

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 03-45

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") is empowered to procure such services as it deems necessary to assist with its operations and to study, develop, and finance potential transportation projects; and

WHEREAS, investment banking services are essential to the operations of the CTRMA and the financing of authority projects; and

WHEREAS, the Board of Directors directed its staff to issue a Request for Qualifications (RFQ) for firms interested in providing investment banking services to the CTRMA; and

WHEREAS, the staff caused an RFQ to be issued on July 18, 2003; and

WHEREAS, sixteen firms submitted responses to the RFQ; and

WHEREAS, the CTRMA's financial advisor and staff have reviewed the responses and have determined that all of the sixteen responding firms are qualified to be placed in a pool of firms available to provide investment banking services in connection with future CTRMA projects; and

WHEREAS, the CTRMA financial advisor has recommended to the Board of Directors that the following firms be considered as the pool of firms available to draw from for investment banking services for future CTRMA financings and for the provision of other planning and financial services: Bear Stearns & Co., Inc., Citigroup, Loop Capital Markets, L.L.C., JP Morgan Securities, Inc., Estrada Hinojosa & Co., Inc., Siebert, Brandford, Shank & Co., L.L.C., UBS Financial Services, Inc., Morgan Stanley, First Albany Corporation, Southwest Capital Markets, Inc., Lehman Brothers, Goldman Sachs, Southwest Securities, Banc One Capital Markets, Inc., Ramirez & Company, and RBC Dain Rauscher, Inc.; and


WHEREAS, the full Board of Directors concurs with the recommendation of the financial advisor and desires to designate each of the aforementioned firms to be part of the pool of investment banking firms qualified and available to provide investment banking services to the CTRMA.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors approves of the following firms as comprising a pool of firms available to provide investment banking services to the CTRMA when requested by the authority: Bear Stearns & Co., Inc., Citigroup, Loop Capital Markets, L.L.C., JP Morgan Securities, Inc., Estrada Hinojosa & Co., Inc., Siebert, Brandford, Shank & Co., L.L.C., UBS Financial Services, Inc., Morgan Stanley, First Albany Corporation, Southwest Capital Markets, Inc., Lehman Brothers, Goldman Sachs, Southwest Securities, Banc One Capital Markets, Inc., Ramirez & Company, and RBC Dain Rauscher, Inc.; and

BE IT FURTHER RESOLVED, that any designation of one or more firms from the pool to assist in planning of CTRMA projects and marketing of CTRMA bond issuances shall be subject to the approval of the Board of Directors.

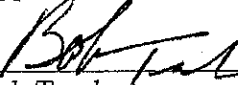
Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 24th day of September, 2003.

Submitted and reviewed by:



C. Brian Cassidy
Legal Counsel for the Central
Texas Regional Mobility Authority

Approved:



Bob Tesch
Chairman, Board of Directors
Resolution Number 03-45
Date Passed 9/24/03

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 03-46

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") is pursuing the development of the US 183-A turnpike project; and

WHEREAS, the CTRMA has received a grant of \$12.7 million from TxDOT as financial assistance to fund certain activities associated with the development of US 183-A (the "183-A Toll Equity Grant"); and

WHEREAS, HNTB, the general engineering consultant retained by the CTRMA (the "GEC"), has developed a scope of work and a proposed budget for the work necessary to expeditiously pursue the development of US 183-A and prepare the project for the issuance of turnpike revenue bonds (the "183-A Work Authorization"); and

WHEREAS, a copy of that proposed scope of work and budget was presented to the Board and approved subject to various restrictions as set forth in Resolution No. 03-38, including review and approval by TxDOT; and

WHEREAS, TxDOT has suggested certain revisions and modifications to the 183-A Work Authorization, which are reflected in the revised version of the work authorization attached hereto as Exhibit A; and

WHEREAS, staff has recommended that the Board of Directors authorize only those items of work under the 183-A Work Authorization that will be necessary regardless of whether the CTRMA develops 183-A through a comprehensive development agreement or a traditional procurement process and which also assure that project planning will continue without delay; and

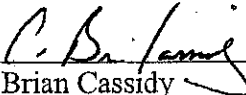
WHEREAS, staff has identified the items (or portions thereof) in the 183-A Work Authorization identified in Exhibit B attached hereto as being those necessary regardless of the project delivery methodology utilized and which will assure that the project will continue without delay; and

WHEREAS, any work undertaken by the GEC under the 183-A Work Authorization will be subject to the terms and conditions of the contract for GEC services between the CTRMA and HNTB;

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors approves and authorizes the GEC to undertake the 183-A Work Authorization items identified on Exhibit B, provided that all such work shall be subject to the GEC contract and that no additional work may be undertaken without the specific approval of the Board of Directors.

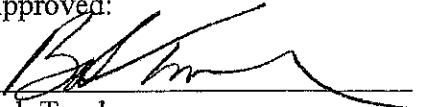
Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 24th day of September, 2003.

Submitted and reviewed by:



C. Brian Cassidy
General Counsel for the Central
Texas Regional Mobility Authority

Approved:



Bob Tesch
Chairman, Board of Directors
Resolution Number 03-46
Date Passed 9/24/03

WORK AUTHORIZATION NO. 3

CENTRAL TEXAS RMA

SERVICES TO BE PROVIDED BY THE GENERAL ENGINEERING CONSULTANT (GEC)

GENERAL PROJECT OVERVIEW

GEC Core Staff and US 183A Schematic review and revisions

The scope of services for this task order shall include General Engineering services for the CTRMA and Preliminary Design (which shall include evaluation of the existing US 183A Schematic, revisions to Schematic to modify the plan as appropriate, route and design studies, public involvement and environmental document updating, drainage studies, and toll facilities concept/study); Public Involvement; Determination of Project Phasing; Survey; ROW assessment and preparation of ROW plans and documents; and cost certification for the Official Statement Bond documents of US-183A from SH 45 at US183 to a connection with US 183, north of Leander, a distance of approximately 11 miles.

The deliverables of this work effort are included on page nine of this document. The Design Schematic and accompanying financial plan are necessary in order to produce a Construction Cost Estimate for the Bond Certification as 183 A moves toward a bond sale. Updated surveys, ROW Map, Hydrology and Hydraulics with necessary easement identification, final vertical geometry, cross sections and construction phasing approach to meet financial feasibility must be produced in order to develop a final construction and ROW acquisition plan for the CTRMA. Public Involvement necessary to achieve Informed Consent for the plan of finance and Tolling is a critical effort of this Work Authorization. A Strategic Plan will be developed as a first phase of Public Involvement and stakeholders at all levels will be involved in communicating the 183 A Toll Road financing plan.

1) MAINTAIN CORE GEC STAFF

The GEC will maintain a core staff of three persons at an office to be designated by the CTRMA. These three people will respond to requests by the CTRMA Board, according to the Scope of Work contained in the master agreement. The GEC core staff will be supported with expertise in Public Involvement, financing methods and the legal and ROW issues involving US 183A roadway development and innovative finance methods.

2) PROJECT MANAGEMENT FOR THE DEVELOPMENT OF US 183A

- a) Design Strategy Meeting: Discuss development of design criteria, toll facility objectives, access management, typical cross section and general process discussion for the

development of US 183A. The GEC's Project Manager and the GEC's task team leaders will participate in the Design Strategy Meeting. GEC will prepare and evaluate design needs, concepts, and guideline information into a Design Summary Report (DSR).

- b) Scheduling: The GEC will develop a detailed, graphic project schedule for complete development of the US 183-A project. This will include identification and integration of all activities with the Traffic and Revenue Consultant, Bond Counsel, Legal Staff, Financial Advisor and Public Involvement. The schedule (in Microsoft Project format) will indicate tasks, subtasks, critical dates, milestone events, deliverables, and information requested from external agencies. The project schedule will be in a format which depicts the order and interdependence of the various tasks, subtasks, milestones, and deliverables for each task identified herein. As a part of the schedule development the GEC will evaluate various constraints and maximize the efficiency of the project.
- c) Progress Reports, Invoices and Billings: The GEC will prepare monthly progress reports (one copy) for review by CTRMA's designee. Invoices for all work completed during the period will be submitted monthly from the GEC and all sub-consultants. Monthly progress reports will include:
 - i) Activities during the reporting period
 - ii) Activities planned for the next period
 - iii) Problems encountered and actions to remedy them
 - iv) Overall status, including a tabulation of percentage completed.
- d) Correspondence: The GEC will submit all written materials, letters, survey forms, etc. used to solicit information or collect data for the project to the CTRMA, or designee, for review and acceptance before its use or distribution. Word processing will be prepared using Microsoft Office 2000 Professional Office Version.
- e) Communication with other resources and/or agencies regarding this project will be handled solely by GEC to ensure all parties are properly notified of any conclusions reached from these communications.
- f) Release of Information. The GEC will not release any project information without consent of the CTRMA's designee.
- g) Document Printing and Distribution. The GEC will be responsible for development of electronic document files and for printing copies of all draft and final documents, reports, etc. produced for the Project except where defined by each specific Task. GEC will be responsible for the distribution of all draft and final documents to appropriate agencies and the public.
- h) Attendance and report at monthly CTRMA Board Meetings, Executive Committee, Planning Committee and other committee functions involving the development of 183A.

- i) Close-Out: Upon completion of the Preliminary Engineering phase, the GEC will organize and retain copies of all associated materials on behalf of CTRMA.

3) ROUTE AND DESIGN STUDIES FOR THE DEVELOPMENT OF US 183A

a) Design Schematic review and evaluation

- i) Review and update where appropriate the design criteria for the US 183A to meet current TxDOT standards.
- ii) The GEC will review and where appropriate revise horizontal and vertical alignments for US 183A. Roadway geometry will be based on the criteria and requirements set forth in part IV of the TxDOT Roadway Design Manual.

(1) Design speed

- (a) Mainlanes: 70 mph
- (b) Ramps and Frontage Roads: 40 mph
- (c) Cross streets consistent with all locally applicable major thoroughfare plans, including those of Austin, Cedar Park, and Leander.

- (2) The horizontal alignment will show bearings in the tangent sections and complete curve data including delta angles, PI stations, tangent lengths, length of curve, and radii. The plan views will show the center-line, edge of pavement, striping, lane widths, shoulder widths, cross slopes, superelevations with transitions, direction of traffic flow, and layouts for all speed change lanes. The GEC will provide horizontal alignments as follows:

- (a) Mainlane horizontal alignment.
- (b) Frontage road horizontal alignment.
- (c) Entrance and exit ramps horizontal alignments for both south and north bound directions.
- (d) Cross street horizontal alignments, best fit of the existing cross street between the frontage roads.

- (3) The GEC will review and where appropriate develop horizontal turnarounds at existing grade separation structures. Deceleration lanes will be provided for on all turnarounds. Acceleration lanes will be provided for on turnarounds.
- (4) The vertical alignment will show existing and proposed elevations at 100-foot intervals, vertical curve VPI stations, curve lengths, superelevation rates and transitions, design speeds, "K" values (evaluation to obtain minimum "K" values), and tangent grades. The GEC will assess the changes made to the TxDOT

Design Manual to see if cost saving can be made by adjusting the vertical alignment. The GEC will provide vertical alignments as follows:

- (a) Main lane vertical alignment.
 - (b) Frontage road vertical alignment.
 - (c) Entrance and exit ramps vertical alignments.
 - (d) Cross road vertical alignments,
 - (e) Turnaround vertical alignments, straight grade alignments between the frontage roads.
- (5) The schematic will be prepared in US Customary units with MicroStation J and GEOPAK 2000.
- (6) The GEC will provide up to 10 senior technical staff to participate in a 5-day Value Engineering Study (V. E. Study.) The GEC will provide a color schematic on roll plans to be used at the V. E. Study.

