

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

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BAY METROPOLITAN TRANSPORTATION AUTHORITY

DBE POLICY AND PROCUREMENT PROGRAM

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BAY METROPOLITAN TRANSPORTATION AUTHORITY
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

GENERAL REQUIREMENTS:

I. INTRODUCTION, PURPOSE AND DEFINITIONS

Introduction

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.

The BMTA is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.

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.

Definitions

The following definitions will be used in this program; however, they are further defined in 49 CFR Part 26, Section 26.5:

- 1) Disadvantaged Business Enterprise or “(DBE)” means a for-profit small business concern:
 - (i) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
 - (ii) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- 2) Socially and Economically Disadvantaged Individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual’s control.

Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
- (ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) “Native Americans,” which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives or Native Hawaiians;
- (iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- 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 (MDOT)
The Michigan Department of Transportation is located at 425 W. Ottawa Street, P.O. Box 30050, Lansing, Michigan 48909.
- 5) FTA (DOT)
The U.S. Department of Transportation – Federal Transit Administration, particularly Region 5, is located at 200 W. Adams Street, Suite 320, Chicago, Illinois 60606.

II. NON-DISCRIMINATION REQUIREMENTS

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

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

III. RECORD KEEPING REQUIREMENTS

BMTA will transmit to FTA, through its online system, the Uniform Report of DBE Awards or Commitments and Payments form. Data that is for period of October 1-March 31 is due June 1. Data that is for period April 1-September 30 is due December 1.

BMTA will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to provide BMTA with as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on Federally-assisted contracts for use in helping set overall goals.

The following information must be obtained about DBE and non-DBE contractors and subcontractors who seek to work on BMTA Federally-assisted contracts:

- (i) Firm name;
- (ii) Firm's address;
- (iii) Firm's status as a DBE or non-DBE;
- (iv) Age of the firm; and
- (v) The annual gross receipts of the firm by requesting what gross receipt bracket they fit into (e.g., less than \$500,000; \$500,000-\$1 million; \$1-2 million; etc.).

This information will be collected by the bid due date with new firms and through conducting a survey with current firms. This information gathered will be retained indefinitely until BMTA is advised of changes with the firm or with this requirement.

IV. ASSURANCES

For each financial assistance agreement BMTA signs with DOT, the following assurance must be included:

Federal Financial Assistance Agreement Assurance:

BMTA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR 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.*).

For each contract BMTA signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) the following assurance must be included:

Contract Assurance:

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

ADMINISTRATIVE REQUIREMENTS:

V. DBE PROGRAM

BMTA is an FTA recipient who receives planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$250,000 in FTA funds in a Federal fiscal year.

VI. POLICY STATEMENT

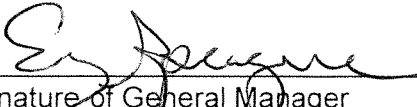
The Bay Metropolitan Transportation Authority (BMTA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The BMTA has received Federal financial assistance from the Department of Transportation,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

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

- 1) To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- 2) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- 3) To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- 4) To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- 5) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- 6) To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Finance Manager has been delegated as the DBE Liaison Officer. In that capacity, the Finance Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the BMTA in its financial assistance agreements with the Department of Transportation.

BMTA has disseminated this policy statement to the Board of Directors and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. This distribution is accomplished through advertisement of RFP's and ITB's and by posting on our website that we encourage DBE businesses to respond to solicitations.



Signature of General Manager

4/19/18

Date

VII. ORGANIZATIONAL STRUCTURE, DBE LIAISON OFFICER 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 16 vans providing service to a county of approximately 105,000 persons.

We have designated the following individual as our DBE Liaison Officer:

Kristy Pletzke, Finance Manager
1510 N. Johnson Street
Bay City, MI 48708
Telephone number: 989-922-3711
Email address: kpletzke@baymetro.com

The DBE Liaison Officer (DBELO) is responsible for implementing all aspects of the DBE program and ensuring that BMTA complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the General Manager concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The BMTA Purchasing Agent will assist in the administration of the program. The duties and responsibilities include the following:

- 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 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

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.

VIII. DBE FINANCIAL INSTITUTIONS

It is the policy of the BMTA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. We will make an effort to identify and use such institutions. In evaluating the availability of DBE financial institutions as of the date of this program's amendment, BMTA has found that there are no DBE financial institutions identified in the Bay County, Michigan area.

IX. PROMPT PAYMENT MECHANISMS

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

"Prime Contractors are to make payment to their Subcontractors, for satisfactory performance of their contracts, within thirty (30) days of the Prime Contractor receiving payment from BMTA."

