

## Duncombe, Kelly (SPEE)

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**From:** Cox, Martha (MDT)  
**Sent:** Wednesday, March 14, 2012 11:19 AM  
**To:** Andres, Ivonne (MDT)  
**Cc:** Valderrama, Jesus (MDT); Richardson, Renessa (MDT); Wardell, Mary (MDT); Golden, Tina (MDT); Blackman, Donna L. (MDT); Sola, Lester (ISD); Duncombe, Kelly (SPEE)  
**Subject:** METROMOVER STATION LIGHTING REFURBISHMENT-PHASE 2  
**Attachments:** 20120314104828433.pdf; Udpated 2-11-11 GENERAL CONSTRUCTION -CONTRACTS WITH GOALS (.doc; DBE FORMS. update doc.doc; RWB\_2012-Building.pdf; 20120314111407036.pdf

Please find attached the DBE Goal recommendation for the Metromover Station Lighting Refurbishment - Phase 2: College/Bayside, College North, and Tenth Street Project.

If additional information is needed, please advise. Thanks, Martha

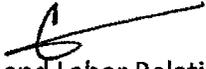
Martha L. Cox  
Special Projects Administrator  
Miami-Dade Transit Office of Civil Rights  
701 N.W. 1st Court, 17th Floor  
Miami, Florida 33136  
786-469-5405 Fax: 786-469-5589  
[mcox@miamidade.gov](mailto:mcox@miamidade.gov)

# Memorandum



**DATE:** March 9, 2012

**TO:** Ysela Llort, Director  
Miami-Dade Transit

**THRU:** Cathy Lewis, Chief   
Office of Civil Rights and Labor Relations

**FROM:** Martha L. Cox, SPA1  
Office of Civil Rights and Labor Relations

**SUBJECT:** DBE Goal Recommendation For: Metromover Station Lighting Refurbishment –  
Phase 2: College/Bayside, College North, and Tenth Street

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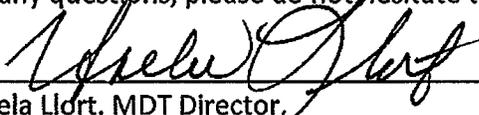
Miami-Dade Transit is preparing for the procurement of the above-captioned services, which will be funded in whole or in part with federal assistance. The estimated cost for this project is \$350,000.00.

After reviewing the scope of work for this project, which consists of removal and replacement of existing site lighting and poles at the College/Bayside, College North, and Tenth Street Metromover stations, we have determined that there exists discernible subcontracting opportunities for participation by certified DBE firms. The Electrical Contractor is required to furnish the electrical permits, materials, labor and supervision required to complete the project in accordance with National Electrical and Dade County Building Codes governing municipalities. This office has identified three (3) or more certified DBE firms that are by reason of their certification ready, willing, and able to provide the services requested on each item in the scope of work. Accordingly and based on the foregoing, this office recommends a **TEN (10%)** percent DBE goal be established for this project.

This office further recommends that DBE firms are afforded a maximum opportunity to participate in this project, and to that end recommends that the proposers make use of the certified DBE firms and vendors listed in the Unified Certification Program (UCP) website [www3.dot.state.fl.us/EqualOpportunityOffice/biznet](http://www3.dot.state.fl.us/EqualOpportunityOffice/biznet) that are by reason of their certification ready, willing and able to provide the services requested on each item in the scope of work.

Should you have any questions, please do not hesitate to contact me at 786 469 5405.

Approval:

  
\_\_\_\_\_  
Ysela Llort, MDT Director

Conformed copies to:

Lester Sola, ISD Director  
Jesus Valderrama, MDT  
Ivonne Andes, MDT  
Renessa Richardson, MDT  
Mary Wardell, MDT  
File

General Decision Number: FL120027 02/17/2012 FL27

Superseded General Decision Number: FL20100126

State: Florida

Construction Type: Building

County: Miami-Dade County in Florida.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Modification Number	Publication Date
0	01/06/2012
1	01/20/2012
2	02/03/2012
3	02/17/2012

CARP0079-001 04/01/2009

	Rates	Fringes
CARPENTER (Form Work Only).....	\$ 22.20	6.67

\* ELEC0349-001 09/05/2011

	Rates	Fringes
ELECTRICIAN, Includes Installation of HVAC/Temperature Controls Electrical contracts including materials that are over \$2,000,000.....	\$ 30.11	8.96
Electrical contracts including materials that are under \$2,000,000.....	\$ 27.15	8.64

ELEV0071-001 01/01/2012

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 38.84	23.535+a

FOOTNOTE:

A: Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit; Paid Holidays: New Year's Day; Memorial Day; Independence Day; Thanksgiving Day; Christmas Day, plus the Friday after Thanksgiving.

\* ENGI0487-001 01/01/2010

	Rates	Fringes
OPERATOR: Backhoe/Excavator.....	\$ 21.00	8.75
OPERATOR: Concrete Pump, Truck Mounted		

Trailer Mounted.....	\$ 20.44	8.75
Truck Mounted.....	\$ 26.21	8.75
OPERATOR: Crane		
All Cranes Over 15 Ton		
Capacity; Boom Truck.....	\$ 28.05	8.75
Yard Crane, Hydraulic		
Crane, Capacity 15 Ton and		
Under; Boom Truck.....	\$ 21.00	8.75
OPERATOR: Mechanic.....	\$ 21.00	8.75
OPERATOR: Oiler.....	\$ 20.00	8.75

\* IRON0272-003 10/01/2011

	Rates	Fringes
IRONWORKER, ORNAMENTAL, REINFORCING AND STRUCTURAL.....	\$ 23.94	5.93

\* PAIN0365-003 08/01/2010

	Rates	Fringes
PAINTER: Roller, Spray, and Steel (Excludes Drywall Finishing/Taping).....	\$ 16.00	6.20

SFFL0821-001 01/01/2012

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 27.93	16.29

\* SHEE0032-003 01/01/2009

	Rates	Fringes
SHEETMETAL WORKER (HVAC Duct Installation).....	\$ 24.42	11.36

\* SUFL2009-023 05/22/2009

	Rates	Fringes
BRICKLAYER.....	\$ 18.93	0.00
CARPENTER, Includes		
Acoustical Ceiling		
Installation (Excludes		
Drywall Hanging, and Form		
Work).....	\$ 15.54	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 11.13	0.00
DRYWALL HANGER.....	\$ 14.00	0.57
FENCE ERECTOR.....	\$ 10.00	0.00
FLOOR LAYER: Carpet.....	\$ 19.00	2.10
GLAZIER.....	\$ 16.89	2.69
HVAC MECHANIC (HVAC Pipe		

Installation).....	\$ 16.19	2.48
HVAC MECHANIC (HVAC System Installation Only).....	\$ 17.91	2.64
INSTALLER - OVERHEAD DOOR.....	\$ 14.40	0.00
LABORER: Asphalt Raker.....	\$ 10.40	0.00
LABORER: Asphalt Shoveler.....	\$ 7.88	0.00
LABORER: Common or General.....	\$ 9.85	0.00
LABORER: Concrete Saw.....	\$ 12.63	0.00
LABORER: Mason Tender - Brick...	\$ 10.75	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 12.83	1.90
LABORER: Pipelayer.....	\$ 13.87	1.58
LABORER: Roof Tearoff.....	\$ 8.44	0.00
LABORER: Landscape and Irrigation.....	\$ 10.00	1.60
MECHANICAL INSULATOR, Including Duct and Pipe.....	\$ 13.98	2.07
OPERATOR: Asphalt Spreader.....	\$ 11.41	0.00
OPERATOR: Bulldozer.....	\$ 16.21	0.00
OPERATOR: Distributor.....	\$ 12.37	0.00
OPERATOR: Forklift.....	\$ 14.00	0.00
OPERATOR: Grader/Blade.....	\$ 13.73	0.00
OPERATOR: Loader.....	\$ 16.00	2.82
OPERATOR: Paver.....	\$ 12.75	0.00
OPERATOR: Roller.....	\$ 10.94	0.00
OPERATOR: Screed.....	\$ 13.05	0.00
OPERATOR: Tractor.....	\$ 9.91	0.00
OPERATOR: Trencher.....	\$ 11.75	0.00
PAINTER: Brush, Includes Drywall Finishing/Taping.....	\$ 13.72	2.22
PIPEFITTER, Excludes HVAC Pipe Installation.....	\$ 17.85	2.54
PLASTERER.....	\$ 15.05	0.00
PLUMBER, Excludes HVAC Pipe Installation.....	\$ 20.00	1.37

