

REGIONAL TRANSIT AUTHORITY

RESOLUTION NO. 66

A RESOLUTION of the Board of the Regional Transit Authority for the Pierce, King and Snohomish Counties region authorizing submittal of the inaugural DBE Program and Goal to the Federal Transit Administration.

WHEREAS, by Resolution No. 54 adopted January 27, 1995, the Board of the Regional Transit Authority ("RTA") established a work program related to Minority/Women/Disadvantaged Business Enterprises (M/W/DBE); and

WHEREAS, a part of that work plan includes the establishment of a Federal DBE Program and Goal; and

WHEREAS, by Resolution No. 59 adopted February 10, 1995, the RTA Board established a draft DBE goal for 1995 for purposes of public review; and

WHEREAS, the submittal of a DBE Program and Goal is required for agencies seeking to become a recipient of grant funding from the U. S. Department of Transportation; and

WHEREAS, the RTA is currently seeking such grant-funded assistance from the Federal Transit Administration ("FTA");

NOW THEREFORE BE IT RESOLVED by the Board of the Regional Transit Authority as follows:

Section 1. The Board of the Regional Transit Authority hereby authorizes the Executive Director to submit the RTA's inaugural DBE Program and Goal to the FTA for review, comment and approval.

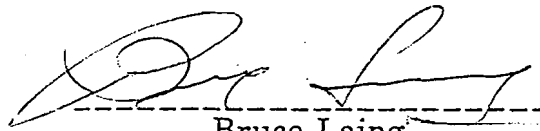
Section 2. Upon submittal to the FTA, notice of the DBE Program and Goal shall be advertised for public review and comment in accordance with federal regulations, and in a manner that reaches affected communities in

Pierce, King and Snohomish Counties. The comment period shall be in effect for sixty (60) days.

Section 3. The M/W/DBE Program Supervisor, who has been designated to serve as the DBE Liaison Officer, will assist the M/W/DBE Task Force in conducting a public hearing to formally receive comments and testimony on the DBE Program and Goal.

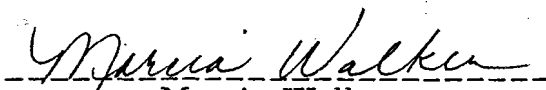
Section 4. Upon completion of the review and comment process and approval of the DBE Program and Goal from the FTA, the Program and Goal shall take effect immediately. The Executive Director, through the M/W/DBE Task Force, shall notify the Board of revisions to the Program that resulted from the review and comment process, shall provide reports to the Board as outlined in the DBE Program, and shall keep the Board informed of DBE Program issues.

ADOPTED by the Board of the Regional Transit Authority for the Pierce, King and Snohomish Counties region at a regular meeting thereof held on the 12th day of May, 1995.



Bruce Laing
Chair of the Board

ATTEST:



Marcia Walker
Board Administrator

**Executive Summary
of the
Disadvantaged Business Enterprise Program for FTA/U. S. DOT
for the
Central Puget Sound REGIONAL TRANSIT AUTHORITY**

I. Policy Statement

Sets forth RTA's policy to ensure that Disadvantaged Business Enterprises (DBEs)¹ will be given the opportunity to participate on contracts to provide goods or services to the RTA to the greatest extent possible. Includes non-discrimination policy applicable to contractors and subcontractors.

II. Designation of DBE Liaison Officer, and Description of Authority, Responsibility and Duties of the Liaison Officer

Executive Director is authorized by Board Resolutions to carry out the policy. The M/W/DBE Program Supervisor is designated by the Executive Director as the RTA's DBE Liaison Officer, who is responsible for the development and daily administration of the DBE Program.

III. Procedures to Ensure Equitable DBE Contracting and Subcontracting Opportunities

Basic procedures include arranging contract sizes and submittal requirements to encourage participation from DBEs; providing financial and technical assistance; directing advertising and solicitation information to DBEs and media that reach DBEs; inform prospective prime contractors of requirements to actively solicit DBEs; and holding meetings to emphasize and explain DBE submittal requirements.

IV. Use of Banks Owned and Controlled by Disadvantaged Individuals

Since there do not presently exist such banks in the State of Washington, prime contractors will be encouraged to use such financial institutions throughout the country.

