

## **MIDTOWN MANAGEMENT DISTRICT DBE PROGRAM**

### **POLICY STATEMENT**

#### **Section 26.1, 26.23**

#### **Objectives/Policy Statement**

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

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

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

Matt Thibodeaux, Executive Director has been delegated as the DBE Liaison Officer. In that capacity, Matt Thibodeaux 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 MMD in its financial assistance agreements with the Department of Transportation.

MMD has disseminated this policy statement to the Board of Directors and all of the components of our organization. MMD has distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. MMD will also notify area contractors through direct mail, the MMD website, and newspaper advertisements soliciting comments on the district’s annual DBE goals, and the overall DBE program.

\_\_\_\_\_  
Matt Thibodeaux, Executive Director

\_\_\_\_\_  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

The objectives are found in the policy statement on the first page of this program.

### **Section 26.3 Applicability**

MMD is the recipient of federal – aid highway funds authorized under Titles I (Highways), III (Public Transportation) and V (Research) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act – Legacy for Users of 2004 (SAFETEA-LU), Pub. L. 109-59.

### **Section 26.5 Definitions**

MMD will adopt the definitions contained in Section 26.5 for this program.

### **Section 26.7 Non-discrimination Requirements**

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

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

### **Section 26.11 Record Keeping Requirements**

#### Reporting to DOT: 26.11(b)

MMD will report DBE participation to DOT as follows:

MMD will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

#### Bidders List: 26.11(c)

MMD will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

MMD will collect this information in the following ways by including a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts.

MMD will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of MMD, FTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

### **Section 26.13 Federal Financial Assistance Agreement**

MMD has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

MMD shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the [Recipient] of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

This language will appear in financial assistance agreements with sub-recipients.

*[Note: This language is to be used verbatim, as it is stated in 26.13(a).]*

Contract Assurance: 26.13b

MMD will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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

*[Note: This language is to be used verbatim, as it is stated in 26.13(b)]*

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

Since MMD has received a grant of \$250,000 or more in FTA capital assistance in a federal fiscal year, MMD will continue to carry out this program until all funds from DOT financial assistance have been expended. MMD will provide to DOT updates representing significant changes in the program.

### **Section 26.23 Policy Statement**

The Policy Statement is elaborated on the first page of this program.

### **Section 26.25 DBE Liaison Officer (DBELO)**

MMD has designated the following individual as our DBE Liaison Officer:

*Matt Thibodeaux, Executive Director  
Midtown Management District  
410 Pierce, Suite 355  
Houston Texas 77002  
Telephone: (713) 526-7577  
E-mail: [mattt@houstonmidtown.com](mailto:mattt@houstonmidtown.com)*

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that MMD complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to Matt Thibodeaux, Executive Director of MMD, concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of two (2) to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyzes MMD's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Executive Director and Board of Directors on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Participates in pre-bid meetings.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Texas.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains MMD's updated directory on certified DBEs.
16. Analyzes shortfall if the overall goal is not reached. If required, will develop a corrective action plan and submit the plan to DOT/FTA.

#### **Section 26.27 DBE Financial Institutions**

It is the policy of MMD to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions.

MMD continuously researches the availability of DBE owned financial institutions at <http://www.federalreserve.gov/releases/mob>.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

### **Section 26.29 Prompt Payment Mechanisms**

MMD will include the following clause in each DOT (FTA)-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from MMD. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of MMD. This clause applies to both DBE and non-DBE subcontracts.

### **Section 26.31 Directory**

MMD provides instructions to potential bidders to access the State of Texas's online Uniform Certification Program Directory and TxDOT's online Certified Firm Information Directory, which identify all firms eligible to participate as DBEs. These directories list the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE.

The State of Texas Uniform Certification Program Directory is included in Attachment 2.