ROOFER (Metal Roof Only).....	\$ 17.10	0.00
ROOFER, Includes Built Up, Hot Tar, Modified Bitumen, Shake & Shingle, Single Ply, Slate, & Tile Roofs (Excludes Installation of Metal Roofs).....	\$ 13.59	0.00
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 15.62	2.03
TILE SETTER.....	\$ 16.50	2.10
TRUCK DRIVER: Dump Truck.....	\$ 10.00	0.00
TRUCK DRIVER: Lowboy Truck.....	\$ 13.78	0.00
TRUCK DRIVER: 3 Axle Truck.....	\$ 10.50	0.80

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters, PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rate.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an

interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION



MIAMI-DADE COUNTY

MIAMI-DADE TRANSIT

REQUEST FOR PROPOSALS

CERTIFICATION OF ASSURANCE FORM

The undersigned hereby gives assurance to Miami-Dade County of having identified certified Disadvantaged Business Enterprise firm(s). Please indicate the total percentage of work to be performed by DBE to achieve the Stated Goal, as follows:

1. Procurement Services \_\_\_\_\_ percent  
(Purchase of materials, supplies, equipment, etc.)

2. Other \_\_\_\_\_ percent

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**DBE CONTRACTOR IDENTIFICATION STATEMENT**

1) Name of DBE Contractor \_\_\_\_\_

2) Year business established \_\_\_\_\_

3) Address and telephone number \_\_\_\_\_  
\_\_\_\_\_

4) DBE Type: Women \_\_\_\_\_ Black \_\_\_\_\_ Hispanic \_\_\_\_\_ Other (specify) \_\_\_\_\_

All DBEs must show ownership percentage by gender-- Male \_\_\_\_\_% Female \_\_\_\_\_%

5) Name of principal officer \_\_\_\_\_

6) Principal type of work \_\_\_\_\_

7) Name of persons involved in management of firm and positions held:

	NAME	RACE	SEX	POSITION/TITLE
A.	_____	_____	_____	_____
B.	_____	_____	_____	_____
C.	_____	_____	_____	_____
D.	_____	_____	_____	_____
E.	_____	_____	_____	_____

If additional space is needed, please use another sheet.

8) For a Corporation or Professional Association (PA): Identify those who own five percent or more of the firm's stock or five percent or more share of a Professional Association.

	NAME	RACE	SEX	OWNERSHIP PERCENTAGE	YEARS OF OWNERSHIP	VOTING PERCENTAGE
A.	_____	_____	_____	_____	_____	_____
B.	_____	_____	_____	_____	_____	_____
C.	_____	_____	_____	_____	_____	_____
D.	_____	_____	_____	_____	_____	_____

If additional space is needed, please use another sheet.

(Continued on Page 2)



**DBE CONTRACTOR IDENTIFICATION STATEMENT**

**MDT DBE Participation Program**

9) For a Proprietorship, indicate the DBE status and gender of the proprietor:

Black Male \_\_\_\_\_ Black Female \_\_\_\_\_ Hispanic Male \_\_\_\_\_ Hispanic Female \_\_\_\_\_

Other Male (Specify) \_\_\_\_\_ Other Female (Specify) \_\_\_\_\_

10) Does the firm have an 8(a) Certification issued by the Small Business Administration under Section 8(a) of the Small Business Act as amended (15 U.S.C. 637 (a))?

NO \_\_\_\_\_ YES \_\_\_\_\_, Certified as an 8(a) Contractor (date) \_\_\_\_\_

11) Date certified as a DBE \_\_\_\_\_ Cert. No. \_\_\_\_\_ Expires \_\_\_\_\_.

12) The undersigned agrees to provide other relevant information concerning ownership and control if requested to do so by MDC or its representative.

\_\_\_\_\_  
Signature of Official of DBE Company

\_\_\_\_\_  
Title of Official

\_\_\_\_\_  
Date



**PRIME AND SUBCONTRACTORS INFORMATION FORM**

**INSTRUCTIONS:** To be completed by the prime and by all subcontractors that submitted a bid on the project.

**BIDDER INFORMATION**

Firm Name \_\_\_\_\_ F.E.I.N.\* \_\_\_\_\_

Street \_\_\_\_\_ Suite No. \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Prime Bidder? Yes \_\_\_\_\_ No \_\_\_\_\_ If No, enter name of Prime \_\_\_\_\_

Year Founded \_\_\_\_\_ Annual Gross Receipts: Under \$500k \_\_\_\_\_ Over \$500k \_\_\_\_\_

Phone No. \_\_\_\_\_ FAX No. \_\_\_\_\_ Email \_\_\_\_\_

**SPECIALTY**

USE APPROPRIATE TWO-DIGITS SBA STANDARD INDUSTRIAL CLASSIFICATION CODE (SIC):

Construction: Building--SIC 15 \_\_\_ Heavy--SIC 16 \_\_\_ Specialty Trades--SIC 87 \_\_\_

Professional Services (Architectural, Engineering, Accounting, etc.) SIC 87 \_\_\_

Goods, Equipment and Non-professional Services \_\_\_\_\_

**MIAMI-DADE COUNTY CERTIFIED DBE:**

Certificate Anniversary Date: \_\_\_/\_\_\_/\_\_\_ Ethnicity \_\_\_\_\_ Gender \_\_\_\_\_

**AFFIDAVIT**

I certify that I am an authorized representative of above named firm.

\_\_\_\_\_  
Signature                      Name                      Title                      Date

<p><b>For MDC Use Only:</b> Was the subject bid awarded to this bidder? Yes _____ No _____</p> <p>Bid Description: _____ Bid No. _____</p> <p>Percentage of DBE Goal _____%</p>
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MIAMI-DADE COUNTY

DBE AFFIDAVIT OF NO CHANGE

I, \_\_\_\_\_, swear<sup>1</sup> (or affirm) that there have been no changes in (name of firm) \_\_\_\_\_ circumstances affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26 and 13 CFR Part 121. I swear (or affirm) there have been no material changes in the information provided with (name of firm) \_\_\_\_\_ application for certification, except for any changes about which I have provided written notice to Miami-Dade County, pursuant to 49 CFR § 26.83(i).

I swear that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified in 49 CFR § 26.5, without regard to my individual qualities. I further swear (or affirm) that my personal net worth does not exceed \$750,000.00, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I specifically swear (name of firm) \_\_\_\_\_ continues to meet the Small Business Administration (SBA) business size criteria and the overall gross receipts cap of 49 CFR Part 26 and (name of firm) \_\_\_\_\_'s average annual gross receipts (as defined by SBA rules) over the previous three fiscal years do not exceed \$16.6 million. I will provide size and gross receipts documentation to support this affidavit, immediately upon Miami-Dade County's request.

Signature \_\_\_\_\_ Date \_\_\_\_\_

On this \_\_\_ day of \_\_\_\_\_, 2004, 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.

(SEAL/STAMP)

Notary Public \_\_\_\_\_ Commission Expires \_\_\_\_\_

<sup>1</sup> Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment or both.



