

BAY METROPOLITAN
TRANSPORTATION AUTHORITY
DISADVANTAGED BUSINESS ENTERPRISE
POLICY AND PROCUREMENT
PROGRAM MANUAL

Updated August 18, 1999

BAY METROPOLITAN TRANSPORTATION AUTHORITY

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BAY METROPOLITAN TRANSPORTATION AUTHORITY
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

I. INTRODUCTION AND PURPOSE

The Bay Metropolitan Transportation Authority (BMTA) is the designated agency for providing public transportation services in Bay County, Michigan. The Authority was established under Michigan Public Act 196 and is governed by a Board of Directors appointed by the Bay County Board of Commissioners' Chair. In its operations, the BMTA initiates various construction, service and material supply contracts and procurements and is interested in adopting procedures and policies to improve Disadvantaged Business Enterprise (DBE) participation in BMTA activities.

Pursuant to the Department of Transportation's Disadvantaged Business Enterprise Regulation (49CFR Parts 23), as amended, for DOT financial assistance which requires that local transit agencies develop an Affirmative Action Program to insure non-discrimination in federally-assisted programs in accordance with Title VI of the Civil Rights Act of 1964, the BMTA Board of Directors has adopted an Equal-Employment Opportunity/Disadvantaged Business Enterprise Program which was originally submitted to UMTA-Chicago in March 1979, and is now updated to reflect rule changes of February 2, 1999. This DBE program described herein addresses FTA requirements and sets forth a goal-oriented DBE system which will be implemented by the management of the BMTA.

A. Definitions — The following definitions will be used in this program; however, they are further defined in 49CFR Part 23, Section 23.5.

1. Disadvantaged Business Enterprise or "(DBE)" means a small business concern:
 - (a) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
 - (b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
 - (c) Which is at least 51 per centum owned by one or more women or in the case of a publicly owned business, at least 51 per centum of the stock of which is owned by one or more women; and
 - (d) Whose management and daily business operations are controlled by one or more such individuals.

2. Socially and Economically Disadvantaged Individuals means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:
 - (a) “Black Americans” which includes persons having Origins in any of the Black racial groups of Africa;
 - (b) “Hispanic Americans “ which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (c) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (d) “Asian—Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
 - (e) “Asian—Indian American,” which includes persons whose origins are from India, Pakistan, and Bangladesh;

and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8 (a) of the Small Business Act. Recipients shall make a rebuttable presumption that individuals in the above groups are socially and economically disadvantaged. Recipients also may determine, on a case—by—case basis, other individuals are socially and economically disadvantaged

3. Bay Metropolitan Transportation Authority (BMTA)

The public transportation agency for Bay County, Michigan is located at 1510 N. Johnson Street, Bay City, Michigan 48708

4. Michigan DOT

The Michigan Department of Transportation, particularly the Bureau of Urban and Public Transportation (UPTRAN) is located at 425 W. Ottawa Street, Lansing, Michigan 48909.

5. FTA

The U.S. Department of Transportation – Federal Transit Administration, particularly the Regional Office in Chicago, is located at 200 W. Adams Street, Suite 2410, Chicago, Illinois 60606.

- B. Purpose of Program — The purpose of the program for DBE procurement is to eliminate obstacles which have discouraged participation by firms, owned by socially and economically disadvantaged individuals in bidding and supplying materials and services. Some of the major causes of these previous obstacles include:

1. Bid quantities, delivery schedules, and time for preparation of bids so as to facilitate participation.
2. Amount of bonding, financing needs and technical assistance needs.
3. Language and communication barriers including bid forms.
4. Lack of knowledge of contracting and supply opportunities.
5. Payment schedules which created cash flow problems.
6. Requiring contractors to purchase supplies and materials for a construction project rather than supplying labor only.