V. DBE Directory

The Washington State Office of Minority and Women's Business Enterprises (OMWBE) is the sole authority in the state to certify minority, women or disadvantaged business enterprises. The RTA will use the State's Directory of firms and the directory is available to the public by OMWBE.

¹ For purposes of submitting a program to the FTA, most of the references only relate to doing business with and providing opportunities to DBEs. The Board's Resolutions are more inclusive and refer to minority, women and disadvantaged businesses.

VI. Procedures to Ascertain the Eligibility of Businesses
DBEs certified by OMWBE or those certified as socially and economically disadvantaged for the Small Business Administration 8(a) program are eligible to participate under the RTA's DBE Program. Any challenge of a firm's certification must be referred to OMWBE or to the SBA. The RTA may also challenge certification. The RTA reserves the right to evaluate the participation of DBEs identified to perform on contracts, and in those instances where a firm does not demonstrate ownership, control or legitimate performance by disadvantaged individuals, the RTA will not recognize the participation of such firms.

VII. Annual DBE Goal, Method for Developing DBE Contract Goals, and Counting DBE Participation Toward Meeting Goals
In the RTA's inaugural Annual DBE Goal Process, this program and an annual DBE goal of 18 percent are submitted to the FTA for approval. The process includes approval by the RTA Board, and a public hearing to receive comments. In subsequent years it is envisioned that the annual goal will be developed by the Liaison Officer, and approved by the Executive Director after consulting with the Board. DBE contract goals will be set by the Liaison Officer. Participation from DBEs will only be recognized if the firms perform a commercially useful function, and the dollar value of such firm's participation will be counted in a manner consistent with FTA regulations.

VIII. Methods to Ensure that Bidders/Proposers Make Affirmative Efforts to Meet Established DBE Contract Goals
Since the initial contracting activity will focus on consultant contracts, the method by which bidders/proposers will respond to DBE proposal requirements will require proposers to develop a program that will be used to involve DBEs. This submittal requirement will have no minimum goals, but will be evaluated as a factor for award of a contract. Proposers will be aware of the RTA's annual DBE goal and of the availability of DBEs certified by OMWBE. If the proposals are below either the annual goal or availability, Proposers will explain what went into their decision to show such participation.

IX. Methods to Require Compliance with DBE Requirements
Contract provisions to ensure the integrity of the RTA's DBE program will be included in contract documents. Contracts in which the RTA will provide FTA funds will trigger requirements for other governments or quasi-governments or public agencies.

X. Reserved or Set Aside Contracts for DBE Participation
With no fewer than three DBEs available and capable of performing the work, contracts may be reserved or set aside solely for competition

among DBEs, in accordance with guidelines to be established by the Executive Director.

XI. Waivers, Reductions, Suspensions and Revisions

DBE participation may be waived on a particular contract if it is infeasible or improbable for DBEs to participate on a contract; there are few, if any, DBEs available, the economic burden or other risk to the RTA outweighs compliance; or other regulatory provisions conflict with the RTA's DBE program.

XII. Maintenance of Records and Reports

RTA will establish a record keeping and reporting system for various purposes, including compliance with FTA requirements. Quarterly reports on DBE activity will be submitted to the FTA, and an extensive report on M/W/DBE activity will be presented to Executive Director and the RTA Board biannually.

XIII. Definitions

Definitions are provided to explain particular words and phrases used in the program document.

ATTACHMENT A -- RTA Resolution Nos. 19, 52, 54, & 59

These Resolutions have not been included in this draft, but will be included in the submittal to FTA. The Resolutions are as follows:

Resolution No. 19---Establishes procedures for the procurement of materials and the performance of work and services for the RTA.

Resolution No. 52---Establishes a policy to maximize construction contract opportunities for local and disadvantaged contractors and authorizes the Executive Director to develop a contracting plan and procedures to implement the policy for further Board review and action.

Resolution No. 54---Establishes a work program related to Minority/Women/Disadvantaged Business Enterprises (M/W/DBE).

Resolution No. 59---Establishes a draft Federal Disadvantaged Business Enterprises (DBE) goal for 1995 for purposes of public review.

ATTACHMENT B -- Sample Request for Proposal

The sample Request for Proposal has not been included in this draft, but will be included in the submittal to FTA. The draft that will be included is a work in progress, but represents the work product up to this time. It is for discussion purposes with the FTA, and serves as a point of reference for FTA or the public to comment on the RTA's approach to generate DBE participation.