**SCHEDULE FOR PARTICIPATION**

**Instructions for Contractors:** List your DBE firms and sign.

**DBE FIRM (1):**

Name \_\_\_\_\_

Type of Work to Be Performed: \_\_\_\_\_

Percentage and Dollar Amount of Total Bid Committed: \_\_\_\_\_ % \$ \_\_\_\_\_

Proposed Commencement Date: \_\_\_\_\_ Proposed Completion Date: \_\_\_\_\_

**DBE Firm (2):**

Name \_\_\_\_\_

Type of Work to Be Performed: \_\_\_\_\_

Percentage and Dollar Amount of Total Bid Committed: \_\_\_\_\_ % \$ \_\_\_\_\_

Proposed Commencement Date: \_\_\_\_\_ Proposed Completion Date: \_\_\_\_\_

**DBE Firm (3):**

Name \_\_\_\_\_

Type of Work to Be Performed: \_\_\_\_\_

Percentage and Dollar Amount of Total Bid Committed: \_\_\_\_\_ % \$ \_\_\_\_\_

Proposed Commencement Date: \_\_\_\_\_ Proposed Completion Date: \_\_\_\_\_

**DBE Firm (4):**

Name \_\_\_\_\_

Type of Work to Be Performed: \_\_\_\_\_

Percentage and Dollar Amount of Total Bid Committed: \_\_\_\_\_ % \$ \_\_\_\_\_

Proposed Commencement Date: \_\_\_\_\_ Proposed Completion Date: \_\_\_\_\_

Under penalty of perjury of the laws of the United States, the undersigned certifies that it is committed to hire the above firms to do the work listed above on project \_\_\_\_\_, as part of its obligations under said project, and agrees to make the DBE & EEO Requirements of said project part of any tier of its subcontracts. The undersigned also certifies that the DBE listed on this Schedule are certified in the work categories in which they are being proposed to perform and that the Contractor has included language in its subcontracts to ensure that its DBE remain compliant with 49 CFR part 26, specifically Subpart 26.83(j).

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Contractor



LETTER OF INTENT FROM DBE SUBCONTRACTOR, SUPPLIER AND/OR CONSULTANT

To: \_\_\_\_\_ and Miami-Dade County
(Name of Prime Contractor)

From: \_\_\_\_\_
(Name of DBE Firm)

The undersigned DBE is prepared to perform the following described services and/or supply the following described goods, in connection with the following project/contract for a total dollar amount of \$\_\_\_\_\_ and certifies that, upon the execution of a contract with the Prime Contractor, it will not subcontract any part of such contract to any firm, at any tier, without obtaining prior written consent from Miami-Dade County, through the Prime Contractor; it further certifies that it has received from Prime Contractor a true copy of the Affirmative Action provisions, which must include the Davis Bacon requirements and wage determinations, if applicable.

The undersigned also certifies that the undersigned's Disadvantage Business Enterprise certification was issued to perform the specific types of work listed below. The undersigned further certifies that as of the date of this letter, the undersigned is compliant with all the requirements of 49 CFR part 26, specifically Subpart 26.83(j). The undersigned further certifies that the undersigned has submitted an Affidavit of Continuing Eligibility to its certifying agency with the last 12 months.

Prime Contractor \_\_\_\_\_ Project Name \_\_\_\_\_

DBE ASSIGNMENTS:

Table with 3 columns: Item No., Work to be performed, Dollar Amount Per Bid Form. Includes three rows with dollar signs and blank lines for entry.

Table with 3 columns: Item/Supply Description, Quantity, Dollar Amount. Includes two rows with blank lines for entry.

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Print Name \_\_\_\_\_ Date \_\_\_\_\_



**SUBCONTRACTORS MONTHLY PROGRESS REPORT**

Report Period: CONTRACT NUMBER \_\_\_\_\_ PROJECT NAME \_\_\_\_\_  
 CONTRACTOR NAME \_\_\_\_\_ CONTRACT AMOUNT \$ \_\_\_\_\_  
 DBE GOAL \_\_\_\_\_ % DBE GOAL TO DATE \_\_\_\_\_ %  
 PAID TO PRIME CONTRACTOR THIS MONTH \$ \_\_\_\_\_ TOTAL TO DATE: \$ \_\_\_\_\_

DBE FIRMS	SEX	ETHNIC	TYPE OF WORK/SERVICE	MONTHLY PAYMENT	PAYMENT TO DATE	CONTRACT AMOUNT

PAYMENTS TO NON-DBES	TYPE OF SERVICE	AMOUNT

I certify that the above information is true and accurate to the best of my knowledge and understand that if I misrepresent or falsify such information, I may be subject to civil and or criminal prosecution under Title 18 United State Code Section 1001.

Authorized Signature \_\_\_\_\_ Print Name and Title \_\_\_\_\_ Date \_\_\_\_\_

DBE/AFFIRMATIVE ACTION REQUIREMENTS  
METROMOVER STATION LIGHTING REFURBISHMENT-PHASE 2  
COLLEGE/BAYSIDE, COLLEGE NORTH, AND TENTH STREET

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## SECTION I: DEPARTMENT OF LABOR - AFFIRMATIVE ACTION REQUIREMENTS

### A. LABOR PROVISIONS

#### 1. Minimum Wages.

a. All laborers and mechanics employed or working upon 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), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deduction as are permitted by regulations issued by the Secretary of Labor under the Copeland Act, 29 C.F.R. Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. 5.5 (a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, That the employer's payroll records accurately reflect the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a) (1) (ii) of 29 C.F.R. 5.5 (a) (1) (ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, that is not listed in the wage determination and that is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(a) Except with respect to helpers as defined in 29 C.F.R. § 5.2(n) (4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(b) The classification is utilized in the area by the construction industry; and

(c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination;

(d) With respect to helpers as defined in 29 C.F.R. § 5.2(n) (4), such a classification prevails in the area in which the work is performed.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representative, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of The Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, who will approve, modify, or disapprove the classification action or will notify the Contracting Officer that additional time is needed, within 30 days of receipt of the request.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions including the views of all interested parties and recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination or notify the Contracting Officer that additional time is necessary, within 30 days of receipt of the request.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to 29 C.F.R. § 5.5(a)(i)(1)(B) or 29 C.F.R. § 5.5(a)(i)(1)(c), shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit

as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or another third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding.

The Department of Transportation and/or MDC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor, under this agreement or any other Federal contract with MDC or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on 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), all or part of the wages required by the contract, FTA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and Basic Records.

a. 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 cost 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 C.F.R. 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 of or the actual costs 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.

b. (1) the contractor shall submit weekly copies of its complete and accurate payrolls, which must be in accordance with 29 C.F.R. 5.5 (a) (3) (i) and similarly those of its subcontractors. Such payrolls may be submitted on form WH-348 or on any identical form with identical wording, which can be purchased from the Superintendent of Documents (Federal Stock No. 029-005-00014-1), U.S. Government Printing Office; Washington, D.C. 20402.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(a) That the payroll for the payroll period contains the information required to be maintained under 29 C.F.R. 5.5. (a)(3)(i) and that such information is correct and complete;

(b) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth at 29 C.F.R. Part 3;

(c) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-348 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 C.F.R. 5.5(a)(3)(ii)(b).

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

c. The contractor or subcontractor shall make the records required under 29 C.F.R. 5.5 (a)(3)(ii) available for inspection, copying, or transcription by authorized representatives of FTA or the department of labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or make them available, FTA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

#### 4. Apprentices and Trainees.

##### a. Apprentices.

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall

be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the Apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees.

Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeyman on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination, which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c Equal Employment Opportunity. The utilization of apprentices, trainees, and journeyman under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 C.F.R. part 30.

d. Helpers.

Helpers will be permitted to work on a project if the helper classification is specified on an applicable Wage Determination or is approved pursuant to the conformance procedure set forth in 29 C.F.R. § 5.5(a)(1)(ii). The allowable ratio of helpers to journeymen employed by the contractor or subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40 percent of the total number of journeymen and helpers in each contractor's or in each subcontractor's own work force employed on the job site.) Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 C.F.R. § 5.2(n)(4), shall be paid not less than the applicable wage rate on the Wage Determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeyman's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.

5. Compliance with Copeland Act requirements.

The contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated herein by reference.

6. Contract termination: debarment.

A breach of the contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. 5.12.

7. Compliance with Davis-Bacon and Related Act requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are incorporated herein by reference.

8. Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontracts) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

9. a. Certification of eligibility. By entering into a third party contract financed under this project, the contractor certifies that neither it (nor he or she) nor any person or firm that has an interest in the contractor's firm is a person or firm ineligible to be awarded

Government contracts by virtue of section 3 (a) of the Davis-Bacon Act or 29 C.F.R. 5.12 (a) (1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a) (1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

10. 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 workweek in which he or she is employed on such work to work in excess of forty hours in the workweek 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 workweek.

11. Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the requirements of 29 C.F.R. 5.5 (b) (1), the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 29 C.F.R. 5.5 (b) (1) in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by 29 C.F.R. 5.5 (b) (1).

12. Withholding for unpaid wages and liquidated damages.

FTA or MDC shall upon its own action or upon written request of any authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth at 29 C.F.R. 5.5 (b)(2).

13. Safe Working Conditions.

Section 107 of C. W. H. S. S. A. (Contract Work Hours and Safety Standards Act, 29 CFR 5) is applicable to construction contracts and provides that no

laborer or mechanic shall be requested to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

#### 14. Non-Construction contracts

The requirements of the clauses contained in 29 C.F.R. 5.5 (b) or paragraphs (10) through (13) of Section 112.a. of Part II Terms and Conditions (Master Agreement) of the Federal Transit Administration agreement, are applicable in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. 5.1. The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of FTA, DOT, or the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

#### 15. Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs (1) through (12) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth on subparagraphs (1) through (12) of this paragraph.

**B. NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (Executive Order 11246 as amended by Executive Order 11375):**

1. The Offeror's or Proposer's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

a. Goals and timetables for minority participation:

Timetable Trade Goal (percent)

Until further notice All 39.5

b. Goals and timetables for the utilization of women:

Timetable Trade Goal (percent)

Until further notice All 6.9

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regards to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is Miami-Dade County, Florida.

C. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (Executive Order 11246 as amended by Executive Order 11375):

1. As used in these Specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d Except for Section III of these Affirmative Action Requirements, "minority" includes:

(1) Black: A person having origins in any of the black groups of Africa;

(2) Hispanic: A person of Spanish or Portuguese culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race;

(3) Portuguese: A person of Portuguese, Brazilian or other Portuguese culture of origin, regardless of race.

(4) Asian American: A person having origins in any of the original peoples of the Far East Southeast Asia, the Indian subcontinent or the Pacific Islands;

(5) American Indian and Alaskan Native: A person having origins in any of the original peoples of North America.

(6) Members of other groups or other individuals found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637 (a)).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered

area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of this Section I. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in Notice Form, and such Notices may be obtained from any office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 as amended, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the

Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under I.B.7 above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any jobsite. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the opening, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (I.B.7.a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 as amended.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties

shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph I.B.7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

## SECTION II: EQUAL OPPORTUNITY/NONDISCRIMINATION

### A. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this contract, the contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, ancestry, marital status, pregnancy, sexual orientation, veteran's status, or national origin. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, disability, marital status, pregnancy, sexual orientation, veteran's status, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by MDC setting forth the provisions of this Equal Opportunity clause.

## B. DISCRIMINATION PROHIBITED

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 any other remedy as MDC deems appropriate. (49 CFR Part 26.13(b))

## C. NONDISCRIMINATION (General)

The proposer will comply with all regulations of the U. S. Department of Transportation, all applicable provisions of the Civil Rights act of 1964, Executive Order 11246 of September 24, 1964 as amended by Executive Order 11375 Executive Order 11625 of October 13, 1971, the Age Discrimination in Employment Act effective June 12, 1968, the rules regulations and relevant orders of the Secretary of Labor, Chapter 760 (Florida Civil Rights Act of 1992, as amended); Dade County Ordinance 75-46 and Articles 3 and 4 of Chapter 11a of the Code of Miami-Dade County which prohibit discrimination because of race, color, religion, ancestry, sex, pregnancy, national origin, age, handicap, marital status or familial status of any individual.

## D. NONDISCRIMINATION: ("Equal Opportunity Clause")

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color religion, sex or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to provide setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age, ancestry, marital status, handicap, place of birth, or national origin.
3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, as applicable, a notice to provided contractors advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by MDC and Compliance Review Agencies for purposes of investigation to ascertain compliance with such rules, regulations and orders. Reports shall be submitted quarterly or as MDC may require.

5. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375 and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 as amended or by rules, regulations, or orders, of the Secretary of Labor, or as otherwise provided by law.

6. The Contractor will include all of these paragraphs A through C and D1 through D6 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as MDC may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as the result of such direction by MDC, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Note: FTA directs MDC, and MDC does require each contractor or subcontractor to include the above paragraphs A through C and D1 through D6 in each of its contracts.

#### E. DISABILITY NONDISCRIMINATION.

It is hereby declared to be the national policy that elderly persons and persons with disabilities have the same right as other persons to utilize mass transportation and services; that special efforts shall be made in the planning and design of mass transportation facilities and services so that the availability to elderly persons and persons with disabilities of mass transportation which they can effectively utilize will be assured; and that all Federal programs offering assistance in the field of mass transportation (including the programs under this chapter) should contain provisions implementing this policy. (49 U.S.C. Part 5301. [d].)

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.

#### ADA ACCESS:

In accordance with section 102(a) as amended, FR 28 CFR Part 35 and 36, section 202, as amended, 29 U.S.C. 794d, and section 228(a)(1), FR 49 CFR, Parts 27, 37, and 38, the Contractor agrees that it will comply with the requirements of the Americans with Disabilities Act Rules and Regulations prohibiting discrimination based on disability: "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." Also, the contractor agrees to comply with requirements pertaining to existing facilities used in the provision of designated public transportation services: "it shall be considered discrimination, for purposes of section 202 of this Act and section #504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities. In addition, the Contractor agrees to comply with any implementing requirements Miami-Dade Transit and/or FTA may issue.

#### F. LIAISON OFFICER

Within 10 days after Notice to Proceed the Contractor shall designate a liaison officer who will monitor the Contractor's Affirmative Action Program and prepare the required reports.

### SECTION III: DISADVANTAGED BUSINESS ENTERPRISE AFFIRMATIVE ACTION REQUIREMENTS

A. DEFINITIONS: As used in this Disadvantaged Business Enterprise (DBE) Contractor Participation Provision ("Provision"), the following terms shall have the following meanings (the definitions shall not apply outside of this Provision where inconsistent with those contained elsewhere in the bid documents):

1. A&E Utilization Report - A monthly report in the form annexed to this Provision, containing certain information with respect to work to be performed by DBE Contractors.
2. Affirmative Action - Positive activities undertaken to eliminate discrimination and effects of past discrimination and to ensure nondiscriminatory practices in the future.
3. Affidavit of No Change- an affidavit from a certified DBE, affirming that the DBE continues to meet the eligibility criteria of 49 CFR Part 26.
4. Board - Board of County Commissioners, Miami-Dade County, Florida.
5. Challenge - A formal filing by a third party to rebut the presumption that a particular individual is socially and economically disadvantaged.
6. Commercially Useful Function – When a DBE is responsible for the execution of the work of the contract and is carrying out its responsibilities by

actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself, in light of industry practices and other relevant considerations. If, MDC has any reason to believe that a firm, while an eligible DBE, is not performing a commercially useful function in a particular transaction, the contractor will not receive credit toward the goal.

7. Compliance Monitor - A person designated by the Director of MDC to assist and to make recommendations to MDC with respect to compliance with this Provision.

8. Contract - A legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them; the Contract, executed by MDC and the successful proposer, of which this Provision is a part. For the purposes of this program, a lease is considered to be a contract.

9. Contract Goal - DBE participation goal established by the Board of County Commissioners for this Contract solicitation.

10. Contract Price - the total bid price of the successful proposer as awarded by the Board of County Commissioners.

11. Contracting Officer - The Director of the Miami-Dade Transit or his/her designee.

12. Contracting Opportunity - Any decision by the Miami-Dade Transit or contractor to institute a procurement action to obtain a product or service commercially (as opposed to intergovernmental actions).

