Manufacturing
325000	Chemical Manufacturing
326000	Plastics and Rubber Products Manufacturing
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	Nonmetallic Mineral Product Manufacturing
331000	Primary Metal Manufacturing
332000	Fabricated Metal Product Manufacturing
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	Machinery Manufacturing
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)

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	Radiant Television Broadcasting and Wireless Communications Equipment Manufacturing	420000	<i>Wholesale Trade</i>
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.

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
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers
424330	Women's, Children's, and Infants' Clothing and Accessories 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
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers
424690	Other Chemical and Allied Products Merchant Wholesalers
424710	Petroleum Bulk Stations and Terminals
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)
424920	Book, Periodical, and Newspaper Merchant Wholesalers
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers
424940	Tobacco and Tobacco Product Merchant Wholesalers
424950	Paint, Varnish, and Supplies Merchant Wholesalers
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers
425000	Wholesale Electronic Markets and Agents and Brokers
425110	Business to Business Electronic Markets
425120	Wholesale Trade Agents and Brokers

440000

Retail Trade

459999

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 Dtrs</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

480000

Transportation

499999

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
484122	General Freight Trucking, Long-Distance, Less Than Truckload
484210	Used Household and Office Goods Moving
484220	Specialized Freight (except Used Goods) Trucking, Local
484230	Specialized Freight (except Used Goods) Trucking, Long-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

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
510000 Information	
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
520000 Finance and Insurance*	
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
530000 Real Estate and Rental and Leasing	
531000	<i>Real Estate</i>
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)
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
	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing
532411	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing
532412	Office Machinery and Equipment Rental and Leasing
532420	Other Commercial and Industrial Machinery and Equipment Rental and Leasing
532490	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)
533110	

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
	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
541620	Environmental Consulting Services
541690	Other Scientific and Technical Consulting Services
541710	Research and Development in the Physical, Engineering, and Life Sciences
	Research and Development in the Social Sciences and Humanities
541720	Advertising Agencies
541810	Public Relations Agencies
541820	Media Buying Agencies
541830	Media Representatives
541840	Display Advertising
541850	Direct Mail Advertising
541860	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)
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists
621391	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

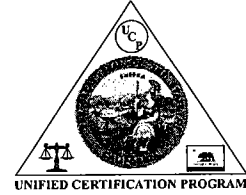
720000 Accommodation and Food Services

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)

810000	Other Services
811000	<i>Repair and Maintenance</i>
811111	General Automotive Repair
811112	Automotive Exhaust System Repair
811113	Automotive Transmission Repair
811118	Other Automotive Mechanical and Electrical Repair and Maintenance
811121	Automotive Body, Paint and Interior Repair and Maintenance
811122	Automotive Glass Replacement Shops
811191	Automotive Oil Change and Lubrication Shops
811192	Car Washes
811198	All Other Automotive Repair and Maintenance
811211	Consumer Electronics Repair and Maintenance
811212	Computer and Office Machine Repair and Maintenance
811213	Communication Equipment Repair and Maintenance
811219	Other Electronic and Precision Equipment Repair and Maintenance
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance
811411	Home and Garden Equipment Repair and Maintenance
811412	Appliance Repair and Maintenance
811420	Reupholstery and Furniture Repair
811430	Footwear and Leather Goods Repair
812000	<i>Personal and Laundry Services</i>
812320	Drycleaning and Laundry Services (except Coin-Operated)
812331	Linen Supply
812332	Industrial Launderers
812921	Photo Finishing Laboratories (except One-Hour)
812922	One-Hour Photo Finishing
812930	Parking Lots and Garages
813000	<i>Religious, Grantmaking, Civic, Professional and Similar Organizations</i>

*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.

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.

<i>Southern Cluster</i>		
Area	Counties	Certifying Agencies
Riverside, Imperial & San Diego (RIS)	Imperial Riverside San Diego	<p><u>SUBMIT APPLICATION PACKAGE TO:</u></p> <ul style="list-style-type: none"> ➤ CITY OF LOS ANGELES ➤ LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY <p style="text-align: center;"><u>OR</u></p> <ul style="list-style-type: none"> ➤ CALIFORNIA DEPARTMENT OF TRANSPORTATION <p style="text-align: center;">SEE CONTACT INFORMATION BELOW.</p>
Los Angeles Area	Kern Los Angeles Orange San Bernardino San Luis Obispo Santa Barbara Ventura	<div style="display: flex; justify-content: space-between;"> <div> <p>CITY OF LOS ANGELES Bureau of Contract Admin. Centralized Certification Section 1149 S. Broadway, Ste 300 Los Angeles, CA 90015 Phone: (213) 847-2684 Fax: (213) 847-2777 http://bca.lacity.org</p> </div> <div> <p>LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (METRO) Diversity and Economic Opportunity Department One Gateway Plaza, MS 99-13-5 Los Angeles, CA 90012 Phone: (213) 922-2600 Fax: (213) 922-7660 www.metro.net</p> </div> </div>

* List of agencies subject to change

Northern Cluster

Area	Counties	Certifying Agencies	
Bay Area/ Central Valley	Alameda	S.F. BAY AREA RAPID TRANSIT DISTRICT (BART)	SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)
	Amador	Office of Civil Rights	Contract Compliance Office
	Calaveras	300 Lakeside Drive	1 South Van Ness Ave, 3rd Floor
	Contra Costa	18 th 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	www.sfmuni.com
	Marin	www.bart.gov	SAN MATEO COUNTY TRANSIT DISTRICT (SAMTRANS)/ PENINSULA CORRIDOR JOINT POWERS BOARD (JPB)
	Mariposa	CITY OF FRESNO	DBE Office
	Merced	DBE Program	1250 San Carlos Avenue
	Monterey	2101 G Street, Building A	San Carlos, CA 94070
	Napa	Fresno, CA 93706	Phone: (650) 508-7939
	San Benito	Phone: (559) 621-1153	Fax: (650) 508-7738
	San Francisco	Fax: (559) 488-1069	www.samtrans.com
	San Joaquin	www.fresno.gov	
	San Mateo	SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA)	
	Santa Clara	Office of Small &	
	Santa Cruz	Disadvantaged Businesses	
	Solano	3331 North First Street, Bldg. A	
	Sonoma	San Jose, CA 95134-1906	
	Stanislaus	Phone: (408) 321-5962	
	Tulare	Fax: (408) 955-9729	
	Tuolumne	www.vta.org	
		CENTRAL CONTRA COSTA TRANSIT AUTHORITY (CCCTA)	
		Office of Civil Rights	
		2477 Arnold Industrial Way	
		Concord, CA 94520-5327	
		Phone: (925) 676-1976	
		Fax: (925) 686-2630	
		www.cccta.org	
Northern California	Alpine	CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS)	YOLO COUNTY TRANSPORTATION DISTRICT (YOLOBUS)
	Butte	Civil Rights MS 79	DBE Programs
	Colusa	1823 - 14 th Street	350 Industrial Way
	Del Norte	Sacramento, CA 95814	Woodland, CA 95776
	El Dorado	Phone: (916) 324-1700 or (866)	Phone: (530) 661-0816
	Glenn	810-6346	Fax: (530) 661-1732
	Humboldt	Fax: (916) 324-1862	www.yolobus.org
	Inyo	www.dot.ca.gov	
	Lake		
	Lassen		
	Mendocino		
	Modoc		
	Mono		

Updated 08/25/08

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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 Metlaktila 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.

Electronic Code of Federal Regulations:

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

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:

(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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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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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.) 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,

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?

Electronic Code of Federal Regulations:

(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.

(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

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

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).

(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.

(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

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.

(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

(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

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

(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.

(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;

(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

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

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

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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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

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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.,

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 Numbers covered by this report. If more than six, 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(H) 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 F 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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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 required 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/indexableofsize.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.

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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"/> §(a) <input type="checkbox"/> SDB	⊗ STOP! If you checked either the §(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?

☐ 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		⊗ STOP! 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?
☐ Yes ☐ 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? ☐ Yes ☐ 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):

Name	Address	Type of Business
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? ☐ Yes ☐ No

If Yes, then list (attach extra sheets, if needed):

Name	Relationship	Company	Type of Business	Own or Manage?
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 the 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):**

	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):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions (responsibility for acquisition of lines 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 investments, 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.			

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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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



*Flex your power!
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.

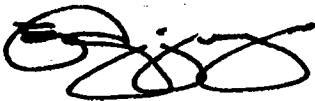
The appropriate race neutral construction contract specifications must be used in all federal-aid contracts at this time. To ensure that your local agency uses the latest construction contract specifications available, always refer to the construction contract specifications online located at the Caltrans, Division of Local Assistance website at:

http://www.dot.ca.gov/hq/LocalPrograms/sam_boil/sam_boil.htm

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. 31

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

FIN 310.2

December 11, 2008

SUBJECT:

MTS: FY 2008 FINAL BUDGET COMPARISON

RECOMMENDATION:

That the Board of Directors approve applying \$481,000 to the MTS Contingency Reserve.

Budget Impact

None.

DISCUSSION:

With the completion of the FY 2008 Comprehensive Annual Financial Report (CAFR), the FY 2008 budget can be reviewed with audited numbers. (The Board received the draft CAFR at its November 15, 2008, meeting, and the final CAFR will be distributed at the December 11, 2008, meeting.) Attachment A-1 summarizes the results with the variances to budget on a consolidated basis for the agency as a whole. Attachments A2-A7 show the results for transit operations (San Diego Transit Corporation [SDTC]), rail operations (San Diego Trolley, Inc. [SDTI]), Contract Services, General Fund, Taxicab Administration, and San Diego and Arizona Eastern (SD&AE) Railway Company (SD&AE), respectively.

Overall Results

As indicated within Attachment A-1, MTS's amended budget called for using \$5,620,000 of reserve revenue. On a consolidated basis, MTS had an excess of revenues of \$652,000 over expenses for FY 2008 for its operations inclusive of SD&AE and Taxicab



Administration. As MTS had an excess of revenues over expenses, it did not need to draw any reserves, which puts the favorable variance against budget at \$6,272,000.

Below is a comparison of the results against the amended budget.

REVENUES

Fare Revenue

Passenger revenues were favorable to budget by \$3,380,000 (4.7%). The January fare change and elimination of transfers caused a dramatic shift in ridership patterns. With the elimination of transfers on January 1, 2008, there was a significant switch to day passes. With the rate per passenger much higher for day pass users, this shift led to a 10.9% overall increase in the average fare per pass passenger, which was much higher than anticipated and resulted in the favorable revenue variance.

Other Operating Revenue

Other operating revenue was favorable to budget by \$177,000. The largest parts of this favorable variance were more fees collected by Taxicab Administration and the sale of land by SD&AE offset by less-than-anticipated advertising revenues.

EXPENSES

Overall, operating expenses were \$208,188,000 compared to an amended budget of \$210,584,000 for a favorable variance of \$2,396,000. The larger variances were in outside services, transit funding operations, energy, and risk management.

Total outside services expenses for the fiscal year totaled \$64,939,000 compared to a budget of \$66,211,000, which resulted in a favorable variance of \$1,272,000 (1.9%). This is primarily due to lower purchased transportation costs within Contract Services fixed-route operations.

Transit funding operations were favorable to budget by \$841,000—primarily within Chula Vista Transit. Chula Vista Transit is managed separately but falls within MTS's umbrella—MTS pays Chula Vista Transit its funding. These numbers reflect FY 2008 estimates plus prior-year adjustments.

Total year-end energy costs were \$27,212,000 compared to the budget of \$26,893,000, which resulted in an unfavorable variance of \$319,000 (-1.2%). This unfavorable variance is primarily due to compressed natural gas (CNG) costs partially offset by favorable variances in traction power and facility electricity. For FY 2008, CNG prices averaged \$1.440 per therm compared to the budgeted rate of \$1.29 per therm. Fiscal year 2008 diesel prices averaged \$2.937 per gallon compared to a budgeted rate of \$2.62 per gallon.

Total year-end expenses for risk management were \$3,880,000 compared to the budget \$4,382,000, which resulted in a favorable variance totaling \$502,000 (11.5%). This positive variance is primarily due to increased claims recovery and decreased legal costs within rail operations.

Subsidy Revenue and Other Nonoperating Revenue and Expenses

Attachment A-8 details subsidy revenue and other nonoperating revenue and expenses. The two large variances are listed in Federal Revenue and State Revenue-Other. The variances are \$2,314,000 and \$10,270,000, respectively.

The federal revenue variance relates to two parts—the first part contains \$1,725,000 for debt service primarily associated to the Automated Fare Collection (AFC) Project, and the second part contains additional revenue of \$531,000 for expenses incurred that MTS is reimbursed from federal Congestion Mitigation and Air Quality (CMAQ) funding.

The State Revenue-Other is comprised of two parts—the first part contains \$9,797,000 of the variance in State Transportation Improvement Program (STIP) funding related to funds received for debt on the AFC Project, and the second part contains \$538,000 received from Medi-Cal for greater reimbursement on paratransit costs.

MTS issued debt in 2004 to finance the AFC Project. The debt was to mature in 2009; however, funding was later structured to pay off the debt in FY 2008 to avoid further interest charges, which explains the additional revenue related to the AFC Project discussed above. The category Other Nonoperating Expenses on Attachment A-8 contains an unfavorable variance of \$13,923,000, which is primarily the expense side of the AFC transactions discussed above.

Investment earnings had a favorable variance of \$1,036,000 and relates to holding larger-than-anticipated cash balances during the fiscal year, which stemmed primarily from the timing of expenditures for capital projects. Nonfederal funding often comes in advance, and local funds are held pending the expenditures.

Reserves

Attachment A-9 details MTS's contingency reserve. The ending reserve balance on June 30, 2007, was \$30,309,000. For FY 2008, MTS had an excess of revenues over expenses of \$652,000. SD&AE and Taxicab Administration portions of this excess of revenues over reserves was \$121,000 and \$50,000, respectively. Those operations are self-funded and draw or add to their reserves. Deducting those amounts brings the net amount from FY 2008 operations to \$481,000. As part of the FY 2009 CIP approved by the Board of Directors in January of 2008, \$871,000 from CNG rebates was transferred from the contingency reserve to a capital project reserve, which brings the ending contingency reserve to \$29,919,000.

MTS has a number of other reserves (the balances are listed on Attachment A-10).

