



**CHICAGO TRANSIT AUTHORITY**  
***DISADVANTAGED BUSINESS ENTERPRISE PROGRAM***

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## **INTRODUCTION**

The Chicago Transit Authority (CTA) operates the second largest public transportation system on the North American continent. Weekday riding averages over 1.4 million trips, with an annual ridership of 418.8 million system-wide.

The CTA, which was created by state legislation, began operating on October 1, 1947, after acquiring the properties of the Chicago Rapid Transit Company and the Chicago Surface Lines. On October 1, 1952, the CTA became the sole operator of transit services in Chicago when it purchased the Chicago Motor Coach System. The governing arm of the CTA is the Chicago Transit Board, consisting of seven members. Four members are appointed by the Mayor of Chicago, subject to approval by the City Council and the Governor of Illinois. Three members are appointed by the Governor, subject to approval by the State Senate and the Mayor of Chicago.

As a recipient of United States Department of Transportation (DOT) grant funds, CTA is subject to regulations governing such funds including the Code of Federal Regulations, Title 49 Part 26, which detail disadvantaged business enterprise (DBE) requirements. As a recipient of DOT grant funds, CTA must adopt a DBE Program.

The DBE Program in the pages that follow sets forth and formalizes CTA's actions with respect to upholding its commitment to create a level playing field on which small and disadvantaged businesses can compete fairly for DOT assisted projects.

## **I. DEFINITION OF TERMS**

### ***Affiliation***

Has the same meaning as in the Small Business Administration (SBA) regulations of 13 CFR, part 121. Except as otherwise provided in 13 CFR, part 121, concerns are affiliates of each other when, either directly or indirectly,

- One concern controls or has the power to control the other; or
- A third party or parties controls or has the power to control both; or
- An identity of interest between or among parties exists such that affiliation may be found.

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 Operating Program.

### ***Area of Specialty***

The description of a DBE's business, which has been determined by the IL UCP, to be most reflective of the DBE's claimed specialty or expertise.

### ***Bid***

A company's submittal to be awarded a CTA contract including proposals, letters of interest and qualification (LIQ) and bids.

### ***Bidder***

Bidder, proposer, or offeror. The terms may be used interchangeably.

### ***Broker***

An entity that charges fees or commissions for providing a bona fide service and provides CTA proof of its fees or commissions.

***Commercially Useful Function***

A DBE performs a commercially useful function on a particular transaction when it is responsible for the management, performance and/or supervision of the work. With respect to materials and supplies used on a contract, the DBE must be responsible for negotiating price, determining quantity and quality, ordering material and installing (where applicable) and paying for the material itself. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant through which funds are passed to obtain the appearance of DBE participation.

***Compliance***

Full satisfaction of a Contractor's DBE requirements.

***Contract***

A legally binding relationship obligating one party to furnish supplies or services (including, but not limited to, construction and professional services) and the other to pay for them.

***Contract Scope of Work***

The identifiable goods and services to be provided through a contract or subcontract (at any tier).

***Contractor***

An individual or firm that provides goods or services through a contract or subcontract of any tier.

***DBE Certification***

A current certification of DBE status issued by the Illinois Unified Certification Program.

***DBE Directory/IL UCP DBE Directory***

Directory of all certified DBEs under the Illinois Unified Certification Program "IL UCP"). IL UCP DBE certifications are determined by the CTA, City of Chicago, Illinois Department of Transportation, Metra and Pace.

***DBE Percentage***

The established goal amount for disadvantaged business enterprise participation on a specified contract.

***Department or DOT***

The U.S. Department of Transportation (USDOT), including the Office of the Secretary, the Federal Highway Administration, the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA).

***Disadvantaged Business Enterprise (DBE)***

A for-profit small business concern 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, when 51 percent of the stock is owned by one or more such individuals and whose management and daily operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

***DOT-assisted contract***

Any contract between the CTA and a contractor (at any tier) funded in whole or part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

***Good Faith Efforts***

Efforts to achieve a DBE goal or other requirements of the DBE Program which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

***Good Faith Efforts Utilization Plan***

A plan submitted by the bidder of its commitment to assist in the development of certified DBEs during the course of its contract with the CTA.

***Illinois Unified Certification Program (IL UCP)***

A reciprocal DBE certification program for all agencies in Illinois that receive federal funds. The IL UCP issues the IL UCP DBE Directory of all businesses in Illinois that have been certified as DBEs.

### ***Immediate Family Member***

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

### ***Joint Venture***

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. The DBE joint venturer must be responsible for a distinct, clearly-defined portion of the work of the contract and share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

### ***Manufacturer***

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 contract specifications.

### ***Non-compliance***

The failure of a contractor to fully satisfy the DBE requirements of its contract.

### ***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.

***Primary Business Activity Classification***

The code referenced within the NAICS Manual, which best describes the primary business of a firm. The NAICS Manual is available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261).

***Prime Contractor***

A company that enters into a contract directly with the CTA.

***Principal Place of Business***

The business location where the individuals who manage a 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 CTA will determine the principal place of business for DBE Program purposes.

***Program***

CTA's Disadvantaged Business Enterprise Program.

***Race-Neutral***

A measure or program that is or can be used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

***Regular Dealer***

A firm that owns, operates, or maintains a store, warehouse, or establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as regular dealers within the meaning of this definition.

### ***Small Business Concern***

A small business concern as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or groups of concerns controlled by the same socially and economically disadvantaged individual or individuals who have annual average gross receipts in excess of \$22.4 million, or as revised from time to time, over the three (3) previous fiscal years.

### ***Socially and Economically Disadvantaged Individual***

Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

- determined by CTA to be a socially and economically disadvantaged individual on a case-by-case basis;
- An individual in the following groups, the members of which are presumed to be socially and economically disadvantaged:

“**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, and other Spanish or Portuguese culture or origin, regardless of race;

“**Asian Americans**”- which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong; India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; or

“**Woman**”- A person of the female gender, regardless of race.

- An individual of any additional groups, whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

### ***Stocking Distributor***

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 contract 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. To be a stocking distributor, 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.

### ***Subcontract***

A contract between a Prime Contractor and a third party to provide all or a specific part of the goods or services required in the Prime's Contractor's contract with CTA.

## **RESPONSIBILITY FOR DBE IMPLEMENTATION**

### **Liaison Officer (49 CFR – 26.25)**

We have designated the individual whose name is shown on Attachment 2 as our DBE Liaison Officer:

In this capacity, DBE Liaison Officer is responsible for implementing all aspects of the CTA's DBE Program and ensuring that the CTA complies with all provisions of 49 CFR Part 26. The DBE Liaison Officer has direct, independent access to the CTA President. An organizational chart displaying the DBE Liaison Officer's (DBELO) position in the organization is found in Attachment 3 to this program. It is the responsibility of the DBELO to carry out the day-to-day operations of the CTA's DBE Program. Specifically, the duties of the DBELO include, but are not limited to:

1. Develop, monitor and provide the implementation and continuing evaluation of the DBE Program;
2. Work with all CTA departments to set the CTA's overall annual DBE participation goal;
3. Circulate the DBE Policy Statement to CTA personnel and the CTA's contracting community;
4. Identify contracts and procurements to ensure that general and/or contract-specific DBE goals are included in solicitations and monitor the results;
5. Review third-party contracts and purchase requisitions for compliance with this program;
6. Ensure that bid notices and requests for proposals are available to DBEs in a timely manner;
7. Provide DBEs with information and assistance in preparing bids, and obtaining bonding and insurance;
8. Analyze the CTA's progress towards goal attainment and identify methods for improvement;

9. Consult with legal counsel, project managers and CTA's Purchasing Department to determine contractor compliance with good-faith efforts;
10. Certify DBEs according to the criteria set by the DOT and act as liaison to the Illinois Unified Certification Program Committee;
11. Maintain and annually update a Directory of bona fide DBEs qualified to participate in the DBE Program;
12. Provide management and technical assistance for the expansion and overall business development of DBEs;
13. Publicize CTA business opportunities to DBEs;
14. Attend pre-bid, pre-award and pre-construction meetings to explain DBE Program requirements;
15. Monitor contractors' and subcontractors' compliance with their DBE participation commitments through the life of the contracts;
16. Plan and participate in training sessions for the purpose of informing potential bidders about the DBE Program and about business opportunities with CTA;
17. Ensure timely submission of DBE Program reports that are required by FTA;
18. Maintain accurate and up-to-date records demonstrating DBE efforts and progress within CTA;
19. Review the Affirmative Action Programs of contractors to determine their compliance with DBE Program requirements; advise contractors (if required) of the steps necessary to bring them into compliance regarding DBE utilization; and conduct compliance reviews as needed to ensure effective program implementation;
20. Investigate complaints and protests filed against the DBE Program;
21. Ensure that each contract and each subcontract executed by the prime contractor contains the assurances listed in 49 CFR Part 26.13;
22. Consult with CTA's Chief Financial Officer to increase investment of funds with minority and female financial institutions;

23. Establish contract-specific DBE goals;
24. Survey the DBE community and other relevant sources as part of the DBE participation goal-setting process;
25. Conduct outreach in order to increase business opportunities for DBEs at CTA;
26. Advise the CTA's President and Board on DBE matters and achievement;
27. Evaluate all change orders that affect the original contract value for potential DBE participation opportunities; and
28. Ensure that safeguards are instituted to mitigate any potential conflicts of interest including reporting relationships.

**Support Staff:** The DBELO has a support staff from within the Diversity Department. An organization chart is found in Attachment 4 to this program.

The President, with input from the DBELO, will evaluate the DBE compliance performance of all department heads and staff with specific DBE responsibility. The following officials from other departments assist the DBELO with implementing the DBE Program:

1. General Counsel
2. Chief Financial Officer
3. Vice President, Purchasing & Warehousing
4. Chief Infrastructure Officer

The assistance includes, but is not limited to:

1. General Counsel: The General Counsel shall:
  - a. Provide legal advice with respect to interpreting and implementing the DBE regulations;
  - b. Advise the CEO and DBELO regarding matters dealing with imposition of administrative sanctions against contractors who violate any part of the DBE program requirements; and
  - c. Represent CTA in all legal actions involving DBE issues.
2. Chief Financial Officer: : The Chief Financial Officer shall;

- a. Consult with the DBELO to maximize investments of CTA funds with minority financial institutions, and periodically report progress to the CTA Board;
  - b. Assist in assuring adherence to the prompt payment provision in CTA contracts; and
  - c. Assist the DBELO in providing information on applications for federal grants..
3. Vice President of Purchasing & Warehousing: The Vice President of Purchasing & Warehousing shall:
- a. Provide the scope of work for Invitation for Bids (IFBs), Request for Proposals (RFPs) and Request for Qualifications (RFQ) to the DBELO on a timely basis to enable goal-setting, outreach and, where applicable, development of appropriate DBE language;
  - b. Ensure that the DBELO has adequate time to review "good faith efforts" on all procurements with DBE contract goals when the goal is not met through participation;
  - c. Provide information to the DBELO on the projected contracts that the CTA plans to award during the upcoming federal fiscal year in a timely manner;
  - d. Ensure that the DBELO is kept abreast of all procurement policies and procedures, and changes thereto;
  - e. Offer instruction on bid/proposal specifications, procurement policies and procedures, and general bidding requirements to DBEs and prime contractors, when requested;
  - f. Assist the DBELO in giving instructions to DBEs on job performance, subcontracting, and bonding requirements;
  - g. Support the DBELO with workshops, seminars, written material and specialized assistance to individual firms in order to facilitate DBE knowledge about procurement activities and business opportunities at CTA;
  - h. Ensure that the DBE community is notified of upcoming procurements, through announcements in the local and community newspapers and through providing the availability of plans and specifications to technical assistance agencies;
  - i. Ensure that a reasonable number of DBEs are listed on all bidders' lists.;

- j. Permit DBE to review and evaluate successful bid and proposal documents, subject to applicable law and confidentiality requirements;
  - k. Support and assist the DBELO with debriefing sessions to explain to DBEs as to why certain proposals were successful;
  - l. Hold and attend pre-bid conferences and pre-contract award meetings to assist the DBELO in giving instructions and explanation of DBE and procurement requirements in the solicitation;
  - m. Ensure that all procurement bid lead-times are reasonable and in accordance with normal industry practice;
  - n. Review with the DBELO certain types of procurements to determine whether the contracts may be broken down to be of a more advantageous size for DBE participation; and
  - o. Provide the DBELO with access to CTA procurement data on a monthly basis for completion of FTA-required reports.
4. Chief Infrastructure Officer: The Chief Infrastructure Officer shall:
- a. Provide advance notification of all construction projects that have subcontracting opportunities;
  - b. Participate in public and community meetings to inform the DBE community of upcoming construction projects; and
  - c. Assist the DBELO in the interpretation of contract specifications for clarification regarding payment and work related disputes.