13. DBE Certification Letter - A letter issued to a firm by the State of Florida Unified Certification Program (UCP) certifying member or agency, declaring that the firm is certified as a DBE.

14. DBE Directory - a registry of DBEs that are certified by Miami-Dade County, published to aid in the location of certified DBE.

15. Disadvantaged Business Enterprise or DBE A "for-profit" small business concern

a. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged as defined in 49 CFR Part 26.5, or in the case of a corporation, in which at least 51 percent of the stock of which is owned by one or more such individuals; and

b. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

16. Goal – a percentage of the total contract price that is to be expended with certified DBE
17. Letter of Intent a letter, in the form annexed to this Provision, to be signed by a DBE with respect to certain work under the Contract.
18. Manufacturer - An individual (or individuals) who owns, operates, or maintains a factory or establishment that produces on the premises the components, materials, or supplies obtained by the Miami-Dade Transit, Contractor, or Transit Vehicle Manufacturer.
19. MDC - Miami-Dade County, Dade County or the County or Miami-Dade Transit or MDT as referred to in the Contract Documents.
20. Primary Recipient - A grantee who receives DOT financial assistance and passes all or some of the assistance on to a subrecipient.
21. Proposer - An individual, firm, partnership, corporation, joint venture, or combination thereof submitting a bid for construction work.
22. Qualified - a Contractor is qualified to do specific work if it meets all of the following criteria:
- a. It has or is able to obtain any and all licenses required to do such work;
  - b. It has the necessary experience, organization, technical qualifications skills and facilities to do such work;
  - c. It is able to comply with the performance schedule reasonably needed for such work;
  - d. It does not have an unsatisfactory record of integrity, judgment and performance;
  - e. It is able to meet the applicable equal employment opportunities requirements; and
  - f. It is not otherwise ineligible to perform such work under applicable laws and regulations.
23. Recipient - means any entity, public or private, to which financial assistance from the U. S. Department of Transportation (DOT) is extended whether directly or through another recipient, through the programs of the Federal Transit Administration (FTA), the Federal Highway Administration (FHWA), or the Federal Aviation Administration (FAA), or who has applied for such assistance.
24. Regular Dealer means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the

firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this definition.

25. A Small Business Concern, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, is defined in section 3 of the Small Business Act and in Small Business Administration regulations implementing the Act (13 CFR Part 121). Additionally, a small business concern cannot exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b).

26. Socially and Economically Disadvantaged Individual - means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

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

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

(1) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

(2) "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;

(3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

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

(5) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(6) Women;

(7) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business

Administration (SBA), at such time as the SBA designation becomes effective.

27. Schedule of Participation by DBEs a schedule, in the form annexed to this Provision, containing certain information with respect to work to be performed by DBEs. It is the schedule that lists the Certified DBEs with which the proposer intends to subcontract with, specifying price, a proposed timetable stating commencement and completion dates, and other information as may be outlined on the schedule.

28. Sub recipient - Any entity that receives Federal financial assistance from FTA through a primary recipient.

29. Successful proposer - the proposer to which the Contract is awarded.

30. Transportation Improvement Program (TIP) means an annual or biennial listing of capital and operating assistance projects proposed for funding by FTA.

31. Unavailable - a Contractor is unavailable to do specific work if:

a. It has that knowledge of the terms and specifications of the Contract needed to formulate intelligently a bid or proposal to do such work or to decline intelligently an opportunity to formulate such a bid or proposal; and

b. It does not intend, or is unable, to make a bid or proposal because of lack of interest, inability to meet the reasonable and ordinary demands connected with doing such work, unwillingness to meet the specifications for such work, unwillingness to work on this project or in this geographic area, or such other reason as is determined by MDC to be sufficient.

32. Unified Planning Work Program (UPWP) - A listing of planning projects proposed for funding by FTA.

33. U.S. Department of Transportation Regulations - the final rules and regulations published in the Federal Register (Vol. 64, No. 21, P. 5126 et seq.) dated Tuesday, February 2, 1999, entitled PART 26--PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS.

B. UTILIZATION OF DBES:

1. Affirmative Action Obligation

**All projects, with Federal Funding.**

a. Policy. MDC is committed to carry out the DBE Program and to meet the objectives stated in the program, including nondiscrimination in the award and administration of DOT assisted

contracts in MDC's transit programs; creating a level playing field on which DBEs can compete fairly; and ensuring that MDC's DBE program is narrowly tailored in accordance with applicable law. Consequently, the DBE requirements of 49 CFR Part 26 apply to this project.

b. **Obligation.** The proposer, DBE or otherwise, agrees to ensure that DBE, as defined in 49 CFR Part 26 and this Provision, are given the opportunity to participate in the performance of this contract for it is financed in whole or in part with Federal Funds. Consequently, the contractor shall take all necessary and reasonable steps pursuant to 49 CFR Part 26 and this Provision to ensure that DBEs have the opportunity to compete for and perform on this contract. Additionally, the proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract.

All determinations of compliance or non-compliance of the proposer with the requirements of this Provision, and of the appropriate consequences of non-compliance, shall be final and binding, except for administrative reconsideration from an adverse decision by MDC as provided in Section 26.53. All determinations shall be final and the result is not administratively appealable to the U.S. Department of Transportation. Nothing in this Provision shall be construed to diminish the legal responsibility or authority of MDC.

## 2. DBE Goal

A "Stated Goal" is a portion of the total contract dollar amount that a prime contractor is expected to expend through subcontracts with DBE firms. For the purpose of this contract, **such goal is.**

## 3. DBE Contractor/Bidder/Proposer

A Bidder or Proposer which is itself a DBE Contractor may, subject to compliance with the applicable requirements of Section III.B.(1) and (2) of this Provision, achieve the stated goal by performing work with its own forces a value at least equal to the percentage goal.

## 4. Title VI Compliance (Civil Rights Act of 1964)

During the performance of this contract, the contractor itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

a. **Compliance with Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.

d. Information and Reports: The contractor shall provide all information and reports required by the regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Miami-Dade County or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required from a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to Miami-Dade County, or to the Federal Transit Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, Miami-Dade County shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:

(1) Withholding of payments to the contractor under the contract until the contractor complies, and/or

(2) Cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions: The contractor shall include the provisions of paragraph III.B.4.a. through III.B.4.f. of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurements as Miami-Dade County or the Federal Transit Administration may direct as a means of enforcing

such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request Miami-Dade County to enter into such litigation to protect the interests of Miami-Dade County, and, in addition, the contractor may request the services of the Attorney General in such litigation to protect the interests of the United States.

C. REQUIREMENTS PRIOR TO CONTRACT AWARD

1. Bid Submittal

(4) a. At the time of submittal, all proposals shall include an executed Certification of Assurance, and a completed Prime and Subcontractor Information Form for each proposer and one for each subcontractor who submitted a bid.

**A proposal that fails to include the Certificate of Assurance, and the Prime and Subcontractor Information Form may be deemed non-responsive.**

2. Submittal Prior to Negotiation/Award

a. Each selected proposer, as a condition of responsiveness, shall submit the following documents to MDC at the minimum two days prior to negotiation/award, for each DBE it submitted a Schedule for Participation:

(1) Schedule of Participation – executed by the prime.

(2) A Letter of Certification/DBE Contractor Identification Statement or other document from the Miami-Dade County Department of Business Development , or the Uniform Certification Program (UCP) for each proposed DBE firm showing that the firm possesses a currently valid certification as a Disadvantaged Business Enterprise.

(3) Submittal of Contracts with each DBE on the selected contractor's team must submit an Affidavit of No Change, indicating that since the firm has been certified that it continues to meet the DBE eligibility requirements of U.S. DOT, 49 CFR Part 26, and the U.S. small Business Administration, 13 CFR Part 21.

(4) A completed and signed Letter of Intent by each DBE listed in the Schedule of Participation indicating readiness to perform the work described for the amounts stated in the Schedule for Participation.

