

METRO DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

This program is for Federal Transportation Administration federal assistance.

Program/Policy Approved by:


Timothy Collier, Chief Financial Officer

Section 1: DBE Program

The purpose of this document is to establish and implement a program by Metro of disadvantaged businesses.

The Metro Disadvantaged Business Enterprise (DBE) seeks to achieve the following:

- ◆ Ensure nondiscrimination in the award and administration of assisted contracts;
- ◆ Create a level playing field on which DBEs can compete fairly for assisted contracts;
- ◆ Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- ◆ Ensure that only firms that fully meet 49 CFR 26 eligibility standards are permitted to participate as DBE's;
- ◆ Help remove barriers to the participation of DBEs in assisted contracts; and
- ◆ Assist the development of firms that can compete successfully in the market place outside the DBE program.

This document is intended to comply with all relevant federal regulations:

- ◆ The Surface Transportation Assistance Act of 1982
- ◆ Intermodal Surface Transportation Efficiency Act of 1991
- ◆ Federal Transit Laws, 49 USC Chapter 53
- ◆ 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- ◆ 49 CFR 26, USDOT Disadvantaged Business Enterprise program requirements
- ◆ FEDERAL TRANSPORTATION ADMINISTRATION Master Agreement

Policy Statement

Metro is committed to the participation of Disadvantaged Business Enterprise (DBEs) in Metro contracting opportunities in accordance with 49 Code of Federal Regulations (CFR) Part 26, Effective March 4, 1999.

It is the policy of Metro to practice nondiscrimination on the basis of race, color, sex, and/or national origin in the award and administration of Metro assisted contracts. The intention of Metro is to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to Metro planning and professional service activities.

The Metro Council is responsible for establishing the DBE policy for Metro. The Executive Officer is responsible to ensure adherence to this policy. The Assistant Director of Administrative Services and the DBE Outreach Coordinator are responsible for the development, implementation and monitoring of the DBE program for contracts in accordance with the Metro nondiscrimination policy. It is the expectation of the

Executive Officer that all Metro personnel shall adhere to the spirit, as well as the provisions and procedures, of the DBE program.

This policy will be circulated to all Metro personnel and to members of the community that perform or are interested in performing work on Metro contracts. The complete DBE Program for contracts goals and the overall annual DBE goals analysis are available for review at the:

Metro
Contracts Division
600 NE Grand Avenue
Portland, Oregon 97232

Nondiscrimination

It is the policy of Metro to provide equal opportunity to all persons to access and participate in the projects, programs and services of Metro, in accordance with Title VI of the Civil Rights Act of 1964. Metro and Metro contractors shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

Contractors, Subcontractors and Subrecipients

Contractors, subcontractors and sub-recipients of Metro accepting contracts or grants under the DBE Program which are USDOT assisted shall be advised that failure to carry out the requirements set forth in 49 CFR 26 shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate.

Quotas

Metro shall not use quotas in any way in the administration of the DBE program.

Overconcentration

If Metro's Contract Division determines that DBE participation is so over-concentrated in certain types of work or contracting opportunities that it unduly burdens the opportunity of non-DBEs to participate in that type of work, Contracts will develop appropriate measures to address the over-concentration. The Contracts Division will see approval of such measures from the appropriate operating administration and, at that time, the measures will become a part of this Program. Currently, Metro is unaware of any types of work that have a burdensome over-concentration of DBE participate, however, the Contracts Division will continue to monitor for indication of over-concentration.

Business Development Programs (BDP)

Metro does not provide any Business Development Programs directly. Metro will provide race-neutral and gender-neutral means of participation with Metro by hosting an annual open house. Metro's open house provides small business an opportunity to meet DBE program staff, project managers, and purchasing/contract staff. Metro also makes available to the small business community resources available to assist them in business development. Metro coordinated, sponsors, and participates in at least three (3) outreach events with other public agencies throughout the year.

DBE Program Updates

Metro will continue this program throughout the term of the grant proceeds. Metro will provide DOT with any updates representing significant changes to the program.

Contract Assurance

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

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

Prompt Payment

We will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from Metro. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payments from the above referenced time frame may occur only for good cause following written approval of Metro. This clause applies to both DBE and non-DBE subcontractors.

Monitoring and Enforcement Mechanism

We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil

Penalties rules) provided in 26.109. We also will consider similar action under our own legal authorities, including responsibility determination in future contracts.

Federal Financial Assistance Agreement Assurance

Metro has the following assurance, applicable to all DOT-assisted contracts and their administration:

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

Section 1A: Small Business Participation

In order to facilitate competition by small business concerns Metro shall take reasonable steps to eliminate obstacles to their participation.

Metro is fortunate to have access to the State of Oregon Office of Minority, Woman and Emerging Small Business (MWESB) database of certified firms. To comply with February 2012 CFR requirements Metro shall use State of Oregon Certified Emerging Small Business utilization language with DBE language in all solicitations and contracts that involve Federal Transit Administration Funds. This language shall include sub-contracting utilization instructions to prime contracts and/or grantees.

All Public Works projects that will be more than \$100,000 shall incorporate Metro's Good Faith Effort Program. All Prime Contractors must include proof of their efforts to solicit and subcontract with local MWESB firms. They must also include in their bid and in the resulting contract a subcontractor utilization plan that may include mentoring, capacity building, and sharing of physical resources.

Metro directs its Project Managers and Construction Managers to make efforts to package their Public Works projects into smaller scopes of work so that the work will be more attractive the small business and local MWESB firms. Scopes of work that are less than \$50,000 shall be bid as part of Metro's Sheltered Market Program in which the planholders are limited to MWESB firms. Metro Project Managers are encouraged to act as the General Contractor of a project, if prudent and feasible, so that there may be

more opportunity to package the work into smaller portions that will be either part of the Sheltered Market Program or otherwise attractive small or MWESB firms.

