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10:40 IN

# **Agenda**

Joint Meeting of the Board of Directors for Metropolitan Transit System, San Diego Transit Corporation, and San Diego Trolley, Inc.

August 11, 2005

9:00 a.m.

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

This information will be made available in alternative formats upon request. To request an agenda in an alternative format, please call the Clerk of the Board at least five working days prior to the meeting to ensure availability. Assistive Listening Devices (ADLs) are available from the Clerk of the Board/Assistant Clerk of the Board prior to the meeting and are to be returned at the end of the meeting.

ACTION RECOMMENDED

- 1. Roll Call
- 2. Approval of Minutes July 14, 2005

Approve

- 3. <u>Public Comments</u> 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 furnish a copy to the Clerk of the Board.
- 4. Presentation of Employee Awards

Receive



5. <u>Closed Session Items</u>

Possible Action

- a. MTS: CONFERENCE WITH LEGAL COUNSEL EXISTING LITIGATION Government Code section 54956.9 Save Our Heritage Organisation (SOHO) v. City of San Diego, et. al. Superior Court Case No. GIC 837743
- b. MTS: CONFERENCE WITH LEGAL COUNSEL EXISTING LITIGATION Government Code section 549456.9 MTDB v. RV Communities, California Supreme Court Case No. S133786
- c. MTS: CONFERENCE WITH REAL PROPERTY NEGOTIATORS

  <u>Property</u>: Grossmont Center Station Parking Lot Assessor Parcel Nos. 490-200-39, 490-200-40, and 490-270-23

<u>Agency Negotiators</u>: Tim Allison, R. Martin Bohl, Paul Marra, and Tiffany Lorenzen

Negotiating Parties: Fairfield Residential, LLC

<u>Under Negotiation</u>: Instructions to negotiators will include price and

terms of payment

#### Oral Report of Final Actions Taken in Closed Session

CONSENT ITEMS - RECOMMENDED BY THE CHIEF EXECUTIVE OFFICER (indicated by \*)

\* 6. <u>MTS: Mission Valley West Light Rail Transit Project - Completion of Wetland Mitigation</u>

Approve

Action would authorize the CEO to execute a purchase agreement with Wildlands, Inc. for the purchase of .86 wetland mitigation credits.

\* 7. MTS: Audit Report - Security

Receive

Action would receive the internal audit report on the MTS security process.

\* 8. <u>SDTC: Uniform Service Contract Award</u>

Approve

Action would authorize the MTS Chief Operating Officer-Bus to execute a five-year contract with Prudential Overall Supply for uniform services.

\* 9. <u>SDTI: Light Rail Vehicle Equipment Procurement - Contract Award</u>
Action would authorize the President-General Manager to execute a
Standard Procurement Agreement with Hi Tec Enterprises to supply five
dynamic brake-resistor segments for U2 light rail vehicles.

Approve

\* 10. MTS: Proposed 2005/2006 Internal Audit Plan
Action would approve the Proposed 2005/2006 Internal Audit Plan.

Approve

\* 11. MTS: Disadvantaged Business Enterprise Program Update
Action would approve the 2005 MTS Disadvantaged Business Enterprise
(DBE) Program Update.

Approve

\* 12. <u>SDTC: Security Patrol Services - Contract Amendment</u>
Action would (1) waive the provisions of MTS Policy No. 13.5.2(b), which requires formally bidding all service contracts over \$50,000; and (2) authorize the President-General Manager to execute a month-to-month contract amendment with Transit Systems Security beginning on July 1, 2005, (not to exceed five months) with no increase in hourly billable rates or other costs.

Approve

\* 13. MTS: Increased Authorization for Legal Services
Action would authorize the CEO to enter into contract amendments with
Roger Bingham of the law firm Butz, Dunn, DeSantis, Bingham, APC and
John Moorehead of the law firm Goldman, Magdalin & Krikes, LLP for
general liability services and ratify prior amendments entered into under

the CEO's and/or previous General Manager's authority(ies).

Approve

\* 14. MTS: Budget Transfers for Mission Valley East
Action would authorize the CEO to transfer funds from the Grantville
Segment Construction line item into the Construction Contingency for the
Grantville Segment, Approved Construction Contingency Changes, to
fund pending and proposed change orders for the closeout of the
Grantville Segment construction contract.

Approve

\* 15. SDTC: Ride-Monitoring Service - Sole Source Contract
Action would: (1) waive the competitive bid requirements of MTS Policy
No. 13, Section 13.5.2(b), which requires contracts exceeding \$50,000 to
be formally bid, and authorize the Chief Operating Officer-Bus to enter
into a retroactive month-to-month contract, not to exceed one year, with
the incumbent contractor, First Transit, Inc.; and (2) waive the
competitive bid requirements of MTS Policy No. 13, Section 13.5.2(i) to
allow for a negotiated procurement that would evaluate the cost as well
as experience of each proposer, instead of evaluating cost from only the
highest-ranked technical proposer, for the bidding of a new multiyear
contract.

Approve

#### NOTICED PUBLIC HEARINGS

25. None.

NOTE: A FIVE-MINUTE RECESS WILL BE TAKEN AT APPROXIMATELY 10:30 A.M.

#### REPORT ITEMS

45. <u>SDTC: MTS Bus FY 05 Year-End Operations Report</u>
Action would receive this report for information.

Receive

46. <u>SDTI: Preliminary Green Line/Red Line Service Observations</u>
Action would receive this report for information.

Receive

47. <u>MTS: June Monthly Performance Indicators</u>
Action would receive this report for information.

Receive

48. MTS: Southern California Maglev Project Receive Action would receive this report for information. 49. MTS: Coordination of MTS Comprehensive Operational Analysis and Receive SANDAG Independent Transit Planning Review Action would receive the report on the coordination of MTS's Comprehensive Operational Analysis (COA) and the San Diego Association of Governments' (SANDAG's) Independent Transit Planning Review (ITR) for information. 60. Chairman's Report Possible Action 61. Chief Executive Officer's Report Information 62. **Board Member Communications** 63. Additional Public Comments Not on the Agenda Possible Action 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. 64. Next Meeting Date: September 8, 2005

65. <u>Adjournment</u>

JGarde ECBDAGENDAS 8/5/2005

# METROPOLITAN TRANSIT DEVELOPMENT BOARD ROLL CALL

MEETING OF (DATE):		8/11/05	<u> </u>	CALL TO ORDER (TIME): 9:06 a.m.		
RECESS:				RECONVENE:		
CLOSED SESSION	:	9:37 a.	<u>m</u>	RECONVENE:	10:28 a.m.	
ORDINANCES ADO	OPTED:		ADJOURN:		12:05 p.m.	
BOARD MEMBER		(Alternate)		PRESENT (TIME ARRIVED)	ABSENT (TIME LEFT)	
ATKINS	Ø	(Vacant)		9:09 a.m. during Al 3	·	
CLABBY	Ø	(Greer)				
EMERY	Ø	(Cafagna)				
EWIN	Ø	(Jantz)				
KALTENBORN	Ø	(N/A)				
LEWIS, Mark	Ø	(Hanson-Co	x)□			
MAIENSCHEIN		(Vacant)			Ø	
MATHIS	Ø	(N/A)				
MONROE	Ø	(Tierney)				
MORRISON	Ø	(Zarate)		9:10 a.m. during Al 3		
RINDONE	Ø	(Davis)				
ROBERTS	Ø	(Cox)		9:19 a.m. during AI 3		
ROSE		(Janney)	Ø			
RYAN		(B. Jones)			<b>M</b>	
WILLIAMS	Ø	(Vacant)				
YOUNG	Ø	(Vacant)		9:09 a.m. during AI 3	11:30 am. during Al 46	
		(Vacant)				
SIGNED BY THE O	FFICE C	OF THE CLER	K OF TH	IE BOARD Seil	Wellian	
CONFIRMED BY O	FFICE C	F THE GENE	RAL CO	UNSEL OLIGER	& William	

# JOINT MEETING OF THE BOARD OF DIRECTORS FOR THE METROPOLITAN TRANSIT SYSTEM, SAN DIEGO TRANSIT CORPORATION, AND SAN DIEGO TROLLEY, INC.

July 14, 2005

#### BOARD OF DIRECTORS MEETING ROOM, 10<sup>TH</sup> FLOOR 1255 IMPERIAL AVENUE, SAN DIEGO

#### **MINUTES**

#### 1. Roll Call

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

#### 2. Approval of Minutes

Mr. Ewin moved to approve the minutes of the June 23, 2005, Board of Directors meeting. Ms. Atkins seconded the motion, and the vote was 9 to 0 in favor.

#### 3. Public Comments

Don Stillwell: Mr. Stillwell objected to the current routing and frequency of service of Route No. 14. He said it is particularly a problem for those riders who want to go to Kaiser Hospital. He proposed a new routing and a 30-minute frequency for this route. Mr. Conan Cheung, MTS Director of Planning and Performance Monitoring, displayed a map of the area in question. He stated that stopping points objected to by Mr. Stillwell are within ¼ mile walking distance of Kaiser Hospital. He added that if Mr. Stilwell's recommendations were implemented, it would add four to five minutes to the route. He stated that this would impact 180 through riders compared to the 66 passengers impacted by the current routing of Route 14. Mr. Cheung also advised the Board that staff from his department have been in touch with Mr. Stillwell and have also been at both Grantville and Mission San Diego stations to alert passengers regarding the service changes related to the opening of Mission Valley East (MVE).

Angela Rainer: Ms. Rainer requested new trolley service to the airport for both air travelers and airport employees, and she requested that service for employees be provided between the hours of 2 a.m. and 4 a.m. when they leave and arrive for work. Mr. Paul Jablonski, MTS Chief Executive Officer (CEO), stated that MTS has to allow freight trains to use the tracks for 2 hours and 15 minutes each morning, and those are the hours they have use of the track. He stated that it is against federal regulations to run both freight and trolley operations at the same time. He added that building a trolley line to serve the airport should not be pursued until a decision has been made regarding the location of a new airport.

Clive Richard: Mr. Richard stated that the new Green Line is beautiful. He also stated that the Board deserved to be thanked for accomplishing the opening of this line. He added that San Diego Trolley management and staff should be applauded for their efforts from construction to operation.

#### Presentation of Employee Awards

SDTC Employee Service Awards: San Diego Transit employees were presented with service awards as follows: For 20 years of service: Arthur Ortiz and Edward Sanchez, both operators. For 25 years of service: Buyer Tessie Paje and Quality Assurance Supervisor Ray Thompson. For 30 years of service: Operator Edward Mendez.

SDTI Employee Service Awards: San Diego Trolley employees were presented with service awards as follows: For 15 years of service: Rolando Montes, Facilities Supervisor.

Award for Distinguished Service: San Diego Trolley employee Lorena Avina, Ticket Sales Agent, was recognized for assisting an elderly man with Alzheimer's get back to his family.

#### 5. <u>Closed Session Items</u> (ADM 122)

a. The Board convened to Closed Session at 9:26 a.m. for <u>CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION Significant Exposure to Litigation Pursuant to Subdivsion (b) of Government Code Section 54956.9 (One Potential Case).</u>

The Board reconvened to Open Session at 9:45 a.m.

#### Oral Report of Final Actions Taken in Closed Session

Ms. Tiffany Lorenzen, MTS General Counsel, reported that the Board received a report and gave direction to staff and General Counsel.

#### **CONSENT ITEMS**

#### 6. MTS: Increased Authorization for Legal Fees (CIP 10453.6)

Recommend that the Board of Directors ratify the previous actions of the Chief Executive Officer (CEO) and authorize the CEO to enter into Contract Amendment No. 5 to MTS Document No. L0602.0-02, in substantially the same form as Attachment A of the agenda item, with Best Best & Krieger, for legal services for the San Ysidro Intermodal Transportation Center Project.

7. MTS: Transportation Development Act Claim Amendment (FIN 340.2, PC 30100)

Recommend that the Board of Directors adopt Resolution No. 05-11 (Attachment A of the agenda item) amending FY 04 Transportation Development Act (TDA) Article 4.0, Claim No. 253, for National City Transit.

#### Recommended Consent Items

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

#### NOTICED PUBLIC HEARINGS

There were no Noticed Public Hearings.

#### **DISCUSSION ITEMS**

# 30. MTS: Comprehensive Operational Analysis – Regional Service Concept (AMD 121.10, PC 50451)

Mr. Cheung advised the Board that this report was being given as a follow-up to discussions at the June 23, 2005, Board meeting. He reviewed the vision for MTS services and the Regional Service Concept with three different tiers or types of services. He reviewed the three tiers and the factors that were used to assess that particular market. He used maps to show demographic information used in the assessment process and to show geographical areas to be served by each tier of service. Mr. Cheung then provided the Board with an overview of the comments made by the Blue Ribbon and Citizen Advisory Committees. He reported the both committees suggested changing the term "Core" network as each of the three tiers of service is equally important. Mr. Cheung reported that All Day Network Area will be used instead of Core.

In response to a question from Mr. Ewin, Mr. Cheung stated that requests for community-based services (Tier 3) will have to meet certain criteria before service will be provided. He added that those criteria have not yet been developed. He also advised Mr. Ewin that service will be designed around key transit corridors, which should facilitate housing and commercial development along those corridors. Mr. Chueng also stated that the competitiveness of transit with other modes was taken into consideration during the assessment process. Mr. Ewin asked at what level of productivity (community-based services) would MTS fund the service and at what level would the community be asked to fund the service. Mr. Cheung stated that service thresholds would be determined at a later date.

Mr. Monroe complimented Mr. Cheung and his staff for their work on this very complex process. He stated that spontaneous service is very important, and he felt that is defined by five- to seven-minute frequencies. He stated that many of the members of the SANDAG Peer Group are from cities that have a spontaneous threshold of five to seven minutes. Mr. Rindone also complimented the work done on this project and added that this is the most challenging analysis this organization has even undertaken. Mr. Rindone stated that an area with high demand and no service should take priority over an area with service but low demand.

In response to a question from Mr. Clabby, Mr. Cheung stated that they have information regarding trip originations that is provided via a SANDAG Transportation Model. He added that he would like to do a zip code survey to validate the SANDAG model.

#### **Action Taken**

Mr. Lewis moved to (1) direct staff to develop the core transit network based on the areas identified in the analysis; (2) receive information on market-based services. Mr. Clabby seconded the motion, and the vote was 12 to 0 in favor.

31. MTS: Operation and Maintenance Agreement for the Mission Valley East (MVE) Light
Rail Transit (LRT) Station and Bus Transit Center at San Diego State University (SDSU)
(CIP 10426.13)

Mr. Jablonski reviewed the Operation and Maintenance Agreement that MTS and SDSU negotiated to govern operational and maintenance activities of the SDSU Station upon completion of the MVE project. He provided the Board with an overview of the provisions in the agreement regarding easements, term, revenue-generating activities, maintenance, indemnity, security protocol, and insurance. Mr. Jablonski also provided the Committee with a detailed explanation of the term of the agreement. Mr. Jablonski advised the Committee that MTS commissioned a risk assessment report from an independent third party in order to facilitate an agreement on the amount of general liability, automobile liability, and workers' compensation insurance coverage to be carried. He added that another risk assessment must be done in ten years. He stated that he and the General Counsel are in the process of ensuring that the easement agreements don't conflict with the operating and maintenance agreement.

In response to a question from Mr. Lewis, Mr. Jablonski reported that any graffiti or vandalism in areas for which MTS is responsible must be addressed within 24 hours, which is consistent with campus policy.

#### **Public Comment**

Clive Richard: Mr. Richard recognized the CEO and General Counsel for negotiating the Operation and Maintenance Agreement with SDSU. He stated that he would like to see the entire agreement when it has been finalized.

#### Action Taken

Mr. Emery moved to (1) authorize the CEO to execute the Operation and Maintenance Agreement for the Mission Valley East Light Rail Transit Station and Bus Transit Center at San Diego state University, in substantially the same format as attached (Attachment A of the agenda item); and (2) authorize the CEO to approve modifications or changes to the exhibits to the Operation and Maintenance Agreement from time to time so long as the exhibits are consistent with the terms and conditions of the Operation and Maintenance Agreement. Mr. Ewin seconded the motion, and the vote was 12 to 0 in favor.

32. MTS: Interim Interest Rate Lock of Pension Obligations Bonds, Variable Rate Series (FIN 300, PC 50601)

Mr. Cliff Telfer, MTS Interim Chief Financial Officer, referred Board members to the revised agenda item that was placed at the table prior to the start of the meeting, which includes a resolution for adoption by the Board. He reminded the Board that, at the time the Pension Obligation Bonds (POBs) were approved, one half of the bonds were issued

as variable-rate debt with the understanding that strategies would be taken as needed to mitigate interest-rate exposure. He then introduced Keith Curry of UBS Financial Services Inc. to explain how and why such an action would be taken at this time. Mr. Curry reported that variable rates have increased from 1.87 on October 28, 2004, to 3.31 on July 6, 2005. He reported that staff is recommending that the interest rate on the variable portion of the POBs be locked in for an interim period of time using a fixed-rate swap and reviewed the mechanics of a Interest Rate Exchange Agreement. He presented rates for one- to seven-year terms.

Mr. Curry also reported that by adopting a variable rate when the bonds were issued, MTS saved approximately \$2 million in debt service cost. He reported that approval of staff's recommendation would preserve redemption flexibility while reducing interest rate exposure in a higher interest rate environment. He added that the primary risk for a short-term swap is basis risk. He added that MTS's variable-rate series has always traded closely to 100 percent of 30-day London Interbank Offered Rate (LIBOR), and therefore risk should be minimal.

The Board briefly discussed locking in the interest rate for one half of the variable-rate bonds for five years and one half for seven years. In response to a question from Ms. Rose, Mr. Curry stated that the bonds should not be locked in for the entire term of maturity because that would eliminate the opportunity to take advantage of rates when they begin to decrease again, which he felt they would. Mr. Roberts expressed support for the seven-year lock, which costs only about \$15,000 more per year than the five-year lock. He also stated that it is important to have certainty for planning purposes. Mr. Rindone also expressed support for a seven-year lock. Mr. Murphy McCalley, McCalley Consulting, in response to a question from Mr. Roberts, agreed that he supported this action.

#### Action Taken

Mr. Rindone moved to (1) direct staff to proceed with locking in the interest rate of the variable rate series of the pension obligation bonds for a seven-year period of time; and (2) authorize the CEO to approve the financing documents so MTS can be ready to lock in the interest rate at the opportune market time; and (3) approve Resolution No. 05-12 authorizing the execution of an Interest Rate Management Agreement in connection with the MTS Pension Obligation Bonds 2004 Series B (Variable Rate Demand Bonds) and other matters relating thereto. Mr. Roberts seconded the motion, and the vote was 11 to 0 in favor.

#### 33. SDTI: Vintage Trolley Concept – PCC Cars (OPS 970.2, PC 30102)

Mr. Mathis provided a historical perspective on electric rail and trolley cars. Mr. Mathis then presented information regarding the purchase and operation of President's Conference Committee (PCC) cars. He stated that there are cars for sale, and he would like staff to pursue the purchase and transport of two of these cars to San Diego. Mr. Mathis stated that an SDTI staff member has identified two cars that are in reasonably good condition (car nos. 1122 and 1123), and the owner is willing to sell these cars for \$35,000 to MTS with delayed payment. He added that shipping would cost between \$8,000 and \$10,000, which would be paid for using donations. Mr. Peter Tereschuck, SDTI President-General Manager confirmed that these two cars could be stored on SDTI property without interfering with normal operations.

Mr. Mathis stated the cars would be purchased and restored using donations and a volunteer force and then used to establish a "Silver Line" service. He stated that these cars would operate in a one-way, clockwise motion utilizing an existing loop of track beginning at 12<sup>th</sup> & Imperial extending along Bayside, through downtown, and back through 12<sup>th</sup> & Imperial using the third track and its connection at Bayside to complete the loop. He added that these cars would also be suitable for use in special service. He stated that SDTI would have operational control of this line, and the line would be governed by MTS.

Mr. Emery expressed his support for this project, and stated that these types of projects are extremely popular with the public. He stated that Poway's project in Old Poway Park generated a lot of volunteers. In response to a question from Mr. Roberts, Mr. Mathis stated that preliminary estimates indicate it would cost approximately \$100,000 per car to complete this project, but he added that a more accurate estimate can be developed once the cars arrive in San Diego and an assessment of the work that is needed can be done. Also in response to a question from Mr. Roberts, Mr. Mathis stated that the seller seems to be more interested in getting the cars off his property than in getting payment. Mr. Mathis felt that the seller would be satisfied with a partial payment. Mr. Mathis stated that an agreement will be reached with the seller that addresses this issue. He also stated that these cars have resale value, and he feels that value will increase as the supply of available cars decreases. Mr. Roberts stressed the importance of having an agreement with the seller in order to protect MTS's investment. In response to a question from Mr. Monroe, Mr. Tereschuck stated that staff members are enthusiastic about this project. Ms. Rose thanked Mr. Mathis for taking on this project and offered her assistance.

#### Action Taken

Mr. Rindone moved to (1) support staff's recommendation for conceptual approval for a vintage trolley operation subject to funding availability; (2) authorize staff to pursue the purchase and transport of two vintage PCC streetcars from Lake Tahoe to San Diego and to allow storage and restoration at SDTI facilities in a manner so as not to interfere with regular light rail transit operations or maintenance; and (3) direct staff to evaluate options for the solicitation of private funds to support the purchase, transport, and restoration of the historic PCC cars. Ms. Rose seconded the motion, and the vote was 11 to 0 in favor.

#### 34. MTS: County Regional Communications System Agreement (OPS 920.5, PC 50751)

Ms. Susan Hafner, MTS Director of Multimodal Operations, provided the Board with an overview of staff's recommendation to join the Regional Communications System (RCS) as an Equity Partner. She provided background on the system, the advantages to joining, the infrastructure investment already made, details of the current opportunity, and identification of funding to cover the costs of joining.

Mr. Roberts stated that this is a state-of-the-art system, and federal agencies are also tied into this system although the City of San Diego is not. He added that he thought the City did not join because of a cost issue. Mr. Roberts also stated that this is a very cost-effective package and not a profit center for the County of San Diego. Mr. Emery stated that 16 San Diego County systems participate in the RCS. Mr. Jablonski pointed out

that San Diego Trolley has its own system – that the RCS system would be for buses only. In response to a question from Mr. Clabby, Ms. Hafner explained that these communication systems are actually installed on the vehicles and that this item was first discussed by the Board as part of the County Transit divestiture. Mr. Clabby expressed concern over the age of the RCS system and short timeframe in which the Board was being asked to consider and take action on this item. Mr. Roberts stated that the RCS can be expanded and upgraded as needed, and that he would be very surprised if there would be a new system available within the near future. Mr. Emery pointed out the importance of having transit integrated into a community-wide system. Mr. Jablonski pointed out that the RCS system is a very cost effective option even if considered as an interim step.

#### Action Taken

Mr. Emery moved to authorize the CEO to execute an option with the County of San Diego to join the Regional Communications System with Equity Partner status for up to 350 radios. Mr. Ewin seconded the motion, and the vote was 11 to 0 in favor.

#### 35. MTS: Rural Bus Service Adjustments (OPS 980, PC 20484)

Mr. Jablonski explained that this report was being given at the Board's request after its review of Rural Bus Service productivity numbers at the June 23, 2005, Board meeting. He reminded the Board that the productivity numbers were presented on June 23 at Board request after approval of the renewal of the contract for this service was presented to the Board for approval on June 9. He stated that staff would present three different service-level options developed from a productivity and life-line standpoint. He also called the Board's attention to letters from both County Supervisors Jacob and Horn regarding the Rural Bus Service adjustments. He advised the Board that the Transportation Development Act (TDA) contains a provision that rural services must achieve a 10 percent farebox recovery rate before TDA funding can be used to fund that service. Mr. Monroe pointed out that the Board was not provided with productivity information at the time the contract was presented for approval.

Mr. Cheung advised the Board that a revised Attachment B was placed at the table prior to the start of the meeting. Mr. Cheung reported the following system-wide averages against which to compare the performance of rural services: 26 revenue passengers per hour with an average fare per passenger of \$2.04. He then provided a review of the passengers per hour, passengers per trip, and subsidy per passenger for each of the existing rural services. He then provided details about each of the three options, including the projected annual savings. He reported that whatever option is selected, staff can renegotiate the contract for Rural Bus Services to reduce the fixed costs. Mr. Cheung stated that, once the Board selects an option, planning staff members would set up community meetings in order to gather information with which to refine the options and then a public hearing would be held. Chairman Williams stated that he had talked to Mr. Jerry Barber, Board Member of the Rural Mountain Bus Board, regarding Rural Bus Service, and asked staff to discuss this matter with him.

Mr. Roberts stated that he agreed that the subsidies for Rural Bus Services are too high. He stated that he had indications that residents in the areas served by these routes have suggestions for improving productivity, including substantially increasing fares. He stated that staff should present all three options to these rural communities. Mr. Lewis

requested that staff keep an open mind during these meetings. He also suggested recording the comments and bringing them back to the Board. Mr. Morrison stressed the importance of making a decision about rural service as quickly as possible given how expensive it is for MTS to provide this service. Mr. Roberts stated that the fare structure for Rural Bus Services should also be discussed. Specifically, he requested that staff compare Rural Bus Service fares to fares for express routes. He requested that staff make this topic part of the discussion in the community meetings.

Mr. Monroe thanked San Diego Union-Tribune reporter Jeff Ristine for his excellent article regarding this matter. He stated that he supported Option 1. He stated that it was interesting that the two supervisors who did not support TransNet II because it included more funding for transit than they wanted, are the individuals now writing to MTS in support of Rural Bus Service.

Mr. Ewin asked staff if this is the maximum ridership that can be achieved for rural services. He also asked if MTS would have adequate equipment to handle the passengers on Route 894 as outlined in Option 3. Mr. Cheung stated that there are a fair number of trips on Route 894 that are at capacity, but 40-foot buses could be added to this route if needed. Mr. Ewin also requested that the public hearing be held at a location closer to the residents.

Mr. Jablonski stated that there may be an excess of rural service provided. He stated that rural service should be once or twice a week, and residents may only want that much service. Mr. Ewin stated that staff should discuss this with the residents. Mr. Emery stated the staff needs to ensure that the information presented to the Board be emphasized at the community meetings. He stated that the displays should be very large and should clearly show the subsidy rates for this service. Mr. Lewis stated that MTS's financial situation should also be explained at these community meetings.

Mr. Rindone suggested that staff include an Option 1a, which would include a reduction in Route 894 from four round trips per day to two round trips per day. Staff agreed to include an Option 1a. Mr. Rindone stated that, as stewards of the public's money, this is the prudent thing to do. Staff confirmed at Mr. Rindone's request that they would attempt to bring the results of the community meetings back to the Board at its September 8 meeting.

#### Action Taken

Mr. Roberts moved to (1) receive the rural services route-by-route analysis as included as Attachment B of the agenda item; and (2) requested, on behalf of the County Supervisors Jacob and Horn, that staff present all three options to the communities served by Rural Bus Services with a report back as soon as possible; and (3) and that staff review the fare structure for Rural Bus Service and discuss this subject at the community meetings. Mr. Emery seconded the motion, and the vote was 10 to 0 in favor.

#### 36. MTS: Procurement for FY 05 Audit Services (FIN 300, PC 50601)

Mr. Telfer provided the Board with background for staff's recommendation to waive the formal bid requirement and authorize the CEO to negotiate a contract for auditing services for a one-year period.

#### Action Taken

Mr. Ewin moved to (1) waive the formal bid requirements of Policy No. 13; and (2) allow the CEO to enter into a negotiated contract for auditing services for a one-year period not to exceed \$350,000. Mr. Jones seconded the motion, and the vote was 9 to 0 in favor.

#### REPORT ITEMS

#### Recommended Report Items

45. MTS: Operations Budget Status Report for May FY 2005 (FIN 310.1, PC 50601)

There was no discussion of this item.

#### **Action Taken**

Mr. Rindone moved to receive the MTS Operations Budget Status Report for May FY 05. Mr. Emery seconded the motion, and the vote was 9 to 0 in favor.

46. MTS: May Monthly Performance Indicators (OPS 920.1, 960.5, 970.5, PC 50451)

In response to a comment by Mr. Monroe, Mr. Tereschuck reported that the spike in the Rail Total Collision Accidents (per 100,000 Miles) for May 05 was an anomaly, and that the accidents that contributed to the spike were low-speed accidents with only minor injuries.

#### Action Taken

Mr. Clabby moved to receive this report for information. Mr. Emery seconded the motion, and the vote was 9 to 0 in favor.

47. SDTC: MTS Bus FY 05 Year-End Operations Report (OPS 920.5, PC 50751)

There was no discussion of this item.

#### Action Taken

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

48. MTS: Southern California Maglev Project (AG 230, PC 30100)

There was no discussion of this item.

#### **Action Taken**

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

#### Chairman's Report (ADM 121.7, PC 30100) 60.

There was no Chairman's Report.

#### 61. Chief Executive Officer's Report (ADM 121.7, PC 30100)

Green Line Opening Day and Ridership: Mr. Jablonski reported that the opening event for the Green Line was very successful. He also reported that between 22.000 and 25,000 people rode the Green Line on Free-Ride Day. He stated that the transfer process at Old Town is working very well, and there has been some increase in car parking at Gillespie Field as a result of people using the trolley. He also reported that. as a result of difficulties with the new S70 trolley cars, only seven to eight cars have been used with any kind of regularity. He added that preliminary estimates are that ridership is approximately 10,000 riders per day. He stated that survey takers will be on the line in the near future to validate that. He stated that this is not 10,000 new riders. Mr. Mathis stated that ridership will increase when school starts.

#### **Board Member Communications** 62.

Green Line Opening Day: Mr. Emery complimented staff for the great job done in handling individuals at the opening event and weekend activities related to the Green Line opening. Mr. Rindone added his thanks and recognition of staff and Mr. Tereshuck.

#### 63. Additional Public Comments on Items Not on the Agenda

Ginny Billock: Ms. Billeck was not present when she was called to speak.

#### 64. Next Meeting Date

The next regularly scheduled Board meeting is Thursday, August 11, 2005, at 9:00 a.m. in the same location.

#### 65. Adjournment

Chairman Williams adjourned the meeting at 12:17 p.m.

Chairmar

San Diego Metropolitan Transit

Development Board

Æiled**⊿**by:

Office of the Clerk of the Board San Diego Metropolitan Transit

Development Board

Approved as to form:

Office of the General Counse San Diedo Metropolitan Transit

Development Board

Attachment: A. Roll Call Sheet

gail.williams/minutes

# METROPOLITAN TRANSIT DEVELOPMENT BOARD ROLL CALL

MEETING OF (DATI	E):	7/14/05	· ·	CALL TO ORDER (	TIME): 9:04 a.m.
RECESS:			<u> </u>	RECONVENE:	
CLOSED SESSION:		9:26 a.	m.	RECONVENE:	9:45 a.m.
ORDINANCES ADO	PTED:		<del></del>	ADJOURN:	12:17 p.m.
BOARD MEMBER		(Alternate)		PRESENT (TIME ARRIVED)	ABSENT (TIME LEFT)
ATKINS	Ø	(Vacant)			9:37 a.m. during Al 6
CLABBY	Ø	(Greer)			
EMERY	Ø	(Cafagna)	0		
EWIN	囡	(Jantz)			
KALTENBORN	Ø	(N/A)			11:58 a.m. during Al 35
LEWIS, Mark	Ø	(Hanson-Co	x) 🗆	·	
MAIENSCHEIN	Ø	(Vacant)		9:04 a.m. during AI 3	10:44 a.m. during Al 32
MATHIS	Ø	(N/A)			
MONROE	Ø	(Tierney)			
MORRISON	Ø	(Zarate)		9:08 a.m. during Al 3	
RINDONE	Ø	(Davis)			· · · · · · · · · · · · · · · · · · ·
ROBERTS	团	(Cox)		9:09 a.m. during AI 3	12:07 p.m. during Al 36
ROSE	Ø	(Janney)		9:35 a.m. during AI 5	11:58 a.m. during Al 35
RYAN		(B. Jones)	Ø		
WILLIAMS	Ø	(Vacant)			
YOUNG		(Vacant)			<u>.</u>
ZUCCHET		(Vacant)	<u>.</u>		Ø
SIGNED BY THE OI	FFICE	OF THE CLER	K OF TH	IE BOARD Saif	hfillians
CONFIRMED BY OF	FICE	OF THE GENE	RAL CO	UNSEL Office	Lillians Williams

REQUEST TO SPEAK FORM

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\*\*PLEASE SUBMIT THIS COMPLETED FORM (AND YOUR WRITTEN STATEMENT) TO THE CLERK OF THE BOARD PRIOR TO DISCUSSION OF YOUR ITEM\*\*

@ 8:21 A.M

#### 1. INSTRUCTIONS

This Request to Speak form must be filled out and submitted in advance of the discussion of your item to the Clerk of the Board (please attach your written statement to this form). Communications on hearings and agenda items are generally limited to three (3) minutes per person unless the Board authorizes additional time. However, the Chairperson may limit comment to one or two minutes each if there are multiple requests to speak on a particular item. General public comments on items not on the agenda are limited to three (3) minutes. Please be brief and to the point. No yielding of time is allowed. Subjects of previous Hearings or agenda items may not again be addressed under General Public Comments.

Date 8-11-2005	,		
Name (PLEASE PRINT) DON STILLWELL			
Address 6308 RANCHO MSN RD #173			
Salt 1860 CA 92108			•
$S_{A} = \frac{5}{1560} C_{A} 92108$ Telephone $\frac{(619)292-7760}{}$			
Organization Represented (if any) <u>Noルを</u>			
Subject of your remarks: Rus ConfectionS			
Agenda Item Number on which you request to speak			.,
Your comments are presenting a position of: SUPPORT		OPPOSITION	

#### 2. TESTIMONY AT NOTICED PUBLIC HEARINGS

At Public Hearings of the Board, persons wishing to speak shall be permitted to address the Board on any issue relevant to the subject of the Hearing.

#### 3. DISCUSSION OF AGENDA ITEMS

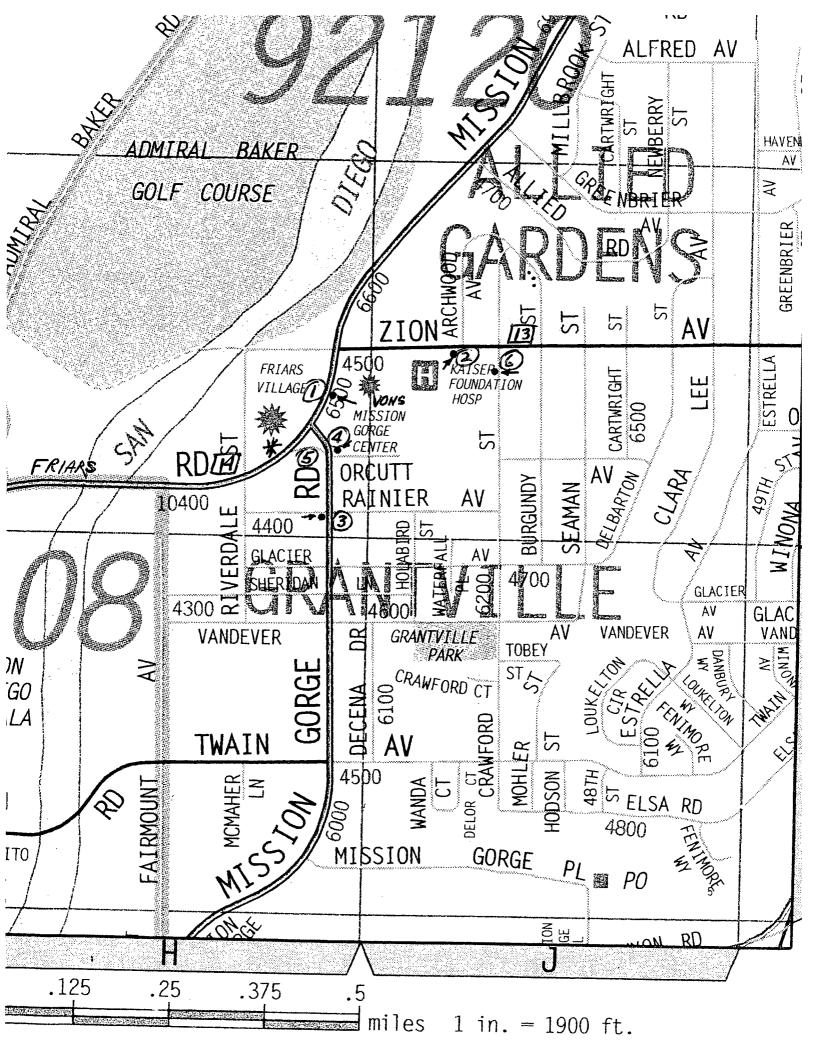
The Chairman may permit any member of the public to address the Board on any issue relevant to a particular agenda item.

#### 4. GENERAL PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA

Public comment on matters not on the agenda will be limited to five (5) speakers with three (3) minutes each, under the Public Comment Agenda Item. Additional speakers will be heard at the end of the Board's Agenda.

\*\*REMEMBER: Subjects of previous Hearings or agenda items may not again be addressed under General Public Comments.\*\*

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\*\*PLEASE SUBMIT THIS COMPLETED FORM (AND YOUR WRITTEN STATEMENT) TO THE CLERK OF THE BOARD PRIOR TO DISCUSSION OF YOUR ITEM\*\*

#### 1. INSTRUCTIONS

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Date \$ 1 0 >			
Name (PLEASE PRINT) Churk Mes 4	12/		
Address /5'6', 7 ~ a~			
Telephone /. / 9 239 306 Y			
Organization Represented (if any)			
Subject of your remarks:			
Agenda Item Number on which you request to speak			
Your comments are presenting a position of: SUPPORT	0	PPOSITION	

#### 2. TESTIMONY AT NOTICED PUBLIC HEARINGS

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Date 8-11-05
Name (PLEASE PRINT) Nancy S. Moore
Address 3630 6th 1 HC-e 303
Telephone 6/9-276-5897
Organization Represented (if any)
Subject of your remarks: More buses + City gilling longer
Agenda Item Number on which you request to speak
Your comments are presenting a position of: SUPPORT OPPOSITION

#### 2. TESTIMONY AT NOTICED PUBLIC HEARINGS

At Public Hearings of the Board, persons wishing to speak shall be permitted to address the Board on any issue relevant to the subject of the Hearing.

