

NORTH EAST TEXAS REGIONAL MOBILITY AUTHORITY

BUSINESS OPPORTUNITY PROGRAM AND POLICY

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NORTH EAST TEXAS REGIONAL MOBILITY AUTHORITY BUSINESS OPPORTUNITY PROGRAM AND POLICY

I. PURPOSE

In accordance with state and federal law, the North East Texas Regional Mobility Authority (the "NET RMA") is required to facilitate and assure the participation of disadvantaged and small businesses in the NET RMA's procurement process. The NET RMA 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 NET RMA Board of Directors adopted Resolution No. 07-12, 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 NET RMA 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 NET RMA 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 NET RMA 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 NET RMA through the Texas Department of Transportation ("TxDOT"). To comply with the federal regulations, the NET RMA may elect to adopt the federally approved TxDOT DBE Program pursuant to 49 C.F.R. § 26.45(c)(4). The NET RMA may agree to a Memorandum of Understanding ("MOU") between the NET RMA, TxDOT and the FHWA concerning NET RMA 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 NET RMA 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 NET RMA 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 NET RMA 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 NET RMA whereby the NET RMA 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 NET RMA 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 NET RMA 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 NET RMA 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 NET RMA 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 NET RMA contract.

Vendor: One who participates in contracts with and/or procurements by the NET RMA 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 NET RMA 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 NET RMA contracts. It is the policy of the NET RMA 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 NET RMA 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 NET RMA 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 NET RMA Board of Directors in Resolution No. 07-12, dated June 20, 2007.

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 NET RMA departments, personnel, and/or consultants having or sharing responsibility for awarding NET RMA 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 Chairman or the Executive Director will appoint a BOPP Liaison Officer who will report directly to the Chairman 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 NET RMA 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 NET RMA 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 NET RMA;
- (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 NET RMA 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 NET RMA 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 NET RMA will maintain and participate in outreach programs that are designed to maximize the opportunities for disadvantaged and small businesses to contract with the NET RMA. The outreach efforts will include, but not be limited to, one or more of the following:

1. Website: The NET RMA official website (www.netrma.org) will include information about its procurement process and how to do business with the NET RMA.

2. Notice Of Bidding Opportunities: The NET RMA will advertise bidding opportunities in accordance with the NET RMA Procurement Policy. The NET RMA may advertise in newspapers or other publications that target small, minority-owned, and/or woman-owned businesses. The NET RMA 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 NET RMA will assist small, minority-owned, and woman-owned businesses by providing them information regarding bid specifications, contracting opportunities, and prerequisites for bidding on NET RMA contracts.

4. Structure Of Bidding Opportunities: When determined to be feasible, the NET RMA 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 NET RMA will simplify or reduce bonding and financing requirements to encourage disadvantaged and small business participation.

6. Directory For Prime Contractors: The NET RMA 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 NET RMA 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 NET RMA 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 NET RMA will make reasonable efforts to use small, woman-owned or minority-owned financial institutions. The NET RMA will encourage prime contractors to use such institutions.

9. **TxDOT/FHWA Programs:** The NET RMA will use and cooperate with programs administered by TxDOT in its DBE Program.

10. **Program Monitoring:** The NET RMA will keep track of disadvantaged and small business participation in NET RMA 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 NET RMA'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 NET RMA's efforts to identify and ensure participation of disadvantaged and small businesses on NET RMA projects, the NET RMA 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 NET RMA's certification requirements, including the Texas Unified Certification Program for Federal DBE Certification, as administered through TxDOT, or any other recognized certification that the NET RMA finds acceptable.

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

1. **Good Faith Efforts/Waiver:** Contractors/vendors who propose to perform a contract with the NET RMA 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 NET RMA) sufficient for the NET RMA 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 NET RMA may also require the same demonstration by contractors/vendors who propose to perform a contract with the NET RMA that is subject to the SBE Program.

2. Payment Of Subcontractors In A Timely Manner: Each contract the NET RMA 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 NET RMA. 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 NET RMA. 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 NET RMA 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 NET RMA, 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 NET RMA adopt the TxDOT DBE Program, it will conduct its DBE Program in accordance with the MOU that is adopted by the NET RMA 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 NET RMA 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 NET RMA will recognize DBE certification by TxDOT, the Texas Unified Certification Program, 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 NET RMA will establish a DBE participation goal following the process set forth in 49 C.F.R. § 26.45 or the MOU. The NET RMA 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 NET RMA will meet the maximum feasible portion of its overall goal by using race- and gender-neutral efforts of facilitating DBE participation. The NET RMA 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 NET RMA'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 NET RMA 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 NET RMA 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 NET RMA 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 NET RMA 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 NET RMA 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 NET RMA 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 NET RMA 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 NET RMA SBE Program applies to NET RMA contracts and procurements that do not involve federal financial assistance. In accordance with § 370.183 of the Texas Transportation Code, the NET RMA Procurement Policy, and consistent with general law, the NET RMA 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 NET RMA will require SBEs to be certified according to its standards, which may vary from the DBE certification. The NET RMA 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; or any other recognized certification that the NET RMA finds acceptable.

Firms that desire or are required by the NET RMA to be certified for SBE participation must complete and submit a NET RMA 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 NET RMA.

C. SBE Goals: The NET RMA 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 NET RMA 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 NET RMA may review and consider information on the availability of SBEs in the NET RMA's applicable marketplace, as well as any other information and data which the NET RMA 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 NET RMA's commitment to facilitate opportunities for the participation of small business enterprises in the NET RMA 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 NET RMA's estimate of overall SBE participation that is attainable given available NET RMA SBE resources and the performance of the NET RMA 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 NET RMA, 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 NET RMA Board of Directors that disadvantaged and small businesses will have the maximum practicable opportunity to participate in the awarding of NET RMA 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 NET RMA SBE suppliers where feasible. NET RMA contractors are expected to make a good faith effort to solicit bids for subcontractors/suppliers from available NET RMA SBEs.
3. The bidder, proposer, contractor or vendor specifically agrees to comply with all applicable provisions of the NET RMA'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 NET RMA 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 NET RMA shall prescribe and will provide access to books, records and accounts to authorized officials of the NET RMA, state or federal agencies for the purpose of verifying NET RMA SBE participation and good-faith efforts to carry out this SBE policy. All NET RMA 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 NET RMA 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 NET RMA SBE goal. Contractors may be required to provide documentation demonstrating that they have made good-faith efforts, as defined by the NET RMA, 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 NET RMA, may be canceled, terminated or suspended in whole or in part; and, the contractor may be debarred from further contracts with the NET RMA 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 NET RMA 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 NET RMA 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 NET RMA 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 NET RMA'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 June 20, 2007, and apply to any contract or procurement executed thereafter. The NET RMA 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.