The GEC will prepare for the Value Engineering Study by developing a cost estimate matrix for the schematic including cost per section, cost per major bid item, cost per interchange etc. This will be done to better determine where cost savings can be found.

- (7) The GEC will assess the currently proposed retaining walls required as part of the project. Geotechnical evaluation of the preferred type will not be completed under this Work Authorization.
- iii) The GEC will evaluate and revise typical sections on the schematic drawing using sections approved by CTRMA. Typical sections for reworking crossroads will also be developed by the GEC and shown on the schematic. The typical sections will also show the intermediate phases of construction related to the construction phasing.
 - iv) The GEC will identify and locate all known utilities impacting the 183 A schematic design.
 - v) The GEC will review the earthwork cross-sections and evaluated how to improve section to minimize costs and maintain safety.
 - vi) The GEC will develop line diagrams for traffic and revenue for multiple options to be used in developing the construction phasing.
 - vii) GEC will re-evaluate the capacity and level of service analysis based on any revisions to the traffic information provided by the Traffic and Revenue Consultant

The scope of services and related fee for the Traffic and Revenue Consultant is not included in this Work Authorization.

- viii) The GEC will prepare the schematic drawing using the same scale, legend and symbol as the existing US 183 A schematic.
- ix) GEC will review the locations of guide signs and pavement markings in compliance with Texas Manual for Uniform Traffic Control Devices (TMUTCD). The GEC will update any signs due to revisions made to the geometric design. Guide signs will be included on the schematic.
- x) The GEC will complete any traffic signal warrant studies.
- xi) The GEC shall provide to CTRMA, as a final product, one Mylar copy of the schematic and two (5) Color copies of the schematic. The final schematic shall also be provided in a digital format. CADD Files shall be provided for Document and Information Exchange. Schematic will include the items included in the CTRMA checklist. The updated final schematic will included the following:
 - (1) The location of all main lanes, grade separations, frontage roads, and ramps
 - (2) Vertical profiles for mainlanes, frontage and ramps.
 - (3) Traffic flow direction on all roadways.
 - (4) Right of Way and Control of Access lines
 - (5) Geometric typical sections (including pavement cross slopes, lane and shoulder widths, and slope rates for cuts and fills) for proposed mainlanes, ramps, frontage roads, and cross streets
 - (6) Toll Plaza Footprints and layouts
 - (7) Current and projected traffic volumes as provided by CTRMA (20-year, unless determined otherwise by the CTRMA)
 - (8) Guide signs
 - (9) Toll signs
 - (10) Geometry of speed change (acceleration, deceleration, climbing, etc.) lanes
 - (11) Location of proposed structures, including pertinent dimensions, lanes on roadways and decks, directions of travel and preliminary vertical clearances for grade separations.
- xii) Additional copies of schematics to be provided include:

- (1) Preliminary schematic, three copies, for review by CTRMA.
 - (2) Draft Final schematic, three copies, for CTRMA and FHWA review.
- b) Pavement design for the all roadways within 183A: Main lanes, Frontage Roads, Ramps, and Cross streets within the US 183A ROW.
 - c) Evaluation will be completed for splitting of the project into multiple construction projects in order to develop the multiple projects. The basis for the construction phasing will be to create an efficient project to build as a toll facility that is financially viable and minimizes the traffic delays.
 - d) The GEC will develop a certified construction estimate for each phase of the construction detailed in the construction phasing.

4) ENVIRONMENTAL UPDATING FOR US 183A

The GEC will assess any deviations from the current Environmental Impact Statement (EIS) and will draft a letter requesting approval of any changes to the EIS including appropriate evaluation of the impact of the changes to the EIS. Modifications in these areas are within the areas of the scope of services:

- i) Cultural Resources & Surveys
- ii) Noise and Air Quality Analysis
- iii) Wetland investigations
- iv) Hazardous Materials
- v) Endangered Species Coordination/Mitigation

GEC believes that the environmental documents can be updated via a re-evaluation of the EIS. However, the cost if more extensive services are required to modify the EIS or other unanticipated complications, such as significant alignment shifts or additional project or public meeting(s) are not included in the scope, schedule, and budget.

5) PUBLIC INVOLVMENT FOR US 183A

The GEC will provide a colored schematic, showing roadway typical sections, mounted on presentation boards with photos of existing interchanges for four public meetings/hearing as required for US 183A with the intent of developing informed public consent for the project. GEC will make all arrangements for the public meetings/hearing and will handle all mailings, advertisements, and announcements for the public meetings/hearing for US 183A.

- a) The GEC conduct and handle the public meetings/hearing and will make all formal presentations at these meetings.

- b) The GEC will meet with stakeholders during the schematic design process as directed by CTRMA in order to deliver informed public consent for the development of US 183A. It is anticipated that the project stakeholders will include neighborhood associations, business groups, civic organizations, and area public officials
- c) The meeting minutes and meeting summaries for the public meetings/hearing will be recorded and prepared by the GEC.
- d) The GEC will also develop a community and governmental relations program to gain informed public consent for the US 183A project. This activities will include:
 - 1. Public Involvement Publications and notifications
 - 2. Audio/Visual Production
 - 3. Brochures, Informational Pieces, Presentations
 - 4. Community and Industry Relations
 - 5. Consumer Attitude Tracking
 - 6. Crisis Communication Plan & Training
 - 7. Government Relations
 - 8. Regulatory Review and Analysis
 - 9. Media Relations
 - 10. Strategic Planning

These activities, initiated for US 183A, will serve as a template for future CTRMA activities.

6) ROW AND UTILITY ADJUSTMENT FOR THE DEVELOPMENT OF US 183A

- a) The GEC will prepare a Right of Way and Control of Access map in order to determine the correct ROW needed. The GEC will modify the ROW map as necessary to provide the most efficient design. Previously establish ground control for the project will be used to document changes to the ROW. Specific attention will be paid to the frontage road side slopes, drainage requirements and conformance with reasonable access where access is allowed. The GEC will evaluate and incorporate ROW previously acquired by other entities.
- b) The GEC will determine any changes to existing ownership information for property adjoining CTRMA right of way.
- c) The GEC will develop metes and bounds descriptions for parcels to be taken.

- d) Assess alternate access to adjacent property to determine, costs, impacts to development of the frontage roads.
- e) Utility Coordination
 - i) Identification of potential conflicts
 - ii) Estimate of likely construction costs for utility relocation
 - iii) Coordination with utility companies regarding the needed adjustment of conflicting utilities.
 - iv) Prepare and negotiate all utility agreements.
- e) Acquire parcels necessary for US 183A right-of-way.

7) FIELD SURVEYING FOR THE DEVELOPMENT OF US 183A

- a) GEC will use the planimetric survey and digital topography developed by TTA for existing schematic. New mapping of the corridor is not including in this task order
- b) Additional topographic information to supplement the planimetric survey information as follows
 - i) Field survey near drainage outfalls to develop properly sized drainage easements.
 - ii) Update planimetric for changes that have occurred since the flight
 - iii) Field survey of proposed roadway centerline
 - iv) Field survey of proposed right-of-way
 - v) Field survey and location of existing utilities
- c) Provide any temporary traffic control such as signs, flags, flaggers, and safety equipment that may be required.

8) TOLL FACILITIES AND TOLL ASSESSMENTS FOR THE DEVELOPMENT OF US 183A

- a) Complete line diagrams for various options to be studied by the Traffic & Revenue consultant to be used to assess appropriate phasing and Toll facility locations. The scope of services and associated fee for the Traffic and Revenue consultant is not included in this Work Authorization.
- b) Review and assess existing schematic toll collection facilities. Develop recommendations for alternate or interim toll facilities. Revise schematic drawing to show appropriate toll facilities to maximize toll revenues.

- c) Assess the impacts of current location of main lane toll plaza relative to existing residential neighborhoods and assess if better location for main lane toll plaza can be developed.
- d) Where necessary modify ramp locations on schematic design to maximize toll revenue
- e) Develop standardized toll signage for toll plazas, ramps, and mainlines

9) **HYDROLOGY AND HYDRAULICS FOR THE DEVELOPMENT OF US 183A**

- a) Place locations of existing outfalls for cross drainage and storm sewer systems on schematic.
- b) Develop preliminary report for hydrology and hydraulics to determine appropriate drainage outfall sizes and develop reasonable estimation of drainage costs.
- c) Existing Hydrology or hydraulic studies will be reviewed to evaluate the 100 year storm elevations. The GEC will determine the approximate limits of the 100-year flood boundary based on current FEMA Flood Insurance Rate Maps for inclusion on the roadway schematic. GEC will evaluate the 100-year storm elevation with the Mainlane vertical profile.
- d) Coordination and agreements required with COE and TCEQ for all related activities.
- e) Develop a water quality plan including an implementation plan for water quality facilities including basins, filters, ponds, etc.

DELIVERABLES FOR THE DEVELOPMENT OF US 183A

Design Summary Report

Preliminary Schematic

Draft Final Schematic

Design Schematic

Value Engineering Report

Construction Phasing Plan

Certified Construction Cost Estimate

Public Meeting/Hearing Minutes and Summary

Required Environmental Documentation

Revised ROW Map and required parcel descriptions

Estimate of Utility Relocation Costs

Utility Relocation Agreements

Updated Planimetric and Topographic Mapping

Line Diagrams for Toll Assessment

Preliminary Hydrology and Hydraulics Report

Water Quality Plan

Engineers Certification Report required for the Official Statement

NOTES:

- 1) All design shall be in accordance with the above references, except where variances are permitted in writing by CTRMA.
- 2) The GEC is responsible for purchasing all references, which are required for the project.

EXHIBIT A

SERVICES TO BE PROVIDED BY THE AUTHORITY

In addition to the services listed in the Agreement, the Authority will provide the following services:

- Provide input, direction and guidance regarding the services provided by the Engineer.

Exhibit B

CTRMA Board Resolution No. 03-46

Authorized 183-A Work Authorization Items*:

Task 1 (Maintenance of Core GEC Staff): 50% of described work and expense

Task 2 (Project Management): 50% of described work and expense

Task 3 (Route and Design Studies): work up to \$500,000 of expense

Task 5 (Public Involvement): 100% of described work and expense

* Task references are to those items of work identified in the 183-A Work Authorization attached as Exhibit A to Board Resolution No. 03-46.

EXHIBIT C

WORK SCHEDULE

This Work Authorization shall become effective August 27, 2003 and shall terminate two years from that date, unless extended by a supplemental Work Authorization.

ATTACHMENT E

WORK AUTHORIZATION NO. 3

THIS WORK AUTHORIZATION is made pursuant to the terms and conditions of the Agreement dated August 27, 2003, hereinafter identified as the "Agreement", entered into by and between Central Texas Regional Mobility Authority ("Authority"), and HNTB Corporation ("Consultant").