The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the BMTA. This clause applies to both DBE and non-DBE subcontracts.

BMTA will monitor and enforce prompt payment from prime contractors to subcontractors by making it mandatory that the prime contractor notifies us in writing that the subcontractor has been paid. This notification must be made within 30 days of the satisfactory work being completed. If the prime contractor fails to notify BMTA in writing of payment being made to subcontractor this will bar the prime contractor from bidding on future solicitations.

X. DIRECTORY

All firms eligible to participate as DBEs is found online at www.michigan.gov/MUCP. The directory will list the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE.

XI. OVERCONCENTRATION

BMTA has not identified that overconcentration exists in the types of work that DBEs perform.

XII. BUSINESS DEVELOPMENT PROGRAMS

BMTA has not established a business development program. We will re-evaluate the need for such a program every three (3) years.

XIII. MONITORING AND ENFORCEMENT MECHANISMS

The BMTA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

- 1) We will bring to the attention of the DOT any false, fraudulent or dishonest conduct in connection with the program, so that DOT can take the steps provided in 26.109.
- 2) We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment B lists the regulation, provisions and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
- 3) We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by documenting in writing that the contracting records have been reviewed and the work sites on which DBEs are performing have been monitored. This will occur for each contract/project on which DBEs are participating. Attachment C (1) or (2) reflects this verification.
- 4) We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. Attachment D provides the format for reporting this running tally.

XIV. SMALL BUSINESS PARTICIPATION

BMTA has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted public works projects by small business concerns for both DBEs and non-DBE small businesses. This is BMTA's procedure for ensuring DBEs have a race neutral, equal opportunity to compete for contracts and sub-contracts:

BMTA Board Policy No. 15, "Procurement 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."

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.

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 and small business competition and participation. The following steps will be taken to promote attainment of these goals:

- 1) Whenever possible, bid packages will be broken into smaller packages, making it easier for DBEs to bid on them.
- 2) BMTA's DBE Liaison Officer will oversee that BMTA works directly with contractors to insure compliance with DBE and small business concern requirements.
- 3) The Liaison Officer will maintain record of DBEs and small businesses 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.
- 4) On a triennial basis, the BMTA Board of Directors will review and evaluate its DBE goals and a written report will be issued documenting the efforts and results of the program.
- 5) All notices for bids or proposals will state that "BMTA encourages women and minority owned firms to respond to this solicitation".

GOALS, GOOD FAITH EFFORTS AND COUNTING:

XV. SET-ASIDES OR QUOTAS

BMTA does not use quotas in any way in the administration of this DBE program as this is not permitted by the regulation.

BMTA does not have a formal set-aside program in place. With regards to this regulation, in limited and extreme circumstances, a set-aside may be used "when no other method could be reasonably expected to redress egregious instances of discrimination".

XVI. OVERALL GOALS

In accordance with Section 26.45, BMTA will submit its triennial overall DBE goal FTA on August 1 of the year specified by FTA.

BMTA will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by FTA.

The methodology used by BMTA to establish overall DBE goals is as follows:

- 1) Determine the Base Figure for the Overall Goal. This is accomplished by:
 - Calculating the relative availability of DBEs to perform the types of work forecasted by BMTA.
 - Determining the weighted DBE relative availability in the projected types of work.
 - Aggregating the weighted availability figures to determine the Base Figure.
- 2) Adjust the Base Figure using factors relevant to BMTA's marketplace.
- 3) Provide an explanation of the goal as being race-conscious and/or race-neutral.

BMTA will furnish to its Board of Directors information regarding the overall goals at the May board meeting for the year in which the triennial overall DBE goal is due. Following the receipt of this information, BMTA will publish a notice in the newspaper of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours for 30 days following the date of the notice, and informing the public that BMTA and DOT will accept comments on the goals for 45 days from the date of the notice.

BMTA will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include: the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and

comments received during this public participation process and our responses; and proof of publication of the goal in media outlets listed above.

We will begin using our overall goal on October 1 of the specified year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project. Our goal will remain effective for the duration of the three-year period established and approved by FTA.

XVII. GOAL SETTING AND ACCOUNTABILITY

If the awards and commitments shown on BMTA's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, we will:

- 1) Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments; this will be completed after the December 1st semi-annual report has been completed. The analysis will contain a narrative summary as to how the shortfall analysis was calculated and the measures taken to try to attain the annual goal.
- 2) Establish specific steps and milestones to correct the problems identified in the analysis. These steps will be documented as reasons for the shortfall and the corrective action. Also upcoming opportunities for DBE participation will be listed.
- 3) The shortfall analyses are to be kept on file and made available for submission to FTA upon request.