### **Section 26.33 Overconcentration**

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

### **Section 26.35 Business Development Programs**

MMD does not have a business development program.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

MMD will monitor and provide written certification for every contract/project on which DBEs are participating, ensuring the DBEs are in fact performing the work. MMD will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. MMD will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. MMD will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. MMD will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by conducting monthly field reviews, and DBE-contractor interviews.
4. MMD will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

### **Section 26.39 Small Business Provision**

MMD will foster small business participation in the following ways:

- Make RFPs/solicitations more attractive to small businesses
- Unbundling of contracts
- Simplify or reduce bonding requirements
- Host matchmaking events

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

MMD does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program. This section of the program will be updated every three years.

In accordance with Section 26.45(f) MMD will submit its overall goal to DOT on August 1<sup>st</sup> (of the year of update). Before establishing the overall goal every three years, MMD will consult with the FTA, local agencies and organizations, trade groups, and the local contracting community to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and MMD's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, MMD will publish a notice of the proposed overall goals on the MMD website and in a daily newspaper of general circulation, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice.

Normally, MMD will issue this notice by June 1<sup>st</sup> of the year of update. The notice must include addresses to which comments may be sent and addresses (including offices and the MMD website) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

MMD will begin using our overall goal on October 1 (of the year adopted), unless MMD have received other instructions from DOT. If MMD establishes a goal on a project basis, MMD will begin using this goal by the time of the first solicitation for a DOT-assisted contract for the project.

### **Section 26.49 Transit Vehicle Manufacturers Goals**

N/A – MMD does not provide transit services, does not procure nor owns transit vehicles.

### **Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation**

The breakout of estimated race-neutral participation can be found in Attachment 5 to this program. This section of the program will be updated annually when the goal calculation is updated.

**Section 26.51(d-g) Contract Goals**

MMD does not intend to use contract goals to meet any portion of the overall goal.

**Section 26.53 Good Faith Efforts Procedures**

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A of USC 49 CFR Part 26.

The Executive Director, Matt Thibodeaux is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

Information to be submitted (26.53(b))

MMD treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 30 days of being informed by MMD that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

*Marlon Marshall, Capital Projects Director  
Midtown Management District  
410 Pierce, Suite 355  
Houston, Texas 77002*

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good

faith efforts to do. MMD will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

MMD will not allow termination for convenience. Prime contractors may not terminate DBE subcontractors from projects without “good cause” and written approval from MMD.

MMD will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. MMD will require the prime contractor to notify the DBE Liaison officer immediately of the DBE’s inability or unwillingness to perform and provide reasonable documentation.

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

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

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of MMD to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of \_\_\_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror’s commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

**Section 26.55 Counting DBE Participation**

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

**CERTIFICATION STANDARDS**



**Certification Process – Section 26.61 – 26.73**

MMD is a member of the State of Texas’s Unified Certification Program (TUCP). The TUCP will meet all of the requirements of this section of the DBE Program. The TUCP follows Federal Regulation 49 CFR, Part 26.

All certification activities should be submitted to the TUCP certifying entity that services the Texas county in which the business’ home or corporate headquarters is located. The appropriate TUCP certifying agency and contact information for businesses located in Harris County is and wanting to be certified is listed below:

City of Houston  
Timothy Warren  
611 Walker St.  
Houston, TX 77002  
Phone: 713-837-9035  
Fax: 713-837-9052  
[timothy.warren@cityofhouston.net](mailto:timothy.warren@cityofhouston.net)  
[www.houstontx.gov/obo/](http://www.houstontx.gov/obo/)

**SUBPART F – COMPLIANCE AND ENFORCEMENT**

**Section 26.109 Information, Confidentiality, Cooperation**

MMD will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Pursuant to Texas Statutes, all information submitted by applicant firms with their applications for certifications and affidavits of continued eligibility, including their personal net worth statements, are confidential and exempt from the requirements of Texas public records laws. Notwithstanding any contrary provisions of state or local law, the MMD will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

