



# **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY  
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The Office of Diversity and Inclusion

**Metropolitan Atlanta Rapid Transit Authority  
Disadvantaged Business Enterprise Program**

<b>Table of Contents</b>		<b>Page</b>
Policy Statement (Section 26.1, 26.23)		iii
Program Objectives (Section 26.1)		iv
<b>GENERAL REQUIREMENTS</b>		<b>1</b>
Accountability (Section 26.3)		
Definitions (Section 26.5)		
Non-discrimination Requirements (Sections 26.7 (a) & (b))		
Recordkeeping Requirements (Section 26.11)		
Reporting to DOT (Section 26.11 (b))		
Bidders' List (Section 26.11 (c))		
Federal Financial Assistance Agreement (section 26.13)		
General Assurance (Section 26.13 (a))		
Contract Assurance (Section 26.13 (b))		
<b>ADMINISTRATIVE REQUIREMENTS</b>		<b>7</b>
Program Updates (Section 26.21)		
DBE Liaison Officer (Section 26.25)		
DBE Financial Institutions (Section 26.27)		
Prompt Payment (Section 26.29 (a))		
Retainage Mechanisms (Section 26.29 (b))		
Monitoring & Enforcement – Prompt Payment (Section 26.29 (d))		
DBE Directory (Section 26.31)		
Overconcentration (Section 26.33)		
Business Development (Section 26.35)		
Monitoring Work/Payment to DBEs (Section 26.37)		
<b>SMALL BUSINESS PROVISION (Section 26.39)</b>		<b>14</b>
<b>GOALS, GOOD FAITH EFFORTS, AND COUNTING</b>		<b>15</b>
Set-asides/quotas (Section 26.43)		
Overall Goals (Section 26.45)		
Goal Setting and Accountability (Section 26.47)		
Transit Vehicle Manufacturers (Section 26.49 (a))		
Meeting Goals/Contract Goals (Section 26.51)		
Good Faith Efforts Procedures (Section 26.53)		
Award of Contracts with a DBE Contract Goal (Section 26.53 (a))		
Demonstration of Good Faith Efforts (Section 26.53 (a) & (c))		
Information to be Submitted (Section 26.53 (b))		
Administration Re-consideration (Section 26.53 (d))		
DBE Termination/Replacement (Section 26.53 (f))		

<b>Table of Contents</b>		<b>Page</b>
	Sample Bid Specifications	
	Counting DBE Participation (Section 26.55)	
<b>SUBPART D - CERTIFICATION STANDARDS</b>		<b>20</b>
	Certification Process (Sections 26.61-26.73)	
<b>SUBPART E - CERTIFICATION PROCEDURES</b>		<b>20</b>
	Unified Certification Programs (GUCP) (Section 26.81)	
	Procedures (Sections 26.83-26.91)	
	Re-certifications (Section 26.83)	
	"No Change" Affidavits (Section 26.81)	
	Denials of Initial Certification (Section 26.86)	
	Removal of a DBE's Eligibility (Section 26.87)	
	Certification Appeals (Section 26.89)	
<b>SUBPART F - COMPLIANCE AND ENFORCEMENT</b>		<b>21</b>
	Information, Confidentiality, Cooperation (Section 26.109)	
<b>ATTACHMENTS AND APPENDICES</b>		<b>24</b>
	Attachment 1: Organizational Chart	
	Attachment 2: DBE Directory Link	
	Attachment 3: Contract Monitoring and Compliance Review	
	Attachment 4: Goal Setting Methodology	
	Attachment 5: Good Faith Efforts Forms and Letter of Intent	
	Attachment 6: Georgia Unified Certification Program (GUCP)	
	Attachment 7: DBE Regulations, 49 CFR Part 26 (link on MARTA's web site)	
	Attachment 8: Small Business Program	
	Attachment 9: Outreach Events	
<b>EXHIBITS</b>		<b>25</b>
	Exhibit A: Bidders' List Procedure	
	Exhibit B: Office of Diversity and Inclusion – Org Chart (See Attachment 1)	
	Exhibit C: Diversity and Inclusion / DBE Staff Job Description	
	Exhibit D: Mechanism for Prompt Payment and Enforcement	
	Exhibit E: Transit Vehicle Manufacturers Certification	
	Exhibit F: Counting Provisions for Overall and Contract Goals	
	Exhibit G: DBE Bid Specifications	