**Reconsideration Officer (49 CFR – 26.53)**

If the CTA determines that the lowest responsive bidder has failed to meet the requirements of the DBE contract goal, the DBELO will provide such bidder an opportunity for administrative reconsideration prior to contract award. If necessary, the DBELO will provide the second low bidder an opportunity for administrative reconsideration. This procedure will be repeated for subsequent bidders, if necessary. The DBELO or his/her supervisor will appoint one or more Reconsideration Officers. A current list of Reconsideration Officers is included as Attachment 5. The designated Reconsideration Officers are CTA employees who did not take part in the original determination that the bidder failed to meet the DBE contract goal or make good faith

efforts to do so. They are familiar with CTA procurement practices and the DBE regulations.

**Financial Institutions (49 CFR – 26.27)**

It is the policy of the CTA to investigate the full extent of services offered by Minority Financial Institutions (MFI) owned and controlled by socially and economically disadvantaged individuals in the community and to make reasonable efforts to use these institutions and encourage prime contractors on DOT-assisted contracts to make use of these institutions. The following clause is contained in the DBE Special Conditions section of contract documents:

“Minority Financial Institutions/Insurance Agencies - The prime contractor is encouraged to use the services of banks and insurance agencies owned and controlled by minorities or women.”

CTA has historically operated a Minority Banking Program. The results of this program are reported to the DBELO on a monthly basis. The minority financial institutions (MFI) in this program are identified by utilization of the U.S. Department of Treasury's listing of MFIs within the State of Illinois. Currently, the following institution has been identified:

**Seaway National Bank**

CTA has also made a commitment in the CTA Investment Policy to utilize approved minority and female owned financial institutions, money managers and financial advisors in the investment of public funds. Currently the following minority investment firms are receiving CTA investments

**Cabrera**

**Loop Capital Markets**

**Directory (49 CFR – 26.31)**

The CTA is a certifying member of the Illinois Unified Certification Program (IL UCP). The IL UCP DBE directory identifying all firms eligible to participate as DBEs on contracts in Illinois is available upon request to all interested persons. The DBE directory is updated as changes occur.

The current IL UCP DBE directory of certified DBE firms is available upon request and an online directory is available at CTA's website ([www.transitchicago.com](http://www.transitchicago.com) or at [www.ctavendor.com](http://www.ctavendor.com)). Appendix. The IL UCP directory currently contains the firm's name,

contact person, address, telephone number, fax, e-mail address, the types of work the firm performs with NAICS codes included and the date of certification.

**Over-concentration (49 CFR – 26.33)**

The CTA will continue to review and monitor DBE participation and statistical reports by the close of each Federal Fiscal Year in order to determine whether there is an over concentration of DBEs. DBE participation on federally funded contracts will continue to be tracked by NAICS Codes. If CTA determines that DBE firms are over concentrated in certain types of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, CTA will consider appropriate measures to address over-concentration.

**Small Business Program (49 CFR – 26.39)**

- A. CTA will establish a race-neutral small business program (“SB Program”) no later than November 28, 2012. The program will:
  - i. Utilize the Small Business Administration’s (“SBA”) size standards for small businesses. Only those businesses that fit within the SBA size standards are eligible to participate in the SB Program. In order to participate in the small business program, a company must be certified as a small business by one of the agencies listed in subsection ii. hereof as amended from time to time.
  - ii. Accept certifications by the following entities: The Illinois Unified Certification Program. The CTA may also certify entities as small business.
  - iii. From time to time, the General Manager, Diversity pursuant to an attachment may add additional certifying agencies whose small business certifications CTA will accept to subsection ii. hereof. CTA will not accept self certifications.
  - iv. Require that every business wishing to participate in the small business program submit its small business certification.
  - v. CTA will also apply a personal net worth limitation in accordance with the DBE personal net worth as provided in 49CFR – 26.67 (b) to participants in its small business program.
  
- B. Two types of contracts may be included in the Small Business program: (1) certain contracts under \$3,000,000 will be set aside for small businesses to bid on as prime contractors, and (2) Certain larger construction contracts will require that prime contractors identify portions of the work to subcontract to only small businesses.
  - i. At the time of submitting its bid, any bidder on a larger construction contract included in the SB Program will be required to identify those specific portions of the

work to be subcontracted only to small businesses. Compliance with this requirement will be an element of responsiveness to the bid.

CTA's Special Conditions of Contract, Small Business Program are attached as Attachment 6.

**Determining, Meeting And Counting Overall Annual DBE Goals For Federally-Assisted Contracts- Methodology/Calculation (49 CFR – 26.45)**

CTA will follow the requirements of 49 CFR Part 26 when setting its overall agency DBE goal for its DOT-assisted contracts. To the extent possible, the goal will be met using means that are race neutral such as outreach, technical assistance and procurement modification. Where race neutral means are insufficient, contract-specific goals will be set by the CTA to assist it in achieving its overall agency DBE goal. The means used to achieve the goal will avoid imposing undue burden on on-DBEs.

Contract-specific goals will be reviewed regularly. This information will be used, along with other data, to adjust the use of contract-specific goals during the remainder of the year. The overall agency DBE goal will be reviewed on a tri-annual basis and revised as necessary.

The CTA will utilize the services of a consultant to analyze available data, including census data, survey data and data on past CTA contracting with federal dollars when determining its overall agency DBE goal. This consultant will perform a detailed statistical analyses to assess the current availability data and a detailed statistical analyses that assesses the current availability of DBEs in relevant market and that assesses whether past or current discrimination has limited the current availability of DBEs in that market. In accordance with the methodology set forth in the regulations (49 CFR Part 26.45), the CTA will then establish its overall DBE contract goal as follows:

**Step 1:** The current availability of DBEs will be established by several methods. First, the pool of DBEs on CTA's vendor list will be identified and broken down by NAICS codes. Second, the pool of DBEs in the relevant market will be identified using Census Bureau data to examine the DBE availability in the industry subgroups in which CTA is spending the procurement dollars derived from DOT-assisted contracts. Then, the proportion of contractible dollars going to DBEs will be compared with the proportion of ready, willing and able DBEs in the marketplace.

**Step2:** In addition to measuring the relative availability of DBEs, the study will examine disparities in the ability of DBEs to obtain financing, bonding and insurance; data on employment and self-employment; and data on access to private and public markets for firms owned and operated by DBEs. If the study indicates that past and current

discrimination has reduced the availability of DBEs in the relevant market, adjustments will be made to estimate what the availability of DBEs would be absent discrimination.

CTA will also examine past experience, confer with local experts, engage in public outreach, meet with technical assistance agencies and examine anticipated changes in DOT-assisted contracting over the next year to buttress the consultant's recommendation.

### **Race-Neutral Measures (49 CFR –26.51)**

The CTA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The CTA will use the following race-neutral means to increase DBE participation:

1. The invitation for bids/proposals which are publicly advertised will be solicited from an adequate number of known small businesses, providing them sufficient bid-submittal time prior to the date set for opening bids/proposals. Ensure that unreasonable requirements are not placed on firms in order for them to qualify to do business, such as unnecessary experience and excessive bonding. Also ensure establishment of delivery schedules, quantities and specifications, where the solicitation permits, that encourage participation by small and DBE businesses;
2. Unbundling large contracts to make them more accessible to small businesses;
3. Encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces;
4. Providing assistance to DBEs in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bidding process, reducing bonding requirements, use of progress payments when appropriate requirements are met, eliminating the impact of surety costs from bids, and providing services to help DBEs and other small businesses obtain bonding and financing);
5. Providing technical assistance and other services;
6. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on CTA's 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);
7. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
8. Institution of a Business Development Program which will assist DBE and other small businesses as new start-up firms (particularly in fields where DBE participation has historically been low), develop their capability to utilize emerging technology and conduct business through electronic media, help them improve long-term development, increase opportunities to participate in a variety of kinds of

- work, handle increasingly significant projects, and achieve eventual self-sufficiency; and
9. Implementation of a Railroad Protective Insurance Program to permit purchase of this insurance, when required by the contract, at lower costs than on the open market.

### **Transit Vehicle Manufacturer (TVM) Certification (49 CFR – 26.49)**

The CTA will require each TVM, as a condition of being authorized to bid or propose on DOT-assisted transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26.49. In conformity with 49 CFR Part 26.49 (d), CTA may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles.

### **Good Faith Efforts Procedures-Contract Goals (49 CFR – 26.53)**

1. For all contracts in which contract DBE goals are established, CTA will inform competitors in the solicitation that all bidders/ proposers will be required to show good faith efforts to meet the DBE goal with their bid/proposal documents. Good faith efforts can be shown by documenting enough DBE participation to meet the goal or documenting adequate good faith efforts to meet the goal or a combination of the two. Award of the contract will be conditioned upon the bidders/proposers documenting good faith efforts to meet the DBE goals on the contract.
2. On all invitations for bids, meeting the DBE goal/documenting good faith efforts will be an element of responsiveness. On all requests for proposals and letters of interest and qualifications, meeting the DBE goal/documenting good faith efforts will be an element of responsibility.
3. All bids and proposals must contain the following:
  - a. The name and addresses of the DBE subcontractors that will participate in the contract;
  - b. A description of the work that each DBE will perform;
  - c. The dollar amount of the participation of each DBE firm participating;
  - d. Written documentation of the bidders'/proposers' commitment to use the DBE subcontractors whose participation it submits to meet a contract goal or otherwise;
  - e. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.

If insufficient DBE participation is submitted to meet the DBE contract goal, bidders/proposers must document their good faith efforts to meet the goal at the time of submitting their bid or proposal. This submission should be submitted on company letterhead and signed by a President, Vice President, or other employee authorized by corporate resolution or bylaw to bind the company. CTA will ensure that all information is complete and accurate and adequately documents the bidder's and or proposer's good faith efforts before CTA awards the contract.