Staff Recommendation

It is staff's recommendation to apply \$481,000 to the contingency reserve, which would provide the Board the maximum flexibility to respond to forthcoming challenges in the FY 2009 midyear (amended) budget as well as the upcoming FY 2010 budget.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Tom Lynch, 619.557.4538, tom.lynch@sdmts.com

DEC11-08.31.FY08BUDGETCOMPARISON.TLYNCH.doc

Attachments: A. Schedules and Balance Tables

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET

FY 2008

CONSOLIDATED

(in \$000's)

	ACTUALS ON A BUDGET BASIS	AMENDED BUDGET	DOLLAR VARIANCE	PERCENT VARIANCE
Passenger Revenue	\$ 75,938	\$ 72,558	\$ 3,380	4.7%
Other Revenue	<u>4,854</u>	<u>4,677</u>	<u>177</u>	<u>3.8%</u>
Total Operating Revenue	<u>80,792</u>	<u>77,235</u>	<u>3,557</u>	<u>4.6%</u>
Personnel costs	98,788	98,998	210	0.2%
Outside services	64,939	66,211	1,272	1.9%
Transit operations funding	3,852	4,693	841	17.9%
Materials and supplies	7,541	7,636	95	1.2%
Energy	27,212	26,893	(319)	-1.2%
Risk management	3,880	4,382	502	11.5%
Miscellaneous operating expenses	<u>1,976</u>	<u>1,771</u>	<u>(205)</u>	<u>-11.6%</u>
Total Operating Expenses	<u>208,188</u>	<u>210,584</u>	<u>2,396</u>	<u>1.1%</u>
Operating income (loss)	<u>(127,396)</u>	<u>(133,349)</u>	<u>5,953</u>	<u>4.5%</u>
Subsidy Revenue	152,547	139,342	13,205	9.5%
Other Non-Operating Revenue	<u>(24,499)</u>	<u>(11,613)</u>	<u>(12,886)</u>	<u>111.0%</u>
Total Non-Operating Revenue	<u>128,048</u>	<u>127,729</u>	<u>319</u>	<u>0.2%</u>
Income (loss) before Reserve Utilization	652	(5,620)	6,272	-111.6%
Contingency Reserves	0	5,459	(5,459)	-
Taxicab/SD&AE Reserves	<u>0</u>	<u>161</u>	<u>(161)</u>	<u>-</u>
Net Income (loss)	\$ <u>652</u>	\$ <u>0</u>	\$ <u>652</u>	<u>-</u>

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET
FY 2008
TRANSIT SERVICES (SAN DIEGO TRANSIT CORPORATION)
(in \$000's)

	ACTUALS ON A BUDGET BASIS	AMENDED BUDGET	DOLLAR VARIANCE	PERCENT VARIANCE
Passenger Revenue	\$ 23,680	\$ 23,515	\$ 165	0.7%
Other Revenue	1,154	965	189	19.6%
Total Operating Revenue	24,834	24,480	354	1.4%
Personnel costs	55,293	56,407	1,114	2.0%
Outside services	2,549	2,705	156	5.8%
Transit operations funding	0	0	0	-
Materials and supplies	4,784	4,546	(238)	-5.2%
Energy	8,934	8,563	(371)	-4.3%
Risk management	1,608	1,606	(2)	-0.1%
Miscellaneous operating expenses	2,824	2,764	(60)	-2.2%
Total Operating Expenses	75,992	76,591	599	0.8%
Operating income (loss)	(51,158)	(52,111)	953	1.8%
Subsidy Revenue	47,573	50,158	(2,585)	-5.2%
Other Non-Operating Revenue and Expense	(3,694)	(3,506)	(188)	5.4%
Total Non-Operating Revenue	43,879	46,652	(2,773)	-5.9%
Income (loss) before Reserve Utilization	(7,279)	(5,459)	(1,820)	33.3%
Contingency Reserves		5,459	5,459	-
Taxicab/SD&AE Reserves	0	0	0	-
Net Income (loss)	\$ (7,279)	\$ 0	\$ 3,639	-

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET

FY 2008

RAIL OPERATIONS (SAN DIEGO TROLLEY, INCORPORATED)

(in \$000's)

	ACTUALS ON A BUDGET BASIS	AMENDED BUDGET	DOLLAR VARIANCE	PERCENT VARIANCE
Passenger Revenue	\$ 31,120	\$ 28,977	\$ 2,143	7.4%
Other Revenue	604	804	(200)	-24.9%
Total Operating Revenue	31,724	29,781	1,943	6.5%
Personnel costs	31,224	30,780	(444)	-1.4%
Outside services	9,102	8,652	(450)	-5.2%
Transit operations funding	0	0	0	-
Materials and supplies	2,739	3,042	303	10.0%
Energy	8,599	9,434	835	8.9%
Risk management	1,767	2,272	505	22.2%
Miscellaneous operating expenses	2,652	2,649	(3)	-0.1%
Total Operating Expenses	56,083	56,829	746	1.3%
Operating income (loss)	(24,359)	(27,048)	2,689	9.9%
Subsidy Revenue	24,359	27,048	(2,689)	-9.9%
Other Non-Operating Revenue	0	0	0	-
Total Non-Operating Revenue	24,359	27,048	(2,689)	-9.9%
Income (loss) before Reserve Utilization	0	0	0	-
Contingency Reserves	0	0	0	-
Taxicab/SD&AE Reserves	0	0	0	-
Net Income (loss)	\$ 0	\$ 0	\$ 0	-

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET

FY 2008

CONTRACT SERVICES

(in \$000's)

	ACTUALS ON A BUDGET BASIS	AMENDED BUDGET	DOLLAR VARIANCE	PERCENT VARIANCE
Passenger Revenue	\$ 21,138	\$ 20,066	\$ 1,072	5.3%
Other Revenue	67	375	(308)	-82.1%
Total Operating Revenue	21,205	20,441	764	3.7%
Personnel costs	536	523	(13)	-2.5%
Outside services	50,260	51,614	1,354	2.6%
Transit operations funding	0	0	0	-
Materials and supplies	0	0	0	-
Energy	9,614	8,831	(783)	-8.9%
Risk management	0	0	0	-
Miscellaneous operating expenses	1,041	1,028	(13)	-1.3%
Total Operating Expenses	61,451	61,996	545	0.9%
Operating income (loss)	(40,246)	(41,555)	1,309	3.2%
Subsidy Revenue	40,226	41,555	(1,329)	-3.2%
Other Non-Operating Revenue	0	0	0	-
Total Non-Operating Revenue	40,226	41,555	(1,329)	-3.2%
Income (loss) before Reserve Utilization	(20)	0	(20)	-
Contingency Reserves	0	0	0	-
Taxicab/SD&AE Reserves	0	0	0	-
Net Income (loss)	\$ (20)	\$ 0	\$ (20)	-

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET

FY 2008

GENERAL FUND (less Taxicab and SD&AE)

(in \$000's)

	ACTUALS ON A BUDGET BASIS	AMENDED BUDGET	DOLLAR VARIANCE	PERCENT VARIANCE
Passenger Revenue	\$ 0	\$ 0	\$ 0	-
Other Revenue	1,971	1,748	223	12.8%
Total Operating Revenue	1,971	1,748	223	12.8%
Personnel costs	11,154	10,651	(503)	-4.7%
Outside services	2,879	3,129	250	8.0%
Transit operations funding	3,852	4,693	841	17.9%
Materials and supplies	16	35	19	54.3%
Energy	56	50	(6)	-12.0%
Risk management	465	461	(4)	-0.9%
Miscellaneous operating expenses	(4,647)	(4,797)	(150)	3.1%
Total Operating Expenses	13,775	14,222	447	3.1%
Operating income (loss)	(11,804)	(12,474)	670	5.4%
Subsidy Revenue	40,389	20,581	19,808	96.2%
Other Non-Operating Revenue	(20,805)	(8,107)	(12,698)	156.6%
Total Non-Operating Revenue	19,584	12,474	7,110	57.0%
Income (loss) before Reserve Utilization	7,780	0	7,780	-
Contingency Reserves	0	0	0	-
Taxicab/SD&AE Reserves	0	0	0	-
Net Income (loss)	\$ 7,780	\$ 0	\$ 7,780	-

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET

FY 2008

TAXICAB ADMINISTRATION

(in \$000's)

	ACTUALS ON A BUDGET BASIS	AMENDED BUDGET	DOLLAR VARIANCE	PERCENT VARIANCE
Passenger Revenue	\$ 0	\$ 0	\$ 0	-
Other Revenue	<u>735</u>	<u>685</u>	<u>50</u>	<u>7.3%</u>
Total Operating Revenue	<u>735</u>	<u>685</u>	<u>50</u>	<u>7.3%</u>
Personnel costs	506	535	29	5.4%
Outside services	63	60	(3)	-5.0%
Transit operations funding	0	0	0	-
Materials and supplies	2	13	11	84.6%
Energy	9	15	6	40.0%
Risk management	0	0	0	-
Miscellaneous operating expenses	<u>105</u>	<u>118</u>	<u>13</u>	<u>11.0%</u>
Total Operating Expenses	<u>685</u>	<u>741</u>	<u>56</u>	<u>7.6%</u>
Operating income (loss)	<u>50</u>	<u>(56)</u>	<u>106</u>	<u>189.3%</u>
Subsidy Revenue	0	0	0	-
Other Non-Operating Revenue	<u>0</u>	<u>0</u>	<u>0</u>	<u>-</u>
Total Non-Operating Revenue	<u>0</u>	<u>0</u>	<u>0</u>	<u>-</u>
Income (loss) before Reserve Utilization	50	(56)	106	-189.3%
Contingency Reserves	0	0	0	-
Taxicab/SD&AE Reserves	<u>0</u>	<u>56</u>	<u>56</u>	<u>-</u>
Net Income (loss)	\$ <u><u>50</u></u>	\$ <u><u>0</u></u>	\$ <u><u>162</u></u>	<u><u>-</u></u>

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET

FY 2008

SAN DIEGO & ARIZONA EASTERN RAILWAY (SD&AE)

(in \$000's)

	ACTUALS ON A BUDGET BASIS	AMENDED BUDGET	DOLLAR VARIANCE	PERCENT VARIANCE
Passenger Revenue	\$ 0	\$ 0	\$ 0	-
Other Revenue	323	100	223	223.0%
Total Operating Revenue	323	100	223	223.0%
Personnel costs	75	102	27	26.5%
Outside services	86	51	(35)	-68.6%
Transit operations funding	0	0	0	-
Materials and supplies	0	0	0	-
Energy	0	0	0	-
Risk management	40	43	3	7.0%
Miscellaneous operating expenses	1	9	8	88.9%
Total Operating Expenses	202	205	3	1.5%
Operating income (loss)	121	(105)	226	215.2%
Subsidy Revenue	0	0	0	-
Other Non-Operating Revenue	0	0	0	-
Total Non-Operating Revenue	0	0	0	-
Income (loss) before Reserve Utilization	121	(105)	226	-215.2%
Contingency Reserves	0	0		-
Taxicab/SD&AE Reserves	0	105		-
Net Income (loss)	\$ 121	\$ 0	\$ 226	-

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET

FY 2008

COMBINED SUBSIDY AND OTHER NON OPERATING REVENUE AND EXPENSES

(in \$000's)

	ACTUALS ON A BUDGET BASIS	AMENDED BUDGET	DOLLAR VARIANCE	PERCENT VARIANCE
<u>Subsidy Revenue</u>				
Federal Revenue	\$ 38,232	\$ 35,918	\$ 2,314	6.4%
Transportation Development Act	72,776	72,767	9	0.0%
State Transit Assistance	9,856	9,429	427	4.5%
State Revenue - Other	13,746	3,467	10,279	296.5%
TransNet funds	16,969	16,795	174	1.0%
Other Local subsidies	968	968	0	0.0%
Total Subsidy Revenue	152,547	139,344	13,203	9.5%
<u>Other Non Operating Revenue and Expense</u>				
Investment Earnings	3,125	2,089	1,036	49.6%
Other Non Operating Income	11,415	11,415	0	0.0%
Other Non Operating Expenses	(39,040)	(25,117)	(13,923)	55.4%
Total Other Non Operating Revenue Revenue and Expense	(24,500)	(11,613)	(12,887)	111.0%
Total Subsidy and Non Operating Revenue and Expense	\$ 128,047	\$ 127,731	\$ 316	0.2%

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

Contingency Reserve**June 30, 2008****(in \$000's)**

Balance, June 30, 2007		30,309
Transfer to CNG reserve		(871)
FY 2008 Operations	652	
Addback (deduct)		
SDAE	(121)	
Taxi	(50)	
Operations, Net		481
		<hr/>
Balance, June 30, 2008		<u><u>29,919</u></u>

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

Reserve Balances**June 30, 2008****(in \$000's)**

Title	Amount	Explanation
Contingency	29,919	For ongoing operations, future matching of grants; minimum 4% of operating budget per Policy 36
Capital Project Reserve	925	To hold prior year's CNG rebate for an existing capital project
CCDC	735	Per agreement and in consultation with CCDC, for enhancement of public transit in centre city
Taxicab capital	12	For replacement of office equipment and vehicles
Insurance	2,000	Established for potential future liability claims, minimum \$2 million per policy 46
Billboard San Diego	94	Per agreement with city, used for improvements to right of way
Billboard Chula Vista	853	Per agreement with city, used for improvements to right of way
SD&AE	890	Established from 1984 state payments for storm damage, restricted for repair/improvement of line
MTS JPA residual	527	Established from proceeds of legal settlement, restricted for repairs to MTS Tower
Land management	430	For for repair and maintenance of rental property
	<u>36,385</u>	



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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 10426.12

December 11, 2008

SUBJECT:

MTS: MISSION VALLEY EAST LEGAL SERVICES - CONTRACT AMENDMENT

RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (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) for legal services on the Mission Valley East Light Rail Transit (MVE LRT) Project.

Budget Impact

The \$100,000 for the legal services contract amendment would come from the MVE LRT Project budget line item (10426-0800 Professional Services) leaving a balance of (\$327,200).

DISCUSSION:

On March 22, 2007, the Board approved a contract with Hecht, Solberg, Robinson, Goldberg, and Bagley, LLP for legal services on the MVE LRT Project on an as-needed, on-call basis. MTS has been utilizing the professional services of James G. Ehlers and others from the law firm for several years through various MTS contracts.

Additional hours for Mr. Ehler's legal services are needed for MVE LRT Project issues. The amount of the contract, which now totals \$1,475,000, is as follows:

1. The initial \$100,000 was approved by the Board on March 22, 2007;



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.

2. Amendment No. 1 for \$100,000 was approved by the Board on June 28, 2007;
3. Amendment No. 2 for \$90,000 was approved by the CEO in August 2007;
4. Amendment No. 3 for \$500,000 was approved by the Board on September 13, 2007.
5. Amendment No. 4 for \$90,000 was approved by the CEO on May 25, 2008
6. Amendment No. 5 for \$500,000 was approved by the Board on October 16, 2007.
7. Amendment No. 6 was a no-cost increase to add authorized legal staff.
8. Amendment No. 7 for \$95,000 was approved by the CEO earlier in December 2008.

The hours invoiced by the law firm have reached the contract limit, and staff will require more legal services from Mr. Ehlers through the end of 2008. Therefore, staff is requesting approval of Amendment No. 8 to MTS Doc. No. M6655.0-07, which would increase the total contract amount to \$1,575,000 for legal services for Hecht, Solberg, Robinson, Goldberg, and Bagley, LLP for the MVE LRT Project.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contacts: Dennis L. Wahl, 619.235.2635, dwa@sandag.org
Ramon A. Ruelas, 619.699.6944, rrue@sandag.org

DEC11-08.32.MVELRTLEGALSVCS.DWAHL.doc

Attachment: A. Draft MTS Doc. No. M6655.8-07

DRAFT

December 11, 2008

MTS Doc. No. M6655.8-07
CIP 10426

Mr. James Ehlers
Hecht, Solberg, Robinson, Goldberg, & Bagley, LLP
600 West Broadway, 8th Floor
San Diego, CA 92101-3542

Dear Mr. Ehlers:

Subject: AMENDMENT NO. 8 TO MTS DOCUMENT NO. M6655.0-07; LEGAL SERVICES FOR THE
MISSION VALLEY EAST LRT PROJECT

This letter will serve as Amendment No. 8 to MTS Document No. M6655.0-07 for professional services as further described below.