Disadvantaged Business Enterprise Program for FTA/US DOT

Central Puget Sound REGIONAL TRANSIT AUTHORITY

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Disadvantaged Business Enterprise Program

(May 1995)

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**Central Puget Sound Regional Transit Authority
Disadvantaged Business Enterprise Program**

I. Policy Statement

It is the policy of the Central Puget Sound Regional Transit Authority ("Regional Transit Authority" or "RTA") to ensure that Disadvantaged Business Enterprises (DBEs) are afforded the maximum practicable opportunity to participate in the performance of contracts for materials and supplies and/or in providing consulting or construction services to and for the RTA. The Regional Transit Authority will encourage businesses owned by disadvantaged individuals to apply for DBE certification from the Washington State Office of Minority and Women's Business Enterprises (OMWBE); and shall actively solicit and require the active solicitation of bids from certified DBEs for the contracting and subcontracting of goods and services. The RTA, its contractors or subcontractors, will not discriminate on the basis of race, color, national origin, sex, religion, sexual orientation, age, or the presence of any sensory, mental or physical disability, unless based on a bona fide occupational qualification.

These DBE Program Regulations are issued pursuant to the provisions of the Central Puget Sound Regional Transit Authority Resolution Nos. 19, 52, 54 and 59.¹ These regulations are based substantially on the requirements set forth in Title 49 Code of Federal Regulations (CFR) Part 23 of the federal Department of Transportation and are intended to comply with applicable regulations of Section 1003(b) of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991.

II. Designation of Disadvantaged Business Enterprise Liaison Officer, and Description of the Authority, Responsibility and Duties of the Liaison Officer.

The Executive Director of the Regional Transit Authority is authorized by RTA Resolution No 19, Section 14 to take such steps as necessary to ensure that parties contracting with the RTA fully comply with all government regulations pertaining to non-discrimination, equal employment and affirmative action. The Executive Director is further authorized to utilize disadvantaged, minority and women's business requirements in contracting pursuant to government laws, regulations and grant requirements. In accordance with RTA Resolution No. 54, establishing a work program related to Minority/Women/Disadvantaged Business

¹ Copies of which are attached hereto as Attachment A.

Enterprises (M/W/DBE), an M/W/DBE Program Supervisor has been hired to develop and implement a M/W/DBE program.

The M/W/DBE Program Supervisor is hereby designated by the Executive Director as the RTA's DBE Liaison Officer, and shall be responsible for the development and administration of all aspects of the RTA's M/W/DBE Program on a daily basis. The Program Supervisor shall report to the Executive Director of RTA.

The Program Supervisor is expected to act as a top level advisor to the Executive Director, and through the Executive Director, to the RTA Board on M/W/DBE matters. The Program Supervisor shall have adequate staff and resources to administer the RTA's M/W/DBE program. Implementation and monitoring of the RTA's M/W/DBE program is a responsibility of all RTA employees.

III. Procedures To Ensure Equitable DBE Contracting and Subcontracting Opportunities

To ensure equitable DBE contracting and subcontracting opportunities, the Liaison Officer shall develop and implement affirmative action techniques including, but not limited to, the following efforts:

- A. Facilitate the participation of DBEs by arranging contracts by size and type of work, and, if advisable and consistent with applicable state and/or federal laws and regulations, reduce or waive bid bonding and other customary bidding or proposal requirements.
- B. Provide assistance to DBEs in overcoming barriers to contract participation in such areas as bonding, financing, managerial and technical assistance.
- C. Make every reasonable effort to ensure that bids and proposals are solicited from disadvantaged businesses and to increase the participation by DBEs, including advertising contracting opportunities in media that focus on disadvantaged business communities.
- D. Ensure that all prospective bidders or proposers are informed of the requirements to actively solicit and obtain the participation of disadvantaged businesses.
- E. Hold a prebid or preproposal conference to emphasize the DBE submittal requirements and contract provisions, and to explain or respond to questions regarding the DBE submittal requirements and contract provisions.