Section 2: DBE Liaison Officer

DBE Liaison Officer

The Executive Officer shall designate a DBE liaison officer and, if necessary, other staff adequate to administer the DBE Program. The DBE liaison officer shall report directly to the Executive Officer on matters pertaining to the DBE Program.

The DBE Liaison Officer (DBELO):

Tim Collier, Deputy Director of Finance and Administrative Services
600 NE Grand Ave.
Portland, Oregon 97232
(503) 797-1913
tim.collier@oregonmetro.gov

The DBE Program Coordinator:

Julie Hoffman, DBE Program Coordinator
600 NE Grand Ave.
Portland, Oregon 97232
(503) 797-1648
julie.hoffman@oregonmetro.gov

The DBE liaison officer shall be responsible for developing, managing and implementing the DBE Program, and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the DBE liaison officer, all department directors and program managers shall have responsibility to assure implementation of the DBE Program.

Liaison Officer

The DBELO will have the following duties:

- ◆ Assure data is gathered and reported as required
- ◆ Reviews contracts to assure compliance with this program
- ◆ Establishes Metro's overall goal
- ◆ Works with project managers to establish contract goals
- ◆ Analyzes Metro's progress toward meeting goals
- ◆ Participates in pre-proposal meetings
- ◆ Provides periodic DBE training
- ◆ Participates with State of Oregon and local governments committees on DBE issues
- ◆ Advises Executive Office and Counsel on DBE efforts
- ◆ Review and approve contract amendments

DBE Program Coordinator

The DBE Program Coordinator will have the following duties:

- ◆ Gathers information about primes and all sub contractors
- ◆ Prepares quarterly and annual reports
- ◆ Reviews proposal submittals to assure compliance with good faith efforts
- ◆ Performs outreach efforts
- ◆ Participates in pre-proposal meetings
- ◆ Reviews proposal submittals to assure compliance with good faith efforts
- ◆ Assures Metro's notice requirements are followed
- ◆ Provides periodic DBE training
- ◆ Participates with State of Oregon and local governments committees on DBE issues

Project Management Staff

The Project Management Staff will have the following duties:

- ◆ Prepare scope of work/ specifications for project
- ◆ Prepare RFP/B using Metro and DOT standard clauses
- ◆ Incorporate contract goals and overall goals in RFP/B and contract
- ◆ Provide entire RFP/B to DBELO and DBE Coordinator for review
- ◆ Forward responses to RFP/B to DBE Coordinator for evaluation of compliance with DBE requirements
- ◆ Prepare contract using Metro and DOT standard clauses
- ◆ Provide DBE Coordinator with monthly reports showing payments to prime and sub-contractors
- ◆ Maintains records of payments to prime and all subcontractors. Performs regular audits to ensure amounts reported paid to DBE meets or exceeds the amounts stated in the schedule of DBE participation
- ◆ Prepare any changes or amendments
- ◆ Prepare current FEDERAL TRANSPORTATION ADMINISTRATION quarterly progress report narrative. This report includes any claims or change orders/amendments
- ◆ Assure the Financial Status Reports are submitted
- ◆ Acquire training on FEDERAL TRANSPORTATION ADMINISTRATION's grant systems including TEAM

Directors

The Director will have the following duties

- ◆ Monitor, review and approve the quarterly reports
- ◆ Review and sign Financial Status Reports
- ◆ Take corrective action when necessary

Section 3: DBE Directory

DBE Directory

Metro utilizes a directory maintained by the State of Oregon's Office of Minority, Women and Emerging Small Business (OMWESB) of the Department of Consumer and Business Services. The directory identifies all firms eligible to participate as DBEs.

The directory can be found at the following:

State of Oregon's Office of Minority, Women and Emerging Small Business
(OMWESB)
350 Winter St. NE, Room 21
Salem, Oregon 97310
(503)947-7976
Website: <http://www.cbs.state.or.us/external/omwesb>

Copies are also available by contacting Metro's DBE Coordinator.

Section 4: DBE-Owned Banks

DBE-Owned Banks

Metro will seek to identify DBE owned banks within the policies adopted by the Metro Council and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE banks.

Section 5: DBE Annual Aspirational Goals

Annual DBE Goals

The Metro Council shall, by resolution each September, establish annual DBE aspirational goals for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, procurement contracts and USDOT-assisted contracts regardless of type. The annual goal will be submitted to FTA by August 1.

Annual aspirational goals will be established based on the demonstrable evidence of the availability or ready, willing, and able DBE's available to participate on USDOT assisted contracts.

Metro intends to meet those aspirational goals to the maximum extent feasible using race neutral measure.

Method: Establishing a Base Figure.

Construction

Available Firms: Data will be gathered from the US Census for all construction contractors with NAICS codes related to the work of ODOT assisted projects.

DBE Firms: DBE firms will be obtained from the Office of Minority, Women and Emerging Small Business (OMWESB).

The goal will be calculated by:

Step One Base Figure = $\frac{\text{Ready, willing, and able DBE's}}{\text{All Firms ready, willing, and able (including DBEs and non-DBEs)}}$

Professional Services

Available Firms: Data will be gathered from the US Census for all professional services contractors with NAICS codes related to the work of ODOT assisted projects.

DBE Firms: DBE firms will be obtained from the Office of Minority, Women and Emerging Small Business (OMWESB).

The goal will be calculated by:

Step One Base Figure = $\frac{\text{Ready, willing, and able DBE's}}{\text{All Firms ready, willing, and able (including DBEs and non-DBEs)}}$

Race Neutral Analysis

Once the overall annual aspirational goal is proposed, the Contracts Division will analyze and project the maximum feasible portion of that goal that can be achieved by using race-neutral methods. Where the projected portion of the goal using race-neutral methods is less than the overall annual goal, the remaining portion will be achieved by establishing contract goals for particular projects that have subcontracting opportunities.