SCOPE OF SERVICES

The approved contract amount is hereby increased by \$100,000 for all expenditures as outlined in the original contract (not to exceed \$1,575,000).

SCHEDULE

There shall be no changes in the contract schedule for services as outlined in the original contract and prior amendments, including this amendment.

PAYMENT

Payment shall be based on actual costs not to exceed \$100,000 (WBS 10426-0800) in accordance with the original contract provisions. There shall be no change in the basic hourly billing rate or contract amount up to and including Amendment No. 8 other than those allowed in the original contract. Addition authorization is contingent upon written approval of MTS. The total value of MTS Document No. M6655.0-07, including this amendment is \$1,575,000. All other conditions of the original contract shall remain the same

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

James Ehlers
Hecht, Solberg, Robinson, Goldberg, & Bagley, LLP

DEC11-08.32.AttA.MVELEGALSVC SM6655.8-07.DWAHL.doc

Date: _____

cc: Tiffany Lorenzen - MTS
Jim Linthicum, Bill Prey, John Haggerty, Dennis Wahl - SANDAG



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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.

SRTP 830 (PC 50451)

December 11, 2008

SUBJECT:

MTS: ANNUAL SERVICE PERFORMANCE MONITORING REPORT

RECOMMENDATION:

That the Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

MTS Board Policy No. 42 establishes a process for evaluating existing transit services to achieve the objective of developing a customer-focused, competitive, integrated, and sustainable system. The policy states that services will be evaluated annually, and provides a set of measures for evaluation.

This report represents the annual service evaluation for FY 2008. This is the first full fiscal year in which the system operated under the results of the Comprehensive Operational Analysis (COA). Some of the definitions have been standardized across the divisions in keeping with definitions used by the National Transit Database, and this has had an impact on some of the trends reported. The narrative indicates instances where that is the case.

In Attachment A, routes are designated into seven service categories based on route characteristics and compared against other similar services in the same category.



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.

Develop a Customer-Focused and Competitive System

The following measures of productivity and service quality are used to ensure that services are focused on providing competitive and attractive transportation that meets our customers' needs.

- **Total Passengers** - *Percent change in passengers should equal or exceed percent change in average daily traffic within the MTS urban network area*

Route Categories	FY 2006	FY 2007	FY 2008	Chg. 06-07	Chg. 07-08
Premium Express	273,161	254,099	280,691	-7.0%	10.5%
Express	2,135,309	2,077,456	2,217,331	-2.7%	6.7%
Light Rail	33,829,833	35,114,385	37,620,944	3.8%	7.1%
Urban Frequent	30,582,865	34,464,253	37,005,041	12.7%	7.4%
Urban Standard	13,670,763	12,091,618	11,949,335	-11.6%	-1.2%
Circulator	1,695,443	1,279,247	1,179,296	-24.5%	-7.8%
Rural	41,909	24,323	25,822	-42.0%	6.2%
Demand-Responsive	351,040	372,619	374,500	6.1%	0.5%
Total MTS Passengers	82,580,323	85,678,000	90,652,960	3.8%	5.8%

System-wide ridership increased 5.8 percent (4,974,960 passengers) between FY 2007 and FY 2008. The greatest ridership increase (2,540,788) was experienced in the Urban Frequent route category while the Urban Standard routes had the largest decrease (-142,283). In terms of percentages, the Premium Express route category had the largest gains in ridership (10.5%) most likely because the new coaches plus competitive travel time and cost make the service an attractive alternative to driving. Higher fuel prices have contributed significantly.

The Circulator category had the largest percentage decrease in ridership (-7.8%, or 99,951 passengers). The Urban Standard routes are slightly down reflecting service cuts made to those routes as a result of the COA and anticipated passenger preference for Urban Frequent routes to complete their trips. These trends reflect the strategies of the COA that passengers will ride routes with better frequencies.

Average daily traffic (ADT) statistics are not yet available for FY 2008; therefore, the increase in ridership cannot be compared to the ADT for this report. However, a decline in auto traffic has been reported and attributed to higher gas prices and the economic downturn.

- **Average Weekday Passengers** - *Improve ratio between ridership and average daily traffic within the MTS urban network area*

Route Categories	FY 2006	FY 2007	FY 2008	Chg. 06-07	Chg. 07-08
Premium Express	1,046	977	1,108	-6.6%	13.3%
Express	7,318	7,403	7,936	1.2%	7.2%
Light Rail	100,593	104,037	113,858	3.4%	9.4%
Urban Frequent	95,127	106,384	119,396	11.8%	12.2%
Urban Standard	41,860	38,148	39,573	-8.9%	3.7%
Circulator	5,357	4,214	4,133	-21.3%	-1.9%
Rural	140	130	144	-7.0%	10.7%
Demand-Responsive	1,264	1,142	1,381	-9.6%	20.9%
Avg. Weekday Passengers	252,706	262,438	287,530	3.9%	9.6%

Average weekday ridership increased 9.6 percent (25,092 passengers) between FY 2007 and FY 2008. The greatest increase occurred in the Urban Frequent category with an increase of 13,012 daily passengers. In terms of percentages, the

I-15 Premium Express routes increased substantially over the previous year in part due to increased ridership resulting from the high cost of fuel for personal-commuting vehicles. The Premium Express routes provide a competitive alternative to the car for such a long commute on a congested corridor, and the introduction of the new coaches makes the ride more comfortable. The Demand-Responsive routes increased substantially showing an increased demand by disabled passengers on ADA paratransit services. Circulator routes showed the only decrease in year-over-year weekday ridership mostly due to service cuts.

Transit's percent of Average Daily Traffic (ADT), or mode split, cannot be calculated at this time since ADT statistics are not yet available for FY 08.

• **Passengers per Revenue Hour – Improve route category average**

Route Categories	FY 2006	FY 2007	FY 2008	Chg. 06-07	Chg. 07-08
Premium Express	19.0	20.9	21.6	10.0%	3.4%
Express	20.2	22.4	25.3	10.9%	13.3%
Light Rail	190.6	198.5	212.4	4.1%	7.0%
Urban Frequent	31.2	31.9	32.9	2.5%	2.9%
Urban Standard	24.5	22.6	23.1	-8.1%	2.4%
Circulator	16.4	16.9	14.9	2.6%	-11.4%
Rural	3.3	5.7	5.6	73.4%	-3.0%
Demand-Responsive	2.2	2.2	2.1	1.7%	-5.1%
MTS System	39.0	39.9	41.5	2.2%	3.9%

Passengers per revenue hour is an industry standard for assessing service productivity. Revenue hours include the time that vehicles are transporting passengers (in service) as well as the recovery time at the end of each trip.

Overall, passengers per revenue hour for the system improved by 3.9 percent from 39.9 to 41.5. Fixed-route bus service improved from 43.2 to 45.0 passengers per revenue hour or a 4.3 percent increase over FY 2007. Circulator routes exhibited the largest percent decline in passengers per hour, which may be reflective of passenger shifts to more frequent routes as planned by the COA. While there was a 5.1% decrease for the Demand-Responsive category, the numeric drop was from 2.2 passengers per hour to 2.1 passengers per revenue hour, which is a .1 passenger difference.

• **Passengers per In-Service Hour – Improve route category average**

Route Categories	FY 2007	FY 2008	Change 07-08
Premium Express	18.2	22.5	23.5%
Express	28.8	32.3	12.3%
Light Rail	228.0	249.6	9.5%
Urban Frequent	38.1	42.4	11.4%
Urban Standard	30.7	31.6	2.8%
Circulator	32.6	26.4	-19.1%
Rural	4.5	5.78	25.2%
Demand-Responsive			
MTS System	52.9	57.5	8.7%

Passengers per in-service hour represents a more accurate picture of productivity because in-service hours only include hours of operations dedicated to transporting passengers and does not include recovery time. This statistic is only available for FY 2007 and beyond.

All categories of services had productivity increases per in-service hour except the Circulator category, which had a decrease of 19.1 percent. Staff has already begun to pare down Circulator service where necessary (especially at night and on weekends). Premium Express routes saw the greatest percentage productivity increase since they are carrying more passengers for nearly the same level of service.

- **Passenger Load Factor** – *No more than 20% of revenue hours exceeding one standee per 4 ft² on local street operation (55 passengers on a standard bus, and 90 passengers on an articulated bus) and seating capacity on freeway operations and minibus service*

Route	Type of Route	% Trips With Overcrowding
3	Regular	2.4%
5	Regular	0.8%
7	Regular	1.0%
11	Regular	0.7%
15	Regular	2.2%
20	Freeway	7.1%
25	Minibus	3.4%
30	Regular	1.5%
41	Regular	1.6%
48	Regular	5.4%
115	Regular	1.6%
150	Freeway	34.0%
701	Regular	0.9%
704	Regular	1.7%
705	Regular	3.3%
709	Regular	13.8%
712	Regular	3.3%
833	Regular	2.2%
844	Regular	5.9%
845	Regular	2.2%
848	Regular	1.5%
855	Regular	2.9%
856	Regular	1.5%
905	Freeway	2.2%
921	Regular	5.6%
929	Regular	15.2%
932	Regular	5.3%
933	Regular	2.6%
934	Regular	3.9%
955	Regular	3.2%
960	Freeway	38.5%
962	Regular	3.3%
964	Minibus	3.4%

Due to a change in the passenger reporting system administered by SANDAG, overcrowding is only available on the trip level for FY 2008; therefore, a figure for overcrowding is not available. As a result, the number of trips that had overcrowding at some point in the trip are reported above. These figures do not mean that buses were overcrowded for the whole trip, but rather at some time during the trip they experienced overcrowding.

Routes 20, 25, 150, 905, 960, and 964 have overcrowding over the threshold specified by Policy No. 42. Route 150 and 960 service has been supplemented with extra trips to help with overcrowding. The rest of the routes have sporadic overcrowding during peak hours typically due to school passengers.

-
- **On-Time Performance** – 85% for Urban Frequent, and 90% for all other route categories
-

Route Categories	Service Changes					
	Jun-06	Sep-06	Jan-07	Jun-07	Sep-07	Jan-08
Premium Express	81%	68%	90%	64%	79%	66%
Express	63%	72%	84%	82%	81%	86%
Light Rail	96%	95%	97%	97%	96%	96%
Urban Frequent	76%	80%	81%	84%	84%	86%
Urban Standard	81%	83%	79%	83%	85%	89%
Circulator	92%	87%	88%	95%	88%	89%
Rural	N/A	N/A	N/A	N/A	N/A	N/A
Demand-Responsive	N/A	N/A	N/A	N/A	N/A	N/A
MTS System	79%	81%	82%	85%	86%	87%

On-time performance is calculated as departing within 5 minutes of the scheduled time.

MTS system-wide, on-time performance has increased gradually over each service change. Both the Planning and Scheduling and Bus Operations Departments have been working to improve on-time performance through driver counseling, improved running times, and strict oversight of contract operations. The Planning and Scheduling Department has been able to use new technologies in place on routes operated by MTS Bus to analyze running times in order to provide more realistic times.

Urban Frequent routes are now above their 85% threshold while all other routes are close to the 90% level of on-time performance.

Premium Express routes have had a decline in on-time performance due to their reroute onto Broadway from other downtown San Diego streets. Premium Express route on-time performances are sampled only on their arrivals into downtown in the morning and their departures from downtown in the afternoon after they have picked up their passengers through the downtown area. Arrivals into downtown are almost at 100% while departures from downtown are lower. Scheduling has shortened the running times leaving downtown so that the passengers will not have to wait on the bus at a time point if they arrive at the point early. This allows the bus to move throughout the entire trip in downtown, but it also means that traffic on Broadway can have a more unpredictable impact on whether or not the bus exits downtown on time.

On-time performance is reported at service changes in order to isolate the changes so that we can monitor the impact of scheduling changes on on-time performance and adjust as needed.

• **Accidents per 100,000 Miles – Improve operator average**

Operator	FY 2006	FY 2007	FY 2008	Chg 06-07	Chg 07-08
MTS Bus	1.74	1.57	1.53	(9%)	(2.5%)
MTS Contract Services	1.86	2.19	2.56	18.2%	16.5%
MTS Rail	0.0	0.0	0.03	0%	100%

Accidents reported are preventable accidents. MTS Rail experienced one preventable accident in 2008, while the total accidents for MTS Rail increased from 16 to 29. MTS Bus had 276 total accidents in FY 2008, which is up from 190 the previous year. However, the number of preventable accidents declined. Continued operator retraining and improved driver safety-awareness programs and materials were used throughout the year to maintain relatively low incident levels for bus and trolley operators. Staff will continue to strive to improve the operator average.

• **Complaints per 100,000 Passengers – Improve operator average**

Operator	FY 06	FY 07	FY 08	Chg 06-07	Chg 07-08
MTS Bus	13.0	11.4	13.6	(12.1%)	19.5%
MTS Contract Services FR	4.2	7.3	14.7	68.8%	100.6%
MTS Contract Services DR	20.2	16.6	27.8	(15.8%)	67.4%
MTS Rail	1.63	1.25	.94	(23%)	(.25%)

All bus operators are showing an increase in the number of customer complaints. However, this number is reflective of the new, centralized customer service database—one point of contact for all customers utilizing any MTS bus route. As a result of the centralized database, complaints are closely tracked and reported uniformly across all services and operators. The complaints for FY 2008 include any complaint received by the database, including scheduling concerns, requests for service, or complaints about a service change. Separating out just complaints about the trip experience and the driver shows an average of 8.75 complaints per 100,000 for MTS Bus and 11.43 for Contract Bus. It is unclear how much of this increase in complaints is due to better tracking and how much is due to the customer experience; however, staff will continue to aggressively address complaints and seek to drive down the number of incidents.

Develop a Sustainable System

The following measures are used to ensure that transit resources are deployed as efficiently as possible and do not exceed budgetary constraints.

• **In-Service Miles - Not to exceed budget**

Operator	FY 2008		Difference	
	Actual	Budget	Number	Percent
MTS Bus	9,534,910	9,570,407	(35,497)	-0.4%
MTS Contract Service FR	9,218,022	9,068,839	149,183	1.6%
MTS Rail	8,002,889	7,959,350	43,539	0.5%

In FY 2008, actual in-service miles were slightly below budget for MTS Bus and slightly above budget for contracted fixed-route and MTS Rail.