## DISADVANTAGED BUSINESS ENTERPRISE PROGRAM POLICY STATEMENT

The Metropolitan Atlanta Rapid Transit Authority (MARTA) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with the regulations of the U.S. Department of Transportation (USDOT) 49 CFR Part 26. MARTA has received federal financial assistance from the USDOT and as a condition of receiving this assistance, MARTA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy and commitment of MARTA that disadvantaged businesses, as defined in 49 CFR Part 26, shall have a level playing field to participate in the performance of contracts financed, in whole or in part, with federal funds. It is also the policy of MARTA to:

- Ensure non-discrimination in the award and administration of USDOT assisted contracts;
- Create a level playing field on which DBE firms can compete fairly for USDOT-assisted contracts;
- Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE firms;
- Assist in the removal of barriers to the participation of DBE firms in USDOT-assisted contracts; and
- Assist in the development of firms to enhance the ability to compete successfully in the marketplace outside of the DBE Program.

The Executive Director of Diversity and Inclusion has been delegated as the DBE Liaison Officer. In that capacity, the Executive Director is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the MARTA in its financial assistance agreements with the Department of Transportation.

MARTA has disseminated this policy statement to local agencies and organizations and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. This is accomplished through email distribution and handouts at various outreach events in which the Authority participates.

As General Manager/CEO of MARTA, I have committed the support and resources needed to make this program a success for small, minority, women, and socio-economically disadvantaged businesses. It has the unwavering support of the Authority's Board of Directors, management staff, and employees in general.

  
\_\_\_\_\_  
Jeffrey A. Varker  
General Manager/CEO

12/19/18  
\_\_\_\_\_  
Date

## **Objectives of Program (Section 26.1)**

The objectives of the Metropolitan Atlanta Rapid Transit Authority's (referred to as MARTA or the Authority) DBE Program are multifaceted. They are oriented towards increasing competition and the generation of economic efficiencies in contract activities. In addition, they are designed to maximize diversity in approach to furthering the development of an expanded small business pool to meet MARTA's changing contract needs. More specifically, our DBE Program objectives are:

1. To provide DBEs with access to tools that allow them to become better business entities that are more competitive for larger segments of the Authority's business opportunities;
2. To partner with select organizations like the Hispanic Chamber of Commerce, National Association of Minority Contractors, and others to maximize resources needed to better serve DBEs;
3. To ensure nondiscrimination in the award and administration of MARTA contracts;
4. To create a level playing field on which DBEs can compete fairly for federally-assisted contracts;
5. To ensure that the Authority's DBE program is narrowly tailored in accordance with applicable law;
6. To ensure that only firms that fully meet the eligibility standards are permitted to participate as DBEs;
7. To help remove barriers to the participation of DBEs in federally-assisted contracts; and
8. To assist in the development of firms that can compete successfully in the marketplace outside of the DBE program.

## **GENERAL REQUIREMENTS**

### **Accountability (Section 26.3)**

The Metropolitan Atlanta Rapid Transit Authority is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

### **Definitions (Section 26.5)**

In accordance with 49 CFR Part 26, MARTA has adopted the definition of terms that follows as they are essential to the effective implementation of the DBE Program.

### **What do the terms used in this part mean?**

**Affiliation** has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

- (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
  - (i) One concern controls or has the power to control the other; or
  - (ii) A third party or parties controls or has the power to control both; or
  - (iii) An identity of interest between or among parties exists such that affiliation may be found.
- (2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

**Alaska Native** means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a father or mother is regarded as an Alaska Native.

**Alaska Native Corporation (ANC)** means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.)

**"Compliance"** means that a recipient has correctly implemented the requirements of this part.

**Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

**Contractor** means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

**Days** mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

**Department or DOT** means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

**Disadvantaged Business Enterprise or DBE** means a for-profit small business concern –  
(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and  
(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**DOT-assisted contract** means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

**Good faith efforts** mean efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

**Immediate family member** means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

**Indian tribe** means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. (See definition of "tribally-owned concern" in this section).

**Joint venture** means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**Native Hawaiian** means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

**Native Hawaiian Organization** means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

**Noncompliance** means that a recipient has not correctly implemented the requirements of this part.

**Operating Administration or OA** means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

**Personal Net Worth** means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: the individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net



worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

**Primary industry classification** means the six digits North American Industrial Classification System (NAICS) code designation, which best describes the primary business of a firm. The NAICS code designations are described in the 65 FR 30836, 66 FR 3825, and Section 121.101(b) of Title 13 of the Code of Federal Regulations.