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#### \*\*PLEASE SUBMIT THIS COMPLETED FORM (AND YOUR WRITTEN STATEMENT) TO THE CLERK OF THE BOARD PRIOR TO DISCUSSION OF YOUR ITEM\*\*

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Date 2005 - 08 - 11
lame (PLEASE PRINT) Clive Richard
address 5153 ( & Dovna 5t
San Dies o CA Telephone 619,582.4036
Organization Represented (if any)
Subject of your remarks:
genda Item Number on which you request to speak
our comments are presenting a position of: SUPPORT OPPOSITION

#### 2. TESTIMONY AT NOTICED PUBLIC HEARINGS

At Public Hearings of the Board, persons wishing to speak shall be permitted to address the Board on any issue relevant to the subject of the Hearing.

#### 3. DISCUSSION OF AGENDA ITEMS

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Will of JAM \*\*REMEMBER: Subjects of previous Hearings or agenda items may not again be addressed General Public Comments.\*\*

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\*\*PLEASE SUBMIT THIS COMPLETED FORM (AND YOUR WRITTEN STATEMENT) TO THE CLERK OF THE BOARD PRIOR TO DISCUSSION OF YOUR ITEM\*\*

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#### 1. INSTRUCTIONS

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Date 8 - 11 - 0 5
Name (PLEASE PRINT) ATHAN JOHNSON
Address 10393 SAN D, ECO MissiON RD.
50ND = 60 92108
Telephone 563-1309
Organization Represented (if any) Amazeamated Transit Unit on Local 1369
Subject of your remarks: 5B 959 PUBLIL SAFETY
Agenda Item Number on which you request to speak
Your comments are presenting a position of: SUPPORT OPPOSITION

#### 2. TESTIMONY AT NOTICED PUBLIC HEARINGS

At Public Hearings of the Board, persons wishing to speak shall be permitted to address the Board on any issue relevant to the subject of the Hearing.

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Date \$/11/05
Name (PLEASE PRINT) Cynara Pawn Kidwell Address 470Z Mission Blud 79
Address 470Z Mission Blud 79
San Diego, LA 92109
Telephone 619-208-0567
Organization Represented (if any)
Subject of your remarks: Elimination of bus voute 27
Agenda Item Number on which you request to speak
Your comments are presenting a position of: SUPPORT OPPOSITION

#### 2. TESTIMONY AT NOTICED PUBLIC HEARINGS

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#### 3. DISCUSSION OF AGENDA ITEMS

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## **Agenda**

Item No. 6

Joint Meeting of the Board of Directors for Metropolitan Transit System, San Diego Transit Corporation, and San Diego Trolley, Inc. CIP 10416.2

August 11, 2005

Subject:

MTS: MISSION VALLEY WEST LIGHT RAIL TRANSIT PROJECT - COMPLETION OF WETLAND MITIGATION

#### RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute a purchase agreement with Wildlands, Inc., for \$129,000 for the purchase of 0.86 wetland mitigation credits (Attachment A).

#### **Budget Impact**

The \$129,000 would come from the Mission Valley West Light Rail Transit (LRT) Project (WBS #10416-1000), leaving a balance of \$35,000.

#### DISCUSSION:

The Mission Valley West LRT Project that opened in November 1997 required permits from the U.S. Army Corps of Engineers (ACOE) and California Department of Fish and Game (CDFG), collectively known as the "Resource Agencies." Wetland mitigation was constructed concurrently with the Mission Valley West LRT Project and completed in June 1996. We are trying to bring to conclusion the Maintenance and Monitoring Program that began in January 1997.

The Resource Agencies permits were amended during construction to allow wetlands to be impacted during the construction of the bridges crossing the First San Diego River Improvement Project (FSDRIP) at Mission Center Road and Camino Del Este in exchange for the removal of 0.86 acres of nonnative and invasive Arundo Donax (Arundo) from the San Diego River. The permit amendment requires that no more than 5 percent of the Arundo remains after five years of eradication attempts.



The eradication effort thinned the Arundo by about 50 percent. Our biological consultant recommended, and the Resource Agencies agreed, that we should cease our unsuccessful attempts to eradicate the Arundo and instead pursue an alternate form of mitigation.

The Resource Agencies have agreed to allow us to instead purchase 0.86 credits in the Rancho Jamul Wetland Mitigation Bank. Credits at this mitigation bank sell for \$150,000 an acre. This is less than what it has cost us to develop wetland mitigation for the Mission Valley West and Mission Valley East Projects and eliminates the requirement for another five-year Maintenance and Monitoring Program prior to getting the Mission Valley West permits signed off.

The purchase of these wetland mitigation credits will bring us very close to the completion of all of our wetland mitigation requirements for the Mission Valley West LRT Project. All that will remain will be to work with the ACOE and CDFG to arrive at Conservation Easement language that is acceptable to both agencies, agree on an endowment amount for transferring the Warner Ranch wetland mitigation site to the San Diego River Park Foundation, record the Conservation Easement with the San Diego River Park Foundation as the grantee, get letters from the Resource Agencies indicating that MTS has fulfilled all of the wetland mitigation requirements of ACOE 404 Permit No. 94-20625-DZ and CDFG 1601 Permit No. 5-019-94, and terminate the Performance Bond.

Paul C. Vablonski Chief Executive Officer

Key Staff Contact: Jim Hecht, 619.699.1935, jhe@sandag.org

JGarde AUG11-05.6.MVWWETLANDMITIGATION.JHECHT 7/18/05

Attachment: A. Agreement for Sale of Mitigation Credits

#### RANCHO JAMUL MITIGATION BANK

# AGREEMENT FOR SALE OF MITIGATION CREDITS

1	This	Agreement	is made	and	entered into this	đav
or				2005	by and between WILDLANDS T	אכ
a Cal	lior	na corpora	ation (B	ank)	and METROPOLITAN TRANSIT	140.,
DEVEL	OPMEI	NT BOARD,	(Project	Prop	ponent) as follows:	

#### RECITALS

- A. The Bank has developed the Rancho Jamul Mitigation Bank located in San Diego County California; and
- B. The Bank has developed the Mitigation Bank under Nationwide Permit #27 Identification #982015400, issued by the United States Army Corps of Engineers (Corps) and pursuant to a Wetland Mitigation Bank Project Agreement dated November 29, 2000, and has received the approval of the Corps, California Department of Fish and Game (CDF&G), Environmental Protection Agency (EPA), and the U.S. Fish and Wildlife Service (FWS) to operate as a Mitigation Bank with compensatory credits available for sale; and
- C. Project Proponent is seeking to implement the project described on Exhibit "A" attached hereto (Project), which would unavoidably and adversely impact waters of the United States or other habitats thereon, and seeks to compensate for the loss of wetland areas or other habitats by purchasing compensatory credits from Bank; and
- D. Project Proponent has been authorized by the Corps under original permit # 94-20625-DZ and by e-mail from Robert Smith dated June 29, 2005 to purchase 0.86 acres of freshwater wetland habitat credits as mitigation for unavoidable impacts to waters of the United States or other habitats associated with the Project; and
- E. Project Proponent desires to purchase from Bank and Bank desires to sell to Project Proponent, 0.86 acres of freshwater wetland habitat credits.

## NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Bank hereby sells to Project Proponent and Project Proponent hereby purchases from Bank: 0.86 acres of

freshwater wetland habitat credits for the purchase price of \$129,000.00. The Bank will then deliver to Project Proponent an executed Bill of Sale in the manner and form as attached hereto and marked Exhibit "B". The purchase price for said credits shall be paid by cashier's check payable to Wildlands, Inc./RJMB or, at the option of Bank, wire transfer of funds according to written instructions by Bank to Project Proponent.

- 2. The sale and transfer herein is not intended as a sale or transfer to Project Proponent of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.
- 3. Project Proponent shall have no obligation whatsoever by reason of the purchase of the compensatory credits, to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the credits sold, or the Bank. As required by law, Bank shall monitor and make reports to the appropriate agency or agencies on the status of any compensatory credits sold to Project Proponent. Bank shall be fully and completely responsible for satisfying any and all conditions placed on the Bank or the compensatory credits, by all state or federal jurisdictional agencies. Bank hereby shall indemnify Project Proponent of and from all such liabilities and obligations.
- 4. The compensatory credits sold and transferred to Project Proponent shall be nontransferable and non-assignable, and shall not be used as compensatory mitigation for any other Project or purpose, except as set forth herein.
- 5. Project Proponent must exercise his/her/its right to purchase within 30 days of the date of this Agreement. After the 30-day period this Agreement will be considered null and void.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

WILDLANDS, IN	IC., a Ca	alifornia	corporation	n
Ву:	Moo	re		
Sharol N	Moore			
PRO	JECT PRO	PONENT		
METROPOLITAN	TRANSIT	DEVELOPME	ENT BOARD	
Descri				

BANK

#### Exhibit "A"

# DESCRIPTION OF PROJECT TO BE MITIGATED

The proposed First San Diego River Improvement Project is for the construction of a light rail transit system and associated elevated structures, bridges, flood control channel/mitigation area, flood control channel, and reconfigured golf course. The site is located in and along a 6.2-mile reach of the San Diego River/floodplain between the I-5 and I-15 freeways, in the County of San Diego.

\*\*\*\*

#### Exhibit "B"

# BILL OF SALE Contract #RJMB-05USACE Permit #94-20625-DZ DFG Agreement#

In consideration of \$129,000.00, receipt of which is hereby acknowledged, WILDLANDS, INC., a California corporation, does hereby bargain, sell and transfer to METROPOLITAN TRANSIT DEVELOPMENT BOARD (Project Proponent), 0.86 freshwater wetland habitat credits for the First San Diego River Improvement Project in the Rancho Jamul Mitigation Bank in San Diego County California, developed and approved under the authority of the United States Army Corps of Engineers, California Department of Fish and Game, U.S. Fish and Wildlife Service, and the Environmental Protection Agency.

Wildlands represents and warrants that it has good title to the credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

Wildlands covenants and agrees with the buyer to warrant and defend the sale of the credits hereinbefore described against all and every person and persons whomsoever lawfully claiming or to claim the same.

DATED:			· · · · · · · · · · · · · · · · · · ·	
WILDLANDS,	INC.,	a	California	corporation
By:				

z:marketing\agreements\saleRJMBMTDB2 Revised: 7/5/05



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

## **Agenda**

Item No. 7

Joint Meeting of the Board of Directors for Metropolitan Transit System, San Diego Transit Corporation, and San Diego Trolley, Inc. LEG 492 (PC 50101)

August 11, 2005

Subject:

MTS: AUDIT REPORT - SECURITY

#### RECOMMENDATION:

That the Board of Directors receive the internal audit report on the MTS security process.

**Budget Impact** 

None.

#### DISCUSSION:

During February 2005, the MTS Internal Auditor performed a review of the MTS security process. The objective was to review the overall adequacy of the process.

As a result of the review, several recommendations were offered to improve controls over security. Management has accepted the recommendations, and action is underway to implement these recommendations.

Paul C. Jabionski Chief Executive Officer

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

AUG11-05.7.MTSSECURITYAUDIT.MABBEY

Attachment: A. Confidential Audit Report (Board Only)





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

## **Agenda**

Item No. 8

OPS 960.6

Joint Meeting of the Board of Directors for Metropolitan Transit System, San Diego Transit Corporation, and San Diego Trolley, Inc.

August 11, 2005

#### SUBJECT:

SDTC: UNIFORM SERVICE CONTRACT AWARD

#### RECOMMENDATION:

That the Board of Directors authorize the MTS Chief Operating Officer-Bus to execute a five-year contract (SDTC Doc. No. B04-007A – Attachment A), in an amount not to exceed \$303,054.00, with Prudential Overall Supply for uniform services.

#### **Budget Impact**

Prudential Overall Supply bid prices per year are as follows:

$\triangleright$	Year 1	\$66,324.08
$\triangleright$	Year 2	\$62,034.08
	Year 3	\$62,034.08
	Option Year 1	\$56,330.88
$\triangleright$	Option Year 2	\$56,330.88

The funds are budgeted under SDTC's operating maintenance funds, which uses federal funds (80 percent federal and 20 percent local).

#### **DISCUSSION:**

San Diego Transit Corporation (SDTC) provides uniform rental and cleaning services for its Maintenance employees as stipulated in the Collective Bargaining Agreement. This contract also includes floor mats, shop towels, and glove-cleaning.



SDTC Invitation for Bids No. B04-007A was solicited and opened on June 21, 2005, for uniform services for a five-year period. Two responsive bids were received in response to the solicitation (see Bid Summary - Attachment B). Unifirst Corporation submitted the lowest price at \$230,311.84, but was deemed nonresponsive because its bid was incomplete (the required federal forms were not submitted). Prudential Overall Supply was the lowest responsive, responsible bidder for the five-year period at \$303,054.00; therefore, pursuant to SDTC policy, staff recommends award of the contract to Prudential Overall Supply.

Paul C. Jablonski

Chief Executive Officer

Key Staff Contact: Claire Spielberg, 619.238.0100, Ext. 400, claire.spielberg@sdmts.com

JGarde AUG11-05.8.PRUDENTIALUNIFORM.CSPIELBERG 7/19/05

Attachments: A. SDTC Doc. No. B04-007A

B. Bid Summary

### San Diego Transit

An Operator in the Metropolitan Transit System



100 16th Street P.O. Box 122511 San Diego, CA 92112-2511 (619) 238-0100 FAX (619) 696-8159

#### STANDARD SERVICES AGREEMENT

B04-007A
CONTRACT NUMBER
31152510
FILE NUMBER(S)

Att. A, Al 8, 8/11/05, OPS 960.6

# DRAFT

THIS AGREEMENT is entered into this day of between the San Diego Transit Corporation (SDTC), and the "Contractor":	e following co	2005, in the state of California by and ntractor, hereinafter referred to as
Name: Prudential Overall Supply	Address: _	740 F Street
Form of Business: Corporation		Chula Vista, CA 91910
(Corporation, partnership, sole proprietor, etc.)	Telephone:	619-427-1240
Authorized person to sign contracts: Bryan Harris General Name	al Manager	Title

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

Provide uniform services to SDTC's two divisions located at 100 16<sup>th</sup> Street and 4630 Ruffner Street as stipulated in SDTC's Invitation for Bid No. B04-007A (including Addendum A) and in accordance with the Standard Service Agreement, including the Standard Conditions and forms, General Contract Provisions, Technical Specifications, SDTC's Safety Program, and Prudential Overall Supply's proposal dated June 21, 2005. If there are any inconsistencies between the General Contract Provisions, Technical Specifications, Standard Service Agreement, including the Standard Conditions Service, the following order of precedence will govern the interpretation of this contract:

- 1. General contractual provisions, including the Bid Proposal, Technical Specifications, and Addendum A.
- 2. Standard Service Agreement, including the Standard Conditions Service.

This contract shall remain in effect for 3 years with 2 one-year options exercisable at SDTC's discretion.

The total cost of this contract shall not exceed \$ 303,054.00.

SAN DIEGO TRANSIT CORPORATION (SD	OTC) CONTRACTO	R AUTHORIZATION
By: Claire Spielberg, Chief Operating Officer-Bus  Approved as to form:  By: Office of the General Counsel	By: Signature Print Name:	
AMOUNT ENCUMBERED	BUDGET ITEM	FISCAL YEAR
\$66,324.08 – Year 1	31152510	FY 06
By: Cliff Telfer, Interim Chief Financial Officer		Date

# San Diego Transit An Operator in the Metropolitan Transit System



100 16<sup>th</sup> Street P.O. Box 122511 San Diego, CA 92112-2511 (619) 238-0100 Fax (619) 696-7084

#### **UNIFORM SERVICE**

### **BID SUMMARY** IFB NO. B04-007A

COMPANY NAME	ADDRESS.	D AMOUNT of Five (5) Years
	4041 Market Street San Diego, CA 92102	\$ 230,311.84
1	740 F Street Chula Vista, CA 91910	\$ 303,054.00
ARAMARK UNIFORM SERVICES	5665 Eastgate Drive San Diego, CA 92191	\$ 640,301.50

<sup>\*</sup> Lowest Responsive, Responsible Bidder

<sup>\*\*</sup> Non-Responsive Bidder

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

## **Agenda**

Item No. 9

Joint Meeting of the Board of Directors for Metropolitan Transit System, San Diego Transit Corporation, and San Diego Trolley, Inc. OPS 970.6

August 11, 2005

Subject:

SDTI: LIGHT RAIL VEHICLE EQUIPMENT PROCUREMENT - CONTRACT AWARD

#### RECOMMENDATION:

That the Board of Directors authorize the President-General Manager to execute a Standard Procurement Agreement (Attachment A) with Hi Tec Enterprises to supply five dynamic brake-resistor segments for U2 light rail vehicles (LRVs) for a total cost, including delivery and taxes, not to exceed \$34,776.31.

#### **Budget Impact**

The \$34,776.31 for the brake-resistor segment would come from the LRV Maintenance, Materials, and Supplies line item of San Diego Trolley, Inc.'s FY 06 operating budget.

#### DISCUSSION:

Resistor segments are components of the LRV dynamic braking system. Some of these resistor segments on the older U2 LRVs are failing and are in need of replacement. San Diego Trolley, Inc. obtained three quotes for five of these resistor segments from different suppliers (see Bid Summary, Attachment B). Hi Tec Enterprises submitted the lowest responsive bid. Board approval is required for all contracts exceeding \$25,000 with nonlocal vendors.

Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Russ Desai, 619.595.4908, rdesai@sdti.sdmts.com

JGarde/AUG11-05.9.LRVEQUIPPROCURE.RDESAI

Attachments: A. Standard Procurement Agreement for Hi Tec Enterprises

B. Bid Summary for Resistor Segments



# San Diego Trolley, Inc. An Operator in the Metropolitan Transit System



1255 Imperial Avenue Suite 900 San Diego, CA 92101-7492 (619) 595-4949 Telefax: (619) 238-4182

# DRAFT

Att. A, AI 9, 8/11/05, OPS 970.6

STANDARD PROCUREMENT AGREEMENT

1818X. (619) 236-4162 STANDARD FROCUNEIN	ENT ACKEEMENT	CONTRACT NUMBER
		FILE NUMBER(S)
THIS AGREEMENT is entered into this day of and between San Diego Trolley, Inc., and the following co	2005, ontractor, hereinafter re	in the State of California by ferred to as "Contractor":
Name: Hi Tec Enterprises	Address: P.O. Box	23310
Form of Business: Corporation	Santa Bai	rbara, CA. 93121-23310
(Corporation, partnership, sole proprietor, etc.)	Telephone: (810) 89	9-4520
Authorized person to sign contracts:Mr. Hans Meiss	ner	President
Name		Title
Furnish five (5) Brake Resistor Segments, R3/4 P/N 6GN Procurement Agreement, price quote, and Federal Requi	irements.	
SAN DIEGO TROLLEY, INC.	CONTRAC	TOR AUTHORIZATION
By: President-General Manager	Firm:	
Approved as to form:	Ву:	ture
	Signat	
By: Office of General Counsel	1100.	
AMOUNT ENCUMBERED BUDG	BET ITEM	FISCAL YEAR
\$34,776.31 LRV Maintena	nce/Spare Parts	2006
By: Chief Financial Officer		



# **BID SUMMARY**

# LRV BRAKE RESISTOR SEGMENT PROCUREMENT

# SAN DIEGO TROLLEY, INC. (SDTI)

Bidder	Bid Total Price
Siemens Transportation Systems, Inc. 7464 French Road, Sacramento, CA 95828	\$35,557.50
Hi-Tec Enterprises, 1542 La Coronilla Drive, Santa Barbara, CA 931210	\$34,776.31*
Soil Tec Gewerbepark Achim-Uesen, Neue Flnlen 7a-28832 Achim - Germany	\$43,945.03
*Low Bid.	

Russ Desai Project Manager



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

# **Agenda**

Item No. <u>10</u>

LEG 492 (PC 50101)

Joint Meeting of the Board of Directors for Metropolitan Transit System, San Diego Transit Corporation, and San Diego Trolley, Inc.

on, and

August 11, 2005

Subject:

MTS: PROPOSED 2005/2006 INTERNAL AUDIT PLAN

RECOMMENDATION:

That the Board of Directors approve the *Proposed 2005/2006 Internal Audit Plan* (Attachment A).

**Budget Impact** 

None.

#### **DISCUSSION:**

Attached is the *Proposed 2005/2006 Internal Audit Plan*. The plan would be carried out by the MTS Internal Auditor. The proposal consists of 12 audit projects and an allowance of 320 hours for completion of various management and Board requests. The projects and the estimated time required to complete these projects is shown on the attached audit plan.

Paul C. Jablonski Chief Executive Officer

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

JGarde/AUG11-05.10.0506AUDITPLAN.MABBEY

Attachment: A. Proposed 2005/2006 Internal Audit Plan



PROPOSED 2005/2006 INTERNAL AU	IDIT PLAN SUMN	MARY	
GOALS, OBJECTIVES, AND ACTIVITIES.	AGENCY PROCESS	GROSS RISK ASSESSMENT	NUMBER OF TASK HOURS
Risk	A STATE OF THE STA		e deposition of the second
GOAL 1: Strengthen the Board's and its subsidiaries' performance and accountabil outcomes	ity to the public in managii	ng resources and a	chieving
OBJECTIVE 1: Improve performance levels and outcomes for the Board	and its subsidiaries		
Potential misappropriation, waste, or loss (evaluate controls)	SDTI - Storeroom	High	120
Potential misappropriation, waste, or loss (evaluate controls)	SDTC - Storeroom	High	160
Bodily harm to customers or employees	SDTI - Transportation	Medium	80
Bodily harm to customers or employees	SDTC - Transportation	Medium	80
Customer concerns or suggestions not addressed	SDTC - Passenger Services	Medium	80
Customer concerns or suggestions not addressed	SDTI - Passenger Services	Medium	80
Regulatory noncompliance and possible loss of funding/poor or unfair employment practices	MTS - Human Resources	Medium	160
Potential misappropriation, waste, or loss (evaluate controls)	MTS - Fixed-Asset Controls	Extreme	120
Misappropriation, waste, or loss of collected revenue (evaluate controls)	MTS- Cash Receipts/ Accounts Receivable	Medium	120
Misappropriation, waste, or loss of collected revenue (evaluate controls)	SDTI - Revenue Collection	Extreme	80
Develop Internal Audit Manual to provide useful training tool for audit function	MTS Internal Audit	Medium	120
Regulatory noncompliance and possible loss of federal and state funding	ELLIPSE Procurement Process Review	Medium	80
	100 mm 1		1,280

PROPOSED 2005/2006 INTERNAL AUDIT PLAN SUMMARY								
GOALS, OBJECTIVES, AND ACTIVITIES	AGENCY - PROCESS	GROSS RISK ASSESSMENT	NUMBER OF TASK HOURS					
Risk		en de la companya de La companya de la companya de						
OBJECTIVE 2: Improve the public's ability to hold the Board and its sub	sidiaries accountable							
Follow-up on all MTS and subsidiary audit and audit-related projects conducted in FY 2004/05 and evaluate the quality and timeliness of action plans								
	15	160						
GOAL 2: Improve the auditing and consulting capabilities of the internal audit function	<u>on</u>							
OBJECTIVE 1: Improve staff knowledge and skills	·		,					
Identify opportunities for improvement and obtain appropriate training								
OBJECTIVE 2: Improve customer satisfaction and internal audit reputation through delivering high quality and timely services								
Prioritize special requests and conduct special projects			320					
TOTAL AUDIT HOURS			1,840					



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

# Agenda

Item No. <u>11</u>

LEG 430 (PC 50121)

Board of Directors Meeting for Metropolitan Transit System, San Diego Transit Corporation, and San Diego Trolley, Inc.

o Trolley, Inc.

August 11, 2005

Subject:

MTS: DISADVANTAGED BUSINESS ENTERPRISE PROGRAM UPDATE

#### RECOMMENDATION:

That the Board of Directors approve the 2005 MTS Disadvantaged Business Enterprise (DBE) Program Update.

**Budget Impact** 

None.

#### DISCUSSION:

#### Update to DBE Program

As a condition of receipt of Federal Transit Administration (FTA) funds, MTS is required to enact and maintain a DBE program. The DBE program has not been updated since July 2002, and under FTA guidelines, MTS is responsible for adopting an updated DBE program every three years. MTS contracts with Teresa Gonzalez-White, DBE consultant, who reviews and recommends changes consistent with current FTA regulations.

Highlights of the proposed changes to the DBE Program include several staff changes in key positions regarding DBE administration (Chief Executive Officer, Paul Jablonski; Liaison Officer, Tiffany Lorenzen; and DBE Coordinator, Traci Bergthold), as well as extensive additions to the section titled "Directory" regarding prompt payment



procedures and the section titled "Monitoring and Enforcement Mechanisms" regarding tracking actual DBE participation.

In addition, the California Department of Transportation requested that MTS describe the methodology for goal setting in greater detail. There were also minor grammatical changes to several sections

A copy of the proposed 2005 DBE Program is included with this agenda item as Attachment A. Staff recommends the Board of Directors approve the 2005 DBE Program and authorize staff to transmit the program to the FTA.

Paul C. Jablonski Chief Executive Officer

Key Staff Contact: Traci Bergthold, 619.557.4540, tbergthold@sdmts.com

JGarde Agenda FY 05 DBE Program Update 8/1/2005

Attachment: A. MTS DBE Program Update

# **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

# of the

# SAN DIEGO METROPOLITAN TRANSIT SYSTEM

# **AUGUST 2005**

# SAN DIEGO METROPOLITAN TRANSIT SYSTEM DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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#### **DEFINITIONS OF TERMS**

The terms used in this program have the meanings defined in 49 CFR 26.5. Some of the most Common terms are:

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

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

- primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.
- 19. <u>Primary industry classification</u> means the four-digit Standard Industrial Classification (SIC) code designation that best describes the primary business of a firm. The SIC code designations are described in the SIC Manual. As the North American Industrial Classification Systems (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS Manual and applicable codes. The SIC Manual and NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, Virginia 22261). NTIS also makes materials available through its website at <a href="https://www.ntis.gov/naics">www.ntis.gov/naics</a>.
- 20. <u>Primary recipient</u> means a recipient who receives DOT financial assistance and passes some or all of it on to another recipient.
- 21. <u>Principal place of business</u> means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.
- 22. <u>Program</u> means any undertaking on a recipient's part to use DOT financial assistance authorized by the laws to which this part applies.
- 23. <u>Race-conscious</u> measure or program is one that is focused specifically on assisting only DBEs, including women-owned businesses.
- 24. <u>Race-neutral</u> measure or program is one that is or can be used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.
- 25. Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.
- 26. Secretary means the Secretary of Transportation or his or her designee.
- 27. <u>Set aside</u> means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.
- 28. <u>Small Business Administrator (SBA)</u> means the United States Small Business Administration.
- 29. <u>Small business concern</u>, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it that also does not exceed the cap on average annual gross receipts, as defined by SBA regulations, over the firm's previous three fiscal years, in excess of \$16.6 million.
- 30. <u>Socially and economically disadvantaged individual</u> means any individual who is a citizen of the United States, or lawfully admitted permanent resident of the United States, or any other individual determined on a case-by-case basis to be socially and economically disadvantaged (providing an individual's personal net worth does not exceed \$750,000, excluding that

individual's ownership interests in the small business concern and his/her primary residence), and any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- a. <u>Asian-Pacific Americans</u>, which includes persons whose origins are from Brunei, Burma (Myanmar), Cambodia (Kampuchea), China, the Commonwealth of the Northern Marianas Islands, the Federated States of Micronesia, Fiji, Guam, Hong Kong, Indonesia, Japan, Juvalu, Kirbati, Korea, Laos, Macao, Malaysia, Nauru, the Philippines, Samoa, Taiwan, Thailand, Tonga, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), or Vietnam;
- b. <u>Black Americans</u>, which includes persons having origins in any of the Black racial groups of Africa:
- c. <u>Hispanic Americans</u>, which includes persons of Central or South American, Cuban, Dominican, Mexican, Puerto Rican, or other Spanish or Portuguese culture or origin, regardless of race;
- d. <u>Native Americans</u>, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- e. <u>Subcontinent Asian Americans</u>, which includes persons whose origins are from Bangladesh, Bhutan, India, the Maldives Islands, Nepal, Pakistan, or Sri Lanka;
- f. Women; or
- g. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.
- 31. <u>Tribally owned concern</u> means any concern at least 51 percent owned by an Indian tribe as defined in this section.

#### **OBJECTIVES/POLICY STATEMENT**

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

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

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- 2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- 3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;

- 4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- 5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
- 6. To assist the development of firms that can compete successfully in the marketplace outside of the DBE program.

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

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

### NONDISCRIMINATION (26.7)

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

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

#### DBE PROGRAM UPDATES (26.21)

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

QUOTAS (26.43)

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

DBE LIAISON OFFICER (DBELO) (26.25)

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

Tiffany Lorenzen, General Counsel 1255 Imperial Avenue, Suite 1000 San Diego, CA 92101-7490 619.557.4512; Tiffany.Lorenzen@sdmts.com In that capacity, Tiffany Lorenzen is responsible for implementing all aspects of the DBE program and ensuring that the MTS complies with all provisions of 49 CFR Part 26. This is available on the Internet at <a href="https://www.osdbuweb.dot.gov/main.cfm">www.osdbuweb.dot.gov/main.cfm</a>. Tiffany Lorenzen has direct, independent access to Paul Jablonski, Chief Executive Officer, concerning DBE program matters. The DBELO has a staff of one professional employee assigned to the DBE program. An organization chart displaying the DBELO's position in the organization is found in Attachment E to this program.

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

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

#### FEDERAL FINANCIAL ASSISTANCE AGREEMENT ASSURANCE (26.13)

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

MTS shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. MTS shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award

and administration of DOT-assisted contracts. MTS's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation, and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to MTS of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

# **DBE FINANCIAL INSTITUTIONS (26.27)**

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

San Diego Community Bank 318 Fourth Avenue Chula Vista, CA 91919

Contact: David Keely, Senior Vice President

Tele: 619.425.5000 Fax: 619.476.3283

First United Bank 7320 Clairemont Mesa Boulevard San Diego, CA 92111 Contact: Cora A. McKnight, Vice President

Tele: 858.496.3800 Fax: 858.496.3808

Borrego Springs Bank, N.A. 7777 Alvarado Road, Suite 114 La Mesa, CA 91941

La IVIESA, CA 3 1341

Contact: Anne-Marie Tweed, Branch Manager

Tele: 619.668.5159, Ext. 400

Fax: 619.668.8150

#### DIRECTORY (26.31)

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

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

#### **OVERCONCENTRATION (26.33)**

MTS has not identified overconcentration.

#### **BUSINESS DEVELOPMENT PROGRAMS (26.35)**

MTS participates in business development programs of the Contracting Opportunities Center located at 3443 Camino Del Rio South, Suite 116, San Diego, CA 92108. MTS also participates in a variety of outreach programs within the community.

# REQUIRED CONTRACT CLAUSES (26.13, 26.29)

#### 1. Contract Assurance

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

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

# 2. Prompt Payment

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

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

A prime contractor or subcontractor shall pay any subcontractor no later than ten days from the receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The ten days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, deficient subcontractor performance, noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Or:

No retainage will be held by the agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with MTS's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specific in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor, or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

#### MONITORING AND ENFORCEMENT MECHANISMS (26.37)

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

#### 1. After Contract Award

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

#### 2. Preconstruction Conference

A preconstruction conference will be scheduled between the project manager/resident engineer

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and the contractor (or their representative) to discuss the work that each DBE subcontractor will perform.

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

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

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

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

#### 3. Construction Contract Monitoring

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

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

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

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

#### 4. Substitution

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

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

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

- a. The name and business address, regardless of tier, of every DBE subcontractor, DBE vendor of materials, and DBE trucking company.
- b. The date of payment and the total dollar figure paid to each of the firms.
- c. The DBE prime contractor shall also show the date of work performed by their own forces along with the corresponding dollar value of the work claimed toward DBE goals.

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

a. There have been no changes made by the project manager/resident engineer.

b. The contractor has not provided a sufficient explanation in the comments section of the completed Exhibit 17-F.

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

MTS's liaison officer will keep track of the DBE certification status on the Internet at <a href="https://www.dot.ca.gov/hq/bep">www.dot.ca.gov/hq/bep</a> and keep the project manager/resident engineer informed of changes that affect the contract. The project manager/resident engineer will require the contractor to act in accordance with existing contractual commitments regardless of decertification.

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

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

# OVERALL GOALS (26.45)

#### 1. Amount of Goal

MTS's overall goal for the FTA fiscal year 2005 is the following: 13.8% of the federal financial assistance in DOT-assisted contracts. Of this 13.8% federal financial assistance, 11.6% is for construction/special trades, 2.2% for professional, scientific, technical services, and 0% for wholesale durable goods. This overall goal is broken down into 5.5% race-conscious and 8.3% race-neutral components.

MTS's overall goal for the federal highway administration (FHWA) fiscal year FY 2005 is the following: 8.2% of the federal financial assistance in DOT-assisted professional, scientific, technical, and construction service contracts. Of this 8.2% federal financial assistance, 17% is for professional, scientific, and technical service contracts, and 6.5% is for construction contracts. The overall goal is broken down into 0% race-conscious and 8.2% race-neutral components.

#### 2. Methodology

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

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

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

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

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

#### Breakout of Estimated Race-Neutral and Race-Conscious Participation

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

- Assure that bidding and contract requirements facilitate participation by DBEs and other small businesses (e.g., unbundling large contracts to make them more accessible to small businesses and encouraging prime contractors to subcontract portions of the work that they might otherwise perform themselves);
- b. Provide assistance in overcoming limitations such as inability to obtain bonding or financing, technical assistance, and other services;
- c. Carry out information and communications programs and other support services to facilitate consideration of DBEs and other small businesses;
- d. Ensure distribution of MTS's DBE directory and assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic technology;

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e. Advise prospective contractors regarding new contracts and the areas for possible subcontracting and of the availability of ready, willing, and able subcontractors, including

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DBE firms, to perform such work; and

f. Monitor progress during the course of the year and continue with its contract-specific goals.

#### 4. Process

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

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

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

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

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

# CONTRACT GOALS (26.51)

MTS will use contract goals to meet any portion of the overall goal that MTS does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of MTS's overall goal that is not projected to be met through the use of race-neutral means.

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

## 1. Transit Vehicle Manufacturers (26.51)

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

#### GOOD FAITH EFFORTS (26.53)

## 1. <u>Information to be Submitted</u>

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

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

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

# 2. Demonstration of Good Faith Efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith

efforts. Examples of good faith efforts are listed below and also found in Appendix A of Part 26.

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

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

- a. <u>Attendance at Prebid Meetings</u>. Name and title of person(s) attending the prebid meetings held to inform contractors of the DBE contracting and subcontracting provisions contained in the specifications. If the contractor attended a prebid meeting within the previous quarter, provide name, title, date, and project involved.
- b. <u>Newspaper Advertisements</u>. Names, phone numbers, and dates of advertisements for each general circulation newspaper, trade publication, and minority-focused newspaper in which requests for DBE participation for this project were placed by the bidder (provide copies of advertisements).
- Written Solicitations. Names, contact persons, addresses, phone numbers and dates of notices of all DBE firms solicited and by what means (e.g., letter, fax, phone call, etc.); include copy of solicitation letter. Only properly certified DBE firms will be taken into consideration for this criteria. Determination of an adequate number of DBEs to be contacted will depend on the number of certified subcontractors in the general local contracting area for each work category identified in No. 5 below:

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

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

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

5. <u>Selected Work Categories</u>. The items of work for which the bidder requested subbids or materials to be supplied by DBEs and any breakdown of items of work into economically feasible units that would increase the likelihood of achieving that goal.

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

6. <u>Providing DBEs with Information on Specifications</u>. Names, contacts, phone numbers, and dates with a brief description of assistance the bidder has extended to DBEs in providing information about plans, specifications, and requirements of the contract.

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

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

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

- 8. <u>Bonding, Lines of Credit, and Insurance Assistance</u>. Names, contacts, phone numbers, and dates with a brief description of assistance the bidder has extended to DBEs in obtaining bonding, lines of credit, or insurance required. This brief description of assisting the bidder with the abovementioned items should be included in the Letter of Solicitation.
- 9. <u>Utilization of Minority Community Organizations Services</u>. Names of organizations/groups, dates, contacts, and telephone numbers bidder contacted to request assistance in the recruitment and placement of DBEs, copies of correspondence/telephone logs, and follow-up methods used.

## 10. Board Determination

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

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

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

# 11. Administration Reconsideration

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

process is not administratively appealable to DOT.

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

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

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

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

# **COUNTING DBE PARTICIPATION (26.55)**

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

#### **CERTIFICATION (26.61 - 26.91)**

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

#### 1. Process

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

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

Traci Bergthold MTS 1255 Imperial Avenue, Suite 1000 San Diego, CA 92101-7490 619.557.4540; Traci Bergthold@sdmts.com

#### 2. Unified Certification Program

MTS utilizes the State of California UCP as the certifying agent for MTS's DBE program. MTS

has joined other local public agencies as a signatory to a Memorandum of Agreement to improve coordination in the DBE certification process.