- A. DBE participation as prime contractors on U.S. DOT assisted contracts;
- B. DBE participation on projects where no DBE goals have been established
- C. DBE Participation on prime contracts exceeding contract goals;
- D. DBE participation on projects as non-committed DBE subcontractors.

The Contracts Division shall monitor and adjust the use of contract-specific aspirational goals in accordance with 49CFR Part 26.51(f). When projecting the percentage of the overall annual aspirational goal to be achieved through establishing contract-specific aspirational goals, the Contracts Division shall analyze the actual achievement of the overall annual aspirational goal through race-neutral methods in the current and previous two years. When establishing contract-specific aspirational goals during the current fiscal year, the Contracts Division shall analyze the progress towards achieving the overall annual aspirational goal and increase or reduce the use of contract-specific aspirational goals accordingly.

Adjustments

Metro may find the need to adjust the base figure for circumstances or issues that may impact availability. Adjustments may occur in consideration of other recipients in the same or similar market. Examples include ODOT, Tri-Met, and the Port of Portland. Adjustments will also occur based on (1) past contracting history, and (2) individual contract goals.

Pubic Notice

Metro will publish notice that the USDOT assisted contract goals are available for inspection when they are submitted to USDOT or other federal agencies. They will be made available for 30 days following publication of notice. Public comment will be accepted for 45 days following publication of the notice.

Contract Goals

Prior to the RFP, the DBELO, DBE Coordinator and Project Manager will identify possible subcontracting opportunities. Contract goals will be established in accordance to the following:

- 1. Project location, size, duration, and dollar value
- 2. Consider the nature of the project
- 3. Availability of DBE firms that perform the subcontractible work
- 4. Availability of non-DBE firms that perform the subcontractible work

5. Any other relevant criteria

Section 6: Good Faith Efforts

Good Faith Efforts

To be eligible for award of contracts containing a DBE aspirational goal, prime contractors must either meet or exceed the specific goal for DBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposal are due. Bidders/Proposers are required to utilize the most current list of DBEs certified in all good faith efforts solicitations.

All invitations to bid or request for proposals on contracts for which goals have been established shall require all proposers to submit with their proposals a statement indicating that they will comply with the contract aspirational goal or that they have made good faith efforts. To document the intent to meet the goals, all proposers shall complete and endorse a disadvantaged business program compliance form and include said form with proposal documents. The form shall be provided by Metro with proposal solicitations.

Agreements between a proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other proposers are prohibited.

A successful proposer who states in its proposal that the DBE aspirational goals were not met but that good faith efforts were performed shall submit written evidence of such good faith efforts. Metro reserves the right to determine the sufficiency of such efforts.

The apparent successful proposer who state in their proposals that they will meet the aspirational goals or will show good faith efforts to meet the goals, but who fail to comply with this section, shall have their proposals rejected and shall forfeit any required bid security or bid bond. In that event, the firm which scores second highest shall, within two days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided above. This process shall be repeated until a proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable.

The liaison officer, at his/her discretion, may waive minor irregularities in a proposer's compliance with the requirements of this section provided, however, that the proposal substantially complies with public bidding requirements as required by applicable law.

Determination of Good Faith Efforts

Bidders or Proposers on USDOT assisted contracts to which DBE goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal. A showing of good faith efforts must include written evidence of at least the following:

1. Attendance at any pre-solicitation or prebid meetings that were scheduled by Metro to inform disadvantaged business enterprises of contracting and subcontracting or material supply opportunities available on the project.
2. Advertisement in trade association, general circulation, disadvantaged and trade-oriented, if any and through a disadvantaged-owned newspaper or disadvantaged-owned trade publication concerning the subcontracting or material supply opportunities at least 10 days before bids or proposals are due.
3. Written notification to a reasonable number but no less than five DBE firms that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE firms, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from DBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE sufficient opportunity to develop quotes or proposals for the work described.
4. Good Faith Program forms in the RFP must be submitted with the proposal. Evidence of follow-up to initial solicitations of interest, include the following:
 - (a) The names, addresses, telephone numbers of all DBE contacted;
 - (b) A description of the information provided to DBE firms regarding the plans and specifications for portions of the work to be performed; and
 - (c) A statement of the reasons for non-utilization of DBE firms, if needed to meet the goal.
5. Negotiation in good faith with DBE firms. The bidder shall not, without justifiable reason, reject as unsatisfactory bids prepared by any DBE firms.
6. Where applicable, the bidder must provide advice and assistance to interested DBE firms in obtaining bonding, lines of credit or insurance required by Metro or the bidder.
7. Overall, the bidder's efforts to obtain DBE participation must be reasonably expected to produce a level of participation sufficient to meet Metro's goals.
8. The bidder must use the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the DBE Firms: DBE firms will be obtained

from the Office of Minority, Women and Emerging Small Business (OMWESB) that provide assistance in the recruitment and placement of DBEs.

Good Faith Program

The Metro Council is committed to doing business with DBEs. The Council recognizes that supporting these firms will result in a stronger economy and increased competition.

To this end, the Metro Council President has established these procedures to maximize utilization of DBEs for Metro projects. The following six steps are required to help us monitor the usage of these firms.

Good Faith Efforts Steps:

1. Identify areas in which you intend to use sub-contractors.
2. Attend the Pre-Bid meeting if held. Meet any DBE firms at the Pre-Bid meeting.
3. Contact several (or all) certified DBE firms listed (with the State of Oregon) to perform the work needed. (Metro's DBE Coordinator will be happy to provide you with a list of firms)
4. Negotiate with interested, available and capable DBE firms who submit competitive bids.
5. Report to Metro all subcontractors contacted, please include their response and price quoted.
6. Complete the DBE Work Plan Proposal.