XVIII. TRANSIT VEHICLE MANUFACTURERS GOALS

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

XIX. MEETING OVERALL GOALS/CONTRACT GOALS

The BMTA will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, BMTA will:

- 1) Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses;
- 2) Carry out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small

businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors);

- 3) Provide services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- 4) Ensure distribution of our DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

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

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

XX. GOOD FAITH EFFORTS PROCEDURES

Award of Contracts with a DBE Contract Goal:

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, BMTA will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

Evaluation of Good Faith Efforts:

The BMTA Purchasing Agent will be responsible for determining whether a bidder/offeree who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

The process used to determine whether good faith efforts have been made by a bidder are as follows:

- 1) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The

bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- 2) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- 3) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- 4) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeree's good faith efforts before we commit to the performance of the contract by the bidder/offeree.

Information to be Submitted:

BMTA treats bidder/offeree's compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerees to submit Attachment E, forms 1 & 2.

Administrative Reconsideration:

Within five (5) days of being informed by BMTA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeree may request administrative reconsideration. Bidder/offeree should make this request in writing to the following reconsideration official: BMTA General Manager, 1510 N. Johnson Street, Bay City, MI 48708, 989-894-2900. The reconsideration official will not have played any role in the original determination that the bidder/offeree did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeree will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeree will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeree a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals:

BMTA requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without its prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to BMTA its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to BMTA prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise BMTA of why it objects to the proposed termination. [Note: the five (5) day period may be reduced if the matter is one of public necessity – e.g., safety.]

In those instances where "good cause" exists to terminate a DBE's contract, BMTA will require the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our contracting officer will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Bid Specification:

Below is a Sample Bid Specification that will be used only when a contract goal is established:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the BMTA to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of ____ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written

confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

XXI. COUNTING DBE PARTICIPATION

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

CERTIFICATION:

XXII. UNIFIED CERTIFICATION PROGRAMS

BMTA will use and count for DBE credit only those DBE firms certified by the Michigan UCP (Unified Certification Program). The Michigan UCP will meet all of the requirements of this section.

Only small firms independently owned and controlled by socially and economically disadvantaged persons are eligible to participate in the DBE program. For more information or to become certified contact:

Wayne County Human Relations Division
500 Griswold, 15th. Floor
Detroit, MI 48226
Phone: (313) 224-5021
Fax: (313) 224-6932

Detroit Department of Transportation
1301 E. Warren
Detroit, MI 48207
Phone: (313) 833-7695
Fax: (313) 833-5523

Michigan Dept. of Transportation
425 W. Ottawa
P.O. Box 30050
Lansing, MI 48909
Phone: (866) 323-1264
Fax: (517) 335-0945
Email: mdot-dbe@michigan.gov

XXIII. PROCEDURES FOR CERTIFICATION DECISIONS

Any firm or complainant may appeal a Michigan Unified Certification Program decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Department Office of Civil Rights
1200 New Jersey Ave. SE
Washington, D.C. 20590

COMPLIANCE AND ENFORCEMENT:

XXIV. INFORMATION, CONFIDENTIALITY, COOPERATION

We will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state and local law.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net work requirement to a third party (other than DOT) without the written consent of the submitter.