### **Good Faith Efforts Determination**

In its Good Faith Efforts evaluation, CTA will consider the quality, quantity, and intensity of the different kinds of efforts that the bidders/proposers have made. It will be determined if the efforts employed by the bidders/proposers were those that one could reasonably expect a bidder/proposer to take if the bidder/proposer was actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Examples of good faith efforts are given in 49 CFR, Appendix A to Part 26 and in the DBE Special Conditions of the CTA contract.

Mere *pro forma* efforts will not be considered good faith efforts to meet the DBE contract requirements.

CTA will also take into consideration the performance of the other bidders/proposers in meeting the goal or good faith efforts on the specific contract. When other bidders/proposers have met the goal, the CTA will analyze the reasonableness of the effort of the apparent low bidders/ successful proposers. If the apparent low bidder/successful proposer fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders/proposers, this will be viewed by CTA in conjunction with the efforts listed above as evidence of the apparent low bidders/successful proposers having made good faith efforts.

CTA's procedures for handling Good Faith Efforts determinations are attached as Attachment 7.

### **Reconsideration**

CTA requires that all information regarding DBE participation and/or good faith efforts must be submitted with the bid. If it is determined that the apparent lowest bidder has failed to submit adequate good faith efforts, CTA will provide the apparent low bidder an opportunity for administrative reconsideration before awarding the contract. This reconsideration will include the following:

- a. The opportunity to either provide written clarification to or attend a scheduled meeting with the Reconsideration Officer concerning the issue of whether the efforts taken by the bidder met the DBE contract goal or documented adequate good faith efforts to meet the goal;
- b. A written decision will be issued promptly to the bidder explaining the basis for the finding that the bidder did or did not meet the goal through participation or made adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable.

### **Good Faith Efforts When a DBE is Replaced on a Contract**

The CTA 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. CTA will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation of such fact.

In this situation, CTA requires that the contractor obtain CTA's prior written approval of the substitute subcontractor. The contractor must provide copies of new or amended subcontracts, completed DBE form and documentation of its good faith efforts to meet the contract goal if the contractor has not done so through participation. If the contractor fails or refuses to comply in the time specified, CTA may issue an order stopping all or part of the payment/work until satisfactory action has been taken. If the contractor still fails to comply, CTA may terminate the contract.

### **Counting DBE Participation (49 CFR – 26.55)**

Participation will be counted toward fulfillment of the DBE goal as follows:

1. When a DBE participates in a contract, count only the value of the work actually performed by the DBE toward DBE goals.
  - a. 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).
  - b. 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 it is determined that the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
- c. 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.
2. 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.
  3. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

#### **Quotas, Set-Asides (49 CFR – 26.43)**

The CTA's DBE Program is a goal oriented program. The CTA will not use quotas in any way in the administration of the DBE Program.

#### **Contract Assurances (49 CFR – 26.13)**

The CTA will ensure that the following clause is placed in every DOT-assisted contract:

*"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."*

#### **Prompt Payment (49 CFR - 26.29)**

The Diversity Department's procedures for ensuring prompt payment are attached hereto as Attachment 8 to this program.

### **Return of Retainage (49 CFR – 26.09)/Contract Clause**

The CTA will withhold retainage from prime contractors, will include the following clauses in each DOT-assisted prime contract and will require that prime contractors on DOT-assisted contracts include this provision in each of their subcontracts:

*The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 7 calendar days from receipt of each payment the prime contractor receives from the Chicago Transit Authority (CTA).*

*The prime contractor agrees further to return retainage to each subcontractor within 14 calendar days after the subcontractor's accepted work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the CTA DBE Liaison Officer (DBELO). This clause applies to both DBE and non-DBE subcontractors.*

The sanctions listed below will not apply if the DBELO determines that the payment is delayed because of a good faith disagreement between the two contractors. Where there are disputes, prime contractors and subcontractors will be required to use appropriate arbitration mechanisms to resolve payment disputes. Failure to carry out prompt payment requirements will be considered as a breach of contract, and will cause the following;

1. CTA will not reimburse prime contractors for work performed unless and until the prime contractor ensures the subcontractors are promptly paid for work they have performed to date as evidenced by the filing with CTA of lien waivers and canceled checks;
2. If the contractor does not pay any subcontractors listed on a pay request or return a subcontractor's retainage within the time limits required under this prompt payment provision, contractor must pay the subcontractor an amount of interest at the lower of one percent (1%) per month or the highest lawful rate on the outstanding balance, for each month, prorated per diem for any partial month, that the contractor fails or refuses to pay the subcontractor.
3. CTA may impose any other remedies permitted by the contract or by law.

### **Legal Remedies (49 CFR – 26.37)**

Failure to comply with the DBE requirements of the contract or failure to use DBEs as stated in the bid/proposal constitutes a material breach of contract. The DBELO shall have the discretion to recommend to CTA's Purchasing Agent that the Purchasing Agent apply suitable sanctions to the Contractor if the Contractor is found to be in non-compliance with the DBE requirements. Such sanctions include, but are not limited to, withholding payment to the Contractor until corrective action is taken; suspension and/or

termination of the contract, in whole or in part; and debaring or suspending the Contractor from entering into future contracts with the CTA.

### **Contractor Reporting Requirements**

#### **Bidders'/Proposers' Responsibilities**

Bidders/proposers are responsible for verifying the current status of any DBE firms the bidder/proposer intends to use on a CTA contract. Only firms certified as DBEs by the IL UCP prior to bid/proposal submittal are eligible for DBE goal credit on a CTA contract.

1. The DBE directory lists those firms that have been certified by the IL UCP. CTA makes no claim as to DBE firm's immediate availability nor as to its expertise or capabilities to perform.
2. Verification of a firm's certification status must be made prior to bi/proposal submittal. Only DBE firms that are certified by the IL UCP prior to bid/proposal submittal are eligible to be counted toward the contract DBE goal.
3. **"FRAUDS AND FRONTS"**- Bidders/Proposers are hereby cautioned against knowingly and willfully using "fronts" to meet the DBE goal. Only legitimate certified DBEs are eligible to participate on federally funded contracts. The use of "fronts" and "pass through" subcontracts to non-DBE firms may constitute criminal violations. Any indication of fraud, waste, abuse or mismanagement of funds found by the DBE Department shall be immediately reported to the Department of Transportation 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 49 CFR Part 26.107. CTA will also consider similar action under its own legal authorities. CTA may also determine that a firm is not responsible and cannot be awarded future CTA contracts.

Individual citizens aware of these violations by any company may report to CTA such incidence directly to the DBE Program Department at (312)681-2600.

### **Subpart D- Certification Standards (49 CFR – 26.61-26.71)**

The CTA and the other certifying members of the IL UCP will use the certification standards of 49 CFR, 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.

For information about the certification process or to apply for certification, firms will be directed to contact the DBE Program Staff Assistant at (312) 681-2601, or directed to submit such requests in writing to:

Chicago Transit Authority  
Diversity Department  
567 West Lake Street; 4<sup>th</sup> Floor  
Chicago, IL, 60601

**Other Rules Affecting Certification (49 CFR – 26.73)**

1. CTA does not consider commercially useful function issues with respect to DBE certification eligibility. CTA recognizes that commercially useful function pertains solely to counting DBE participation and meeting DBE goals on individual CTA contracts.
2. CTA will consider 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 when rendering certification decisions.
3. CTA will evaluate the eligibility of a firm on the basis of present circumstances.
4. CTA requires all firms seeking DBE certification to cooperate fully with requests from CTA and DOT for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.
5. CTA will only accept firms organized for-profit in consideration for DBE certification.
6. An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as set forth below, a firm that is not owned by such individuals, but instead is owned by another firm—even another DBE firm—cannot be an eligible DBE.
7. A subsidiary of socially and economically DBE eligible parent company or holding company may be certified if it otherwise meets all the requirements for certification. 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. Where the parent or holding company has not applied for certification, CTA will require it to first demonstrate its eligibility prior to certifying the subsidiary.
8. CTA will certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals.
9. Recognition of business as a separate entity for tax or corporate purpose is not necessarily sufficient to demonstrate that a firm is an individual business, owned and controlled by socially and economically disadvantaged individuals.
10. Prequalification as a condition for DBE certification is not required at this time.

11. CTA recognizes firms owned by an Indian tribe or Native Hawaiian organization as an entity, not as individuals. Such a firm must meet the size standards of CFR Part 26.65 and be controlled by socially and economically disadvantaged individuals, as provided in 49 CFR, Part 26.71.
12. CTA will comply with requirements for Alaskan-Native Corporation set forth in 49 CFR, Part 26.73(i).

### **Certification Appeals (49 CFR – 26.89)**

Any firm may appeal CTA's decision in any certification or removal of eligibility matter to DOT. All appeals must be filed within 90 days of CTA's final decision. Appeals must be sent in writing to DOT, including information and arguments concerning why CTA's decision should be reversed. The address in which appeals are to be sent to is:

U.S. Department of Transportation  
Departmental Office of Civil Rights  
Certification Appeals Branch  
1200 New Jersey Ave; SE W-35  
Washington, DC 20590

or as amended by the U.S. Department of Transportation.

CTA will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for DOT-assisted contracting (e.g., certify a firm if DOT has determined that CTA's denial of its application was erroneous). Pending DOT's decision, the CTA's decision will remain in effect.

### **Removal of Certification (49 CFR – 26.87)**

In the event CTA proposes to remove a DBE's certification, it will follow procedures consistent with 49 CFR 26.87. To ensure separation of functions in a decertification hearing, the DBELO has established a reconsideration officer who will render such decisions, separate and apart from the DBE Program Office.

In the event CTA denies a firm's initial certification or renders a decision to remove a firm, the firm may not submit another application for certification eligibility prior to 12 months from the date of our decision letter.

### **Unified Certification Program (IL UCP) (49 CFR – 26.81b)**

CTA, along with four other agencies, is a certifying member of the IL UCP. All certification decisions by the IL UCP are made by the five certifying members of the IL UCP.

The IL UCP is governed by the IL UCP Program document which can be found on CTA's website. The IL UCP publishes and regularly updates the IL UCP DBE Directory. The IL UCP DBE Directory can be found on CTA's website.

### **Recertification and No Change Affidavits (49 CFR – 26.83)**

Firms certified by CTA under the IL UCP, must, on the anniversary of the date of their certification, submit an affidavit sworn to by the firm's owners affirming that there have been no changes in the firm's circumstances regarding the size, disadvantaged status, ownership or control requirements or other material changes that could affect eligibility. The form of affidavit is found on the CTA website. In addition, certified firms must inform CTA of any material change at any time that could affect its eligibility promptly after such material change has taken place.

### **Personal Net Worth (49 CFR – 26.67)**

CTA will require all disadvantaged owners of applicants and of currently-certified DBEs whose eligibility under 49 CFR Part 26 is reviewed, to submit a statement of personal net worth (PNW). CTA will ensure all PNW statements are incorporated into each application for certification or recertification.

The statement of personal net worth and supporting documentation submitted pursuant to 49 CFR, Part 26.67 (a)(2)(I) will be kept confidential by the CTA.

### **Bidder's List (49 CFR -26.11)**

The CTA will require all prime contractors bidding on DOT-assisted contracts to return, at the time of submittal of its bid/proposal, the following information about the prime contractor and all subcontractors who submitted a bid to the prime for the contract:

- Firm name
- Firm address
- Firms status as DBE or non-DBE
- Age of the firm
- Annual gross receipts of the firm

The specific information contained on this form, which is included in the solicitation document, will be used for statistical purposes only and will not be considered in the decision making process of awarding the contract.