#### 3. Certification Appeals

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

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

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

## 4. Recertifications

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

#### 5. UCP Annual Declaration and Notices of Change

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

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

# 6. Personal Net Worth

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

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#### INFORMATION COLLECTION AND REPORTING

#### 1. Bidders' List

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

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

# 2. Monitoring Payments to DBEs

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

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

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

# 3. Reporting to DOT

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

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

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

#### 4. Confidentiality

MTS will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information consistent with federal, state, and local law. Notwithstanding any contrary provisions of state or local law, MTS will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Paul C. Jablonski	Date	
Chief Evecutive Officer		

This Disadvantaged Business Enterprises Program is accepte	d by	<i>!</i> :
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DLAE	Date	

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Attachments:

- A. DBE Bidder Information
- B. Subcontracting Request
- C. Final Utilization of DBE Participation
- D. Notice of Materials to Be Used
- E. MTS Organization Chart
- F. Uniform Certification Program Application
  G. DOT Federal Register 49 CFR Part 26

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# INSTRUCTIONS - LOCAL AGENCY BIDDER-DBE (CONSTRUCTION CONTRACTS) INFORMATION FORM (Revised 08/04)

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, Bidder's Name and Advertised DBE Contract Goal.

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

This information may be submitted with your bid. (If DBE information is not submitted with the bid proposal, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received as specified in the Special Provisions). Failure to submit the required information will be grounds for finding the bid nonresponsive.

AGENCY: PROJECT DESCI		LOCATION:				
TOTAL CONTRA						
	BE CONTRACT GOAL:		. 1			
CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED <sup>2</sup>	AND EXPIRATION	NAME OF DBEs 1 (Must be certified on the date bids are opened - include DBE address and phone number)	DOLLAR AMOUNT DBE <sup>3</sup>		
Copies of the DB their respective it of work in the "L	dentify all DBE firms being claimed for cred E quotes are required. Names of the First Ti em(s) of work listed above shall be consisten ist of Subcontractors" submitted with your bi isting Law and the Special Provisions.		\$%			
	ime and subcontractors certification number. ork to be performed by DBEs including work	Signature of Bidder				
	m is not to be performed or furnished by DB formed or furnished by DBE.	of Date (Area Code) Tel. N				
	Disadvantaged Business Enterprises," of the Scontracts); to determine the credit allowed for		Person to Contact (Please Type or Print)			
Local Agency Con	tract Officer		CT Bidder - DBE Informat	ion (Rev 8/12/04)		

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.

Submit a separate written request for approval of any DBE/MBE/WBE/DVBE substitution. Include appropriate backup information and state what efforts were made to accomplish the same dollar value of work by other certified DBE/MBE/WBE/DVBEs.

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

								REQU	EST NUMBER
CONTRACTOR NAME				·		COUNTY		ROUT	E
BUSINESS ADDRESS							CT NO.	<u> </u>	
CITY/STATE ZIP CODE						FEDERAL AID PROJECT NO. (From Special Provisions)			
SUBCONTRACTOR (Name, Business Address, Phone)		% OF BID ITE SUBBE	ITEM   (See Categories I			DESCRIBE WORK WHEN LESS THAN 100% OF WORK IS SUBBED		\$ AMOUNT BASED ON BID \$ AMOUNT	
									·
Categories: 1) Specialty	2) Listed Und	der Fair	r Practi	ices A	ct	3) Cer	tified DBE/MB	E/M/RE/	DVBE
I Certify That:	2) Listed Oil	ici i an	Tracti	ices A		3) CC1	dified DBL/MB	LI W DLI	DVBL
<ul> <li>The Standard Provisions for labor set</li> <li>If applicable, (Federal Aid Projects or subcontracts and shall be incorporated in subcontracted work.</li> </ul>	nly) Section 14 (	Federa	Requi	iremen	its) of the	e Special P			
CONTRACTOR'S SIGNATURE							DATE		
NOTE: This section is to be completed by	the Resident Er	ngineer						·	
<ol> <li>Total of bid items</li> <li>Specialty items (previously reque</li> </ol>	sted)					\$		\$_	<u>.</u>
<ul><li>3. Specialty items (this request)</li><li>4. Total (lines 2+3)</li></ul>									
<ul><li>4. Total (lines 2+3)</li><li>5. Contractor must perform with ow</li></ul>	n forces (lines 1	minus	4) x			·· \$		\$	
<ol><li>Bid items previously subcontracted</li></ol>	:d					\$			
7. Bid items subcontracted (this req	uest)				•••••	\$			
<ul><li>8. Total (lines 6+7)</li><li>9. Balance of work Contractor to per</li></ul>								\$_	
			AP	PROV	ED				
RESIDENT ENGINEER'S SIGNATURE							DATE		
CEM-1201 (HC-46 REV. 4/94) COPY DISTRIBU	JTION: 1. Ori 3. Cop	ginal - C by - local	ontractor agency	r 2. Co Labor C	opy - local ompliance	agency Reside Officer 4. (	ent Engineer Contractor's Informa	ation Copy	

Final Report of Utilization of Disadvantaged Businesses 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/ Post Kilometers, 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 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 nonDBE 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 Name and Business Address. For those firms who are DBE, there is a column to enter their DBE Cert 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 NonDBE 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 (<a href="https://www.dot.ca.gov/hq/bep/">www.dot.ca.gov/hq/bep/</a>) 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	DBE
other programs listed	<u> </u>
If program status shows DBE, SMBE	DBE Minority
If program status shows DBE, SMBE, 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.

Page 17-22 August 12, 2004

LPP 04-07

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	ON	FEDERAL AID	PROJECT NO.	ADMINISTERING	AGENCY	CONTRACT COMPLE	TION DATE
PRIME CONTRACTOR/CONSULTANT B			BUSINESS ADDRESS				FEDERAL SHARE (For local agency to complete)		FINAL CONTRACT AMOUNT		
	DESCRIPTION OF	1		DBE CERT.		C	ONTRACT PAYME	NTS		FEDERAL	. SHARE \$
CONTRACT ITEM No.	WORK PERFORMED AND MATERIAL PROVIDED		ACTOR NAME ESS ADDRESS	NUMBER & EXP. DATE	NON-DBE	D8E	DBE (MINORITY)	DBE (NON- MINORITY WOMEN)	DBE (MINORITY WOMEN)	DATE WORK COMPLETE	DATE OF FINAL PAYMENT
S DECINAL DRE		Original D8£ %	-	TOTAL PAYMENTS	s .	s	s	\$	s	DBE GOAL ATTAINMENT	
List all First Ti	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.										
The state of the s							DATE				
RESIDENT P	ROJECT ENGINEERS SI	GNATURE				ne trape de la composition della composition del	A - Million of the Control of the Pool (1995)	BUSINESS PHONE NUMBER			DATE
AGENCY											

Distribution:

Original plus one copy to DLAE included in the Report of Expenditures.

(1) Original plus one copy to (2) Copy - local agency files

EXHIBIT 17-F FINAL REPORT UTILIZATION OF DISADVANTAGED BUSINESSES

EXHIBIT 16-I
Notice of Materials To Be Used (Form CEM-3101)

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION NOTICE OF MATERIALS TO BE USED DC-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.

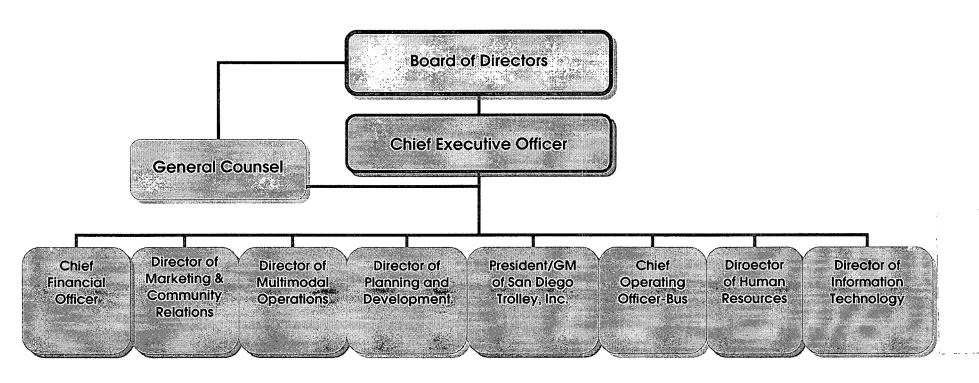
CEM-3101 (OLD HC-30 REV 10/92)

FORM CEM-3101 (Old HC-30(REV3-81)

## STATE OF CALIFORNIA

		DEPARTMENT OF TRANSPORTAT NOTICE OF MATERIALS TO BE U	
То:	Resident Engineer		Date:19
		aterials required for use under Contract No.	
for cons		<del>-</del>	
in Dist.		, Co, Rte.	P.M.
will be	obtained from sources here	in designated.	1.141
	ONTRACT TEM NO.	KIND OF MATERIAL	NAME AND ADDRESS WHERE MATERIAL CAN BE INSPECTED
···-			
6 of the	Standard Specifications w on does not relieve me of t	sampling, testing and inspection of materials here the same is practicable and in accord with the full responsibility for incorporating in the cations, nor does it preclude the subsequent re	h your policy. It is understood that source work materials that comply in all respects
Distributio	n:		•
White	Office of Materials Engineering & 7 5900 Folsom Blvd. Sacramento, California 95819	esting Services	Volum truly
Yellow	Resident Engineer		Yours truly, Address
Green	Contractor's File	_	
Blue	District		Phone No. ( )

# METROPOLITAN TRANSIT SYSTEM Organization Chart





Dear Business Owner:

Thank you for your interest in participating in the Unified Certification Program (UCP) of California 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 will eliminate the need for DBE firms to obtain certifications from multiple agencies within the State.

The UCP of California 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 \$17.42 million.
  - For firm 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 \$30 million.
- d) The Personal Net Worth (PNW) of each socially and economically disadvantaged owner must not exceed \$750,000. The PNW excludes the individual's ownership interest in the applicant firm and the equity in his/her primary residence.

For firm applying for airport concession DBE certification: A PNW is not required at this time.

5/31/02

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,

Of

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, Affidavit of Social and Economic Disadvantage and Personal Net Worth Statement 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.

The California UCP has established four 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 California UCP 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 currently certified as a DBE at its home state, please forward your completed certification packet, along with copies of your certification letter and DBE certificate, to the California Department of Transportation. (See page 3 of the enclosed Roster of Certifying Agencies.)

CALIFORNIA UNIFIED CERTIFICATION PROGRAM



## Definitions of Terms Used in Uniform Certification Application

Alaska Native Corporation (ANC) – 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.

Concession – A grant of property made by a government or other controlling authority in return for stipulated services or a promise that the property will be used for a specific purpose.

Corporate Tax Returns - Federal Tax Return Form 1120 or 1120S, including Schedules E or C.

Indian Tribe – 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.

Key Person Insurance – Life insurance and long-term disability income insurance on major employees, with benefits payable to the business.

Native Hawaiian – Any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization – 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.

Partnership Tax Returns – Federal Tax Return Form 1065, including Schedules K and K-1.

Personal Net Worth – 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.

Personal Tax Returns - Federal Tax Return Form 1040, including Schedules B and C.

5/31/02

Definitions of Terms Used in Uniform Certification Application Page 2

Regular Dealer – A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.

Socially and Economically Disadvantaged Individual – 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:
  - "African Americans" or "Black Americans," which includes persons having origins in any of the Black racial groups of Africa.
  - "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.
  - "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.
  - "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, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong.
  - "Asian Indian Americans" or "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.
  - Women.
  - 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 Concerns – Any concern at least 51 percent owned by an Indian tribe.

5/31/02

## DISADVANTAGED BUSINESS ENTERPRISE PROGRAM 49 CFR PART 26

### UNIFORM CERTIFICATION APPLICATION

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 under 18 U.S.C. 1001.

### **ROADMAP FOR APPLICANTS**

1	Should I apply? Your firm must meet the following requirements	to qua	alify as a DBE under the DOT DBE program:
0 0 0 0 Not	Disadvantaged owners are U.S. citizens or legal perm Firm's annual gross income does NOT exceed \$17.42 Firm is at least 51% owned and controlled by socially Firm meets SBA small business size in the primary in Firm owned by ANCs, Indian Tribes, and Native Haw requirements and are controlled by socially and econor Firm and owners meet the requirements of part 26 con Firm must be for-profit.  te: Firm must undergo an on-site review.	milli and e dustry vaiian mical	on (averaged over 3 years). economically disadvantaged individuals. y group (13 CFR part 121). Organizations meet the small business size lly disadvantaged individuals.
2	application process pursuant to a Memorandum of Under the MOU, the certifying agency to which	of Und	ou may be eligible for a streamlined certification lerstanding (MOU) between DOT and the SBA. The applying will accept your current SBA application new application. You must still meet the requirement.
3	What documents must I submit with this applies The following documents must be attached to you information will delay the processing of your applies.	ur app	lication. Missing documents or incomplete
All	Applicants .		
	Work experience resumes that include places of	So	le Proprietorship
_	ownership/employment and corresponding dates.		Assumed name, fictitious name or other registration
0	Personal Net Worth statement or statement from CPA.		certificate from appropriate governmental agency.
	Social & economic disadvantage statement.	_	
	Entire copy of personal tax returns for the last 3 years, if applicable.	-	rtnership or Joint Venture
a	Documented proof of contributions used to acquire		Original and any amended Partnership or Joint Venture
_	ownership for each owner (e.g. both sides of cancelled		Agreements. Assumed name, fictitious name, or other registration
	checks).	_	Certificate from appropriate governmental agency, if
	Signed loan agreement and security agreements.		applicable.
	Description of real estate and proof of ownership listed.		Partnership tax returns for last 3 years.
<u> </u>	List of equipment leased and signed lease agreements.		
	List of construction equipment and/or vehicles owned	Co	rporation or LLC
	and titles/proof of ownership. Signed leases for office/storage space.	Q	Official Articles of Incorporation (signed by the state
ā	End of Year Balance Sheets and Income Statements for	_	official).
	the past 3 years (or life of firm if less than 3 years). A	0	Both sides of all Corporate Stock Certificates and Stock.
	new business must provide a current Balance Sheet.	0	Transfer Ledger. <u>Entire copy</u> of corporate tax returns for the last 3 years.
	Copies of relevant licenses.		Shareholders' Agreement.
	DBE/MBE/WBE, SBA 8(a) or SDB certifications or		Minutes of all Stockholders' and Board of Directors'
	denials and decertifications.  Bank Authorizations and Signatory cards.		meetings.
_	Schedule of salaries paid to all officers, managers,		Corporate By-laws and any amendments.
	owners or directors of the firm (W-2s).	B.I.F	
	` ,		OTE: The specific state or recipient to which you
		. are	e applying may have additional requirements.
æ	Where can I find more information?		the state of the s
4	U.S. DOT – http://osdbuweb.dot.gov/business/	dbe/i	ቀሚ ndex.html

#### Section 1: CERTIFICATION INFORMATION

1. Prior/Other Certifications.							
(a) Is your firm currently certified	DBE	Nam	e of certifying agen	ıcy:			
for any of the following programs?		L					
(If Yes, attach a copy of your			this firm's home sta				e visit?
certification(s)).	2()		s, on//		_		
	8(a) SDB		! You may not have treamlined applicat				
(b) Has your firm applied for certifica							/ No
If Yes, identify: Other names you Identification an	r company ha	as used:		•	·		
(c) Has this firm or any of its owners,	Board of Dire	ectors, o	officers or managem	nent pe	ersonnel	been de	nied certification
or decertified before by any agency in any state, local or Federal entity? Yes, on// No							
If Yes, identify State and name of	agency:						
2. Control Information	Section 2	2: GEN	NERAL INFORMA	ATIO	N		
2. Contact Information.  Contact Person:			Legal name of firm	m·			
Phone #:	Cell #:		Legal name of mi	<u></u>	Fax #:		
					2 00/2 1/1		
E-Mail:			Web Site (if firm has	s one):			
Street address of firm: (No P.O. box no.)							
Mailing address of firm:							
City:			County/Parish:		3	State:	Zip:
3. Business Profile.							
Primary nature of business/NAICS co	de:			Fede	ral tax	ID:	
Federal identification number or Appl		1 Securi	ty number:	1 2 0 0 0	-		
This firm was established on /			I(we) have owned	this fi	rm sinc	e· .	· · · · /
Did the business exist under a different	nt type of owr	nership	prior to the date ind	licated	above?	Yes	No
If Yes, Explain.							
Method of acquisition (check all that app							
Started new business	Bought exis				iness	Secur	red concession
Merger or consolidation	Other (explo	ain)			····	-	
Has this firm operated under a differe	nt name durin	ng the pa	ast five years? Y	es	No		
If Yes, explain.			-				<u> </u>
Has this firm applied for reorganization years? (If Yes, provide court papers)		pter 11 a	und/or liquidation u	nder C	Chapter	7, within	the last 3
Type of firm (Check all applicable):	.5 110						
Sole proprietorship (provide d	copy of the as	sumed n	ame certificate)				
Partnership (provide copies of				named	certifica	ate)	
Corporation (provide Articles							
Shareholders' Agreement, all minutes of t						s, the Corp	porate Bylaws and
Bylaws Amendments (if applicable), the C Limited Liability Partnership		Kesoiun	on ana bank signatui	re Cara	<b>1</b> 5)		
Joint Venture	,		•				
Other							
Number of employees: Permanent	Full-time_	Tem	porary Full-time	Sea	sonal F	ull-time	
Permanent Part-time Temporary Part-time Seasonal Part-time							
Where do you obtain seasonal employees?							
Does your firm directly pay, in its own name, all its employees? Yes. No If No, explain.							
Specify the gross receipts of the firm for the last 3 years: Year ending Total receipts: \$							
(Attach copies of full transactions for each yea	7)		Year ending Year ending			ceipts: \$_ ceipts: \$	
I .			r ear ending		совитес	CCIDIS: 35	

Page 1 of 8

#### Section 3: OWNERSHIP

4. Identify all individuals or holding companies with any ownership interest. List their cash, equipment and/or real estate and/or other investment in the firm; and attach the documentation of the source of these investments. (Attach work experience resumes of each person; If more than two owners, attach a separate sheet.)

	First Person	
Name: Title:	Home Phone#:	
Home Address (street and number):		
City:	State: Zip	
Gender: Male Female	Ethnic Group (attach proof of status):	
U.S. Citizen: Yes No	African American Hispanic Native American	
Legal permanent resident: Yes No	Caucasian Asian Pacific Asian Indian Other Ethnic Group (explain)	
Number of years owned:	Initial investment to Type Dollar Value	
Percentage owned:	acquire ownership Cash \$	
Familial relationship to other owners:	interest in firm: Real Estate \$	
	Equipment \$	
	Other \$	
Shares of Stock: Number Percentage		
Additional contributions made by anyone since	e the business was started/acquired:	
•	Second Person	
Name: Title:	Home Phone#:	
Home Address (street and number):		
City:	State: Zip:	
Gender: Male Female	Ethnic Group (Attach proof of status):	
U.S. Citizen: Yes No	African American Hispanic Native American	
Legal permanent resident: Yes No	Caucasian Asian Pacific Asian Indian Other Ethnic Group (explain)	
Number of years owned:	Initial investment to Type Dollar Value	<u> </u>
Percentage owned:	acquire ownership Cash \$	
Familial relationship to other owners:	interest in firm: Real Estate \$	
	Equipment \$	
	Other \$	
Shares of Stock: Number Percentage		
Additional contributions made by anyone since	e the business was started/acquired:	

#### Section 4: CONTROL

5. Identify Officers & Board of Directors. (Attach work experience resumes of each person; If additional space is required, attach a separate sheet.)

	Name	Title/Date Appointed	Ethnicity	Gender
Company	1.			
Officers	2.	•		
	3.			
	4.		*	
	5.			
Board of	1.			
Directors	2.	\$ T		
	3.	1		
	4			
	5.			] .

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6. Identify management personnel who control the firm in the following areas. (Attach work experience resumes, including dates of employment at each company for each person; if more than two persons, attach a separate sheet)

	Name	Title	Ethnicity	Gender
Financial Decision (responsibility	1.			
for check signing, acquisition of lines of credit, surety bonding, supplies, etc.)	2.			
Estimating, bidding and	1.			
negotiating (cost estimates, bid preparation and submission, negotiation or contract execution)	2.			
Hiring/firing of management	1.			
personnel	2.			•
Field/Production Operations	1.			
Supervisor (site supervision/scheduling, project management services)	2.			
List all field supervisors	1. 2.	·		
Office management	1. 2.	·		
Marketing/Sales	1. 2.			
Purchasing of major equipment	1. 2.			

7. Identify persons or firms who provide the following services.

	Name of firm	Name of person	Address	Phone No.
External management or technical/				
Computer service				
Accountant				
Attorney				
Principal Suppliers	Materials or equipment supplied			
·	2. Materials or equipment supplied			

8. Identify those union(s), business(es), or professional association(s) in which the owner(s) or management personnel have membership.

Name of union, business or professional association	Address	Phone No.
1.		
2.	:	
3.		

9. Attach a list of equipment and/or vehicles within your firm's possession or under your control (indicate separately), office space (owned or leased) and storage space (owned or leased), including signed leasing agreements.

10. Financial Information.					· · · · · · · · · · · · · · · · · · ·	
(a) Banking Information						
Name of bank:		·		Phone N	o. ( )	
Name of officer:		******				
Name of officer:Address of bank:			City:		State:	Zip:
(b) Bonding Information: If you	ı have bondin	ig capacity, ide	entify:			
Name of agent or broker:			P	hone No: (	)	
Address of agent/broker:			City	У	State:	Zip :
Name of agent or broker: Address of agent/broker: Bonding limit: Aggregate limit	\$	Project lim	it \$			
(c) Attach copies of year end ba						
has been in operation for less th					profit and lo	iss statement for
the next 12 month period and a	projected bal	ance sheet for	the end of that p	eriod.		
					_	
11. Identify all sources, amou					g name of	person or firm securi
the loan, if other than ow					· · · · · · · · · · · · · · · · · · ·	
		A	Address of Sour	ce		Amount
1.	İ					
2.						
3.						
					<u> </u>	
12 Tinh	4		Anna ICC atal	/444h	<i>Cl</i> :	- 1
12. List current licenses (e.g. Name of Individual or			Name of License			
Name of Individual or	ririn	ľ	Name of License	2	Expiration Date	Number
1					Date	Hamber
1.						
2.		<del>                                     </del>				
3.		L				
12. D		77	M-			
13. Does your firm have key						
(If Yes, attach a list of the p	oersons name	a ana the valu	ie.)			•
14. List the 3 largest contract					<del></del>	
Name of owner/contractor		Name/location	on of project		Type of wo	rk performed
1.						
2.						
			<del></del>			
3.				ļ		
	_					
15. List all active jobs this fir						
Name of prime contractor	Location	of project	Type of w		te project	Anticipated
and project number					began	completion date
1.						
2.		·	ļ			
3.		<u> </u>	1			

#### Section 5: AFFILIATION

10. Almation with other businesses.							
(a) Affiliate companies:							
(b) Do any of the people listed in question 4, 5, or 6 perform a management or supervisory function for any other							
business? Yes No		-					
If Yes, identify: Person:	Title:	_					
Business:	Function:	_					
(c) Do any of the people listed in questions 4, 5, o	or 6 own or work for other firms that have a business re	lationsh	ip with				
yours? (e.g., ownership interest, shared office space,	financial investments, equipment leases or personnel sharing)?	Yes N	lo				
If Yes, identify: Firm:	Person:	<u> </u>					
Business Relationship	·	•					
	n co-located at any of it business locations, or does it s						
	warehouse, facilities, equipment, or office staff, with an	y other					
business, organization, or entity? Yes No			•				
	Tax ID number		_				
Explain nature of shared facilities:			_				
		37	3.7				
(e) At present or in the past 5 years:	Has this firm been a subsidiary of any other firm?	Yes	No				
	Has this firm consisted of a partnership in which one						
If you answered Yes to any to any of these	partners are other firms?	Yes	No				
questions, identify on a separate piece of paper	Has any other firm owned 5% or more of this firm?	Yes	No				
any relevant names, addresses, dates and	Has this firm had any subsidiaries?	Yes	No				
explanations.	Has this firm owned 5% or more of any other firm?	Yes	No				

#### Section 6: OTHER

- 17. Are you a trucking firm? Yes No (If Yes, attach proof of ownership of a fully operational truck and trailer. Documentation should include insurance and titles.)
- 18. Are you a regular dealer? Yes No (If Yes, attach proof of warehouse, product lines carried, and distribution equipment.)

#### **AFFIDAVIT OF CERTIFICATION**

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), swear or affirm	n under penalty of law that I am
(title) of appl I have read and understood all of the questions is submitted in this application and its attachments and that all responses to the questions are full an material information necessary to fully and accu the named firm, as well as the ownership, control	n this application and that all of the for and supporting documents are true and d complete, omitting no material infor- rately identify and explain the operation	d correct to the best of my knowledge, mation. The responses include all
I recognize that the information submitted in thi government agency. I understand that a government of the statements in the application, and I a named firm's bonding companies, banking institute purpose of verifying the information supplies	ment agency may, by means it deems a uthorize such agency to contact any en tutions, credit agencies, contractors, cli	ppropriate, determine the accuracy and tity named in the application, and the ents, and other certifying agencies for
I agree to submit to government audit, examinat exist, of the named firm and its affiliates, inspec principals, agents, and employees. I understand certification.	tion of its place(s) of business and equi	pment, and to permit interviews of its
If awarded a contract or subcontract, I agree to p Department, recipient agency, or federal funding regarding (1) work performed on the project; (2)	g agency on an ongoing basis, current,	complete and accurate information
I agree to provide written notice to the recipient information contained in the original application number, etc.).		
I acknowledge and agree that any misrepresenta will be grounds for terminating any contract or s suspension and debarment; and for initiating act applicable offenses.	subcontract which may be awarded; des	nial or revocation of certification;
I declare under penalty of perjury that the forego	oing is true and correct.	
Signature of owner, officer or partner		Date(mm/dd/yy)
I declare under penalty of perjury that the informatisadvantaged status and me is true and correct.	nation provided in this application and	supporting documents relating to my
Print Name:	Signature:	Date:

NOTARY CERTIFICATION				
STATE OF COUNTY OF	}SS:	·		
Subscribed and sworn to before me this	day of	, 20		
Signature of Notary Public				
Printed/typed name of Notary Public		<del></del>		
County of residence	Date commission expires			

AFFIDAVIT OF SOCIAL AND ECONOMIC DISADVANTAGE

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

#### **SOCIAL DISADVANTAGE**

I hereby certify under pena African American Asian Indian	Hispanic	a member of one of the follo Native American (explain)	Caucasian	Asian Pacific
And that I have held mysel	f out as a member of th	nat group and have acted as a	member of that gro	oup.
I further certify that I am at due to the effect of discrim race ethnic	ination based upon my	y seeking DBE certification a (check all that apply) other (explain)	_	
Print Name:		Signature:	•	Date:
	PERSO	NAL FINANCIAL STATE	MENT	
I hereby certify under pena	lty of perjury that my p	personal net worth does not ex	xceed \$750,000.	
Print Name:		Signature:		Date:
A signed, notarized state	ement of personal net vernent from a certified sistent with the provisi	worth, with appropriate supportion public accountant (CPA) atteons of §26.67(a)(2) and generated	sting that he/she ha	is examined my personal ne
	NOTAL	RY CERTIFICATION		
STATE OF		}SS:		
		day o	of	, 20
Signature of Notary Pub	lic			· · · · · · · · · · · · · · · · · · ·
Printed/typed name of N	otary Public			
County of residence		Date comm	nission expires	

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## PERSONAL NET WORTH STATEMENT (49 CFR PART 26)

As of		

For firm applying for airport concession DBE certification: A PNW is not required at this time.

Each individual owner of a DBE firm whose ownership or control is relied upon for DBE certification is required to provide Personal Net Worth (PNW) information and include it in the notarized DBE Certification Application package. For a firm with more than one owner relied upon for DBE certification, please make additional copies of this Statement. The Unified Certification Program of California reserves the right to request additional information as necessary and may conduct an on-site visit to verify the information contained in this Statement.

I understand that all personal financial information I submit will remain confidential unless I give my written consent to release this information to a third party. I also understand that the only exception to this confidentiality provision is if I decide to appeal a decision by the Unified Certification Program of California.

Business Address	
City, State, & Zip Code	
Business Name	
Assets	Liabilities
Cash on Hand & in Banks\$	Accounts Payable\$
Savings Accounts\$	Notes Payable to Banks and Others\$
IRA or Other Retirement Accounts\$	Installment Accounts (Auto)\$
Accounts/Notes Receivable\$	(Mo. Payments \$) Other Installment Accounts\$
Life Insurance/Cash Surrender Value\$	Other Installment Accounts\$
Stocks and Bonds\$	(Mo. Payments \$)
Real Estate <sup>2</sup> \$	Loans on Life Insurance\$
Automobile - Present Value\$	Mortgages on Real Estate <sup>2</sup>
Other Personal Property\$	Unpaid Taxes\$ Other Liabilities\$
Other Assets\$	Other Liabilities\$
Total Assets\$	Total Liabilities\$NET WORTH \$
	Contingent Liabilities
Sources of Income	Contingent Englished
Salary\$	As Endorse or Co-Maker\$
Salary	Legal Claims and Judgment\$
Salary	Legal Claims and Judgment\$ Provision for Federal Income Tax\$
Sources of Income           Salary	Legal Claims and Judgment\$
Salary\$ Net Investment Income\$ Real Estate Income\$ Other Income <sup>3</sup> \$	Legal Claims and Judgment\$ Provision for Federal Income Tax\$ Other Special Debt\$  ence attributable to withdrawal(s) from the firm applying for
Salary	Legal Claims and Judgment\$  Provision for Federal Income Tax\$  Other Special Debt\$  ence attributable to withdrawal(s) from the firm applying for
Salary\$  Net Investment Income\$  Real Estate Income\$  Other Income <sup>3</sup> \$  Is any portion of the equity in the individual's primary residual.	Legal Claims and Judgment\$ Provision for Federal Income Tax\$ Other Special Debt\$  ence attributable to withdrawal(s) from the firm applying for ments are true, accurate, and complete.

- Exclude an individual's ownership interest in the firm applying for DBE certification.
   For individuals claiming to be Alaska Native, exclude any of the following which the individual receives from any Alaska Native Corporation ("ANC"): Cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per year; a partnership interest; land, or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock); and an interest in a settlement trust.
- 2. Do not include the individual's primary residence.
- 3. Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

## PERSONAL NET WORTH STATEMENT NOTARY ACKNOWLEDGEMENT

STATE OF	
COUNTY OF	
On this day of Public, personally appeared	
personally known to me (or proved to me on the basis name(s) is/are subscribed to the within Affidavit, and a his/her/their authorized capacity, and that by his/her/th executed the instrument.	acknowledged that he/she/they executed the same in
WITNESS my hand and Official Seal.	
Signature:	
Name:(Typed or Printed)	· <del>-</del> .



## Supplemental Questionnaire

Foi	r firm applying for airport	t concession DBE	certification: A	Supplemental Question	onnaire is not require	ed at this time.
Fir	m Name:	<u> </u>				
1.	Is the firm's principal place of business in California? Yes No					
	If no, please include (The California UCP principal place of but	will not proces	ss a new applic	ation for DBE cer	tification from a	firm having its
2.	Is the firm authorize	ed to do busines	s in the State of	of California? Yo	es No	
3.	List all office location	ons in Californi	a:		•	
4.	Has the firm ever do If yes, please indicat		•		lifornia? Yes	No
		<del></del>				Latest Year
	Agency	La	atest Year	Agend	cy	Latest Year
5.	Is there an upcomin prior to a specific d	O 1 0			•	
	If yes, please answer	r the following:				
	Agency letting contr	ract:				· ·
	Contract number and	d name:				
	Bid opening date (If			•		
6.		you prefer to d	lo your work. Y			
	SW Statewide 01 Alameda 02 Alpine 03 Amador 04 Butte 05 Calavaras 06 Colusa 07 Contra Costa 08 Del Norte 09 El Dorado	10 Fresno 11 Glenn 12 Humboldt 13 Imperial 14 Inyo 15 Kern 16 Kings 17 Lake 18 Lassen 19 Los Angeles	20 Madera 21 Marin 22 Mariposa 23 Mendocino 24 Merced 25 Modoc 26 Mono 27 Monterey 28 Napa 29 Nevada	30 Orange 31 Placer 32 Plumas 33 Riverside 34 Sacramento 35 San Benito 36 San Bernardino 37 San Diego 38 San Francisco 39 San Joaquin	40 San Luis Obisp 41 San Mateo 42 Santa Barbara 43 Santa Clara 44 Santa Cruz 45 Shasta 46 Sierra 47 Siskiyou 48 Solano 49 Sonoma	50 Stanislaus 51 Sutter 52 Tehema 53 Trinity 54 Tulare 55 Tuolumne 56 Ventura 57 Yolo 58 Yuba



### Work Category Codes

Please review the enclosed Work Category Codes list and indicate below areas of expertise that you prefer to perform in order of importance. 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 \$17.42 million. Please note that size standards are subject to change at any time by the SBA. To determine if the firm meets SBA's and U.S. DOT's size standards, please contact one of the certifying agencies on the enclosed roster.

For firm 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 \$30 million.