Part 1. The Consultant will provide the following engineering services:

- Maintain a core staff of three persons at an office to be designated by the CTRMA.
- Project Management for the development of US 183A.
- Develop route and design studies for US 183A.
- Environmental updating for US 183A.
- Public involvement for US 183A.
- ROW and utility adjustment for the development of US 183A.
- Field surveying for the development of US 183A.
- Toll facilities and toll assessments for the development of US 183A.
- Hydrology and hydraulics for the development of US 183A.

The responsibilities of Authority, the Consultant, and the schedule are further detailed in Exhibits A, B, C and D.

Part 2. Without modification, the maximum amount payable for services performed under this work authorization is \$6,377,921. A fee schedule used to establish the maximum amount payable is attached hereto as Exhibit D.

ATTACHMENT E

Part 3.

The Authority and Consultant both recognize that additional effort will be required to complete the services listed in Attachment B of the Agreement. This additional effort will be addressed and executed in future Work Authorizations.

Part 4. Payment to the Consultant for the services established under this Work Authorization shall be made in accordance with the Agreement.

Part 5. This Work Authorization shall become effective August 27, 2003 and shall terminate two years from that date, unless extended by a Supplemental Work Authorization.

Part 6. This Work Authorization does not waive the parties' responsibilities and obligations provided under the contract.

Part 7. This Work Authorization in hereby accepted and acknowledged below.

CONSULTANT:
HNTB Corporation

AUTHORITY:
Central Texas Regional Mobility Authority

By: Richard J. Ridings, P.E.
Signature

By: _____
Signature

Richard Ridings, P.E.
Printed Name

Printed Name

Vice President
Title

Title

09/01/03
Date

Date

LIST OF EXHIBITS

- Exhibit A - Services to be Provided by the Authority
- Exhibit B - Services to be Provided by the Consultant
- Exhibit C - Work Schedule
- Exhibit D - Fee Schedule

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 03-47

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") is empowered to procure such services as it deems necessary to assist with its operations and to study, develop, and finance potential transportation projects; and

WHEREAS, US 183-A was identified in the Petition of Travis and Williamson Counties to Form the CTRMA as the authority's initial project; and

WHEREAS, planning for the project has advanced to the point where the services of one or more investment banking firms is required to assist in further development of plans for financing of the project and the designation of a syndicate of investment banking firms is appropriate to prepare for the possible sale of turnpike revenue bonds and other financial instruments; and

WHEREAS, on July 16, 2003 the CTRMA issued an RFQ for firms interested in providing investment banking services to the CTRMA; and

WHEREAS, sixteen firms responded to the RFQ; and

WHEREAS, in Resolution No. 03-45 the Board of Directors designated sixteen firms as a pool of firms qualified to provide investment banking services to the CTRMA; and

WHEREAS, on September 15, 2003, the Board of Directors interviewed five national firms to determine which should serve as the Senior Manager for purposes of assisting with the further development of plans for financing the US 183-A project and to lead the efforts to market and sell bonds for the US 183-A project; and

WHEREAS, based on the previously submitted RFQ responses and the interviews conducted on September 15, 2003, the CTRMA's financial advisor has recommended to the Board of Directors that UBS Financial Services, Inc. serve as the Senior Manager for the US 183-A financing; and


WHEREAS, based on the previously submitted RFQ responses the CTRMA's financial advisor has recommended to the Board of Directors that the following firms comprise the remainder of the syndicate designated to market and sell bonds for US 183-A: JP Morgan Securities, Inc., Morgan Stanley, First Albany, Southwest Securities, Estrada Hinojosa, and Siebert, Brandford, Shank & Co., LLC; and

WHEREAS, the full Board of Directors concurs with the recommendation of the financial advisor and desires to designate the syndicate, including the Senior Manager, for the US 183-A financing.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors designates the following to serve as the syndicate for the financing of the US 183-A project: UBS Financial Services, Inc. as Senior Manager; and JP Morgan Securities, Inc., Morgan Stanley, First Albany, Southwest Securities, Estrada Hinojosa, and Siebert, Brandford, Shank & Co., LLC as the remaining members.

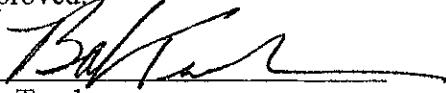
Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 24th day of September, 2003.

Submitted and reviewed by:



C. Brian Cassidy
Legal Counsel for the Central
Texas Regional Mobility Authority

Approved:



Bob Tesch
Chairman, Board of Directors
Resolution Number 03-47
Date Passed 9/24/03

DEFERRED*

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 03-48

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 46 Tex. Admin. Code § 26.01, *et. seq.* (the "RMA Rules"); and

WHEREAS, the Board of Directors of the CTRMA has been constituted in accordance with the Transportation Code and the RMA Rules; and

WHEREAS, Transportation Code Section 370.183 requires regional mobility authorities to: set goals for the award of contracts to disadvantaged businesses and to attempt to meet those goals; attempt to identify disadvantaged businesses that may provide or have the potential to provide supplies, materials, equipment or services to the authority; and give disadvantaged businesses full access to the authority's contract bidding process; and

WHEREAS, regulations of the Federal Highway Administration ("FHWA") also require the development and implementation of certain policies and procedures for DBE participation in projects which receive any federal funding; and

WHEREAS, implementation of policies and procedures to meet these state and federal requirements requires coordination among the authority, TxDOT, and FHWA representatives; and

WHEREAS, staff has developed a Business Opportunity Program and Policy ("BOPP") to implement the CTRMA's program for promoting the use of disadvantaged and small businesses in CTRMA projects, a copy of which is attached as Exhibit A, and staff recommends approval and adoption of the BOPP; and

WHEREAS, staff has developed and seeks approval of a DBE policy statement to forward to FHWA officials to indicate concurrence with federal requirements, a copy of which is attached as Exhibit B; and

WHEREAS, staff has prepared a draft of a memorandum of understanding between the CTRMA, TxDOT, and FHWA which details how the entities will work together to satisfy the requirements of state and federal law and regulations, a copy of which is attached as Exhibit C, and staff seeks authorization to pursue the consummation of same with the other entities;

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the CTRMA hereby approves and adopts the Business Opportunity Program and Policy attached hereto as Exhibit A; and

BE IT FURTHER RESOLVED, that the Board of Directors approves the DBE policy statement attached hereto as Exhibit B and authorizes such statement to be provided to the FHWA; and

BE IT FURTHER RESOLVED, that the Board of Directors approves of the memorandum of understanding attached hereto as Exhibit C and authorizes staff to seek concurrence and execution thereof by TxDOT and the FHWA, provided that if changes or modifications are made to that agreement that the revised version be presented to the Board of Directors for approval.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 24th day of September, 2003.

Submitted and reviewed by:

Approved:

C. Brian Cassidy
General Counsel for the Central
Texas Regional Mobility Authority

Bob Tesch
Chairman, Board of Directors
Resolution Number 03-48
Date Passed 9/24/03

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9/22/03

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

BUSINESS OPPORTUNITY PROGRAM AND POLICY

9/22/03

TABLE OF CONTENTS

I. PURPOSE..... 1

II. APPLICABILITY..... 1

A. DBE PROGRAM1

B. SBE PROGRAM.....2

III. DEFINITIONS2

IV. POLICY STATEMENT AND OBJECTIVES OF BUSINESS OPPORTUNITY PROGRAM.....5

V. GENERAL REQUIREMENTS AND ADMINISTRATION OF BUSINESS OPPORTUNITY PROGRAM5

A. ADMINISTRATION5

B. OUTREACH7

C. DIRECTORIES OF DISADVANTAGED BUSINESSES9

D. GENERAL REQUIREMENTS OF CONTRACTORS/VENDORS....9

VI. DBE PROGRAM REQUIREMENTS AND IMPLEMENTATION10

A. DBE PROGRAM ADOPTION.....10

B. DBE CERTIFICATION.....10

C. DBE GOAL SETTING/DBE ANNUAL GOAL11

D. DBE CONTRACTOR/VENDOR OBLIGATIONS11

VII. SBE PROGRAM REQUIREMENTS AND IMPLEMENTATION12

A. SBE PROGRAM.....12

B. SBE CERTIFICATION12

C. SBE GOALS.....13

D. SBE CONTRACTOR/VENDOR QUALIFICATIONS13

VIII. ENFORCEMENT15

A. COMPLIANCE WITH PROGRAM15

B. CLAIMS OF PROGRAM VIOLATIONS15

C. NOTIFICATION OF TxDOT, DOT AND OTHER AGENCIES.....15

IX. COMPLIANCE AND SEVERABILITY CLAUSE.....15

X. EFFECTIVE DATE.....16

9/22/03

**CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY
BUSINESS OPPORTUNITY PROGRAM AND POLICY**

**I.
PURPOSE**

In accordance with state and federal law, the Central Texas Regional Mobility Authority (the "CTRMA") is required to facilitate and assure the participation of disadvantaged and small businesses in the CTRMA's procurement process. The CTRMA is also generally required to procure its goods and services and construction contracts through a competitive bid process. To facilitate compliance with federal and state laws regarding disadvantaged businesses and competitive bid procurement, the CTRMA Board of Directors adopted Resolution No.[NUMBER], which establishes the Disadvantaged Business Enterprise ("DBE") Policy Statement and this Business Opportunity Program and Policy ("BOPP").

The BOPP incorporates the policies and objectives of state and federal laws, and establishes goals that attempt to monitor and encourage disadvantaged and small businesses to participate in the process and award of governmental contracts. The BOPP will consist of two separately administered programs: (1) the DBE Program; and (2) the Small Business Enterprise (SBE) Program.

**II.
APPLICABILITY**

The policies, procedures and contract clause(s) established under the BOPP apply to CTRMA procurements, bidders and recipients of contracts, and to related subcontracts, to the extent that these provisions are not inconsistent with state or federal law or other rules and regulations.

A. DBE Program: The CTRMA is required, as a condition of receiving federal financial assistance for transportation projects, to provide certain assurances that it will comply with 49 C.F.R. Part 26, which requires the creation of a DBE Program that applies to CTRMA contracts, including roadway construction contracts and related purchases, funded in whole or in part with federal funds received from the United States Department of Transportation ("DOT"), including funds received through the Federal Highway Administration ("FHWA"), or funded in whole or in part with such federal funds received by the CTRMA through the Texas Department of Transportation ("TxDOT"). To comply with the federal regulations, the CTRMA may elect to adopt the federally approved TxDOT DBE Program pursuant to 49 C.F.R. § 26.45(c)(4) and the Recreational Trails Program Guidance (Revised 2 June 2000) of the DOT. The CTRMA may agree to a Memorandum of Understanding ("MOU") between the CTRMA, TxDOT and the FHWA concerning CTRMA adoption and operation of its DBE program under TxDOT's DBE program for contracts involving federal assistance.

9/22/03

B. SBE Program: The SBE Program is created pursuant to Section 370.183 of the Texas Transportation Code and applies to all CTRMA contracts and procurements that do not involve federal financial assistance (i.e. contracts and procurements funded strictly by state, local or private means, or any combination thereof).

**III.
DEFINITIONS**

The following are definitions of terms used in this Program based primarily on definitions found in 49 C.F.R. § 26.5:

Aspirational Goal: A level of SBE participation that the CTRMA will strive to achieve which may be based upon a numeric formula or other milestones.