### **Monitoring and Enforcement Mechanisms (49 CFR – 26.37)**

CTA utilizes Business to Government Now (B2GNOW), a web-based software, to track DBE attainments and produce reports regarding CTA's DBE commitments and awards.

### **Monitoring Payments to DBEs (49 CFR – 26.37)**

The DBELO, in cooperation with the Purchasing Department Office of Business Systems, tracks and monitors all contracts awarded to all prime contractors and subcontractors by the North American Industry Classification System (NAICS) codes. Each IFBRFP/RFQ will have one or more NAICS codes assigned to it. The purpose of this monitoring is three fold:

1. Maintain the level of compliance by the prime contractor with the subcontractor(s);
2. Determine over and under concentration; and
3. Goal monitoring for FTA reporting.

Upon notification to the prime contractor of contract award, the prime contractor is required to execute subcontractor agreements or purchase orders within seven (7) calendar days and prior to start of work with the DBE subcontractors identified in its bid/proposal. CTA will issue a letter to each of the DBE subcontractors advising it that it has been listed as a subcontractor on the contract.

Throughout the life of the contract, the DBELO has the primary responsibility for monitoring the DBE and EEO compliance by the prime contractor. DBE participation will be monitored for consistency with the schedules submitted by the prime contractor. The DBE participation, subcontracts, payments, completed work and payrolls will be substantiated.

### **Award Notification and Contract Monitoring**

When a contract award is made by the CTA, the prime contractor is mailed a copy of the fully executed contract. At this time CTA will inform the DBE subcontractors in writing that they have been named as subcontractor on the contract.

To insure DBE contract compliance, CTA's web-based DBE tracking system allows approved Contractors and vendors working on federally funded CTA contracts to submit data to CTA that include DBE sub-contractors, payments to primes, payments to sub-contractors and various notes to file. For the awards of contracts containing DBE contract goals or race neutral DBE participation, commitments to provide work and payments made to DBEs can be progressively monitored to confirm that work has been performed and a Commercially Useful Functions has been provided by each DBE. All Prime contractors and all DBE subcontractors must submit proof of payment to CTA. This information is entered into the DBE Tracking System by the Contractors. The DBE Tracking and reporting system has all of the required DOT, FTA and USDOT reporting formats incorporated into the web-based software. The software is designed to keep a running tally of all actual awards and payments. The prime contractor and DBE subcontractors will be fully monitored for the duration of the contract and will receive monthly audit letter (see Attachment 9). The prime contractor is required to submit copies of all invoices, copies of all cancelled checks, a "Status Report of DBE Subcontractor Payment" and copies of all subcontract agreements for their DBE participants.

The contractor must maintain records of all relevant data with respect to the utilization of DBEs, retaining these records for a period of at least three (3) years after final acceptance of contract work. Full access to these records shall be granted to CTA, FTA or State authorities involved in this project, CTA's Office of Inspector General the U.S. Department of Justice, the U.S. Department of Transportation or any duly authorized representatives, thereof.

#### **Reporting to the Department of Transportation (49 CFR – 26.11)**

The CTA DBELO will continue to report DBE participation to Region V of the FTA on a semi-annual basis in the prescribed format.

#### **Public Participation and Outreach Efforts (49 CFR 26.45)**

When establishing or revising its agency DBE goal, CTA will:

1. Consult with minority, women's and general contractor group, community organization, and other officials and organizations.
2. Publish (in general circulation and minority-focused media and trade publications) a notice announcing the overall goal and the fact that the goal and a description of the methodology used to establish it is available for inspection during regular business hours at the principal office of CTA for thirty (30) days following the publication. The public will be advised that it can

submit comments on goals to CTA or the FTA within forty-five (45) days of the date of publication.

3. This information will be made available on the CTA website. The notice includes the address for CTA's principal offices where the program and goals can be reviewed and the address to which comments could be sent.

### **Shortfall Analysis (49 CFR – 26.47)**

If the awards and commitments shown on CTA's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, CTA will complete a shortfall analysis as required by the DBE regulations.

### **Amendment**

This program may be amended to comply with changes to the federal regulations, 49 CFR Part 26, or with changes to the manner in which the CTA does business by the President of the CTA; provided, however, that the DBE goal may only be set or revised by the Chicago Transit Board. Excluding the documents provided in the "Attachments" section of this plan, any amendments to the program must be authorized by the Chicago Transit Board prior to taking effect.

# ATTACHMENT 1 Policy Statement

Forrest Claypool  
President  
Chicago Transit Authority



567 W. Lake Street  
Chicago, Illinois 60661

## POLICY STATEMENT

### DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

TO ALL CTA EMPLOYEES AND THE SERVICE COMMUNITY:

As a major provider of public transportation and whose thousands of employees have extensive daily contact with the public, the Chicago Transit Authority (CTA) recognizes its responsibility to the community which it serves. As such, the CTA is committed to a policy of nondiscrimination. It is the policy and commitment of CTA not to discriminate on the basis of race, color, national origin, or sex in the award and performance of any CTA contract or in the administration of its Disadvantaged Business Enterprise (DBE) Program. The CTA will take all necessary and reasonable steps to assure that small business enterprises, certified and defined as DBEs pursuant to 49 CFR Part 26, shall have a fair opportunity to participate in CTA contracts. As part of its DBE policy commitment, CTA will make every effort to achieve the following objectives of 49 CFR Part 26:

- a) Ensure nondiscrimination in the award and administration of contracts;
- b) Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- c) Ensure that the CTA's DBE Program is narrowly tailored in accordance with applicable law;
- d) Ensure only firms that fully meet eligibility standards of 49 CFR Part 26 are permitted to participate as DBEs;
- e) Help remove barriers so DBEs can fully participate in contracts; and,
- f) Assist the development of firms so they can compete successfully in the marketplace outside the DBE Program.
- g) Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations required by CTA's financial assistance agreements with the U.S. Department of Transportation (DOT).

The President and the General Manager of the Small Business Compliance Department are specifically delegated responsibility to ensure proper DBE participation in CTA's procurement process. However, all Executive Vice Presidents, Vice Presidents, General Managers, and their management staff share in the responsibility for making CTA's DBE Program a success.

This statement is made available to DBE and non-DBE business communities that perform work for CTA. The Transit Board is committed to the DBE Program. In my role as President, I shall take all reasonable steps to ensure achievement of our goal.

Date:

6/30/11

A handwritten signature in black ink, appearing to read "Forrest Claypool", is written over a horizontal line. Below the line, the word "President" is printed in a small, black, sans-serif font.

President

## **ATTACHMENT 2**

### **DBE Liaison Officer**

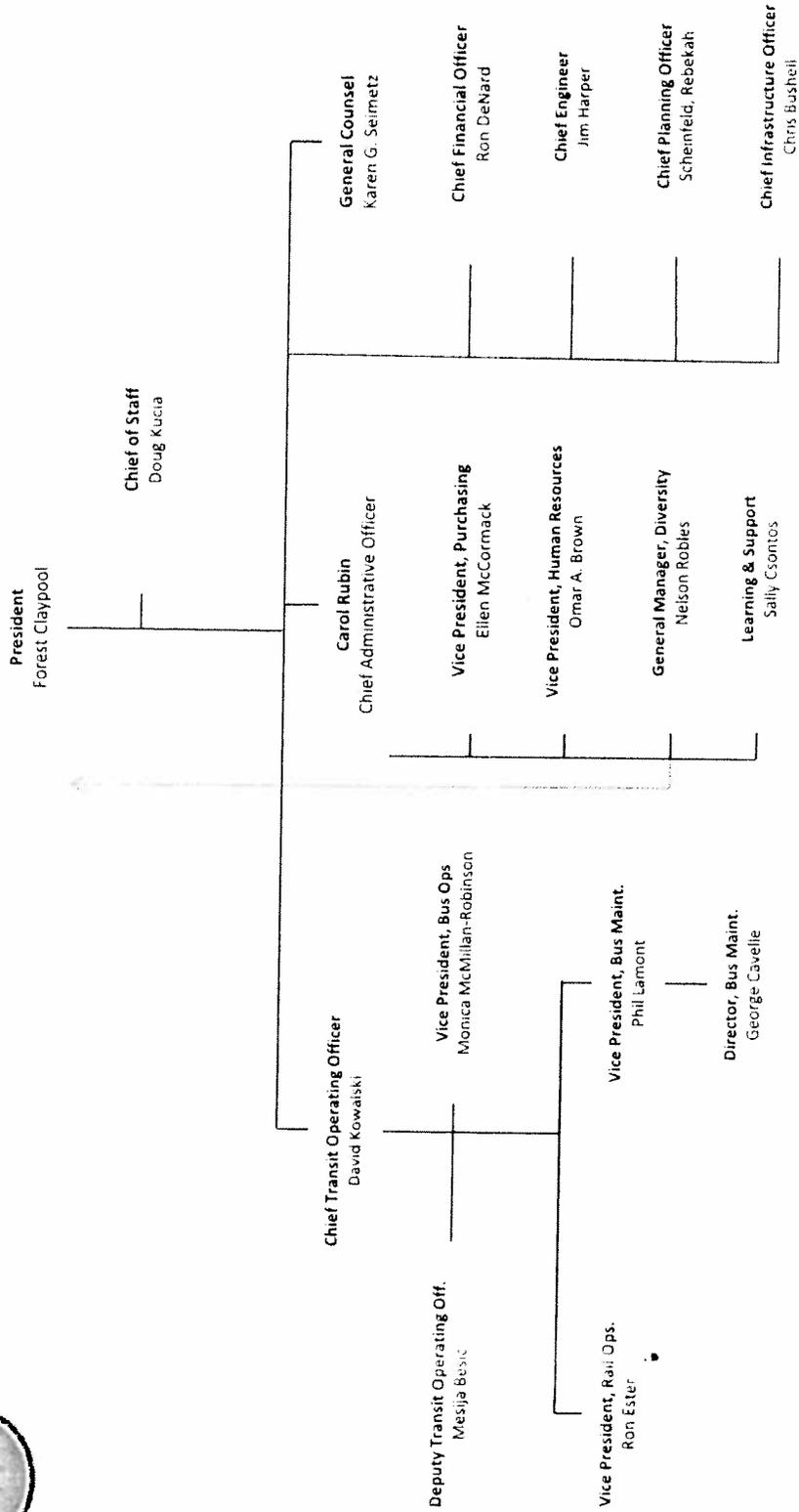
CTA names the following person as the DBE Liaison Officer:

Carolyn Williams-Meza  
General Manager, Diversity  
Chicago Transit Authority  
567 West Lake Street 4<sup>th</sup> floor  
Chicago, IL 60661  
(312) 681-2600