Work Code	Title (Description of Wo	ork/Service)
	·	



## Work Category Codes

	AGRICULTURE, FORESTRY, AND FISHING		CONSTRUCTION
A0110	CASH GRAINS	C0600	MISC SUPPLIERS
A0130	FIELD CROPS, EXCEPT CASH GRAINS	C0612	SAFETY
A0160	VEGETABLES & MELONS	C0620	LANDSCAPING & NURSERY
A0170	FRUITS & TREE NUTS	C0624	PETROLEUM, OIL, LUBRICANTS
A0180	HORTICULTURAL SPECIALTIES	C0625	SAND & GRAVEL
A0190	GENERAL FARMS, PRIMARILY CROP	C0626	GRANITE & MARBLE
A0210	LIVESTOCK, EXCEPT DAIRY AND POULTRY	C0639	ASPHALT
A0240	DAIRY FARMS	C0649	PILINGS
A0250	POULTRY & EGGS	C0651	CONCRETE & CEMENT
A0270	ANIMAL SPECIALTIES	C0652	REINFORCING BAR SECTION
A0290	GENERAL FARMS, PRIMARILY ANIMAL	C0655	STEEL
A0710	SOIL PREPARATION SERVICES	C0656	DOORS & FRAMES
A0720	CROP SERVICES	C0657	LUMBER
A0740	VETERINARY SERVICES	C0658	PAPER
A0750	ANIMAL SERVICES, EXCEPT VETERINARY	C0659	PAINT
A0760	FARM LABOR & MANAGEMENT SERVICES	C0670	PIPE
A0780	LANDSCAPE & HORTICULTURAL SERVICES	C0680	FENCING
A0810	TIMBER TRACTS	C0683	GUARD RAILINGS & BARRIERS
A0830	FOREST PRODUCTS	C0685	PAVEMENT MARKERS
A0850	FORESTRY SERVICES	C0686	ELECTRICAL & SIGNALS
A0910	COMMERCIAL FISHING	C0687	GLASS & GLASS BLOCK
A0920	FISH HATCHERIES & PRESERVES	C0698	BUILDING MATERIAL
A0970	HUNTING, TRAPPING, GAME PROPAGATION	C0699	TOOLS
	MINING	C0700	CONSTRUCTION STAKING
	MINANAG	C1200	CONSTRUCTION AREA SIGNS
B1010	IRON ORES	C1201	TRAFFIC CONTROL SYSTEM
B1020	COPPER ORES	C1522	RESET, ADJUST ROADWAY ITEMS
B1030	LEAD & ZINC ORES	C1531	PLANE ASPHALT CONCRETE
B1040	GOLD & SILVER ORES	C1575	REMOVE BRIDGE ITEM
B1060	FERROALLOY ORES, EXCEPT VANADIUM	C1580	MODIFY BRIDGE ITEM
B1080	METAL MINING SERVICES	C1601	CLEARING & GRUBBING
B1090	MISC METAL ORES	C1701	DEVELOP WATER SUPPLY
B1220	BITUMINOUS COAL & LIGNITE MINING	C1801	DUST PALLIATIVE
B1230	ANTHRACITE MINING	C1901	ROADWAY EXCAVATION
B1240	COAL MINING SERVICES	C1910	GRADING
B1310	CRUDE PETROLEUM & NATURAL GAS	C1920	- STRUCTURE EXCAVATION
B1320	NATURAL GAS LIQUIDS	C1925	SHAPED BEDDING
B1380	OIL & GAS FIELD SERVICES	C1930	STRUCTURE BACKFILL
B1410	DIMENSION STONE	C1940	DITCHES EXCAVATION
B1420	CRUSHED & BROKEN STONE	C1970	EMBANKMENT CONSTRUCTION
B1440	SAND & GRAVEL	C1980	IMPORTED BORROW
B1450	CLAY, CERAMIC, & REFRACTORY MINERALS	C2000	HIGHWAY PLANTING
B1470	CHEMICAL & FERTILIZER MINERALS	C2020	\ SOIL AMENDMENTS
B1480	NONMETALLIC MINERALS SERVICES	C2021	HYDROSEEDING
B1490	MISC NONMETALLIC MINERALS	C2030	EROSION CONTROL

### **CONSTRUCTION** (Continued)

	CONSTITUTION (Continued)		
C2065 C2201	IRRIGATION SYSTEM FINISHING ROADWAY	C6800 C6811	SUBSURFACE DRAIN EDGE DRAIN
C2401	LIME TREATMENT	C6815	HORIZONTAL DRAIN
C2501	AGGREGATE SUBBASE	C6819	FILTER FABRIC
C2602	AGGREGATE BASE	C6820	PERMEABLE MATERIAL
C2700	CEMENT TREATED BASE	C6900	DOWNDRAIN
C2800	CONCRETE BASE	C7000	PLASTIC PIPE
C3600	PENETRATION TREATMENT & PRIME COAT	C7006	CORRUGATED STEEL PIPE INLET & RISER
C3701	SEAL COAT	C7026	CORRUGATED STEEL PIPE ENERGY DISSIPATOR
C3901	ASPHALT CONCRETE	C7035	WELDED STEEL PIPE
C3910	PAVING ASPHALT (ASPHALT CONCRETE)	C7041	JACKED WELDED STEEL PIPE
C3930	PAVEMENT REINFORCING FABRIC	C7065	DEBRIS RACK-DRAINAGE GATE
C3940	PLACE ASPHALT CONCRETE DIKE & MISC	C7112	REINFORCED CONCRETE SEWER PIPE
C3990	RECYCLE, RECLAIM ASPHALT CONCRETE	C7140	CLAY SEWER PIPE
C4010	PORTLAND CEMENT & CONCRETE PAVEMENT	C7160	ASBESTOS-CEMENT SEWER PIPE
C4040	CLEAN & SEAL PAVEMENT JOINTS - ROUT & SEAL	C7180	CAST IRON SEWER PIPE
	CRACKS	C7191	SEWER MANHOLE
C4101	PAVEMENT SUBSEALING & JACKING	C7194	JUNCTION CHAMBER
C4201	GROOVE & GRIND PAVEMENT	C7200	ROCK SLOPE PROTECTION
C4901	FURNISH & DRIVE PILING	C7215	CONCRETED-ROCK SLOPE PROTECTION
C4906	CAST-IN-DRILLED-HOLE CONCRETE PILING	C7218	AIR-BLOWN MORTAR (SLOPE PAVING)
C5000	PRESTRESSING CONCRETE CAST-IN-PLACE	C7250	SACKED CONCRETE
C5100	CONCRETE STRUCTURE	C7301	CONCRETE CURB & SIDEWALK - MISC
C5105	MINOR CONCRETE STRUCTURE	C7405	DRAINAGE PUMPING EQUIPMENT
C5110	CONCRETE SURFACE FINISH	C7410	PUMPING PLANT ELECTRICAL EQUIPMENT
C5111	CONCRETE OVERLAY – DRILL & BOND	C7415	ENGINE GENERATOR SET
C5120	FURNISH PRECAST CONCRETE DECK UNIT	C7500	MISC IRON & STEEL FRAME, COVER & GRATE
C5124	ERECT PRECAST CONCRETE	C7505	MISC BRIDGE METAL PUMPING PLANT METAL
C5135	CONCRETE BLOCK & MASONRY RETAINING WALL	C7600	DEVELOP, TEST, DRILL, MAINTAIN WELLS
C5136	REINFORCED CONCRETE CRIB WALL	C8000	FENCING
C5150	CORE CONCRETE - REPAIR BRIDGE DECK	C8101	SURVEY OR HISTORICAL MONUMENT
C5180	SOUND WALL (MASONRY BLOCK - CONCRETE)	C8201	OBJECT MARKER
C5190	JOINT SEAL - WATER STOP	C8320	METAL BEAM GUARD RAILING
C5201	REINFORCING STEEL	C8330	METAL RAILING
C5301	AIR-BLOWN MORTAR	C8331	CONCRETE BARRIER
C5310	PIPE LINING (CEMENT MORTAR)	C8391	METAL BEAM BARRIER
C5401 C5501	WATERPROOFING STEEL STRUCTURES	C8405	THERMOPLASTIC TRAFFIC STRIPE & MARKING
		C8406	PAINTED TRAFFIC STRIPE & MARKING
C5570	STEEL CRIB WALL	C8501	PAVEMENT MARKING
C5601	SIGN STRUCTURE ROADSIDE SIGN	C8602	SIGNAL & LIGHTING
C5620 C5701	LUMBER & TIMBER	C8603	SIGNAL
C5900	CLEAN & PAINT STEEL	C8604	LIGHTING
C6101	RAILROAD WORK	C8605	MESSAGE SIGNS, LIGHTING & SIGN ILLUMINATION
C6200	ALTERNATIVE PIPE CULVERT	C8608	- DETECTOR
C6301	CAST-IN-PLACE CONCRETE PIPE	C8609	TRAFFIC COUNT STATION
C6401	ASBESTOS-CEMENT PIPE	C8610	SPEED MONITORING STATION
C6500	REINFORCED CONCRETE PIPE	C8611	RAMP METERING SYSTEM
C6552	JACKED REINFORCED CONCRETE PIPE	C8700	CONSULTANT
C6591	NON-REINFORCED CONCRETE PIPE	C8701	BUSINESS ADMINISTRATION
C6650	CORRUGATED METAL PIPE (CSP)	C8702	MANAGEMENT INFORMATION SYSTEMS
C6680	JACKED CORRUGATED STEEL PIPE)	C8703	TRAFFIC ENGINEER
C6700	STRUCTURAL STEEL PLATE PIPE, ARCH & PIPE	C8704	ARCHITECTURAL
C0100	ARCH	C8705	DESIGN

### **CONSTRUCTION** (Continued)

	CONSTRUCTION (Continued)		
C8706 C8707	DESIGN BRIDGES FEASIBILITY STUDIES	C9858 C9860	RESIDENTIAL ELECTRICAL WATER METER & TEMP FACILITIES
C8710	ENGINEERING	C9862	RESIDENTIAL AIR CONDITIONING & SHEET METAL
C8711	COMPUTER	C9864	SHOWER DOORS & MIRROR INSTALLATION
C8712	PUBLIC RELATIONS	C9866	HEATING & AIR CONDITIONING
C8716	ARCHITECTURAL ENGINEER	C9868	INSULATION
C8720	CIVIL ENGINEERING	C9869	ASBESTOS REMOVAL/ABATEMENT
C8721	RIGHT OF WAY ENGINEER	C9872	SEWER CONNECTION
C8722	ENVIRONMENTAL ENGINEER	C9874	HARDWARE (ROUGH)
C8730	SAFETY STUDIES	C9876	HARDWARE (FINISH)
C8740	ELECTRICAL ENGINEERS	C9878	SIDING, STUCCO, VENEER
C8742	MECHANICAL ENGINEERS	C9901	MISC SERVICES - CALTRANS FACILITIES
C8744	LANDSCAPE ARCHITECTS	C9902	FUEL SYSTEMS
C8750	REAL ESTATE	C9903	CONSTRUCTION CLEAN UP
C8760	SURVEYOR	C9904	CORING
	GEOPHYSICS	C9905	CUTTING
C8761		C9906	SANDBLASTING
C8765	DRAFTING CONSTRUCTION MANAGEMENT	C9907	CONSTRUCTION EQUIPMENT RENTAL
C8770	CONSTRUCTION MANAGEMENT	C9908	HEAVY EQUIPMENT RENTAL
C8900	RAIL CAR SERVICES	C9947	ELEVATOR
C8901	AIR CONDITIONING/SHEET METAL	C9980	DEMOLITION
C8902	HEATING .	C9981	BUILDING MOVER
C8903	ELECTRICAL	C9988	MOVING & STORAGE
C8904	GLASS INSTALLATION	C9999	BROKER (FOR FEE ONLY)
C8905	SEATS	03333	BROKER (FOR FEE ONE F)
C8906	AUTO SERVICE		MANUFACTURING
C8907	MACHINING	2	
C8908	PERSONNEL TRANSPORTATION	D2010	MEAT PRODUCTS
C9602	BOTTOM DUMP TRUCKING	D2020	DAIRY PRODUCTS
C9605	FLAT BED TRUCKING	D2030	PRESERVED FRUITS & VEGETABLES
C9632	HAZARDOUS WASTE TRUCKING	D2040	GRAIN MILL PRODUCTS
C9670	TRUCK RENTAL	D2050	BAKERY PRODUCTS
C9771	TRUCK BROKER	D2060	SUGAR & CONFECTIONERY PRODUCTS
C9774	TRUCKER	D2070	FATS & OILS
C9801	BUILDING CONSTRUCTION	D2080	BEVERAGES
C9810	SMALL STRUCTURES	D2090	MISC FOOD & KINDRED PRODUCTS
C9822	CARPENTRY	D2110	CIGARETTES
C9826	LAND SURVEYING	D2120	CIGARS
C9827	DRYWALL CONSTRUCTION	D2130	CHEWING & SMOKING TOBACCO
C9828	CRANE WORK	D2140	TOBACCO STEMMING & REDRYING
C9829	RETAINER WALLS	D2210	BROADWOVEN FABRIC MILLS, COTTON
C9830	WALL COVERING	D2220	BROADWOVEN FABRIC MILLS, MANMADE
C9834	CABINETRY	D2230	BROADWOVEN FABRIC MILLS, WOOL
C9835	LATHING	D2240	NARROW FABRIC MILLS
C9836	PLASTERING	D2250	- KNITTING MILLS
C9837	ROOFING	D2260	TEXTILE FINISHING, EXCEPT WOOL
C9838	CERAMIC TILE	D2270	CARPETS & RUGS
C9839	CARPET & DRAPES	D2280	YARN & THREAD MILLS
C9840	FLOOR COVERING	D2290	MISC TEXTILE GOODS
C9842	MASONRY		MEN'S & BOYS' SUITS & COATS
C9846	ADDITIONS, ALTERATIONS OR REPAIRS	D2320	MEN'S & BOYS' FURNISHINGS
C9850	PLUMBING	D2330	WOMEN'S & MISSES' OUTERWEAR
C9852	EXTERMINATORS	D2340	WOMEN'S & CHILDREN'S UNDERGARMENTS
C9854	PAINTING STRUCTURES	D2350	HATS, CAPS, & MILLINERY

#### MANUFACTURING (Continued)

D2360 D2370	GIRLS' & CHILDREN'S OUTERWEAR FUR GOODS	D3220 D3230	GLASS & GLASSWARE, PRESSED OR BLOWN PRODUCTS OF PURCHASED GLASS
D2380	MISC APPAREL & ACCESSORIES	D3240	CEMENT, HYDRAULIC
D2390	MISC FABRICATED TEXTILE PRODUCTS	D3250	STRUCTURAL CLAY PRODUCTS
D2410	LOGGING	D3260	POTTERY & RELATED PRODUCTS
D2420	SAWMILLS & PLANING MILLS	D3270	CONCRETE, GYPSUM, & PLASTER PRODUCTS
D2430	MILLWORK, PLYWOOD & STRUCTURAL MEMBERS	D3280	CUT STONE & STONE PRODUCTS
D2440	WOOD CONTAINERS	D3290	MISC NONMETALLIC MINERAL PRODUCTS
D2450	WOOD BUILDINGS & MOBILE HOMES	D3310	BLAST FURNACE & BASIC STEEL PRODUCTS
D2490	MISC WOOD PRODUCTS	D3320	IRON & STEEL FOUNDRIES
D2510	HOUSEHOLD FURNITURE	D3330	PRIMARY NONFERROUS METALS
D2520	OFFICE FURNITURE	D3340	SECONDARY NONFERROUS METALS
D2530	PUBLIC BUILDING & RELATED FURNITURE	D3350	NONFERROUS ROLLING & DRAWING
D2540	PARTITIONS & FIXTURES	D3360	NONFERROUS FOUNDRIES (CASTINGS)
D2590	MISC FURNITURE & FIXTURES	D3390	MISC PRIMARY METAL PRODUCTS
D2610	PULP MILLS	D3410	METAL CANS & SHIPPING CONTAINERS
D2620	PAPER MILLS	D3420	CUTLERY, HANDTOOLS, & HARDWARE
D2630	PAPERBOARD MILLS	D3430	PLUMBING & HEATING, EXCEPT ELECTRIC
D2650	PAPERBOARD CONTAINERS & BOXES	D3440	FABRICATED STRUCTURAL METAL PRODUCTS
D2670	MISC CONVERTED PAPER PRODUCTS	D3450	SCREW MACHINE PRODUCTS, BOLTS, ETC.
D2710	NEWSPAPERS	D3460	METAL FORGINGS & STAMPINGS
D2720	PERIODICALS	D3470	METAL SERVICES, NEC
D2730	BOOKS	D3480	ORDNANCE & ACCESSORIES, NEC
D2740	MISC PUBLISHING	D3490	MISC FABRICATED METAL PRODUCTS
D2750	COMMERCIAL PRINTING	D3510	ENGINES & TURBINES
D2760	MANIFOLD BUSINESS FORMS	D3520	FARM & GARDEN MACHINERY
D2770	GREETING CARDS	D3530	CONSTRUCTION & RELATED MACHINERY
D2780	BLANKBOOKS & BOOKBINDING	D3540	METALWORKING MACHINERY
D2790	PRINTING TRADE SERVICES	D3550	SPECIAL INDUSTRY MACHINERY
D2810	INDUSTRIAL INORGANIC CHEMICALS	D3560	GENERAL INDUSTRIAL MACHINERY
D2820	PLASTICS MATERIALS & SYNTHETICS	D3570	COMPUTER & OFFICE EQUIPMENT
D2830	DRUGS	D3580	REFRIGERATION & SERVICE MACHINERY
D2840	SOAP, CLEANERS, & TOILET GOODS	D3590	INDUSTRIAL MACHINERY, NEC
D2850	PAINTS & ALLIED PRODUCTS	D3610	ELECTRIC DISTRIBUTION EQUIPMENT
D2860	INDUSTRIAL ORGANIC CHEMICALS	D3620	ELECTRICAL INDUSTRIAL APPARATUS
D2870	AGRICULTURAL CHEMICALS	D3630	HOUSEHOLD APPLIANCES
D2890	MISC CHEMICAL PRODUCTS	D3640	ELECTRIC LIGHTING & WIRING EQUIPMENT
D2910	PETROLEUM REFINING	D3650	HOUSEHOLD AUDIO & VIDEO EQUIPMENT
D2950	ASPHALT PAVING & ROOFING MATERIALS	D3660	COMMUNICATIONS EQUIPMENT
D2990	MISC. PETROLEUM & COAL PRODUCTS	D3670	ELECTRONIC COMPONENTS & ACCESSORIES
D3010	TIRES & INNER TUBES	D3690	MISC ELECTRICAL EQUIPMENT & SUPPLIES
D3020	RUBBER & PLASTICS FOOTWEAR	D3710	MOTOR VEHICLES & EQUIPMENT
D3050	HOSE & BELTING & GASKETS & PACKING	D3720	AIRCRAFT & PARTS
D3060	FABRICATED RUBBER PRODUCTS, NEC	D3730	- SHIP & BOAT BUILDING & REPAIRING
D3080	MISC PLASTICS PRODUCTS, NEC	D3740	RAILROAD EQUIPMENT
D3110	LEATHER TANNING & FINISHING	D3750	MOTORCYCLES, BICYCLES, & PARTS
D3130	FOOTWEAR CUT STOCK	D3760	GUIDED MISSILES, SPACE VEHICLES, PARTS
D3140	FOOTWEAR, EXCEPT RUBBER	D3790	MISC TRANSPORTATION EQUIPMENT
D3150	LEATHER GLOVES & MITTENS	D3810	SEARCH & NAVIGATION EQUIPMENT
D3160	LUGGAGE	D3820	MEASURING & CONTROLLING DEVICES
D3170	HANDBAGS & PERSONAL LEATHER GOODS	D3840	MEDICAL INSTRUMENTS & SUPPLIES
D3190	LEATHER GOODS, NEC	D3850	OPHTHALMIC GOODS
D3210	FLAT GLASS	D3860	PHOTOGRAPHIC EQUIPMENT & SUPPLIES
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	MANUFACTURING (Continued)		<b>SUPPLIERS</b> (Construction suppliers listed in Construction section.)
D3870 D3910	WATCHES, CLOCKS, WATCHCASES & PARTS JEWELRY, SILVERWARE, & PLATED WARE	F5030	LUMBER AND CONSTRUCTION MATERIAL
D3930	MUSICAL INSTRUMENTS	F5040	PROFESSIONAL & COMMERCIAL EQUIPMENT
D3940	TOYS & SPORTING GOODS	F5044	OFFICE EQUIPMENT
D3950	PENS, PENCILS, OFFICE, & ART SUPPLIES	F5045	COMPUTERS, PERIPHERALS & SOFTWARE
D3960	COSTUME JEWELRY & NOTIONS	F5050	METALS & MINERALS, EXCEPT PETROLEUM
D3990	MISC MANUFACTURES	F5060	ELECTRICAL GOODS
		F5070	HARDWARE, PLUMBING & HEATING EQUIPMENT
	TRANSPORTATION & PUBLIC UTILITIES	F5080	MACHINERY, EQUIPMENT, & SUPPLIES
E4010	BAIL BOADS	F5085	COMPUTER EQUIPMENT & SUPPLIES
E4110	RAILROADS LOCAL & SUBURBAN TRANSPORTATION	F5088	TRANSPORTATION EQUIPMENT & SUPPLIES
E4120	TAXICABS	F5090	MISC DURABLE GOODS
E4130	INTERCITY & RURAL BUS TRANSPORTATION	F5110	PAPER & PAPER PRODUCTS
E4140	BUS CHARTER SERVICE	F5130	APPAREL, PIECE GOODS, & NOTIONS
E4150	SCHOOL BUSES	F5140	GROCERIES & RELATED PRODUCTS
E4170	BUS TERMINAL & SERVICE FACILITIES	F5150	FARM-PRODUCT RAW MATERIALS
E4210	TRUCKING & COURIER SERVICES, EX. AIR	F5160	CHEMICALS & ALLIED PRODUCTS
E4220	PUBLIC WAREHOUSING & STORAGE	F5170	PETROLEUM & PETROLEUM PRODUCTS
E4230	TRUCKING TERMINAL FACILITIES	F5180	BEER, WINE, & DISTILLED BEVERAGES
E4310	U. S. POSTAL SERVICE	F5190	MISC NONDURABLE GOODS
E4410	DEEP SEA FOREIGN TRANS. OF FREIGHT	F5210	LUMBER & OTHER BUILDING MATERIALS
E4420	DEEP SEA DOMESTIC TRANS. OF FREIGHT	F5230	PAINT, GLASS, & WALLPAPER STORES
E4430	FREIGHT TRANS. ON THE GREAT LAKES	F5251	HARDWARE STORES
E4440	WATER TRANSPORTATION OF FREIGHT, NEC.	F5260	RETAIL NURSERIES & GARDEN STORES
E4480	WATER TRANSPORTATION OF PASSENGERS	F5270	MOBILE HOME DEALERS
E4490	WATER TRANSPORTATION SERVICES	F5310	DEPARTMENT STORES
E4510	AIR TRANSPORTATION, SCHEDULED	F5330	VARIETY STORES
E4520	AIR TRANSPORTATION, NONSCHEDULED	F5390	MISC GENERAL MERCHANDISE STORES
E4580	AIRPORTS, FLYING FIELDS, & SERVICES	F5410	GROCERY STORES
E4610	PIPELINES, EXCEPT NATURAL GAS	F5420	MEAT & FISH MARKETS
E4720	PASSENGER TRANSPORTATION ARRANGEMENT	F5430	FRUIT & VEGETABLE MARKETS
E4724	TRAVEL SERVICE	F5440	CANDY, NUT, & CONFECTIONERY STORES
E4730	FREIGHT TRANSPORTATION ARRANGEMENT	F5450	DAIRY PRODUCTS STORES
E4740	RENTAL OF RAILROAD CARS	F5460	RETAIL BAKERIES
E4780	MISC TRANSPORTATION SERVICES	F5490	MISC FOOD STORES
E4810	TELEPHONE COMMUNICATIONS	F5510	NEW & USED CAR DEALERS
E4820	TELEGRAPH & OTHER COMMUNICATIONS	F5520	USED CAR DEALERS
E4830	RADIO & TELEVISION BROADCASTING	F5530	AUTO & HOME SUPPLY STORES
E4840	CABLE & OTHER PAY TV SERVICES	F5540	GASOLINE SERVICE STATIONS
E4890	COMMUNICATIONS SERVICES, NEC	F5550	BOAT DEALERS
E4910	ELECTRIC SERVICES	F5560	RECREATIONAL VEHICLE DEALERS
E4920	GAS PRODUCTION & DISTRIBUTION	F5570	MOTORCYCLE DEALERS
E4930	COMBINATION UTILITY SERVICES	F5590	AUTOMOTIVE DEALERS, NEC
E4940	WATER SUPPLY	F5610	MEN'S & BOYS' CLOTHING STORES
E4950	SANITARY SERVICES, NEC	F5620	WOMEN'S CLOTHING STORES
E4952	SEWERAGE SYSTEMS	F5630	WOMEN'S ACCESSORY
E4953	WASTE COLLECTION AND DISPOSAL	F5640	CHILDREN'S & INFANTS' WEAR STORES
E4954	HAZARDOUS WASTE COLLECTION AND DISPOSAL	F5650	FAMILY CLOTHING STORES
E4960	STEAM & AIR-CONDITIONING SUPPLY	F5660	
E4970	IRRIGATION SYSTEMS	F5690	MISC APPAREL & ACCESSORY STORES
		F5710	¹ FURNITURE & HOMEFURNISHINGS STORES
		F5720	HOUSEHOLD APPLIANCE STORES
		F5730	RADIO, TELEVISION, & COMPUTER STORES

<b>SUPPLIERS</b> (Constru	action suppliers listed in
Construction section.	)

	Construction Section.
F5810	EATING & DRINKING PLACES
F5820	CATERING
F5910	DRUG STORES & PROPRIETARY STORES
F5920	LIQUOR STORES
F5930	USED MERCHANDISE STORES
F5940	MISC SHOPPING GOODS STORES
F5960	NONSTORE RETAILERS
F5980	FUEL DEALERS
F5990	RETAIL STORES, NEC
F5992	FLORIST
	FINANCE INSURANCE & REAL ESTATE
H6010 H6020	CENTRAL RESERVE DEPOSITORIES COMMERCIAL BANKS
H6030	SAVINGS INSTITUTIONS
H6060	CREDIT UNIONS
H6080	FOREIGN BANK & BRANCHES & AGENCIES
H6090	FUNCTIONS CLOSELY RELATED TO BANKING
H6110	FEDERAL & FEDSPONSORED CREDIT
H6140	PERSONAL CREDIT INSTITUTIONS
H6150	BUSINESS CREDIT INSTITUTIONS
H6160	MORTGAGE BANKERS & BROKERS
H6210	SECURITY BROKERS & DEALERS
H6220	COMMODITY CONTRACTS BROKERS, DEALERS
H6230	SECURITY & COMMODITY EXCHANGES
H6280	SECURITY & COMMODITY SERVICES
H6310	LIFE INSURANCE
H6320	MEDICAL SERVICE & HEALTH INSURANCE
H6330	FIRE, MARINE, & CASUALTY INSURANCE
H6350	SURETY INSURANCE
H6360	TITLE INSURANCE
H6370	PENSION, HEALTH, & WELFARE FUNDS
H6390	INSURANCE CARRIERS, NEC
H6410	INSURANCE AGENTS, BROKERS, & SERVICE
H6510	REAL ESTATE OPERATORS & LESSORS
H6530	REAL ESTATE AGENTS & MANAGERS
H6531	REAL ESTATE APPRAISERS & BROKERS
H6540	TITLE ABSTRACT OFFICES
H6550	SUBDIVIDERS & DEVELOPERS
H6710	HOLDING OFFICES
H6720	INVESTMENT OFFICES
H6730	TRUSTS
H6790	MISC INVESTING
	SERVICES
17010	HOTELS & MOTELS
17020	ROOMING & BOARDING HOUSES
17030	CAMPS & RECREATIONAL VEHICLE PARKS
17040	MEMBERSHIP-BASIS ORG. HOTELS
17210	LAUNDRY, CLEANING, & GARMENTS

PHOTOGRAPHIC STUDIOS, PORTRAIT

BEAUTY SHOPS

18060

HOSPITALS

	•
17240 17250	BARBER SHOPS SHOE REPAIR & SHOESHINE PARLORS
17260	FUNERAL SERVICE & CREMATORIES
17290	MISC PERSONAL SERVICES
17290	TAX RETURN PREPARATION SERVICES
17310	ADVERTISING
17320	CREDIT REPORTING & COLLECTION
17330	MAILING, REPRODUCTION, STENOGRAPHIC
17336	COMMERICAL ART AND GRAPHIC DESIGN
17340	SERVICES TO BUILDINGS
17341	JANITORIAL SERVICES DISINFECTING AND PEST CONTROL
17342	
17349	BUILDING MAINTENANCE SERVICES
17350	MISC EQUIPMENT RENTAL & LEASING
17360	PERSONNEL SUPPLY SERVICES
17370	COMPUTER & DATA PROCESSING SERVICES
17371	COMPUTER PROGRAMMING
17372	PREPACKAGED SOFTWARE
17373	INTEGRATED SYSTEMS & CAD/CAM SYSTEMS
17375	INFORMATION RETRIEVAL SYSTEMS
17377	COMPUTER RENTAL AND LEASING
17378	COMPUTER MAINTENANCE & REPAIR
17380	MISC BUSINESS SERVICES
17381	DETECTIVE & ARMORED CAR SERVICES
17382	SECURITY SYSTEMS SERVICES
17388	INTERIOR DECORATING & DESIGN
17510	AUTOMOTIVE RENTALS, NO DRIVERS
17520	AUTOMOBILE PARKING
17530	AUTOMOTIVE REPAIR SHOPS
17540	AUTOMOTIVE SERVICES, EXCEPT REPAIR
17550	TOWING
17620	ELECTRICAL REPAIR SHOPS
17630	WATCH, CLOCK, & JEWELRY REPAIR
17640	REUPHOLSTERY & FURNITURE REPAIR
17690	MISC REPAIR SHOPS
17698	LOCKSMITH
17810	MOTION PICTURE & VIDEO TAPE PRODUCTION
17820	MOTION PICTURE & VIDEO TAPE DISTRIBUTION
17830	MOTION PICTURE THEATERS
17840	VIDEO TAPE RENTAL
17850	MISCELLANEOUS AUDIO VISUAL SERVICES
17910	DANCE STUDIOS, SCHOOLS, & HALLS
17920	PRODUCERS, ORCHESTRAS, ENTERTAINERS
17930	BOWLING CENTERS
17940	COMMERCIAL SPORTS
17990	MISC AMUSEMENT, RECREATION SERVICES
18010	OFFICES & CLINICS OF MEDICAL DOCTORS
18020	OFFICES & CLINICS OF DENTISTS
18030	OFFICES OF OSTEOPATHIC PHYSICIANS
18040	√ OFFICES OF OTHER HEALTH PRACTITIONERS
18050	NURSING & PERSONAL CARE FACILITIES
	HOODEN

17220

17230

#### SERVICES (Continued)

	· ·
18070	MEDICAL LABORATORIES
18073	DRUG TESTING
18080	HOME HEALTH CARE SERVICES
18090	HEALTH & ALLIED SERVICES, NEC
18110	LEGAL SERVICES
18210	ELEMENTARY & SECONDARY SCHOOLS
18220	COLLEGES & UNIVERSITIES
18230	LIBRARIES
18240	VOCATIONAL SCHOOLS
18290	SCHOOLS & EDUCATIONAL SERVICES, NEC
18320	INDIVIDUAL & FAMILY SERVICES
18330	JOB TRAINING & RELATED SERVICES
18350	CHILD DAY CARE SERVICES
18360	RESIDENTIAL CARE
18390	SOCIAL SERVICES, NEC
18410	MUSEUMS & ART GALLERIES
18420	BOTANICAL & ZOOLOGICAL GARDENS
18610	BUSINESS ASSOCIATIONS
⋅18620	PROFESSIONAL ORGANIZATIONS
18630	LABOR ORGANIZATIONS
18640	CIVIC & SOCIAL ASSOCIATIONS
18650	POLITICAL ORGANIZATIONS
18660	RELIGIOUS ORGANIZATIONS
18690	MEMBERSHIP ORGANIZATIONS, NEC
18720	ACCOUNTING, AUDITING, & BOOKKEEPING
18730	RESEARCH & TESTING SERVICES
18734	LABORATORY TESTING AND ANALYSIS
18740	MANAGEMENT & PUBLIC RELATIONS
18810	PRIVATE HOUSEHOLDS
18990	SERVICES, NEC
18991	RECYCLING

#### **PUBLIC ADMINISTRATION**

J9110 J9120	EXECUTIVE OFFICES LEGISLATIVE BODIES
J9130	EXECUTIVE & LEGISLATIVE COMBINED
J9190	GENERAL GOVERNMENT, NEC
J9210	COURTS
J9220	PUBLIC ORDER & SAFETY
J9410	ADMIN. OF EDUCATIONAL PROGRAMS
J9430	ADMIN. OF PUBLIC HEALTH PROGRAMS
J9440	ADMIN. OF SOCIAL & MANPOWER PROGRAMS
J9450	ADMINISTRATION OF VETERANS' AFFAIRS
J9510	ENVIRONMENTAL QUALITY
J9530	HOUSING & URBAN DEVELOPMENT
19610	ADMIN, OF GENERAL ECONOMIC PROGRAMS

J9620 J9630	REGULATIONS, ADMIN. OF TRANSPORTATION REGULATION, ADMIN. OF UTILITIES
J9640	REGULATION OF AGRICULTURAL MARKETING
J9650	REGULATION MISC COMMERCIAL SECTORS
J9660	SPACE RESEARCH AND TECHNOLOGY
J9710	NATIONAL SECURITY
J9720	INTERNATIONAL AFFAIRS



## Roster of Certifying Agencies

Note: Underlined website includes the California Unified Certification Program Application Package.

If 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.

·	Southern Cluster		
Area	Counties	Certifyi	ng Agencies
Riverside, Imperial & San Diego (RIS)	Imperial Riverside San Diego	CITY OF SAN DIEGO Equal Opportunity Contracting Program 1010 Second Avenue, #500 San Diego, CA 92101 Phone: (619) 533-4492 Fax: (619) 533-4474 www.sandiego.gov	SUNLINE TRANSIT AGENCY Contracts and Compliance 32-505 Harry Oliver Trail Thousand Palms, CA 92276-3501 Phone: (760) 343-3456, Ext. 167 Fax: (760) 343-3845 www.sunline.org
		AIRPORT CONCESSIONS ONLY: SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY Small & Emerging Business Department P.O. Box 82776 San Diego, CA 92138-2776 Phone: (619) 400-2569 Fax: (619) 400-2566 www.san.org	
Los Angeles Area	Kern Los Angeles Orange San Bernardino San Luis Obispo Santa Barbara Ventura	CITY OF LOS ANGELES Office of Contract Compliance 600 South Spring St., Suite 1300 Los Angeles, CA 90014 Phone: (213) 847-6480 Fax: (213) 847-5566 www.lacity.org/bca	ORANGE COUNTY TRANSPORTATION AUTHORITY (OCTA) Small Business Programs 550 South Main Street P.O. Box 14184 Orange, CA 92863-1584 Phone: (714) 560-5620 Fax: (714) 560-5792 www.octa.net
		COUNTY OF ORANGE JOHN WAYNE AIRPORT 3160 Airway Avenue Costa Mesa, CA 92626 Phone: (949) 252-5175 Fax: (949) 252-5225 www.ocair.com	LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (MTA) Diversity and Economic Opportunity Dept One Gateway Plaza Los Angeles, CA 90012 Phone: (213) 922-2600 Fax: (213) 922-7660 www.mta.net

Northern Cluster				
Area	Counties	Certify	Certifying Agencies	
BayArea/ Central Valley	Alameda Amador Calaveras Contra Costa Fresno Kings Madera Marin Mariposa Merced Monterey Napa San Benito San Francisco San Joaquin San Ateo Santa Clara Santa Cruz Solano Sonoma Stanislaus Tulare Tuolumne	SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA) Small & Disadvantaged Businesses 3331 North First Street San Jose, CA 95134-1906 Phone: (408) 321-5962 Fax: (408) 955-9729 WWW.vta.org  BAY AREA RAPID TRANSIT DISTRICT (BART) Small and Disadvantaged Business Office of Civil Rights 1330 Broadway, #1702 Oakland, CA 94612 Phone: (510) 464-6100 Fax: (510) 464-7587 WWW.bart.gov  SAN JOAQUIN REGIONAL RAIL COMMISSION DBE Liaison Officer 5000 S. Airport Way, #102 Stockton, CA 95206 Phone: (209) 468-5600 Fax: (209) 468-5613 WWW.acerail.com  CITY OF FRESNO DBE Program 2101 G Street, Building A Fresno, CA 93706 Phone: (559) 498-4071 Fax: (559) 488-1069 WWW.ci.fresno.ca.us	SAN MATEO COUNTY TRANSIT DISTRICT (SAMTRANS)/ PENINSULA CORRIDOR JOINT POWERS BOARD (JPB) DBE Office 1250 San Carlos Avenue San Carlos, CA 94070 Phone: (650) 508-7939 Fax: (650) 508-7738 WWW.SAMTRANS.COM  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  SAN FRANCISCO PUBLIC TRANSPORTATION DEPT. Accessible Services and Contract Compliance 1145 Market Street, 7th Floor San Francisco, CA 94103 Phone: (415) 934-3987 Fax: (415) 934-3987 Fax: (415) 934-3980 WWW.sfmuni.com  AIRPORT CONCESSIONS ONLY: SAN FRANCISCO INTERNATIONAL AIRPORT Airport Minority/Women Opportunity  P.O. Box 8097 San Francisco, CA 94128 Phone: (650) 821-5021 Fax: (650) 821-5146 WWW.flysfo.com	

Northern
California

Alpine Nevada Butte Placer Colusa Plumas Del Norte Sacramento El Dorado Shasta Glenn Sierra Humboldt Siskiyou Inyo Sutter Lake Tehama Trinity Lassen Mendocino Yolo Modoc Yuba Mono

CALIFORNIA
DEPARTMENT OF
TRANSPORTATION
(CALTRANS)
Civil Rights MS 79
1823 14<sup>th</sup> Street
Sacramento, CA 95814
Phone: (916) 324-1700 or
(866) 810-6346
Fax: (916) 324-1862

www.dot.ca.gov

TRANSPORTATION DISTRICT DBE Programs 350 Industrial Way Woodland, CA 95776 Phone: (530) 661-0816 Fax: (530) 661-1732 www.yctd.org

**YOLO COUNTY** 

Concessions, Government contracts. Grant programs—transportation, Minority businesses, Reporting and recordkeeping requirements.

#### 49 CFR Part 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant programs-transportation, Highways and roads. Mass transportation. Minority businesses, Reporting and recordkeeping requirements.

Issued this 8th day of January, 1999, at Washington, DC.

#### Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 49 CFR subtitle A as follows:

#### PART 23-PARTICIPATION BY DISADVANTAGED BUSINESS **ENTERPRISE IN AIRPORT** CONCESSIONS

- 1. Revise the heading of 49 CFR part 23 as set forth above.
- 2. Revise the authority citation for 49 CFR part 23 to read as follows:

Authority: 42 U.S.C. 200d et seq; 49 U.S.C. 47107 and 47123; Executive Order 12138, 3 CFR, 1979 Comp., p. 393.

#### Subparts A, C, D, and E---[Removed and Reserved]

Remove and reserve subparts A, C, D, and E of part 23.

#### § 23.89 [Amended]

- Amend § 23.89 as follows:
- a. In the definition of "disadvantaged business," remove the words "§ 23.61 of subpart D of this part" and add the words "49 CFR part 26"; and remove the words "§ 23.61" in the last line of the definition and add the words "49 CFR part 26"
- b. In the definition of "small business concern," paragraph (b), remove the words "§ 23.43(d)" and add the words "§ 23.43(d) in effect prior to March 4, 1999 (See 49 CFR Parts 1 to 99 revised as of October 1, 1998.)'
- c. In the definition of "socially and economically disadvantaged individuals," remove the words "§ 23.61 of subpart D of this part" and add "49 CFR part 26".

#### § 23.93 [Amended]

Amend § 23.93(a) introductory text by removing the words "§ 23.7" and adding the words "§ 26.7".

#### § 23.95 [Amended]

6. Amend § 23.95(a)(1) by removing the words "based on the factors listed in  $\S 23.45(g)(5)$ " and adding the words

"consistent with the process for setting overall goals set forth in 49 CFR 26.45".

- 7. In addition, amend § 23.95 as
- a. In paragraph (f)(1), remove the words "§ 23.51" and add the words "49 CFR part 26, subpart E";
- b. In paragraph (f)(2), remove the words "Except as provided in § 23.51(c). each" and add "Each";
  - c. Remove paragraph (f)(5);
- d. In paragraph (g)(1), remove the words "§ 23.53" and add the words "49 CFR part 26, subpart D".

#### § 23.97 [Amended]

8. Amend § 23.97 by removing the words "§ 23.55" and adding the words "49 CFR 26.89".

#### § 23.11 [Removed]

- 9. Remove § 23.111.
- 10. Add a new 49 CFR part 26, to read as follows:

#### PART 26-PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

#### Subpart A—General

Sec.

- What are the objectives of this part?
- 26.3 To whom does this part apply?
- 26.5 What do the terms used in this part mean?
- 26.7 What discriminatory actions are forbidden?
- 26.9 How does the Department issue guidance and interpretations under this part?
- 26.11 What records do recipients keep and report?
- 26.13 What assurances must recipients and contractors make?
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#### Subpart B-Administrative Requirements for DBE Programs for Federally-Assisted Contracting

- 26.21 Who must have a DBE program? 26.23 What is the requirement for a policy statement?
- 26.25 What is the requirement for a liaison officer?
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- 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?
- 26.35 What role do business development and mentor-protégé programs have in the DBE program?
- 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

#### Subpart C-Goals, Good Faith Efforts, and Counting

- 26.41 What is the role of the statutory 10 percent goal in this program?
- 26.43 Can recipients use set-asides or quotas as part of this program?
- 26.45 How do recipients set overall goals? 26.47 Can recipients be penalized for failing
- to meet overall goals?
- 26.49 How are overall goals established for transit vehicle manufacturers?
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- 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?
- 26.55 How is DBE participation counted toward goals?