Availability: The calculated estimate of qualified small business enterprises in a particular trade and/or profession. In defining availability of small business enterprises, a common sense approach with respect to geographical basis, customs that apply to firms and logistics of timely completion of work orders are taken into consideration.

Bidder/Proposer: Any person, firm, partnership, corporation, association or joint venture as herein provided seeking to be awarded an CTRMA contract, award or lease by a competitive process.

Business Enterprise: Any legal entity which is organized to engage in lawful commercial transactions and is actively engaged in such transactions as a means of livelihood, such as a sole proprietorship, partnership or corporation, but not a joint venture except as hereinafter provided.

Commercially Useful Function: Means the DBE/SBE is responsible for a distinct element of the work of a contract and actually manages, supervises, and controls the materials, equipment, employees, and all other business obligations related to the satisfactory completion of the contracted work.

Contract: An award by the CTRMA whereby the CTRMA expends or commits the expenditure of its funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing.

Contractor: One who participates through a contract or subcontract in a transportation construction project.

DBE Goal: A flexible target determined by the CTRMA and/or TxDOT, in accordance with the requirements and formulas set forth in 49 C.F.R. Part 26, and applicable rules promulgated thereunder, based on estimates of the availability of qualified and certified disadvantaged business enterprises ("DBEs") in the applicable marketplace, and known circumstances and conditions. In no case will a goal be construed as constituting a quota.

DRAFT OF

9/22/03

Disadvantaged Business: A minority-owned, woman-owned, or otherwise economically disadvantaged small business in general, used in this BOPP to refer to both DBEs and SBEs, as may be more particularly defined by certifying agencies.

Disadvantaged Business Enterprise ("DBE"): A for-profit small business enterprise: (a) which is at least 51.0 percent owned, as defined herein, by one or more Socially and Economically Disadvantaged Individual(s), or, in the case of any publicly owned business, at least 51.0 percent of the stock of which is owned by one or more Socially and Economically Disadvantaged Individual(s); and (b) whose management and daily business operations are controlled, as defined herein, by one or more of the Socially and Economically Disadvantaged Individual(s) who own it; and (c) which receives appropriate certification status through the appropriate federally-designated or approved DBE certification agency. The Texas Unified Certification Program, administered by TxDOT, is the certifying agency for businesses within the state of Texas.

Good Faith Efforts: Efforts to achieve a goal or other requirements that, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the BOPP.

Joint Venture: An association of two (2) or more persons, partnerships, corporations or any combination thereof, founded to carry on a single business activity, which is limited in scope and duration. The degree to which a joint venture may satisfy the stated DBE goal cannot exceed the proportionate interest of the DBE as a member of the joint venture in the work to be performed by the joint venture. For example, a joint venture for which the DBE contractor is to perform 50.0 percent of the contract work itself shall be deemed equivalent to having DBE participation of 50.0 percent of the work. DBE member(s) of the joint venture must have financial, managerial, or technical skills in the work to be performed by the joint venture.

Minority Business Enterprise (MBE): A business enterprise that is owned and controlled by one or more minority person(s). Minority persons include the ethnic categories listed under the definition of "Socially and Economically Disadvantaged Individuals" in this section. The MBE must also satisfy the owned and controlled provisions set forth in the definitions of "Disadvantaged Business Enterprise" and "Socially and Economically Disadvantaged Individuals."

Prime Contractor: Any person, firm, partnership, corporation, association, or joint venture as herein provided which has been awarded an CTRMA contract or agreement.

Professional Services: Those Services as defined by Chapter 2254 of the Government Code (Professional Services Procurement Act).

Race-and-Gender Conscious: Describes a measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-and-Gender Neutral: Describes a measure or program that is, or can be, used to assist all small businesses.

9/22/03

Small Business Enterprise: As defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto except that a small business shall not include any business or group of businesses controlled by the same Socially and Economically Disadvantaged Individual(s) which has annual average gross receipts in excess of the standards established by the Small Business Administration's regulation under 13 C.F.R. Part 121 for a consecutive three-year period. However, no firm is considered small if, including its affiliates, it averages annual gross receipts in excess of \$16.6 million per year over the previous three (3) fiscal years.

Socially and Economically Disadvantaged Individuals: As included in 49 C.F.R. Part 26, individuals who are citizens of the United States (or lawfully admitted permanent residents), and who are Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act, or individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities and whose 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 business area who are not socially disadvantaged. There shall be a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged, and DBE Program officials may also determine, on a case-by-case basis, that individuals who are not members of one of the following groups are socially and economically disadvantaged:

- a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
- c. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
- d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma, Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, and the U.S. Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- e. "Subcontinent Asian Americans," which include persons whose origins are from India, Pakistan and Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
- f. "Women;" and

9/22/03

- g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Subcontractor: Any named person, firm, partnership, corporation, association or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing, under contract with a prime contractor on a CTRMA contract.

Vendor: One who participates in contracts with and/or procurements by the CTRMA in a transportation construction project.

Women Business Enterprise (WBE): A business enterprise that is owned and controlled by one or more females. The WBE must also satisfy the owned and controlled provisions under the definition of "Disadvantaged Business Enterprise" in this section.

IV.
**POLICY STATEMENT AND OBJECTIVES
OF BUSINESS OPPORTUNITY PROGRAM**

It is the policy of the CTRMA to ensure that disadvantaged businesses, as defined in 49 C.F.R. Part 26 and under this BOPP, have an equal opportunity to receive and participate in CTRMA contracts. It is the policy of the CTRMA never to exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, or national origin. In administering its BOPP, the CTRMA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of federal and state law with respect to individuals of a particular race, color, sex, or national origin. In implementing these policies and objectives, the CTRMA will strive to ensure that the DBE Program is narrowly tailored in accordance with applicable law. This program also incorporates the DBE Policy Statement adopted by the CTRMA Board of Directors in Resolution No. [NUMBER], dated [DATE].

V.
**GENERAL REQUIREMENTS AND ADMINISTRATION
OF BUSINESS OPPORTUNITY PROGRAM**

A. **Administration:** The DBE and SBE programs will be administered through and in accordance with the Business Opportunity Program and Policy. All CTRMA departments, personnel, and/or consultants having or sharing responsibility for awarding CTRMA contracts and/or making procurements, will support and assist in promoting and carrying out this BOPP. Examples of such departments, or consultant services, include Administration, Engineering, Information Technology, Maintenance, Contract Management, Legal and Purchasing].

1. **BOPP Liaison Officer:** The Executive Director will appoint a BOPP Liaison Officer who will report directly to the Executive Director regarding the implementation, status

9/22/03

and compliance with the BOPP. The BOPP Liaison Officer's duties for this BOPP include, but are not limited to, the following:

- (a) implementing, coordinating, administering and monitoring the program;
- (b) developing and presenting annual and other reports as may be requested by the Executive Director or Board of Directors;
- (c) coordinating and conducting outreach efforts with other CTRMA departments, TxDOT, FHWA and other agencies;
- (d) educating and advising the staff as necessary for effective implementation of the BOPP, and the DBE and MWSBE programs;
- (e) developing and maintaining procedures to ensure that disadvantaged businesses are afforded an equitable opportunity to compete on all CTRMA contracts by providing assistance and opportunities through workshops and trade fairs, distributing handbooks, conducting pre-bid/pre-proposal conferences, assuring timely dissemination of bid/contract information;
- (f) developing, administering and enforcing policies, standards, definitions, criteria and procedures to govern the implementation, interpretation, and application of this Program in a manner that is designed to achieve its purposes;
- (g) assuring that listings or directories of small business enterprises are developed, maintained and available to persons seeking to do business with the CTRMA;
- (h) receiving and reviewing inquiries and making recommendations concerning the DBE and/or SBE programs, including concerns about violations and/or abuse of the DBE and/or SBE programs;
- (i) making recommendations for resolution of any issues or concerns and taking appropriate steps to enforce the program, including deciding and imposing appropriate sanctions for violations and/or abuse of the program;
- (j) considering and evaluating whether efforts for DBE and SBE utilization by contractors satisfy the good faith requirements of the BOPP;
- (k) recommending, in cooperation with other departments, appropriate DBE and/or SBE goals and any program changes, which may be appropriate to improve the overall effectiveness of the BOPP;
- (l) ensuring that appropriate provisions of the DBE and/or SBE Program are included in bid proposals and contract specifications;

9/22/03

- (m) periodically reviewing applicable insurance and bonding requirements with a view toward determining, if prudent and feasible, whether established risk/exposure limits may be changed to allow business enterprises, particularly DBEs and MWSBE's, to bid more competitively on all CTRMA contracts;
- (n) compiling information to determine the level of DBE and/or SBE utilization; and
- (o) reviewing contracting requirement and recommending modification of requirements, where appropriate, that may tend to create barriers for minority, women owned and small businesses.

2. **Departmental Responsibilities:** All CTRMA departments, and consultants, when applicable, will cooperate with the BOPP Liaison Officer in the implementation of the goals and intent of this BOPP. However, certain departments and consultants will have particular responsibilities because of the procurement activity. Examples of such departments and consultant services include Engineering, Information Technology, Maintenance and Purchasing. These responsibilities for this BOPP include, but are not limited to, the following:

- (a) assisting the BOPP Liaison Officer in gathering information to determine the availability of qualified disadvantaged businesses, as defined in this BOPP;
- (b) assisting and participating in workshops, trade fairs, outreach seminars, and other similar programs designed to identify and increase the participation of disadvantaged businesses in Authority projects;
- (c) working with the BOPP Liaison and other departments and coordinating with TxDOT, where appropriate, in establishing BOPP goals;
- (d) maintaining appropriate records to keep track of compliance with the BOPP and to be able to present reports concerning the DBE/SBE programs;
- (e) ensuring that applicable provisions of the DBE and/or SBE programs are included in bid proposals and specifications and in contracts awarded;
- (f) assisting in evaluating whether there are opportunities to present bid packages and requests for proposal in a manner that provides DBEs and/or SBEs a maximum opportunity for competitive participation; and
- (g) ensuring that purchasing procedures are consistent with the BOPP.