# ATTACHMENT 3 CTA Organizational Chart

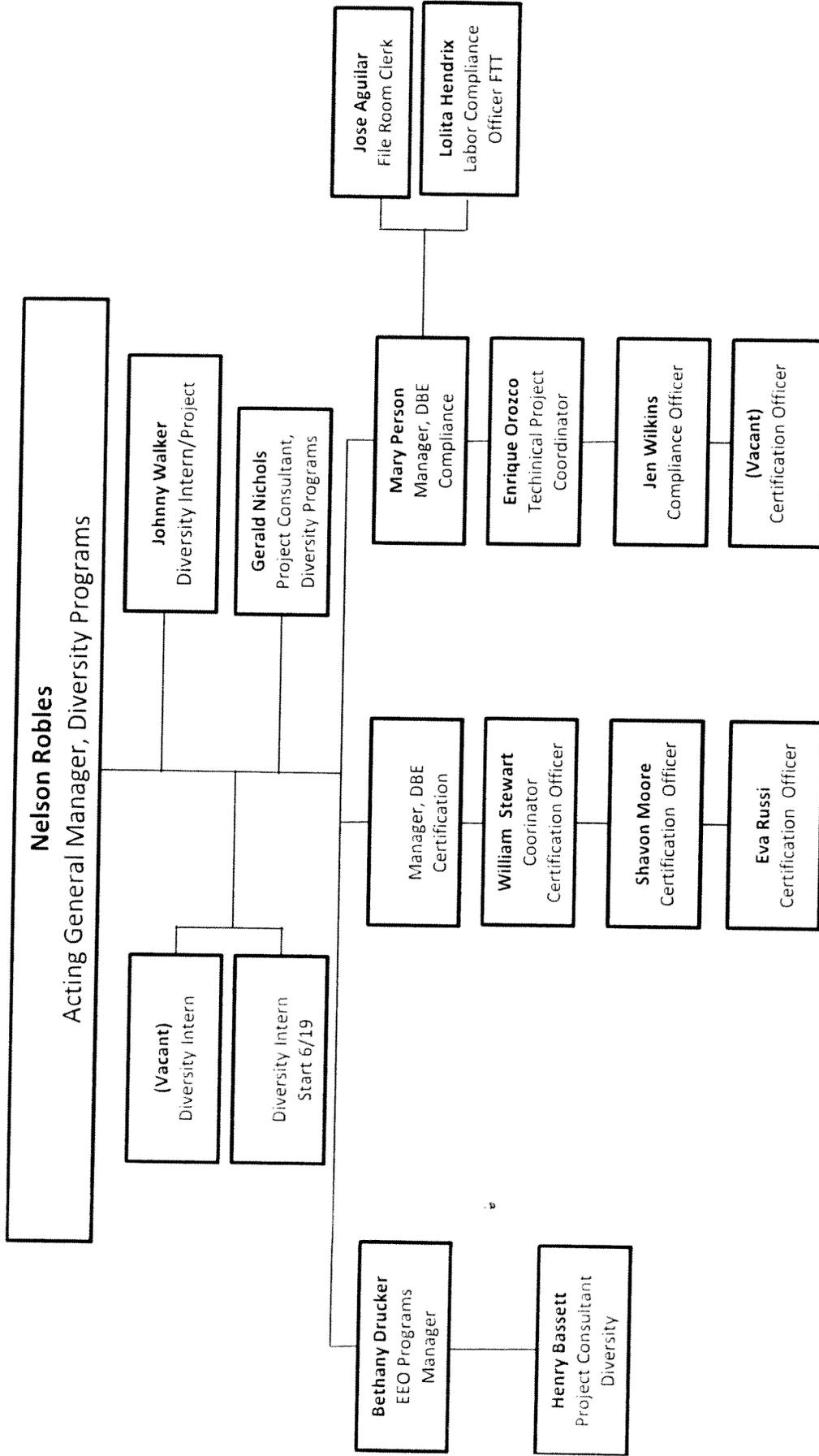


## CTA DEPARTMENT LEADS



Note \*: Blue line indicates direct reporting to the President from GM of Diversity

# ATTACHMENT 4 CTA DIVERSITY PROGRAMS DEPARTMENT



## **ATTACHMENT 5**

### **Reconsideration Officers**

The DBE Liaison Officer names the following individuals as Reconsideration Officers:

1. Michael Bowen  
Manager II, Compensation and HRIS
2. Rita Kapadia  
Project Coordinator, Compliance
3. Donald Gismondi  
General Manager, Capital Grants

# ATTACHMENT 6

## SPECIAL CONDITIONS SMALL BUSINESS PROGRAM (SBE) INVITATION FOR BIDS REQUISITION NUMBER:

### I. POLICY AND TERMS

- A. The policy of the Chicago Transit Authority (CTA) is to facilitate competition by small businesses as prime contractors or subcontractors on CTA contracts. The CTA Small Business Program is part of its Disadvantaged Business Enterprise (DBE) Program as set forth in United States Department of Transportation (USDOT) Regulations, 49 C.F.R. Part 26.
- B. CTA has designated this contract for inclusion in its Small Business Program. The Bidder must submit a copy of the small business certification of any small businesses proposed to participate on this contract as a Bidder or subcontractor at the time of submission of the Bid.
- C. CTA prohibits agreements between a Bidder and a small business in which the small business promises not to provide subcontracting quotations to other Bidders.

### II. DEFINITIONS

- A. **"Bid"** includes the following CTA purchasing requests: Invitation for Bids (IFB), Request for Proposals (RFP) and Letters of Interest and Qualifications (LIQ) and may be used interchangeably with "Proposal."
- B. **"Bidder"** includes bidders, proposers, consultants and contractors. These terms may be used interchangeably in these Special Conditions.
- C. **"Joint Venture"** means an association of two or more businesses to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skill and knowledge. Bidders may develop joint venture agreements as an instrument to provide participation by small businesses in contract work. A joint venture seeking to be credited for small business participation on a CTA contract may be formed among small businesses enterprises or between a small business enterprise and a company that is not a small business.
- D. **"Personal Net Worth"** means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's net worth does not include the individual's ownership interest in an applicant or participating small business concern or the individual's equity in his or her primary 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.
- E. **"Purchasing Agent"** means the CTA employee who holds the position of Vice President, Purchasing, or the successor position.

- F. "SBA" refers to the U.S. Small Business Administration
- G. "Small Business Concern" means a small business as defined in Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or groups of concerns controlled by the same individual or individuals that has exceeded annual average gross receipts and/or number of employees limitations on small businesses under the Small Business Act over the three (3) previous fiscal years
- H. "USDOT" or "DOT" refers to the U.S. Department of Transportation.

### III. SMALL BUSINESS PROGRAM

- A. Each year the CTA will make an assessment of those contracts which will be included in its Small Business Program. Two types of contracts are anticipated to be included: (1) certain contracts under \$100,000 in value and (2) certain larger construction contracts. However, CTA may include different or additional types of contracts in the Small Business Program as it determines are appropriate. CTA's selection of the types of contracts and/or the specific contracts to be included in the Small Business Program is final.
- B. The selected contracts valued under \$3,000,000 in the Small Business Program will be set aside for small businesses to bid on as prime contractors. Only certified small businesses that meet the eligibility requirements of Section IV hereof will be eligible to bid on these contracts.
- C. The selected larger construction contracts in the Small Business Program will require that the Bidders identify in their Bid documents portions of the work on the contract that will be subcontracted to small businesses. Only certified small businesses that meet the eligibility requirements of Section IV hereof will be eligible to participate on these contracts as small business subcontractors.

### IV. ELIGIBILITY FOR SMALL BUSINESS PROGRAM

- A. In order to be considered to be a small business eligible to participate in the CTA Small Business Program and therefore for work as a small business on this contract, the following requirements must be met:
  - 1. The company must meet the size standards for small businesses, as revised, by the Small Business Administration (SBA) for the industry in which it works.
  - 2. The company must be certified as an SBE through one of the following:
    - CTA SBE Program
    - Illinois Unified Certification Program (IL UCP) or
    - A public agency or other entity that certifies firms as small business concerns

#### **Self-Certification is not permitted**

- 3. The personal net worth of the owner(s) of the company cannot exceed \$1.32 million, as

revised in 49 CFR 26.67 from time to time.

*From time to time, the General Manager, Diversity may add additional certifying agencies whose small business certifications CTA will accept to this subsection IV.B.*

- B. CTA will verify that businesses participating in the Small Business Program are actually small businesses. The small business concern must provide all documentation evidencing the fact that it is a certified small business upon request. Failure to cooperate with CTA in its verification process will be cause for a business to be removed from or found unqualified to participate in the Small Business Program.
- C. The small business concern must submit a copy of its small business certification with its Bid and/or provide a copy of the certification for the prime contractor to submit with its Bid. A small business that does not submit its small business certification at the time of Bid submittal is not eligible to participate as a small business on the CTA contract.

## V. CTA CERTIFICATION

- A. Small Businesses that are not currently DBE or 8(a) certified can apply for Small Business Enterprise (SBE) certification directly with CTA, using the application attached hereto as Exhibit A. CTA must certify the company as a SBE prior to contract award for the company to be eligible for contract award.
- B. Companies that are currently DBE certified by the Illinois Unified Certification Program (ILUCP) or that are certified through the SBA 8(a) program automatically qualify to participate in CTA's Small business program. Any such company must submit its current DBE or 8(a) certification letter and the signed SBE acknowledgment form, attached hereto as Exhibit B, stating that it wishes to be considered an SBE firm for purposes of participating in CTA's Small Business Program prior to or at the time of submitting its first bid. Those companies properly submitting these documents/forms will receive a small business certification letter from CTA which it may submit with future bids.

## VI. PROCEDURE TO DETERMINE BID COMPLIANCE

- A. **Schedules:** Schedules B, C and D are attached.
  - 1. If the Bidder is a Joint Venture, the Bidder as well as the Joint Venture partner **MUST** complete and sign Schedule B.
  - 2. A SBE Subcontractor of any tier, SBE Joint Venture partner and/or the Bidder if it is a SBE **MUST** complete and sign Schedule C.
  - 3. The Bidder **MUST** complete and sign Schedule D.
  - 4. All completed Schedules **MUST** be submitted at the same time as or prior to submittal of the sealed bid. In addition, any documentation evidencing the Bidder's good faith efforts to meet the contract SBE goal must be submitted with the bid. Any bids submitted without completed and executed Schedules as indicated above and/or evidence of good faith efforts will be deemed non-responsive and rejected by CTA.

**B. Letters of Certification:** A copy of each proposed small business concern's current Letter of Certification or Re-certification as a small business must be submitted with the Bid.

**C. Joint Ventures**

1. Where the Bidder proposes to include in its Bid a small business concern that is a joint venturer, the Bidder must submit a fully executed copy of the joint venture agreement with its Bid. The joint venture agreement must show that the small business will be responsible for a clearly defined portion of the work to be performed, and that the small business concern's capital contribution, control, management, risks and profits are commensurate with its ownership interest.
2. Further, the proposed joint venture agreement shall include specific details related to:
  - a) contributions of capital and equipment;
  - b) work items to be performed by the small business concern's own forces;
  - c) work items to be performed under the supervision of the small business concern;
  - d) the management, supervisory and operating personnel to be dedicated to the performance of the project; and
  - e) the authority of each joint venturer to contractually obligate the joint venture and to expend funds. Failure to submit a copy of the joint venture agreement will cause the firm to be considered by CTA to be non-responsible.
3. The General Manager, Diversity, will evaluate the joint venture agreement submitted on behalf of the proposed joint venture and all related documents to determine whether the small business requirements of these Special Conditions have been satisfied. Whenever a joint venture is proposed as the prime Contractor, CTA requires that each joint-venturer sign the Bid submitted to CTA.