IV. Use of Banks Owned and Controlled by Disadvantaged Individuals

The Regional Transit Authority's policy encompasses the utilization of banks owned and controlled by disadvantaged individuals in the urbanized portions of the King, Pierce and Snohomish tri-county area and to make every effort to ensure that a meaningful portion of funds under its control is deposited with such banks. At the current time there are no such banks located in the area, and a review of the State of Washington Directory of Certified Minority, Women and Disadvantaged Business Enterprises indicates that there are no such banks certified in the State of Washington. Nevertheless, the RTA will retain its bidding provision to encourage contractors to use the services of banks owned and controlled by disadvantaged individuals in the area and, in the absence of such local area banks, to utilize DBE banks throughout the country.

V. DBE Directory

Pursuant to RCW Chapter 39.19 and WAC 326.20.190, the State Office of Minority and Women Business Enterprises (OMWBE), is the sole authority to perform certification of DBEs in the state of Washington and is responsible for preparing, publishing, disseminating and maintaining a directory identifying all disadvantaged businesses that are certified by the state. The RTA shall use the directory to identify and solicit firms for the procurement process.

The directory is available for sale from OMWBE to the public, and the RTA will assist the public in identifying DBEs.

VI. Procedures to Ascertain the Eligibility of Businesses

A. Certification

Pursuant to the Revised Code of Washington (RCW) Chapter 39.19 the Washington State Office of Minority and Women's Business Enterprises (OMWBE) shall be the sole authority to perform certification of disadvantaged business enterprises throughout the state of Washington. The RTA will utilize the directory provided by OMWBE and firms certified by OMWBE will be eligible to participate and be counted in the RTA's program toward meeting annual and contract goals, consistent with the RTA's DBE Program. In addition, the RTA's DBE Program also includes the participation of firms found to be socially and economically disadvantaged by the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act.

The OMWBE has promulgated certification requirements and procedures in compliance with federal Department of Transportation regulations and guidelines 49 CFR Part 23 and Section 1003(b) of ISTEA. Certification is implemented under the Washington Administrative Code (WAC) 326-20-010 through 326-20-220. Specifically, WAC 326-20-091 through 326-20-096 complies with ISTEA size standards for disadvantaged business enterprises.

The RTA can petition the OMWBE for reconsideration of its certification decisions. Businesses that wish to challenge or appeal certification decisions shall use procedures outlined in WAC 326-20-171 and 172. Under WAC 326-20-200, any individual, firm, agency or other person who believes that a disadvantaged firm does not qualify under the standards of eligibility for certification may file a complaint with the OMWBE.

B. Bid/Proposal & Contract Provisions

The RTA will take all necessary and appropriate steps, through its bid/proposal and contract provisions, to ensure that the DBE program benefits only those firms owned and controlled by disadvantaged individuals. Certification by OMWBE or the SBA, notwithstanding, the RTA will evaluate the participation of DBE firms to assess that the disadvantaged business owners are exercising sufficient ownership and control of their firms and are legitimately performing the scope of work for which the respective firms have been contracted. In the event that such firms do not demonstrate ownership, control and legitimate performance, the participation of such firms shall not be recognized by the RTA, and the RTA will petition that the OMWBE or the SBA review such firm's certification.

VII. Annual DBE Goal, Method for Developing DBE Contract Goals, and Counting DBE Participation Toward Meeting Goals

A. Inaugural Annual DBE Goal Process

Pursuant to RTA Resolution No. 59, a draft Federal DBE goal of 18 percent has been adopted for 1995. This goal was adopted by surveying and averaging the DBE goals of state and local DBE programs operated in the urbanized portions of King, Pierce and Snohomish counties, which comprise the boundaries of the RTA. It is the intention of the RTA Board that this inaugural annual goal will be exceeded on specific contracts awarded by the RTA.

In accordance with the M/W/DBE Program work plan, the RTA's inaugural DBE Program and Goal have been submitted to FTA for approval. In accordance with procedures outlined in 49 CFR 23 the RTA has published a notice in one or more newspapers of general circulation and one or more minority community newspapers announcing the inaugural DBE program and goal, informing the public that a description of how the goal was determined is available for review at the RTA, announcing that [a] public hearing(s) will be held by the RTA Board's M/W/DBE Task Force to take comments, and providing that written comments on the proposed goal will be accepted for 45 days from the date of the notice. After a review of comments that may be received from the public, the DBE Liaison Officer may recommend revisions, if appropriate, to the proposed DBE Program or inaugural annual goal. The RTA's inaugural DBE Program and Goal will be approved by the RTA Board.