B. **Outreach:** The CTRMA will maintain and participate in outreach programs that are designed to maximize the opportunities for disadvantaged and small businesses to contract with the CTRMA. The outreach efforts will include, but not be limited to, one or more of the following:

9/22/03

1. **Website:** The CTRMA official website (www.ctrma.org) will include information about its procurement process and how to do business with the CTRMA.
2. **Notice Of Bidding Opportunities:** The CTRMA will advertise bidding opportunities in accordance with the CTRMA Procurement Policy. The CTRMA may advertise in newspapers or other publications that target small, minority-owned, and/or woman-owned businesses. The CTRMA will take reasonable steps to include disadvantaged and small businesses on its mailing lists for the receipt of bid documents.
3. **Assistance In Bidding Process:** Upon request, the CTRMA will assist small, minority-owned, and woman-owned businesses by providing them information regarding bid specifications, contracting opportunities, and prerequisites for bidding on CTRMA contracts.
4. **Structure Of Bidding Opportunities:** When determined to be feasible, the CTRMA will structure its solicitations for bid proposals so that they include bidding opportunities for businesses of varying sizes and delivery schedules and encourage opportunities for disadvantaged and small businesses.
5. **Simplification Or Reduction Of Bonding Requirements:** When determined to be feasible, the CTRMA will simplify or reduce bonding and financing requirements to encourage disadvantaged and small business participation.
6. **Directory For Prime Contractors:** The CTRMA will utilize and refer contractors to the DBE participant directories developed and maintained by TxDOT, to directories maintained by other agencies, and may prepare and maintain one or more of its own directories of disadvantaged and small businesses. The CTRMA will make the directory(ies) available to its prime contractors and known potential prime contractors, and encourage prime contractors to subcontract with the disadvantaged and small businesses.
7. **Encouragement Of Joint Ventures:** The CTRMA may encourage joint ventures between and with businesses that qualify as disadvantaged and small businesses by providing access to it directories.
8. **Use Of Financial Institutions:** The CTRMA will make reasonable efforts to use small, woman-owned or minority-owned financial institutions. The CTRMA will encourage prime contractors to use such institutions.
9. **TxDOT/FHWA Programs:** The CTRMA will use and cooperate with programs administered by TxDOT in its DBE Program.
10. **Program Monitoring:** The CTRMA will keep track of disadvantaged and small business participation in CTRMA contracts, including those with and without specific contract goals. "Participation" by disadvantaged and small businesses for this purpose means that payments have actually been made to the disadvantaged and/or small business. The record will show the commitments and attainments as required by 49 C.F.R. § 27.37. The BOPP Liaison

9/22/03

Officer will monitor the CTRMA's progress toward its annual overall goal as may be required by law or the Executive Director. Progress toward the federal DBE Program goal will be calculated in accordance with 49 C.F.R. § 26.55.

11. **Program Inquiries:** Any questions about the Programs or Policies, including allegations about possible violation and/or abuse of the Programs or Policies, must be submitted to the BOPP Liaison Officer.

C. **Directories and Designations of Disadvantaged Businesses:** As part of CTRMA's efforts to identify and ensure participation of disadvantaged and small businesses on CTRMA projects, the CTRMA will rely on listings (directories) of certified small, woman-owned and minority-owned businesses maintained by TxDOT and other entities and governmental units that satisfy the CTRMA's certification requirements, including the Texas Unified Certification Program for Federal DBE Certification, as administered through TxDOT and the City of Austin's Department of Small and Minority Business Resource (as the designated Texas DBE certifying agency for Hays, Travis, Williamson, Caldwell and Bastrop Counties), or any other recognized certification that the CTRMA finds acceptable.

D. **General Requirements of Contractors/Vendors:**

1. **Good Faith Efforts/Waiver:** Contractors/vendors who propose to perform a contract with the CTRMA that is subject to the DBE Program, using their own work force, and without the use of subcontractors will be required to demonstrate good-faith efforts by submitting information (when requested by the CTRMA) sufficient for the CTRMA to determine the following to effectuate a waiver of applicable BOPP requirements:

- a. That it is a normal business practice of the contractor/vendor to perform the elements of the contract with its own work forces without the use of subcontractors;
- b. That the technical nature of the proposed project does not facilitate subcontracting nor any significant supplier opportunities in support of the project; and/or;
- c. That the contractor/vendor in fact has demonstrated its capabilities to perform the elements of the contract with its own work forces without the use of subcontracts.

The CTRMA may also require the same demonstration by contractors/vendors who propose to perform a contract with the CTRMA that is subject to the SBE Program.

2. **Payment Of Subcontractors In A Timely Manner:** Each contract the CTRMA signs with a prime contractor/vendor will also contain provisions with regard to the timely payment of subcontractors as required by 49 C.F.R. §26.29. The following language is an example of the type of language to be included, however, such language may be subject to modification and approval by the TxDOT:

9/22/03

The contractor agrees to pay its subcontractors for satisfactory performance of their contracts no later than thirty (30) days from its receipt of payment from the CTRMA. The contractor shall also promptly return any retainage payments to subcontractors within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the CTRMA. This clause applies to payments to all subcontractors.

3. **Reasonable Efforts To Use Local DBE/SBE Financial Institutions:** Prime contractors subject to the DBE Program will also be encouraged to make reasonable efforts to identify and use financial institutions owned and controlled by socially and economically disadvantaged individuals in their communities pursuant to 49 C.F.R. § 26.27.

4. **Approval For Replacement of DBE:** A contractor must obtain approval from the CTRMA to substitute another firm for a DBE firm listed on an approved commitment and demonstrate written justification for the substitution, for example, that the original firm is unable or unwilling to carry out the terms of the contract.

VI.
DBE PROGRAM REQUIREMENTS
AND IMPLEMENTATION

A. **DBE Program Adoption:** This DBE Program is created pursuant to 49 C.F.R. Part 26 and applies only to procurements that are federally-assisted and only until such time that all funds from DOT have been expended. As a sub-recipient of federal funds through TxDOT, the Authority may establish a distinct federal DBE Program, or may comply with the federal regulations by adopting the federally approved TxDOT DBE Program.

In order to facilitate the administration of the federal DBE requirements, the Authority, and TxDOT may enter into a Memorandum of Understanding ("MOU") to establish the obligations and responsibilities of the CTRMA, TxDOT and FHWA in each agency's collective efforts to abide by and implement the policies and objectives of the federal DBE regulations. Should the CTRMA adopt the TxDOT DBE Program, it will conduct its DBE Program in accordance with the MOU that is adopted by the CTRMA Board and incorporated herein for all purposes pursuant to 49 C.F.R. § 26.45(c)(4). If the MOU requirements are inconsistent with the DBE Program requirements, the MOU will govern.

B. **DBE Certification:** The CTRMA will ensure that only businesses certified as DBEs are allowed to participate as DBEs in its DBE Program. To be certified as a DBE, a business must meet the definition of Disadvantaged Business Enterprises as set forth in the Definitions section of this Policy and the certification standards set forth at 49 C.F.R. Part 26, Subpart D. The CTRMA will recognize DBE certification by TxDOT, the Texas Unified Certification

9/22/03

Program, and the City of Austin Department of Small and Minority Business Resources (as the Federal DBE certifying entity for Hays, Travis, Williamson, Caldwell, and Bastrop Counties), and other agencies, to the extent approved by TxDOT to process applications for DBE certification.

C. **DBE Goal Setting/DBE Annual Goal:**

1. **Process For Establishing DBE Goal:** The CTRMA will establish a DBE participation goal following the process set forth in 49 C.F.R. § 26.45 or the MOU. The CTRMA will not use quotas in any way in the administration of this DBE Program.
2. **Race- and Gender-Neutral And Race- and Gender-Conscious Participation:** The CTRMA will meet the maximum feasible portion of its overall goal by using race- and gender-neutral efforts of facilitating DBE participation. The CTRMA will adjust the estimated percentage of race- and gender-neutral and race- and gender-conscious participation as needed to reflect actual DBE participation and will track and report race- and gender-neutral and race- and gender-conscious participation separately. For reporting purposes, race- and gender-neutral DBE participation is defined in this BOPP.
3. **Race- and Gender-Neutral Efforts To Achieve Annual DBE Goals:** Race- and gender-neutral DBE participation exists when a DBE: (1) wins a prime contract through customary competitive procurement procedures; (2) is awarded a subcontract on a prime contract that does not carry a DBE goal; or (3) is awarded a subcontract on a prime contract that carries a DBE goal if the prime contractor awarded the subcontract without regard to DBE status.
4. **DBE Contract Goals:** Contract goals may be established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the CTRMA's overall DBE goal that is not projected to be met through the use of race- and gender-neutral efforts. Contract goals may be set only if the CTRMA determines that it will not meet its annual overall DBE participation goal by race and gender neutral efforts, and that the contract at issue will have subcontracting opportunities. In this event, contract goals shall be set in accordance with 49 C.F.R. § 26.51(e), (f) and (g) and race- and gender-neutral efforts shall be increased to achieve the overall goal. If a contract goal is set, the contract must include provisions requiring the contractor to make good faith efforts to achieve the contract goal and may only be awarded to a bidder who agrees to do so. The CTRMA need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBE's to perform the particular type of work). The CTRMA will express its DBE contract goals as a percentage of the total contract, including both federal and any other funds; however, for purposes of reporting to the U.S. DOT, emphasis will be placed on the percentage of federal funds that were ultimately paid to DBEs.
5. **Good Faith Effort:** The CTRMA will make a good faith effort to meet or exceed the goal of this DBE Program, using good faith efforts and the race- and gender-neutral methods described in this Program. Contractors will be required to make good faith efforts to obtain DBE

9/22/03

participation as described in Appendix A to 49 C.F.R. Part 26 and the TxDOT DBE Program, if applicable. The CTRMA will grant no preferences to DBEs in the bidding/contracting process.

D. DBE Contractor/Vendor Obligations: Potential prime contractors on projects involving federal funds will be notified of this policy and must meet the following standards:

1. **Compliance With This Program:** The CTRMA contracts that involve federal financial assistance will include a contract provision requiring the contractor: (a) to encourage the use of DBEs in subcontracting and material supply activities; (b) to prohibit discrimination against DBEs; and (c) to provide a method of reporting race-and gender neutral DBE participation.

2. **Adherence To Equal Opportunity:** When federal financial assistance is involved, each contract the CTRMA signs with a contractor and each subcontract between a prime contractor and a subcontractor will include the following assurance as required by 49 C.F.R. § 26.13:

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 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**VII.
SBE PROGRAM
REQUIREMENTS AND IMPLEMENTATION**

A. SBE Program: The CTRMA SBE Program applies to CTRMA contracts and procurements that do not involve federal financial assistance. In accordance with Section 370.183 of the Texas Transportation Code, the CTRMA Procurement Policy, and consistent with general law, the CTRMA will:

1. set goals for the award of contracts to disadvantaged and small businesses and attempt to meet the goals;
2. attempt to identify disadvantaged and small businesses that provide or have the potential to provide supplies, materials, equipment, or services to the authority; and
3. give disadvantaged and small businesses full access to the authority's contract bidding process, inform the businesses about the process, offer

9/22/03

the businesses assistance concerning the process, and identify barriers to the businesses' participation in the process.

B. SBE Certification: The CTRMA will require SBEs to be certified according to its standards, which may vary from the DBE certification. The CTRMA will recognize as certified SBEs certifications for small, minority-owned, women-owned, historically underutilized, and disadvantaged business enterprises. Such certifications may be provided by one or more of the following agencies or entities: TxDOT; the Texas Unified Certification Program for Federal DBE Certification; the Texas Building and Procurement Commission's Historically Underutilized Business ("HUB") Program Certification; the City of Austin's Department of Small and Minority Business Resources; or any other recognized certification that the CTRMA finds acceptable.

Firms that desire or are required by the CTRMA to be certified for SBE participation must complete and submit a CTRMA SBE Status Certification Affidavit which identifies the status certification and the group providing the certification. The MWSBE status certification is effective for as long as it is effective with the certifying entity, unless terminated earlier by the CTRMA.

C. SBE Goals: The CTRMA will identify overall SBE aspirational goals for the construction, professional services, consulting services and other goods and services procurements. The aspirational goal may generally establish a level of participation that the CTRMA will strive to achieve. The aspirational goal may be based upon a numeric formula and/or based on other factors. During the process of developing SBE goals, the CTRMA may review and consider information on the availability of SBEs in the CTRMA's applicable marketplace, as well as any other information and data which the CTRMA believes is pertinent to goal setting.