**Primary recipient** means a recipient which DOT financially assists who passes some or all of its grant funds on to another recipient.

**Principal place of business** means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

**Program** means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

**Race-conscious measure or program** is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

**Race-neutral measure or program** is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

**Recipient** is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

**Secretary** means the Secretary of Transportation or his/her designee.

**Small Business Administration or SBA** means the United States Small Business Administration.

**Small business concern** means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the

Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

**Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) "**Black Americans**," which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) "**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;
  - (iii) "**Native Americans**," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (iv) "**Asian-Pacific Americans**," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (v) "**Subcontinent Asian Americans**," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri-Lanka; and
  - (vi) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

**Tribally owned concern** means any concern at least 51 percent owned by an Indian tribe as defined in this section.

## **Non-discrimination Requirements (Section 26.7(a) & (b))**

The Metropolitan Atlanta Rapid Transit Authority 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, the Metropolitan Atlanta Rapid Transit Authority 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.

## **Record Keeping Requirements (Section 26.11)**

### **Uniform Report of DBE Awards or Commitments and Payments (Section 26.11 (b))**

The Metropolitan Atlanta Rapid Transit Authority will report DBE participation to the FTA using the electronic semi-annual Uniform Report of DBE Awards or Commitments and Payments through the Transit Award Management System (TrAMS).

### **Bidders List (Section 26.11 (c))**

The Metropolitan Atlanta Rapid Transit Authority 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 bidder's 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. We will collect this information by using the proposed procedure (**Exhibit A**):

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

The Metropolitan Atlanta Rapid Transit Authority has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

#### **General Assurances (Section 26.13(a))**

The Metropolitan Atlanta Rapid Transit Authority 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 MARTA 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.**

**Contract Assurance (Section 26.13 (b))**

We 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.*

**ADMINISTRATIVE REQUIREMENTS**

**DBE Program Update (Section 26.21)**

Since the Metropolitan Atlanta Rapid Transit Authority has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

**Policy Statement (Section 26.23)**

The Policy Statement is elaborated on page iii of this program.

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

With respect to the Disadvantaged Business Enterprise Program, ultimate responsibility for implementation belongs to MARTA's General Manager/CEO. The General Manager/CEO has been directed by the MARTA Board of Directors to delegate implementation of the DBE Program to the Office of Diversity and Inclusion. As a result, Paula M. Nash, the Executive Director, Office of Diversity and Inclusion (D & I), MARTA, 2424 Piedmont Road, NE, Atlanta, GA 30324 is the DBE Liaison Officer. She can be reached at 404-848-4639. Her email

address is [pmnash@itsmarta.com](mailto:pmnash@itsmarta.com). She serves as the organization's DBE Liaison Officer and has direct, independent access to the General Manager/CEO. Given that the Executive Director for D&I is a senior management position, the duties of the DBE Liaison Officer are structured to facilitate long and short-range planning for program activities. They include the following:

- ◆ Development of budget for the implementation of coordinated program elements;
- ◆ Staffing of DBE Program related projects;
- ◆ Facilitating liaisons with the SBA, Greater Atlanta Economic Alliance, Georgia Minority Supplier Development Council and other management and technical assistance groups to maximize assistance to DBEs;
- ◆ Identifying interior and external barriers to DBE participation and implementing strategies to overcome them;
- ◆ Implement new and innovative ways of facilitating DBE participation in non-traditional contracts;
- ◆ Gathers and reports statistical data and other information as required by DOT;
- ◆ Reviews third party contract and purchase requisitions for compliance with this program.
- ◆ Works with all departments to set overall all annual goals.
- ◆ Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- ◆ Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
- ◆ Analyzes MARTA's progress toward attainment and identifies ways to improve progress.
- ◆ Participates in pre-bid and pre-proposal meetings.
- ◆ Advise the CEO/governing body of DBE matters and achievements.
- ◆ Chairs the DBE Advisory Committee
- ◆ Determine contractor compliance with good faith efforts.
- ◆ Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- ◆ Plans and participates in DBE training seminars.
- ◆ Certifies DBEs according to the criteria set by DOT and acts as liaison/partner to the Uniform Certification Process in Georgia.

- ◆ Provides outreach to DBEs and community organizations to advise them of opportunities.
- ◆ Maintains MARTA's updated directory on certified DBEs.