B. Annual DBE Goal Process--Subsequent Years

After a year's experience with the inaugural 18% annual goal, the DBE Liaison Officer will review the RTA's experience in meeting the goal and assess the appropriate level for the subsequent annual DBE goal. A reasonably achievable annual goal for participation of disadvantaged businesses in contracts or categories of contracts shall be established as provided below. To the extent relevant information is available, the following factors shall be considered by the Liaison Officer in recommending such annual goals to the Executive Director:

1. The number and types of contracts likely to be awarded by the RTA;
2. The number of disadvantaged businesses likely to be available to compete for such contracts or subcontracts under such contracts;
3. The past levels of participation by disadvantaged businesses in contracts awarded by the RTA, and other governmental agencies operating DBE programs within the boundaries of the RTA;
4. The level of participation recommended by governmental and private entities within the boundaries of the RTA whose purpose is to promote the use of disadvantaged businesses; and

5. Any other relevant information which may be obtained by or provided to the Liaison Officer.

Upon concurrence by the Executive Director, the recommended annual goal will be reported by the Liaison Officer to the RTA Board through the Board's M/W/DBE Task Force. Following a report to the Board on the recommended annual goal, the Liaison Officer shall publish a notice in one or more newspapers of general circulation and one or more minority community newspapers announcing the proposed annual goal, informing the public that a description of how the goal was determined is available for review at the RTA, and providing that comments on the proposed goal will be accepted for 45 days from the date of the notice. After a review of comments that may be received from the public, the DBE Liaison Officer may recommend revisions, if appropriate, to annual goal. A final annual goal shall be determined by the Executive Director.

C. Method for Developing DBE Contract Goals

Besides the annual goal, a reasonably achievable participation goal shall be established for each contract within which there are subcontracting opportunities. Each contract for which the RTA requests bids or proposals shall be reviewed by the DBE Liaison Officer to determine the extent of contracting opportunities available for DBE participation and, based on such review and on the availability of disadvantaged businesses, a participation goal and bid or proposal requirements to meet that goal shall be determined by the Liaison Officer.

D. Counting DBE Participation Toward Meeting Goals

Participation of certified DBE businesses will be acceptable only if such businesses will perform a commercially useful function under the contract. To perform a commercially useful function, a business shall be responsible for executing a distinct element of the work of a contract and for carrying out its responsibilities by performing, managing and supervising the work involved.

A certified DBE business may enter into contracts consistent with normal industry practice. If a DBE business subcontracts or otherwise has another firm perform a significantly greater portion of the work than would be expected on the basis of normal industry practice, then the DBE business would be presumed not to be performing a commercially useful function.

A disadvantaged business that is a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock and regularly sold to the public in the usual course of business.

Participation by businesses acting as brokers (unless such is consistent with normal industry practice), fronts, conduits or similar "pass through" arrangements shall not be acceptable and will not count toward the DBE utilization goal. Businesses determined to be acting under such arrangements may be disqualified from contracting with the RTA as provided in Regional Transit Authority Resolution No. 19, Section 11.

The Liaison Officer shall make all determinations regarding whether a business will perform a commercially useful function and will determine how the participation of DBEs will be counted toward meeting goals within the terms of these Regulations.

Participation of disadvantaged businesses that will perform a commercially useful function will be counted in accordance with the following guidelines:

1. The RTA will count only the dollar value that will actually be paid to the DBEs, whether as contractors, subcontractors or joint venture partners, toward the DBE goal. The dollar value of any work (excluding the procurement of materials and supplies) that the proposed DBEs will contract to other than certified DBEs, regardless of tier, shall **not** be counted toward the DBE goal.
2. The RTA will count the entire dollar value which will be paid to a DBE manufacturer (i.e. a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies).
3. The RTA will count the entire dollar value that will be paid to DBE regular dealers for materials and supplies. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.

4. The following expenditures to DBEs which are not manufacturers or regular dealers may be counted toward meeting the DBE goal:
 - a. **Sixty percent (60%)** of the dollar value of the award or expenditure that will be paid for materials and supplies provided by a DBE that is not a manufacturer or regular dealer.
 - b. Fees or commissions charged for providing a bona fide service such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies,
 - c. Fees charged for delivery of materials and supplies required on the job site (but not the cost of the materials and supplies themselves) when the hauler, trucker or delivery service is not also the manufacturer of the materials and supplies; and
 - d. Fees or commissions charged for providing any bonds or insurance specially required for the performance of a contract.