1. The overall SBE aspirational goal(s) may be established or reaffirmed on an annual basis and will reflect the CTRMA's commitment to facilitate opportunities for the participation of small business enterprises in the CTRMA procurement process and awards.

2. The goals may be expressed as a broad and general aspiration, as a percentage of the total estimated dollar amount of all contracts and subcontracts to be awarded during the applicable fiscal year, or as a specific percentage of the dollar amount on a given contract. The goal may reflect the CTRMA's estimate of overall SBE participation that is attainable given available CTRMA SBE resources and the performance of the CTRMA in its efforts to achieve previous goals under the Program.

3. If contract specific goals are established, no contract will be executed until the lowest responsible bidder/proposer has achieved or demonstrated an acceptable good-faith effort toward achievement of the SBE goal. If goals are established and are not met, no sanctions will be recommended or imposed provided the successful bidder/proposer can fully demonstrate that he/she made an acceptable good-faith effort, as defined by the CTRMA, to achieve it

9/22/03

D. SBE Contractor/Vendor Obligations: All contracts and specification packages and requests for bids or proposals will incorporate the following provisions specifically or by reference:

1. It is the policy of the CTRMA Board of Directors that disadvantaged and small businesses will have the maximum practicable opportunity to participate in the awarding of CTRMA contracts and related subcontracts.
2. The bidder, proposer, contractor or vendor agrees to employ good-faith efforts to carry out this policy through award of subcontracts to small or disadvantaged business enterprises to the fullest extent consistent with the efficient performance of the contract, and/or the utilization of CTRMA SBE suppliers where feasible. CTRMA contractors are expected to make a good faith effort to solicit bids for subcontractors/suppliers from available CTRMA SBEs.
3. The bidder, proposer, contractor or vendor specifically agrees to comply with all applicable provisions of the CTRMA's SBE Program, and to include Federal requirements when applicable.
4. The contractor/vendor will maintain records, as specified in his/her contract, showing: (1) subcontract/supplier awards, specifically to small business enterprises; (2) specific efforts to identify and award such contracts to small business enterprises; and, (3) submit, when requested, copies of executed contracts to establish actual CTRMA SBE participation and how much DBEs were paid.
5. The contractor/vendor agrees to submit periodic reports of subcontract and/or supplier awards to small business enterprises in such form and manner, and at such time, as the CTRMA shall prescribe and will provide access to books, records and accounts to authorized officials of the CTRMA, state or federal agencies for the purpose of verifying CTRMA SBE participation and good-faith efforts to carry out this SBE policy. All CTRMA contractors may be subject to a post-contract SBE audit. Audit determination(s) may be considered and have a bearing in the evaluation of a contractor's good-faith efforts on future CTRMA contracts.
6. The contractor/vendor will appoint an official or representative knowledgeable as to this Policy and Program to administer and coordinate the contractor's efforts to carry out this SBE policy.
7. Where possible and/or practical, all vendors and/or contractors will make good-faith efforts to subcontract and meet the CTRMA SBE goal. Contractors may be required to provide documentation demonstrating that they have made good-faith efforts, as defined by the CTRMA, in attempting to do so by submitting an acceptable SBE Utilization Statement. Bidders are required to satisfy applicable

9/22/03

SBE Program requirements prior to the award of contract. ~~Bidders that fail to~~
meet these requirements will be considered non-responsive or in non-compliance.

8. Vendors or contractors will report any changes in proposed or actual SBEs, and will make good-faith efforts to replace SBE subcontractors or subconsultants unable to perform on the contract with another SBE.
9. Failure or refusal by a bidder, proposer, contractor or vendor to comply with the SBE provisions herein or any applicable provisions of the SBE Program, either during the bidding process or at anytime during the term of the contract, shall constitute a material breach of contract whereupon the contract, at the option of the CTRMA, may be canceled, terminated or suspended in whole or in part; and, the contractor may be debarred from further contracts with the CTRMA as a non-responsible contractor.

VIII. ENFORCEMENT

- A. **Compliance With Program:** The BOPP Liaison Officer will monitor compliance by all prime contractors with the requirements under these Programs, implement appropriate mechanisms to ensure compliance by all program participants, and verify that the work committed to disadvantaged and small businesses is actually performed by the disadvantaged and/or small business.
- B. **Claims of Program Violations:** Allegations about violations and/or abuse should be made in writing and identify the person making the allegation. The BOPP Liaison Officer will review the information presented and take whatever steps he or she determines to be appropriate under the circumstances to resolve the issues raised by the allegation. The BOPP Liaison Officer may conduct an investigation of the allegations. The CTRMA cannot assure complete confidentiality in conducting its investigation, which may require the disclosure of information to other governmental agencies or affected third parties. Allegations that are made anonymously or verbally will be reviewed as is deemed appropriate. It may not be possible to investigate an issue if insufficient information is provided.
- C. **Notification of TxDOT, DOT and Other Agencies:** The CTRMA will notify TxDOT, FHWA, the DOT and other appropriate agencies of any false, fraudulent, or dishonest conduct in connection with the federal DBE Program, so that TxDOT and/or DOT can take the necessary steps to investigate the alleged conduct as provided in 49 C.F.R. § 26.109.

IX. COMPLIANCE AND SEVERABILITY CLAUSE

It is the intent of the CTRMA to comply with all applicable federal and state laws and regulations and to comply with the TxDOT DBE Program, where applicable. The BOPP will not

9/22/03

apply to contracts that are subject to overriding state or federal laws, regulations, policies or guidelines, including those regarding small, minority-owned, or woman-owned businesses. In the event that an apparent conflict arises between the language contained in this Program and federal, state or local law or ordinance, the language will be construed so as to comply with the federal, state or local law or ordinance.

Nothing in this Business Opportunity Program or Policy should be construed as requiring a set-aside or mandatory quota. Any questions regarding the CTRMA's Business Opportunity Program should be directed to the BOPP Liaison Officer.

**X.
EFFECTIVE DATE**

This Business Opportunity Program and Policy (BOPP) shall become effective on [INSERT DATE], 2003, and apply to any contract or procurement executed thereafter. The CTRMA shall approve any amendment, modification, or replacement of this BOPP by resolution, with such resolution including either an explicit repeal of specific sections and provisions of this BOPP, or a replacement of this BOPP with entirely new provisions.

9/22/03

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY
DBE POLICY STATEMENT

The Central Texas Regional Mobility Authority ("CTRMA") has established a Disadvantaged Business Enterprise ("DBE") program in accordance with regulations of the U.S. Department of Transportation ("DOT"), 49 C.F.R. Part 26. The CTRMA has received, or will receive, federal financial assistance from DOT, and as a condition of receiving this assistance, the CTRMA has signed an assurance that it will comply with 49 C.F.R. Part 26.

It is the policy of the CTRMA to ensure that DBEs, as defined in 49 C.F.R. Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also CTRMA policy:

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

[Name or title of appropriate CTRMA person or office] has been designated as the CTRMA DBE Liaison Officer. In that capacity, [Name or title] is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the CTRMA in its financial assistance agreements with DOT.

The CTRMA has disseminated this policy statement to members of the CTRMA Board of Directors and all of the components of the regional mobility authority. CTRMA has also distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. Such distribution was undertaken via [Specify how distribution to be accomplished].

[Signature of CTRMA Chief Executive Officer]

Date

9/23/03

MEMORANDUM OF UNDERSTANDING

CTRMA ADOPTION OF TxDOT DBE PROGRAM

This Memorandum of Understanding is by and between the **FEDERAL HIGHWAY ADMINISTRATION ("FHWA")**; the **TEXAS DEPARTMENT OF TRANSPORTATION ("TxDOT")**, an agency of the State of Texas; and the **CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY ("the CTRMA")**, a Texas regional mobility authority organized and existing pursuant to Chapter 370, Texas Transportation Code.

WHEREAS, from time to time from FHWA through TxDOT, the CTRMA receives federal funds to assist with the construction of its transportation projects; and

WHEREAS, the CTRMA, as a sub-recipient of federal funds, is required pursuant to 49 C.F.R. Part 26, to implement a program for disadvantaged business enterprises ("DBE"), as defined by 49 C.F.R. §26.5 ("DBE Program"); and

WHEREAS, TxDOT has implemented an approved DBE program pursuant to 49 C.F.R. Part 26; and

WHEREAS, as a condition of receiving federal funds from FHWA through TxDOT, certain aspects of the CTRMA's procurement of construction services are subject to review and/or concurrence by TxDOT; and

WHEREAS, the CTRMA shall undertake roadway construction projects that are substantially similar to those undertaken by TxDOT, and the CTRMA shall construct its projects using substantially the same pool of certified contractors that TxDOT uses; and

WHEREAS, the CTRMA desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

WHEREAS, FHWA, TxDOT and the CTRMA find it appropriate to enter into this Memorandum of Understanding to memorialize the obligations, expectations and rights each has as related to the CTRMA's adoption of the TxDOT DBE Program to meet the federal requirements;

NOW, THEREFORE, FHWA, TxDOT and the CTRMA, in consideration of the mutual promises, covenants and conditions made herein, agree to and acknowledge the following:

(1) TxDOT has developed a DBE Program and annually establishes a DBE goal for Texas that is federally approved and compliant with 49 C.F.R. Part 26 and other applicable laws and regulations.

(2) The CTRMA is a sub-recipient of federal assistance for roadway construction projects and, in accordance with 49 C.F.R. §26.21, must implement a federally approved DBE Program. The CTRMA receives its federal assistance through TxDOT. As a sub-recipient, the CTRMA has the option of developing its own program, or adopting and operating under TxDOT's

9/22/03

approved DBE Program. For a variety of reasons, the FHWA recommends that sub-recipients, such as the CTRMA, adopt state U.S. DOT-approved DBE programs.

(3) The CTRMA and TxDOT procure services from substantially the same pool of certified contractors for the construction of roadways.

(4) This Memorandum of Understanding evidences FHWA's and TxDOT's consent to the adoption of the TxDOT DBE Program by the CTRMA to achieve its DBE participation in CTRMA federally assisted roadway construction projects.

(5) The CTRMA and TxDOT have agreed upon the following delegation of responsibilities and obligations in the administration of the DBE Program adopted by the CTRMA:

(a) The CTRMA will be responsible for project monitoring and data reporting to TxDOT. The CTRMA will furnish to TxDOT any required DBE contractor compliance reports, documents or other information as may be required from time to time to comply with federal regulations. TxDOT will provide the necessary and appropriate reporting forms, if any, to the CTRMA.

(b) The CTRMA will furnish to the Business Opportunity Office ("BOP") of TxDOT, at least three (3) months before letting, the specific work items (bid items) and engineers' estimates for the construction project to be let in order for TxDOT to accurately determine the appropriate DBE Goal, if any, for the CTRMA construction project.

(c) The CTRMA may recommend contract-specific DBE goals, if any, consistent with TxDOT's DBE guidelines and in consideration of the local market and nature of the good or service to be acquired. The CTRMA's recommendation may be that no DBE goals are set on any particular project or portion of a project or that proposed DBE goals be modified. TxDOT will retain authority to establish project goals.