**An organization chart displaying the DBELO's position in the organization is found in (Attachment 1) of this program.**

**D & I Office Staffing:**

The Executive Director of D&I is assisted in her DBE Liaison duties by a staff of six (6) persons. As shown in **(Exhibit C)**, the Manager of Supplier Diversity, a management-level official, reports directly to the Executive Director of D & I. The Manager of Supplier Diversity is assisted by five (5) Analysts: Certification Analysts; DBE/Small Business Analysts; and a Supplier Diversity Program Analyst; and oversees the administrative coordination of the Authority's Disadvantaged Business Enterprise Program. The Analysts' monitor overall DBE contract compliance; support the DBE goal; related provisions at the contractor level and process DBE certifications. The Manager of Supplier Diversity handles the day-to-day administrative aspects of managing the DBE program. His/her duties are supportive of the duties of the DBE Liaison Officer. The Manager of Supplier Diversity does the following:

- ◆ Administers the Authority's Disadvantaged Business Enterprise Utilization Program;
- ◆ Evaluates, analyzes and maintains all certifications data on DBE firms; and
- ◆ Works with external organizations and associations. Participates in DBE trade shows, community functions, provides outreach, technical assistance and is FTA's contact for all reporting requirements.

The job description for the Manager of Supplier Diversity and the Analysts is shown at **(Exhibit C)**. The individuals holding these positions devote a significant proportion of their time to the DBE Program.

**Staffing Coordination:**

In executing the DBE Program, the DBE Liaison Officer is provided regular support by various other staff units in the MARTA organization. The Division of Contracts Procurement and Materials (CPM) plays a key role in involving disadvantaged firms in direct contracting. Close coordination is maintained between the DBE staff and CPM to ensure that all known socially, and economically disadvantaged firms receive copies of bid solicitations, requests for

proposals, debriefings, opportunities to review similar contracts, etc. The Accounting Department promptly pays prime contractors within 14 days so that payments to all subcontractors can be made in a timely fashion. The Construction Division, through the Resident Engineer, insures timely input of monthly payments to subcontractors by primes so that DBE participation can be easily tracked. Finally, Legal Services provides advice and guidance on how to overcome barriers encountered before or after a contract is awarded. Should an issue require the input of all the above mentioned, and or other offices, the DBE Liaison Officer holds a meeting with all relevant parties present to effectuate a satisfactory solution in an expeditious time frame.

**Financial Institutions (Section 26.27)**

The Authority ensures that all prime contractors and subcontractors are cognizant of MARTA’s commitment to inclusiveness in the use of minority financial institutions and banks.<sup>1</sup> A listing of said institutions, contact persons, and the services they provide are afforded to firms under contract to the authority for their reference. This is in keeping with the dictates of 49 CFR Part 26.27 (d) (2) and extends to prime contractors located outside the metropolitan Atlanta area. As a result, they are encouraged to be inclusive in their use of minority financial institutions and banks in their respective locales. To date we have identified the following such institutions:

<b>Carver State Bank</b>	<b>Metro City Bank</b>
<b>Citizens Trust Bank</b>	<b>NOA Bank</b>
<b>Embassy National Bank</b>	<b>Quantum National Bank</b>
<b>First IC Bank</b>	<b>Touchmark National Bank</b>

**Prompt Payment and Retention Mechanism (Section 26.29 (a, b & d))**

It is the policy of the Authority that prompt payment is made to all subcontractors. **Each subcontract the prime contractor signs with a subcontractor; and each lower tier contract the subcontractor signs with a lower tier contractor must include the following assurance:** The Contractor is required to pay subcontractors for satisfactory performance of their contracts within 10 days after the Authority has paid the Contractor for such work. The Contractor shall not require retainage of subcontractors that is greater than the retainage required of the Contractor by the Authority. In addition, the Contractor must return any retainage payments to those subcontractors within 14 days after the subcontractor’s work related to this contract is satisfactorily completed; or any retainage payments after incremental acceptance of the

<sup>1</sup> None of the minority financial institutions/banks in Georgia are certified as DBEs.

subcontractor's work by MARTA and Contractor's receipt of the partial retainage payment related to the subcontractor's work. The Contractor's failure to pay subcontractors, as provided herein, shall be a material breach for which the Authority may cancel the Contract. In addition, 49 CFR 26.29 cites that all progress payments not promptly processed by the prime within specified time limits (i.e. 10 days from receipt of payment by MARTA) will bear interest of 1% per month on the unpaid balance. The Contractor shall not delay or postpone payment to a subcontractor without prior written approval from the Executive Director of Diversity and Inclusion.