The RTA, through the Liaison Officer, reserves the right to determine whether any such fee or commission for the aforementioned services is reasonable and not excessive as compared with fees or commissions customarily allowed for similar services.

VIII. Methods to Ensure that Bidders/Proposers Make Affirmative Efforts to Meet Established DBE Contract Goals

For all contracts for which a DBE participation goal or approach has been established, the Liaison Officer shall ensure that the solicitation for bids or proposals informs all bidders or proposers of the bid or proposal requirements with which each bidder must comply.

For the initial solicitation of proposals for consultant contracts to perform Architectural & Engineering and other Professional Services contracts, the RTA intends to request that proposers submit a program that they would use to involve DBE participants. Proposers would have no minimum numerical requirement of DBE participation to meet. Proposers would be advised of the RTA's Annual DBE Goal, and the most recent availability data on M/W/DBEs for the particular contract category. The quality as well as the quantity of DBE participation proposed would be a significant

evaluation factor, and those proposals reflecting a maximum overall effort to utilize DBEs will receive the highest ratings for this evaluation element.

Incorporated by reference, the contents of the proposal will serve as the basis of the scope of work pertaining to DBE participation in the negotiated contract of the successful proposer. The final percentage of DBE participation projected at the conclusion of contract negotiations shall be placed in the contract as the DBE contract goal.

Using this approach, minimum submittal requirements include a statement of the DBE program the proposer will use if awarded the contract; identification of the DBE firms projected to be used on the contract; the dollar or percentage amounts that the DBE firms are projected to earn on the contract; the scopes of work for each firm; the role of each DBE firm relative to the team; the proposer's approach to managing the DBE firms and other firms identified on the proposal; innovative approaches that will be used to benefit the DBE firms, minority and women employees, the proposer's team and the RTA; and any other information that the RTA should consider in evaluating the proposal regarding the DBE participation evaluation factor.

In the event proposals are submitted indicating less than the RTA's annual DBE goal or the availability for the particular contract category, proposers will also submit information on the affirmative efforts used by the proposers to develop the proposer's DBE program.

After bids or proposals are opened, the RTA may, at its discretion, request from the named DBEs, supplemental information pertaining to the portion of work to be performed by DBEs to verify their performance of a commercially useful function. This information may include copies of quotes and bids, quantity and pricing calculations, take off sheets, records of solicitation, plans and schedules by which the DBEs' work would be performed and completed, and other documents or information determined necessary and reasonable by the RTA. In the event the DBE expects to share the resources of a non-DBE, the RTA may require information describing the extent to which facilities, financial assistance, equipment or personnel are to be shared.

IX. Methods To Require Compliance With DBE Requirements

- A. The Liaison Officer shall ensure provisions substantially conforming to the following are included, as appropriate, in all solicitation and bid or proposal documents issued and contract documents executed by the RTA.

1. A provision stating that RTA Resolution No. 19, the RTA DBE Program, and the bid or proposal submittal is incorporated by reference into each such document and that failure to comply with any of the provisions of those documents may be considered a breach of contract.
2. A requirement that during the term of the contract the contractor shall comply with all commitments made in the proposal or bid, as to tasks and dollar amounts, for the participation of disadvantaged businesses and that, in the absence of a waiver, disadvantaged businesses which for any reason no longer remain associated with the contract shall be replaced with other disadvantaged businesses.
3. A provision requiring continuing affirmative efforts by a contractor to maintain the contract participation goal in change orders increasing the contract price and/or scope of work.
4. A provision requiring the contractor to ensure that subcontractors make affirmative efforts to utilize disadvantaged businesses during performance of the contract.
5. A provision requiring the contractor to maintain records and to submit any reports deemed reasonably necessary to enable the RTA to monitor compliance with the commitments for participation by disadvantaged businesses.
6. A provision setting forth sanctions or other actions which may be taken by the RTA in the event the bidder/proposer or contractor fails to comply with the stated requirements for participation by disadvantaged businesses including, but not limited to, the following:
 - a. Refusal to award the contract;
 - b. Rescission of the contract;
 - c. Suspension of the contractor; and
 - d. Withholding of funds until compliance.