• **In-Service Hours - Not to exceed budget**

Operator	FY 2008		Difference	
	Actual	Budget	Number	Percent
MTS Bus	870,793	872,208	(1,415)	(0.2%)
MTS Contract Service FR	824,244	817,107	7,137	0.9%
MTS Rail	439,377	468,154	(28,777)	(6.1%)

MTS Bus and MTS Rail were below budget for in-service hours. MTS fixed-route Contract Services were 0.9% over budget, which was mostly due to increased running times for better on-time performance.

• **Peak-Vehicle Requirement - Not to exceed budget**

Operator	June 07	Sept 07	Jan 2008	Chg Jun-Sept	Chg Sept-Jan
MTS Bus	200	199	199	(1)	0
MTS Contract Services FR	242	244	238	1	(6)
MTS Rail	96	96	97	0	1

The peak-vehicle requirement is the maximum number of vehicles available to provide scheduled service during the heaviest service period of the week. Peak vehicles have been mostly level over the fiscal year except for fixed-route contract services, which saw a decrease of 6 buses due to elimination of some services and scheduling and vehicle-blocking efficiencies.

• **In-Service Speeds - Improve operator average**

Operator	June 07	Sept 07	Jan 2008	Chg Jun-Sept	Chg Sept-Jan
MTS Bus	13.3	13.4	13.3	0.8%	(0.8%)
MTS Contract Services FR	14.1	14.0	14.1	(0.7%)	0.7%
MTS Rail	20.8	21.2	21.1	1.92%	(0.5%)

In-service speeds were almost neutral for all modes of service between the June 2007 to January 2008 service periods.

• **In-Service/Total Miles - Improve operator average**

Operator	June 07	Sept 07	Jan 08	Chg Jun-Sept	Chg Sept-Jan
MTS Bus	89.6%	89.5%	89.2%	(0.1%)	(0.3%)
MTS Contract Services FR	N/A	N/A	N/A	N/A	N/A
MTS Rail	N/A	N/A	N/A	N/A	N/A

In-service miles per total miles is only calculated for MTS bus operations as the contract is responsible for bus and driver assignments (run cutting), which determines total mileage. MTS bus ratios have been generally consistent over time with only a minor decrease in the ratio. MTS rail does not incur out-of-service mileage.

- **In-Service/Total Hours - Improve operator average**

Operator	June 07	Sept 07	Jan 2008	Chg Jun-Sept	Chg Sept-Jan
MTS Bus	94.2	94.2	94.2	0.0%	0.0%
MTS Contract Services FR	N/A	N/A	N/A	N/A	N/A
MTS Rail	N/A	N/A	N/A	N/A	N/A

As with the mileage statistic, in-service hours per total hours can only be calculated for MTS Bus operations. Efficiency of scheduling has shown that the in-service to total vehicle hours has remained steady over the past three service changes for MTS Bus.

- **Farebox Recovery Ratio - TDA requirement of 31.9 percent system wide for fixed-route (excluding regional routes that have a 20 percent requirement)**

Operator	FY 2007	FY 2008	Chg 07-08
MTS (excluding Premium Exp)	37.1%	38.6%	1.5%
Premium Express	32.0%	45.0%	13.0%
MTS Rail	49.0%	55.4%	6.4%
System	37.0%	38.7%	1.7%

For both system wide and Premium Express services, farebox recovery ratios continue to exceed the Transportation Development Act (TDA) target and are improving. This is due to more efficient service based on the implementation of the COA, an increase in ridership in the urban core, and fare adjustments.

- **Subsidy per Passenger - Improve route category average**

Route Categories	FY 06	FY 07	FY 08	Chg 06-07	Chg 07-08
Premium Express	\$5.70	\$5.72	\$3.38	0.3%	(40.9%)
Express	\$4.33	\$3.68	\$2.76	(15.1%)	(25.0%)
Light Rail	\$0.80	\$0.81	\$0.66	1.6%	(18.3%)
Urban Frequent	\$1.46	\$1.42	\$1.55	(2.4%)	9.2%
Urban Standard	\$1.86	\$1.75	\$1.90	(6.0%)	8.5%
Circulator	\$2.58	\$2.47	\$2.68	(4.1%)	8.5%
Rural	\$21.29	\$21.41	\$24.11	0.5%	12.6%
Demand-Responsive	\$20.60	\$22.23	\$25.21	7.9%	13.4%
<i>Fixed-Route Bus Average</i>	<i>\$1.76</i>	<i>\$1.65</i>	<i>\$1.71</i>	<i>(6.7%)</i>	<i>3.6%</i>
MTS System	\$1.46	\$1.40	\$1.38	(4.1%)	(1.4%)

Overall, system-wide subsidy per passenger has improved from \$1.46 in FY 2006 to \$1.38 in FY 2008. For fixed-route bus service, subsidy per passenger decreased from \$1.76 in FY 2006 to \$1.71 in FY 2008 but increased \$0.06 per passenger between FY 2007 and FY 2008. Light rail decreased to \$0.66 over the last year, which is a result of ridership increasing faster than cost.

Premium Express routes have shown marked decreases in subsidy per passenger as a result of rising gas prices and a fare increase, which has led to higher passenger loads.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Devin Braun, 619.595.4916, devin.braun@sdmts.com

DEC11-08.45.PERF MONITORING.DBRAUN.doc

Attachment: A. Key Route Statistics

FY 2008 ANNUAL ROUTE STATISTICS

Updated: 10/30/2008

Route	Annual Passengers	Avg. Weekday Passengers	Passengers/ Revenue Hour	Subsidy per Passenger	Farebox Recovery
1	1,398,655	4,574	27.6	\$2.43	26.2%
2	1,698,026	5,422	37.6	\$1.60	34.1%
3	1,953,012	6,405	41.6	\$1.35	38.4%
4	814,302	2,574	35.6	\$1.74	31.9%
5	872,697	2,940	44.2	\$1.24	40.0%
6	606,206	1,907	32.8	\$1.92	31.0%
7	3,651,241	11,533	44.2	\$1.20	41.7%
8	670,419	1,862	27.3	\$2.49	25.3%
9	725,553	2,035	29.5	\$2.22	27.9%
10	1,414,634	4,362	33.6	\$1.90	30.3%
11	2,615,245	8,529	31.6	\$2.04	29.2%
13	1,708,936	5,575	37.6	\$1.57	35.6%
14	460,435	1,530	14.5	\$5.43	13.2%
15	1,528,740	4,853	34.2	\$1.83	31.5%
18	35,110	138	11.8	\$3.32	17.1%
20	1,297,149	4,315	24.4	\$2.88	22.9%
25 (New)	104,190	371	13.3	\$2.78	21.8%
27	360,331	1,250	21.4	\$1.39	39.6%
28	439,807	1,434	27.3	\$0.79	51.5%
30	1,997,923	6,444	27.1	\$2.50	25.7%
31	130,664	513	16.8	\$5.44	14.1%
35	469,569	1,398	26.8	\$0.41	69.0%
41	1,131,913	3,782	32.8	\$1.86	30.4%
44	1,108,020	3,665	32.5	\$1.94	30.7%
48/49	498,051	1,605	25.4	\$1.15	37.5%
50	283,177	1,115	21.4	\$3.43	19.3%
83	57,625	215	15.6	\$2.31	23.9%
84	26,356	216	14.4	\$2.53	22.8%
86	11,185	84	6.8	\$6.19	11.3%
105	518,722	1,568	25.4	\$2.72	24.0%
120	933,992	3,061	26.9	\$2.57	23.9%
150	454,196	1,785	31.0	\$2.17	26.1%
210	77,085	303	26.0	\$2.71	22.6%
Blue Line	20,826,129	62,967	278.3	\$0.48	62.6%
Orange Line	7,704,265	23,320	137.3	\$1.32	38.6%
Green Line	9,090,550	27,571	196.9	\$0.52	62.2%
701	687,639	2,443	25.7	\$1.41	37.1%
704	560,247	1,926	28.6	\$1.65	34.7%
705	265,132	906	22.5	\$1.56	34.7%
707	52,609	208	22.0	\$2.17	30.1%
709	1,079,036	3,794	36.6	\$0.95	47.5%
712	876,140	3,146	34.3	\$0.86	49.5%
810	97,869	387	18.1	\$4.31	39.3%
115/815/848	1,109,634	3,529	26.5	\$1.41	39.6%
816	287,684	1,134	27.3	\$1.19	42.9%
820	45,274	178	25.4	\$3.40	44.8%
832	67,347	232	17.3	\$3.11	22.9%
833	95,790	324	17.6	\$1.89	29.7%
834	22,401	93	19.1	\$3.15	24.8%
844/845	203,601	725	13.4	\$2.64	26.8%
850	65,362	258	27.6	\$2.18	55.8%
851	90,105	355	19.3	\$1.55	36.7%
854	141,926	491	15.9	\$3.40	19.5%
855	282,621	959	22.6	\$1.68	33.9%
856	675,390	2,373	25.2	\$1.73	33.6%
860	59,643	235	23.2	\$2.82	49.5%

Route	Annual Passengers	Avg. Weekday Passengers	Passengers/ Revenue Hour	Subsidy per Passenger	Farebox Recovery
864	476,159	1,494	17.5	\$3.90	20.6%
870	12,543	49	15.1	\$5.05	35.6%
871/872	253,214	802	16.5	\$2.05	33.0%
874/875 (New)	489,511	1,492	24.3	\$1.68	35.4%
878	36,012	186	17.7	\$1.89	29.3%
888	2,015	19	3.6	\$47.64	3.5%
891	1,243	24	3.9	\$41.50	5.4%
892	761	15	2.5	\$64.31	4.4%
894	21,803	86	6.3	\$19.54	15.5%
901	1,035,208	3,184	21.4	\$2.69	25.6%
904	41,589	115	13.1	\$1.28	39.8%
905	418,817	1,452	25.5	\$2.24	33.4%
916/917	254,002	834	16.6	\$2.95	22.5%
921	337,461	1,196	21.0	\$1.93	31.4%
923	313,450	1,054	16.4	\$1.88	35.3%
926/927	9,998	228	9.5	\$5.04	15.4%
928	280,758	940	18.3	\$2.93	22.2%
929	2,992,665	9,613	32.9	\$0.61	60.2%
932	2,224,889	7,091	34.8	\$0.66	58.1%
933/934	2,223,567	7,191	33.8	\$1.23	41.6%
936	560,592	1,632	26.1	\$1.00	45.3%
955	1,434,397	4,700	34.4	\$0.71	53.7%
960	105,724	417	30.0	\$2.11	32.1%
961/962/963	1,240,893	4,355	28.6	\$1.10	44.5%
963 (Old)/964	147,373	580	15.7	\$2.20	27.1%
965	72,663	243	12.9	\$2.96	19.8%
966	10,336	47	5.6	\$7.75	8.4%
967	74,700	241	13.8	\$2.70	24.5%
968	84,890	281	15.7	\$2.76	24.0%
992	436,288	1,286	15.2	\$1.93	36.0%
ADA SUBURBAN	165,613	610	2.2	See Access	See Access
MTS ACCESS	201,114	740	2.0	\$25.35	14.8%
RB DART	2,465	10	2.1	\$24.57	5.4%
SR DART	5,308	21	3.2	\$15.49	8.3%
SVCC	215,253	847	14.7	\$3.50	14.3%
SVCC Cal Trans	30,126	118	12.9	\$3.51	18.4%

SERVICE CATEGORY	Annual Passengers	Avg. Weekday Passengers	Passengers/ Revenue Hour	Subsidy per Passenger	Farebox Recovery
Premium Express	280,691	1,108	21.6	\$3.38	45.0%
Express	2,217,331	7,936	25.3	\$2.76	23.3%
Light Rail	37,620,944	113,858	212.4	\$0.66	55.4%
Urban Frequent	37,005,041	119,396	32.9	\$1.55	35.8%
Urban Standard	11,949,335	39,573	23.1	\$1.90	31.8%
Circulator	1,179,296	4,133	14.9	\$2.68	23.2%
Rural	25,822	144	5.6	\$24.11	12.2%
Demand-Responsive	374,500	1,381	2.1	\$25.21	14.7%

MODE	Annual Passengers	Avg. Weekday Passengers	Passengers/ Revenue Hour	Subsidy per Passenger	Farebox Recovery
Light Rail	37,620,944	113,858	212.4	\$0.66	55.4%
Fixed Route Bus	52,631,694	172,147	28.9	\$1.71	33.8%
Demand-Responsive	374,500	1,381	2.1	\$25.21	14.7%
Rural	25,822	144	5.6	\$24.11	12.2%



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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.

CIP 11457

December 11, 2008

SUBJECT:

MTS: COMPASS CARD UPDATE

RECOMMENDATION:

That the Board of Directors receive a status report on development and implementation of the Compass Card fare system.

Budget Impact

None.

DISCUSSION:

Compass Card (SANDAG Capital Improvement Program [CIP] 1145700) is a multiyear project that will create a regional fare collection system for the San Diego region's fixed-route bus and rail operations. Formerly known as "Smart Card," the Compass Card is being designed by Cubic to provide a better fare product for the transit customer and to allow the area's transit operators to collect enhanced ridership and revenue data. The plastic cards will be reusable and reloadable and will eventually replace all paper fare media for MTS and North County Transit District (NCTD) operations. Riders will be able to reload the cards at transit stores and all ticket vending machines.

The Compass Card will be accepted on all MTS or NCTD fixed-route bus, Trolley, Coaster, or Sprinter services; however, not on Americans with Disabilities Act (ADA) Paratransit. The embedded technology will require riders to have their fares validated by touching the card to a specially designed validator on the rail platforms or bus fare boxes. All fare media will be available on the Compass Card. Cardholders will be able to purchase monthly and multiday passes and store them on the Compass Card; they



can also load cash values or link them to a credit card for automatic renewal. Compass Cards can be registered to a specific user; if the cards are ever lost or stolen, they can be deactivated and a new one issued by SANDAG.

Currently, the Regional Fare Ordinance designates a rollout of the Compass Card in stages to ensure optimum performance and customer satisfaction with a start date of January 1, 2009. At that time, the Compass Card would replace paper passes for MTS Express Bus Services, and riders on other services could voluntarily choose to move to the Compass Card. In addition, the SANDAG Board determined that eventually all monthly passes would be eliminated and replaced with a 14- or 30-day rolling pass. However, equipment installation is continuing, and the system will need to be tested prior to rollout to ensure a smooth transition. Therefore, MTS staff recommends that SANDAG delay implementation until testing demonstrates that the system is 100% operational and there is adequate time to educate the customer.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, sharon.cooney@sdmts.com

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Agenda

Item No. 47

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

CIP 10465

December 11, 2008

SUBJECT:

MTS: SORRENTO VALLEY COASTER CONNECTION

RECOMMENDATION:

That the Board of Directors receive a report on the Sorrento Valley Coaster Connection.

Budget Impact

The total budgeted cost for the Sorrento Valley Coaster Connection is \$1,045,598.