The DBE procurement program, operated by BMTA is designed to take affirmative action steps to recognize and overcome such barriers and to assist DBEs throughout the life of contracts in which they participate. This program specifically is designed to carry out the Federal Transportation Administration's policies as set forth in Section 19 of the Urban Mass Transportation Act of 1964, as amended C.P.L. 95-599

II. POLICY STATEMENT ON PROCUREMENT PRACTICES

The Bay Metropolitan Transportation Authority is committed to a policy of non-discrimination in the conduct of its business, including the procurement of goods and services. BMTA will take affirmative action to assure that disadvantaged business enterprises (DBEs) shall have maximum practicable opportunity to participate in procurements financed in whole or in part with funds derived from the Federal Transit Administration (FTA) and the Michigan Department of Transportation (MDOT). The Board of Directors shall establish DBE goals annually.

III. ORGANIZATONAL STRUCTURE AND DBE ROLES

The Bay Metropolitan Transportation Authority (BMTA) is classified as a small urban transit property having a fleet of 45 transit coaches and ten vans providing service to a county of approximately 110,000 persons.

The activities of managing DBE procurement have been assigned to the Finance Manager as the Liaison Officer, who has familiarity with the purchasing system and laws governing it. The specific duties assigned to the Liaison Officer include:

- To develop, implement and evaluate the BMTA DBE Program as it may exist from time-to-time in accordance with Federal and State law.
- To keep a current updated directory of DBEs who can provide services, supplies and materials to BMTA.
- To review potential vendors to determine their qualification as a bonafide DBE.
- To provide assistance and advice of a technical nature including referral of resources to DBEs as requested or as needed.
- To provide notification of business opportunities for which DBEs can participate.
- To organize, attend and participate in training sessions, workshops, pre-bid conferences and seminars dealing with procurement and particularly with DBEs.
- To organize, prepare and maintain accurate records of DBE utilization to document BMTA's efforts.
- To monitor performance in the day-to-day procurement of goods and services purchased by BMTA.

BMTA through its procurement practices, purchases a variety of goods and services through contracts. The following classifications of goods and services are purchased currently:

Architectural/Engineering Services, Accounting Services,
Legal Services, Construction Services, Consulting Services,
Parts and Materials Supplies, Uniform Purchases, Insurance
Purchases, Fuel and Lubricant Purchases, Repair Services,
Trash Collection Services, Maintenance Services,
Advertising Services, Custodial Services, Leases and
Rentals

The BMTA Purchasing Agent does the actual procuring for the Authority, with the approval of the Finance Manager. This allows day-to-day review to assure that procurement is in compliance with this DBE plan.

(ENTER NEW ORGANIZATIONAL CHART)

The Finance Manager is also responsible in monitoring all invoices from contractors who use DBEs as subcontractors to assure that the amount(s) stated in their bid award for DBEs are actually being paid to the DBEs. The legal counsel for BMTA shall be responsible for enforcing any violation reported to it by the General Manager based upon information supplied by the DBEs Liaison Officer. The General Manager will be responsible for general supervision.

IV. PROCEDURES FOR ENSURING DBEs HAVE AN EQUAL OPPORTUNITY TO COMPETE FOR CONTRACTS AND SUB-CONTRACTS.

The following procedures have been adopted to insure that the DBE goals established by the BMTA Board of Directors:

1. Set-Asides:

BMTA Policy No. 1, "BMT Contracting Policy," states, "All procurement transactions, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition." In keeping with policy, BMTA does not have a formal set-aside program in effect.

BMTA does purchase many relatively small items without the use of a formal bidding procedure. Such procurements include office supplies, printing services, maintenance materials and supplies, etc. With all things being equal (price, delivery, quality, etc.), BMTA will always buy from a DBE.

2. Formal Bidding Procedures:

For the procurement of major goods and services requiring the use of formal bids or proposals, BMTA will make every effort to insure active DBE/WBE competition and participation. The following steps will be taken to promote attainment of BMTA's annual DBE goals.