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

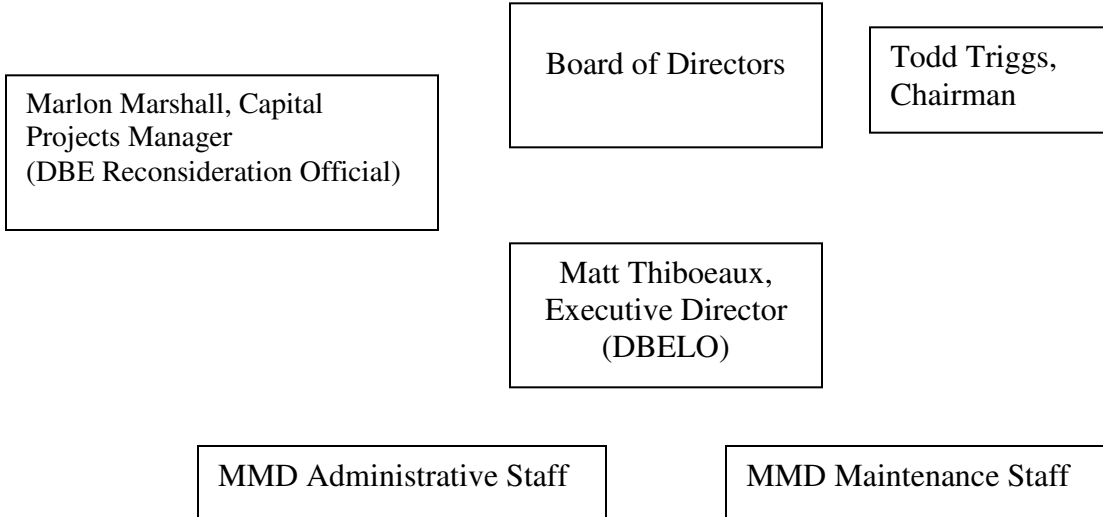
MMD will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

**ATTACHMENTS**

- |              |   |
|--------------|---|
| Attachment 1 | Organizational Chart  |
| Attachment 2 | DBE Directory   |
| Attachment 3 | Monitoring and Enforcement Mechanisms                             |
| Attachment 4 | Overall Goal Calculation  |
| Attachment 5 | Breakout of Estimated Race-Neutral & Race-Conscious Participation |
| Attachment 6 | Form 1 & 2 for Demonstration of Good Faith Efforts                |
| Attachment 7 | Certification Application Forms                                   |
| Attachment 8 | Procedures for Removal of DBE’s Eligibility                       |
| Attachment 9 | Regulations: 49 CFR Part 26                                       |

**Attachment 1**

**Organizational Chart**



**Attachment 2**

**DBE Directory**

A copy of the Texas Unified Certification Program DBE Information Directory can be obtained on the MMD website at <http://www.dot.state.tx.us/business/tucp/default.htm> or a copy can be requested from MMD's DBE Liaison Officer.

**Attachment 3**

**Monitoring and Enforcement Mechanisms**

MMD will monitor and provide written certification for every contract/project on which DBEs are participating, ensuring the DBEs are in fact performing the work.

MMD has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved; and/or
2. Work stoppage; and/or
3. Termination, suspension, or cancellation of the contract in whole or in part; and/or
4. In the event that a bidder fails to achieve the DBE goals of this program, after contract completion, the bidder's eligibility to receive any future MMD contract will be conditioned upon the bidder making up the deficit in DBE participation in such future contracts by having DBEs perform equal to double the dollar value of the deficiency in the DBE requirement in the prior contract.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.

**Attachment 4**

**Section 26.45: Overall Goal Calculation**

The process used by MMD to establish its DBE goal for FY 2014 through 2016 is summarized below. MMD followed a two-step process based on documented evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate in the MMD's FTA assisted contracts, which is referred to as relative availability of DBEs. The goal reflects MMD's expected level of participation by DBEs.