PLEASE NOTE: A selected DBE firm must be used unless the Procurement Officer or DBE Coordinator authorizes a substitution.

Thank you for your assistance in this important area. Attached are forms to complete and return as part of your bid document. Please contact our DBE Coordinator at (503) 797-1648 if you have any questions.

DBE Compliance Form GOOD FAITH PROGRAM

Project Name _____

Bidder/Proposer _____

Address _____

Phone & Fax _____

Proposal Closing **Date:** _____ **Time:** _____

Failure to complete this form shall be considered non-responsive to the DBE requirements.

Step 1. Identify areas in which you intend to use sub-contractors.

Step 2. Attend the Pre-Bid meeting if held. Meet any DBE firms at the Pre-Bid meeting.

Name of person who attended pre-bid.

Step 3 & 4. List all firms contacted for sub-contracting work. (use more sheets if necessary)

Sub-contract for _____

DBE/ Non-DBE	Name of Firm	Date Contacted	Amount of Bid	Comments

Sub contract for _____

DBE/ Non-DBE	Name of Firm	Date Contacted	Amount of Bid	Comments

Sub contract for _____

DBE/ Non-DBE	Name of Firm	Date Contacted	Amount of Bid	Comments

Sub contract for _____

DBE/ Non-DBE	Name of Firm	Date Contacted	Amount of Bid	Comments

Step 5: List all sub-contractors used for this project.

BIDDER/PROPOSER INTENDS TO SUBCONTRACT WITH THE FOLLOWING:

SUBCONTRACTOR/ SUPPLIER Contact Name & Address & Telephone	DBE/ Non- DBE	NATURE OF WORK	DOLLAR VALUE OF PARTICIPATION

Total:\$ _____ Amount of Contract:\$ _____

DBE Percent of Total Contracts: _____ %

In accordance with Metro's Disadvantaged Business Enterprises (DBE) Program, the above-named Contractor has fully met Metro's DBE Utilization Goal of _____% and will subcontract \$_____ to DBE(s)

or

The above named Contractor will **not** meet Metro's Disadvantaged Business Enterprises (DBE) goal. Attached is written and signed evidence of good faith efforts.

Please attach:

The DBE Work Plan Proposal Form for each DBE subcontractor

I do hereby certify to use each DBE subcontractor identified above.

Authorized Signature _____

Date _____

Demonstration of Good Faith Efforts

The following person is responsible for determining whether a proposer has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive:

Julie Hoffman, DBE Program Coordinator
600 NE Grand Ave.
Portland, Oregon 97232
(503)797-1648
Julie.hoffman@oregonmetro.gov

Administrative Reconsideration

Within five (5) days of being informed by Metro that the apparent successful proposer may have failed the requirements of the program because it has not documented sufficient good faith efforts, the proposer may request administrative reconsideration to the DBELO.

The proposer shall have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to so. The reconsideration request shall be heard by Metro's Chief Operating Officer, Chief Financial Officer, and the Director of Planning.

A determination will be made and sent to the proposer within three (3) days with a written decision on the reconsideration, explaining the basis for the finding that the proposer did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Replacement of DBE Subcontractors

Prime contractors shall not replace a DBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a DBE subcontractor shall replace such DBE subcontractor with another certified DBE subcontractor or make good faith efforts as described in the preceding section to do so.

Section 7: Counting and Reporting DBE Participation

Counting Disadvantaged Business Participation Toward Meeting Goals

Metro will count DBE participation toward overall and contract goals in accordance with 49 CFR 26.55.

1. DBE participation shall be counted toward meeting the goals on each contract as follows:
 - (a) Subject to the limitations indicated in paragraphs (b) through (h) below, the total dollar value of a prime contract or subcontract to be performed by DBEs is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.
 - (b) Progress payments will be recorded on the "Subcontractors Paid – Monthly Report" form.
 - (c) Prime contractors are required to maintain and document payments to DBE's for three years following the performance of the contract. These documents must be made available to DOT and Metro.
 - (d) Metro shall count toward its goals only payments to DBEs that perform a commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a DBE is performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
 - (e) The participation of a DBE subcontractor will not be credited toward the prime contractor's DBE achievement, or the overall goal, until the amount being counted toward the goal, and any retainage held by the prime contractor has been **paid** to the DBE.
 - (f) Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. DBE's must complete at least 30 percent of the work by their own work force.
 - (g) A DBE which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other than DBE suppliers and manufacturers, provided that

the DBE contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.

- (h) Metro shall count its entire expenditure to a DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
- (i) When USDOT funds are passed through by Metro to other agencies, any contracts made with those funds and any DBE participation in those contracts shall only be counted toward Metro's goals. Likewise, any USDOT funds passed through to Metro from other agencies and then used for contracting shall count only toward that agency's goals.

SUBCONTRACTS PAID – MONTHLY REPORT

MONTH: _____

PROJECT NAME: _____ LOCATION: _____ PRIME CONTRACTOR: _____ ADDRESS: _____ _____ _____	CONTRACT NUMBER: _____ CONTRACT AMOUNT: _____ CONTRACT AWARD DATE: _____ PROJECT GRANT NUMBER: _____ <small>(If Applicable)</small> COMMITTED DBE GOAL: _____ DBE COORDINATOR REVIEW: _____ <small>(Initial and Date)</small>
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Subcontractor	DBE/ Non DBE	Committed DBE Amount	Amount Paid This Period	Total Amount Paid	Percent Of Work Completed To Date	Percent Of Committed Amount Paid To Date
SAMPLE						

This certification is made under Federal and State laws concerning false statement. The undersigned firm understands also that supporting documentation for the payment is subject to audit, and it will be retained for a minimum of three years from the project acceptance date.