- A. Whenever possible, bid packages will be broken into smaller packages, making it easier for DBEs to bid on them.
- B. BMTA's DBE Liaison Officer will work directly with contractors to insure compliance with Authority DBE requirements.
- C. The Liaison Officer will maintain record of DBEs contacted for various procurements to show that opportunity was provided for their participation. The Liaison Officer will report periodically to Board of Directors on progress made in attaining DBE goals.
- H. Contractors must maintain records to show that opportunity was provided to DBE subcontractors to participate in programs.
- I. On an annual basis, the BMTA Board of Directors will review and evaluate its DBE policy and a written report will be issued documenting the efforts and results of the program.
- J. Businesses wishing to be considered a DBE must file an affidavit certifying certain organizational and financial information to allow BMTA to make a determination of status as set forth in 49CFR Part 23, as amended.

NOTE: Notices will be in English only since there is less than 5% Spanish speaking persons in Bay County.

V. USE OF DBE FINANCIAL INSTITUTIONS

BMTA, consistent with this DBE Program/Policy, will utilize the services of disadvantaged-owned and controlled financial institutions to the fullest extent practicable, both as depository of funds and for such other financial transactions, as may from time to time arise.

BMTA will also affirmatively seek out and utilize the services of disadvantaged-owned insurance firms and bonding agencies on an equitable basis consistent with its contractual policy governing the use of such institutions.

In addition to its own use, BMTA shall encourage its contractors and vendors to utilize the services of these disadvantaged-owned institutions where practical in connection with contract awards. Where subcontracting of major bids for such service exists, BMTA will affirmatively seek to encourage majority/minority joint ventures or prime/sub-relationships.

To the knowledge of BMTA there are no disadvantaged-owned and controlled financial institutions in the Bay County area.

VI. PROCEDURES TO ASCERTAIN THE ELIGIBILITY OF DBES AND JOINT VENTURES INVOLVING DBES.

It is extremely crucial to the DBE procurement policy of BMTA to assure that the program benefits only those firms which are owned and controlled by disadvantaged. BMTA must certify that firms which promulgate themselves as DBE, are, in fact, bonafide in accordance with federal regulations. Certification is mandatory in order for a firm to participate as a DBE in BMTA's procurement program.

Standards used by BMTA in the determination of eligible DBEs follows:

1. A small independent business owned and controlled by an individual belonging to one or more of the socially and economically disadvantaged groups as defined previously. The ownership and control shall be 51% or greater. Control shall mean not only legal or tax ownership, but also shall mean participation in the day-to-day management and policy decision making of the business as well as the profit and loss and major decisions of the enterprise.
2. Joint ventures are encouraged between majority and DBE entrepreneurs. In the case of reporting on joint ventures the percentage of the minority-owned portion of the joint venture will be applied to the actual total contract amount to obtain a percent minority. (Example: A Contract of \$100,000 which is awarded to a joint venture where 75% is the majority-owned firm and 25% is the DBE firm would be determined as a \$25,000 DBE contract.)
3. The socially and economically disadvantaged owners shall possess the power to direct or cause the direction of the management and policies of the enterprise and make day-to-day, as well as major decisions on management, policy, and operations. If the actual management of the firm is contracted out to persons other than the owner, those persons who have the power to hire and fire the managers, may be considered as controlling the business.

Once the DBE is certified, BMTA will require a triennial update report to be submitted to keep the status on a current basis. If there is a change in ownership and/or control in the Enterprise, then notification should be sent promptly to BMTA.

Firms that are denied certification will be notified in writing promptly, of the denial and the reasons for it. They will be advised of their rights to appeal and will be informed of the methods to correct deficiencies in their application for future contracts.

The appeal process shall be first to the Board of Directors of BMTA, and if still denied, to the Secretary of the U.S. Department of Transportation. This appeal process must be filed with BMTA within 80 calendar days after the denial date. If the Board of Directors and/or the Secretary of Transportation grants the appeal, then the DBE will be certified for future contracts. The date of the certification granting will be used for determination of eligibility. No past contracts, including a contract or contracts for which the firm may have submitted a bids, will be affected.

Attached are Schedules A and B which are forms to be used in determining eligibility as a DBE or a joint venture.