(d) TxDOT will cooperate with the CTRMA in an effort to meet the timing and other requirements of CTRMA projects.

(e) The CTRMA will be solely responsible for the solicitation and structuring of bids and bid documents to procure goods and services for its roadway construction projects and will be responsible for all costs and expenses incurred in its procurements.

(f) The DBEs eligible to participate on TxDOT roadway construction projects will also be eligible to participate on CTRMA roadway construction projects subject to the DBE Program, unless otherwise prohibited from bidding on a CTRMA project under applicable law or the CTRMA's Procurement Policy. The DBEs will be listed on TxDOT's website under the Texas Unified Certification Program.

(g) The CTRMA will conduct investigations and provide reports with recommendations to TxDOT concerning any DBE program compliance issues that may

9/22/03

arise such as Good Faith Effort, Commercially Useful Function, ~~DBE qualification and~~ other similar requirements.

(h) The CTRMA and TxDOT will work together to achieve a mutually acceptable result with regard to Items (b) and (g); however, TxDOT will retain final decision-making authority on those issues.

(i) The CTRMA will designate a liaison officer to coordinate efforts with TxDOT DBE Program administrators and to respond to questions from the public and private sector regarding the CTRMA's administration of the DBE Program through TxDOT.

(j) TxDOT will be responsible for providing the CTRMA with DBE project awards and expense reports, with a quarterly DBE summary report and with a DBE shortfall report to allow the CTRMA to prepare its required quarterly DBE report for FHWA.

(k) TxDOT will be responsible for maintaining a directory of firms eligible to participate in the DBE Program, and providing business development and outreach programs. The CTRMA and TxDOT will work cooperatively to provide supportive services and outreach to DBE firms in the Central Texas area.

(l) The CTRMA will submit quarterly reports to FHWA through the division administration of the Texas Division of FHWA.

(m) The CTRMA will agree to participate in TxDOT-sponsored training classes to include topics on DBE Annual Goals, DBE Construction Project Goal Setting, DBE Contract Provisions, and DBE Contract Compliance, including DBE Commitments, DBE Substitution, and Final DBE Clearance. TxDOT will include DBE contractors performing work on the CTRMA projects in the DBE Education and Outreach Programs.

(6) In the event there is a disagreement between TxDOT and the CTRMA about the implementation of the TxDOT DBE Program by the CTRMA, the parties agree to meet within ten (10) days of receiving a written request from the other party of a desire to meet to resolve any disagreement. The parties will make good faith efforts to resolve any disagreement as efficiently as is reasonably possible. If the parties are not able to resolve any material disagreement to the satisfaction of all parties, any party may terminate this Memorandum of Understanding by written notice to all other parties.

(7) This Memorandum of Understanding becomes effective upon execution by all parties and automatically renews each year unless a party notifies the other parties of its intent to terminate the agreement.

(8) If this Memorandum of Understanding is terminated for any reason, the CTRMA will be allowed reasonable time in which to seek approval for a DBE Program without being deemed not to be in compliance with 46 C.F.R. Part 26, or with an approved DBE Program.

(9) This Memorandum of Understanding applies only to projects for which the CTRMA is a sub-recipient of federal funds. The CTRMA may also implement a Small Business Enterprise

(SBE) policy and program that applies to projects for which it is not a sub-recipient of federal funds and which are not subject to the TxDOT DBE Program. The CTRMA may, at its option, use some aspects of the TxDOT DBE Program and other similar programs in implementing its other policies and programs.

EXECUTED this the ____ day of _____, 2003, by FHWA, TxDOT, and the CTRMA, acting through each duly authorized official.

APPROVED AS TO FORM:

TEXAS DEPARTMENT OF
TRANSPORTATION

By: _____
[TxDOT General Counsel]

By: _____
[TxDOT DBE Program Administrator]

APPROVED AS TO FORM:

CENTRAL TEXAS REGIONAL MOBILITY
AUTHORITY

By: _____
CTRMA General Counsel

By: _____
Executive Director (ALT: Chairman)

U.S. DEPARTMENT OF
TRANSPORTATION, FEDERAL
HIGHWAY ADMINISTRATION – TEXAS
DIVISION

By: _____

LOCKE LIDDELL & SAPP
MEMORANDUM

TO: C. Brian Cassidy

FROM: Erin F. Davis

DATE: September 10, 2003

SUBJECT: Background and specific information related to drafts of Central Texas Regional Mobility Authority ("CTRMA") Business Opportunity Program and Policy ("BOPP"), DBE Policy Statement, and proposed joint Memorandum of Understanding ("MOU").

I. INTRODUCTION

The purpose of this memorandum is to provide background information regarding the federal and state requirements related to the CTRMA's adoption of both a Disadvantaged Business Enterprise ("DBE") and Small Business Enterprise ("SBE") program and policy. The DBE program requirements are dictated by federal law and apply solely to federally funded roadway construction contracts, and the procurement of goods and services pertaining to such contracts. By contrast, the SBE program is required under general Texas state law requirements, and applies to all other contracts and procurements of goods and services that do not involve federal assistance.

II. FEDERAL DBE PROGRAM REQUIREMENTS

This section pertains to sections of the CTRMA Business Opportunity Program and Policy relating to the DBE program requirements and implementation, and also applies to the MOU between Federal Highways Administration ("FHWA"), the Texas Department of Transportation ("TxDOT"), and the CTRMA.

U.S. Department of Transportation ("DOT") DBE regulations require recipients of DOT federal financial assistance for roadway construction, mainly state and local transportation agencies, to establish goals for the participation of disadvantaged entrepreneurs and certify the eligibility of DBE firms to participate in DOT-assisted contracts. Relevant enabling legislation and statute has established that the U.S. DOT DBE program is required in order to remedy discrimination in transportation-related construction industries. However, each DOT-assisted state and local transportation agency is required to establish "narrowly tailored" DBE goals to remedy such discrimination.¹

¹ U.S. Department of Transportation, "The DOT Disadvantaged Business Enterprise (DBE) Program," *available at* <http://osdbuweb.dot.gov/business/mp/miphtml23.html>. The "narrowly tailored" requirement is pursuant to U.S.

As a sub-recipient of federal U.S. DOT funds, through FHWA and as administered through TxDOT, the CTRMA is required as a condition of receiving federal funds for roadway construction² to comply with the requirements of 49 C.F.R. Part 26 ("Participation By Disadvantaged Business Enterprises In Department of Transportation Financial Assistance Programs"). 49 C.F.R. §26.21(c) states that a proposed recipient is not eligible to receive DOT financial assistance unless DOT has approved their DBE program and the recipient is in compliance with the approved program. Further, a recipient must continue the DBE program until all funds from DOT financial assistance have been expended.³

As a practical matter, the CTRMA has two choices for implementing a DOT-approved DBE program: 1) the CTRMA can develop its own DBE program; or 2) the CTRMA can adopt and operate under TxDOT's federally approved DBE program.⁴ For a variety of reasons, mainly in the interest of time, efficiency, and ease, the FHWA recommends that entities like the CTRMA choose to implement a DBE program already approved by DOT. If CTRMA were to choose to implement its own program, this could take considerable time and effort, and could result in a delay of federal funding until such program was approved and in place. By adopting and operating under the TxDOT program, TxDOT will set DBE overall goals; as of August 8, 2003, the TxDOT proposed overall DBE goals for Fiscal Year 2004 are 12.44% for highway design and construction, 14.59% for aviation design and construction, and 6.02% for public transportation.⁵ The end of the 45-day comment period on these proposed DBE goals is September 22, 2003.

The proposed MOU among CTRMA, TxDOT, and FHWA is based upon a similar memorandum entered into among TxDOT, FHWA, and the North Texas Tollway Authority ("NTTA"). The MOU seeks to establish what responsibilities TxDOT and CTRMA will assume regarding administration of the CTRMA DBE program through TxDOT. While the particular procedures of the DBE program compliance and oversight will be based upon future discussions with the TxDOT DBE program administrator and the appropriate FHWA administrator, the requirements as set forth in Section V of the proposed CTRMA BOPP are federal requirements as established by the U.S DOT requirements under 49 C.F.R. Part 26.⁶ As such, the CTRMA is not allowed to modify this section of the proposed BOPP. Finally, the proposed "DBE Policy

DOT's 1999 DBE Program Regulations as amended in light of the U.S. Supreme Court's 1995 decision in *Adarand v. Peña*.

² The particular type of federal funds are explicitly listed in 49 C.F.R. §26.3 (U.S. GPO 2002); "DOT-assisted Contract" is defined as "any contract between recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land." 49 C.F.R. §26.5 (U.S. GPO 2002).

³ 49 C.F.R. §26.21 (U.S. GPO 2002).

⁴ Information based upon meeting with Liz Lang-Miers, attorney with Locke Liddell & Sapp's Dallas office, and lead outside counsel for the NTTA's adoption and implementation of its DBE and SBE programs (meeting on 8/29/03). Ephraim Casares, DBE program director for TxDOT, suggested following the NTTA's Memorandum of Understanding and program model.

⁵ Texas Department of Transportation, "Public Notice – August 8, 2003," available at <http://www.dot.state.tx.us/business/dbepublicnotice.htm>.

⁶ The proposed BOPP is modeled on a similar program created by the NTTA, which appears to have been modeled off of a "sample DBE program" prepared by the U.S. DOT and published as of July 17, 2002. See U.S. Department of Transportation, "Sample DBE Program," available at <http://osdbuweb.dot.gov/business/dbe/index.html>.

Statement" is required to be adopted by the CTRMA Board in accordance with 49 C.F.R. §26.23.⁷

III. SUGGESTED CTRMA SBE PROGRAM

Newly added Section 370.183 of the Texas Transportation Code requires the CTRMA to:

- (1) set goals for the award of contracts to disadvantaged and small businesses and attempt to meet the goals;
- (2) attempt to identify disadvantaged and small businesses that provide or have the potential to provide supplies, materials, equipment, or services to the authority; and
- (3) give disadvantaged and small businesses full access to the authority's contract bidding process, inform the businesses about the process, offer the businesses assistance concerning the process, and identify barriers to the businesses' participation in the process.⁸

Unlike the federal DBE program, there are no set formal requirements regarding a SBE program established to meet the above-listed statutory requirements for entities such as the CTRMA. Under H.B. 3588, new provisions of the Texas Transportation Code relating to the creation of regional mobility authorities define such authorities as a "political subdivision" of the state.⁹ As a "political subdivision," the CTRMA is not subject to requirements under Texas Government Code Chapter 2151 ("Historically Underutilized Businesses"), but is subject to requirements under Texas Government Code Chapter 2154 ("Professional Services Procurement Act").¹⁰ In contrast to the DBE section of the proposed BOPP, the CTRMA has more flexibility regarding the make-up, scope and application of its SBE program. However, such a state program is still limited by federal (and state) case law regarding a "narrowly tailored" program established to remedy past discrimination.

In 2000, TxDOT chose to adopt its HUB program that comports as much as possible with Texas Government Code Chapter 2161 regarding HUB requirements in the procurement of goods and services for TxDOT activities other than highway construction and maintenance.¹¹ Additionally, TxDOT implemented a new, separate SBE program that applies to "all highway construction and maintenance contracts funded entirely with state or local funds."¹² Thus,

⁷ "You [recipient] must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation." See 49 C.F.R. §26.23 (U.S. GPO 2002).