**Step 1 – Establish Base Goal**

MMD considered all the possible FTA assisted contracting opportunities for award in fiscal years 2014 through 2016 and compiled the North American Industry Classification System (NAICS) codes for the work included in the contracting opportunities. MMD also established a market area of Harris counties to determine the total number of DBE ready, willing, and able businesses and all ready, willing, and able businesses available to perform work in the same NAICS codes.

- Column 1 shows the possible NAICS codes for ready, willing and able DBEs.
- Column 2 shows the type of industry the NAICS codes represent.
- Column 3 shows the dollar amount of the potential contracting opportunities by industry code.
- Column 4 shows the percentage of contracting opportunities by industry code.
- Column 5 lists the total number of firms, which is based on Census Data, in each NAICS code.
- Column 6 lists the total number of DBE firms, which is based on the Texas Unified Certification Program DBE database, in each NAICS code.
- Column 7 calculates the base figure for relative availability of DBEs for each industry code, which is the total number of ready, willing and able DBE firms (Column 6) divided by the total number of ready, willing and able Firms (Column 5).
- Column 8 is the result of multiplying the Base Goal percentage (Column 7) by the Possible Contracting Opportunities (Column 3).
- Column 9 is the result of dividing the total Expected DBE Dollars (Column 8) by the total Possible Contracting Opportunities (Column 3).

| NAICS  | Industry Code | Possible Contracting Opportunities | % of the Budget | Total Firms | DBEs | Base Goal | Expected DBE Dollars | DBE Goal |
|--|---------------|------------------------------------|-----------------|-------------|------|-----------|----------------------|----------|
| 221310<br>237310<br>238210<br>238910<br>238990 | Construction  | 2,000,000                          | 100%            | 1,208       | 108  | 8.94%     | \$178,800            |          |
|  |               | \$2,000,000                        | 100%            |             |      |           |                      | 8.94%    |

**Step 2 – Base Goal Adjustment**

Previously, MMD had a FTA-approved DBE goal of 5.8%. Based on the statistical analysis conducted under Step 1, Establish Base Goal, MMD will use the base goal of 8.94% as the overall goal.

### **Public Participation**

On February 26, 2014, MMD notified the public about the overall Disadvantaged Business Enterprise goal to comply with the U.S. Department of Transportation's Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Program (49 Code of Federal Regulation Part 26) Disadvantaged Business Enterprises (DBE), which was required for public transit provided by MMD. The notification was published in the Houston Chronicle and instructed the public that the goal were available for review MMD's web site and physically at MMD offices. MMD accepted public comment for 45 days from the date of publication.

On an annual basis, MMD, as well as other Houston area management districts, participate in informational presentations regarding the Department of Transportation's DBE Program. The presentation included information about each management district's program, established or proposed goals, how to become a DBE, how to provide comments about the proposed goals and upcoming projects with opportunities for DBEs to participate. Attendees were also provided an opportunity to ask questions.

**Attachment 5**

**Section 26.51: Breakout of Estimated  
Race-Neutral & Race Conscious Participation**

MMD will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. MMD uses the following race-neutral means to increase DBE participation:

MMD estimates that, in meeting our overall goal of **8.94%**, MMD will obtain 8.94% from race-neutral participation and 0% from race-conscious participation.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation:

MMD's program will be implemented with entirely race-neutral means. In order to ensure that MMD's DBE program will be narrowly tailored to overcome the effects of discrimination, if MMD uses contract goals, MMD will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and MMD will communicate this change to the program to FTA. If MMD revise its program and use contract goals, MMD will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

MMD does not intend to achieve any DBE participation by using contract goals.