Schedule A

Information for Determining Disadvantaged Business Enterprise Eligibility

1. Name of Firm: _____
2. Address of Firm: _____
3. Phone Number of Firm: _____
4. Indicate whether firm is sole proprietorship, partnership, joint venture, corporation or other business entity (please specify):

5. Nature of firm's business: _____
6. Years firm has been in business: _____
7. Is firm considered a "small business" per Small Business Administration size standard? _____
8. Ownership of firm: Identify those who own 5 percent or more of the firm's ownership. Columns e and f need to be filled out only if the firm is less than 100 percent minority or woman owned

a	b	c	d	e	f
<u>Name</u>	<u>Race</u>	<u>Sex</u>	<u>Years of Ownership</u>	<u>Ownership Percentage</u>	<u>Voting Percentage</u>

With firms less than 100 percent minority owned, list the contributions of money, equipment, real estate, or expertise of each of the owners.

9. Control of firm: (a) Identify by name, race, sex, and title in the firm those individual (including owners and non-owners) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:

(1) Financial Decisions _____

(2) Management decisions, such as:

a. Estimating _____

b. Marketing and Sales _____

c. Hiring and firing of management personnel _____

d. Purchasing of major items or supplies _____

(3) Supervision of field operations _____

10. For each of those listed in question 9, provide a brief summary of the person's experience and number of years with the firm, indicating the person's qualifications for the responsibilities given him or her.

11. Describe or attach a copy of any stock options or other ownership options that are outstanding, and any agreements between owners or between owners and third parties, which restrict ownership or control of minority owners.

12. Identify any owner (see item 8) or management official (see item 9) of the named firm who is or has been an employee of another firm that has an ownership interest in or a present business relationship with the named firm. Present business relationships including shared space, equipment, financing, or employees as well as both firms having some of the same owners.

13. Is any owner's personal net worth, not counting primary residence and interest in the firm, \$750 thousand or more? _____
14. For the last three (3), completed, calendar years, were the firm's average gross receipts \$16.6 million or more? _____
15. Name of bonding company, if any: _____
Bonding limit _____
Source of letters of credit, if any _____

16. Are you authorized to do business in the state of as well as locally, including all necessary business licenses? _____
17. Indicate if the firm or other firms with any of the same officers have previously received or been denied certification for participation as a DBE and describe the certifying authority and the date of such certification or denial.

Affidavit

“The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of (name of firm) as well as the ownership thereof. Further, the undersigned agrees to provide through the prime contractor or, if no prime, directly to the grantee current, complete, and accurate information regarding actual work performed on the project, the payment therefore and any proposed changes, if any, of the foregoing arrangements and to permit the audit and examination of books, records, and files of the named firm. Any material misrepresentation will be grounds for termination any contract which may be awarded and for initiating action under Federal or State laws concerning false statements.”

NOTE: If, after filing this Schedule A and before the work of this firm is completed on the contract covered by this regulation, there are any significant changes in the information submitted, you must inform the grantee of the changes through the prime contractor or, if no prime contractor, inform the grantee directly.

Signature: _____

Name: _____

Title: _____

Date: _____

Corporate Seal (where appropriate)
STATE OF _____

COUNTY (CITY) OF _____

On this day of _____, 20____, before me, _____, known to me to be the person described on the foregoing Affidavit and acknowledged that he (she) executed the same in the capacity therein stated and for the purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

(Notary Public)

My Commission Expires _____

SCHEDULE B – INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY

(This form need not be filled in if all joint venture firms are minority owned.)

1. Name of joint venture_____
2. Address of joint venture_____
3. Phone number of joint venture_____
4. Identify the firms which comprise the joint venture. (The DBE partner must complete Schedule A.)_____
- _____
- (a) Describe the role of the DBE firm in the joint venture._____
- _____
- (b) Describe very briefly the experience and business qualifications of each non-DBE joint venture_____
- _____
5. Nature of the joint venture's business._____
6. Provide a copy of the joint venture agreement._____
7. What is the claimed percentage of DBE ownership?_____
8. Ownership of joint venture; (This need not be filled in if described in the joint venture agreement, provided by question6._____
- _____
- (a) Profit and loss sharing
- (b) Capital contributions, including equipment
- (c) Other applicable ownership interests
9. Control of and participation in this contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:
 - (a) Financial decisions_____
 - (b) Management decisions, such as:
 - (1) Estimating_____
 - (2) Marketing and sales_____

(3) Hiring and Firing of management personnel_____

(4) Purchasing of major items and supplies_____

(c) Supervision of field operations_____

NOTE – If, after filing this Schedule B and before the completion of the joint venture’s work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee, wither directly or through the prime contractor if the joint venture is a subcontractor.