MARTA has established a **Prompt Payment and Retention Payment Procedure** to ensure that all subcontractors, both DBEs and non-DBEs alike, are paid for work satisfactorily completed within ten days of MARTA's payment to the prime contractor. (**Exhibit D**)

#### **DBE Directory (Section 26.31)**

The Metropolitan Atlanta Rapid Transit Authority utilizes the UCP DBE directory as published by the Georgia Department of Transportation. The link to the Directory can be found on MARTA's web site is: <https://MARTAbiext.dot.ga.gov/analytics/saw.dll?Dashboard>

The directory lists the owner's name, firm's name, address, phone number, email address and North American Industry Classification System code(s).

#### **Over-concentration (Section 26.33)**

The Metropolitan Atlanta Rapid Transit Authority has not identified that overconcentration exists in the types of work that DBEs perform. If the Authority determines that DBE firms are over concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate, the Authority will implement appropriate measures to address over-concentration. The measures will include technical assistance, business development programs, mentor-protégé programs and other measures designed to assist DBEs in performing work outside of the specific field in which it has determined that non-DBEs are unduly burdened.

#### **Business Development Programs (Section 26.35)**

In (**Attachment 9**), there is an outline of the varied outreach programs that have been initiated and/or participated in with various agency partners. These efforts are being engendered to provide management and technical assistance to DBEs. In tandem, the Authority is promoting business development through partnerships with the Greater Atlanta Economic Alliance, and the Georgia Minority Supplier Development Council. These partnerships will include the following:



- ◆ MARTA will participate in the Alliance’s Construction Business Management Institute training module to provide participants with an end user’s perspective. We will designate personnel from the Office of Diversity and Inclusion to address the necessity for detailed contract requirements, criteria used to test the validity of bids, financial planning in correlation with progress payments, the pros and cons of intentionally under bidding and the concepts of responsiveness, as well as, responsibility. This will be supplemented by an examination of bonding and insurance requirements, OFCCP and OSHA requirements, certified payroll and other pertinent contract parameters.
  
- ◆ The Authority’s Office of Diversity and Inclusion (D & I) will work cooperatively with the Alliance in the coordination of outreach programs that target small, minority, women and disadvantaged businesses. In this connection, D & I will actively participate in the planning, development and facilitation of conferences and workshops. This includes forums that are oriented towards encouraging introductions and healthy exchanges of information between vendors, suppliers, subcontractors and primes.
  
- ◆ In tandem with the above, D & I will aggressively communicate information about our partnership and the respective programs offered by the Alliance. We will use special brochures, e-alerts and other means at our disposal to publicize and inform our targeted small business audience. When required, D & I will facilitate the assistance of our Marketing Department in the design, production and distribution of needed printed material or web page references and links.
  
- ◆ The same types of activities carried out with the Alliance will also be carried out with the Georgia Minority Supplier Development Council. MARTA will support these agency’s Programs through the various means mentioned but we will also do the following:
  1. D & I will explain “How to do business with MARTA”, provide vendor mailing list information forms, process certification applications submitted by interested parties and establish one-on-one meetings with MARTA officials for the firms that request such.

2. D & I will conduct one-on-one management and technical assistance sessions with each firm and afford them access to the Authority's DBE Resource Center.
3. MARTA will participate in workshops, seminars, trade fairs, and the like as sponsored by the agencies in question when discussions of historical barriers to DBE participation and ways to overcome them are proactively addressed. An example of such an activity would be the bringing of DBEs and venture capitalist together in an open forum.
4. When an agency affiliated firm plans to bid on a contract like one issued by MARTA in the past, D & I will arrange with the Authority's CP&M Office for the firm to review the previously let contract for information purposes.

These business development efforts will be carried out in a continuous, cooperative and coordinated fashion to ensure that DBEs, minority, women and socially and economically disadvantaged businesses are afforded every opportunity to comprehensively develop the differing aspects of their business.