DISCUSSION:

The Metropolitan Transit System (MTS) has provided connecting service since 1997 to employment centers in Sorrento Valley for North County Transit District (NCTD) Coaster patrons. The Sorrento Valley Coaster Connection (SVCC) operates on Routes 971-978 and Route 89 during peak commute times—combined, these services carried an average of 892 passengers a day in October of 2008. FY 2008 was the last year that MTS received funding for this service from the Air Pollution Control District (APCD) (\$539,000) 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 FY 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 MTS staff began an organized effort to seek funding from employers that benefit from the service. MTS, with the assistance of Move San Diego, attended multiple meetings with representatives of Sorrento Valley employers. Attachment A shows a sample letter of intent that was circulated to gain employer buy-in.



After implementation of the SVCC fare and the increase in the Coaster fare, ridership on these routes dropped 31% to 644. Subsidy per passenger has risen since FY 2008 to \$5.18 per passenger.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, sharon.cooney@sdmts.com

DEC11-08.47.SVCC.COONEY.doc

Attachment: A. Sample Letter of Intent

September XX, 2008

Mr. Paul Jablonski
Chief Executive Officer
San Diego Metropolitan Transit System
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

Dear Mr. Jablonski:

(Company Name) views public transportation as an important service for its employees in Sorrento Valley. We understand that the Coaster Connection service is in danger of being discontinued due to a significant drop in the subsidy that has helped pay for it since it began.

(Company Name) is interested in helping to sustain this service by committing to the purchase of (number) \$40 pre-paid monthly Coaster Connection passes for six months, October 2008 through March 2009. In exchange, we understand that MTS will provide (Company Name) with an equal number (number) of passes to be distributed to (Company Name's) employees that use the Coaster Connection service. (Company Name) will not reduce the number it agrees to purchase during the six month period, but may at any time increase that number as the service becomes more popular with its employees.

This commitment does not bind MTS to continue the service, but (Company Name) hopes that our effort combined with the other employers in Sorrento Valley may help to fund the service sufficiently to make it viable in the long term.

Sincerely,

(Company Authorized Official)



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San Diego, CA 92101-7490
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Agenda

Item No. 48

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

OPS 970.12

December 11, 2008

SUBJECT:

SDTI: PADRES BASEBALL 2008 YEAR-END SUMMARY

RECOMMENDATION:

That the Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

The 2008 San Diego Padres baseball season marked the fifth year of Major League Baseball at the downtown ballpark. This also was the 11th year of light rail transit (LRT) service to Padres baseball games since the opening of the Mission Valley West line segment in late 1997. To date, more than 3.2 millions fans have used LRT to attend Padres baseball games at Qualcomm Stadium and PETCO Park.

The 2008 season resulted in significant reductions in attendance and overall ridership; however, ridership as a percentage of attendance was up slightly compared to the 2007 season. We have maintained a steady level of loyal fans who continue to use the trolley as their preferred mode of travel to games. There was a significant increase in the number of low attendance games (less than 50% of ballpark capacity) as well as a sharp decrease in the number of capacity or near-capacity games.



Attendance and Ridership Recap

	<u>2007</u>	<u>2008</u>
No. of Games	81	82
Overall Attendance	2,437,990	2,006,657 (down 18%)
Attendance per Game	30,099	24,471 (down 19%)
No. of Games Below 20K	5	23 (up 360%)
No. of Games Above 40K	10	2 (down 80%)
Overall Ridership	347,922	297,320 (down 15%)
Average Ridership	4,295	3,626 (down 16%)
Average Gate %	14.3%	14.8%

Ticket Booth Revenue – Ballpark Summary

Ticket sales were conducted for all 82 games in 2008. For high-attendance games, manual sales were conducted at as many as 10 locations (Opening Day). For weekend games including Friday nights, seven locations were opened. For midweek or low-attendance games, sales locations were reduced to four. The average amount collected per game was down 22% to \$3,158 compared to \$4,064 last year.

September 2008 Fare Change

The change to the flat fare structure was in effect for the final ten games of the 2008 season. Preliminary observations revealed that the amount collected at the ticket booths increased an average of \$0.21 per trip after the change was implemented. The average number of single-trip tickets sold at the ticket booths during the 2008 season was 1,648 per game. Projected over a full season at the 2008 numbers, this change to the fare structure would result in an estimated increase of more than \$28,000 for ticket booth sales.

Cost Recovery

As part of an annual cost-recovery exercise, a 12-game series was chosen to obtain numbers from high-attendance weekend games as well as lower-attendance weeknight games. The sample includes two 3-game, midweek series and two 3-game, weekend series.

All operating costs generated by the event service were considered including car miles, staffing levels, and contract services. Revenue sources include manual tickets sales, estimated revenue from ticket vending machines (TVM), and COASTER fare receipts. The TVM figures were established based upon sales averages by day of the week and comparing sales on nonevent dates with the dates in the sample. Reductions in gross receipts and revenue collected per rider were more than offset by improved operating efficiencies resulting in a net increase in operating revenue per game despite fewer riders.

Padres Midseason Sample

	<u>2007</u>	<u>2008</u>	
• No. of Games	6	12	
• Average Attendance	29,810	26,926	(down 10%)
• Average Ridership	4,242	4,086	(down 4%)
• Gate %	14.2%	15.2%	
• Average Revenue per Rider (estimate)	\$3.25	\$3.15	(down 3%)
• Average Gross Revenue (estimate)	\$13,796	\$12,854	(down 7%)
• Average Operating Costs	\$9,565	\$8,125	(down 15%)
• Average Net Revenue (estimate)	\$4,231	\$4,729	(up 12%)

Using these figures and based on the level of service offered, the current breakeven point for a typical baseball game at PETCO Park is approximately **2,580** passengers (note: 2008 season average = 3,626).

OPERATING COST/REVENUE COMPARISON 12-Game Series

Category	Revenue	Expenses
Ticket Sales (Booth)	\$36,000.00	
Ticket Sales (TVM)	\$114,585.00	
COASTER	\$3,665.00	
Security (TSS)		(\$10,499.00)
Security (Heritage)		(\$23,688.00)
Transportation Department		(\$32,654.00)
Car Miles (Traction Power)		(\$19,280.00)
Revenue Department		(\$8,418.00)
Facilities Department		(\$2,959.00)
Total Expenses:		(\$97,498.00)
Total Revenues:	\$154,250.00	
Net-Operating Rev. 12-Game Series:	\$56,752.00	
Net Operating Rev. per Game:	\$4,729.00	

Season Summary

The 2008 season marked the fifth year that SDTI provided service to baseball games at PETCO Park. Overall, the season was considered successful. Ridership, as a percentage of the gate, remained consistent through the year averaging between 12% and 15% for most games. Another factor that affected gate percentages included seven midweek day games (18% average gate percentage) due to reduced downtown parking availability. On Monday, May 19, prior to a game between the Padres and St. Louis Cardinals, an explosion in the new Hilton Hotel resulted in the temporary closure of the adjacent parking structure. The resulting unplanned reduction in parking capacity produced a higher mode split than normal for LRT for the baseball game that night (19% of the gate).

Ballgames during concurrent events at Qualcomm Stadium (Chargers, international soccer) represented the opposite end of the spectrum averaging less than 13% of the gate as parking availability was reduced in the Mission Valley corridor due to multiple events.

A full season breakdown by game is contained in Attachment A.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Tom Doogan, 619.595.4984, tom.doogan@sdmts.com

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Attachment: A. Attendance/Ridership Summary

Attendance / Ridership Summary

Att. A, AI 48, 12/11/08

DAY	DATE	GAME #	TEAM	GAME ATT (GATE)	CUMULATIVE ATT	CUMULATIVE ATT 2007	% DIFF 06 - 07	GAS	IMP	TOTAL RIDERS	GATE %	CUM TOT RIDERS	CUM TOT RIDERS 2007	% DIFFER 06 - 07	TIME	COMMENTS
FRI	3/28	1	LA ANGELS	21,393	21,393	42,509	-49.7%	1,405	1,491	2,896	13.5%	2,896	6,429	-55.0%	7:05 PM	Exhibition Game
MON	3/31	2	HOUSTON	43,719	65,112	78,725	-17.3%	2,746	3,006	5,752	13.2%	8,648	11,565	-25.2%	7:05 PM	Opening Night (Caps)
TUE	4/1	3	HOUSTON	17,642	82,754	101,226	-18.2%	1,041	1,322	2,363	13.4%	11,011	14,322	-23.1%	7:05 PM	
WED	4/2	4	HOUSTON	15,678	98,432	130,103	-24.3%	853	980	1,833	11.7%	12,844	18,328	-29.9%	7:05 PM	
THU	4/3	5	HOUSTON	20,012	118,444	157,093	-24.6%	1,491	1,963	3,454	17.3%	16,298	22,131	-26.4%	12:35 PM	2 for 1 Day
FRI	4/4	6	LOS ANGELES	39,696	158,140	185,721	-14.9%	2,424	3,470	5,894	14.8%	22,192	26,647	-16.7%	7:05 PM	Fireworks, towels
SAT	4/5	7	LOS ANGELES	36,151	194,291	208,504	-6.8%	2,463	3,218	5,681	15.7%	27,873	29,684	-6.1%	12:55 PM	Padres Flags
SUN	4/6	8	LOS ANGELES	40,525	234,816	235,654	-0.4%	2,679	3,469	6,148	15.2%	34,021	34,531	-1.5%	1:05 PM	Kids Floppy Hats
TUE	4/15	9	COLORADO	21,165	255,981	277,745	-7.8%	1,181	1,603	2,784	13.2%	36,805	42,541	-13.5%	7:05 PM	SDSU Charter Group
WED	4/16	10	COLORADO	18,839	274,820	317,685	-13.5%	1,219	1,919	3,138	16.7%	39,943	49,184	-18.8%	7:05 PM	
THU	4/17	11	COLORADO	23,886	298,706	358,062	-16.6%	1,712	1,812	3,524	14.8%	43,467	55,925	-22.3%	7:05 PM	
WED	4/23	12	SAN FRAN	21,836	320,542	374,579	-14.4%	1,318	1,624	2,942	13.5%	46,409	58,224	-20.3%	7:05 PM	
THU	4/24	13	SAN FRAN	23,983	344,525	390,256	-11.7%	1,694	1,817	3,511	14.6%	49,920	60,298	-17.2%	7:05 PM	
FRI	4/25	14	ARIZONA	29,314	373,839	408,042	-8.4%	1,980	2,123	4,103	14.0%	54,023	62,874	-14.1%	7:05 PM	Fireworks
SAT	4/26	15	ARIZONA	27,660	401,499	443,989	-9.6%	1,578	2,704	4,282	15.5%	58,305	67,854	-14.1%	12:55 PM	Seat Cushions
SUN	4/27	16	ARIZONA	34,394	435,893	484,253	-10.0%	2,011	2,922	4,933	14.3%	63,238	72,962	-13.3%	1:05 PM	Kids Posters
FRI	5/9	17	COLORADO	26,695	462,588	517,002	-10.5%	1,705	2,022	3,727	14.0%	66,965	77,554	-13.7%	7:05 PM	Fireworks
SAT	5/10	18	COLORADO	30,322	492,910	533,581	-7.6%	1,948	2,120	4,068	13.4%	71,033	80,003	-11.2%	7:05 PM	T-shirts
SUN	5/11	19	COLORADO	24,014	516,924	556,460	-7.1%	1,521	2,121	3,642	15.2%	74,675	83,379	-10.4%	1:05 PM	Kids Batting Helmets
MON	5/19	20	ST. LOUIS	18,515	535,439	577,066	-7.2%	1,396	2,040	3,436	18.6%	78,111	85,989	-9.2%	7:05 PM	
TUE	5/20	21	ST. LOUIS	22,675	558,114	600,229	-7.0%	1,369	2,010	3,379	14.9%	81,490	89,202	-8.6%	7:05 PM	
WED	5/21	22	ST. LOUIS	16,920	575,034	624,760	-8.0%	975	1,467	2,442	14.4%	83,932	92,403	-9.2%	7:05 PM	
THU	5/22	23	CINCINNATI	15,387	590,421	652,925	-9.6%	842	1,372	2,214	14.4%	86,146	96,480	-10.7%	7:05 PM	
FRI	5/23	24	CINCINNATI	18,307	608,728	682,163	-10.8%	1,049	1,329	2,378	13.0%	88,524	100,550	-12.0%	7:05 PM	Beanie Caps
SAT	5/24	25	CINCINNATI	23,406	632,134	713,895	-11.5%	1,502	1,665	3,167	13.5%	91,691	104,802	-12.5%	7:05 PM	Fireworks
SUN	5/25	26	CINCINNATI	27,718	659,852	747,801	-11.8%	1,708	2,571	4,279	15.4%	95,970	109,468	-12.3%	1:05 PM	Photo Day
TUE	5/27	27	WASHINGTON	13,329	673,181	775,742	-13.2%	680	1,265	1,945	14.6%	97,915	113,164	-13.5%	7:05 PM	
WED	5/28	28	WASHINGTON	14,203	687,384	804,733	-14.6%	769	1,500	2,269	16.0%	100,184	116,848	-14.3%	7:05 PM	
THU	5/29	29	WASHINGTON	18,909	706,293	842,207	-16.1%	1,324	2,395	3,719	19.7%	103,903	122,100	-14.9%	12:35 PM	2 for 1 Day
MON	6/2	30	CHI. CUBS	26,694	732,987	882,557	-16.9%	1,585	2,248	3,833	14.4%	107,736	128,672	-16.3%	7:05 PM	
TUE	6/3	31	CHI. CUBS	21,102	754,089	915,811	-17.7%	1,354	1,772	3,126	14.8%	110,862	132,992	-16.6%	7:05 PM	
WED	6/4	32	CHI. CUBS	18,638	772,727	946,081	-18.3%	1,108	1,137	2,245	12.0%	113,107	137,471	-17.7%	7:05 PM	Light Rain / Soccer at Q
THU	6/5	33	NY METS	22,927	795,654	978,332	-18.7%	1,231	2,111	3,342	14.6%	116,449	141,992	-18.0%	7:05 PM	Concert
FRI	6/6	34	NY METS	24,466	820,120	1,002,584	-18.2%	1,356	1,945	3,301	13.5%	119,750	144,961	-17.4%	7:05 PM	Caps
SAT	6/7	35	NY METS	34,464	854,584	1,037,196	-17.6%	2,094	2,374	4,468	13.0%	124,218	151,665	-18.1%	7:05 PM	Kids Gloves
SUN	6/8	36	NY METS	27,931	882,515	1,079,676	-18.3%	2,520	2,386	4,906	17.6%	129,124	156,750	-17.6%	1:05 PM	
TUE	6/10	37	LOS ANGELES	22,584	905,099	1,121,994	-19.3%	1,213	2,063	3,276	14.5%	132,400	161,589	-18.1%	7:05 PM	
WED	6/11	38	LOS ANGELES	26,188	931,287	1,164,288	-20.0%	1,396	1,957	3,353	12.8%	135,753	167,131	-18.8%	7:05 PM	
THU	6/12	39	LOS ANGELES	32,704	963,991	1,185,597	-18.7%	2,224	3,455	5,679	17.4%	141,432	169,880	-16.7%	12:35 PM	2 for 1 Day
FRI	6/20	40	DETROIT	35,934	999,925	1,217,275	-17.9%	2,202	2,647	4,849	13.5%	146,281	174,132	-16.0%	7:05 PM	Kouzmanoff Koosies
SAT	6/21	41	DETROIT	30,556	1,030,481	1,240,338	-16.9%	1,801	2,150	3,951	12.9%	150,232	177,263	-15.2%	7:05 PM	Fireworks
SUN	6/22	42	DETROIT	23,368	1,053,849	1,266,857	-16.8%	1,696	2,087	3,783	16.2%	154,015	180,718	-14.8%	1:05 PM	Kids T-shirts
TUE	6/24	43	MINNESOTA	29,456	1,083,305	1,301,373	-16.8%	1,489	2,779	4,268	14.5%	158,283	185,472	-14.7%	7:05 PM	
WED	6/25	44	MINNESOTA	18,450	1,101,755	1,338,980	-17.7%	1,165	1,678	2,843	15.4%	161,126	191,320	-15.8%	7:05 PM	