AFFIDAVIT

“The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to the grantee current, complete and accurate information regarding actual joint venture work and the payment therefore and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements.”

Name of Firm	Name of Firm
Signature	Signature
Name	Name
Title	Title
Date	Date

Date_____

State of _____

County of _____

On this _____ day of _____, _____, before me appeared (name) _____, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (name of firm) _____ to execute the affidavit and did so as his or her free act and deed.

Notary Public_____

Commission expires_____

Seal

Date _____

State of _____

County of _____

On this _____ day of _____, _____, before me appeared (name) _____
_____, to me personally known, who, being duly sworn, did execute the foregoing affidavit,
and did state that he or she was properly authorized by (name of firm) _____
_____ to execute the affidavit and did so as his or her free act and deed.

Notary Public _____

Commission expires _____

Seal

VI(a) T.V.M. Challenge Procedure

- A. It shall be the right of any third party to challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified from Bay Metropolitan Transportation Authority (BMTA) as a disadvantaged business.
The challenge shall be in writing to the BMTA.
- B. In its letter of challenge, the challenging party shall include all information available, relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.
- C. The BMTA shall determine, on the basis of information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially or economically disadvantaged.
 - (1) If BMTA determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the BMTA shall so inform the challenging party in writing. This terminates the proceeding.
 - (2) If BMTA determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the BMTA shall begin a proceeding as provided in paragraph D, E, F.
- D. The BMTA shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide the BMTA, within a reasonable time, information sufficient to permit the BMTA to evaluate his or her status as a socially and economically disadvantaged individual.
- E. The BMTA shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The BMTA shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The BMTA shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.
- F. Following the informal hearing, the BMTA shall make a final determination. The BMTA shall inform the parties in writing of the final determination, setting forth its reasons for its determination.

- G. In making its determinations called for in paragraphs C, E and F, the BMTA shall use the standards set forth in appendix C of 49CFR, Part 23, Subpart D.
- H. During the pendency of a challenge under this procedure, the presumption that the challenged party is socially and economically disadvantaged individual shall remain in effect.
- I. The final determination of the BMTA under these procedures may be appealed to the Department of Transportation by the adversely affected party to the proceedings under the procedures of 49CFR, Part 23, Paragraph 23.55.

VII. GOALS AND TIMETABLES FOR DISADVANTAGED BUSINESS

BMTA submits applications to FTA from time-to-time for operating and capital grants to construct, purchase, and operate various transit facilities. The requirements of these grants prescribe BMTA to establish annual percentage goals for DBE participation (49 CFR Part 23)

Therefore, the major goals of the DBE/WBE program are as follows:

1. All advertisements for procurement of goods and services will notify potential BMTA suppliers and contractors that they will be expected to cooperate with the BMTA to help it achieve its DBE goals.
2. For fiscal year 2002, BMTA has established goals for DBE participation in the federally funded portion of all contracting opportunities. These goals will be reviewed and re-established on an annual basis.
3. The BMTA will establish a record-keeping system to document DBE participation in its procurements. Such procedure will allow the Authority to accurately report its success in meeting its goals and will help it to update those goals annually.
4. The BMTA Board of Directors will appoint a liaison officer to coordinate the Authority's DBEs program. Included in the officer's duties will be the assembly and maintenance of a listing of DBEs in this region, the notification of potential DBEs when projects of interest to them arise and the establishment of a good working relationship with local minority organizations which will provide input into potential suppliers and contractors. Such organizations include the NAACP, Tri-City SER and the Business and Professional Women's Clubs.
5. BMTA employees responsible for procurement of goods and services will periodically attend training sessions to inform them as to how to better fulfill their DBE responsibilities.
6. If the goals above cannot be easily met, BMTA will widen the geographic search.