I declare under penalty of perjury, as set out in ORS 162.055 through 162.085, and other applicable State and Federal Laws that the statements made on the document are true and complete to the best of my knowledge

Prepared by: _____ **Title:** _____ **Date:** _____
Signature: _____

SUBMIT WITH INVOICE TO PROJECT MANAGER

Section 8: Reporting

Proposals

1. Metro shall develop, maintain and implement a record keeping system to identify and assess DBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts using the Access database by **(need date)**. Specifically, the following records will be maintained and submitted with the proposal:
 - (a) Awards to DBEs by number, percentage and dollar amount;
 - (b) Awards to non-DBEs by number, percentage and dollar amount;
 - (c) A description of the types of work in contracts awarded; and
 - (d) The extent to which goals were exceeded or not met and reasons therefor.
2. All DBE records will be separately maintained. Required DBE information will be provided to federal agencies on request.

Monitoring On Going Payments to DBEs

Metro requires that prime contractors submit and maintain records of payments to DBEs for three years following the performance of the contract. These records will be made available to inspection upon request by DOT or Metro.

Metro will monitor actual payments to DBE firms for work committed to them at the time of contract. Progress payments will be recorded on the "Subcontractors Paid – Monthly Report" form.

Quarterly Reporting to DOT

Metro DBE Coordinator will report quarterly DBE participation using the DOT form 4630. These reports reflect the payments actually made to DBEs on DOT assisted contracts.

Annual Reporting

Metro will report annually the DBE participation to DOT using the DOT form 4630. This will be completed in September of each year.

Section 9: Compliance and Enforcement

Compliance and Enforcement

1. Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by a contractor prior to contract award pertaining to DBE participation in the contract.
2. The liaison officer may require, at any stage of contract completion, documented proof from the contractor of actual DBE participation.
3. Metro will bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with this program, in accordance with 26.109. Metro may also take its own legal action within its authority.

Section 10. RFP and Contracts

Step 1

Determine the **contract DBE goal** (different from the annual DBE goal adopted by Council each fiscal year). The DBE Coordinator will calculate using the scope of work and the goal setting criteria of the DBE program.

Step 2

Place together the RFP using Metro's standard RFP, a complete scope of work, and **DBE Guidelines** and **Federal Regulations** must be included in all RFBs/RFPs for federally funded contracts. The **Disadvantaged Business Program Good Faith Compliance Forms** and **Utilization Form** should be standard documents included in the RFB/RFP. (*Important:* the Good Faith Compliance and Utilization forms must both be returned with all bids/proposals). Evaluation criteria must be established, including cost and DBE compliance. (Cost is not to be used in A&E contracts). ODOT's approval is required prior to sending out an RFP for FHWA funded projects.

Step 3

Obtain Council approval.

Step 4

Advertising completed by the DBE Coordinator and sending RFP to all qualified DBE firms.

Step 5

For all federally funded contracts over \$25,000, a **Pre-Bid/Proposal meeting** be scheduled and attended by the DBELO and DBE Coordinator. This will give the DBELO an opportunity to review the DBE Program requirements with prime contractors. Attendance should be recorded for all pre-bid/proposal meetings and forwarded to the Contract Management Division.

Step 6

Proposal opening. Assure all required DBE forms are returned. The DBE Coordinator will evaluate the Good Faith efforts.

Step 7

With at a minimum of three evaluators (one from outside of Metro is recommended), evaluate the proposers. It is recommended that compliance with the DBE program is an evaluation criteria as part of the RFP.

Step 8

Award contract and wait five days prior to contract signature to allow for appeals process. Assure that all federal clauses are in the contract. Contracts will be signed by the Contracts Officer after completion of the internal review process. No contracts or IGA's can have a term longer than 5 years, or be amended longer than 5 years unless approved by Federal Grantor.

Ongoing

- ◆ Maintains records of payments to prime and all subcontractors. Performs regular audits to ensure amounts reported paid to DBE meets or exceeds the amounts stated in the schedule of DBE participation
- ◆ Prepare any changes or amendments
- ◆ Prepare current FEDERAL TRANSPORTATION ADMINISTRATION Quarterly Progress Report Narrative. This report includes any claims or change orders/amendments
- ◆ Assure the Financial Status Reports are submitted
- ◆ All change orders/amendments must be approved by the DDELO and DBE Coordinator.

Noteworthy

- ◆ Metro's policy requires competitive quotes for all personal service contracts over \$5,000. When federal funds are involved, the Contract Management Division encourages competitive quotes for all projects over \$2,500.
- ◆ When federal funds are involved, evaluation criteria must be weighed. An evaluation criteria on DBE compliance is encouraged. On A&E contracts, cost cannot be considered an evaluation criterion.
- ◆ If **lump sum** payment is considered on a FHWA funded contract, Metro contracting personnel shall obtain a written approval from ODOT's Purchasing & Contracts Management Section prior to contract award.
- ◆ Each year the Federally required clauses will change in accordance with the Master Document (FEDERAL TRANSPORTATION ADMINISTRATION). The FEDERAL REQUIREMENTS will be updated annually by Metro's Contracts and Transportation Departments.

Standard Items (to be included in RFP)

1. Disadvantaged Business Enterprise Program Guidelines
2. Federal Regulations
3. DBE Compliance Form
4. DBE Utilization Form
5. DBE Verification Participation Form
6. Subcontractor Payment Report
7. Personal Services Agreement w/Federal Funds Provision

DISADVANTAGED BUSINESS ENTERPRISE (DBE) GUIDELINES

In accordance with Title 49, Code of Federal Regulations, Part 26, or as may be amended (49 CFR 26), Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE Policy Statement

It is the policy of Metro and the Oregon Department of Transportation (ODOT) that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DBE requirements of 49 CFR 26 apply to this contract.

DBE Obligations

Contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and subcontracts. Contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of federally assisted contracts.

To determine whether a Contractor who has failed to meet the assigned DBE goal may receive award of this contract, Metro must determine whether the efforts put forth by the Contractor were good faith efforts, as outlined in Metro Code Section 2.04.360 (a), toward meeting the goal.