⁸ This statutory charge is identical to state statutory requirements regarding the Texas Department of Transportation (see TEX. TRANSP. CODE § 201.702) and the NTTA (see TEX. TRANSP. CODE § 366.184).

⁹ TEX. TRANSP. CODE § 370.032(a) (H.B. 3588, effective September 1, 2003).

¹⁰ See TEX. GOV'T CODE § 2151.002 (stating that Chapter 2151 applies to "state agencies"); cf. TEX. GOV'T CODE § 2254.002(1) (stating that Chapter 2254 applies to "governmental entities," which includes political subdivisions).

¹¹ 25 TEX. REG. 6805 (July 14, 2000).

¹² 43 T.A.C. § 9.55(a) (Vernon 2002).

TxDOT now administers three separate components of its agency "business opportunities program:"

- 1) the federal DBE component that applies to all contracts funded in whole or in part with federal funds;
- 2) the state HUB component, applying to all department activities other than highway construction and maintenance; and
- 3) a state SBE component applying to all highway construction and maintenance contracts funded entirely with state or local funds.¹³

Finally, the Texas Transportation Commission, in a procedure similar to that required by the federal DBE program, and roughly equivalent to the HUB goal setting procedures, will establish annual goals based on the availability of SBE firms, and such goals will be set in a public forum subject to public comment.¹⁴

TxDOT's current program is only partially instructive regarding activities involving state and local funds only. CTRMA is an entity more like the NTTA in that it is not a state agency, and therefore not subject to the HUB requirements of Chapter 2161 of the Texas Government Code. NTTA has chosen to implement an SBE program that applies to all other NTTA contracts, including those for highway construction and maintenance funded solely with state and local funds. The NTTA originally implemented a "Minority-Women-Small Business Enterprise" ("MWSBE") program, but is in the process of amending its BOPP to expand the SBE program to all small businesses as defined.

The proposed CTRMA SBE program is modeled after the NTTA SBE program. Liz Lang-Miers stressed the importance of having a program that included all small businesses, including those owned by white males, so that the goals established for the programs were not race-and-gender conscious goals, but were race-and-gender neutral in order to pass constitutional muster. In addition, while TxDOT can rely on the State of Texas Disparity Study, it is unclear whether CTRMA, without any region-specific disparity study, or, as a recently formed entity, any historical data regarding discrimination in its activities. However, setting goals for participation by small businesses in general may be a way in which numerical goals may be acceptable. Increasing the level of small business participation would then indirectly increase the level of participation by minority-and-women-owned businesses as well.

Liz Lang-Miers suggested accepting a variety of certifications in order to qualify a business as a "small business enterprise" for CTRMA purposes, including but not limited to recognizing small businesses, minority-and-women-owned businesses, businesses certified as HUBs by the State of Texas, and any disadvantaged business enterprise certified as such. In addition, the CTRMA could choose to accept other certifications as well.

¹³ See generally, 25 TEX. REG. 6805- 6810.

¹⁴ *Id.* at 6808.

IV. CONCLUSIONS AND SUGGESTIONS

If the CTRMA chooses to adopt and operate under the TxDOT DBE program, there is little room for change to the MOU or DBE sections of the BOPP. In addition, after adoption of the MOU and BOPP, representatives from the CTRMA will need to meet with TxDOT and FHWA personnel regarding specific operating procedures (the NTTA did not wish to disclose any of its proposed operating procedures to CTRMA as those procedures have not yet been officially adopted.) Such a meeting is necessary to establish bid letting requirements, reporting requirements, mechanisms for TxDOT setting appropriate DBE goals, and other related issues. In addition, CTRMA will need to appoint a DBE Program Liaison as required by federal U.S. DOT rules.

With regards to the CTRMA SBE program, the CTRMA has more latitude regarding the structure of, and particular procedures for, the program. However, the experiences and program as structured by NTTA, as well as advice from TxDOT, should be instructive as to program structure, implementation, and scope. The CTRMA can adopt an initial SBE program and then subsequently amend it based upon findings of historical discrimination, etc., based upon discussion and recommendations by the appropriate committees and subcommittees of the Board, to be voted on by the Board as a whole.

The most urgent component is the federal DBE component, as that is a prerequisite for receiving federal funds administered by TxDOT. A summary of suggested actions for the CTRMA Board regarding adoption of federal DBE and requirements is as follows:

- 1) Pass a resolution adopting federal DBE policies as drafted in the proposed CTRMA "Business Opportunity Program and Policy;"
- 2) Pass a resolution authorizing CTRMA staff to enter into negotiations with appropriate TxDOT and FHWA personnel to formulate a MOU in a form substantially similar to the draft MOU (which is based upon the NTTA/ TxDOT/ FHWA MOU currently in effect); and
- 3) Pass a resolution adopting the "DBE Policy Statement" (form of draft dictated by federal rules).

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 03-49

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 46 Tex. Admin. Code § 26.01, *et. seq.* (the "RMA Rules"); and

WHEREAS, each of Travis and Williamson Counties (the "Counties") contributed funding for the initial operations of the CTRMA; and

WHEREAS, the CTRMA has secured project specific funds from TxDOT for costs related to US 183-A but has received no assistance from TxDOT for funding of other necessary operational expenses; and

WHEREAS, the CTRMA has a need to explore other permissible sources of funding, including loans, lines of credit, or similar financial transactions; and

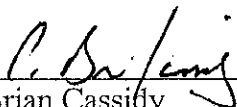
WHEREAS, any such funding options will require negotiation of terms and execution of various agreements;

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors hereby authorizes its staff, financial advisor and legal counsel to consider additional funding options and to preliminarily negotiate the terms and any necessary agreements to secure additional funding, subject to a work authorization to be approved by the Executive Committee; and

BE IT FURTHER RESOLVED, that any such agreements must be presented to the Board of Directors for final approval.

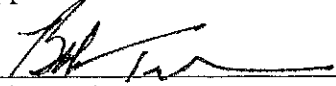
Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 24th day of September, 2003.

Submitted and reviewed by:



C. Brian Cassify
General Counsel for the Central
Texas Regional Mobility Authority

Approved:



Bob Tesch
Chairman, Board of Directors
Resolution Number 03-49
Date Passed 9/24/03

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 03-50

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") is empowered to procure such goods and services as it deems necessary to assist with its operations and to study and develop potential turnpike projects; and

WHEREAS, close scrutiny of CTRMA expenditures for goods and services, including those related to project development, is the responsibility of the Board of Directors and its designees through procedures the board may implement; and

WHEREAS, as the CTRMA prepares to spend significant sums of money in pursuit of the development of its initial project it is appropriate to modify the oversight procedures which have been utilized to date; and

WHEREAS, toward that end the Chairman of the Board has appointed an Interim Budget Committee, comprised of Directors Bob Bennett, Henry Gilmore and Mike Robinson, to develop and implement appropriate oversight procedures; and

WHEREAS, the Interim Budget Committee directed the interim Executive Director to develop a recommendation of procedures to be implemented as additional oversight measures; and

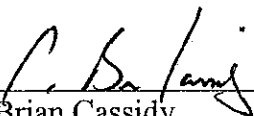
WHEREAS, Mr. Weaver has developed, and the Interim Budget Committee has approved, the procedures described in the memorandum attached as Exhibit A, for review, approval, and oversight of CTRMA expenditures; and

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors authorizes and approves of the implementation of the procedures identified in Exhibit A for the review, approval, and oversight of CTRMA expenditures.

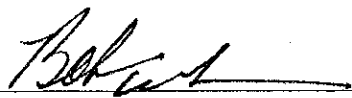
Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 24th day of September, 2003.

Submitted and reviewed by:

Approved:



C. Brian Cassidy
General Counsel for the Central
Texas Regional Mobility Authority



Bob Tesch
Chairman, Board of Directors
Resolution Number 03-50
Date Passed 9/24/03

Memorandum

To: CTRMA Board of Directors
cc: Mike Swayze, Michael J. Weaver
From: Interim Budget Committee
Regarding: CTRMA Interim Budget Committee Recommendations
Date: September 19, 2003

The Interim Budget Committee has developed a set of recommendations related to work authorizations and invoice and payment procedures.

We believe that these procedures will complement the existing level of responsibility and accountability already in place. The Interim Budget Committee will also serve as the Invoice Review Committee. This dual role and proposed procedures will probably change once the Executive Director is in place. Last, the Interim Budget Committee is also preparing to develop a draft operating budget. Again, we will build on the "checks and balance" budget already put in place by Mike Swayze and Mike Weaver to prepare this draft.

RECOMMENDATION

1. The Board should have significant input into the approval of contracts, including scope and budget.
2. Once a contract is approved, work authorization(s) will be written for all or significant portions of the work and budget specified in the contract. Work authorizations will be approved by the Executive Director and the Executive Committee.
3. Invoices, detailing monthly charges and accompanied by a written progress report, will be reviewed by the Executive Director. This review will assure that the work being billed was authorized; the specified work was completed; and, that the charges (including hourly rates and number of hours) comply with both the work authorization and the approved contract budget.
4. The Interim Budget Committee will also serve as an "invoice review committee." As such, the Interim Budget Committee will review and approve all invoices authorized and provided by the Executive Director.

5. The monthly Board Meeting agenda will include a new agenda item: Authorize Monthly Disbursement Report. The monthly disbursement report would be a list of all invoices/charges authorized by the Interim Budget Committee. This report would be reviewed and approved by the entire Board. After approval, checks would be cut and distributed.

6. In order to manage consultant costs and insure that there are not excessive consultant requests for additional services all Board requests to CTRMA outside consultants should be directed through the Executive Director.

DEFERRED*

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 03-51

WHEREAS, Texas Transportation Code Section 361.003 authorizes the creation of a regional mobility authority for the purposes of constructing, maintaining, and operating one or more turnpike projects in a region of this state; and

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 46 Tex. Admin. Code § 26.01, *et. seq.* (the "RMA Rules"); and

WHEREAS, the Board of Directors of the CTRMA has been constituted in accordance with the Transportation Code and the RMA Rules; and

WHEREAS, the Board of Directors desires to hire an Executive Director to serve as the chief administrative officer for the CTRMA; and

WHEREAS, pursuant to Resolution No. 03-32 the staff caused to be published a posting for the Executive Director position for the purpose of soliciting interest and responses from qualified candidates interested in the job; and

WHEREAS, twenty responses were received to the job posting notices; and

WHEREAS, after screening all of the responses and conducting interviews with several of the applicants the CTRMA Board of Directors has determined that _____ is the applicant best qualified for the position of Executive Director of the CTRMA.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the CTRMA hereby selects _____ to serve as its Executive Director; and

BE IT FURTHER RESOLVED, that staff and the general counsel are directed to negotiate terms and conditions for the employment of the Executive Director and to present any employment contract and a summary of the material terms thereof to the Board of Directors for approval.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 24th day of September, 2003.

Submitted and reviewed by:

C. Brian Cassidy
Legal Counsel for the Central
Texas Regional Mobility Authority

Approved:

Bob Tesch
Chairman, Board of Directors
Resolution Number 03-51
Date Passed 9/24/03