VIII. PROCEDURES TO REQUIRE THAT PARTICIPATING DBES ARE IDENTIFIED BY NAME BY COMPETITORS FOR CONTRACTS.

BMTA will include in all solicitations that provide DBE opportunities for bids and proposals or quotations for DOT—assisted contracts that bidders, proposers, or quoters submit a written assurance of meeting the goals in their bids or proposals within a reasonable amount of time after opening of the bids and before contract award. The bidder proposer must name the DBE sub-contractor, describe the work to be performed and the dollar value of each proposed DBE sub-contractor.

A timetable will be determined by the Liaison Officer of BCMTA for submittal of this information and such timetable, normally 30 days, will be inserted into the written solicitation. Award of a contract will be made after proper submission of this information.

If a proposed contractor who is low bidder and is qualified to provide the work can show a “good faith effort” as defined in Section IX of this manual then the contract may be awarded to the low bidder who did not achieve the DBE goal.

IX. PROCEDURES ON THE DBE/WBE SELECTION CRITERIA FOR CONTRACT AWARD

BMTA is guided by the regulations of the Federal Transit Administration for award of contracts and therefore has utilized the selection criteria as required under 49 CFR Part 23, for award of contracts to meet DBE goals. The selection criteria used is as follows:

The responsible bidder or proposer offering the most reasonable price and meeting the contract-specific DBE goals or submitting documentation of "good faith effort" (along with all other required presentations) shall be awarded the contract. Reasonable price is defined to mean the amount that would be acceptable to BMTA if that bidder or proposer was the only such bidder or proposer.

Should no bidder/proposer meet both the contract-specific goal or submitting documentation of "good faith effort" to meet the contract specific goal and the reasonable price criteria (and provide all other required documentation), then the BMTA shall look for the bidder/proposer whose price is within a reasonable range, and who comes closest to the contract-specific DBE goal requirements. This review process continues until a contractor is selected who most closely satisfies both the price and the DBE goal requirements. Contractors are not to be penalized for failing to meet the contract specific goal requirement.

If no competitor with the required level of DBE participation has offered a reasonable price, the contract may be awarded to the competitor offering the lowest price with the highest percentage of DBE participation and who has demonstrated sufficient reasonable efforts to meet the established contract-specific DBE goal(s). In order to demonstrate sufficient reasonable efforts to meet the DBE contract goal, a contractor shall document the steps taken to obtain DBE participation. Such "good faith efforts" shall include, but are not limited to, the following:

1. Attendance at a pre-bid meeting, if any, scheduled by the BMTA to inform DBEs of sub-contracting opportunities under a given solicitation;
2. Advertisement in a general circulation newspaper, trade association publication, and/or disadvantaged-focus media for at least twenty (20) days before bids or proposals are due. If twenty (20) days are not available, publication for a shorter reasonable time is acceptable;
3. Written notification to DBEs that their interest in the contract is solicited;
4. Efforts to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal; and,
5. Efforts to negotiate with DBEs for specific subcontracting, including at a minimum:
 - (a) The names, addresses, and telephone numbers of DBEs that were contacted;

- (b) A description of the information provided to DBE/WBE's regarding the plan and specifications for portions of the work to be performed; and,
- 6. With respect to DBE firm(s) contacted, but rejected as unqualified, the reasons for rejection should be stated.

X. METHOD OF COMPLIANCE WITH DBE REQUIREMENTS

BMTA will provide, pursuant to the requirements of 49 CFR, Part 23, Section 23.45, that the following statements be included in all financial assistance agreements and contracts awarded above \$5,000.

“Policy — It is the policy of the Department of Transportation that disadvantaged business enterprises, as defined in 49 CFR, Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR, Part 23 apply to this agreement.”

“DBE Obligation (i) The recipient or its contractor agrees to insure that disadvantaged business enterprises, as defined in 49 CFR, Part 23, 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 agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR, Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.”