**A selected proposer(s) which does not submit all four forms may be found non-responsive and may therefore be subject to disqualification by MDC.**

2. After Opening of Bids

a. Good Faith Effort.

(1) When MDC establishes a DBE goal on a DOT-assisted contract, it requires a proposer, as a condition of responsiveness, to make good faith efforts to meet the goal. The proposer can meet this requirement in either of two ways.

(a) The proposer can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. The SCHEDULES FOR PARTICIPATION and the LETTERS OF INTENT can be used for this purpose.

(b) If the proposer does not meet the DBE goal, it can document adequate good faith efforts. This means that the proposer must show that it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. The SCHEDULES FOR PARTICIPATION and the LETTERS OF INTENT may be used as part of this documentation. Information sufficient to satisfy MDC that the proposer has made good faith effort must be submitted to the Clerk of the Board located on the 17<sup>th</sup> floor of the SPCC Building, 111 NW 1<sup>st</sup> St., Miami, Florida 33128 by 4:30 p.m. on the second business day following the opening of bids.

(2) In any situation in which MDC has established a contract goal, MDC will use the good faith efforts mechanism spelled out in 49 CFR Part 26, Appendix A. MDC will make a fair and reasonable judgment whether a proposer that did not meet the goal made adequate good faith efforts. MDC will consider the quality, quantity and intensity of the different kinds of efforts that the proposer has made. The efforts employed by the proposer should be those that one could reasonably expect a proposer to take if the proposer were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE Contract Goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements.

MDC emphasizes that the determination concerning the sufficiency of the proposer's good faith efforts is a judgment call: meeting quantitative formulas is not required.

(3) MDC does not require that a proposer meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, providing the proposer makes an adequate good faith efforts showing. MDC will give fair and serious consideration to bona fide good faith efforts.

(4) The following is a list of types of actions which the proposer should consider as part of its good faith efforts to obtain DBE participation. The list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

(a) Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

(b) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the contractor might otherwise prefer to perform these work items with its own forces.

(c) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

(d) (i) Negotiating in good faith with interested DBEs. It is the proposers' responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses,

and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(ii) A proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a contractor to perform the work of a contract with its own organization does not relieve the proposer of the responsibility to make good faith efforts. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

(e) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. 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.

(f) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by MDC or contractor.

(g) Making efforts to assist interested DBEs in obtaining necessary equipments, supplies, materials, or related assistance or services.

(h) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case

basis to provide assistance in the recruitment and placement of DBEs.

(5) In determining whether a proposer has made good faith efforts, MDC may take into account the performance of other proposers in meeting the Contract goal. For example, when the apparent successful proposer fails to meet the contract goal, but other proposers meet it, MDC may reasonably raise the question of whether, with additional reasonable efforts; the apparent successful proposer could have met the goal. If the apparent successful proposer fails to meet the goal, but meets or exceeds the average DBE participation obtained by other proposers, MDC may view this, in conjunction with other factors, as evidence of the apparent successful proposer having made good faith efforts.

(6) Good Faith Efforts (Invitation for Bid/Request for Proposal). Good faith efforts, under the Invitation for Bid (IFB) method of procurement, to be considered must have been carried out prior to bid opening. Under a Request for Proposal (RFP) or similar method, good faith efforts must have been accomplished prior to receipt of best and final offers. MDC may request any other information as may be required to determine the listed DBE's qualification.

(7) Agreements between a proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other proposers are prohibited. The listing of a DBE by a proposer on its Schedule shall constitute a representation by the proposer that such DBE is Qualified and Not Unavailable, and a commitment by the proposer that if it is awarded the contract, it will enter into a subcontract with such minority contractor for the portion of the work and at the price set forth in its submittal subject to the terms of this Provision.

3. Selection Criteria to Ensure that Prime Contracts Are Awarded to Proposers that Meet the DBE Goal or Demonstrate Good Faith Efforts to Meet the DBE Goal.
  - a. If any one proposer meets or exceeds the Contract Goal, MDC may take into consideration whether proposers who failed to meet the Goal failed to exert sufficient reasonable efforts to meet the Goal and are, therefore, ineligible to be awarded the contract.
  - b. MDC reserves the right to award the Contract to a proposer prior to making a final determination as to the DBE status or qualification of a firm listed on the proposer's Schedule. If the DBE status of a firm listed on the proposer's Schedule is disapproved after contract award, the proposer shall remain bound by procedures under Section III.D.

c. DBE Participation shall be counted toward meeting the DBE Goal as follows:

(1) Once a firm is determined by MDC to be an eligible DBE, the dollar value of the work performed by the DBE is counted toward the DBE Goal, except as limited by paragraph III.C.2.c. (2) through III.C.2.c. (4). (49 CFR 26.55(a)).

(2) MDC shall count toward the DBE Goal a portion of the total dollar value of a contract with a joint venture equal to the percentage of the ownership and control of the DBE partner(s) in the joint venture. (26, 55(b))

(3) MDC shall count toward the DBE Goal only expenditures to DBEs that perform a commercially useful function in the work of a contract. (26.55(c))

(a) 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 and supervising the work involved. To determine whether a DBE is performing a commercially useful function, the proposer shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.

(b) Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE 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.

(4) MDC shall count toward DBE goals expenditures for materials and supplies obtained from DBE suppliers and manufacturers, provided that the DBEs assume the actual and contractual responsibility for the provisions of the materials and supplies.

(a) MDC shall count toward DBE goals the entire expenditure to a DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).

(b) MDC shall count toward DBE goals 60 percent of the expenditures to DBE suppliers that are not manufacturers provided that the DBE supplier performs a commercially useful function in the supply process.

#### 4. Determination of Compliance

The total price for work to be performed by DBEs as indicated in the Proposer's Schedule of Participation by DBEs is required to be sufficient to fulfill the stated goal, unless the Proposer shall demonstrate adequate good faith efforts as provided in III.C.2.c.

#### 5. Award of Contract

**MDC shall not award a contract to any Proposer which it determines fails to comply with the applicable requirements of these provisions.** Nothing herein shall relieve any Proposer or any Contractor performing any work under the Contract from any of the terms, conditions or requirements of the Contract or modify the Owner's rights as reserved in the Contract Documents.

#### 6. Procedures for Determination of Compliance

Provided the proposer shall have submitted completed forms and information required by Section III.C.1. of this Provision, and its proposal is otherwise responsive to the solicitation, and it is determined by MDC that no proposer with DBE Participation has offered a reasonable price who can demonstrate that it has made sufficient reasonable efforts to meet the DBE contract goal, the proposer who failed to obtain appropriate DBE Participation, but has the lowest reasonable price shall be provided an opportunity to participate in the proceedings set out in this Section III.C.3.

The Proposer's failure to submit completed forms and information as required can neither be cured by supplementary submittals and testimony at hearings, nor shall the non-responsiveness of the bid on account thereof be waived, negotiated or compromised. A proposer shall not be foreclosed from participating in the proceedings provided in this Section because the Disadvantaged Business Enterprise status, non-qualification or unavailability of a Contractor as shown in the bid submitted is questioned by the Compliance Monitor. Further, a Proposer shall not be foreclosed from said proceedings merely because the Compliance Monitor questions the reasonableness of the effort required by these Sections.

##### a. Investigation and Recommendation by Compliance Monitor.

In the event that the Proposer has not met the stated goals, and has submitted the good faith efforts extended by the Proposer to meet the stated goal, the Compliance Monitor may require that the Proposer meet with the Compliance Monitor at the Miami Dade Transit Agency, 111 N. W. First Street, Suite 910, Miami, FL 33128, phone 305/375-1962, or such other place as the Compliance Monitor may designate.