PADRES 2008

	DAY	DATE	GAME #	TEAM	GAME ATT (GATE)	CUMULATIVE ATT	CUMULATIVE ATT 2007	% DIFF 06 - 07	GAS	IMP	TOTAL RIDERS	GATE %	CUM TOT RIDERS	CUM TOT RIDERS 2007	% DIFFER 06 - 07	TIME	COMMENTS
	THU	6/26	45	MINNESOTA	22,811	1,124,566	1,374,135	-18.2%	1,732	2,654	4,386	19.2%	165,512	196,322	-15.7%	12:35 PM	2 for 1 Day
	FRI	6/27	46	SEATTLE	23,603	1,148,169	1,405,686	-18.3%	1,697	1,532	3,229	13.7%	168,741	200,633	-15.9%	7:05 PM	
	SAT	6/28	47	SEATTLE	32,717	1,180,886	1,434,769	-17.7%	2,018	2,429	4,447	13.6%	173,188	204,885	-15.5%	7:05 PM	Jerseys
	SUN	6/29	48	SEATTLE	22,570	1,203,456	1,463,864	-17.8%	1,328	2,180	3,508	15.5%	176,696	209,176	-15.5%	1:05 PM	Kids Banks
	MON	7/7	49	FLORIDA	18,034	1,221,490	1,490,987	-18.1%	1,198	1,806	3,004	16.7%	179,700	213,354	-15.8%	7:05 PM	
	TUE	7/8	50	FLORIDA	19,754	1,241,244	1,523,498	-18.5%	1,333	1,982	3,325	16.8%	183,025	217,725	-15.9%	7:05 PM	
	WED	7/9	51	FLORIDA	24,167	1,265,411	1,556,070	-18.7%	1,574	2,078	3,652	15.1%	186,677	223,119	-16.3%	12:35 PM	2 for 1 Day
	FRI	7/11	52	ATLANTA	37,191	1,302,602	1,589,048	-18.0%	2,372	3,399	5,771	15.5%	192,448	228,095	-15.6%	7:05 PM	Beach Towels
	SAT	7/12	53	ATLANTA	36,933	1,339,535	1,615,133	-17.1%	2,587	2,753	5,340	14.5%	197,788	232,026	-14.8%	7:05 PM	Fireworks
	SUN	7/13	54	ATLANTA	26,239	1,365,774	1,640,471	-16.7%	2,270	2,662	4,932	18.8%	202,720	235,302	-13.8%	1:05 PM	Kids Caps
	MON	7/28	55	ARIZONA	25,026	1,390,800	1,670,423	-16.7%	1,564	2,131	3,695	14.8%	206,415	240,345	-14.1%	7:05 PM	
	TUE	7/29	56	ARIZONA	25,366	1,416,166	1,711,784	-17.3%	1,870	2,664	4,534	17.9%	210,949	246,433	-14.4%	7:05 PM	
	WED	7/30	57	ARIZONA	27,432	1,443,598	1,750,991	-17.6%	1,676	2,490	4,166	15.2%	215,115	251,820	-14.6%	7:05 PM	
	FRI	8/1	58	SAN FRAN	29,697	1,473,295	1,788,481	-17.6%	1,947	1,872	3,819	12.9%	218,934	257,423	-15.0%	7:05 PM	Famous Chicken
	SAT	8/2	59	SAN FRAN	35,357	1,508,652	1,813,853	-16.8%	2,067	2,531	4,598	13.0%	223,532	261,040	-14.4%	7:05 PM	T-shirts
	SUN	8/3	60	SAN FRAN	24,724	1,533,376	1,844,114	-16.9%	2,315	1,633	3,948	16.0%	227,480	265,194	-14.2%	1:05 PM	Kids Hot Wheels
	TUE	8/12	61	MILWAUKEE	22,430	1,555,806	1,867,985	-16.7%	1,816	2,357	4,173	18.6%	231,653	268,745	-13.8%	7:05 PM	
	WED	8/13	62	MILWAUKEE	25,584	1,581,390	1,895,832	-16.6%	1,631	2,345	3,976	15.5%	235,629	272,462	-13.5%	7:05 PM	
	THU	8/14	63	MILWAUKEE	22,729	1,604,119	1,934,754	-17.1%	1,651	2,047	3,698	16.3%	239,327	277,322	-13.7%	12:35 PM	2 for 1 Day
	FRI	8/15	64	PHILADELPHIA	30,794	1,634,913	1,964,483	-16.8%	2,017	2,347	4,364	14.2%	243,691	282,278	-13.7%	7:05 PM	Fireworks
	SAT	8/16	65	PHILADELPHIA	27,718	1,662,631	1,986,479	-16.3%	1,656	2,160	3,816	13.8%	247,507	285,460	-13.3%	12:55 PM	Fan Bags
	SUN	8/17	61	PHILADELPHIA	26,255	1,688,886	2,006,322	-15.8%	2,087	2,155	4,242	16.2%	251,749	288,176	-12.6%	1:05 PM	Kids Backpacks
	MON	8/25	61	ARIZONA	19,060	1,707,946	2,029,806	-15.9%	914	1,660	2,574	13.5%	254,323	291,372	-12.7%	7:05 PM	Chargers MNF
	TUE	8/26	62	ARIZONA	22,918	1,730,864	2,054,796	-15.8%	984	2,081	3,065	13.4%	257,388	294,532	-12.6%	7:05 PM	
	WED	8/27	63	ARIZONA	14,268	1,745,132	2,094,887	-16.7%	1,292	1,547	2,839	19.9%	260,227	300,223	-13.3%	12:35 PM	2 for 1 Day
	FRI	8/29	64	COLORADO	18,718	1,763,850	2,133,259	-17.3%	1,053	1,351	2,404	12.8%	262,631	305,506	-14.0%	7:05 PM	Concert
	SAT	8/30	65	COLORADO	21,716	1,785,566	2,168,333	-17.7%	1,358	1,649	3,007	13.8%	265,638	310,869	-14.6%	12:55 PM	Caps
	SUN	8/31	66	COLORADO	18,279	1,803,845	2,196,169	-17.9%	1,154	1,838	2,992	16.4%	268,630	314,576	-14.6%	7:05 PM	Kids Back-to-School sets
	MON	9/8	67	LOS ANGELES	18,889	1,822,734	2,234,237	-18.4%	1,073	1,582	2,655	14.1%	271,285	319,757	-15.2%	7:05 PM	
	TUE	9/9	68	LOS ANGELES	20,615	1,843,349	2,260,204	-18.4%	1,101	1,947	3,048	14.8%	274,333	323,343	-15.2%	7:05 PM	
	WED	9/10	69	LOS ANGELES	22,094	1,865,443	2,283,698	-18.3%	1,064	1,962	3,026	13.7%	277,359	326,522	-15.1%	7:05 PM	
	THU	9/11	70	SAN FRAN	21,252	1,886,695	2,307,547	-18.2%	1,147	1,926	3,073	14.5%	280,432	329,723	-14.9%	7:05 PM	
	FRI	9/12	71	SAN FRAN	18,776	1,905,471	2,328,757	-18.2%	1,302	1,343	2,645	14.1%	283,077	332,488	-14.9%	7:05 PM	Concert
	SAT	9/13	72	SAN FRAN	24,961	1,930,432	2,349,172	-17.8%	1,415	2,031	3,446	13.8%	286,523	335,970	-14.7%	7:05 PM	Coolers
	SUN	9/14	73	SAN FRAN	15,743	1,946,175	2,376,999	-18.1%	908	1,618	2,526	16.0%	289,049	339,677	-14.9%	1:05 PM	Kids Toothbrush Holders
	FRI	9/26	80	PITTSBURGH	19,484	1,965,659	2,407,310	-18.3%	1,076	1,467	2,543	13.1%	291,592	342,958	-15.0%	7:05 PM	Calendars
	SAT	9/27	81	PITTSBURGH	23,148	1,988,807	2,437,990	-18.4%	1,047	1,764	2,811	12.1%	294,403	347,922	-15.4%	7:05 PM	Fireworks
	SUN	9/28	82	PITTSBURGH	17,850	2,006,657	2,437,990	-17.7%	988	1,929	2,917	16.3%	297,320	347,922	-14.5%	1:05 PM	Kids Pennants
					</												



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Agenda

Item No. 49

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

MKPC 620.8

December 11, 2008

SUBJECT:

MTS: PADRES TICKET PROGRAMS

RECOMMENDATION:

That the Board of Directors receive a status report on new and existing ticket programs between the San Diego Padres and MTS.

Budget Impact

To be determined.

DISCUSSION:

Beginning with the 2007 season, the Padres and MTS introduced options for PETCO Park employees to purchase discounted transit tickets for travel to and from work on game days. In 2008, the partnership grew to allow MTS riders the opportunity to purchase discounted Padres tickets when they showed their MTS ticket or pass. In 2009, the program will expand to offer Padres season ticket holders the option to purchase transit tickets. The purpose of this report is to provide an overview of the success of the two existing programs and a description of the new program for 2009.

PETCO Park Employees

Given the unique nature of the baseball season in which employees typically work only 10 to 15 days each month for a six-month period, MTS developed a specialized employer discount program for people who work at PETCO Park. The program offers



employees three options to purchase transit tickets for use to and from PETCO Park on game days:

1. Single Game-Day Tickets: These tickets are priced at \$2.65 per game for the 2009 season. This allows for travel to and from PETCO Park only. It is good for two hours before the game and two hours after the game.
2. Full Season Pass: This option will be priced at \$215 for the 2009 season (\$2.65 times 81 home games). Travel with this pass is also restricted to travel to and from PETCO Park on game days only.
3. Senior/Disabled/Monthly (S/D/M) Full-Season Pass: The S/D/M Pass is priced at \$102 for the season. There are no travel restrictions on this option as it is priced the same as purchasing six monthly S/D/M passes at the standard rate of \$17 per month.

The Padres and MTS agreed that to judge this program a success, sales needed to reach the equivalent of 100 PETCO Park employees traveling to each home game. For the 2008 season, the following number of tickets was sold:

- 12 Full-Season
- 27 S/D/M Full-Season
- 1,594 Game Day Tickets

This equates to 58.68 full-season equivalents and represents a 60% increase in sales over the 2007 season. Although the program did not meet its goal, its strong growth in season two justifies the extension of the program. As in past years, MTS will provide the Padres with marketing and promotional materials to market the program. MTS will meet with the Padres in early 2009 to explore new methods to increase the program's popularity.

Transit Tuesdays

In 2008, for the first time, the Padres provided game ticket discounts to transit riders. By showing a transit ticket or monthly pass at the Padres ticket windows on the day of the game, MTS riders received \$6 off of most PETCO Park tickets. Monthly pass holders could also purchase tickets in advance.

MTS promoted this program as part of its annual television advertising contract with Cox Cable, bus king in-house ads, ad panels on top of ticket vending machines, newspaper advertising, and radio advertising.

The goal for this program was to average 100 or more tickets sold for each month. The results were as follows:

<u>Date</u>	<u>Opponent</u>	<u>Tickets</u>
April 1	Houston	30
April 15	Colorado	70
May 20	St. Louis	74
May 27	Washington	35
June 3	Chicago Cubs	122
June 10	L.A. Dodgers	123
June 24	Minnesota	148
July 7	Florida	226
July 29	Arizona	559
August 12	Milwaukee	170
August 26	Arizona	76
TOTAL		1,633
		AVERAGE: 148

The Padres and MTS have agreed to a goal of 175 average tickets sold for the 2009 season. In addition to MTS marketing efforts, the Padres will market Transit Tuesdays with an ad in its official program and scoreboard announcements.

Season Ticket Program

Building on the partnership, the Padres and MTS will launch a new program for 2009 to encourage Padres season ticket holders to opt for a transit package of game-day transit tickets.

The Padres will promote this program in all season ticket mailers, telephone solicitations, and other promotional materials.

To establish the per-game price for a transit package, MTS analyzed its current ridership to Padres home games. MTS is carrying an average of 14% of the Padres' gate to the games. It is estimated that about 90% of all riders to games are purchasing round-trip cash fares for the Trolley. A large percentage of these buyers are "regular" customers, meaning that many are Padres season ticket holders. Hundreds, if not thousands, of Padres season ticket holders have already discovered the convenience and benefits of riding the Trolley to baseball games and are already paying full cash fares.

The pricing rationale, therefore, is intended to attract new riders without eroding historical revenue levels. The pricing must also recognize established ordinances and be fair to the majority of MTS riders.

In addition, to establish a price point that would be attractive to people who are now driving, MTS analyzed the Padres' parking pass sales and area parking lot prices.

The Padres sell season parking passes for approximately \$1,440 (80 games times \$18 per game). According to the Padres, an average of 2.7 fans drive and park together for an average cost of \$6.67 per person per game in an \$18 lot. The cost per person per game would be \$5.56 to park in \$15 lots; \$4.44 in \$12 lots; \$3.70 in \$10 lots; and \$2.96 in \$8 lots.

Season ticket holders opting for the season transit ticket package will be charged \$4 per game per person. The prices for the various season ticket options are as follows:

- Full Season (82 games to include one preseason game): \$328
- Half Season (40 games): \$160
- 20 Games: \$80

People will be issued individual game-day tickets to ride transit. MTS will print these tickets with serial numbers to allow MTS to brand the partnership and to account for tickets sold. The goal is to generate \$100,000 of revenue (equal to approximately 300 full-season packages).



Paul C. Jablonski
Chief Executive Officer

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DEC11-08.49.PADRESTICKETPROGRAM.RSCHUPP.doc



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Agenda

Item No. 50

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

FIN 305 (PC 50601)

December 11, 2008

SUBJECT:

MTS: INVESTMENT REPORT – OCTOBER 2008

RECOMMENDATION:

Receive a report for information.

Budget Impact

None.

DISCUSSION:

Attachment A is a report of MTS investments as of October 2008. It is broken into two columns—the first column relates to investments restricted for capital support or debt service, and the second column is the unrestricted portion.

As the schedule shows, the overwhelming bulk of investments are restricted primarily for debt service related to the payments on the 1995 Lease and Leaseback transactions.