BMTA will advise each sub-recipient and contractor that failure to carry out the requirements as set forth in the agreement shall constitute a breach of contract which may result in the termination of the agreement or contract or such remedy as BMTA deems appropriate.

BMTA in an effort to overcome barriers to DBE participation, has developed a policy to aid potential businesses. Many DBEs may not have had experience in bidding on BMTA contracts in the past so the Authority will extend special assistance to such businesses to encourage their participation in contract bidding. Such assistance will include:

1. Providing information to DBEs on BMTA contractual needs.
2. Providing information on preparation of bid specifications, procurement policies, and procedures, and bid requirements.
3. Providing an opportunity for DBEs to review successful bid submittals from previous procurements.
4. Providing explanations to DBEs who submit unsuccessful bids.

Whenever possible, the BMTA will divide large projects into smaller contracts which will reduce the bonding requirements of bidders making bids more accessible to DBEs.

XI. INFORMATION AND COMMUNICATIONS

The BMTA will work with area minority organizations, such as the NAACP, Tri-City SER, and the Business and Professional Women's Club, to inform DBEs of upcoming projects. Whenever necessary, meetings will be held with interested DBEs to acquaint them with bid needs and requirements of the BCMTA. DBE will be provided with complete information in bidding procedures, contact persons, examples of responsive bids, types of supplies and services needed, and contract requirements.

In addition, BMTA will take steps to ensure that disadvantaged entrepreneurs are kept informed of the procurement needs on a timely basis.

Written material will be developed and made available to the disadvantaged business community covering the following aspects of BMTA's procurement procedures:

1. Specific steps on how to bid;
2. Pre-requisites for bidding on contracts;
3. Information on where to obtain information on proposed procurements;
4. Information on how plans and specifications can be obtained;
5. Names of persons to contact concerning questions in bid documents;
6. Names of procurement officers and office hours;
7. Examples of responsive bids, if available;
8. Types of supplies and services needed; and,
9. Explanation of standard contract implementation procedures and requirements, concerning such matters as timely performance of work, contract changes, and payment schedules.

BMTA will make every effort to inform DBEs of bid notices and specifications related to their respective areas of business. At a minimum, bid notices will be placed in major area newspapers, DBE trade association newsletters, and minority newspapers as available. Efforts will also be made to have lead time of 30-45 days from the publication of a bid notice to the receipt of bids to allow DBEs both the time to develop complete packages and to negotiate arrangements with any majority prime contractor.

XII. RECORDS AND REPORTING SYSTEMS FOR BMTA

BMTA personnel will develop a comprehensive monitoring system for the purpose of: 1) assisting the Authority in evaluating progress in achieving DBE goals; 2) identifying problem areas in a timely fashion; and 3) complying with the Department of Transportation's reporting requirements.

It will maintain data for the statutory period indicating;

A. Procedures which have been adopted to comply with the requirements for 49 CFR Part 23 including:

- affirmative action techniques
- technical assistance efforts and referrals;
- communications programs; and,
- copies of all relevant correspondence, minutes of meetings, and lists of attendees at conferences and workshops.

B. Awards to DBEs including:

- names of DBE contractors and subcontractors;
- nature of work;
- total dollar value of the contract or subcontract; and,
- the dollar amount of DBEs awards as a percentage of all contracts and subcontracts awarded in that phase or project.

C. Specific efforts to identify and award contracts to DBEs, including:

- number and identity of DBEs contacted and invited to quote-bid by contract; and,
- number and identity of DBEs responding to bid offers.

BMTA will submit reports to the U.S. Department of Transportation as required. These reports will conform in format to the contract reporting requirements of the Department of Transportation, and will include the following:

1. The number of contracts awarded to DBEs;
2. A description of the general categories of contracts awarded to DBEs
3. The dollar value of contracts awarded to DBEs;
4. The percentage of the dollar value of all contracts awarded to DBEs during the applicable period; and,
5. An indication of whether, and the extent to which, the percentage achieved, met, or exceeded the goal.