The purpose of this meeting shall be for the Compliance Monitor to consider whether to recommend that the proposer's proposal be determined to be in compliance with the requirements of this Provision or to recommend award not be made to the proposer. At

this meeting the proposer has an opportunity to present information and arguments pertinent to its compliance with the applicable requirements. Upon request of the Compliance Monitor, the proposer shall produce in writing at this meeting the information required in III.C.2.c, including the following:

(1) A detailed statement of the efforts made to contact and negotiate with DBEs, including:

(a) the names, addresses and telephone numbers of DBEs who were contacted;

(b) a description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed; and

(c) a detailed statement of the reasons why additional prospective agreements with DBEs, if needed to meet the stated goal, were not reached;

(2) A detailed statement of the efforts made to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal;

(3) As to each DBE contacted but which the proposer considered to be not qualified, a detailed statement of the reasons for the proposer's conclusion;

(4) As to each DBE contacted but which the proposer considered to be unavailable, either

(a) a written statement from the DBE that it is unavailable, or

(b) a statement from the proposer that the DBE refused to give such written certification after reasonable request, and a detailed statement from the proposer of the reasons for the proposer's conclusion that the DBE was unavailable (the Statement may be used for this purpose where appropriate);

(5) Attendance at a pre-bid meeting, if any, scheduled by the proposer to inform DBEs of subcontracting opportunities under a given solicitation;

(6) Advertisements in general circulation media, trade association publications, and minority-focus media for at least 20 days before bids or proposals are due concerning subcontracting opportunities (if the interval between MDC

advertising is so short that 20 days are not available, then publication for a shorter reasonable time is acceptable).

(7) Efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the proposer or MDC; and

(8) Written notification to DBEs that their interest in the contract is solicited.

The Compliance Monitor may require the proposer to produce such additional information as the Compliance Monitor deems appropriate and may obtain whatever other and further information from whatever other sources he deems appropriate.

Not later than fifteen (15) days after given notice of his initial meeting with the proposer, the Compliance Monitor shall make a written recommendation to the Contracting Officer which shall include a statement of the facts and reasons upon which it is based.

b. Determination by MDC. Following receipt of the Compliance Monitor's recommendation, the Contracting Officer shall send to the proposer a Notice of Opportunity to meet with the Contracting Officer, enclosing a copy of the Compliance Monitor's recommendation. Such Notice shall indicate the date, time and place at which the proposer may, if it so requests in writing, meet with the Contracting Officer and have an opportunity to present pertinent arguments and information relating to the recommendation by the Compliance Monitor regarding the proposer's compliance with this Provision. The Contracting Officer may request such further information from the proposer as it deems appropriate, and may rely upon any factual conclusion reported by the Compliance Monitor which is not contradicted by the proposer. The Contracting Officer may also conduct informal conferences, to which the proposer shall be invited, in which other parties invited by the Contracting Officer may offer information relevant to the issues on which its recommendation to the Board of County Commissioners will be based.

As soon as practicable, the Contracting Officer shall make a determination, in writing and setting forth the facts and reasons upon which it is based, whether the bid of such proposer complies with the requirements of this Provision or recommending to the Board that the Contract not be awarded to the proposer. A copy of such determination shall be sent to the proposer. Such determination shall not affect the power of the Board of County Commissioners to reject the proposer's proposal for any other reason or to take action on the recommendation of the Contracting Officer it deems appropriate.

c. Consideration of Other Bids. If MDC deems it advisable in the interests of expediting the award of the Contract, the procedures set

forth in this Section III.C. may be carried out with respect to the bids of one or more additional proposers at the same or different times with each such proceeding to be separately conducted.

d. Failure of proposer to Participate. The proposer will be bound by proceedings under this Provision to which it has been given required notice without regard to its participation or lack of participation in them. Its lack of participation, upon receiving notices and requests pursuant to this Provision, shall not be grounds for reconsideration of any actions taken in the procedure.

#### 6. Substitution of DBEs for those Listed in the Schedule for Participation

A proposer may change information required by this provision from that provided in its Schedule of Participation of DBE only when directed to do so by the Contracting Officer. The Contracting Officer may make such a direction if it determines in the course of any proceeding conducted pursuant to Section III.C.3., that

a. Although listed by a proposer in good faith, a Contractor appearing on the proposer's Schedule is not a DBE, is not qualified or is unavailable and that

b. If the work scheduled to be performed by said Contractor or its equivalent is not performed by a DBE, the proposer will not achieve the level of participation listed on its Schedule.

Upon receiving such a direction, the proposer shall make every reasonable effort to replace a contractor listed in its Schedule with a qualified DBE to perform, for not less than the lesser of the same price or the price necessary to achieve the level of participation listed in its Schedule, the same work or other work not appearing on the Schedule included with its bid or proposal submission. For the purpose of determining the proposer's compliance with this Provision, the revised list of DBEs shall be considered. However, a failure by a proposer to make the efforts required by the preceding paragraph prior to Contract award shall be grounds for a determination by the Board of County Commissioners that the contract not be awarded to the proposer. If a proposer is awarded the Contract and it fails to make such efforts upon notice by MDC, MDC shall subject the proposer to sanctions as provided in Section III.D.4.

#### D. REQUIREMENTS AND PROCEDURES SUBSEQUENT TO CONTRACT AWARD

##### 1. Proposal, Execution, and Compliance with Subcontracts

a. The successful proposer/contractor shall enter into subcontracts corresponding in all respects to the proposed agreements listed on the contractor's Schedule for Participation by DBEs included in its bid or proposal with substitutions authorized under this Provision. The contractor shall enter into each such approved subcontract and shall thereafter neither terminate any such subcontract nor reduce the

scope of the work to be performed by, or decrease the price to be paid to, the DBE thereunder without in each instance the prior written approval of the Contracting Officer.

b. in addition to the requirement in paragraph (a) above, Section III (D) (1), no DBE subcontractor should subcontract any part of its contract without prior written consent from the Contracting Officer.

c. MDC retains the right to approve or disapprove any subcontract with a DBE proposed under this Provision for the same reasons and in the same manner that MDC may approve or disapprove any other subcontract proposed to it. If MDC disapproves a subcontract required to be proposed under this Provision for reasons relating to its form, the contractor shall propose for approval another subcontract with the same DBE, for the same work and at the same price, in a form acceptable to MDC. If MDC disapproves a subcontract required to be proposed under this Provision for any other reason, the contractor shall be excused from proposing that subcontract and shall be subject to the provisions of Section III.D.2 below.

## 2. Substitution of Subcontractors

### a. Excuse from Entering Subcontracts.

If prior to execution of a subcontract required by this Provision, the contractor submits a written request to the Contracting Officer and demonstrates to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond its control of which it was not aware and could not reasonably have been aware until subsequent to the date of award of the Contract, a DBE which is to enter into such subcontract has become not Qualified, or that the DBE has unreasonably refused to execute the subcontract, the contractor shall be excused from executing such subcontract.

### b. Rightful Termination of Subcontracts.

If, after execution of a subcontract required by this Provision, the contractor submits a written request to the Contracting Officer and demonstrates to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond its control of which it was not aware and could not reasonably have been aware until subsequent to the date of execution of such subcontract, a DBE which entered into such subcontract has become not Qualified or has committed and failed to remedy a material breach of the subcontract, the contractor shall be entitled to exercise such rights as may be available to it to terminate the subcontract.

### c. Determination of Excuse of Rightful Termination.

If the contractor at any time submits a written request to the Contracting Officer under the provisions of either Section III.D.1. or

Section III.D.2., the Contracting Officer, as soon as practicable, shall determine whether the contractor has made the requisite demonstration, and shall not determine that such a demonstration has not been made without first providing the contractor upon notice, an opportunity to present pertinent information and arguments.

d. Alternative Subcontracts.