The second column (unrestricted assets) provides the working capital for MTS operations including employee payroll and vendors' goods and services. This column includes the investment in San Diego Transit Corporation's (SDTC's) pension obligation bonds (POBs) that were repurchased and represents an asset that is not currently liquid. It is expected that the bonds will be remarketed during the next six months, which will liquidate this asset.

This month, the report includes detailed information about the individual accounts included within the investment totals.



The Bank of America concentration account and the Local Agency Investment Fund (LAIF) account comprise the total of unrestricted cash available to fund operations.

1. In order to optimize investment earnings on all idle cash, MTS has arranged for all balances in the concentration account at the end of each day to be swept nightly into a highly liquid treasury reserve fund. Up until the market changes during the past few months, the earnings were sufficient to offset fees charged by the bank to maintain MTS's accounts. As the returns on this investment vehicle have sharply declined during this time of financial uncertainty, we have arranged to increase our minimum balance to \$5,000,000 in order to absorb bank fees each month.
2. According to reports published by LAIF, the fair value of its total investments has decreased by 1.61% between August and October of this year. Between August and October of this year, the average monthly effective yield has decreased from 2.779% to 2.709%

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.



Paul C. Jablonski
Chief Executive Officer

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DEC11-08.50.INVESTMT RPT OCT.LMUSENGO.doc

Attachment: A. Investment Report

San Diego Metropolitan Transit System
Investment Report
October 31, 2008

	Restricted	Unrestricted	Total	Average rate of return
Cash and Cash Equivalents				
Bank of America - concentration sweep account	\$ 9,620,774	\$ 13,630,619	\$ 23,251,393	0.07%
Total Cash and Cash Equivalents	9,620,774	13,630,619	23,251,393	
Cash - Restricted for Capital Support				
US Bank - retention trust account	3,084,842	-	3,084,842	N/A *
Bank of New York/Mellon - retention trust account	2,515,455	-	2,515,455	N/A *
Bank of America - Proposition 1B-TSGP funds	2,700,058	-	2,700,058	N/A *
Total Cash - Restricted for Capital Support	8,300,355	-	8,300,355	
Investments - Working Capital				
Local Agency Investment Fund (LAIF)	14,906,494	19,581,712	34,488,206	2.71%
Bank of New York Money Market POB interest	-	307	307	
Total Investments - Working Capital	14,906,494	19,582,019	34,488,513	
Investments - Restricted for Debt Service				
US Bank - Treasury Strips - current market value (Par value \$39,474,000)	30,205,262	-	30,205,262	
Rabobank - Payment Undertaking Agreement	86,247,213	-	86,247,213	7.69%
Total Investments Restricted for Debt Service	116,452,475	-	116,452,475	
Investment in SDTC Pension Obligation Bonds				
Bank of America custodial account	-	35,477,990	35,477,990	
Total cash and investments	\$ 149,280,098	\$ 68,690,628	\$ 217,970,726	

N/A* - Per trust agreements, interest earned on retention accounts is allocated to trust beneficiary (contractor)



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Agenda

Item No. 51

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

FIN 310.2

December 11, 2008

SUBJECT:

MTS: YEAR-TO-DATE OPERATIONS BUDGET STATUS REPORT THROUGH
SEPTEMBER 2008

RECOMMENDATION:

That the Board of Directors receive the MTS Year-to-Date Operations Budget Status
Report through September 2008.

Budget Impact

None at this time.

DISCUSSION:

This report summarizes MTS's year-to-date operating results through September 2008 compared to the Board-approved budget. Attachment A-1 combines the operations, administration, and other activities results through September 2008. Attachment A-2 details the year-to-date September 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 Attachment A-10 provides year-to-date September 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 September 2008 MTS net-operating subsidy favorable variance totaled \$2,678,000 (8.1%). Operations produced a \$2,790,000 (8.4%) favorable variance, and the administrative/other activities areas were unfavorable by \$112,000.

MTS COMBINED RESULTS

Operating Revenues

Year-to-date combined operating revenues through September 2008 were \$24,449,000 compared to the year-to-date budget of \$22,143,000, which represents a \$2,307,000 favorable variance. This is due to higher passenger revenues (\$2,596,000), primarily within rail operations (\$818,000) and transit services (\$808,000). Consolidated other operating revenues were unfavorable by \$289,000.

Expenses

Year-to-date combined expenses through September 2008 were \$54,983,000 compared to the year-to-date budget of \$55,353,000, which resulted in a \$371,000 (0.7%) favorable variance.

Personnel Costs. Year-to-date personnel-related costs totaled \$25,036,000 compared to a year-to-date budgetary figure of \$25,698,000, which produced a favorable variance of \$662,000 (2.6%). 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 \$18,240,000 compared to a budget of \$18,808,000, which resulted in a year-to-date favorable variance of \$568,000 (3.0%). This is primarily due to purchased transportation for fixed-route and lower-than-expected operating expenses within repairs and maintenance services for rail operations.

Materials and Supplies. Total year-to-date materials and supplies expenses totaled \$2,009,000 compared to a budgetary figure of \$1,887,000, resulting in an unfavorable expense variance of \$122,000 (-6.4%). This is primarily due to materials and supplies costs within transit services and rail operations.

Energy. Total year-to-date energy costs were \$8,566,000 compared to the budget of \$7,712,000, which resulted in a year-to-date unfavorable variance of \$854,000 (-11.1%). This unfavorable variance is primarily due to compressed natural gas (-\$562,000) and diesel (-\$302,000). Year-to-date compressed natural gas prices averaged \$1.715 per therm compared to the budgetary rate of \$1.470 per therm. Year-to-date diesel prices averaged \$3.945 per gallon compared to a budgetary rate of \$3.290 per gallon.

Although energy is unfavorable through September year-to-date, the month had a favorable variance of \$17,000, 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 \$843,000 compared to the year-to-date budget \$899,000, which resulted in a favorable variance totaling \$56,000 (6.2%).

General and Administrative. Year-to-date general and administrative costs, including vehicle and facilities leases, were \$60,000 (17.2%) favorable to budget totaling \$289,000 through September 2008 compared to a year-to-date budget of \$349,000.

YEAR-TO-DATE SUMMARY

The September 2008 year-to-date net-operating subsidy totaled a favorable variance of \$2,678,000 (8.1%) 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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Chief Executive Officer

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DEC11-08.51.OPSBUDGETSEPT08.MTHOMPSON.doc

Attachment: A. Comparison to Budget

MTS
CONSOLIDATED
COMPARISON TO BUDGET - FISCAL YEAR 2009
SEPTEMBER 30, 2008
(in \$000's)

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	% VARIANCE
Passenger Revenue	\$ 22,846	\$ 20,250	\$ 2,596	12.8%
Other Revenue	1,603	1,893	(289)	-15.3%
Total Operating Revenue	\$ 24,449	\$ 22,143	\$ 2,307	10.4%
Personnel costs	\$ 25,036	\$ 25,698	\$ 662	2.6%
Outside services	18,240	18,808	568	3.0%
Transit operations funding	-	-	-	-
Materials and supplies	2,009	1,887	(122)	-6.4%
Energy	8,566	7,712	(854)	-11.1%
Risk management	843	899	56	6.2%
General & administrative	207	208	0	0.2%
Vehicle/facility leases	82	142	60	42.2%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	0	(0)	(0)	701.4%
Depreciation	-	-	-	-
Total Operating Expenses	\$ 54,983	\$ 55,353	\$ 371	0.7%
Operating income (loss)	\$ (30,533)	\$ (33,211)	\$ 2,678	8.1%
Total public support and nonoperating revenues	(748)	(467)	(281)	60.1%
Income (loss) before capital contributions	\$ (31,281)	\$ (33,678)	\$ 2,397	-7.1%

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
OPERATIONS
CONSOLIDATED OPERATIONS
COMPARISON TO BUDGET - FISCAL YEAR 2009
SEPTEMBER 30, 2008
(in \$000's)

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	% VARIANCE
Passenger Revenue	\$ 22,846	\$ 20,250	\$ 2,596	12.8%
Other Revenue	151	155	(4)	-2.6%
Total Operating Revenue	\$ 22,998	\$ 20,405	\$ 2,592	12.7%
Personnel costs	\$ 22,505	\$ 22,942	\$ 437	1.9%
Outside services	17,314	17,880	566	3.2%
Transit operations funding	-	-	-	-
Materials and supplies	2,001	1,885	(116)	-6.2%
Energy	8,476	7,628	(848)	-11.1%
Risk management	693	793	100	12.6%
General & administrative	88	92	4	4.4%
Vehicle/facility leases	82	136	54	39.8%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	2,317	2,317	-	0.0%
Depreciation	-	-	-	-
Total Operating Expenses	\$ 53,477	\$ 53,674	\$ 197	0.4%
Operating income (loss)	\$ (30,479)	\$ (33,268)	\$ 2,790	8.4%
Total public support and nonoperating revenues	118	399	(281)	-70.4%
Income (loss) before capital contributions	\$ (30,361)	\$ (32,870)	\$ 2,509	-7.6%

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
OPERATIONS
TRANSIT SERVICES (SAN DIEGO TRANSIT CORPORATION)
COMPARISON TO BUDGET - FISCAL YEAR 2009
SEPTEMBER 30, 2008
(in \$000's)

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	% VARIANCE
Passenger Revenue	\$ 6,771	\$ 5,964	\$ 808	13.5%
Other Revenue	30	2	28	1106.0%
Total Operating Revenue	\$ 6,802	\$ 5,966	\$ 835	14.0%
Personnel costs	\$ 14,176	\$ 14,638	\$ 462	3.2%
Outside services	441	509	68	13.3%
Transit operations funding	-	-	-	-
Materials and supplies	1,207	1,141	(66)	-5.8%
Energy	2,829	2,333	(496)	-21.3%
Risk management	308	361	53	14.6%
General & administrative	35	43	9	19.8%
Vehicle/facility leases	18	46	29	61.7%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	1,171	1,171	-	0.0%
Depreciation	-	-	-	-
Total Operating Expenses	\$ 20,183	\$ 20,241	\$ 57	0.3%
Operating income (loss)	\$ (13,382)	\$ (14,274)	\$ 893	6.3%
Total public support and nonoperating revenues	(1,138)	(857)	(281)	32.7%
Income (loss) before capital contributions	\$ (14,520)	\$ (15,132)	\$ 612	-4.0%

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
OPERATIONS
RAIL OPERATIONS (SAN DIEGO TROLLEY, INCORPORATED)
COMPARISON TO BUDGET - FISCAL YEAR 2009
SEPTEMBER 30, 2008
(in \$000's)

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	%
Passenger Revenue	\$ 9,148	\$ 8,330	\$ 818	9.8%
Other Revenue	105	153	(48)	-31.2%
Total Operating Revenue	\$ 9,253	\$ 8,483	\$ 771	9.1%
Personnel costs	\$ 7,952	\$ 7,857	\$ (95)	-1.2%
Outside services	2,338	2,438	101	4.1%
Transit operations funding	-	-	-	-
Materials and supplies	770	740	(30)	-4.0%
Energy	2,313	2,301	(11)	-0.5%
Risk management	385	432	47	10.9%
General & administrative	51	44	(7)	-15.9%
Vehicle/facility leases	21	51	30	59.2%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	907	907	-	0.0%
Depreciation	-	-	-	-
Total Operating Expenses	\$ 14,737	\$ 14,772	\$ 35	0.2%
Operating income (loss)	\$ (5,483)	\$ (6,289)	\$ 806	12.8%
Total public support and nonoperating revenues	-	-	-	-
Income (loss) before capital contributions	\$ (5,483)	\$ (6,289)	\$ 806	-12.8%

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
OPERATIONS
MULTIMODAL OPERATIONS (FIXED ROUTE)
COMPARISON TO BUDGET - FISCAL YEAR 2009
SEPTEMBER 30, 2008
(in \$000's)

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	% VARIANCE
Passenger Revenue	\$ 5,451	\$ 4,762	\$ 689	14.5%
Other Revenue	16	-	16	-
Total Operating Revenue	\$ 5,467	\$ 4,762	\$ 705	14.8%
Personnel costs	\$ 102	\$ 89	\$ (13)	-14.7%
Outside services	10,192	10,558	366	3.5%
Transit operations funding	-	-	-	-
Materials and supplies	23	-	(23)	-
Energy	2,524	2,116	(408)	-19.3%
Risk management	-	-	-	-
General & administrative	3	2	(1)	-41.9%
Vehicle/facility leases	43	38	(5)	-13.4%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	196	196	-	0.0%
Depreciation	-	-	-	-
Total Operating Expenses	\$ 13,083	\$ 12,999	\$ (85)	-0.7%
Operating income (loss)	\$ (7,616)	\$ (8,236)	\$ 620	7.5%
Total public support and nonoperating revenues	-	-	-	-
Income (loss) before capital contributions	\$ (7,616)	\$ (8,236)	\$ 620	-7.5%

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
OPERATIONS
MULTIMODAL OPERATIONS (PARATRANSIT)
COMPARISON TO BUDGET - FISCAL YEAR 2009
SEPTEMBER 30, 2008
(in \$000's)

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	% VARIANCE
Passenger Revenue	\$ 441	\$ 411	\$ 30	7.2%
Other Revenue	-	-	-	-
Total Operating Revenue	\$ 441	\$ 411	\$ 30	7.2%
Personnel costs	\$ 27	\$ 52	\$ 25	47.7%
Outside services	2,668	2,682	14	0.5%
Transit operations funding	-	-	-	-
Materials and supplies	-	-	-	-
Energy	606	644	38	5.9%
Risk management	-	-	-	-
General & administrative	0	1	1	96.0%
Vehicle/facility leases	-	1	1	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	8	8	-	0.0%
Depreciation	-	-	-	-
Total Operating Expenses	\$ 3,309	\$ 3,388	\$ 79	2.3%
Operating income (loss)	\$ (2,868)	\$ (2,977)	\$ 109	3.7%
Total public support and nonoperating revenues	-	-	-	-
Income (loss) before capital contributions	\$ (2,868)	\$ (2,977)	\$ 109	-3.7%

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
OPERATIONS
CONSOLIDATED CHULA VISTA TRANSIT OPERATIONS
COMPARISON TO BUDGET - FISCAL YEAR 2009
SEPTEMBER 30, 2008
(in \$000's)

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	% VARIANCE
Passenger Revenue	\$ 1,034	\$ 783	\$ 252	32.2%
Other Revenue	-	-	-	-
Total Operating Revenue	\$ 1,034	\$ 783	\$ 252	32.2%
Personnel costs	\$ 60	\$ 117	\$ 57	49.1%
Outside services	1,483	1,501	18	1.2%
Transit operations funding	-	-	-	-
Materials and supplies	-	4	4	-
Energy	204	234	29	12.5%
Risk management	-	-	-	-
General & administrative	0	2	2	96.5%
Vehicle/facility leases	-	-	-	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	36	36	-	0.0%
Depreciation	-	-	-	-
Total Operating Expenses	\$ 1,783	\$ 1,893	\$ 110	5.8%
Operating income (loss)	\$ (749)	\$ (1,111)	\$ 362	32.6%
Total public support and nonoperating revenues	1,207	1,207	-	0.0%
Income (loss) before capital contributions	\$ 458	\$ 96	\$ 362	375.6%