**Attachment 6**

**Forms 1 & 2 for Demonstration of Good Faith Efforts**

*[Forms 1 and 2 should be provided as part of the solicitation documents.]*



## Form 1 Bidder/Respondent/Contractor Certification

**Instructions:** The Bidder/Respondent/Contractor shall complete this form by listing 1) Names of all proposed subcontractors. 2) Contact information, 3) Description of work to be performed/product to be provided, 4) Status as a DBE or non-DBE, 5) Ethnic Code of firm 6) Age of the firm, 7) Annual gross receipts of the firm, 8) % or \$ amount of Total Contract. Those subcontractors which are listed on this form as DBEs must have current certification as a DBE with a participating TUCP certifying agency. The DBE certification must be complete by the time the proposals are submitted. Additionally, those subcontractors which are listed on this form as DBEs must complete Form 2, agreeing to the information listed here.

**Name of Prime Contractor (Bidder/Respondent/Contractor):** \_\_\_\_\_

**Ethnic Codes**

- A)** Black American
- B)** Hispanic American
- C)** Native American
- D)** Sub-continental Asian American
- E)** Asian-Pacific American
- F)** Non-Minority Women
- G)** Other

**Project Name:** \_\_\_\_\_

| 1) Name of Subcontractor | 2) Address, Telephone # of DBE Firm (Including name of contact person) | 3) Description of Work, Services Provided. Where applicable, specify "supply" or "Install" or both. | 4) DBE or non-DBE | 5) Ethnic Code | 6) Age of Firm | 7) Annual Gross Receipts | 8) DBE % or \$ amount of Total Contract |
|--------------------------|--|---|-------------------|----------------|----------------|--------------------------|---|
|                          |  |   |                   |                |                |                          |   |
|                          |  |   |                   |                |                |                          |   |
|                          |  |   |                   |                |                |                          |   |
|                          |  |   |                   |                |                |                          |   |
|                          |  |   |                   |                |                |                          |   |
|                          |  |   |                   |                |                |                          |   |

**This schedule must be completed as instructed above and include every subcontractor proposed on this project.**

The undersigned will enter into a formal agreement with DBE contractors for work listed in this schedule upon execution of a contract with the Owner. The contractor agrees to the terms of this schedule by signing below and submitting the Intent to Perform, as completed by the DBE subcontractor(s). The contractor also certifies that no more than 70% of the work for this project will be subcontracted.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

## Form 2 DBE Subcontractor Certification

**NOTE:** In accordance with 49 CFR (Code of Federal Regulations) Part 26 and Board policy, DBE firms participating in the DBE Program must have "current" certification status with a TUCP Certifying Agency by the due date established for this RFP.

1. TO: (Name of Bidder/Respondent/Prime Contractor) \_\_\_\_\_
2. The undersigned is either currently certified under the Texas Unified Certification Program (TUCP) as a DBE or will be at the time this solicitation is due.
3. The undersigned is prepared to perform the following described work and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both)

\_\_\_\_\_

and at the following price \$\_\_\_\_\_ and/or \_\_\_\_\_% of the total contract amount (should be the same \$ or % found on Form 1).

4. **The DBE subcontractor should complete this section only if the DBE is subcontracting any portion of its subcontract.**  
With respect to the proposed subcontract described above, the undersigned DBE anticipates that\_\_\_\_\_% of the dollar value of this subcontract will be sublet and/or awarded to other contractors. Any and all DBE subcontractors a DBE subcontractor uses must be listed on Form 1 and must also be DBE certified.

\_\_\_\_\_  
Name of DBE Firm

\_\_\_\_\_  
Name of Bidder/Respondent/Prime Contractor

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Attachment 7**

**Certification Application Forms**

*[Include in this attachment a copy of the certification forms that you require the DBE to fill out. Also make sure to include the affidavit of personal net worth.]*

**Attachment 8**

**Procedures for Removal of DBE's Eligibility**

*[Set out the procedures in 26.87 for the removal of DBE's eligibility in this attachment.]*

**Attachment 9**

**Regulations: 49 CFR Part 26**

*[MMD recommends that you attach a copy of the regulations to your program so that the public users to whom you send copies can have it handy.]*

*[You may attach other documents as you see necessary to make your program as complete as possible. The current list of attachments is an example and can be modified at your convenience.]*