## VII. REPORTING REQUIREMENTS DURING THE TERM OF THE CONTRACT

- A. The Bidder shall, within seven (7) calendar days of contract award or prior to any work being performed by any small business subcontractor, execute written subcontracts or purchase orders with those subcontractors included in its Bid. All contracts between the Bidder and its subcontractors must contain a prompt payment clause as set forth in Section VII herein. These written agreements shall be made available to the General Manager, Diversity, upon request. In the event the Bidder cannot complete the agreement with one or more subcontractors within this seven (7) day period, the Bidder must provide a written explanation for the delay and an estimated date by which the written agreement will be completed to the General Manager, Diversity.
- B. During the term of annual contracts, the Contractor must utilize the "Chicago Transit Authority's Disadvantaged Business Enterprise System (B2GNOW)" <https://cta.dbesystem.com/> which provides the Contractor an easy to use web-based service for reporting payments rendered to all Subcontractors. The frequency with which these reporting will vary based on each individual contract, but in no event will reporting be required less frequently than quarterly. **Failure to follow these directions may delay payment.**
- C. In the case of a one-time procurement with either a single or multiple deliveries, the contractor must utilize the "Chicago Transit Authority's Disadvantaged Business Enterprise System (B2GNOW)" <https://cta.dbesystem.com/> which provides the Contractor with an easy to use web-based service for reporting payments rendered to all Subcontractors. The required entries on B2GNOW must be completed prior to or concurrently with the Contractor's submittal of its final invoice to the Authority user department identified in the contract. PLEASE NOTE: Two different processes must be

followed. (1) The original invoices must be submitted directly to the Authority department identified in the contract and (2) a report of Subcontract Payments must be entered onto B2GNOW. **Failure to follow these directions may delay final payment.**

The address for the General Manager, Diversity, is:  
**CTA General Manager, Diversity Programs Department**  
**567 W. Lake Street; 4<sup>th</sup> Floor, Chicago, IL 60661-1465**

## VIII. PROMPT PAYMENT TO SUBCONTRACTORS

- A. The Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed no later than seven (7) calendar days after the Contractor has received payment from CTA. All of the Contractor's contracts with its Subcontractors must state that the Subcontractor will receive payment within 7 days of the date that the Contractor has received payment from CTA.
- B. In addition, all Retainage amounts must be paid by the Contractor to the Subcontractor no later than fourteen (14) calendar days after the Subcontractor has, in the opinion of the VP Construction, satisfactorily completed its portion of the Work. All of the Contractor's contracts with its Subcontractors must state that the Subcontractor will receive payment of Retainage within fourteen (14) calendar days of the date that the Subcontractor has, in the opinion of the CTA Vice President, Construction, satisfactorily completed its portion of the Work.
- C. A delay in or postponement of payment to the Subcontractor requires good cause and prior written approval of the Vice President, Purchasing.
- D. The Contractor is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.
- E. CTA will not pay the Contractor for work performed unless and until the Contractor ensures that the Subcontractors have been promptly paid for the work they have performed under all previous payment requests, as evidenced by the filing with CTA of lien waivers, canceled checks (if requested), invoices and the Contractor's sworn statement that it has complied with the prompt payment requirements. Prime Contractors must submit a prompt payment affidavit, (form to be provided by CTA) which identifies each subcontractor (both small business concerns and non-small business concerns) and the date and amount of the last payment to such subcontractor, with every payment request filed with CTA, except for the first payment request, on every contract with CTA.
- F. Failure to comply with these prompt payment requirements is a breach of contract which may lead to any remedies permitted under law, including, but not limited to, Contractor debarment. In addition, Contractor's failure to promptly pay its Subcontractors is subject to the provisions of 50 ILCS 505/9.

## IX. SUBSTITUTIONS

- A. Arbitrary changes by the Bidder of the commitments previously indicated in Schedule D are prohibited. No changes may be made by the Bidder to the small business concerns listed on Schedule D after the opening of Bids but prior to contract award. However, in the event the Purchasing Agent, after consulting with the Diversity Department, determines that a critical subcontractor is non-responsible, CTA may require that Bidder replace the non-responsible subcontractor prior to contract award. In that event the non-responsible subcontractor is a small business concern, the Bidder must replace it with a responsible subcontractor who is a small business concern; must submit all information required in subsection C. hereof; and must receive the prior written approval of the General Manager, Diversity for such substitution.
- B. After entering into each approved subcontract with a small business concern, the Contractor shall neither terminate the subcontract for convenience, reduce the scope of the work to be performed by the small business concern or decrease the price to the small business concern without receiving prior written approval of the General Manager, Diversity. Such approval is required even if the small business concern agrees with the change to its subcontract desired by the Contractor.
- C. It may become necessary, at times, to substitute a new subcontractor in order to complete the contract work. The substitution procedure to be followed is:
1. The Contractor must immediately notify the General Manager, Diversity in writing of the proposed substitution of subcontractor. The Contractor's notification must include the specific reasons it intends to reduce the scope of or terminate a small business concern's subcontract; adequate documentation to support the Contractor's proposed action; and a proposed substitute firm to complete that subcontractor's portion of work.
  2. The following is a non-exclusive list of the types of reasons which do not justify substitution: business concern was found unable to perform or unable to perform on time; its work product was not acceptable; or the small business demanded an unreasonable escalation of its price.
  3. The following is a non-exclusive list of the types of reasons which do not justify substitution: a replacement firm has been recruited by the Contractor to perform the same work under more advantageous terms; performance issues by the small business concern were disputed and every reasonable effort to have the dispute resolved or mediated has not been taken; the small business concern has requested a reasonable price escalation which may be justified due to unforeseen circumstances (e.g., a change in scope of its work).
  4. The Contractor's request for approval of a substitution must include the name, address, and principal official of the proposed substitute subcontractor and the dollar value and scope of work of the proposed subcontract. All affidavits and documents required by **Schedule C** must be attached.
  5. CTA will evaluate the submitted documentation and respond within fifteen (15) calendar days to the request for approval of a substitution. CTA's response may approve the request, seek more information request an interview to clarify the problem or reject the proposed substitution, with the reasons for the rejection stated in CTA's response. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, CTA will respond as soon as practicable.
  6. Actual substitution by the Contractor may not be made prior to CTA's approval. Once notified of CTA's approval, the substitute subcontract must be executed within five (5) calendar days, and a copy submitted to the General Manager, Diversity.
- D. CTA will not approve extra payment for escalated costs incurred by the Contractor when a substitution

of subcontractors becomes necessary in order to comply with the small business requirements of the contract.

## IX. NON-COMPLIANCE

- A. Failure to comply with the small business requirements of the contract or failure to use small business concerns as stated in the Bid constitutes a material breach of contract. The General Manager, Diversity, shall have the discretion to recommend to CTA's Purchasing Agent that the Purchasing Agent apply suitable sanctions to the Contractor if the Contractor is found to be in non-compliance with the small business requirements. Such sanctions include, but are not limited to, withholding payment to the Contractor until corrective action is taken; suspension and/or termination of the contract, in whole or in part; and debarring or suspending the Contractor from entering into future contracts with CTA.
- B. The failure by the Contractor to use a small business subcontractor to the extent the Contractor committed to use said small business concern, may give the underutilized subcontractor contract remedies under Illinois law and/or the subcontract.
- C. In addition, federal and state laws apply to false representations, deception and fraud:
  1. Illinois Law. Under Illinois law, it is a Class 2 felony to make certain false representations as to the status of a person or entity in obtaining a governmental contract. In addition, any person convicted of this felony offense must pay to the governmental unit that issued the contract a penalty equal to one and one-half (1 ½) times the amount of the contract. 720 ILCS 5/17-29.
  2. Federal Law. False, fraudulent, or deceitful statements made in connection with participation in USDOT-assisted programs could also result in liability under 49 CFR Part 31, Program Fraud and Civil Remedies and possible prosecution under 18 U.S.C. 1001.
- D. If the Contractor does not pay any subcontractor listed on a pay request or return a subcontractor's retainage within the time limits required under the prompt payment provision set forth in Section VIII hereof, the Contractor must pay the subcontractor an additional amount for interest at the lower of one percent (1%) per month or the highest lawful rate in Illinois on the outstanding balance, for each month, prorated for any partial month, that the Contractor fails or refuses to pay the subcontractor. All agreements between the Contractor and its subcontractors must provide for interest as set forth herein.
- E. The Contractor and its subcontractors of any tier 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 CTA deems appropriate. The Contractor agrees to include this assurance in all subcontracts.

## X. RECORD KEEPING

The Contractor shall maintain records of all relevant data with respect to the utilization of small business concerns and shall retain these records for a period of at least three (3) years after final

acceptance of the work. Full access to said records shall be granted to CTA and its federal and/or state funding agencies, the U.S. Department of Justice, the USDOT and any duly authorized representatives thereof.

## XII. CTA CONTACT INFORMATION

Chicago Transit Authority  
Ellen McCormack  
**Vice President**  
Purchasing Department  
567 W. Lake Street  
Chicago, IL 60661-1465  
Phone: (312) 681-2400  
Fax: (312) 681-2405  
E-mail: [emccormack@transitchicago.com](mailto:emccormack@transitchicago.com)

Chicago Transit Authority  
Carolyn Williams-Meza  
**General Manager**  
Diversity Programs Department  
567 W. Lake Street  
Chicago, IL 60661-1465  
Phone: (312) 681-2600  
Fax: (312) 681-2695  
E-mail: [cwilliamsmeza@transitchicago.com](mailto:cwilliamsmeza@transitchicago.com)

# ATTACHMENT # 7

## Procedure for Good Faith Efforts Reconsideration

All Hearing Officers must be familiar with 49CFR Part 26 (the DBE Regulations) before conducting a hearing. In addition, no one may act as a Hearing Officer who participated in the decision that the bidder did not document good faith efforts.

### Reason for Reconsideration:

When an apparent low responsible bidder has not demonstrated good faith efforts to meet the contract DBE goal, it must be provided an opportunity for administrative reconsideration.

### Evaluation of Good Faith Efforts in a Bid:

1. The Purchasing Agent (PA) evaluates all bids and determines the apparent low responsible bidder. The PA sends the DBE forms submitted by the low bidder (at times the DBE forms from the second, third, etc. low bidder are also sent) to the DBE Compliance Coordinator who determines whether the low bidder (and the second, third, etc. bidder if relevant) has demonstrated good faith efforts to meet the contract DBE goal.
2. If the DBE Compliance Coordinator determines that the low bidder has not demonstrated good faith efforts to meet the contract DBE goal, he or she notifies the General Manager, Diversity, of this fact. The General Manager, Diversity notifies the coordinator of the Reconsideration Hearing Committee (Committee) and the PA that the low bidder has not demonstrated good faith efforts to meet the goal and is entitled to reconsideration. All notices may be by email.
3. The coordinator opens a file and completes the Hearing Checklist (attached as Exhibit A).
4. The coordinator issues a letter to the bidder stating that the bidder has failed to demonstrate good faith efforts to meet the contract DBE goal, explaining the reason for this determination and offering the bidder an opportunity for administrative reconsideration. The bidder can choose to attend a hearing on a date and time specified in the letter or can decline to attend a hearing and instead submit documentation evidencing its good faith efforts to meet the contract DBE goal. Out-of-State bidders are offered a hearing via telephone conference; local bidders must travel to CTA headquarters for an in-person hearing. The letter is sent via certified mail or facsimile and a copy is placed in the file. (A copy of the letter is attached as Exhibit B.)
5. Whenever possible, the reconsideration hearing is scheduled promptly (3-4 days after the date of the letter).
6. No new evidence of good faith efforts may be presented after the bid date. Instead, the type of evidence or documentation the bidder may submit, with or without a hearing, is

limited to documentation that expands on or explains the information submitted with its bid.