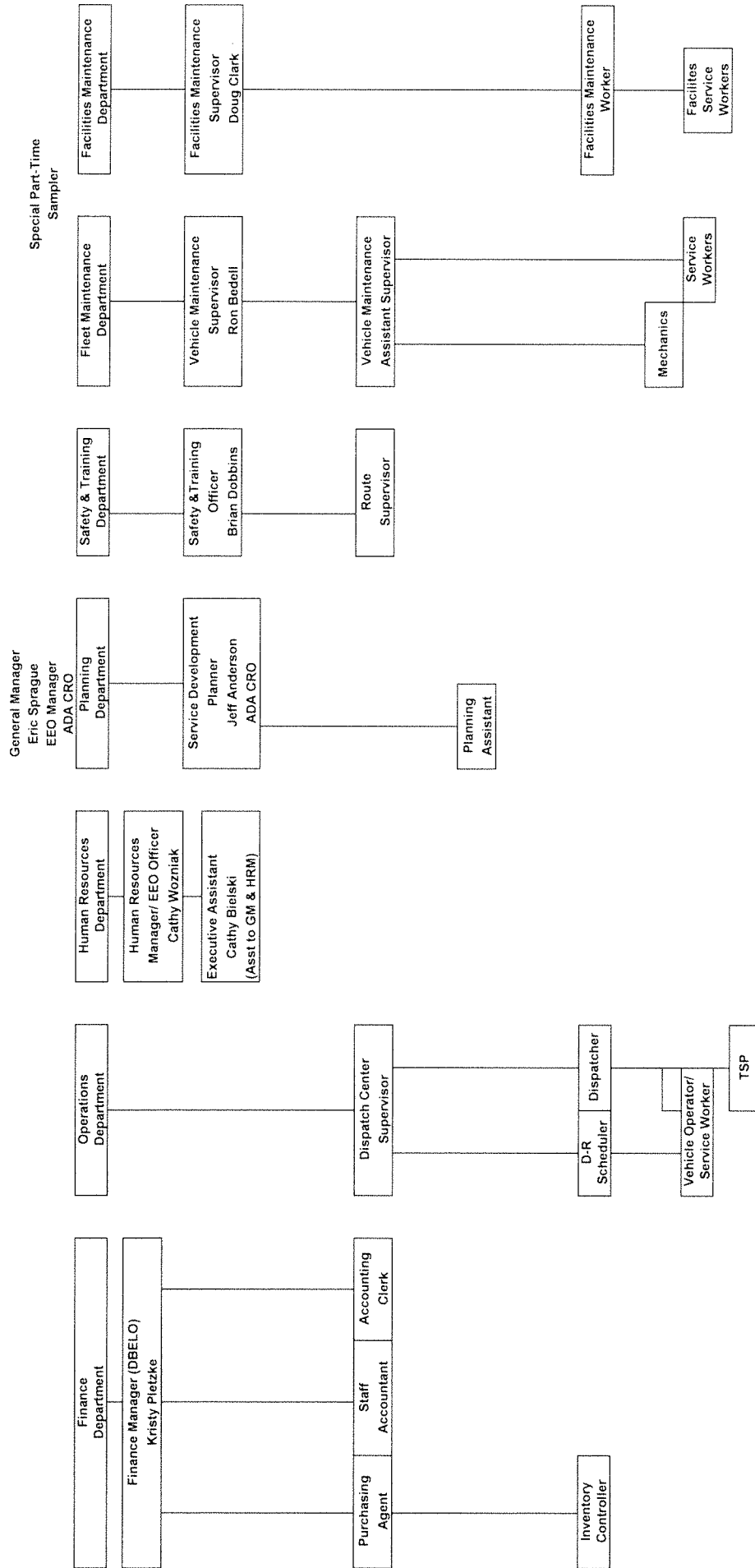
Monitoring Payments to DBEs:

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

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

Bay Metro Transit Organizational Chart

2017



Attachment B:

Regulation and Contract Remedy for monitoring of other program participant's performance

Regulation:

§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

(c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 76 FR 5097, Jan. 28, 2011]

Contract Remedies:

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.

Attachment C (1):

Monitoring and Enforcement Mechanism of DBE work by Contractor

Contract:

Work being performed:

Percentage of work DBE performed:

Contractor Name:

Sub-Contractor (DBE)Name:

This form is being used to ensure that the work committed to the above mentioned DBE firm was actually performed by the DBE firm.

Also, this form is being used to certify that the DBE contracting records have been reviewed and the work site(s) on which the DBE firm is performing have been monitored.

Signature of Authorized Contractor

Date

Attachment C (2):

Monitoring and Enforcement Mechanism of DBE work by BMTA

Contract:

Work being performed:

Percentage of work DBE performed:

Contractor (DBE) Name:

This form is being used to ensure that the work committed to the above mentioned DBE firm was actually performed by the DBE firm.

Also, this form is being used to certify that the DBE contracting records have been reviewed and the work site(s) on which the DBE firm is performing have been monitored.

Signature of BMTA Project Manager

Date

Running Tally of Actual DBE Commitments and Attainments

<u>Contract Number</u>	<u>DBE Firm</u>			<u>Commitment</u>	<u>Actual Payment</u>
	Firm Name:				
	Address:				
	City, State & ZIP:				
	Firm Name:				
	Address:				
	City, State & ZIP:				
	Firm Name:				
	Address:				
	City, State & ZIP:				
	Firm Name:				
	Address:				
	City, State & ZIP:				
	Firm Name:				
	Address:				
	City, State & ZIP:				

Attachment E:

Forms 1 & 2 for Demonstration of Good Faith Efforts

Form 1: Disadvantaged Business Enterprise (DBE) Utilization

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature) Title

Form 2: Letter of Intent

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm form the work described above. The estimated dollar value of this work is \$_____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.