The Disadvantaged Business Enterprises *Good Faith Compliance Forms* shall be completed, signed and included with the bid/proposal documents. The *Utilization Form* must be completed, signed and submitted by the close of business the next working day following the bid opening/proposal submission.

The Disadvantaged Business Enterprises Guidelines shall be included in all subcontracts entered into under this contract.

Opportunities For DBE Owned Banks

Contractors are encouraged to investigate the full extent of services offered by banks owned and controlled in the community.

Records and Reports

Contractor shall provide monthly documentation to Metro that it is subcontracting with or purchasing materials from the DBEs identified to meet contract goals. Contractor shall notify Metro and obtain its written approval before replacing a DBE or making any change in the DBE participation identified. If a DBE is unable to fulfill the original obligation to the contract, Contractor must demonstrate to Metro good faith effort steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items.

Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of the Disadvantaged Business Enterprise Program (DBE Program) for Federally-Funded Contracts, Findings, Purpose and Authority, and the contract with any representation made by a Contractor prior to contract award pertaining to DBE participation in the contract. As well, the Liaison Officer may require, at any stage of contract completion, documented proof from the Contractor of actual DBE participation.

DBE Definition

Only firms certified by the State of Oregon Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Businesses, may be utilized to satisfy the DBE obligation.

DBE Compliance Form

Project Name _____

Bidder/Proposer _____

Address _____

Phone & Fax _____

Proposal Closing **Date** _____ **Time** _____

Failure to complete this form shall be considered non-responsive to the DBE requirements.

Step 1. Identify areas in which you intend to use sub-contractors.

Step 2. Attend the Pre-Bid meeting if held. Meet any DBE firms at the Pre-Bid meeting.

Name of person who attended pre-bid.

Step 3 & 4. List all firms contacted for sub-contracting work. (photocopy and use more sheets if necessary)

Sub-contract for _____

DBE/ Non-DBE	Gender	Ethnicity <small>** (See below)</small>	Name of Firm	Date Contacted	Amount of Bid	Comments

**Choose one of the following for ethnicity-Black American, Hispanic American, Native American, Sub-Continent Asian-American, Asian-Pacific American, Caucasian, or Other

Sub contract for _____

DBE/ Non-DBE	Gender	Ethnicity **(See below)	Name of Firm	Date Contacted	Amount of Bid	Comments

**Choose one of the following for ethnicity-Black American, Hispanic American, Native American, Sub-Continent Asian-American, Asian-Pacific American, Caucasian, or Other

Sub contract for _____

DBE/ Non-DBE	Gender	Ethnicity **(See below)	Name of Firm	Date Contacted	Amount of Bid	Comments

**Choose one of the following for ethnicity-Black American, Hispanic American, Native American, Sub-Continent Asian-American, Asian-Pacific American, Caucasian, or Other

Sub contract for _____

DBE/ Non-DBE	Gender	Ethnicity **(See below)	Name of Firm	Date Contacted	Amount of Bid	Comments

**Choose one of the following for ethnicity-Black American, Hispanic American, Native American, Sub-Continent Asian-American, Asian-Pacific American, Caucasian, or Other

DBE Program Coordinator Telephone Verification *(for internal use only)*

Company Name	Contact Person	Date Contacted	Comments

Step 5: List all sub-contractors used for this project.

BIDDER/PROPOSER INTENDS TO SUBCONTRACT WITH THE FOLLOWING:

SUBCONTRACTOR/ SUPPLIER Contact Name & Address & Telephone	DBE/ Non- DBE	NATURE OF WORK	DOLLAR VALUE OF PARTICIPATION

Total \$ _____ Amount of Contract Total \$ _____

DBE Percent of Total Contracts _____%

In accordance with Metro's Disadvantaged Business Enterprises (DBE) Program, the above-named Contractor has fully met Metro's DBE Utilization Goal of _____% and will subcontract \$_____ to DBE(s).

or

The above named Contractor will **not** meet Metro's Disadvantaged Business Enterprises (DBE) goal. Attached is written and signed evidence of good faith efforts.

Please attach:

The DBE Work Plan Proposal Form for each DBE subcontractor

I do hereby certify to use each DBE subcontractor identified above.

Contractor Signature _____

Date _____

DBE Signature _____

Date _____

DBE Signature _____

Date _____

DBE Signature _____

Date _____

Disadvantaged Business Enterprise Work Plan Proposal

(The DBE Proposal Work Plan shall be prepared by all committed DBEs that are to perform work on the project. This form shall be submitted for each proposal).

Prime

Contractor _____

Project _____

DBE Name _____

Address _____

Phone Number _____ Name of DBE Supervisor _____

Work To Be Performed By the DBE Subcontractor

Est. Start Date _____ Est. Completion Date _____

A. **Personnel Required** – List below the names and/or craft classifications for personnel who will perform. Indicate whether the individual is regularly employed by the DBE, and/or the source from which the individual was or is to be recruited.

B. **Equipment Required** – List below the items or equipment which will be used on the project. Indicate whether the equipment is owned, or will be rented or leased. If rented or leased, consent to the agreement must be obtained prior to beginning of the work.

C. **Supplies and Materials Required** – List the supplies and materials which will be used on the project. Indicated the source, by name, address, and phone number, from which supplies and materials will be obtained.

D. **Prime Contractor Resources** – Discuss any plans for the DBE to share any resources of the prime contractor, e.g. personnel, equipment, tools, facilities, etc.

