

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

RESOLUTION NO. 03-60

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.

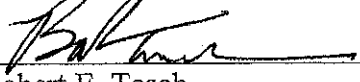
Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 5th day of November, 2003.

Submitted and reviewed by:



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

Approved:



Robert E. Tesch
Chairman, Board of Directors
Resolution Number 03-60
Date Passed 11/05/03

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

BUSINESS OPPORTUNITY PROGRAM AND POLICY

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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. 03-60, 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.

B. SBE Program: The SBE Program is created pursuant to § 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.

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 Texas 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.

Small Business Concern: 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. The definition of "Small Business Concern" applies only to federal DBE certification, and not to the CTRMA state SBE program set forth in Section VII of this BOPP.

Small Business Enterprise: A business is considered a "Small Business Enterprise" for purposes of the CTRMA BOPP if it meets the definition of "small business concern" as set forth in Section 3 of the U.S. Small Business Act. This provision defines a "small business concern" as any business concern (including those limited to enterprises engaged in the business of production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries) which is independently owned and operated and which is not dominant in its field of operation. 13 C.F.R. § 121.201 sets forth the "size standards," in either number of employees or average annual receipts, that define the maximum size that a concern, together with all of its affiliates, may be to be eligible for federal small business programs. The Small Business Administration organizes these specific size standards according to North American Industry Classification System (NAICS) Codes, as published in the Small Business Administration's "Table of Small Business Size Standards."

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, Kirbati, 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
- 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. 03-60, dated November 5, 2003.

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 BOPP. 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 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 BOPP;
- (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 SBE 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, and 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 the BOPP in a manner that is designed to achieve its purposes;
- (g) assuring that listings or directories of SBEs 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 BOPP, 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;
- (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 SBEs, 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 their 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:

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 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 TxDOT:

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 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 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 § 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 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 the goals.

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 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 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 November 5, 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.

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.

The CTRMA Executive Director has been designated as the CTRMA DBE Liaison Officer. In that capacity, the Executive Director 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 publication on the CTRMA web site (www.ctrma.org), by publication, and via reference in targeted mailings to DBE businesses in the Central Texas region.

Mike Heiligenstein, Executive Director

Date



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** ("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

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 Program ("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

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: _____
Efrem Casares, TxDOT DBE Program
Administrator

APPROVED AS TO FORM:

CENTRAL TEXAS REGIONAL MOBILITY
AUTHORITY

By: _____
C. Brian Cassidy
General Counsel

By: _____
Mike Heiligenstein
Executive Director

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

By: _____
[Name & title]