B. All contracts or other agreements between the RTA and other governmental or quasi-governmental agencies or public corporations, whereby such agencies or corporations receive FTA funds from or through the RTA for the purpose of contracting with businesses to perform public improvements, shall require such sub-recipients to ensure compliance with

the requirements of the RTA's DBE Program in awarding and administering such contracts in the following manner:

As a term and condition of receiving FTA funds from the RTA:

1. Sub-recipients of funds more than \$250,000 exclusive of transit vehicle purchases or of planning funds more than \$100,000, shall implement a DBE program as delineated in 49 CFR Part 23, Section 23.41 (a)(2) or (3) "Responsibilities of applicants and recipients," and Section 23.45 "Required MBE program components." Such DBE program may be implemented by adopting the RTA's DBE Program, or by the sub-recipient developing its own DBE Program for submittal to and approval by the RTA. A sub-recipient's program shall be consistent with the RTA's DBE Program, Annual Goal and FTA regulations. The DBE Liaison Officer shall provide assistance to sub-recipients in the process of choosing and implementing either approach.
 2. Sub-recipients of funds below \$250,000 or of planning funds below \$100,000 shall adhere to the general requirements of 49 CFR Part 23, Section 23.43 "General requirements for recipients."
 3. All sub-recipients of FTA funds from the RTA shall maintain records and to submit any reports deemed reasonably necessary to enable the RTA to monitor compliance with the commitments for participation by disadvantaged businesses. In addition, all sub-recipients shall provide for and cooperate with the RTA in performing compliance reviews consistent with provisions of 49 CFR Part 23, Section 23.75, "Compliance reviews of recipients."
- C. Transit vehicle manufacturers shall be required to submit certifications to the RTA certifying that they have complied with FTA requirements pursuant to 49 CFR, Part 23, Section 23.45 (g).
- D. Contracts for transit or paratransit services are within the scope of Regional Transit Authority Resolution No. 19. Whenever it is determined by the RTA that it will contract for transit or paratransit services, the appropriate RTA personnel shall advise the DBE Liaison Officer of the decision to contract such services. The DBE Liaison Officer shall establish, with advice and assistance from appropriate RTA personnel, an approach to maximize DBE participation in such transit or paratransit opportunities.

E. Contracts to lease RTA property to others for business purposes are also within the scope of Regional Transit Authority Resolution No. 19. Whenever it is determined by the RTA that such leases will be made available, appropriate RTA personnel shall advise the DBE Liaison Officer of the decision to offer leases for business purposes. The DBE Liaison Officer shall establish, with advice and assistance from appropriate RTA personnel, an approach to maximize DBE participation in such leasing opportunities, consistent with Section III of this program, and the provisions of 49 CFR Part 23, Section 23.43(d), pertaining to actions by recipients concerning lessees. The RTA's DBE Program and Department of Transportation regulations provide that maximum efforts shall be made to provide opportunities for disadvantaged businesses; that DBEs shall not be excluded by long-term, exclusive agreements with non-DBEs for the operation of major transportation related activities, and that such lease opportunities shall be reviewed for the possibility of establishing a goal for DBE lessees pursuant to RTA's Annual DBE Goal.

X. Reserved or Set Aside Contracts For DBE Participation

To ensure increased participation by disadvantaged businesses, contracts or portions thereof, may be reserved or set aside for competition solely among such businesses, in accordance with guidelines to be established by the Executive Director. To ensure competitive procurement, contracts shall not be reserved or set aside unless there are enough disadvantaged businesses, but in any event no fewer than three DBEs, available with capabilities consistent with the requirements of the contract to be reserved.

XI. Waivers, Reductions, Suspensions and Revisions

Particular elements of the Regional Transit Authority's DBE Program may be waived for the following circumstances:

A. If the Liaison Officer concurs that the needed materials, supplies or services are readily available from only one source; that the reasonable and necessary requirements of the contract with that source render subcontracting or other participation by disadvantaged businesses infeasible or improbable; and such source is not currently disqualified from doing business with the RTA or with any other governmental agency based on a failure to comply with disadvantaged business requirements or similar affirmative action requirements. Should

subcontracting or other participation by businesses other than the contractor become necessary however, the contractor shall make affirmative efforts to utilize disadvantaged businesses to the maximum practicable extent to equal or exceed the established annual DBE goal of the RTA.