E. **Additional Information** – Provide comments or explanation f any of the information provided above.

The work plan must be signed by both the Prime Contractor and the DBE Subcontractor

Signature, DBE Subcontractor

Signature, Prime Contractor

Type/Print Name

Type/Print Name

Title

Title

Date

Date

REVIEWED BY _____
Metro Project Manager

DATE _____

REVIEWED BY _____
DBE Coordinator

DATE _____

Project Name _____
Contract No. _____

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 N.E. Grand Avenue, Portland, OR 97232-2736, _____, referred to herein as "Contractor," located _____.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective _____ and shall remain in effect until and _____, unless terminated or extended as provided in this Agreement.

2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.

3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed _____ AND _____ /100THS DOLLARS (\$ _____)

Upon acceptance of work completed, Metro will approve payment for the amount invoiced less ten percent (10%) retainage. Final payment of retainage will be paid upon full satisfactory completion of contract terms.

4. Project Managers. The overall coordination and direction of the Project shall be provided by Metro's Project Manager. Metro's Project Manager is _____. Contractor's Project Manager is _____. Any change of Project Manager by Contractor or any changes in the designated Task Managers must be approved by Metro's Project Manager.

5. Notices. All notices provided for hereunder shall be in writing and sufficient if deposited in the United States mail, postage prepaid, to the parties addressed as indicated below:

METRO
Name of Project Manager
Metro Transportation Department
600 NE Grand Avenue

CONTRACTOR
Name of Contractor

Portland, Oregon 97232-2736

6. Insurance.

- a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
 - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
 - (2) Automobile bodily injury and property damage liability insurance.
- b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.
- d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.
- e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.
- f. Contractor shall provide Metro with a certificate of insurance complying with this article and naming Metro as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

7. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way

connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

8. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

9. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

10. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

11. Audits, Inspections and Retention of Records. Metro, the Oregon Department of Transportation, the State Auditors, the Federal Transit Administration, and any of their representatives shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all of the Contractor's records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls and other matters covered by this Agreement. All documents, papers, accounting records and other materials pertaining to costs incurred in connection with the project shall be retained by the Contractor for three years from the date of completion of the project to facilitate any audits or inspections. If any litigation, claim, or audit is commenced, the records along with supporting documentation shall be retained until any litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the three-year retention period.

12. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification

number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

13. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

14. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

15. Equal Employment Opportunity. The Contractor agrees to abide by all state and federal laws and regulations with respect to employment. This includes, but is not limited to, equal opportunity employment, nondiscrimination assurances, project record keeping, audits, inspection, and retention of records.

16. Federal Funds Provision.

- a. If this payment is to be charged against federal funds, the Contractor certified that it is not currently employed by the federal government. Contractor further certifies that it is not currently employed by the State of Oregon.
- b. If federal funds are involved in this Agreement, Federal Requirements are incorporated into this Agreement as an Exhibit, including Attachment "A", Buy America Certification, Attachment "B", Lobbying Certification and Attachment "C", Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion .
- c. Contractor shall not be compensated for work performed under this Agreement by any other federal, state or local agency.
- d. This Agreement may be terminated by Metro upon 30 days notice, in writing and delivered by certified mail or in person, if funding from federal, state or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. The Agreement may be modified to accommodate a reduction in funds.

17. Situs. The Situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted

in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

18. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

19. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor seven days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

20. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

21. Severability. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

22. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

_____	METRO
By _____	By _____
Title _____	Title _____
Date _____	Date _____

EXHIBIT B

FEDERAL REQUIREMENTS

1. Buy America Requirements

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FEDERAL TRANSPORTATION ADMINISTRATION-funded projects are produced in the United States, unless a waiver has been granted by FEDERAL TRANSPORTATION ADMINISTRATION or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to Metro the appropriate Buy America certification with all bids on FEDERAL TRANSPORTATION ADMINISTRATION-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors. (See Attachment A)

2. Cargo Preference

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FEDERAL TRANSPORTATION ADMINISTRATION recipient (through the contractor in the case of a subcontractor's bill-of-lading). (c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

3. Energy Conservation Requirements

The Contractor agrees to comply with mandatory standards and policies relating to

energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

4. Clean Water

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. The Contractor agrees to report each violation to Metro and understands and agrees that Metro will, in turn, report each violation as required to assure notification to FEDERAL TRANSPORTATION ADMINISTRATION and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEDERAL TRANSPORTATION ADMINISTRATION.

5. Lobbying

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. (See Attachment B).

6. Access to Records

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until Metro, the FEDERAL TRANSPORTATION ADMINISTRATION Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.42(i)(11).

7. Federal Changes

Contractor shall at all times comply with all applicable FEDERAL TRANSPORTATION ADMINISTRATION regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement (Form FEDERAL TRANSPORTATION ADMINISTRATION MA (5) dated October, 1998) between Metro and FEDERAL TRANSPORTATION ADMINISTRATION, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

8. Clean Air

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to Metro and understands and agrees that Metro will, in turn, report each violation as required to assure notification to FEDERAL TRANSPORTATION ADMINISTRATION and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEDERAL TRANSPORTATION ADMINISTRATION.

9. Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

10. Contract Work Hours and Safety Standards Act (Non-Construction)

- (1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.
- (2) Payrolls and basic records – (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States

Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

11. No Government Obligation to Third Parties

- (1) Metro and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to Metro, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FEDERAL TRANSPORTATION ADMINISTRATION. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

12. Program Fraud and False or Fraudulent Statements

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FEDERAL

TRANSPORTATION ADMINISTRATION assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FEDERAL TRANSPORTATION ADMINISTRATION under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FEDERAL TRANSPORTATION ADMINISTRATION. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

13. Termination

- (1) Termination for Convenience: Metro, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, Metro shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- (2) Termination for Default: If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, Metro may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by Metro that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, Metro, after setting up a new delivery of performance schedule, may allow the

Contractor to continue work, or treat the termination as a termination for convenience.

- (3) Opportunity to Cure: Metro, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 10 (ten) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Metro's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from Metro setting forth the nature of said breach or default, Metro shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Metro from also pursuing all available remedies against Contractor and its sureties for said breach or default.