7. The coordinator obtains copies of the Diversity and Purchasing Department files and distributes the relevant information to the Hearing Officer(s).

**The Hearing:**

1. Before the hearing begins, the Hearing Officer informs the bidder that while the hearing is an informal one, it will be recorded. The Hearing Officer starts the recorder and states the date and time, the file number, the bidder's name, the names of everyone in the hearing, and asks the bidder's permission to be recorded.
2. The Hearing Officer explains why reconsideration is needed for this contract.
3. The bidder then presents its explanation of why/how it made good faith efforts to meet the contract DBE goal.
4. Once the explanation is given, the Hearing Officer will ask any question(s) he or she may have pertaining to the bidder's explanation or information regarding the bid.
5. The bidder is then asked to provide any other information, documentation or explanation of its good faith efforts.
6. If necessary, the Hearing Officer can request additional documentation from the bidder, provides a date by which he or she expects to receive the requested documentation.
7. Conclude the hearing and turns off the recorder.

**The Determination:**

1. Within # days, (if additional documents were not requested) the Hearing Officer will render a written decision. The decision will either conclude that the bidder made good faith efforts or failed to make good faith efforts to meet the contract DBE goal. The decision should reference the relevant provisions of the DBE regulations. (A sample letter is attached as Exhibit C.)
2. The Hearing Officer sends his or her written decision to the law department for approval prior to issuance.
3. Once the decision is approved by law, the Hearing Officer sends the written decision to the bidder via certified mail. The decision will always include a statement that the decision of the Hearing Officer is the final decision of the CTA and is not appealable to the Department of Transportation.
4. Copies of the decision are forwarded to the General Manager, Diversity, the Compliance Coordinator, the PA and the file.
5. The Hearing Officer completes the checklist and closes the hearing file.

If the low bidder is determined to have failed to make good faith efforts, the procedure set forth above is undertaken for the second low responsible bidder, if necessary, and so on until a bidder is determined to have documented good faith efforts to meet the contract DBE goal.

**EXHIBIT A**

**Reconsideration Hearing Checklist**

Hearing Officers: \_\_\_\_\_

Date Received for Reconsideration: \_\_\_\_\_

Initial Review Date: \_\_\_\_\_

Company: \_\_\_\_\_

Contract #: \_\_\_\_\_

Contract Person: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

DBE Goal %;  
Bidder's DBE  
Commitment %: \_\_\_\_\_

Date Hearing Letter Mailed/Faxed/Email: \_\_\_\_\_

Date Response Received From Bidder: \_\_\_\_\_

Date & Time of Hearing: \_\_\_\_\_

Final File Review: \_\_\_\_\_

Date of Determination: \_\_\_\_\_

Date Response Drafted: \_\_\_\_\_

Legal Review Date: \_\_\_\_\_

By: \_\_\_\_\_

Legal Approval Date: \_\_\_\_\_

By: \_\_\_\_\_

Determination Mailed: \_\_\_\_\_

Comments:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT B**

**VIA FACSIMILE**

February 9, 2013

Mr. Red Line  
My New Company  
123 S. Lake Street  
Chicago, IL 60661

RE: **Notice of Failure to meet the DBE compliance Goal**  
**Requisition: B110P0CTA- Televisions for Train Stations**

Dear Mr. Line:

The bid submitted by your company does not meet the DBE compliance goal of 20% as set forth in the solicitation documents for the following reasons:

- Adequate Good Faith Efforts

Your business will be given ONE opportunity to explain why it believes the materials submitted with your bid documents qualify as Good Faith Efforts to meet the DBE compliance goal to CTA's Reconsideration Committee. To insure that this issue is resolved quickly, you must schedule your hearing immediately, by contacting Henry Bassett at (312) 681-2624 or you may, instead, submit written documentation before February 16, 2013, which clarifies the information submitted with your bid. Be advised that the only documents which will be considered are those which explain the good faith efforts your company made prior to submitting your bid.

A written decision will be sent to you by the CTA explaining the basis for the finding by the Reconsideration Committee. The decision will tell you the reasons that your business has: 1) met the DBE goal through participation; 2) not met the DBE goal through participation but your good faith efforts were adequate; or 3) not met the DBE goal through participation and your good faith efforts were not adequate. Failure to appear at the scheduled time or to provide written documentation may affect the final evaluation of your bid. Phone calls will not be accepted as the official response of your business.

Please be advised that the reconsideration process is NOT ADMINISTRATIVELY APPEALABLE TO THE U.S DEPARTMENT OF TRANSPORTATION. Please contact me to schedule your hearing of, for any other questions about the process

Sincerely,

- 9

Henry Bassett  
Reconsideration Hearing Chairman

**EXHIBIT C**

January 30, 2013

Mr. Green Bus  
My Old Company  
321 N. Lake  
Chicago, IL

**RE: Notice of Decision on Reconsideration  
Requisition: B110P00CTA – Maintenance & repairs of Material Moving Equipment**

Dear Mr. Bus:

The Chicago Transit Authority's Disadvantaged Business Enterprise ("DBE") hearing Committee has reviewed the written documentation submitted by you, to support your claim of making a Good Faith Efforts to achieve the DBE Contract Goal of 15%. The applicable federal regulations (49 CFR Part 26) include the procedures for Good Faith Efforts when there are contract goals.

**Part 26. 53 (a) (1) (2)**

- a. When you have established a DBE contract goal, you must award the contract only to a bidder/offeror that makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:**
- 1. Documents that it has obtained enough DBE participation to meet the goal; or**
  - 2. Documents that it made adequate good faith efforts to meet the goal even though it did not succeed in obtaining enough DBE participation to do so.**

My Old Company did not meet the overall 15% DBE goal through DBE participation. In your letter dated January 18, 2013, you stated that your firm had contacted a number of agencies to assist you in finding DBE's that are involved in the forklift industry as distributors of parts, batteries, chargers and other ancillary items, but were not successful. You stated that you further looked into trucking as a subcontracted function but the liability was too great. At the request of the hearing Committee, you supplied a list of DBE companies that you contacted for this contract.

The Reconsideration Hearing Committee has determined that the efforts made by MY Old Company to find DBE participation on this contract were sufficient to evidence a real and substantial effort to find the needed participation. Therefore, the Committee concludes that My Old Company met the requirements of good faith efforts set forth in 49 CFR 26.53. **This is the final decision of the Chicago Transit Authority.**

Sincerely,

Henry Bassett  
Reconsideration Hearing Chairman

# ATTACHMENT # 8

## DIVERSITY & SMALL BUSINESS COMPLIANCE PROGRAMS DEPARTMENT

### MONITORING OF PROMPT PAYMENT AND DBE COMMITMENT

The Diversity & Small Business Compliance Programs Department is responsible for monitoring CTA General/Prime Contractors' compliance with DBE and prompt payment contractual requirements. The following is a summary of the prompt payment and DBE contractual requirements as well as the steps taken to monitor compliance.

#### Contract Requirement

- General/Prime Contractor must insert required prompt payment contract clauses into all subcontracts and material/purchase orders.

#### Steps Taken to Monitor Compliance

The Diversity Dept. representative attends a contract kickoff meeting and informs the General/Prime Contractor that there are specific contract clauses/provisions that are to be inserted into subcontracts and material/purchase orders. A follow-up email (see attached sample) is sent to the General/Prime Contractor representative(s). The General/Prime Contractor is requested to submit a copy of its contract boiler plate(s) and subcontracts and material/purchase orders for review.

#### Contract Requirement

- General/Prime Contractor is to submit a currently dated Prompt Payment Affidavit with each Payment Request, except the first, and attach proof of prompt payment documentation-that all Subcontractors have been promptly paid for the work they have performed under all previous payment requests that have been paid by CTA.

#### Steps Taken to Monitor Compliance

The Diversity Dept. representative attends a contract kickoff meeting and informs the General/Prime Contractor that there are prompt payment requirements that will be monitored by the Diversity Dept. and that a Prompt Payment Affidavit (See Sample Prompt Payment Affidavit form attached) will be sent by email with further instructions.

The Diversity Dept., upon receipt of Purchasing Quality Assurance's email (see attached Prompt Payment Procedures as well as the Prompt Payment Review Flow

Chart), reviews General/Prime Contractor's Prompt Payment Affidavit to verify that it is dated current with the date of submission of the payment request.

The Diversity Dept. representative looks up (on Oracle) the status of the last payment to General/Prime Contractor. The Diversity Dept. representative reviews the proof of payment documentation received, copies of checks, Prompt Payment Summary Report (see attached Sample Prompt Payment Summary Report). If there is any indication of a delay or postponement of payment to any Subcontractor, the Diversity Dept. representative checks to see if the General/Prime Contractor has attached prior written approval of the General Manager, Purchasing, for a delay in or postponement of payment to any Subcontractor. The Diversity Dept. representative responds in accordance with the Prompt Payment Procedures.

#### Contract Requirement

- The General/Prime Contractor and DBE participants are required to execute written subcontracts or purchase orders after award of contract to the General/Prime Contractor. After entering into each subcontract, the General/Prime Contractor is not to terminate the subcontract for convenience or reduce the scope of work to be performed by the DBE with prior approval of the General Manager, DBE Program.

#### Steps Taken to Monitor Compliance

During its review of the prompt payment documentation, the Diversity Dept. representative checks the General/Prime Contractor's committed DBE participation against the contract values documented on the General/Prime Contractor's Payment Request and Sworn Statement (CTA 308 Form). If the Diversity Dept. representative finds any discrepancy in the committed and contracted values, an email is sent to the General/Prime Contractor. Copies of subcontract change orders are requested if the DBE's contract amount is greater than the commitment on file. If the contracted value is less than the commitment, the General/Prime Contractor is requested to review the DBE Special Conditions, provide additional documentation as required by contract (request for substitution, etc.), and is also notified that it could be found non-compliant with the DBE Special Conditions dependent on the Diversity Dept.'s evaluation of the actions taken by the General/Prime Contractor.

PROMPT PAYMENT AFFIDAVIT

Contractor will place a check in the appropriate box below that applies to this payment request.

Re: Current Payment Request No. \_\_\_\_\_

I, \_\_\_\_\_, the \_\_\_\_\_  
Affiant Name Title (e.g., President, Vice President)

of \_\_\_\_\_, do state the following with regard to  
Company Name (hereinafter "Company")

payments made under Contract No. \_\_\_\_\_  
(Hereinafter "Contract")

1. Subcontractors, at the first tier, both DBE and non-DBE, who completed work and were listed for payment on the last request received from Company and paid by CTA, were paid no later than seven (7) calendar days after Company received payment from CTA.
2. A copy of this affidavit along with copies of canceled checks, invoices, proof of wire transfers and/or other itemized documentation, for subcontractors at the first tier who were listed for payment on the last payment request received from Company and paid by CTA, have been delivered or mailed to the CTA DBE Department. In addition, Company has attached to the current payment request all lien waivers for prior subcontractor payments and any other documentation required by CTA. (Failure to attach all required documentation to the payment request or forward copies of canceled checks, invoices, proof of wire transfers and/or other itemized documentation to the CTA DBE Department may cause the current payment request to be rejected by CTA.)
3. All retainage amounts withheld from any subcontractor who satisfactorily completed its portion of the Contract work, including punch list items, were paid to the subcontractor(s) no later than fourteen (14) calendar days after it satisfactorily completed its work, whether or not CTA has paid said retainage amounts to Company. A copy of this affidavit along with copies of the canceled checks, invoices, proof of wire transfers and/or other itemized documentation evidencing payment of each retainage amount have been delivered or mailed to the CTA DBE Department.
4. There was no delay in or postponement of any payment owed to a subcontractor, whether periodic payment or retainage amount, except for good cause and after receipt of prior written approval from the CTA General Manager, Purchasing. Attached is a copy of the written approval from the CTA General Manager, Purchasing.