#### Subpart D-Certification Standards

- 26.61 How are burdens of proof allocated in the certification process?
- 26.63 What rules govern group membership determinations?
- 26.65 What rules govern business size determinations?
- 26.67 What rules govern determinations of social and economic disadvantage?
- 26.69 What rules govern determinations of ownership?
- 26.71 What rules govern determinations concerning control?
- 26.73 What are other rules affecting certification?

#### Subpart E-Certification Procedures

- 26.81 What are the requirements for Unified Certification Programs?
- 26.83 What procedures do recipients follow in making certification decisions?
- 26.85 What rules govern recipients' denials of initial requests for certification?
- 26.87 What procedures does a recipient use to remove a DBE's eligibility?
- 26.89 What is the process for certification appeals to the Department of Transportation?
- 26.91 What actions do recipients take following DOT certification appeal decisions?

#### Subpart F-Compliance and Enforcement

- 26.101 What compliance procedures apply to recipients?
- 26.103 What enforcement actions apply in FHWA and FTA programs?
- 26.105 What enforcement actions apply in FAA Programs?
- 26.107 What enforcement actions apply to firms participating in the DBE program?
- 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?
- Appendix A to part 26—Guidance Concerning Good Faith Efforts Appendix B to part 26—Forms [Reserved] Appendix C to part 26—DBE Business Development Program Guidelines
- Appendix D to part 26-Mentor-Protégé Program Guidelines
- Appendix E to part 26—Individual Determinations of Social and Economic Disadvantage
- Authority: 23 U.S.C. 324; 42 U.S.C. 20001 et seq.); 49 U.S.C 1615, 47107, 47113, 47123;

Sec. 1101(b), Pub. L. 105-178, 112 Stat. 107, 113.

#### Subpart A-General

### § 26.1 What are the objectives of this part? each other when, either directly or

This part seeks to achieve several

objectives:

(a) To ensure nondiscrimination in the award and administration of DOTassisted 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 reach 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 Nativemeans a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq).

Compliance means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

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 enterpriser DBE means a for-profit small business

- (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.

DOT-assisted contractmeans 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.

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 memberneans father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribemeans 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 venturemeans 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 Hawaiianmeans any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organizationmeans 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 Auto 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 "Administration" 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 four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system. references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site (www.ntis.gov/naics).

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 womenowned 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 SBA means the United States Small Business Administration.

Small business concermeans, 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 individualmeans 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-bycase 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, Kirbati, 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 concernmeans 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).

### § 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) This part applies instead of subparts A and C through E of 49 CFR part 23 in effect prior to March 4, 1999. (See 49 CFR Parts 1 to 99, revised as of October 1, 1998.) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 have definitive, binding effect in implementing the provisions of this part and constitute the official position of the Department of Transportation.

(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 binding, and constitute the official position of the Department of Transportation, only if they are issued over the signature of the Secretary of Transportation or if they contain \$\mathbb{A} \circ 3\$ 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.

#### § 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, consisting of all firms bidding on prime contracts and bidding or quoting subcontracts on DOT-assisted projects. For every firm, the following information must be included:
  - Firm name:
  - (2) Firm address;
  - (3) Firm's status as a DBE or non-DBE;
  - (4) The age of the firm; and
- (5) The annual gross receipts of the

#### § Section 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 DOTassisted 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
- (ii) Conditions in your jurisdiction are appropriate for implementing the
- (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

(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.

#### 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 that receive \$250,000 or more in FTA planning, capital, and/or operating assistance in a Federal fiscal year;

(3) FAA recipients that receive a grant of \$250,000 or more for airport planning

or development.

- (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 DOTassisted programs (except that goals are reviewed and approved 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 receiv AP64 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

#### §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 a specific number of days from receipt of each payment you make to the prime contractor. This clause must also require the prompt return of retainage payments from the prime contractor to the subcontractor within a specific number of days after the subcontractor's work is satisfactorily completed.

(1) This clause may provide for appropriate penalties for failure to comply, the terms and conditions of

which you set.

(2) This clause 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.

(b) 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.

#### § 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.

### 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 upsure 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-proégé 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 \$26.33 What steps must a recipient take to 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 mentorprotégé 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?

(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

(b) Your DBE program must also include a monitoring and enforcement mechanism to verify that the work 4-65 committed to DBEs at contract award is

actually performed by the DBEs. This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms) and include a provision ensuring that DBE participation is credited toward overall or contract goals only when payments are actually made to DBE firms.

#### Subpart C-Goals, Good Faith Efforts. and Counting

### 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 DOTassisted 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) You must set an overall goal for DBE participation in your DOT-assisted
- (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 § 26.41 What is the role of the statutory 10 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 SIC 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 listDetermine 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. Subject to the approval of the DOT operating administration, 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

(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) You may also consider available 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, selfemployment, 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 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 FHWAassisted 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 &-66 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 raceneutral 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 groupspecific goals.

# § 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 **A-67** 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 raceneutral 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 raceneutral 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 raceneutral 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?

(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/offer A-688 made good faith efforts if the bidder/

offeror does either of the following

(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 coats 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:

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 an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
- (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 the prime contractor's DBE achievements or your overall goal until the amount being counted toward the goal has been paid to the DBE.

### 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 that they do not have the burden of proving to you that they are socially and economically disadvantaged. However, applicants 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.

# § 26.63 What rules govern group membership determinations?

(a) If you have reason to question whether an individual is a member of a group that is presumed to be socially and economically disadvantaged, you must require the individual to demonstrate, by a preponderance of the evidence, that he or she is a member of the group.

(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.

# § 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. 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 \$16.6 million. The Secretary adjusts this amount for inflation from time to time.

# § 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 whose ownership and control are relied upon for DBE certification to submit a signed, notarized statement of personal net worth, with appropriate supporting documentation.

(ii) In determining net worth, you must exclude an individual's ownership interest in the applicant firm and 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). A contingent liability does not reduce an individual's net worth. The personal net worth of an individual claiming to be an Alaska Native will include assets and income from sources other than an Alaska Native Corporation and exclude any of the following which the individual receives from any Alaska Native Corporation: cash (including cash dividends on stock received from an ANC) to the extent that it does not. in the aggregate, exceed \$2,000 per individual per annum; stock (including stock issued or distributed by an ANC as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock); and an interest in a settlement trust.

(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) 8(a) and SDB Firms. If a firm applying for certification has a current, valid certification from or recognized by the SBA under the 8(a) or small and disadvantaged business (SDB) program (except an SDB certification based on the firm's self-certification as an SDB), you may accept the firm's 8(a) or SDB certification in lieu of conducting your own certification proceeding, just as you may accept the certification of another DOT recipient for this purpose. You are not required to do so, however.

(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 rebutted) may apply for DBE

certification. You must make a case-bycase 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.

# § 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, policymaking, 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 A-72 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 cosignature 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
- (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 consistencyof 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 nondisadvantaged 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 nondisadvantaged 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 longterm 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 nondisadvantaged 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 nondisadvantaged 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 licenser 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 nondisadvantaged 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 employeremployee 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 aA-74 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 whollyowned 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, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of § 26.65. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in § 26.71.

### 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 A-75 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 onsite 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.

Uniform form. [Reserved]

(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

(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

(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 Ah 66 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.

### § 26.85 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 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.

(c) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under § 26.89.

### § 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 currentlycertified 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

(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
- (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
- (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 A-77 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) Status of firm during proceeding.
(1) A firm remains an eligible DBE during the pendancy 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.

(i) 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.

(j) 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.

# § 26.89 What is the process for certification appeals to the Department of Transportation?

(a)(1) If you are a firm which is denied certification or whose eligibility is removed by a recipient, 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, 400 7th Street, SW, Room 2401, 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, of 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 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.

# § 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.

# 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 A-79 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) If you are a recipient, you shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with Federal, state, and local law.

(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 nonresponsibility 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.

# 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. Tais80 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 formaefforts 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 fidegood 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. nonunion 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

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-Forms [Reserved]

### Appendix C to Part 26-DBE Business **Development Program Guidelines**

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 the recipient.

(A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage

and a transitional stage.

(B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part

(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 programbenefits 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 nontraditional 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;

(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 nontraditional 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-Proégé 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 protege 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 advances 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 nonbusiness 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) When married, an individual claiming economic disadvantage also must submit separate financial information for his or her spouse, unless the individual and the spouse are legally separated.
- 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 (C) Factors to be considered. In considering 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).

> [FR Doc. 99-1083 Filed 1-29-99; 11:00 am] BILLING CODE 4910-62-P

procedure for processing "9–1–1" calls. Such procedure must recognize when a "9–1–1" call is made and, at such time, must override any programming in the mobile unit that determines the handling of a non-911 call and permit the call to be handled by other analog carriers. This special procedure must incorporate any one or more of the 9–1–1 call system selection processes endorsed or approved by the Commission.

[FR Doc. 99–16484 Filed 6–25–99; 8:45 am] BILLING CODE 5712–01–P

### **DEPARTMENT OF TRANSPORTATION**

Office of the Secretary

49 CFR Parts 23 and 26 [Docket OST-97-2550]

RIN 2105-AB92

Participation by Disadvantaged Business Enterprises in Department of Transportation Programs

**AGENCY:** Office of the Secretary, DOT. **ACTION:** Final rule; correction.

SUMMARY: In its final disadvantaged business enterprise (DBE) rule, the Department intended to ensure the confidentiality of personal financial information submitted to recipients by owners of DBE firms. The Department inadvertently omitted the regulatory text language on this point. This correction document remedies this omission. In addition, this document corrects minor omissions concerning the threshold for Federal Transit Administration recipients to establish DBE programs and a requirement for transit vehicle manufacturers to have DBE programs, removes a potentially confusing word from the rule's provisions concerning DOT review of recipients' overall goals, clarifies language concerning the certification and personal net worth of airport concessionaires and others, and clarifies that a lease is viewed as a contract for purposes of the rule.

**DATES:** This rule is effective June 28, 1999.

FOR FURTHER INFORMATION CONTACT:
Robert C. Ashby, Deputy Assistant
General Counsel for Regulation and
Enforcement, Department of
Transportation, 400 7th Street, SW.,
Room 10424, Washington, DC 20590,
phone numbers (202) 366–9306 (voice),
(202) 366–9313 (fax), (202) 755–7687
(TDD), bob.ashby@ost.dot.gov (email).

### SUPPLEMENTARY INFORMATION:

### Privacy

In discussing the requirement of the DBE final rule that owners of DBE firms submit a statement of personal net worth, with supporting documentation, the Department addressed commenters' concerns about the confidentiality of the information. The preamble to the rule said the following:

One of the primary concerns of DBE firms commenting about submitting personal financial information is ensuring that the information remains confidential. In response to this concern, the rule explicitly requires that this material be kept confidential. It may be provided to a third party only with the written consent of the individual to whom the information pertains. This provision is specifically intended to preempt any contrary application of state or local law (e.g., a state freedom of information act that might be interpreted to require a state' transportation agency to provide to a requesting party the personal income tax return of a DBE applicant who had provided the return as supporting documentation for his PNW statement). There is one exception to this confidentiality requirement. If there is a certification appeal in which the economic disadvantage of an individual is at issue (e.g., the recipient has determined that he or she is not economically disadvantaged and the individual seeks DOT review of the decision), the personal financial information would have to be provided to DOT as part of the administrative record. The Department would treat the information as confidential. (64 FR 5117; February 2, 1999).

Unfortunately, through editorial error on the Department's part, the regulatory text provision referred to was omitted from the final rule. We regret any confusion that this omission may have caused, and we are correcting the error by inserting the language in a new paragraph (a)(2)(iii) of § 26.67 of the rule.

### FTA Requirements for DBE Programs

In § 26.21(a)(2) of the rule, the Department states that FTA recipients who receive more than \$250,000 in various forms of FTA assistance must have a DBE program. The phrase "exclusive of transit vehicle purchases" was inadvertently omitted from this paragraph. This omission has raised questions from some recipients, and we are reinserting the omitted language to avoid confusion. In addition, this provision did not make explicit that transit vehicle manufacturers must have DBE programs, so we are adding language to make this clear.

### **Review of Overall Goals**

While operating administrations review recipients' overall goal submissions, recipients are not required to obtain prior concurrence by operating administrations with their overall goals (see § 26.45(f)(4)).

However, as the result of an editorial oversight, § 26.21(b)(1) of the rule makes a reference to overall goals being "approved" by operating administrations. Because prior concurrence is not required, this reference is incorrect and could be misleading. Therefore, we are removing it.

### Concessionaires

In the February 2, 1999, final DBE rule, the Department removed all of former part 23 except the portion concerning airport concessionaires. The airport concession provisions were modified for consistency with the new 49 CFR part 26. In one respect, however, the amendment of the airport concessions provision failed to delete language concerning certification procedures that referred to the (now deleted) certification provisions of former part 23. While we have provided guidance to airports that they should follow part 26 procedures, we believe it would be useful to delete the language referring to former part 23's procedures. Therefore, this rule eliminates two paragraphs in § 23.95. Recipients should follow part 26 certification procedures for concessionaires as well as for other contractors.

Airports have expressed concern that the rule is unclear concerning the application to concessionaires of the \$750,000 personal net worth (PNW) cap and PNW statement requirements of § 26.67. The Department is currently working to complete a final rule concerning airport concessions. The PNW cap applicable to concessionaires is one of the matters being considered in this rulemaking. The PNW cap amount that the Department applies to concessionaires may or may not be \$750,000. Pending completion of the final rule on airport concessions, the Department believes it best to resolve the current uncertainty by making the \$750,000 cap amount and PNW statement requirement of § 26.67 inapplicable to airport concessionaires.

We are amending § 26.67(a)(2)(i) to specify that disadvantaged owners of airport concessionaires are not required to submit PNW statements. Consequently, the rebuttal of the presumption of economic disadvantage based on a PNW statement an individual is required to submit (see § 26.67(b)(1)) also does not apply to airport concessionaires.

### Definition of "Contract"

The 49 CFR part 23 definition of "contract" specified that a lease was

viewed as a contract. The part 26 definition inadvertently omitted this sentence. To avoid any potential confusion on this point, this correction document adds a sentence on leases.

### Clarification Concerning Personal Net Worth Documentation

The Department has received a number of questions and expressions of concern about the documentation it is appropriate for recipients to require in ascertaining the personal net worth of owners of DBE firms. The Department believes that it is important to clarify the rule to state that this documentation, and the PNW statement itself, should not be unduly lengthy, burdensome or

The Department uses the Small Business Administration's implementation of its PNW requirements as a model for recipients' practices. SBA requires a two-page form. supported by two years' of personal and business tax returns. With respect to the information routinely collected from applicants or owners of currently certified DBEs for purposes of ascertaining PNW, the Department believes that recipients should not exceed the information sought by SBA in its programs. Consequently, while recipients are not required to use the SBA form verbatim, they should use a form of similar length and content. Recipients may appropriately collect and retain copies of two years' of the individuals personal and business tax returns.

On the other hand, the Department regards as unduly lengthy, burdensome, or intrusive such practices as using a form significantly longer or more complex than the SBA form (e.g., a multipage PNW form), requiring inventories of personal property or appraisals of real property. Such practices are contrary to part 26.

### Regulatory Analyses and Notices

This set of amendments correcting part 26 is not a significant rule under Executive Order 12866 or the Department's Regulatory Policies and Procedures. The Department certifies that the amendments will not have significant economic impacts on a substantial number of small entities. This is because the amendments are technical corrections that will not impose costs on entities, regardless of their size. They do not have Federalism impacts sufficient to warrant the preparation of a Federalism impact statement. They do not impose information collection requirements.

These amendments relate to regulatory provisions that have already been the subject of notice and comment (as part of the Department's May 1997 supplemental notice of proposed rulemaking concerning the DBE program).

Because the amendments merely correct accidental omissions from the regulatory text or remove a potentially confusing reference, we do not believe that additional notice and comment would be productive. Therefore, the Department has determined that further notice and comment would be impracticable, unnecessary, and contrary to the public interest. The Department has good cause to make the corrections effective immediately in order to avoid confusion and any adverse effects on DBEs or recipients from the absence of the omitted language.

### List of Subjects

### 49 CFR Part 23

Administrative practice and procedure, Airports, Civil rights, Concessions, Government contracts, Grant programs—transportation. Minority businesses, Reporting and recordkeeping requirements.

### 49 CFR Part 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant programs-transportation, Highways and roads, Mass transportation, Minority businesses, Reporting and recordkeeping requirements.

Issued this 11th day of June, 1999, at Washington, D.C.

### Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 49 CFR parts 23 and 26 as follows:

### PART 23—[AMENDED]

 The authority citation for part 23 continues to read as follows:

Authority: 42 U.S.C. 200d et seq.; 49 U.S.C. 47107 and 47123; Executive Order 12138, 3 CFR, 1979 Comp., p. 393.

### § 23.95 [Amended]

2. In § 23.95, remove and reserve paragraphs (f)(2) and (f)(3).

### PART 26—[AMENDED]

3. The authority citation for part 26 is revised to read as follows:

Authority: 23 U.S.C. 324; 42 U.S.C. 2000d, et seg.; 49 U.S.C 1615, 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105-178, 112 Stat. 107.

4. In the definition of the term "Contract" in § 26.5, add a sentence at the end of the definition, to read as follows:

### § 26.5 What do the terms used in this part mean?

Contract \* \* \* For purposes of this part, a lease is considered to be a contract.

5. In § 26.21, revise paragraph (a)(2) to read as follows:

### § 26.21 Who must have a DBE program?

(2) FTA recipients that receive \$250,000 in FTA planning, capital, and/ or operating assistance in a Federal fiscal year, exclusive of transit vehicle purchases, and transit vehicle manufacturers who must submit an overall goal under § 26.49;

### § 26.21 [Amended]

5. In § 26.21(b)(1), in the parenthetical phrase, remove the words "and approved" following the word "reviewed".

### § 26.45 [Amended]

6. In § 26.45(c)(5), remove the words "Subject to the approval of the DOT operating administration, you" and add You" in its place.
7. Amend § 26.67 as follows:

a. Revise paragraph (a)(2)(i); and b. Redesignate paragraph (a)(2)(ii) as paragraph (a)(2)(iii), and add a new paragraph (a)(2)(ii), to read as follows:

### § 26.67 What rules determine social and economic disadvantage?

(a) \* \* \* (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 submit a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

(ii) Notwithstanding any provision of 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.

[FR Doc. 99–15866 Filed 6–24–99; 8:45 aml BILLING CODE 4910-52-P



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

# **Agenda**

Item No. <u>12</u>

Joint Meeting of the Board of Directors for Metropolitan Transit System, San Diego Transit Corporation, and San Diego Trolley, Inc.

OPS 970.2

August 11, 2005

Subject:

SDTI: SECURITY PATROL SERVICES - CONTRACT AMENDMENT

### RECOMMENDATION:

That the Board of Directors:

- 1. waive the provisions of MTS Policy No. 13.5.2(b), which requires formally bidding all service contracts over \$50,000; and
- 2. authorize the President-General Manager to execute a month-to-month contract amendment with Transit Systems Security beginning on July 1, 2005 (not to exceed five months) with no increase in hourly billable rates or other costs.

### **Budget Impact**

FY 06 funds not to exceed \$2.7 million.

### DISCUSSION:

The existing contract for security patrol services became effective on July 1, 2000. The contract as approved by the San Diego Trolley, Inc. (SDTI) Board of Directors was for a five-year term and expired on June 30, 2005.

While staff initially intended to prepare a Request for Proposals (RFP) for security patrol services prior to expiration of the contract, due to the substantial nature of this effort (proposal evaluation team selection) and expanded operational needs, including background checks and the challenges associated with the Mission Valley East opening,



the process was delayed. In reviewing the existing contract, there is no provision to extend the contract beyond the indicated term.

Staff has accelerated preparation of the RFP and is committed to proceed with the process required to award a new contract. In the interim, Transit Systems Security is willing to continue the existing contract on a month-to-month basis and has further agreed to retain all existing billing rates and associated costs for the period necessary to award a new contract. Current billing rates were competitively bid during the original procurement process.

Therefore, staff recommends waiving the provisions of MTS Policy No. 13.5.2(b) and authorizing the President-General Manager to execute a month-to-month contract (not to exceed five months) with Transit Systems Security, in an amount not to exceed \$2.7 million.

Paul & Jablenski Chief Executive Officer

Key Staff Contact: Peter Tereschuck, 619.595.4902, peter.tereschuck@sdmts.com

JGarde AUG11-05.12.SECURITYCONTRACTEXT.PTERES 7/27/05

Attachment: A. Contract with Transit Systems Security

# San Diego Trolley, Inc.

An Operator in the Metropolitan Transit System



1255 Imperial Avenue Suite 900 San Diego, CA 92101-7492 (619) 595-4949 Telefax: (619) 238-4182

Att. A, Al 12, 8/11/05, OPS 970.2



August 11, 2005

OPS 970.2

Mr. Lawrence Richman President Transit Systems Security 1260 Morena Boulevard, Suite 200 San Diego, CA 92110

Dear Mr. Richman:

Subject:

AMENDMENT NO. 2 TO SDTI CONTRACT NO. 00-02; CONTRACT TO PROVIDE

SECURITY PATROL SERVICES

This letter will serve as Amendment No. 2 to the Standard Services Agreement, Contract No. 00-02, for the subject services as described below.

SCOPE OF SERVICES

Continue to provide security patrol services as described in the original contract.

### **TERM**

In accordance with authorization and direction as provided by the Board of Directors at the August 11, 2005, meeting, the term of the aforementioned contract is extended on a month-to-month basis not to exceed five additional months or November 30, 2005.

### **BILLING RATES**

Under the terms of Amendment No. 2, Transit Systems Security agrees to retain all billing hourly rates, and other contract-related charges/costs at the current level, as stipulated in the aforementioned contract.

### **PAYMENT**

T٢	ne tr	ntal	cost	for:	thie	amend	lment	· chal	ll no	evceed	<b>\$2.7</b>	7 million	ΔII	nrevious	conditions	remain in e	ffect
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Sincerely,	Agreed:
Peter Tereschuck President-General Manager	Lawrence Richman, President Transit Systems Security
JGarde AUG11-05.12.ATTA.TRANSITSYSTEMS	Date:



SECURITY.PTERES

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

# **Agenda**

Item No. 13

LEG 491 (PC 50633)

Joint Meeting of the Board of Directors for Metropolitan Transit System, San Diego Transit Corporation, and San Diego Trolley, Inc.

August 11, 2005

Subject:

MTS: INCREASED AUTHORIZATION FOR LEGAL SERVICES

### **RECOMMENDATION:**

That the Board of Directors authorize the Chief Executive Officer (CEO) to enter into a contract amendment with Roger Bingham of the law firm Butz, Dunn, DeSantis, Bingham, APC (MTS Doc. No. G0723.12-02, Attachment A), and John Moorehead of the law firm Goldman, Magdalin & Krikes, LLP (MTS Doc. No. G0735.4-02, Attachment B) for general liability services, in substantially the same form as attached, and ratify prior amendments entered into under the CEO's and/or previous General Manager's authority(ies).

### **Budget Impact**

Unknown at this time. Not to exceed \$55,000 for Roger Bingham, and not to exceed \$35,000 for John Moorehead.

### **DISCUSSION:**

On December 13, 2001, the Board approved a list of qualified attorneys for general liability and workers' compensation for use by MTS, San Diego Trolley, Inc. (SDTI), and San Diego Transit Corporation (SDTC) (hereinafter referred to as "the Agencies") staff on an as-needed basis. MTS thereafter contracted with 26 local attorneys at an average of \$25,000 per initial contract.



Pursuant to Board Policy No. 13 (Procurement of Services), the CEO may enter into contracts with service providers for up to \$100,000. The Board must approve all agreements in excess of \$100,000. Some attorneys have multiple cases that are or have proceeded to trial, and the total cost of their legal services will exceed \$100,000. Roger Bingham is currently under contract with the Agencies for \$930,000. Mr. Bingham has successfully defended the Agencies in a number of cases. Invoices for current services in process are anticipated to exceed the current contract authority.

John Moorehead is currently under contract with the Agencies for \$100,000. Mr. Moorehead has successfully defended SDTC in a number of workers' compensation cases. Anticipated future invoices are projected to reach contract maximum within second quarter of FY 2006; therefore, we request additional authority of \$35,000, for a total authorization of \$135,000.

The CEO has approved prior amendments for both of these contracts totaling \$100,000. Board ratification of the prior contracts/amendments is also requested.

Paul C. Jablenski Chief Executive Officer

Key Staff Contact: James Dow, 619.557.4562, jim.dow@sdtms.com

JGarde AUG11-05.13.LEGALSVCS.JDOW 7/27/05

Attachments: A. MTS Doc. No. G0723.12-02

B. MTS Doc. No. G0735.4-02



Att. A, Al 13, 8/11/05, LEG 491

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

# DRAFT

August 11, 2005

MTS Doc. No. G0723.12-02 LEG 491 (PC 50633)

Mr. Roger Bingham Butz, Dunn, DeSantis, Bingham, APC 101 West Broadway, Suite 1700 San Diego, CA 92101-8289

Dear Mr. Bingham:

Subject: AMENDMENT NO. 12 TO MTS DOC. NO. G0723.0-02: LEGAL SERVICES – GENERAL LIABILITY

This letter will serve as Amendment No. 12 to MTS Doc. No. G0723.0-02. This contract amendment authorizes additional costs not to exceed \$55,000 for professional services. The total value of this contract, including this amendment, is \$985,000. Additional authorization is contingent upon MTS approval.

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

Sincerely,	Accepted:
Paul C. Jablonski	Roger Bingham
Chief Executive Officer	Butz, Dunn, DeSantis, Bingham, APC
JGarde	Date:

**A-1** 





1255 Imperial Avenue, Suite 1000 San Diego, CA 92101-7490 (619) 231-1466 • FAX (619) 234-3407 Att. B, AI 13, 8/11/05, LEG 491

# DRAFT

August 11, 2005

MTS Doc. No. G0735.4-02 LEG 491 (PC 50633)

Mr. John Moorehead Goldman, Magdalin & Krikes, LLP 1230 Columbia Street, Suite 950 San Diego, CA 92101-8539

Dear Mr. Moorehead:

Subject: AMENDMENT NO. 4 TO MTS DOCUMENT NO. G0735.0-02: WORKERS'

COMPENSATION - LEGAL SERVICES

This letter will serve as Amendment No. 4 to MTS Document No. G0735.0-02. This contract amendment authorizes additional costs not to exceed \$35,000 for the above-referenced legal services. The total value of this contract, including this amendment, is \$135,000. Additional authorization is contingent upon MTS approval.

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

Sincerely,	Accepted:			
Paul C. Jablonski Chief Executive Officer	Mr. John Moorehead Goldman, Magdalin & Krikes, LLP			
JGarde	Date:			



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

# **Agenda**

Item No. 14

Joint Meeting of the Board of Directors for Metropolitan Transit System, San Diego Transit Corporation, and San Diego Trolley, Inc. CIP 10426.7

August 11, 2005

Subject:

MTS: BUDGET TRANSFERS FOR MISSION VALLEY EAST

### RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to transfer \$250,000 from the Grantville Segment Construction line item (WBS 10426-109918GR) into the Construction Contingency for the Grantville Segment, as shown on Attachment A, Approved Construction Contingency Changes, to fund pending and proposed change orders for the closeout of the Grantville Segment construction contract.

### **Budget Impact**

The \$250,000 would be transferred from the available balance in the Grantville Segment Construction line item (WBS10426-109918GR) leaving a balance of \$517,827.

### DISCUSSION:

The Grantville Line Segment construction contract (LRT-426.3) includes construction of structure and trackway for the Mission Valley East Light Rail Transit (LRT) Project from the Mission San Diego LRT station, easterly to the west portal of the San Diego State University tunnel, including the Grantville Station. This contract was awarded to Modern Continental Construction Company (MCC), and construction began on December 12, 2001; MCC is now 99 percent complete. We are in the process of contract close out of change order work. The funds requested in this transfer are for final change orders for cleanup items and final balancing of bid items and extra work tickets.

Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Dennis Wahl, 619.235.2635

Attachment: A. Approved Construction Contingency Changes



# Att. A, Al 14, 8/11/05, CIP 426.7

# Mission Valley East LRT Project Approved Construction Contingency Changes

		-			Segn	nent/Contract N	٥.			
		109918GR		1010		1010		109918LM		109918TR
		Grantville	1	SDSU Utility		SDSU		La Mesa	Tra	ck & Systems
		LRT 426.3		LRT 426.2		LRT 426.1		LRT 426.4		_RT 426.5
5% Original Construction Contingency	_  \$	2,871,502	\$	451,731	\$	4,135,020	\$	2,981,094	\$	2,192,878
4/19/01 AI #6			_	450.000						
8/09/01 AI #24	İ		\$	150,000						
8/22/02 AI #9			\$	100,000	φ.	500 000				
9/12/02 AI #9					\$	500,000				
					\$	1,500,000				
11/14/02 AI #18		500.000			\$	450,000				
12/12/2002 AI #33	\$	500,000			\$	2,000,000				
1/16/2003 AI #37		750 000			\$	4,200,000				
2/27/2003 AI #18	\$	750,000							,	
4/24/2003 AI #5	\$	500,000					١.			
5/8/2003 AI #10							\$	500,000		
DW to provide backup			\$	247,546	\$	(247,546)				
8/7/2003 AI #9	\$	600,000			\$	800,000				
10/30/2003 AI #9					\$	1,000,000			i	
12/11/2003 AI # 5	\$	500,000			\$	1,000,000				
3/25/2004 AI#18	\$	100,000					\$	500,000		
4/29/04 AI#12				250,000						
07/08/2004 AI#6					\$	1,300,000				
09/23/2004 AI#					\$	1,300,000				
09/23/2004 AI#			\$	(130,000)	\$	130,000				
04/28/05 AI#31	\$	100,000	\$	500,000					\$	1,200,000
08/11/05 AI#	\$	250,000								
Approved Construction Contingency	\$	6,171,502	\$	1,569,277	\$	18,067,474	\$	3,981,094	\$	3,392,878



# **Agenda**

Item No. <u>15</u>

Joint Meeting of the Board of Directors for Metropolitan Transit System, San Diego Transit Corporation, and San Diego Trolley, Inc.

August 11, 2005

**OPS 960.6** 

Subject:

SDTC: RIDE MONITORING SERVICE - SOLE SOURCE CONTRACT

### RECOMMENDATION:

### That the Board of Directors:

- 1. waive the competitive bid requirements of MTS Policy No. 13, Section 13.5.2(b), which requires contracts exceeding \$50,000 to be formally bid, and authorize the Chief Operating Officer-Bus to enter into a retroactive month-to-month contract (Attachment A), not to exceed one year, with the incumbent contractor, First Transit, Inc., for an amount not to exceed \$118,018.20; and
- 2. waive the competitive bid requirements of MTS Policy No. 13, Section 13.5.2(i) to allow for a negotiated procurement that would evaluate the cost as well as experience of each proposer, instead of evaluating cost from only the highest-ranked technical proposer, for the bidding of a new multiyear contract.

### **Budget Impact**

\$58,018.20 from the FY 05 Bus Transportation budget for outstanding invoices for March, April, May, and June. \$60,000 from the FY 06 Bus Transportation Department operating budget to cover costs on a month-to-month basis until a new contract is bid and executed.



### **DISCUSSION:**

SDTC had a contract with First Transit, Inc. for operator performance evaluation services (ride monitoring). This contract provides data on operator performance by trained transit professionals who audit service on a regular basis and provide extensive reports on all aspects of the ride experience. Prior to the change in transportation management, the contract was not utilized for directed ride checks, but random observations. As a result of this change in direction, and a comprehensive reevaluation of this service, it was decided to use it as an integral part of the intensive effort management has taken to improve customer service and safety at SDTC.

This contract was for a three-year period that expired in September 2004 and was extended for six more months to March 2005 in order to reassess its value. A determination was made that this service was key to the changes that needed to be made in driver attitude and behavior. Since it has been decided to continue this service, staff is requesting a waiver of Policy No. 13 to allow for a one-year contract with the incumbent contractor, First Transit, Inc. This extension will allow SDTC to continue this service without negatively impacting the recent improvement in customer service, allow sufficient time to enhance the scope of work, tighten specifications, and bid and award a new multiyear contract. This one-year contract shall not exceed \$118,018.20.

With the implementation of the ride-monitoring program, management has been provided with immediate information relating to all aspects of driver performance. This has made the program an invaluable tool to modify the behavior of poor-performing drivers. The program's purpose is to improve service delivery to customers and increase ridership. Ride-monitoring reports, combined with an accelerated and progressive management response to poor performance, are having a significant impact on improving the quality of service provided to riders. Operator-related complaints have been sharply reduced and ridership has increased since this program was instituted.

The ride-monitoring program has had a significant impact on improving customer satisfaction as measured by complaints per 100,000 riders. Since inception of the program, complaints relating to operator performance have dropped significantly from 18 per 100,000 riders to 11.5 per 100,000 riders. This positive trend has been steady and progressive. SDTC has also experienced an increase in ridership and while this increase cannot be attributed to any single cause, improved service and customer satisfaction do play an important part in the retention of existing riders and the acquisition of new riders. The program has also provided management with important insight regarding our passenger's perspective on the quality of our service.

An interruption in this program could jeopardize the positive momentum and success of this effort. Therefore, staff is requesting a waiver of the formal bid requirements of Policy No. 13. There are no federal dollars involved in this procurement.

Staff is also requesting a waiver to NTS Policy No. 13 that governs competitive negotiated procurements. This waiver would allow the evaluation of cost from all proposers and not just from the highest-ranked technical proposer for the

resolicitation. Upon completion of the procurement process for a new multiyear contract, staff will bring an award recommendation back to the Board for approval.

Paul C. Jablonski

Chief Executive Officer

Key Staff Contact: Claire Spielberg, 619.238.0100, Ext. 400, claire.spielberg@sdmts.com

JGarde/AUG11-05.15.RIDEMONITORSVC.KTSUBAKIHARA 7/28/05

Attachment: A. Contract with First Transit, Inc.

An Operator in the Metropolitan Transit System

(Continued on \_\_ sheets, each bearing contract number)



100 16<sup>th</sup> Street P.O. Box 122511 San Diego, CA 92112-2511 Att. A, Al 15, 8/11/05, OPS 960.6

(619) 238-0100

## DRAFT

### DRAFI

STANDARD SERVICE AGREEMENT CONTRACT NUMBER RIDE MONITORING SERVICE 20153910 FILE NUMBER (S) THIS AGREEMENT is entered into this day of 2005, in the state of California by and between San Diego Transit Corporation (SDTC), and the following contractor, hereinafter referred to as "Contractor": Name: First Transit, Inc. Address: 351 Pleasant Street, No. 8 Form of Business: Corporation North Hampton, MA 01060 (Corporation, partnership, sole proprietor, etc.) Telephone: 513-419-3278 Authorized person to sign contracts: Ryan Minges Project Manager Name Title The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to SDTC services and materials, as follows: To provide operator performance evaluation services to SDTC's two divisions located at 100 16th Street and 4630 Ruffner Street, according to the scope of work. This contract shall be effective for up to a one-year period. In addition, attached is SDTC's Standard Operating Procedures for Contractor's Safety and Health Requirements (SAF016-03). To comply, please sign the attached form. Total expenditures of this contract shall not exceed \$118,018.20. SAN DIEGO TRANSIT CORPORATION (SDTC) CONTRACTOR AUTHORIZATION By: Claire Spielberg, Chief Operating Officer (Bus) Approved as to form: Signature Office of the General Counsel AMOUNT ENCUMBERED **BUDGET ITEM** FISCAL YEAR \$118,018.20 20153910 By: Cliff Telfer, Interim Chief Financial Officer Date AUG11-05.15.ATTA.RIDEMONITORSVC.KTSUBAKIHARA

### SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

REQUEST TO SPEAK FORM

AGENDA ITEM NO.

/	5	 •
/ -		

<b>ORDER</b>	<b>REQUEST</b>	<b>RECEIVED</b>

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l 1

\*\*PLEASE SUBMIT THIS COMPLETED FORM (AND YOUR WRITTEN STATEMENT) TO THE CLERK OF THE BOARD PRIOR TO DISCUSSION OF YOUR ITEM\*\*

### 1. INSTRUCTIONS

This Request to Speak form <u>must be filled out and submitted in advance of the discussion of your item</u> to the Clerk of the Board (please attach your written statement to this form). Communications on hearings and agenda items are generally limited to three (3) minutes per person unless the Board authorizes additional time. However, the Chairperson may limit comment to one or two minutes each if there are multiple requests to speak on a particular item. General public comments on items not on the agenda are limited to three (3) minutes. Please be brief and to the point. No yielding of time is allowed. <u>Subjects of previous Hearings or agenda items may not again be addressed under General Public Comments.</u>

Date 8-11-05
Name (PLEASE PRINT) NATHAN E - SOHNSON
Address 10393 SARIDIEGO MISSION RO
ANDIEGO CA 9210R
Telephone 563 - 1309
Organization Represented (if any) Hand LOAN TEA TRANSIT LINION LOCAL 1309
Subject of your remarks: RIDE MONITORS
Agenda Item Number on which you request to speak
/our comments are presenting a position of: SUPPORT OPPOSITION
2. TESTIMONY AT NOTICED PUBLIC HEARINGS

At Public Hearings of the Board, persons wishing to speak shall be permitted to address the Board on any issue relevant to the subject of the Hearing.

### 3. DISCUSSION OF AGENDA ITEMS

The Chairman may permit any member of the public to address the Board on any issue relevant to a particular agenda item.

### 4. GENERAL PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA

Public comment on matters not on the agenda will be limited to five (5) speakers with three (3) minutes each, under the Public Comment Agenda Item. Additional speakers will be heard at the end of the Board's Agenda.