- B. If the Liaison Officer determines the reasonable and necessary requirements of a contract render subcontracting or other participation by disadvantaged businesses infeasible or improbable; provided, that should subcontracting or other participation by businesses other than the contractor become necessary, the contractor shall make affirmative efforts to utilize disadvantaged businesses to the maximum practicable extent to equal or exceed the established annual DBE goal of the RTA.
- C. If the Liaison Officer determines there are no disadvantaged businesses available to provide the needed materials, supplies or services.
- D. If the Liaison Officer determines compliance with the requirements of Regional Transit Authority Resolutions or the RTA DBE Program, for a specific contract would impose an unwarranted economic burden on, or risk to the RTA, as compared with the degree to which the purposes of the Resolution(s) or Program would be furthered by requiring compliance, the Liaison Officer may recommend waiver, reduction or suspension of particular elements of the Resolution(s) or Program to the Executive Director.
- E. If the Liaison Officer determines a state or federal agency providing funds to the RTA has established requirements with which the RTA must comply to receive such funds and such requirements conflict or are inconsistent with Regional Transit Authority Resolutions or the RTA DBE Program, the Liaison Officer shall identify necessary revisions to particular elements of the Resolution(s) or Program and submit such revisions for review by the Executive Director.

XII. Maintenance of Records and Reports

The RTA is in the process of establishing a record keeping and reporting system and procedures. This system and procedures will comply with FTA guidelines and regulations, and will keep the RTA Board, Executive Director, Staff, and the Public informed of progress in meeting the M/W/DBE Program goals and objectives. Minimum elements that will be included for record keeping and reporting are as follows:

A. Record keeping

Collect information on contracts and subcontracts awarded to M/W/DBEs (certified firms), by type of contract, the names and addresses of the certified firms, the race and gender of the certified firms, the amount of each contract, the actual amount of expenditures for each contract. Collect from prime contractors progress reports on meeting contractual obligations.

B. Reporting

Provide regular reports to FTA and the RTA Board and Executive Director consistent with FTA guidelines and regulations and policies to be established by the RTA Board and Executive Director. For FTA reports, information on DBE awards compared to total FTA-assisted contracts shall be prepared and submitted to the FTA's Office of Civil Rights on a quarterly basis. A report on all M/W/DBE awards compared to RTA contracting activities shall be prepared and submitted to the Executive Director and the RTA Board biannually.

XIII. Definitions

The definitions of particular words and terms used in this DBE Program are as follows:

- A. "Affirmative Efforts" means making vigorous attempts in good faith to contact and contract with disadvantaged businesses.
- B. "Bidder or Proposer" means any person, firm or corporation that formally submits a proposal or bid to provide materials, supplies or services, including expert personal, professional or technical services and construction services, in response to requests for bids or proposals issued by the RTA.
- C. "Disadvantaged Business" means that the State OMWBE has notified a firm that it has met all requirements and eligibility criteria as a disadvantaged business enterprise under state law and Department of Transportation regulations, and the State OMWBE has issued a certification registration number to such a firm; or is a firm so certified by the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act.
- D. "Disadvantaged Business Enterprise" (DBE) means a small business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals,

or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of the socially disadvantaged individuals who own it.

- E. "Compliance" means the condition existing when a bidder or proposer has met the requirements applicable Regional Transit Authority Resolutions, FTA regulations and guidelines, and policies and specifications pursuant to those resolutions, regulations and guidelines.
- F. "Contract" means a mutually binding legal relationship or any modification thereof obligating a contractor to provide materials, supplies or services and the RTA to pay therefor.
- G. "Contractor" means the person, firm or corporation that has a contract with the RTA or serves in a subcontracting capacity with a person, firm or corporation having a contract with the RTA.
- H. "Small Business Concern" means a small business as defined pursuant to Section 3 of the federal Small Business Act and relevant regulations promulgated pursuant thereto except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals that has annual gross receipts more than \$15,370,000, over the previous three fiscal years.
- I. "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:
 - 1. "Black or African Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - 2. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - 3. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;

4. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U S Trust Territories of the Pacific and the Northern Marianas; and
5. "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan and Bangladesh;
6. "Women," regardless of race, ethnicity or origin; and
7. "Other", individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

ATTACHMENT A

**CENTRAL PUGET SOUND
REGIONAL TRANSIT AUTHORITY
RESOLUTION NOS.
19, 52, 54, & 59**

ATTACHMENT B

SAMPLE PROPOSAL DOCUMENTS