14. Debarment and Suspension

Instructions for Certification (See Attachment C)

- (1) By signing and submitting this bid or proposal, the Contractor is providing the signed certification set out below.
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, Metro may pursue available remedies, including suspension and/or debarment.
- (3) The Contractor shall provide immediate written notice to Metro if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction", "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Metro for assistance in obtaining a copy of those regulations.
- (5) The Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred,

suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Metro.

- (6) The Contractor further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
- (8) Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (9) Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, Metro may pursue available remedies including suspension and/or debarment.

15. Privacy Act

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FEDERAL TRANSPORTATION ADMINISTRATION.

16. Civil Rights

The following requirements apply to the underlying contract:

- (1) Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FEDERAL TRANSPORTATION ADMINISTRATION may issue.
- (2) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying contract:
 - (a) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing

requirements FEDERAL TRANSPORTATION ADMINISTRATION may issue.

- (b) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FEDERAL TRANSPORTATION ADMINISTRATION may issue.
- (c) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FEDERAL TRANSPORTATION ADMINISTRATION may issue. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FEDERAL TRANSPORTATION ADMINISTRATION, modified only if necessary to identify the affected parties.

17. Dispute Resolution

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Metro. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Metro's Executive Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute. Unless otherwise directed by Metro, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages. Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Metro and the Contractor arising out of or

relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Oregon, Multnomah County.

Rights and Remedies. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Metro, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

18. Patent and Rights in Data

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK

Rights in Data. The following requirements apply to each contract involving experimental, developmental or research work:

- (1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- (2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - (a) Except for its own internal use, Metro or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Metro or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - (b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and

irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by Metro or Contractor using Federal assistance in whole or in part provided by FEDERAL TRANSPORTATION ADMINISTRATION.

- (c) When FEDERAL TRANSPORTATION ADMINISTRATION awards Federal assistance for experimental, developmental, or research work, it is FEDERAL TRANSPORTATION ADMINISTRATION's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FEDERAL TRANSPORTATION ADMINISTRATION determines otherwise, Metro and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FEDERAL TRANSPORTATION ADMINISTRATION to make available to the public, either FEDERAL TRANSPORTATION ADMINISTRATION's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for Metro or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FEDERAL TRANSPORTATION ADMINISTRATION for transportation capital projects.
- (d) Unless prohibited by state law, upon request by the Federal Government, Metro and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from

any willful or intentional violation by Metro or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither Metro nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

- (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- (f) Data developed by Metro or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that Metro or Contractor identifies that data in writing at the time of delivery of the contract work.
- (g) Unless FEDERAL TRANSPORTATION ADMINISTRATION determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEDERAL TRANSPORTATION ADMINISTRATION.
 - (1) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), Metro and the Contractor agree to take the necessary actions to provide, through FEDERAL TRANSPORTATION ADMINISTRATION, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 - (2) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEDERAL TRANSPORTATION ADMINISTRATION.

B. Patent Rights

These following requirements apply to each contract involving experimental, developmental, or research work:

- (1) General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Metro and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FEDERAL TRANSPORTATION ADMINISTRATION is ultimately notified.
- (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), Metro and the Contractor agree to take the necessary actions to provide, through FEDERAL TRANSPORTATION ADMINISTRATION, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEDERAL TRANSPORTATION ADMINISTRATION.

19. Disadvantaged Business Enterprises

In accordance with 49 C.F.R. Part 26, Metro has established an annual DBE goal of 12.4%.

Pursuant to 49 CFR Part 26, the following provisions are made a part of this contract:

- (1) Policy. It is policy of the U.S. Department of Transportation (DOT) and Metro that DBE's as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of 49 CFR Part 26 apply to this contract.
- (2) DBE Obligation. Contractor agrees to ensure that DBE's as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part

with Federal funds provided under this contract. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts. Contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts.

- (3) Contractor's failure to carry out the requirements set forth herein shall constitute a breach of contract, and may result in termination of the contract by Metro or such other remedy as Metro deems appropriate.

20. Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 et seq. consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FEDERAL TRANSPORTATION ADMINISTRATION statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FEDERAL TRANSPORTATION ADMINISTRATION regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

21. Conflict of Interest

Contractor shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or Board member of the Contractor shall participate in the selection, award, or administration of a contract supported by FEDERAL TRANSPORTATION ADMINISTRATION funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- (1) The employee, officer, agent, or Board member,
- (2) Any member of his/her immediate family,
- (3) His or her partner, or
- (4) An organization that employs, or is about to employ, any of the above.

The Contractor's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from potential contractors, or parties to sub agreements. Contractor may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such

standards by the Contractor's officers, employees, or agents, or by sub-contractors or their agents.

22. Prompt Payment

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from Metro. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payments from the above referenced time frame may occur only for good cause following written approval of Metro. This clause applies to both DBE and non-DBE subcontractors.

23. Contract Assurance

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

24. Federal Transit Administration (FEDERAL TRANSPORTATION ADMINISTRATION) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FEDERAL TRANSPORTATION ADMINISTRATION Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FEDERAL TRANSPORTATION ADMINISTRATION mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Metro requests which would cause Metro to be in violation of the FEDERAL TRANSPORTATION ADMINISTRATION terms and conditions.

Attachments

- A. Buy America Certification**
- B. Lobbying Certification**
- C. Debarment & Suspension Certification**

ATTACHMENT A

BUY AMERICA CERTIFICATION

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

ATTACHMENT B

LOBBYING CERTIFICATION

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be

subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Name/Title of Contractor's Authorized Official

_____ Name/Title of Contractor's Authorized Official

_____ Date

ATTACHMENT C

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction

- (1) The prospective participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- (2) When the prospective participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date _____

Signature _____

Company Name _____

Title _____