\*\*REMEMBER: Subjects of previous Hearings or agenda items may not again be addressed under General Public Comments.\*\*

DGunn/SStroh / FORMS REVREQFO.DGUNN — 10/15/03



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

### Memorandum

DATE:

August 10, 2005

TO:

MTS Board of Directors

FROM:

Cliff Telfer

SUBJECT:

LOCK IN THE INTEREST RATE OF THE VARIABLE RATE SERIES OF MTDB'S

PENSION OBLIGATION BONDS FOR AN INTERIM PERIOD OF TIME

At the direction of the Board of Directors, staff began the process of entering into an interest rate swap with UBS that would have locked in a seven year rate on the \$38.8 million variable rated pension obligation bonds (POB). When the Board gave staff direction, the rate for the seven years was 4.47 percent. Since then, the rate has move up considerably, 4.78 percent as of August 10.

Staff working with our financial consultant, PFM, and UBS have explored various options that could potentially lower MTS's interest payments on these bonds. The attached report contains information on these options.

The first option is to proceed as the Board directed and do the swap at the current market rate, 4.78 percent, as of August 10. This would still achieve our original goal and fix out the variable rate bonds at an interest rate that is still lower than the fixed 2004 Series A bonds.

UBS has offered a seven-year rate with a five-year UBS cancellation option with a rate of 4.53 percent. This saves MTS .25 percent per year for the first five years, or .19 percent over the conventional five years. This represents a savings of approximately \$485,000 compared to the straight seven-year term and \$368,000 over the five-year conventional term. If the option were not exercised by UBS, MTS would receive the benefit of the interest rate protection for the full seven years. On the down side, the option would be exercised when market swap rates exceed the existing swap rate (higher rate environment).

The third option would be to go with a shorter term, three years. The current market rate for a conventional three term is 4.63 percent. While this is .10 percent higher than the seven-year term with cancellation option, it is .15 percent lower than the conventional seven-year term.

Based upon the Board's original desire to lock the rates up for seven years, staff and our financial consultant would recommend taking the seven-year rate with the five-year cancellation option.





# Municipal Securities Group

Market Update

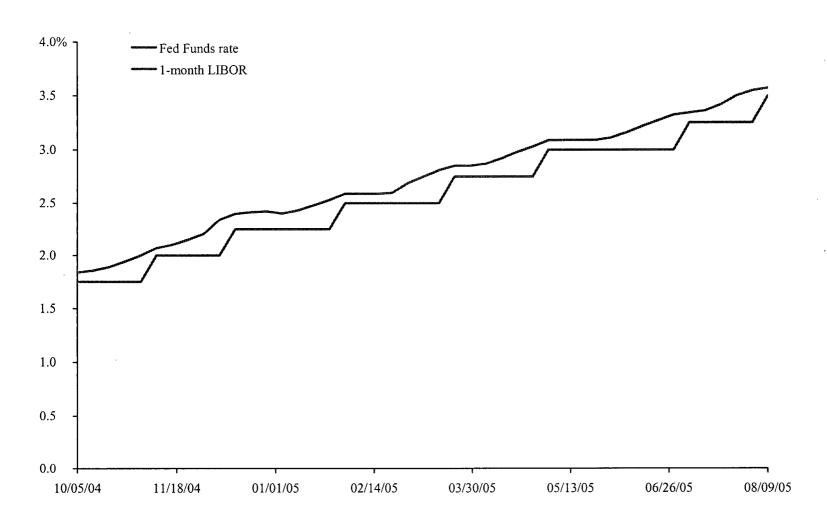


August 11, 2005





# **Increase in Fed Fund Rates Directly Impacts Short-term Rates and Additional Increases Expected**





# **Fix-out Rates Continue to Increase**

Term (Years)	May	June	July	August 10
. 1	3.88%	3.88%	4.10%	4.36%
2	4.14	4.10	4.22	4.55
3	4.28	4.18	4.29	4.63
4	4.37	4.24	4.35	4.68
5	4.47	4.29	4.39	4.72
6	_	4.33	4.43	4.75
7	_	<del>-</del>	4.47	4.78
1-month LIBOR	3.09	3.22	3.34	3.57

Fix-out rates still lower than the interest rate of the 2004 Series A bonds

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

# **Agenda**

Item No. <u>45</u>

Joint Meeting of the Board of Directors for Metropolitan Transit System, San Diego Transit Corporation, and San Diego Trolley, Inc. OPS 960.2

August 11, 2005

Subject:

SDTC: MTS BUS FY 05 YEAR-END OPERATIONS REPORT

#### RECOMMENDATION:

That the Board of Directors receive this report for information.

**Budget Impact** 

None.

#### DISCUSSION:

This report provides information about the status of MTS Bus (San Diego Transit Corporation) operations for the FY 05 year. An overview of all departments is presented, followed by a brief discussion of their accomplishments during the just-concluded fiscal year.

## Ridership

We are pleased to see ridership on MTS Bus (Attachment A) increasing and view this trend as an affirmation of the efforts of all departments to enhance the quality and the reliability of the new MTS Bus. When finally quantified, we anticipate ridership to surpass 24 million passengers in FY 05. Issues related to the installation of the Cubic



fare boxes severely impacted our ability to obtain accurate passenger counts for a three-month period. We believe the data presented for December, January, and February vastly underreports our true ridership.

#### Service Quality

MTS Bus is engaged in a campaign to change behaviors, and we are focused on the quality of our "product." We track all complaints by category and use the driver-related complaint chart for quality control and retraining purposes. We are pleased to report that complaints per 100,000 passengers have decreased throughout the service year to approximately 14 complaints per 100,000 passengers (Attachment B). We will continue to work with our employees to further reduce this critical key indicator of performance in FY 06. We will expand the use of Professional Transit Ride Checkers to gain a greater sense of our passengers' perspectives.

We anticipate very positive customer feedback as we gradually introduce the 41 New Flyer vehicles with their red and white livery into passenger service. These vehicles serve as an immediate reminder to our passengers and bus operators that our service is changing and getting better. The addition of these vehicles will reduce our average fleet age to just less than eight years and should enhance our ability to deliver a more reliable service with fewer service interruptions.

MTS Bus recently contracted with The Arc of San Diego to provide employment opportunities for San Diego residents with developmental disabilities. We view this new partnership as a true "win-win" situation since The Arc is desirous to place workers, and we can readily assign these workers to bus detailing. This is still a new program, but we are confident that the dialogue and feedback between MTS Bus and The Arc will translate to cleaner buses and meaningful jobs for the disabled community.

#### Safety

The commitment to safety at MTS Bus is evident from the dramatic reductions achieved. Greater management involvement has resulted in a 50% decrease in Preventable Accidents in the past five years. During FY 05, total accidents and preventable accidents declined by 11% (Attachment C). Ongoing audits of our physical plants and our commitment to shop safety resulted in zero injuries requiring immediate medical attention in the workplace.

Safety begins with employee recruitment and training; we are pleased to report that our operator recruitment efforts are ongoing. In FY 05, we graduated 106 new bus operators after their completion and demonstration of proficiency after eight weeks of classroom, on the road, and route instruction.

#### Risk and Workers' Compensation

Our Risk Department has done an outstanding job, and the chart of Workers' Compensation Incidents (Attachment D) during FY 05 exhibits a decreasing trend. Liability claims against MTS Bus also continue on a downward trend. The subrogation recoveries in both liability and workers' compensation are on the rise and have resulted in over \$60,000 returned to MTS Bus.

Over the last two years, the Risk Department has worked with the San Diego District Attorney's office to combat workers' compensation fraud. The fruits of our labor are finally evident with the indictment of a former employee on seven (7) felony counts of illegally obtaining Workers' Compensation benefits--the trial is pending. Our efforts to eliminate unsafe acts in the workplace and our commitment to safe bus operations should contribute to an improving workers' compensation and should positively impact the number of liability claims against MTS Bus in FY 06.

#### On-Time Performance

Our field supervisors are monitoring timetable time points to ensure that all buses operate on or near schedule—but never early. We are working to honor our commitment to our passengers for timely arrival of an MTS bus at their local stop. We are pleased to report that we are approaching a 90% measure for on-time performance (Attachment E).

#### **Quantitative Measurements**

MTS Bus is actively measuring all key performance data so that we can make necessary adjustments to enhance the transit product offered to the residents of San Diego County. As the furnished report will show, we are capturing the appropriate data and then charting to view the long-term trends. At the present time, all critical trends indicate a move in the correct direction and would appear representative of a positive result for the many changes that have been put in place by the management team of MTS Bus.

#### **Operations Staff and Management Capabilities**

The managers and supervisors at MTS Bus are capable of responding to many situational events at a moments' notice. Examples would include the bus bridge services that we provided to the Coaster during last winter's heavy rains and the occasional bus bridges provided to San Diego Trolley, Inc. during construction or renovation.

Our biggest test in FY 05 was the Rock 'N' Roll Marathon where we served as the primary transit provider for runners and guests. We provided shuttle service for the runners from the parking lots to the Starting Line, a shuttle from the Finish Line for runners and guests and a shuttle from the parking lots to the Starting Line. This year, our team of transit professionals moved in excess of 34,000 passengers with a fleet of 41 buses and attained passenger productivity in excess of 100 passengers per bus hour.

## Superlative Maintenance Performance

The major bus rehabilitation program initiated in January 2004 included an assessment of condition, concurrent mechanical, electrical and body repair and a final inspection prior to release for revenue service. The results of this program have been dramatic with demonstrable improvement in the quality and reliability of our services. We have charted the Mean Distance Between Failures (MDBF) and the Mean Distance Between Service Interruptions (MDBSI). In this fiscal year, we have improved our MDBF from 6,000 to nearly 20,000 miles between failures. From a passenger's perspective, the MDBSI measures our ability to avoid needless service interruptions. We have taken our

MDBSI from 15,000 miles to over 33,000 miles between interruptions (Attachments F and G).

We have also addressed the cosmetic quality of the vehicles and expended great energy and resources to remove all graffiti and replace all torn seat cushions. We believe that evidence of vandalism would deter our riders and that immediate and timely repair of damaged bus interiors and exteriors would demonstrate our commitment to our passengers and our concern for the ambience and comfort associated with their commute.

#### New Bus Procurement

When funding uncertainties resulted in the loss of our production slot in January 2005, our management team rebounded and identified an existing procurement between Pierce Transit in Tacoma, Washington and New Flyer Industries with an option for additional vehicles not exercised by Pierce Transit. This creativity allowed us to expeditiously purchase 47 compressed natural gas-powered, low-floor New Flyer coaches (MTS Series 400).

To expedite the process and conserve scarce capital dollars, the new MTS-branded Pinwheel design was applied to the vehicles by our in-house body and paint shop at the Kearny Mesa Division. This in-house operation resulted in significant cost savings, which ranged from \$143,000 to \$287,000, as compared to tendered bids to outsource this work.

#### The Future for MTS Bus

As MTS evolves as an organization, MTS Bus must refine our services to offer the best "product" to retain our current passengers with the ultimate goal of attracting discretionary riders with a greater menu of transit options, enhanced services, and customer amenities. We believe that we are affecting appropriate change at MTS Bus and that we are positioned to achieve these goals.

Paul C. Jablonski Chief Executive Officer

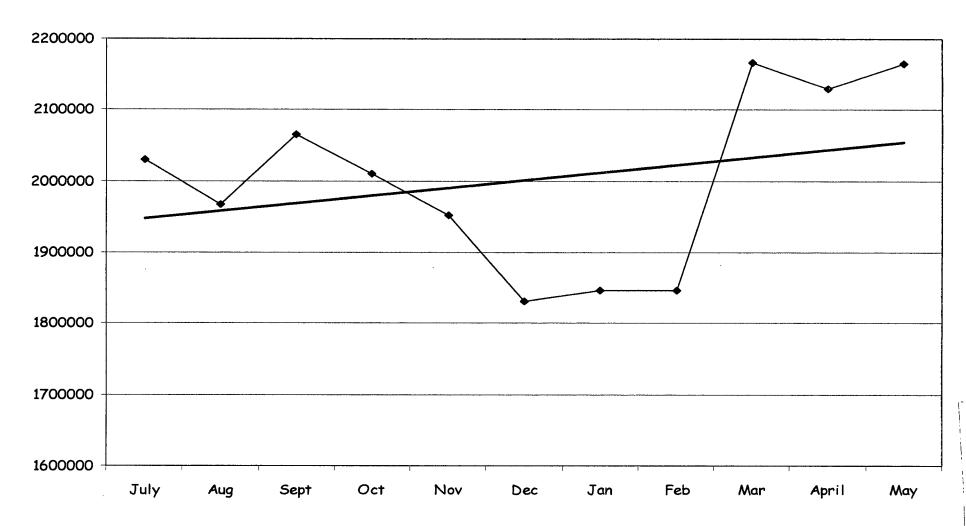
Key Staff Contact: Claire Spielberg, 619.238.0100, ext 400, Claire Spielberg@sdmts.com

JGarde AUG11-05.45.FY05BUSACCOMPLISHMTS.JBYRNE 7/6/05

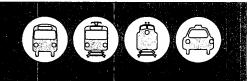
Attachments:

- A. Operations Ridership Chart
- B. Operations Passenger Complaint Chart
- C. Safety Accident Reduction Chart
- D. Risk Workers' Compensation Experience
- E. Operations On-Time Performance Chart
- F. Maintenance Mean Distance Between Failures
- G. Maintenance Mean Distance Between Service Interruptions

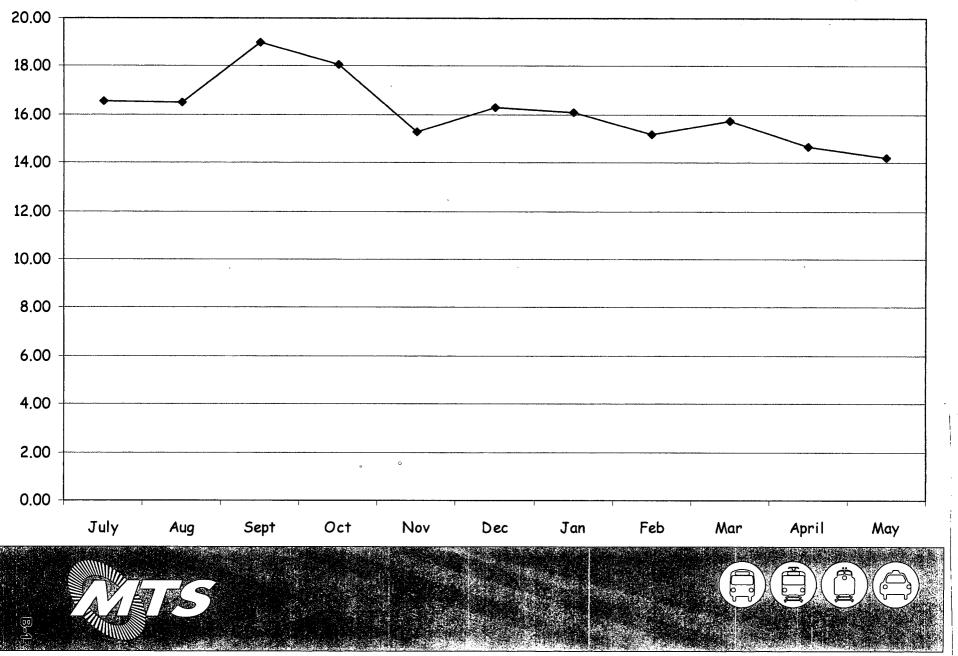
# Passenger Boardings





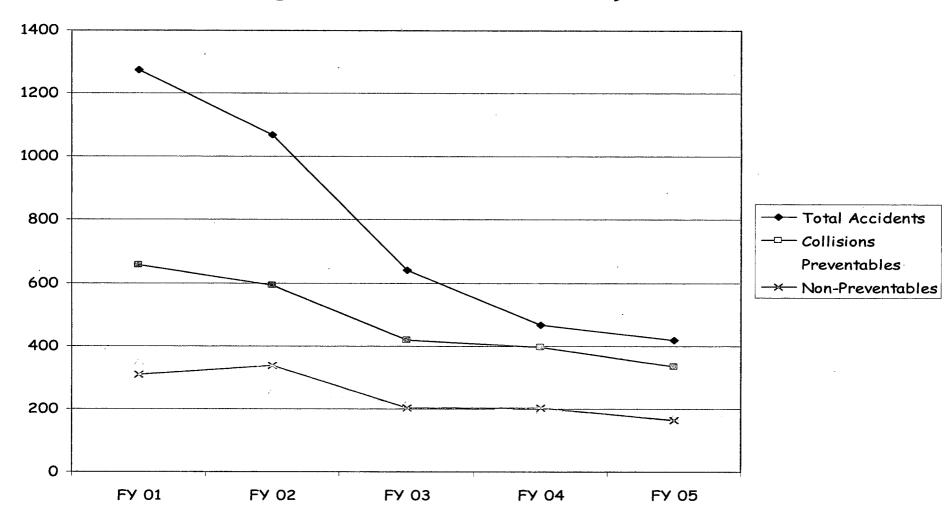


# Complaints per 100,000 Passengers

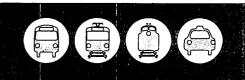


Att. B, Al 45, 8/11/05, OPS 960.2

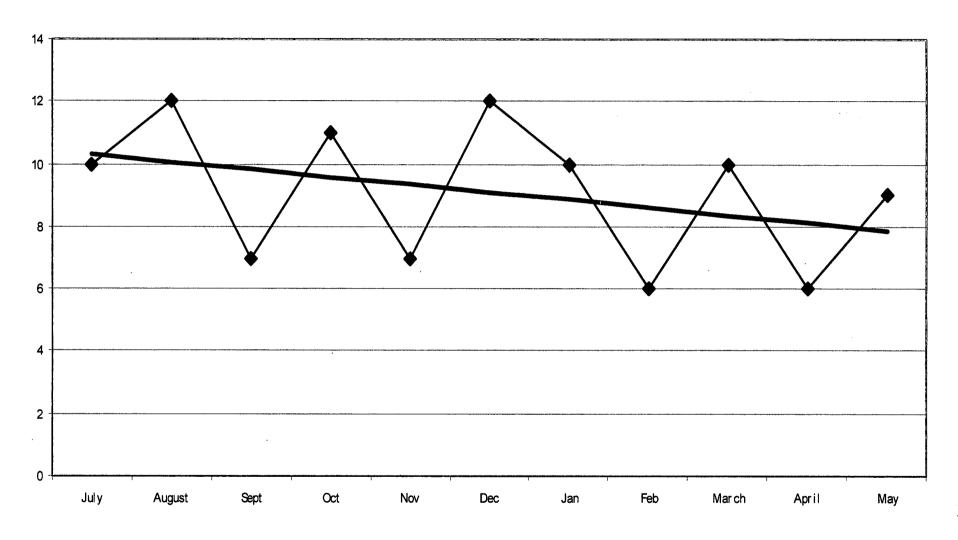
# Progress on the Safety Front







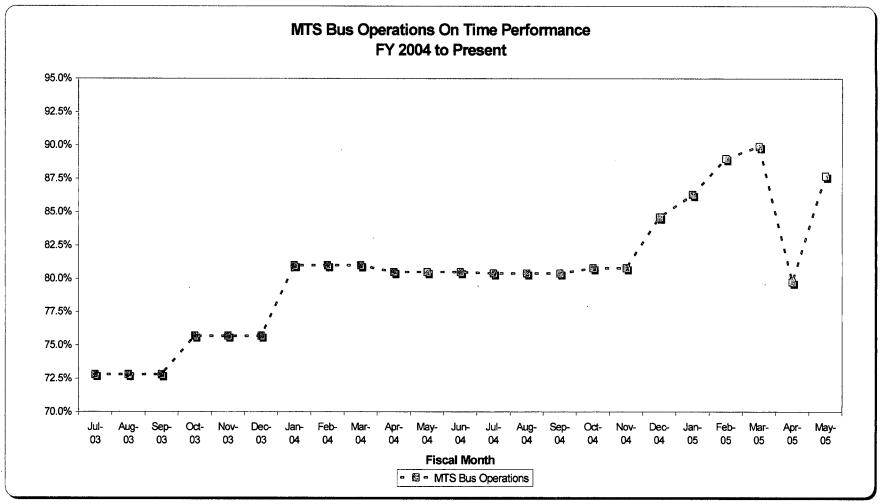
# FY 05 Workers Compensation Incidents







# On Time Performance

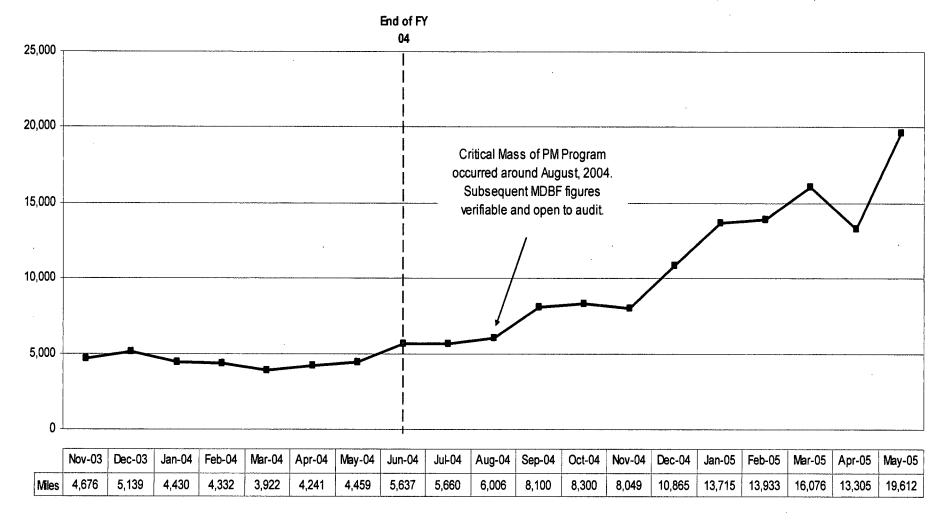


May 2005: 87.7%





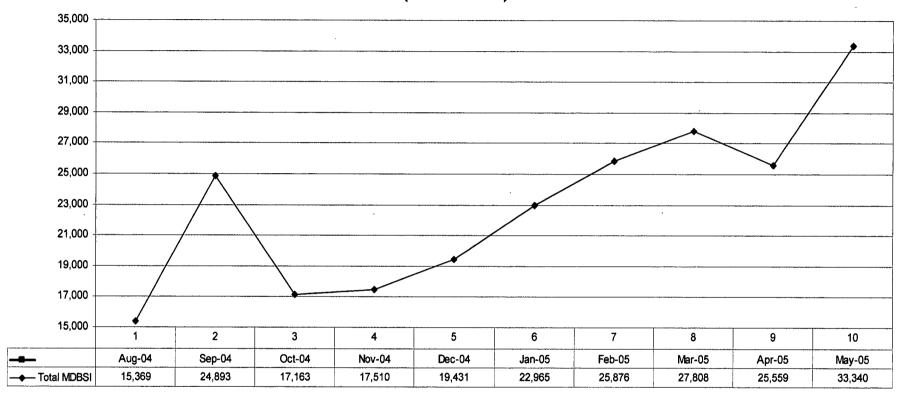
# Mean Distance Between Failures (MDBF)







# Mean Distance Between Service Interruptions (MDBSI)







FY05 Year End Report

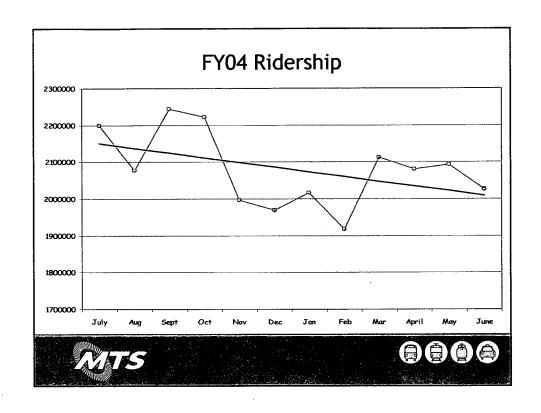


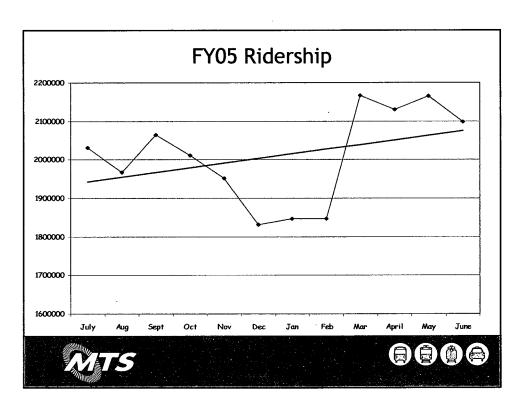


San Diego residents are deciding to ride the bus!







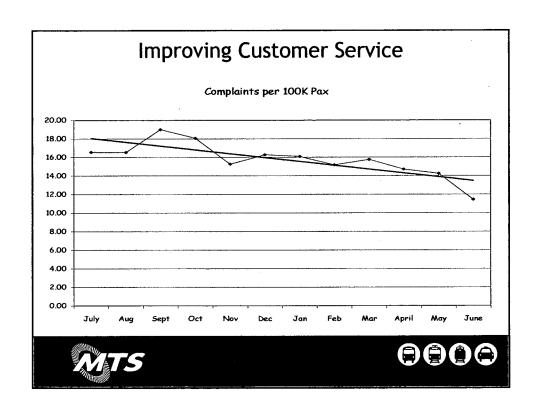


# **Service Quality**

- Customer service is improving.
- We are engaged in a campaign to change behaviors and focus on the quality of our "product".
- We are rebuilding our image every day!





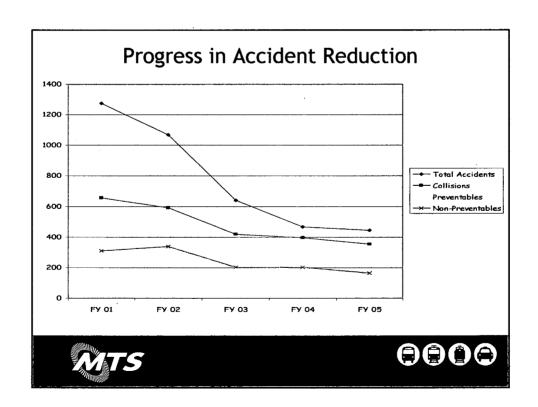


# Focus on Safety at MTS Bus

- MTS Bus has made a dramatic recommitment to safety during FY 05
- Reduced Vehicle accidents in FY 05 by 11%
- Preventable accidents have decreased by 50% in five years!
- No injury in the workplace requiring immediate medical attention in FY 05





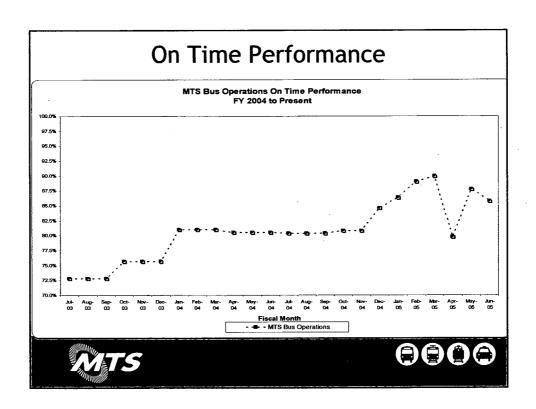


# Timely Operations on the Street

- Our Field Supervisors are monitoring timepoints to ensure that all buses operate on or near schedule - but never early.
- We are honoring our commitment to our passengers for timely arrival of MTS buses at their local stop!







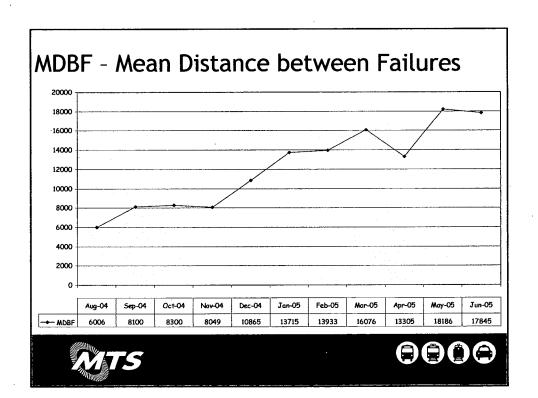
# Preventive Maintenance Program

## Consists of three phases:

- Assessment
- Concurrent Mechanical, Electrical and Body Repair
- Final Inspection







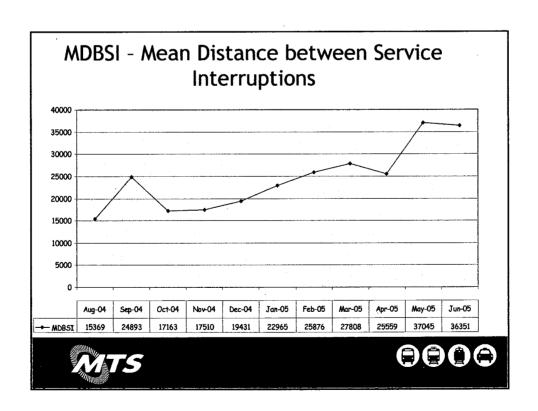
# Another quantitative benefit of the PM Program

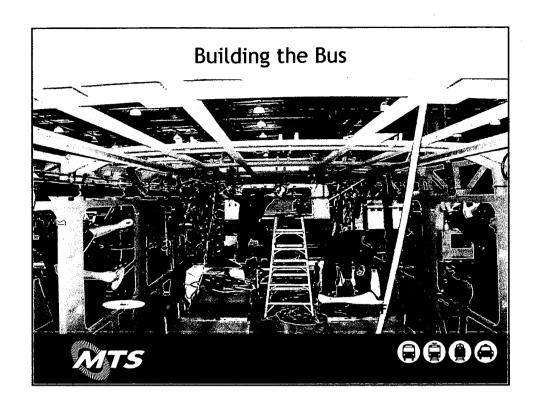
has been the increase in trip reliability.

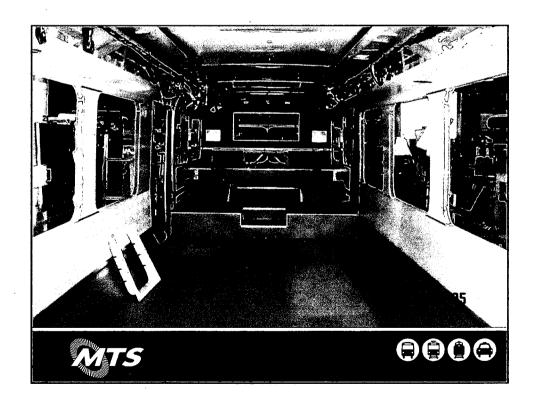
Our passengers now travel farther between service interruptions which prevent a vehicle from completing a scheduled revenue trip.

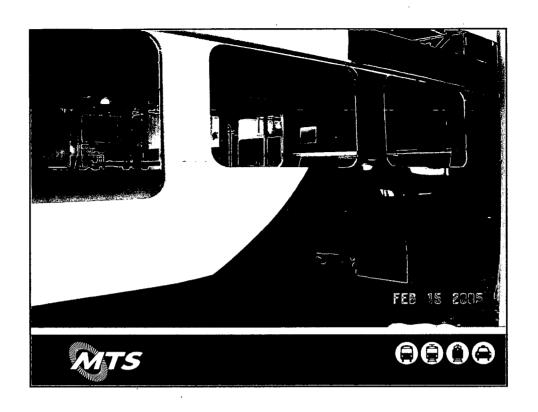


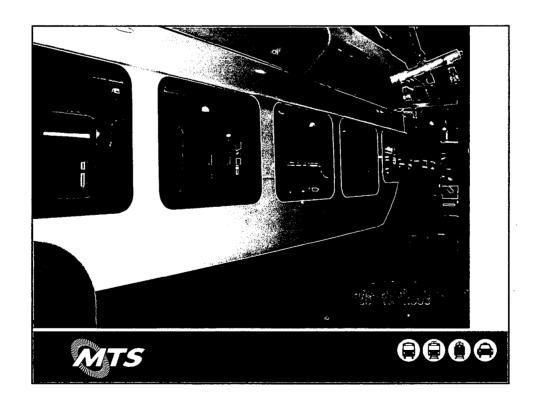










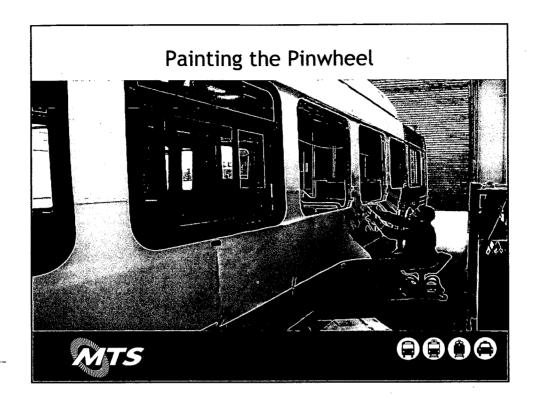




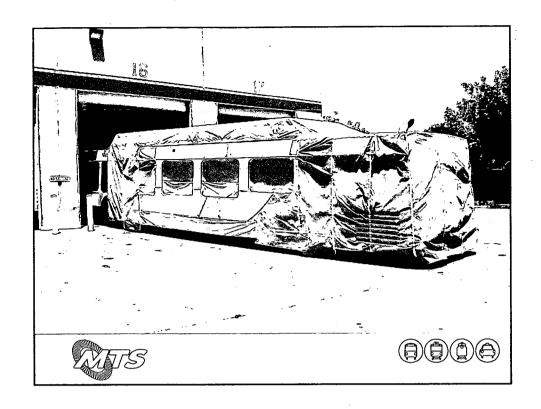
The dynamic MTS Pinwheel detailing was completed by our personnel at the Kearny Mesa Paint and Body Shop. Our in-house team was able to save MTS over \$150K as compared to the lowest bid received.

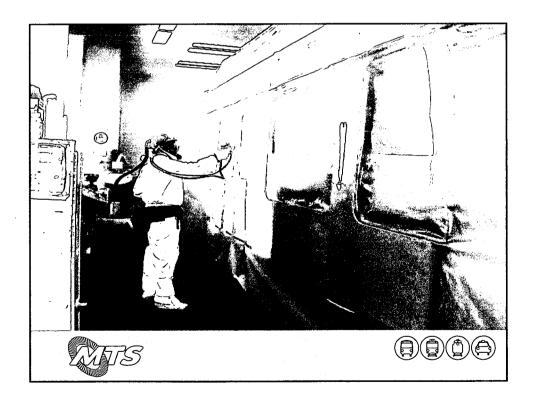


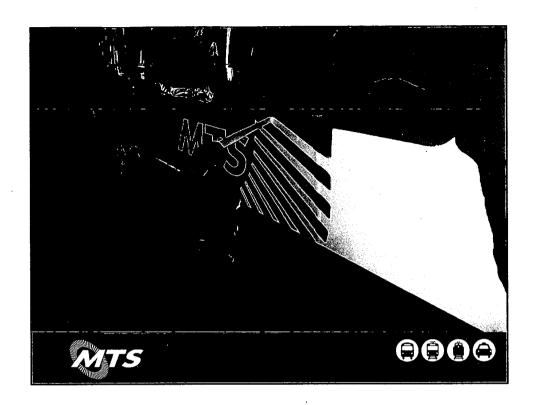












## The Future for MTS Bus

As MTS evolves as an organization, MTS Bus must refine our services to offer the best "product" to retain our current passengers with the ultimate goal of attracting discretionary riders with a greater menu of transit options, enhanced services and customer amenities.







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

## **Agenda**

Item No. <u>46</u>

OPS 970.2

Joint Meeting of the Board of Directors for Metropolitan Transit System, San Diego Transit Corporation, and San Diego Trolley, Inc.

August 11, 2005

Subject:

SDTI: PRELIMINARY GREEN LINE/RED LINE SERVICE OBSERVATIONS

#### **RECOMMENDATION:**

That the Board of Directors receive this report for information.

**Budget Impact** 

None.

**Executive Committee Recommendation** 

At its meeting on August 4, 2005, the Executive Committee recommended forwarding this item to the Board for approval.

#### **DISCUSSION:**

The Green Line began revenue service on Sunday, July 10, 2005, providing service between the Old Town Transit Center and the Santee Town Center Station. Service levels on this line segment are at 15-minute intervals transitioning to 30-minute intervals after 8:00 p.m. during weekdays. On weekends and holidays, similar service is operated albeit an expanded 30-minute interval is conducted during the early morning and evening hours. During weekdays, there are 144 trains on the service schedule with 112 scheduled on weekends and holidays. This brings the total number of trains on the service schedule system wide to 507. Service on the Green Line is currently being



provided using seven 2-car trains (S70 or SD100) in nonmixed train consists for the majority of the day.

#### Green Line Service - Initial Observations

Ridership. The level of service provided appears to be adequate for the current service demand. During the peak-period time frame, fully seated passenger loads (with few standees typically observed) had marginally lighter ridership throughout the base period of the day. Public interest in the Green Line, especially the San Diego State University (SDSU) station, appears to be at a relatively high level and is generating a fair amount of the off-peak and weekend ridership. Based on general observations and surveys conducted during the initial few weeks of service, it appears that a considerable number of riders originate their trips outside of the new four-station Mission Valley East segment, although ticket vending numbers are improving at those stations.

Old Town Transit Center. The interline transfer of passengers between Green and Blue Line service has been reasonably well received due to the timeliness of the connecting service. However, the education process for our passengers, especially the unseasoned rider, has been labor-intensive for field supervision and security personnel. The regular commuter has adapted to the service change without much difficulty, although timed transfers can be adversely impacted when delays occur on the system involving connecting service. On weekdays during the morning and afternoon peak periods, there are four morning and six afternoon "peak-of-the-peak" trains that travel through to Qualcomm Stadium Station. Operating these trains through onto the Green Line to Qualcomm Stadium Station flows nicely, but the concentration of passengers has been rather light on this service. There are two security officers assigned to the Old Town Transit Center Station platform throughout the daytime and evening hours, along with supervision during the peak-period time frame. Overall, the scheduled Blue and Green Line service is operating efficiently at this station; however, since this is an end-of-the line terminal for two line segments, each main track is scheduled to be occupied for a minimum of 20-minutes per hour due to crew changes, passenger loading, and turn backs. This has proven somewhat restrictive and constrained when special event Red Line service is operated and will require a modification to the interlocking signal control to provide remote routing control from the Operations Control Center.