If the contractor is excused from proposing a subcontract under Section III.D.1. or from executing a subcontract under Section III.D.2.a., or rightfully terminates a subcontract under Section III.D.2.b. and without such subcontract the contractor will not achieve the stated level of DBE participation on which the contract was awarded, the contractor shall make every reasonable effort to propose and enter into an alternative subcontract or subcontracts for the same work to be performed by another Qualified DBE or Contractors for a contract price or prices totaling not less than the contract price under the excused or terminated subcontract, less all amounts previously paid thereunder. The contractor shall be deemed to satisfy the requirements of this Section III.D.2.d. if:

(1) it shall propose and enter each such alternative subcontract for the same work; or

(2) it demonstrates to the satisfaction of the Contracting Officer that it has made every reasonable effort to contact and negotiate with DBEs in an attempt to subcontract such work, but that it was unable to subcontract the work because DBEs were

(a) not Qualified;

(b) Unavailable; or

(c) although Qualified and not Unavailable, unwilling or unable to propose a price for such work equal to or less than the greater of the price originally scheduled for such work (less all amounts previously paid therefor), or the price stated in another bona fide proposal, of which such DBEs had knowledge, submitted by another contractor to which the contractor proposes to subcontract such work; or

(3) it shall propose and enter into subcontracts with another qualified DBE or Contractors, for prices totaling the price originally scheduled for such work (less all amounts previously paid therefor) for the performance of other work not included in its Schedule as it may be modified according to this Provision.

In any situation covered by this Section III.D.2., the Compliance Monitor shall promptly meet with the contractor and provide it an opportunity to demonstrate compliance with these requirements. The Compliance Monitor shall, as promptly as practicable, recommend to the Contracting Officer whether the contractor should be determined to be in compliance with these requirements.

The Compliance Monitor may require the contractor to produce such information as the Compliance Monitor deems appropriate and may obtain whatever other and further information from whatever sources the Compliance Monitor deems appropriate. A copy of the Compliance Monitor's recommendation shall be promptly hand delivered or sent by registered mail to the contractor. The Compliance Monitor shall not make his recommendation under this paragraph without giving the contractor notice and an opportunity to present pertinent information and arguments. MDC will consider objections to the Compliance Monitor's recommendation only if such written objections are received by the Contracting Officer within five (5) calendar days from the contractor's receipt of the Compliance Monitor's recommendation. The Contracting Officer with or without a hearing, as he in his discretion may determine, will reply to the contractor's written objection within ten (10) working days of receipt of these objections.

3. Continued Compliance - MDC shall monitor the compliance of the contractor with the requirements of this Provision during the course of the work to be performed under the Contract. The contractor shall permit MDC to have access to the job site and to necessary records, and to examine such information as appropriate for the purpose of investigating and determining compliance with this Provision, including, but not limited to, manning tables, records of expenditures, change orders, observations at the job site, and contracts between the contractor and other parties entered into during the life of the Contract.

#### Sanctions for Violations

If at any time MDC has reason to believe that the contractor is in violation of its obligations under this Provision, or has otherwise failed to comply with this Provision, MDC may, in addition to pursuing any other available legal remedy, commence proceedings to impose sanctions on the contractor. Such sanctions may include, but are not limited to, one or more of the following:

- a. The suspension of any payment or part thereof due the contractor until such time as the issues concerning the contractor's compliance are resolved;
- b. The termination or cancellation of the Contract in whole or in part unless the contractor is able to demonstrate within a reasonable time its compliance with the terms of this Provision; and

c. The denial to the contractor of the right to participate in any further contracts awarded by MDC for a period of not longer than three (3) years. No such sanction shall be imposed by MDC upon the contractor except pursuant to a hearing conducted by the Contracting Officer.

#### 5. DBE Reporting Requirements.

The Contractor shall submit every so often reports of payments made to all subcontractors, including DBEs in this project.

##### a. Quarterly Reports

Within 15 days of the end of the quarter which the report is for, the contractor shall submit quarterly reports of payments made to all its subcontractors, accompanied by proof of payments made only to its DBEs, pursuant to the schedule outlined on the Quarterly Report Form. Such proof of payments may be copies of canceled checks to and/or signed affidavits from the subcontractors, affirming receipt of specific payments.

#### 6. Prompt Payment.

Pursuant to 49 CFR part 26.29 and 26.37, prime contractors shall pay subcontractors, including DBE'S, for satisfactory performance of their contracts no later than 30 calendar days after the date on which the payment request or a proper invoice is stamped received. Further, the prime contractor will return retainage payments to the subcontractor, including DBE firms, within 30 days of the subcontractor's satisfactory completion of work.

(2) The following correct information constitutes a proper invoice and is required as payment documentation:

- a. Name of Subcontractor;
- b. Invoice date;
- c. Invoicing period;
- d. MDT Contract number;
- e. Subcontractor's invoice number; account number; and/or any other identifying number agreed by contract;
- f. Description and nature of work completed;
- g. Taxpayer Identification Number (TIN);
- h. Bank Information; and/or EFT and Financial EDI Statements
- i. Contact person's name, title and Telephone Number.
- j. Other substantiating documentation, information required by contract.

(3) An invoice shall be deemed to be received on the receipt date stamped on the invoice by the contractor. If the contractor fails to annotate the invoice with a date of receipt, the date placed on the invoice by the subcontractor shall control.

(4) The Prime Contractor shall make timely payment on a payment request or invoice without regard as to whether MDT has tendered payment and/or reimbursement to the Prime contractor.

(5) The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed, and upon which a payment request or proper invoice was submitted and received. Nothing herein shall prohibit a prime contractor or subcontractor from disputing, pursuant to the terms of the contract, all or any portion of a payment alleged to be due to another party.

(6) In the event of a payment dispute, the contractor and subcontractor may withhold the disputed portion of any such payment, if the contractor, or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The undisputed portion shall be paid timely.

(7) The Prime and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payments disputes, including but not limited to mediation, arbitration and/or an MDT's Ombudsperson.

(8) In cases of disputes, proceedings to resolve the dispute shall be commenced not later than 20 days after the date on which the payment request or proper invoice was received by the contractor and shall be concluded by final decision not later than 30 days after the date on which the payment request or proper invoice was received by the contractor. Such procedures shall not be subject to chapter 120, and such procedures shall not constitute an administrative proceeding which prohibits a court from deciding de novo any action arising out of the dispute. If the dispute is resolved in favor of the Prime Contractor, then interest charges shall begin to accrue 15 days after the final decision. If the dispute is resolved in favor of the subcontractor, then interest shall begin to accrue as of the original date the payment became due.

(9) The prime contractor may reject a payment request or invoice within 10 business days after the date on which the payment request or invoice is stamped as received. The rejection must be written and must specify the deficiency in the payment request or invoice and the action necessary to make the payment request or invoice proper.

(10) If a payment request or an invoice is rejected under subsection (9) and the subcontractor submits a corrected payment request or invoice which corrects the deficiency specified in writing by the prime, the corrected payment request or invoice must be paid or rejected on the later of Ten (10) business days after the date the corrected payment request or invoice was stamped as received.

(11) All payments due under this section and not made within the period specified by this section shall bear interest at the rate of 1.5% per month, or the rate specified by contract whichever is greater.

(12) Late payment interest penalties shall be paid without regard to whether the subcontractor has requested payment of such penalty, and shall be accompanied by a notice stating the amount of the interest penalty, the number of day late and the rate used. Interest payment of less than one dollar need not be paid. In the event of a dispute, interest penalties under this clause will not continue to accrue.

(13) The Prime and subcontractor in their business judgment and of their own volition may negotiate reasonable cash discounts, or any other means of payment reduction for early payments, if the parties can agree to mutually advantageous terms.

(14) A provision in an agreement between a subcontractor and a contractor is void and unenforceable to the extent that it purports to waive or preclude the rights, remedies, or requirements set forth in this subsection; or that it purports to limit it or preclude any liability of the prime contractor to the subcontractor or of the subcontractor to the contractor, arising under this subsection.

APPENDIX OF FORMS

CERTIFICATION OF ASSURANCE FORM

DBE CONTRACTOR IDENTIFICATION STATEMENT

PRIME AND SUBCONTRACTORS INFORMATION FORM

LETTER OF CERTIFICATION

SCHEDULE FOR PARTICIPATION

LETTER OF INTENT FROM DBE SUBCONTRACTOR, SUPPLIER AND/OR CONSULTANT

SUBCONTRACTORS MONTHLY PROGRESS REPORT

AFFIDAVIT OF NO CHANGE