Subscribed and sworn to before me

this \_\_\_\_\_ day of

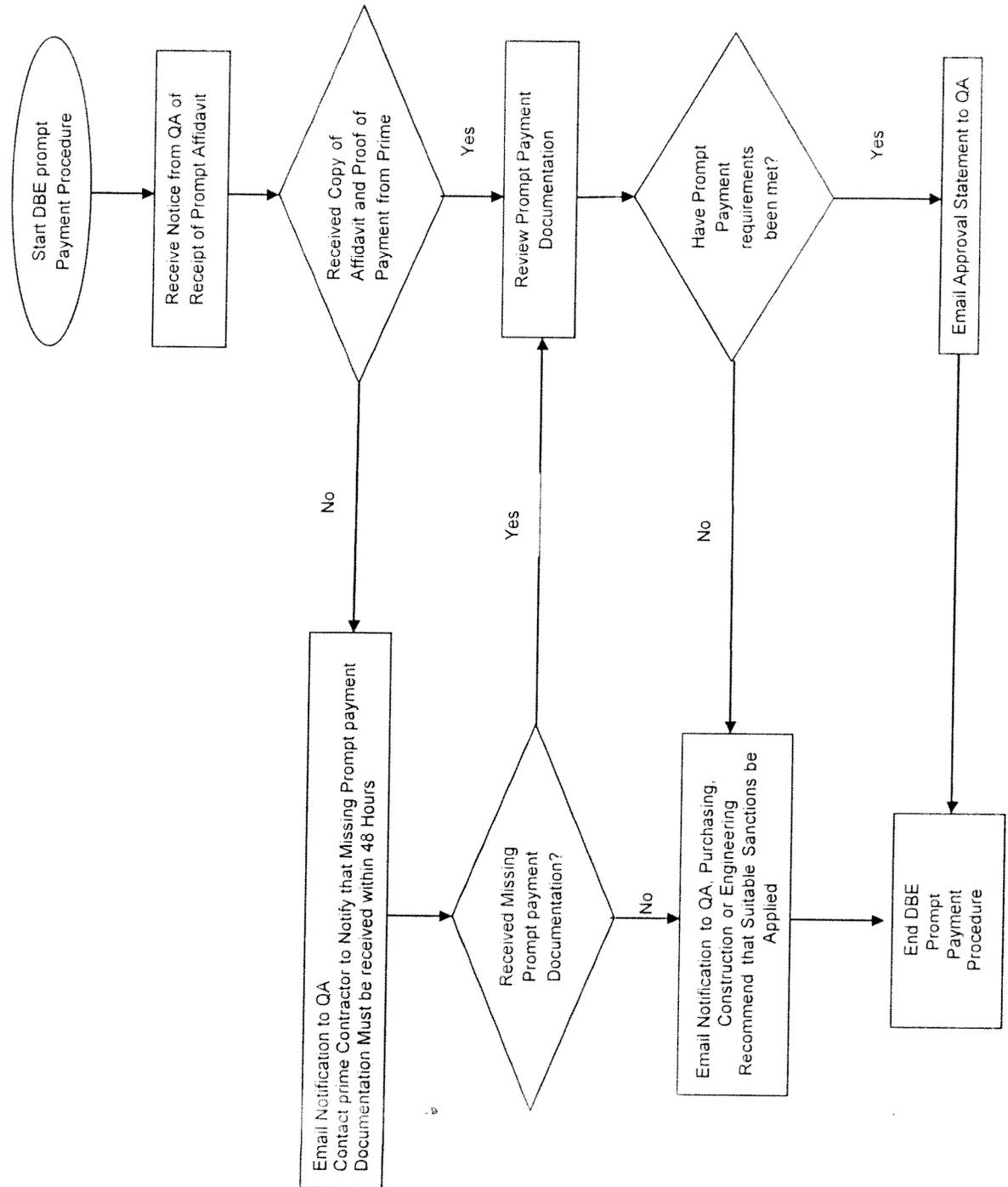
\_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Print Affiant's Name



# ATTACHMENT # 9



July 1, 2013

Name of Firm

Contract: DESCRIPTION OF CONTRACT  
Prime Contractor: Name of Prime Contractor.  
Award Date: Today's Date

Dear \_\_\_\_\_:

Our records indicate that you are listed as a subcontractor on the above listed Chicago Transit Authority contract for DBE program credit in the amount of \$0.00. If we do not hear from you within 5 days, we will assume that the information submitted \_\_\_\_\_ is correct.

The Diversity & Small Business Compliance Department will monitor DBE participation on this project. Therefore, it is necessary that you participate in our online DBE utilization reporting program. You will be notified monthly by email of the need to verify your actual participation in terms of payments received from \_\_\_\_\_. This department may also conduct site visits to the project site or to your place of business for interviews.

Please notify us of any change from your original subcontract agreement, or of any problems you may experience during the course of this project. If you were not aware that your firm had been listed as a subcontractor on this project, or have been told by the prime contractor that your services will not be needed, please contact my office at \_\_\_\_\_.

Our Disadvantaged Business Enterprise System (DBE System) may be accessed by typing <https://CTA.dbesystem.com> in your internet browser address line. Your account username is the email address on file with this Department. We request that you take this opportunity to log in and review your contact information in our DBE System, if you have not done so already. This is so that this Department may communicate with \_\_\_\_\_, Inc. quickly and effectively.

If you need additional assistance regarding this or other related matters, please contact \_\_\_\_\_.

Sincerely,

\_\_\_\_\_

DBE Certification Procedures:  
Checklist Reference Guide

FOR INTERNAL USE ONLY

Regulatory Requirements	Procedures to verify regulatory requirements are met
Basic Criteria	
1: Is the application form and supporting documentation complete?	Ensure that all questions have been addressed or N/A has been marked. Also, ensure that all needed supporting documentation is present with application.
2: Has the firm been granted DBE certification from their home state agency?	If the firm is an out of state firm, look at firm's state (state of incorporation) DBE office website and print page that proves certification exist. If the out of state firm is not certified in their home state, this ends the process and a letter is prepared advising of the home state certification requirement. If the out-of-state firm is certified in their home state, request a copy of the on-site visit report.
3: Is the business in good standing?	Go online to the home state's Secretary of State website, or perform a search in Clear to verify that the firm's business is in good standing. If not, prepare a "We need additional information..." Print copy of your conducted search.
4: Has the firm been granted any other certifications or denials? DBE, WBE, MBE, SBA 8(a), SDB	Determine what are the reasons for any denial and check to see if they have been corrected or hidden on current application. Are the certifications current? Are the certification dates available? Is the applicant requesting any changes in certification areas from prior applications and/or certification.
5: Is the applicant(s) a U.S citizen of legal resident	Verification includes: 1) a copy of every applicant's driver's license along with a copy of their certified birth certificate, or 2) copy of their passport or 3) legal aliens can provide their Alien registration number and copy of their current green card. If green card is set to expire before next renewal, record the information.
Disadvantage Status	
1: Are the firm's average gross receipts, over the previous 3 years, over \$22.41 million? (Keep current on these numbers)	Calculation of business size should be calculated using the following method: "total income plus 'cost of goods' ". If the total amount of all gross receipts exceeds \$22.41 million, stop process here and prepare a denial letter. If the disadvantaged applicant owns more than 51% of a business, make sure Schedule C of the Individual Tax Return, and Rental Income from Schedule E of the tax return for the investment properties are included. Make sure sure all properties on Schedule E have also been listed on Personal Financial Statement and that rental income is also included, if applicable.
2: Determine NAICS code and specialty code(s) to see if firm falls below the dollar amounts and/or employee limits for that NAICS code.	Check the SBA website to get the specialty codes for the applicant's firm. Compare amount of employees/revenue level listed under the specialty code to the income limit.  www.sba.gov
3: Are the majority owners socially disadvantaged?	<b>Check birth certificate for ethnicity designation:</b> African American, Hispanic American, Native American, Asian-Pacific American, Subcontinent-Asian American, Woman  See SBA 124,103 & Appendix E 49CFR part 26



### View DBE Uniform Report

Recipient: 1182 - CTA  
 Fiscal Year: 2013  
 Grant Number(s):  
 (separated by commas)

Status: Ready for Regional Review  
 Reporting Period: Semiannual: Report due Dec. 1

#### Annual DBE Goal(s):

Race Conscious Goal: 22%

Race Neutral Goal: 3%

#### Awards/Commitments Made During This Reporting Period:

	A. Total Dollars	B. Total Number	C. Total to DBEs (dollars)	D. Total to DBEs (number)	E. Total to DBEs/Race Conscious (dollars)	F. Total to DBEs/Race Conscious (number)	G. Total to DBEs/Race Neutral (dollars)	H. Total to DBEs/Race Neutral (number)	I. Percentage of Total Dollars to DBEs
8. Prime Contracts Awarded This Period:	\$34,221,154.00	52	\$15,082,819	7	\$1,833,891.00	7	\$13,248,928.00	0	44.1 %
9. Subcontracts Awarded/Committed This Period:	\$3,047,086.00	15	\$3,047,086	15	\$3,047,086.00	15	\$0.00	0	100.0 %
<b>Total:</b>			\$18,129,905	22	\$4,880,977	22	\$13,248,928	0	53.0 %

Overall Goal: 25%

#### DBE Awards/Commitments This Reporting Period Breakdown By Ethnicity & Gender:

	A. Black American	B. Hispanic American	C. Native American	D. Subcont. Asian American	E. Asian-Pacific American	F. Non-Minority Women	G. Other	H. Total (number)
10. Total Number of 5 Contracts: (Prime and Sub)	7	0	0	0	1	7	2	22

11. Total Dollar Value: \$1,172,372.00 \$3,858,193.00 \$0.00 \$0.00 \$59,963.00 \$7,022,036.00 \$6,017,341.00 \$18,129,905

#### Actual Payments On Contracts Completed This Reporting Period:

	A. Number of Prime Contracts Completed	B. Total Dollar Value of Prime Contracts Completed	C. DBE Participation Needed to Meet Goal (dollars)	D. Total DBE Participation (dollars)	E. Percentage of Total DBE Participation
12. Race Conscious: 5		\$203,623.00	61087.00	\$62,770.00	30.8 %
13. Race Neutral: 12		\$3,799,870.00		\$620,681.00	16.3 %
Totals: 17		\$4,003,493		\$683,451	17.1 %

#### Status History:

Status	Last Updated By	Last Updated Date
Ready for Regional Review	Enrique Orozco, Jr	12/1/2013 2:02:22 AM