<u>Grossmont Center Station</u>. The interline transfer of passenger between the Orange Line and Green Line service onto the new Mission Valley segment is working well. There is a three-minute transfer between line connections; the transfer appears both timely and consistent in terms of train operation, although it can be impacted by a service delay on either line segment.

Gillespie Field Station. As the terminal for Orange Line trains, this station is located on the west end of the Cuyamaca Street single track where Green Line trains traverse to access the Santee Town Center Station. Minimum operating time over the single-track segment is 13 minutes, restricting this area to a one-train, single-headway operation. The net impact is a several-minute transfer between Green Line and Orange Line service at the Gillespie Field Station. This arrangement has generated some controversy involving a group of Santee riders who would have preferred the Orange Line continuing to service the Santee Town Center Station. The operating dynamics surrounding these two stations, which are bordered by Cuyamaca Street as well as the meet at the Grossmont Transit Center, requires the Green Line to operate

ahead of the Orange Line eastbound, and the Orange Line to operate ahead of the Green Line westbound, through Gillespie Field Station. While ridership from Gillespie Field Station has not experienced much of an increase, there are now upwards of 25 automobiles observed in the parking lot on most weekdays where there were few, if any, before. With the expansion of State Route 52 and corresponding off-ramps in the vicinity of Gillespie Field Station, it is anticipated that an increase in ridership will occur in the future.

## Red Line Service - Initial Observations

Since the opening of the Green Line, San Diego Trolley, Inc. (SDTI) had the opportunity to serve two concurrent events. The annual Comic-Con consumer and trade show was held at the Convention Center between Thursday, July 14, 2005, and Sunday, July 17, 2005. The San Diego Padres hosted its division rival, the Arizona Diamondbacks, at PETCO Park during the same dates as Comic-Con. Combined single-day attendance to these events is estimated to have peaked at close to 100,000 on Saturday, July 16, 2005. Over the four dates, special event service was operated between Qualcomm Stadium and the Gaslamp Quarter Station. Operational elements unique to the current operating plan presented challenges in handling the event service in addition to normal scheduled operations.

On Friday, July 29, and Saturday, July 30, the annual Street Scene event was held at Qualcomm Stadium Station. These two dates also included Padres home games on the same days. Based on experience from ComicCon in conjunction with Padres games, significant changes were made to deployment of field personnel and schedule operations. The field coverage closely resembled that which was provided for Super Bowl XXXVII. Operations for Friday and Saturday functioned extremely well with few, if any, problems. Attendance for Street Scene was 18,900 on Friday and 15,200 on Saturday. Note: overall Street Scene attendance was down from previous years by over 25,000. SDTI's percentage of the gate, in comparison, actually rose to close to 50 percent. Overall ridership on these two days is likely to exceed 200,000-plus.

The greatest challenges were primarily associated with heavy ridership and subsequent train congestion through critical points in the system. Of note was the failure of a motor mechanism for the derail safety feature at the stadium west pocket track. This condition prevented the safe routing of trains to turn back on the westbound platform at Qualcomm Stadium Station. Use of the east pocket track was utilized as an alternative route; however, this arrangement required additional time, which impacted train sequencing and schedules.

While a special operating schedule was prepared in advance, the additional constraints on train sequencing in vicinity of the Old Town Transit Center dramatically increased with any delays to Blue Line, Green Line, or Red Line (special event) trains. The combination of regular Blue and Green Line trains turning back at Old Town Transit Center, on top of additional through service for special event trains, created a vulnerable point as any delay that incurred had a negative impact on all three service elements. This was especially evident during weekday evening peak-service hours when normal demand is at its highest.

#### S70 Light Rail Vehicle Performance

As of this writing, 10 of the 11 new low-floor light rail vehicles have been conditionally accepted for service. It appears that as staff has become more familiar with the operation and maintenance of these vehicles, nuisance delays associated with minor troubleshooting have subsided. Siemens continues to address issues with the vehicle including:

- Software changes to correct onboard announcements and visual message signs
- Intermittent train-to-wayside signal transmittal problems
- Wiring problems in the coupler head impacting certain end-to-end coupling configurations
- Various fault indications on the train-operated display requiring the train operator to recycle the master controller and turn the battery off for a period of 30 seconds; this will clear the fault, but causes a delay in service
- Mechanical integrity and strength associated with the deployable disabled ramp.

## Station Platform Modification Project/Residual Work

The Station Platform Modification Project is essentially complete in terms of meeting federal Americans with Disabilities Act (ADA) standards pertaining to height and slope configurations. However, there are a number of outstanding work orders specified in the contract that are yet to be completed. Engineering staff at the San Diego Association of Governments (SANDAG) has scheduled an August walk-through with the contractor to ensure project completion in the following areas:

- Tree grating installation or replacement at a number of locations
- Station platform pavers need grouting, to some degree, at nearly all stations
- The installation of Braille signage is needed at various station
- Some asphalt needs to be removed and/or cleaned up at various locations
- The Morena/Linda Vista Station platform needs to be leveled to an appropriate slope (this will be coordinated with the developer who is currently constructing a transit-oriented housing project)
- Pedestrian ramps at Santee, El Cajon, Arnelle, Grossmont Center, and
   Fenton Parkway Stations need to be replaced to meet federal ADA standards

The joint SANDAG/MTS punch list that was developed during the initial acceptance phase is approximately 85 percent complete. This list is generally comprised of small,

nonoperation critical items, but nevertheless important for project completion. Worthy of note is the graffiti coating for the concrete walls and columns along the right-of-way.

## Future Actions/Projects Under Consideration

- 1. Aggressively pursue implementation of centralized control of Old Town routing for improved train movement.
- 2. Accelerate system-wide implementation of comprehensive Centralized Train Control and monitor progress of same.
- 3. Evaluate enhanced directional signage for passenger information, especially at transfer locations.
- 4. Pursue enhanced communications to improve interline transfers during minor schedule deviations.
- 5. Continue to assign field personnel at critical locations to improve train movement and passenger transfers during special event service.
- 6. Accelerate platform modifications at additional stations to expand operational flexibility for S70 consists.
- 7. Evaluate locations along the special event Red Line route where additional pocket tracks or sidings can be configured to improve operational flexibility and schedule reliability with focus on Old Town and vicinity.
- 8. Enhance passenger awareness and information for special event service (Web page, etc.).

Paul C. Jablonski Chief Executive Officer

Key Staff Contact: Wayne Terry, 619.595.4906, wayne.terry@sdmts.com

JGarde AUG11-05.46.GREENREDLINE.WTERRY 7/27/05

# Preliminary Green Line / Red Line Service Observations

Board of Directors Meeting August 11, 2005





# Green Line

- Seven 2-car trains consists provide:
  - 144 train trips on weekdays
  - 112 train trips on weekends and holidays
- · Overall, 507 daily trips operated





# **Green Line Schedule**

- Weekday
  - 15-minute service
    - · begins at Old Town Transit Center at 4:15AM
  - 30-minute service
    - from 8:00PM 11:23PM (Santee departure)
- Weekends/Holidays
  - 30-minute service
    - · early morning and evening
    - from Old Town Transit Center at 4:30AM until 11:23PM (Santee departure)
  - 15-minute service
    - · majority of day





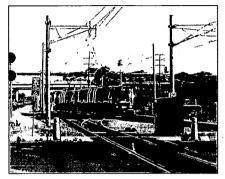
# Ridership

- · Service level appears to accommodate demand
- Fully-seated and some standing passengers on peak period trains
- Marginally lighter ridership off-peak and weekends
- · Public interest remains high
- Ridership monitoring continues

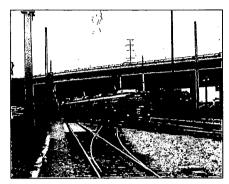




# Interline Service Connection at Old Town Transit Center



Green Line Southbound



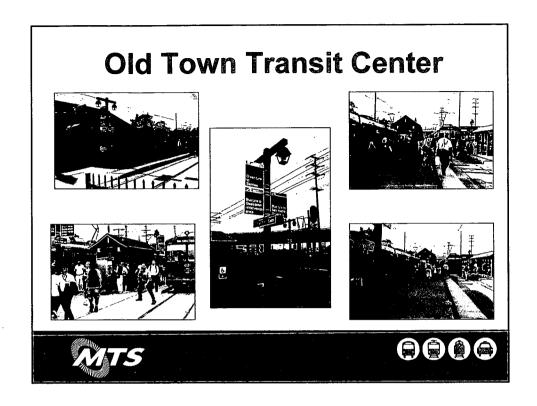
Blue Line Northbound

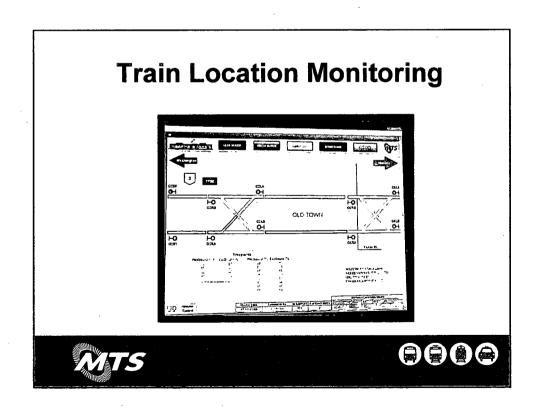
# **Old Town Transit Center**

- Station oversight / passenger information
- Peak-of-the-peak Blue Line service
- Timed transfer / service delays
- Terminal layover







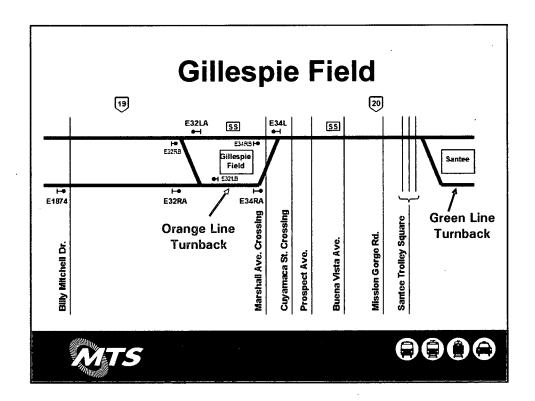


# **Grossmont Transit Center**

- Connecting Orange to Green Line (Mission Valley) service
- Timed transfer
- Ridership / timed transfer experience







## **Summary**

- · Employee familiarization system / equipment improving
- · Passenger familiarization is improving
- · Schedule reliability appears consistent
- Ridership remains constant
- · Oversight and performance monitoring will continue





# Red Line / Special Event Service

- Special event service overlay constraints and vulnerability
- Comic Con / Padres home stand
- · Street Scene / Padres home stand
- · Signal routing enhancement





# Station Platform Modification / Punch List Items

- Raised platform project
- Station platform finish work
- Station platform pedestrian ramp replacement
- SANDAG/MTS joint punch list: 85% complete





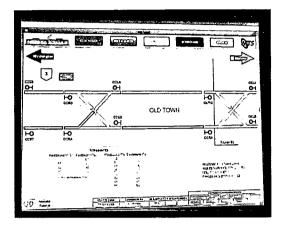
## Future Actions / Projects Under Consideration

- □ Pursue implementation of centralized control of Old Town routing;
   □ Accelerate systemwide implementation of CTC
   □ Evaluate enhance directional signage at key locations
- Pursue enhanced communication to improve interline transfers during minor schedule deviations
- Assign extra field personnel during special events
- Accelerate platform modifications at additional stations
- Evaluate locations along Red Line route where additional pocket tracks or sidings can be accommodated





# Train Location / Proposed Remote Control Routing





## \$70 Vehicle Performance

- 10 of 11 vehicles conditionally accepted
- · Vehicle availability / reliability
- Operating and maintenance familiarity
- Siemens software upgrades





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### **Agenda**

Item No. <u>47</u>

Joint Meeting of the Board of Directors for Metropolitan Transit System, San Diego Transit Corporation, and San Diego Trolley, Inc. OPS 920.1, 960.5, 970.5 (PC 50451)

August 11, 2005

Subject:

MTS: JUNE MONTHLY PERFORMANCE INDICATORS

#### RECOMMENDATION:

That the Board of Directors receive this report for information.

**Budget Impact** 

None.

#### DISCUSSION

#### Operating Environment

The following report is a summary of the MTS operational statistics for June 2005, month 12 of FY 2005. There were 22 operational weekdays and 8 weekend days of service. Padres regular season games continued at PETCO Park, with 18 games played at the stadium during the month. The Annual Coca-Cola One Rock 'N' Roll Marathon was held in the streets of San Diego. There was a new routing chosen this year that worked well to minimize the impact on operations for both bus and rail. MTS bus provided shuttle service for runners and spectators at both the start and finish lines and was assisted for most of the morning by Laidlaw contract services. MTS rail provided extra service for the day's events.

#### Service Statistics

The following are the relevant service statistics for June 2005, categorized by performance indicator. Charts based on the statistics are provided in Attachments A through D.



#### • Service Effectiveness

- The MTS system carried 6,510,552 passengers in June with 3,729,040 traveling on MTS buses and 2,781,512 passengers traveling on MTS rail.
- MTS rail carried 240.30 passengers per revenue hour. The MTS bus system carried 24.33 passengers per revenue hour with fixed-route services performing at 27.02 passengers per revenue hour.

#### Service Reliability

- On-time Performance: MTS system wide on-time performance for June was 91.1%. MTS bus reported 90.0% of its trips as being on time. MTS rail reported 93.2% of its trips on time.
- Mean Distance Between Failures (MDBF): MTS bus was 15,939 miles overall for the month of June. There was one major failure on MTS rail; the MDBF was 616,831 car miles.

#### Quality of Service

- MTS bus had 3.28 total collisions per 100,000 miles. MTS rail had 3 collisions, with a rate of 0.49 collisions per 100,000 miles.
- Non-ADA customer complaints reported 10.75 complaints per 100,000 passengers. There were 15 ADA complaints, which represented 0.05% of total ADA ridership.

Paul C. Jablopski Chief Executive Officer

Key Staff Contact: Anika-Aduesa deSilva, 619.595.4901, anika.desilva@sdmts.com

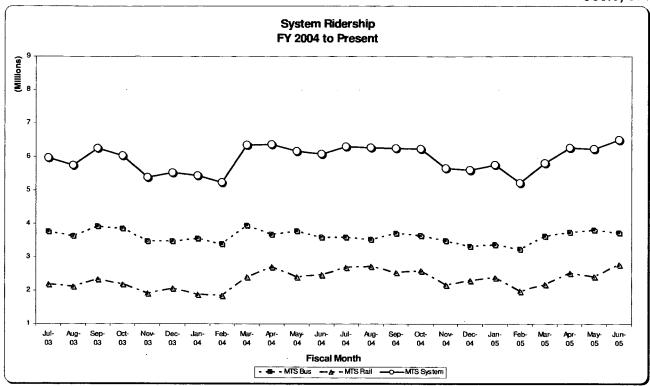
Attachments: A. MTS System Ridership, On-Time Performance (Bus, Rail, System)

B. MTS Mean Distance Between Mechanical Failures (Bus, Rail)

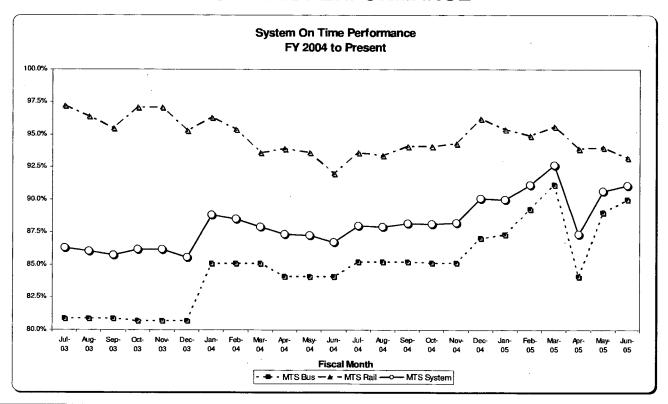
C. MTS Total Collision Accidents (Bus, Rail)

D. MTS Customer Complaints (Non-ADA Service)

#### **RIDERSHIP**



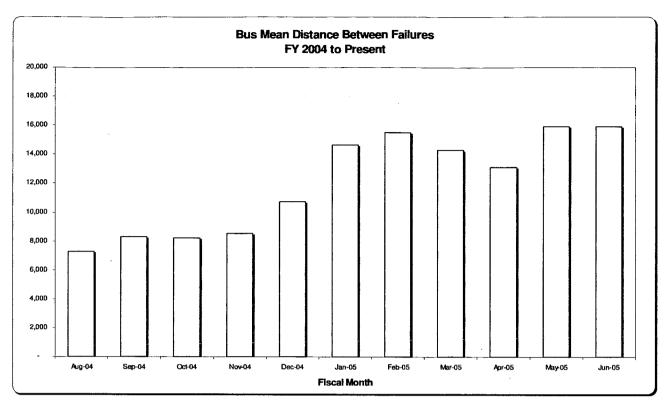
#### ON TIME PERFORMANCE

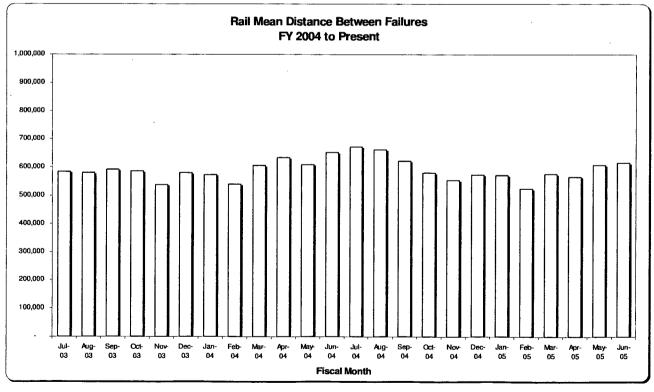




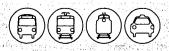


## MEAN DISTANCE BETWEEN MECHANICAL FAILURES

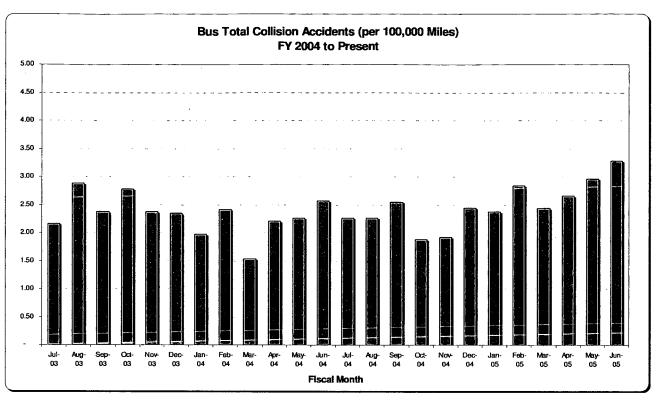


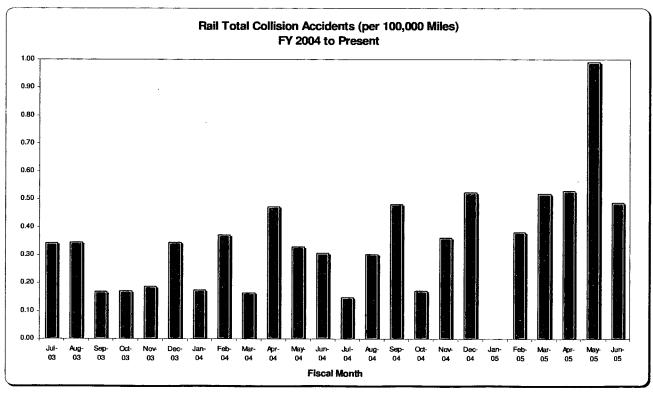






## TOTAL COLLISION ACCIDENTS (PER 100,000 MILES)

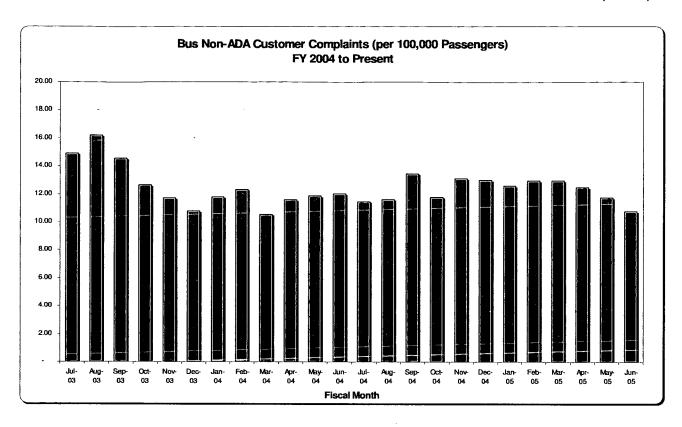








### **CUSTOMER COMPLAINTS**









## **June 2005 Monthly Performance Indicators**

August 11, 2005

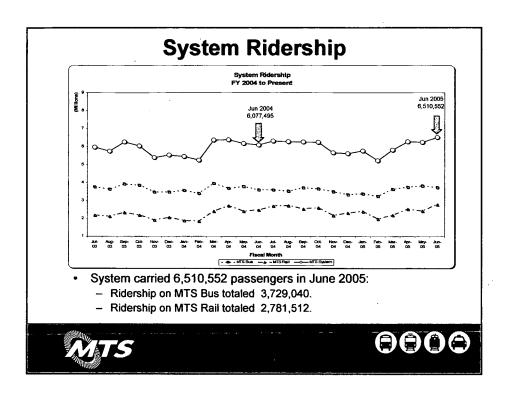


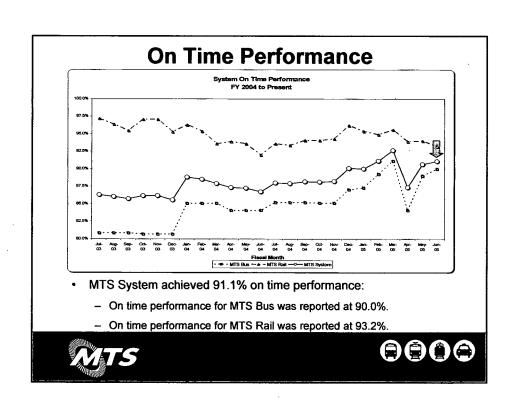
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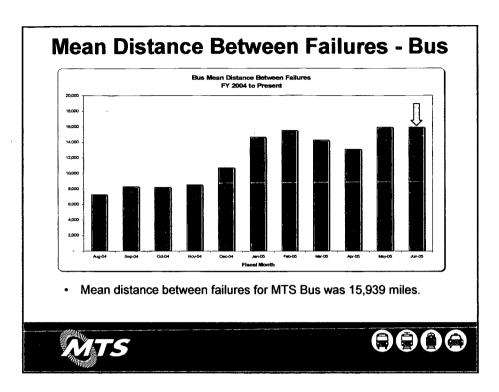
### **Operating Environment**

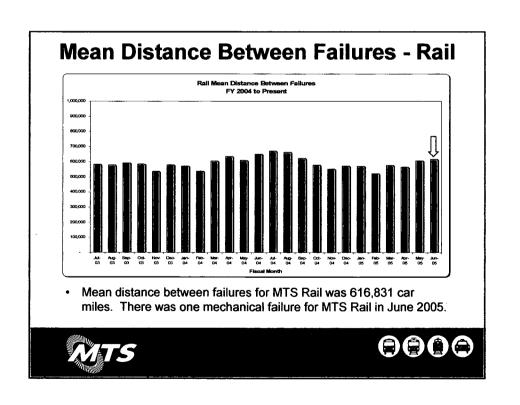
- Service Levels
  - 22 days of weekday service.
- Special Events
  - 18 Padres games played at Petco Park.
  - Annual Rock 'n' Roll Marathon
    - Improved routing reduced impact on regular bus, trolley service.
    - MTS Bus, Contract Services provided shuttle service; extra trolley service.



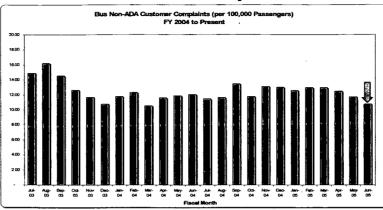








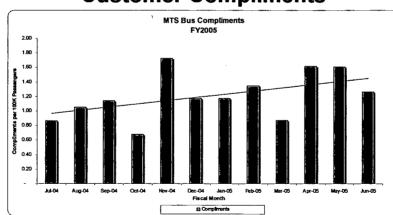




- Non-ADA complaints declined to 10.75 complaints per 100,000 passengers
- ADA services' 15 complaints represented 0.05% of ADA ridership.

MIS

### **Customer Compliments**



- Customer compliments from MTS Bus (SDTC) Customer Service reports for FY 2005.
- · Comments primarily about good customer service from bus operators.

MITS

#### **Collision Accidents**

- MTS Bus collision rate was 3.28 collisions per 100,000 miles in June 2005.
- MTS Rail had three collision accidents in June 2005, at a rate of 0.49 collisions per 100,000 miles.





Conclusion of Report June 2005





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## **Agenda**

Item No. <u>48</u>

Joint Meeting of the Board of Directors for Metropolitan Transit System,
San Diego Transit Corporation, and

San Diego Transit Corporation, and San Diego Trolley, Inc.

AG 230 (PC 50121)

August 11, 2005

Subject:

MTS: SOUTHERN CALIFORNIA MAGLEV PROJECT

#### RECOMMENDATION:

That the Board of Directors receive a report on the San Diego – Los Angeles Maglev Project.

**Budget Impact** 

None.

#### **DISCUSSION:**

At the May 21, 2004, San Diego Association of Governments (SANDAG) Transportation Committee meeting, staff presented an update on the San Diego – Los Angeles Maglev Project. Maglev is a high-speed magnetic levitation passenger rail system being proposed along the coastal Interstate 5 corridor. The project would connect San Diego to Los Angeles and provide high-speed passenger rail at up to 300 miles per hour. A copy of the SANDAG Transportation Committee agenda item is attached. Board Member Ron Roberts will make an oral presentation during the meeting explaining the project.

Paul C. Jablonski Chief Executive Officer

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

JGarde/AUG11-05.48.MAGLEV.TLOREN

Attachment: A. SANDAG Transportation Committee Maglev Agenda Item



#### San Diego Association of Governments

## TRANSPORTATION COMMITTEE

May 21, 2004

AGENDA ITEM NO.: 4

**Action Requested: APPROVE** 

#### SOUTHERN CALIFORNIA MAGLEV PROJECTS

#### Introduction

The San Diego – Los Angeles Maglev Project, a nonprofit corporation, is interested in developing a very high-speed magnetic levitation (maglev) passenger rail system along the coastal Interstate 5 (I-5), inland I-15, and I-8 corridors. This system, if feasible, would be capable of speeds in excess of 300 miles per hour (mph) and require a dedicated, grade-separated structure. It would connect with a maglev system proposed by the Southern California Association of Governments (SCAG) for the Los Angeles area.

San Diego – Los Angeles Maglev Project representatives have requested that SANDAG send a letter to the Congressional Committee on Transportation and Infrastructure to support their effort to obtain a \$6 million federal funding earmark to study these three corridors.

#### Recommendation

It is recommended that the Transportation Committee authorize sending a letter to the Congressional Committee on Transportation and Infrastructure in support of the San Diego – Los Angeles Maglev Project's effort to obtain a \$6 million federal funding earmark in the reauthorization of the Transportation Equity Act for the 21st Century (TEA-21) to study the feasibility of maglev along the coastal I-5, inland I-15, and I-8 corridors. SANDAG's support would be contingent on the San Diego – Los Angeles Maglev Project providing the required local match to the federal earmark with private funds, and on assurances that the studies be conducted as objective analyses that include peer review with SANDAG participating on the peer review team.

#### Discussion

California is developing a statewide high-speed passenger rail system using steel-wheel-on-steel-rail technology. The state agency charged with this is the California High-Speed Rail Authority (Authority).

On March 5, 2004, the Transportation Committee heard a presentation from the Authority and took action to request the Authority to evaluate maglev as a technology option for the San Diego high-speed rail corridors. The recommendation to support the request by the San Diego – Los Angeles Maglev Project is consistent with that previous action. In addition, Congressman Bob Filner has expressed interest in evaluating maglev along the I-8 corridor to connect San Diego with a possible new international airport in Imperial County in the future. There is currently an earmark for that project in the House version of the reauthorization legislation.

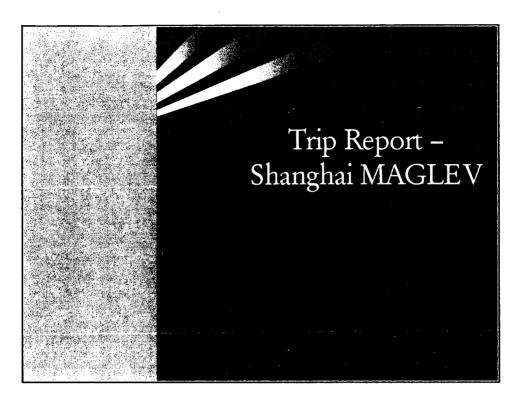
Maglev was reviewed and evaluated by the Authority as a possible technology for California's high-speed rail system. The Authority eliminated maglev from further consideration, concluding that maglev systems cannot share track with conventional rail, and that sharing track along the I-5 corridor with other steel rail operations would be less costly than a dedicated system and would result in fewer environmental impacts. The Authority also concluded that incremental improvements to the conventional system would benefit all rail operators; Coaster, Metrolink, Amtrak, and freight.

Nevertheless, based on the discussion at the March 5 Transportation Committee meeting, further analyses of maglev seems warranted to answer questions and evaluate the feasibility and appropriateness of maglev in the I-5, I-15, and I-8 corridors. Given the High Speed Rail Authority's previous analysis of this issue it is imperative that any maglev studies conducted by the San Diego – Los Angeles Maglev Project be as objective as possible and therefore include a peer review that incorporates SANDAG on the peer review team.

At a recent meeting between Sandy Shapery of the San Diego – Los Angeles Maglev Project and SANDAG staff, Mr. Shapery committed to providing the local match for the federal funding earmark with private funds so that no SANDAG transportation funding would be required.

BOB LEITER
Director of Land Use and Transportation Planning

Key staff contact: Toni Bates, (619) 699-6950; tba@sandag.org





## Shanghai Basic Statistics

- Length of Track 19 mi (30 km)
- Top Speed on Shanghai Track 267 mi/h (430 km/h)
- Travel Time 8 minutes
- Service Frequency Every 20 Minutes



#### Basic Statistics Cont.

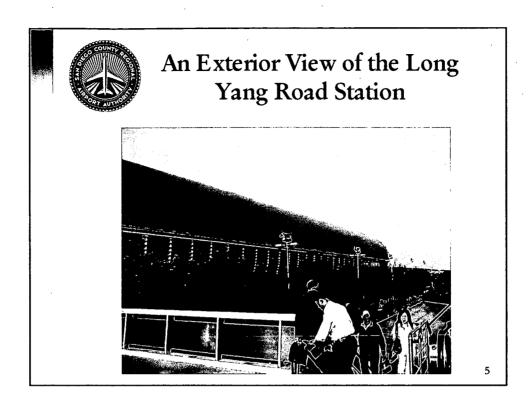
- Shanghai Maglev Transportation
   Development Co. Ltd. responsible for erecting the guideway
- German consortium composed of Siemans, ThyssenKrupp and Transrapid International – supplied operating system
- · Contract signed in January 2001
- Inaugural run December 31, 2002

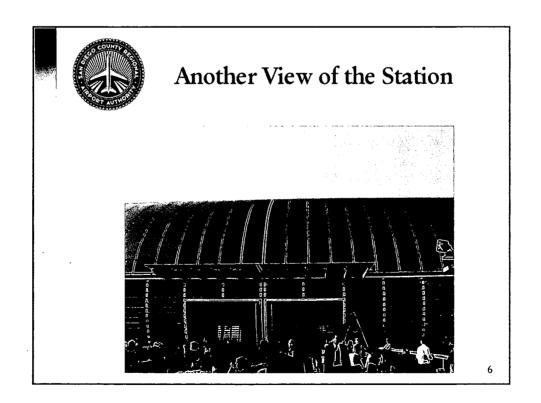
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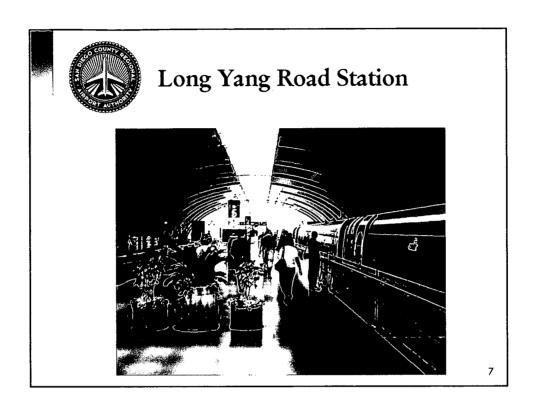


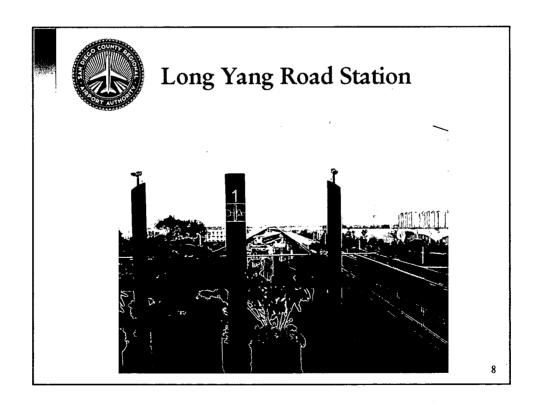
## System Characteristics

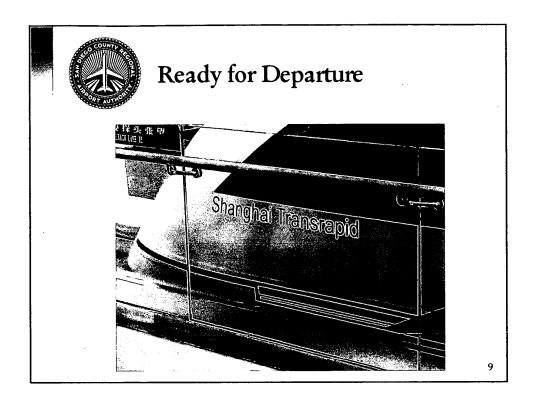
- Non-contact and non-wearing levitation, guidance, and propulsion technology
- Flexible route alignment of the guideway due to small curve radii and high grade climbing ability (10%)
- Low Noise Emission
- Low Specific Energy Consumption
- Aerodynamic Effects