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
OPERATIONS
CORONADO FERRY
COMPARISON TO BUDGET - FISCAL YEAR 2009
SEPTEMBER 30, 2008
(in \$000's)

	YEAR TO DATE			%
	ACTUAL	BUDGET	VARIANCE	VARIANCE
Passenger Revenue	\$ -	\$ -	\$ -	-
Other Revenue	-	-	-	-
Total Operating Revenue	\$ -	\$ -	\$ -	-
Personnel costs	\$ -	\$ -	\$ -	-
Outside services	37	37	-	0.0%
Transit operations funding	-	-	-	-
Materials and supplies	-	-	-	-
Energy	-	-	-	-
Risk management	-	-	-	-
General & administrative	-	-	-	-
Vehicle/facility leases	-	-	-	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	-	-	-	-
Depreciation	-	-	-	-
Total Operating Expenses	\$ 37	\$ 37	\$ -	0.0%
Operating income (loss)	\$ (37)	\$ (37)	\$ -	0.0%
Total public support and nonoperating revenues	49	49	-	0.0%
Income (loss) before capital contributions	\$ 12	\$ 12	\$ -	0.0%

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
ADMINISTRATION
CONSOLIDATED
COMPARISON TO BUDGET - FISCAL YEAR 2009
SEPTEMBER 30, 2008
(in \$000's)

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	% VARIANCE
Passenger Revenue	\$ -	\$ -	\$ -	-
Other Revenue	1,342	1,644	(302)	-18.4%
Total Operating Revenue	\$ 1,342	\$ 1,644	\$ (302)	-18.4%
Personnel costs	\$ 2,409	\$ 2,634	\$ 226	8.6%
Outside services	907	887	(20)	-2.3%
Transit operations funding	-	-	-	-
Materials and supplies	6	1	(5)	-399.4%
Energy	87	79	(9)	-11.2%
Risk management	140	97	(43)	-44.6%
General & administrative	89	89	(0)	-0.1%
Vehicle/facility leases	-	6	6	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	(2,328)	(2,328)	-	0.0%
Depreciation	-	-	-	-
Total Operating Expenses	\$ 1,311	\$ 1,465	\$ 154	10.5%
Operating income (loss)	\$ 32	\$ 180	\$ (148)	82.5%
Total public support and nonoperating revenues	(866)	(866)	-	0.0%
Income (loss) before capital contributions	\$ (835)	\$ (686)	\$ (148)	21.6%

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

OTHER ACTIVITIES

CONSOLIDATED

COMPARISON TO BUDGET - FISCAL YEAR 2009

SEPTEMBER 30, 2008

(in \$000's)

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	% VARIANCE
Passenger Revenue	\$ -	\$ -	\$ -	-
Other Revenue	109	93	17	17.9%
Total Operating Revenue	\$ 109	\$ 93	\$ 17	17.9%
Personnel costs	\$ 122	\$ 122	\$ (1)	-0.4%
Outside services	18	41	23	55.4%
Transit operations funding	-	-	-	-
Materials and supplies	2	1	(1)	-49.5%
Energy	2	5	2	50.8%
Risk management	9	9	(1)	-5.8%
General & administrative	30	27	(4)	-13.4%
Vehicle/facility leases	-	-	-	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	11	11	-	0.0%
Depreciation	-	-	-	-
Total Operating Expenses	\$ 195	\$ 215	\$ 20	9.2%
Operating income (loss)	\$ (86)	\$ (122)	\$ 36	29.8%
Total public support and nonoperating revenues	-	-	-	-
Income (loss) before capital contributions	\$ (86)	\$ (122)	\$ 36	-29.8%



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Agenda

Item No. **52**

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

OPS 920

December 11, 2008

SUBJECT:

MTS: 4S RANCH PILOT PROJECT – ROUTE 880 EXPRESS SERVICE TO
SORRENTO VALLEY/UTC

RECOMMENDATION:

That the Board of Directors receive a report on the plan to establish an express service between 4S Ranch and Sorrento Valley/University Towne Centre (UTC). The route will be a pilot project funded with developer mitigation fees.

Budget Impact

\$709,631 in unbudgeted revenue will be used to fund the service.

DISCUSSION:

Background

Based on a condition of its development agreement, 4S Kelwood General Partnership (the developer of 4S Ranch) entered into a Transit Service Agreement with MTS on December 31, 2005, where 4S Kelwood would contribute \$500,000 to the County's Transit Trust Account for providing transit services in 4S Ranch (there is currently over \$709,631 in the account).

The agreement between MTS and 4S Kelwood stated that MTS was required to administer (1) an initial survey of 4S Ranch residents to determine travel patterns and travel needs, and (2) a follow-up survey with specific transit proposals developed from the initial survey.

The first survey was conducted in June 2006 and showed that residents preferred a fast, comfortable trip, catering to various employment sites around the county. The two most-requested sites were downtown San Diego and the Sorrento Valley/UTC/UC San Diego areas.



Consequently, a second survey was distributed in February 2007. Given the responses to the first survey, a few options were developed for the second survey:

- 1) Express service to downtown San Diego
- 2) Express service to UTC/UCSD
- 3) Express service to Mira Mesa/Sorrento Valley/UTC/UCSD

A total of 313 residents returned surveys to MTS. Of these, 82 indicated that they would use an express service to downtown San Diego; 80 indicated that they would use the UTC/UCSD express service; and 82 indicated that they would use the Mira Mesa/Sorrento Valley/UTC/UCSD service.

Service Plan

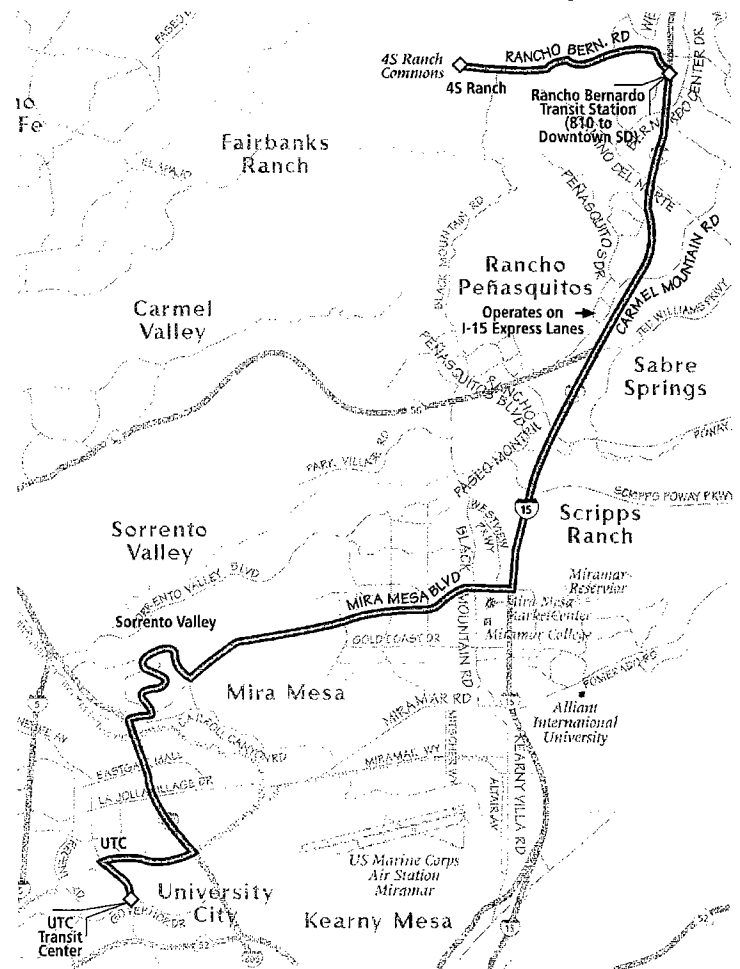
Using the survey results as a guide, MTS staff recommends an express route from 4S Ranch to Sorrento Valley and UTC (Route 880). Given that a number of routes already operate to downtown San Diego, an express route to Sorrento Valley and UTC would provide 4S Ranch residents, as well as those in the Rancho Bernardo area and points north, more public transportation options.

Route 880 is proposed to originate at the 4S Commons shopping center where dedicated park-n-ride spots have been provided. The route will travel east on Rancho Bernardo Road and serve the Rancho Bernardo Transit Station. It will then use the I-15 Express Lanes traveling south to Mira Mesa Boulevard. Route 880 will make limited stops on its way to Sorrento Valley, stop in Sorrento Valley, and then serve UTC via I-805 and La Jolla Village Drive. Passengers would be able to make quick connections to UCSD at the UTC Transit Center.

Route 880 will initially operate three southbound trips in the morning and three northbound trips in the afternoon. The route will take roughly 35 minutes to reach Sorrento Valley from 4S Ranch and 50 minutes to UTC.

Trips into the Rancho Bernardo Transit Station would be timed with Route 810 trips in order to provide better connections for residents of both 4S Ranch and the northern I-15 corridor.

FIGURE 1 - Route 880 Map



Expenditure of Funds

Beginning in late 2012 or early 2013, a new Bus Rapid Transit (BRT) route – following a similar alignment as proposed here – is scheduled to start service. This BRT route will be funded as part of TransNet.

Ideally, Route 880 will operate until the BRT route is implemented. Consequently, MTS budgeted the route to operate from January 2009 through December 2012 after which the BRT route would be implemented.

The projected expenditure of funds is shown in Table 1.

TABLE 1. Projected Expenditure of Funds

	Days of Service	Operating Costs	Expected Revenues	Operating Subsidy	Cumulative Subsidy
Project Start-up		\$20,000	\$0	\$20,000	\$20,000
FY09	110	\$106,495	\$37,273	\$69,222	\$89,222
FY10	252	\$251,456	\$88,009	\$163,446	\$252,668
FY11	252	\$259,203	\$90,721	\$168,482	\$421,150
FY12	252	\$266,904	\$93,416	\$173,488	\$594,638
FY13	126	\$135,660	\$47,481	\$88,179	\$682,817

Table 1 shows MTS's best estimates of how much service the funding will provide. A number of factors could increase costs (such as higher-than-anticipated fuel prices or changes within the contract with the operator, Veolia Transportation) or decrease anticipated fare revenues.

As a pilot project, MTS reserved the right to make adjustments to the route in the future for service-efficiency purposes. MTS also reserved the right to cancel the route at any time and use any unused portion of the funds for other transit-related projects that would benefit 4S Ranch residents.



Paul C. Jablonski
Chief Executive Officer

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Agenda

Item No. 62

Chief Executive Officer's Report

ADM 121.7 (PC 50101)

December 11, 2008

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 November 4 through December 1, 2008.

[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
L0860.0-09	SAN DIEGO GAS ELECTRIC	EASEMENT FOR DISTRIBUTION UNDERGROUND	\$0.00	11/4/2008
G1080.2-07	LAW OFFICES OF MICHAEL E. RIPLEY	LEGAL SERVICES GENERAL & TORT LIABILITY	\$40,000.00	11/6/2008
L0849.1-08	ELECTRO SPECIALTY SYSTEMS, INC	CONTRACT AMEND 1 ADD TWO HIGH MEGA PIXEL	\$32,520.56	11/6/2008
G1072.2.-08	R. MARTIN BOHL	LEGAL SERVICES FOR JOINT DEVELOPMENT	\$100,000.00	11/10/2008
G1230.0-09	CITY OF SAN DIEGO OHS	MOU FOR MUTUAL AID AGREEMENT FOR DISASTER	\$0.00	11/17/2008
G1232.0-09	SAN DIEGO PADRES	AGREEMENT TO ALL PADRE SEASON TKT HOLDER	\$0.00	11/17/2008
G0856.11-03	GIRO INC	PROF SVCS FOR INSTALL SERVER HARDWARE	\$62,700.00	11/20/2008
G1101.4-07	NEW FLYER OF AMERICA, INC	INCORPORATE EARLY PAYMENT DISCOUNT TERMS	\$0.00	11/20/2008
G1165.1-08	OPPER & VARCO LLP	LEGAL SERVICES ENVIRONMENTAL LAW	\$25,000.00	11/20/2008
L0859.0-09	SIEMENS TRANSPORTATION	LRV REPAIRS 2052	\$25,000.00	11/20/2008
G1087.3-07	LIEBMAN, QUIGLEY, SHEPPARD	LEGAL SERVICES - GENERAL & TORT LIABILIT	\$45,000.00	11/24/2008

PURCHASE ORDERS

DATE	Organization	Subject	AMOUNT
11/6/2008	WAVE IMAGING CORPORATION	RENEWAL OF ANNUAL SUPPORT MAINTENANCE	\$4,369.62
11/6/2008	STOP SIGNS AND MORE	PLEASE DO NOT LITTER SIGNS	\$170.31
11/6/2008	MULTICARD SYSTEMS	COLOR RIBBON KIT	\$2,456.70
11/6/2008	CLEAR CHANNEL BROADCASTING	2 BULLETIN BOARDS WITH EXTENSIONS	\$27,375.00
11/13/2008	BORDEAUX PRINTERS INC	NABI DOOR HANGERS	\$4,259.36
11/13/2008	ELECTRO SPECIALTY SYSTEMS	AVIGILON CAMERA, 16 MEGAPIXEL	\$8,904.46
11/13/2008	CDW GOVERNMENT INC	NORTEL ETHERNET	\$13,521.55
11/13/2008	SAN DIEGO READER	FULL PAGE COLOR AD	\$1,800.00
11/13/2008	SAN DIEGO CITYBEAT	FULL PAGE COLOR AD	\$2,000.00
11/13/2008	CONVIS	1/3/ PAGE COLOR AD IN 2009 VISITOR GUIDE	\$5,000.00
11/17/2008	ACCESSIBLE SAN DIEGO	ACCESS GOLD MEMBERSHIP RENEWAL	\$6,250.00
11/17/2008	IMAGE SCENE	MTS PROTECTS OUR ENDANGERED SPECIES	\$2,431.75
11/20/2008	SIEMENS TRANSPORTATION SYSTEMS	BRACKETS FOR S70 DC CONVERTER	\$1,303.78

WORK ORDERS

Doc #	Subject	Amount	Day
G0980.0-06.08.04	TASK ORDER #4 FEDERAL LEGISLATIVE	\$38,007.00	11/20/2008
G1131.0-08.02	DBE, PREVAILING WAGES AND LABOR COM	\$30,000.00	11/20/2008

CONTRACTS (REVENUE)

Doc #	Organization	Subject	Amount	Day
G1198.1-09	HOTEL DEL CORONADO	ECO PASS RENEWAL	(\$56,640.00)	11/10/2008
L0872.0-09	PUREFITNESS RUN FOR THE HUNGRY	ROE PERMIT TO CROSS RR TRACKS	(\$1,460.00)	11/13/2008
G1210.0-09	HUNTINGTON PACIFIC HOTELS	ECO PASS 3-MONTH PILOT PROGRAM	(\$4,320.00)	11/13/2008
L0871.0-09	BOVIS LEND LEASE INC	ROE PERMIT CONSTRUCTION-T JEFFERSON	(\$3,450.00)	11/20/2008