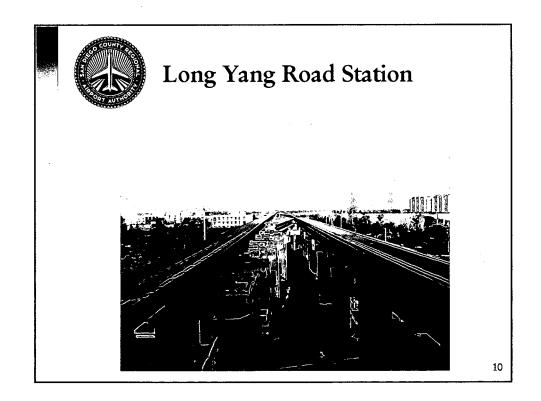


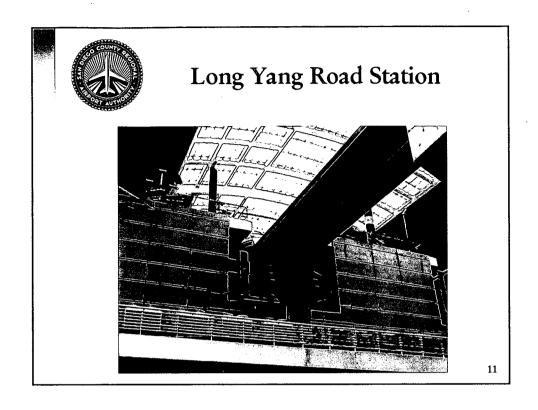


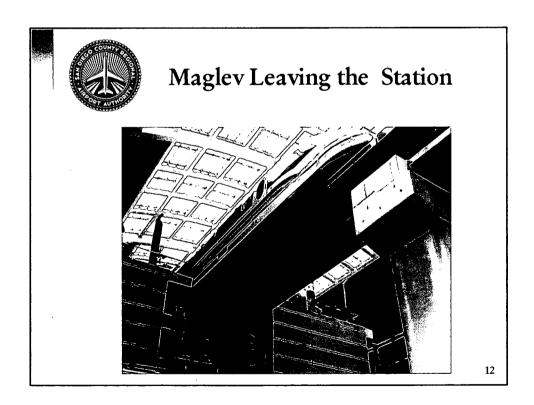


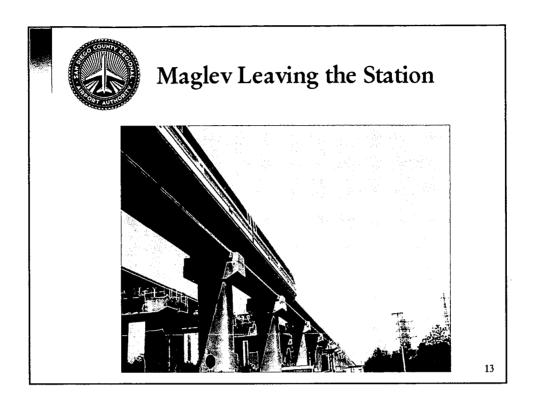


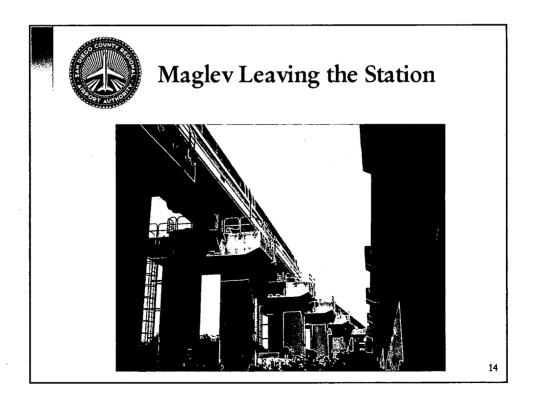


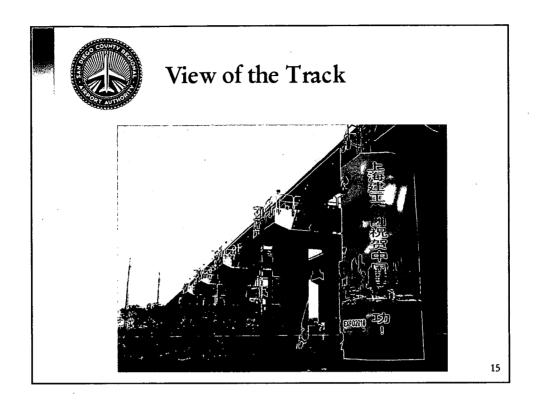


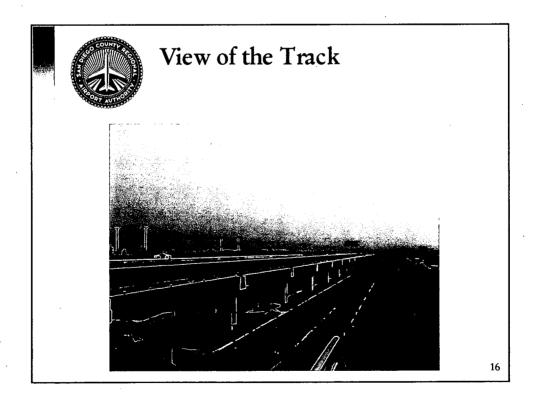


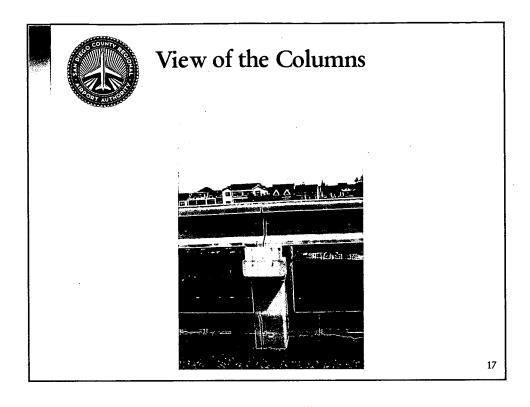


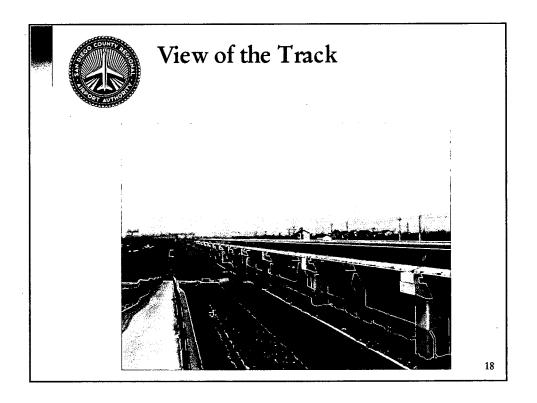


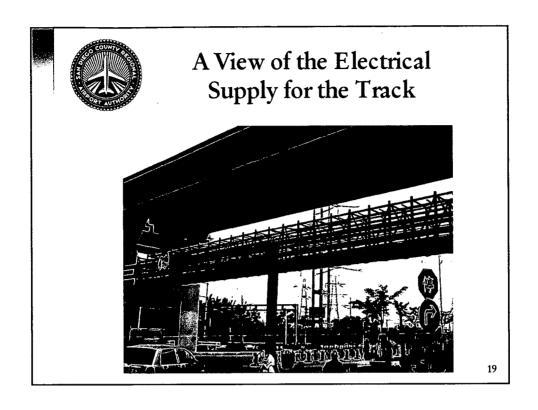


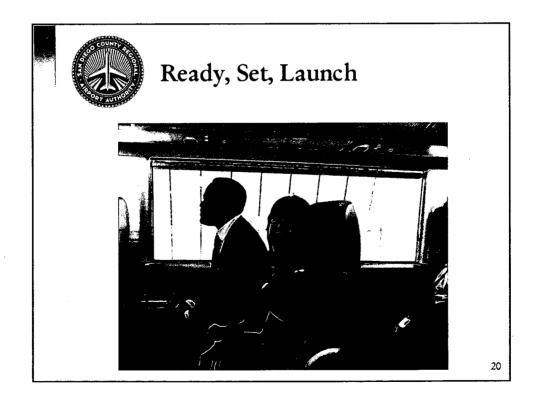


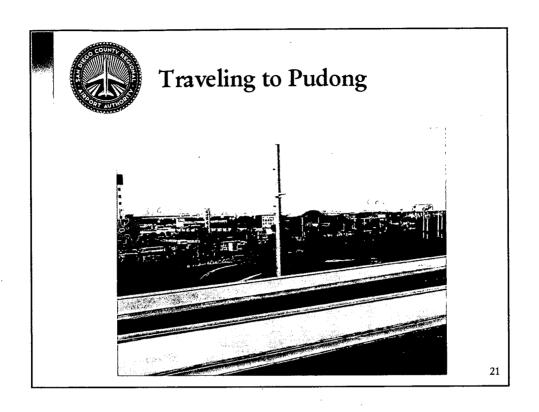


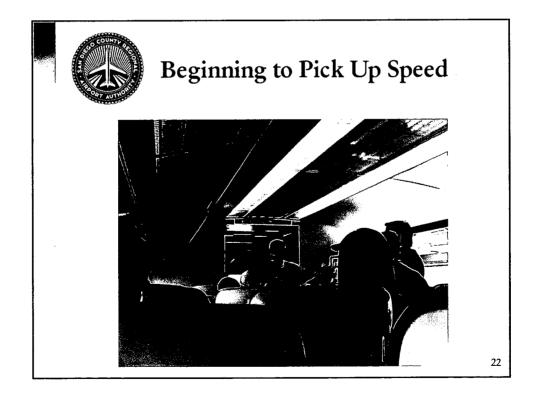


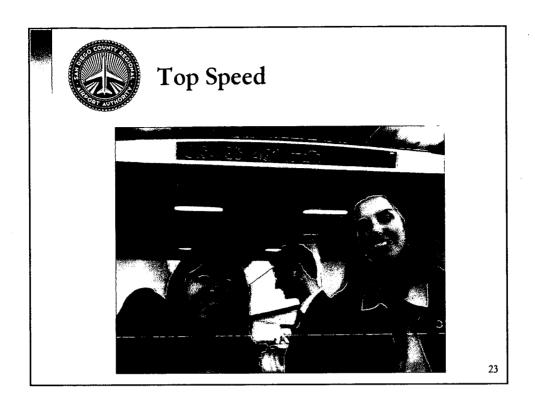


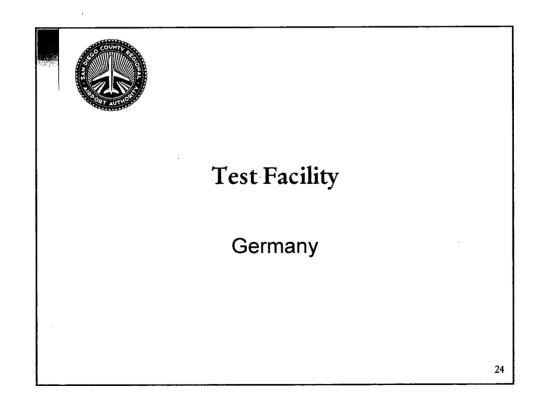


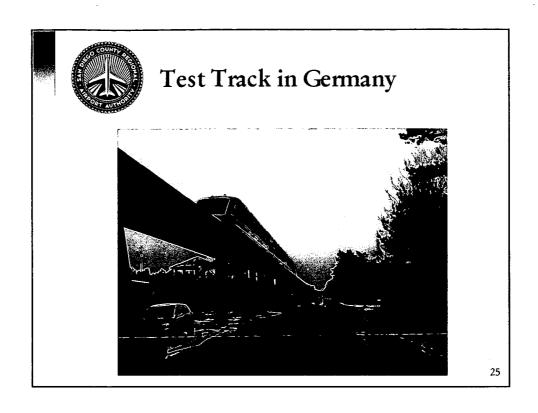




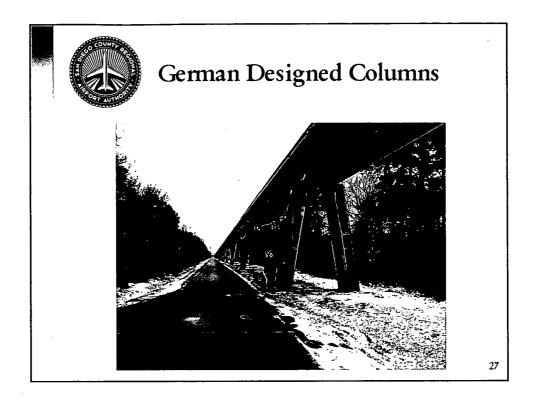


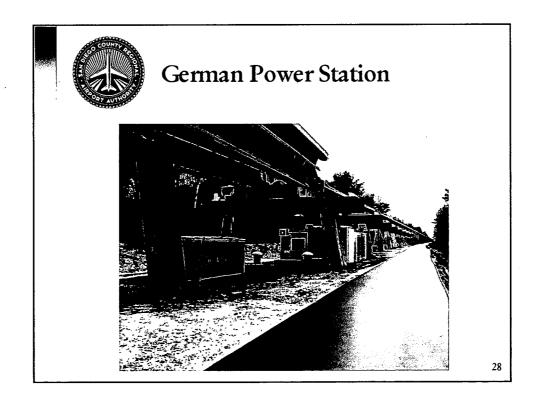














## Maglev Video

- Video 1 Train at top speed (267mi/hr) traveling from the airport
- Video 2 Train at top speed traveling towards the airport
- Video 3 Train at 120 mi/hr on far track pulling into the Pudong station

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Thank you.



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

## **Agenda**

Item No. <u>49</u>

Joint Meeting of the Board of Directors for Metropolitan Transit System, San Diego Transit Corporation, and San Diego Trolley, Inc. ADM 121.10 (PC 50451) SPTP 805.1

August 11, 2005

#### SUBJECT:

MTS: COORDINATION OF MTS COMPREHENSIVE OPERATIONAL ANALYSIS AND SANDAG INDEPENDENT TRANSIT PLANNING REVIEW

#### RECOMMENDATION:

That the Board of Directors receive this report on the coordination of MTS's Comprehensive Operational Analysis (COA) and the San Diego Association of Governments' (SANDAG's) Independent Transit Planning Review (ITR) for information.

**Budget Impact** 

None.

#### DISCUSSION:

MTS and SANDAG have embarked on two separate, yet related efforts to improve transit service and operations within the region. The goal of MTS's COA is to evaluate and restructure MTS services and operations to more efficiently and effectively serve the region's transit needs and meet regional transportation goals within the constraints of the current financial and operating environment. The project aims to improve the attractiveness and effectiveness of transit in serving market needs and achieving long-term financial sustainability through increased ridership, productivity, and operational efficiency.

While the COA is primarily focused on improving existing services within the short- to mid-range term (0-10 years), SANDAG's ITR was established to determine the most effective and cost-efficient transit service and infrastructure plan for the region well into









the future (30 years). The future focus of the ITR allows SANDAG to explore service and facility options that look beyond today's financial and operating conditions. Combined, the COA and ITR will be coordinated as follows to ensure the overall success of transit in serving the region's mobility needs:

- The COA will establish Service Development Guidelines and a Regional Service
  Concept that prioritize and reflect the transit travel needs of the region's
  residents, businesses, and visitors. Based on this guidance, the existing transit
  system will be redesigned to provide a solid foundation of transit services that are
  attractive, effective, and sustainable.
- The ITR will build off of the foundation laid by the COA to determine an effective and cost-efficient regional transit service and infrastructure plan. This effort will help to address many of the region's future mobility needs by providing a competitive travel option for many travelers.

#### MTS COMPREHENSIVE OPERATIONAL ANALYSIS (COA)

Prior to FY 2001, changes in ridership corresponded with changes in the amount of service provided. Since FY 2001, however, ridership has decreased despite increases in the level of service as well as in the population and the employment market base. Given these increases, the downward ridership trend does not indicate that the market size is contracting; rather the composition of the market has shifted, and MTS services are no longer optimally aligned with the travel demand and characteristics of the market. Furthermore, the ridership decline appears to be systemic and cannot be fully attributed to a specific operation, service type, geographic area, or corridor. Several factors can be attributed to the misalignment in service versus demand, as follows:

- While employment is growing, it is changing both in geography and in industries.
   The relocation of businesses from established employment centers to newer suburban business parks and the shift from manufacturing to service jobs have not been met with complementary changes in transit routes and schedules.
- The significant population increase in the suburban areas of the region and southwestern Riverside County has further added to the misalignment of transit services with travel patterns.
- Transit is becoming less competitive with other transportation modes, including
  driving, carpools, vanpools, and other travel-demand management offerings that
  have expanded or been enhanced significantly during the last five years with the
  increase in parking availability, travel, high-occupancy vehicle (HOV) lanes, and
  employer subsidies.

While services have become less utilized and efficient, costs for providing service have increased. Over the past several years, MTS has been faced with severe operating budget deficits that have resulted in service reductions and fare increases, further degrading the attractiveness of transit. Given the financial outlook, it is expected that the budget deficit will continue over the next several years.

In January 2005, MTS initiated the COA to take a fresh look at transit service in the greater San Diego area and to address the recurring budget deficit. This effort is the first time that MTS has taken a comprehensive look at its services. In addition to reducing inefficiencies in the system, the COA provides an opportunity to realign services with current market needs and to begin implementing components of the Transit First Strategic Plan.

The COA consists of three general steps, as follows.

- 1. Establish service development guidelines that reflect the goals of the COA.
- 2. Develop a Regional Service Concept based on the established guidelines. The Regional Service Concept should address:
  - what markets should be served;
  - how best to serve them; and
  - performance standards and service warrants that should be considered in evaluating existing services and identifying future opportunities.
- 3. Evaluate existing conditions and redevelop MTS services and operations based on the Regional Service Concept.

#### Service Development Guidelines

Attachment A details the service development guidelines for MTS services that were adopted by the MTS Board of Directors on June 23, 2005. These guidelines, as summarized below, reflect the input of the Blue Ribbon Committee and Citizens' Advisory Committee established for the COA and set a foundation for developing an attractive, effective, and sustainable transit system.

#### A Vision for MTS Services

- Develop a <u>Customer-Focused</u> System: Provide services that reflect the travel needs and priorities of our customers.
- Develop a <u>Competitive</u> System: Provide services that are competitive with other travel options by meeting market segment expectations.
- Develop an <u>Integrated</u> System: Develop transit services as part of an integrated network rather than a collection of individual routes.
- Develop a <u>Sustainable</u> System: Provide appropriate types and levels of service that are consistent with market demands and are maintainable under current financial conditions.

#### Regional Service Concept

A Regional Service Concept was developed that reflects the Service Development Guidelines. This service concept consists of three tiers of services:

- 1. <u>Urban Network</u> Rich network of services that support spontaneous use for a wide range of travel needs within urban areas demonstrating sufficient demand.
- 2. <u>Community-Based Services</u> Services designed for individual commuter market needs where enough demand exists to warrant service.
- 3. <u>Community-Based Services</u> Services specifically tailored to individual community niche market needs where enough demand exists to warrant service.

This service concept is designed to provide the appropriate type and level of service for each area given the demand for transit. A rich urban network of services will be developed in areas where transit is a competitive travel choice for most trip purposes given favorable land-use conditions and market segments. Routes will be designed to serve key corridors with convenient transfers between local, corridor, and regional routes that allows for spontaneous use to and from anywhere within the network throughout the day.

In areas where the demand does not warrant a rich network of routes, market-specific services (including commuter and community-based services) will be designed and tailored to the needs of specific markets that demonstrate sufficient demand. Lifeline service needs should be evaluated within the context of market-specific services. Attachment B outlines the characteristics of the Regional Service Concept.

To help determine the type and level of service applicable to specific areas and markets within our jurisdiction, a set of underlying factors or service warrants have been identified that should exist within an area before services are considered.

Service warrants for the Urban Network are:

- High demand for all-day/every-day travel.
- High degree of transit dependence.
- High density of employment.
- High degree of positive market segments given underlying land-use conditions.
- High degree of positive market segments given transit's competitiveness as a travel option.

Attachment C presents a map illustrating areas within the Urban Network based on these service warrants.

### Service warrants for Commuter-Based Services are:

- High density of employment.
- High demand for specific market travel pattern.
- High degree of positive market segments given underlying land-use conditions.
- High degree of positive market segments given transit's competitiveness as a travel option.
- Commitment at destination to assist in trip completion (station cars/vans, shuttles).

### Service warrants for Community-Based Services are:

- High demand for specific market travel pattern.
- High degree of positive market segments given transit's competitiveness as a travel option.
- Funding commitment to ensure that minimum cost-effectiveness standards are met.

### SANDAG'S INDEPENDENT TRANSIT PLANNING REVIEW (ITR)

The TransNet extension includes funding for a number of light rail transit (LRT) and bus rapid transit (BRT) projects that are identified in the Regional Transportation Plan (RTP). At the SANDAG Board's direction, passage of the *TransNet* extension triggered a commitment to conduct an Independent Transit Planning Review of the RTP and regional transit projects to help determine the most effective and cost-efficient transit service and infrastructure plan for the region. Specifically, the study effort shall:

- Evaluate regional transit projects in light of global "best practices" and possible alternatives, and
- Conduct an analysis with the goal of producing a market-responsive service plan aimed at:
  - maximizing ridership/attracting new riders:
  - improving traffic/reducing congestion and reducing transit travel time.
  - supporting redevelopment/smart growth; and
  - doing so cost-effectively in light of expected capital and operating resources.

The study results would support the 2007 update of the transit component of the RTP in conjunction with the comprehensive update to the current 2030 RTP.

### **Study Format**

SANDAG's Transportation Committee approved a two-faceted approach for undertaking the Independent Transit Planning Review that includes: (1) a consultant study that will provide the technical analysis of regional plans and implementing strategies; and (2) an oversight Peer Review Panel that brings expert guidance and oversight from transit industry professionals with direct implementation and operating experience in the field. Together, the consultant firm and Peer Review Panel provide an independent but capable, strong and balanced assessment of SANDAG's plans and projects relative to their experience with in-service BRT, LRT, and guideway transit.

Based on direction from SANDAG's Transportation Committee, input from the American Public Transit Association, and colleagues in the field, the following peer review panel was formed.

- <u>David Mieger, Los Angeles County Metropolitan Transportation Authority</u> Mr. Mieger is the Director of Westside Planning and has led the development of both LRT and BRT projects for the agency.
- <u>John Bonsall, McCormick/Rankin</u> Mr. Bonsall is the former head of OC Transpo, the transit authority in Ottawa, Ontario, where he led development of its bus transitway system. Currently Mr. Bonsall serves as President of McCormick/Rankin, a consultant firm that has been involved in the development of a number of BRT projects throughout the world.
- <u>Richard Feder, Pittsburgh Port Authority of Allegheny County</u> Mr. Feder serves as Director of Transit Planning and is involved in the planning, implementation, and operations of the agency's extensive LRT, BRT, and exclusive busway system.
- <u>Phil Selinger, Portland Tri-County Metropolitan Transportation District of Oregon</u>
   Mr. Selinger serves as Director of Project Implementation for the agency's extensive LRT and bus system.
- Linda Cherrington, Texas Transportation Institute (TTI) Ms. Cherrington serves as Program Manager for TTI's Transit Mobility Program, which has been involved in several studies involving high occupancy vehicle (HOV) facilities, BRT, and value pricing; Ms. Cherrington previously served as Assistant General Manager for the Houston Metropolitan Transit Authority and Chief Executive Officer for LKC Consulting Services in Houston.
- Robert Cervero, University of California Berkeley Dr. Cervero is professor of City and Regional Planning and is considered a leading expert in transit-oriented development, land use and economic benefits of transit service, and transit/land use integration.

### Study Progress to Date

Two meetings have been held with the Peer Review Panel (one in April and one in late June). The purpose of these meetings was three-fold: (1) to get the panelists up to speed on the current transit system, plans, and projects (including the COA); (2) to solicit input from various stakeholders' groups on issues that should be addressed as part of the Independent Transit Planning Review; and (3) to finalize the key study issues.

In terms of stakeholder groups, the panelists met with several SANDAG committees (the Regional Planning Technical Working Group, the Cities/County Transportation Advisory Committee, and the Regional Stakeholders Working Group), MTS, and North County Transit District (NCTD) management staff, and several SANDAG Transportation Committee members. In addition, a public forum for interested community/business/civic groups and individuals was held.

Based on an initial study issues list prepared by SANDAG staff and input from the various groups mentioned above, a final study issues list was prepared that will serve as the basis for the scope of work for the technical consultant study. These tasks are summarized below:

### 1. <u>Integration of Regional Transit Vision with Land Use Vision</u>

- a. Compare Mobility 2030 transit plan with the emerging Smart Growth Concept map.
- b. Suggest refinements to the key transit corridors based on current transit mode shares, updated travel data, existing transit infrastructure, key activity areas, MTS's COA, and NCTD's Fast Forward plan.
- c. Research experience with Smart Growth strategies elsewhere, their successes in attracting new riders, institutional barriers that had to be overcome, and financial incentives needed. Discuss their potential application to our region.

### 2. Transit Level of Investment Strategy

- a. Refine the Yellow/Red/Blue/Green service concepts in light of current projects, the land use issues from Task 1, and experience in other cities.
- b. Develop definitions for different BRT gradations in light of corridor characteristics, speed/transit priorities needed, service frequencies, station spacing, and customer amenities/technologies.
- c. Evaluate the application, design, and trade-offs of LRT, managed lanes, bus guideway, BRT/enhanced bus investment strategies in light of current Mobility 2030 and Regional Comprehensive Plan goals, existing highway/transit infrastructure, sensitive areas (i.e., open space, habitat areas), financial resources, and capital and operating costs.

- d. Evaluate the role Smart Growth opportunity area can play in determining the transit level of investment, both in urban and suburban settings.
- e. Evaluate opportunities for integration of future technologies.

### 3. BRT and Trolley Operating Cost Model

- a. Research BRT cost experience in other North American cities.
- b. Develop a BRT cost model for the various BRT gradations, calibrated to San Diego costs that factor in the various cost categories, including vehicle maintenance/operations, labor, station maintenance, security, fare collection/inspection, and marketing associated with a BRT operation.
- c. Evaluate current trolley operating costs to provide comparison with BRT costs.

#### 4. Operating Strategies

- a. Develop operating strategy options for different corridor applications, factoring in land-use factors (densities, smart growth opportunities, urban design) and service characteristics (frequencies, span of service, transit markets to be served). Factor in MTS's COA and NCTD's Fast Forward service concepts.
- b. Evaluate the role of park-and-ride lots and shuttles in enhancing access to regional transit services.
- c. Apply a reasonable check in terms of matching operating costs for the strategy options with available regional funding for operations.
- d. Use this information to develop realistic mode-split goals for key transit corridors.

### 5. Modeling

- a. In conjunction with the update to SANDAG's transportation model, evaluate experience in other cities with modeling BRT services.
- b. Evaluate the potential for incorporating the market research information into ridership forecasting.

This work effort will serve as input into preparation of the comprehensive 2007 update to the 2030 RTP, where changes to the current regional transit plan will be made as needed to reflect the findings from the Independent Transit Planning Review.

### NEXT STEPS FOR THE COA AND ITR

It is anticipated that both the COA and ITR will be completed by the end of the calendar year in 2005. The results of both projects will be presented to the MTS Board and SANDAG Transportation Committee.

The COA project team is currently defining the regional and corridor network. Once this network is established, MTS will begin detailed service redesign of local, neighborhood, and market-based services within the system. This process will include a series of stakeholder planning sessions in which members of the project committees and key stakeholders will be invited to provide input into the specific service design. When completed, the draft Service Development Plan will be reviewed through an extensive public outreach effort before a public hearing and adoption by the MTS Board in December 2005.

SANDAG's ITR technical consultant started work in late July, and a detailed scope of work and schedule will be developed by mid-August. The overarching schedule calls for the technical work on the ITR to be completed by the end of the calendar year with final approval of recommendations by the SANDAG Transportation Committee in late January/early February 2006.

Paul C. Jablonski Chief Executive Officer

Key Staff Contact: Conan Cheung, 619.515.0933, conan.cheung@sdmts.com

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Attachments: A. Proposed Service Development Guidelines

B. Service Characteristics of the Regional Service Concept

C. Urban Network Service Area

#### SERVICE DEVELOPMENT GUIDELINES

**Develop a <u>Customer-Focused</u>** System: Provide services that reflect the travel needs and priorities of our customers

- Develop services based on input from existing customers, the public, operators, and other key stakeholders
- Provide services that are simple to use, and provide information through multiple sources that is easily understood:
  - > Develop a core network that supports spontaneous use for a wide range of travel needs
  - Augment the core network with market-based services that allow for spontaneous use for specific trip purposes

**Develop a Competitive System:** Provide services that are competitive with other travel options by meeting market segment expectations

- Provide services only where they can meet the market segment expectations:
  - Balance speed, directness, and access when planning routes and stops according to specific market-segment needs to ensure that transit has a competitive position
  - Provide services that are predictable and reliable, particularly on less frequent routes
  - Provide services that are attractive, comfortable, and safe

**Develop an Integrated System:** Develop transit services as part of an integrated network rather than a collection of individual routes

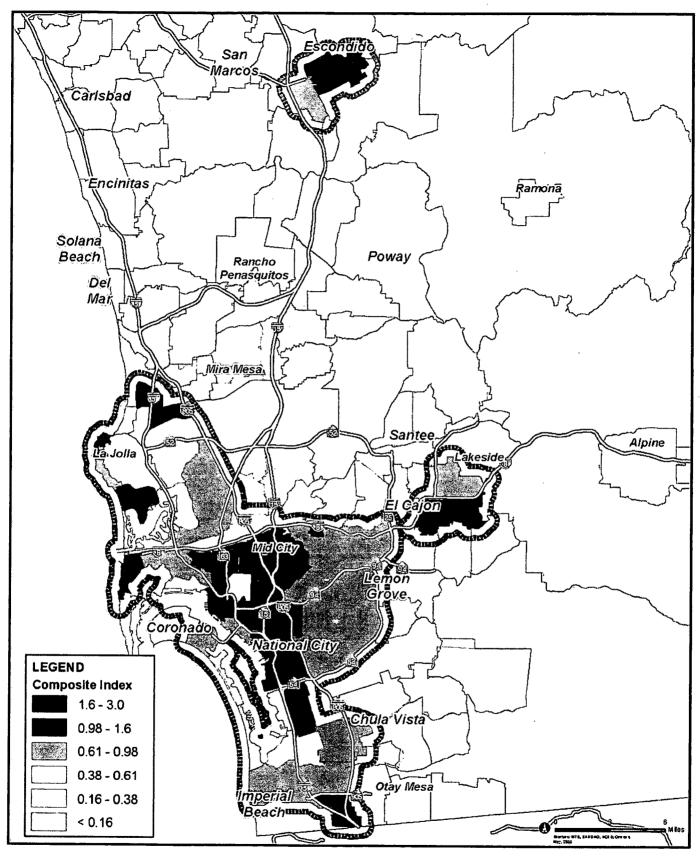
- Establish a core network of services that accommodates the diverse travel needs of areas with sufficient all-day demand
- Maintain high frequencies and consistent span of service along key corridors within the core network for spontaneous use
- Augment the core network with market-specific services as warranted by demand (e.g. commuter, community-based)
- Design routes and locate major transfer hubs for efficient connections
- Provide timed connections between less frequent services where timed-transfer benefits outweigh the impact to through riders
- Market services as part of an integrated system

**Develop a** <u>Sustainable</u> **System:** Provide appropriate types and levels of service that are consistent with market demands and are maintainable under current financial conditions

- Provide services that maximize customer benefits and usage within available funding
- Provide services where and when there is a "critical mass" of demand to meet subsidy expectations
- Introduce new services only if:
  - Financially viable after the initial testing period
  - Seek partnerships with local jurisdictions, other agencies, communities, businesses, and other organizations to help design and finance special community services
- Regularly evaluate and adjust transit services to optimize performance

### SERVICE CHARACTERISTICS OF THE REGIONAL SERVICE CONCEPT

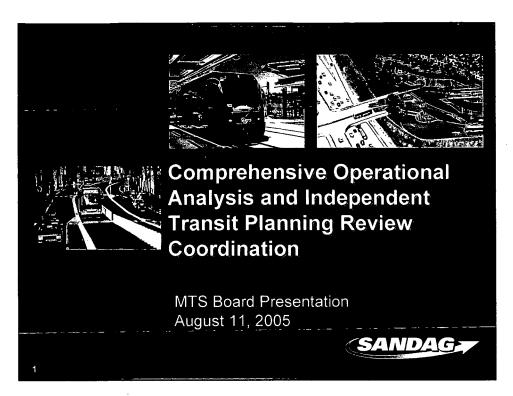
4	Markets Served	Frequency	Span of Service	Service Attributes
Core Network	Wide range of local and regional travel needs within the core of the service area.	15 minutes or better all day (5-10 min peak) along key corridors, with a minimum of 30 minutes throughout the network.	Consistent all-day/ every-day service on key corridors with a minimum of all day weekday service throughout the network.	Network of local and corridor services with convenient connections to regional network. Allows for spontaneous use from anywhere to anywhere along the network throughout the day.
Commuter Services	Peak-period regional work trips that demonstrate sufficient demand.	10-15 minutes during peak periods and 60 minutes during off-peak periods on key corridors.	Weekday service from start of commute to early evening on key corridors, and peak periods only on other corridors.	Direct service for one-seat travel for key origin/destination travel pairs.
Community- Based Services	Specifically defined niche market needs; e.g., seniors, disabled, students that demonstrate sufficient demand.	Tailored to specific market needs.	Tailored to specific market needs.	Flexible routing and schedule tailored to the specific needs of the market served. Generally links neighborhoods with local destinations (e.g. retail, schools, civic centers, and medical) and regional transit services. May vary throughout day and week.



## **Urban Network Service Area**

Poverty, Auto-deficit, Easy Goer & Flexible Flyer Demand, & Employment Densities





## **Objectives**

- Comprehensive Operational Analysis (COA)
  - Establish a Regional Service Concept that reflect today's mobility needs
  - Redesign existing transit system to provide a solid foundation of transit services that are attractive, effective, and sustainable within the short to mid term.
- Independent Transit Planning Review (ITR)
  - Build off of the foundation laid by the COA to determine an effective and cost efficient regional transit service and infrastructure plan for region's long term mobility needs.



## **COA - Study Approach**

- Establish service development guidelines that reflect the COA goals
- Develop a Regional Service Concept based on the established guidelines
  - What markets should be served?
  - How can we best serve them?
  - Identify performance standards and service warrants
- Evaluate existing conditions and redevelop MTS services based on the Regional Service Concept

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COA and ITR Coordination

## **COA - A Vision for MTS Services**

- Develop a <u>Customer Focused</u> System: Provide services that reflect the travel needs and priorities of our customers
- Develop a <u>Competitive</u> System: Provide services that are competitive with other travel options by meeting market segment expectations
- Develop an <u>Integrated</u> System: Develop transit services as part of an integrated network rather than a collection of individual routes
- Develop a <u>Sustainable</u> System: Provide appropriate types and levels of service that are consistent with market demands and are maintainable under current financial conditions

# **COA - Regional Service Concept**

- <del>-</del>	Markets Served	Service Attributes	Frequency/Span
Network Based	Spontaneous use for wide range travel needs.	Network of local and corridor services with convenient connections to regional network.	High frequencies (7-8 min during peak, with 15 min all day along key corridors) and consistent span of service (minimum all day service on weekdays).
Commuter Services	Peak period work trips.	Direct service for one seat travel for key origin-destination travel pairs.	High frequencies (7-8 min during the peak of the peak, and 10-15 min during shoulders of peak). Service during prevailing work hours along key corridors, and peak period only on other corridors.
Community Based Services	Specifically defined market needs.	Flexible routing and schedule. May vary throughout day and week.	Tailored to specific market needs.



COA and ITR Coordination

## ITR - Study Approach

- Evaluate regional transit system in light of global "best practices"
- Two-faceted approach designed to provide a capable, strong, & balanced assessment:
  - Consultant Study would provide technical analysis of our regional plans and implementing strategies
  - Peer Review Panel brings in expert guidance and oversight from transit industry professionals`
- Coordinate efforts closely with MTS and NCTD

MTS SANDAG

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## **ITR - Peer Review Panel**

- David Meiger Los Angeles MTA
- Richard Feder Pittsburgh Port Authority
- Phil Selinger Portland Tri-Met
- Linda Cherrington Texas Transportation Institute
- John Bonsall McCormick-Rankin
- Robert Cervero UC Berkeley

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COA and ITR Coordination

### ITR - Feedback Issues to be Studied

- Need for stronger articulation of transit/land use connection
- Define success for transit/ land use coordination
- Explore experience with arterial BRT & implementation of transit priority measures
- Explore access to and from regional BRT services, both on home and job ends of trip
- Analyze how transit can best serve the many-to-many trip movements in our region (SANDAGE)

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## ITR - Study Issues

- 1) Integration of Regional Transit and Land Use Visions
  - Compare RTP transit plan with emerging Smart Growth map
  - Suggest refinements to key transit corridors
- 2) Transit Level of Investment Strategy
  - Develop definitions for different BRT gradations
  - Evaluate application, design, and tradeoffs of transit investments
- 3) BRT and LRT Operating Cost Model
  - Develop detailed BRT cost model
- 4) Operating Strategies
  - Evaluate operating strategy options for different corridors
  - Develop realistic transit mode-split goals for key corridors
- 5) Modeling

Incorporate market research insights into ridership forecasting





COA and ITR Coordination

### Coordination between COA and ITR

- MTS/SANDAG staff participation on working groups for both projects
- COA results will serve as foundation for SANDAG's mid- to long-range plans and 2007 RTP update
- TransNet transit projects considered within COA planning
- COA study schedule ahead of ITPR --- thus, COA results provide input to ITPR study
- MTS & SANDAG will jointly manage a number of planning & operations studies to coordinate our transit planning efforts

(SANDAGA

# **Next Steps**

	COA	ITR
August 2005	Begin detailed service and schedule design for existing services	Begin consultant study
December 2005	Final redevelopment plan to MTS Board	Complete technical analysis
January/ February 2006	Public outreach and begin implementation of service changes	Final report to Transportation Committee
Spring/ Summer 2006	Majority of changes to be implemented by June/Sept 2006	Use results as input into 2007 Regional Transportation Plan update

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## **Agenda**

Item No. <u>61</u>

Chief Executive Officer's Report

ADM 121.7 (PC 30100)

August 11, 2005

### **Minor Contract Actions**

- San Diego Trolley, Inc. for flagging for the 12<sup>th</sup> Avenue Corridor Improvements and Mission Valley East (MVE) Light Rail Transit (LRT) projects.
- Aerial Advertising for a one-half day aerial banner for the MVE LRT Extension opening.
- San Diego Loose Leaf for poly tab inserts for Board agenda binders.
- U. S. Postal Service for postage for postage meter in the MTS mail and copy center.
- Laidlaw Transit Services, Inc. for the addition of Route No. 981 and 982, Sorrento Valley Coaster Connection Caltrans Mitigation.
- The Wiggans Group for right-of-way services for the Grossmont transit-oriented development easement.
- Gonzalez-White Consulting for the development of 2006 Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) Disadvantaged Business Enterprise (DBE) goals.
- Marie Burke Lia for legal services for the Coronado Branch Line.
- Transportation Management & Design (TMD) for consulting services for the Comprehensive Operational Analysis (COA).
- Commercial & Industrial Roofing for a contract amendment for the reroofing of the taxicab building.
- PGH Wong Engineering Inc. for general consulting for the MVE LRT Extension.
- Hecht, Solberg, Robinson for legal services related to the MVE LRT Extension.
- Orion Construction Corp./Balboa construction, Inc. for construction services for the MVE LRT Extension SDSU Segment Utilities.



- SDSU Foundation for tax payments per the leases for 5186-98 and 5104-30 College Avenue (Lot P) for the MVE LRT Extension.
- Clark Construction Group, Incorporated for construction services for the SDSU Tunnel and Underground Station portion of the MVE LRT Extension.
- Balvour Beatty-Ortiz Enterprises, Inc. for construction services for the La Mesa segment of the MVE LRT Extension.
- Reid and Clark Silkscreen for kiosk signs for the MVE LRT Extension.
- Raphael's Party Rental for equipment rental for the MVE LRT Extension opening.
- Dimensional Silkscreen for local area maps for the MVE LRT Extension.
- Clear Channel Traffic for advertising for the MVE LRT Extension opening.
- Mots Media for advertising for the MVE LRT Extension opening.
- National Cinemedia for in-theater advertising for the MVE LRT Extension opening.
- Daily Aztec for advertising for the MVE LRT Extension opening.
- Outdoor Insight for outdoor advertising for the MVE LRT Extension opening.
- 100.7 Jack FM for advertising for the MVE LRT Extension opening.
- Aztec Shops Ltd. for catering for the MVE LRT Extension opening.
- Voice & Video for voice and video equipment rental for the MVE LRT Extension opening.

#### Contract Matters

There were no Contract Matters.

gail.williams/agenda item 61