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

The Metropolitan Atlanta Rapid Transit Authority will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We 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. We will consider similar action under our own legal authorities, including responsible determinations in future contracts. MARTA will utilize the regulations, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities (**Attachment 3**).
3. We 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 performing job site visits on federal-assisted contracts.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Upon notification to the prime contractor of contract award, the contractor is required to execute a schedule of disadvantaged business enterprise participation identifying the DBE subcontractors and scope of work to be performed. The Office of Diversity and Inclusion will then monitor the work performed and the dollar amounts paid to the DBE during the life of the contract. After the contractor has been issued an administrative notice to proceed, the Office of Diversity and Inclusion will request the prime contractor to complete a monthly report via MARTA's Supplier Diversity Management Program system throughout the life of the contract. This system generated report identifies the names of DBEs proposed by the prime contractor, the proposed goods/services the DBE subcontractor is to provide, and the proposed subcontracted DBE dollar amount paid.

Likewise, the DBE subcontractors are requested to confirm payment verification via the Supplier Diversity Management Program system attesting to the work performed and the amount paid as reported by the prime contractor (**Attachment 3**).

In addition to the above, MARTA will require 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 the FTA or DOT. This reporting requirement also extends to any certified DBE subcontractor. MARTA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. MARTA 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 amount stated in the schedule of DBE participation.

### **SMALL BUSINESS PROVISION**

#### **Small Business Participation (Section 26.39)**

The Metropolitan Atlanta Rapid Transit Authority has incorporated the following non-discriminatory element to its DBE program, to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses): (**Attachment 8**)

## **GOALS, GOOD FAITH EFFORTS AND COUNTING**

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

The Metropolitan Atlanta Rapid Transit Authority does not use quotas in any way in the administration of the DBE program.

### **Overall Goals (Section 26.45)**

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 annually.

In accordance with Section 26.45(f) the Metropolitan Atlanta Rapid Transit Authority will submit its overall goal to DOT on August 1 of each year. The overall DBE goal will be submitted in accordance with Group B as established by FTA. Before establishing the overall goal, MARTA will consult with the Georgia Minority Supplier Development Council, city and local municipalities, Georgia Department of Transportation, state agencies, general contractors, and sister agencies to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and MARTA's efforts to establish a level playing field for the participation of DBEs. The consultation will include, but not necessarily be limited to, minority, women's and general contractor groups, community organizations, and other officials or organizations

Following this consultation, we will publish a notice on MARTA's web site and other media outlets, of the proposed overall goals, informing the public that the proposed goal and its rationale are available for review during normal business hours at 2424 Piedmont Road, NE, Atlanta, GA 30324 for 30 days following the date of the notice, and MARTA will accept comments on the goals for 45 days from the date of the notice. This notice will be issued by June 1<sup>st</sup> of the specified year. The notice will include addresses to which comments may be sent and addresses (including office and website) where the proposal may be reviewed.

Our overall goal submission to DOT will include: the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during this public participation process and our responses; and proof of publication of the goal in media outlets listed above.

We will begin using our overall goal on October 1 of the specified year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project. Our goal will remain effective for the duration of the three-year period established and approved by FTA for Group B.

This is exclusive of the financial assistance we will expend in DOT-assisted contracts for the purchase of transit vehicles. The process generally used by the Metropolitan Atlanta Rapid Transit Authority to establish overall DBE goals is as follows:

**Transit Vehicle Manufactures (Section 26.49)**

MARTA will require each transit vehicle manufacturer the following:

1. As a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, each transit vehicle manufacturer will certify that:
  - a. It has submitted the required annual percentage overall goal to FTA; and
  - b. FTA has either approved its annual percentage overall goal or has not disapproved the goal.
2. A distributor or dealer must provide a copy of documentation which verifies that the manufacturer has complied with the provisions of 49 CFR Part 26 for any vehicles the distributor or dealer seeks to provide.
3. The Authority has made these provisions in its bid specifications requiring the above certification from TVMs, distributors, or dealers, as a condition of permission to bid, **(Exhibit E)**.

Alternatively, MARTA may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

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

The breakout of estimated race-neutral and race-conscious participation can be found in **(Attachment 4)** to this program. This section of the program will be updated annually when the goal calculation is updated.

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

The Metropolitan Atlanta Rapid Transit Authority will use contract goals to meet any portion of the overall goal it does not project being able to meet using race-neutral means. Contract goals

are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

MARTA will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We 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 DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

**Evaluation of Good Faith Efforts: (Section 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 to Part 26.

The following personnel are 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 or responsible*; designee from the Department of Legal Services.

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

**Information to be Submitted (Section 26.53 (b))**

MARTA treats bidder/offers' compliance with good faith efforts' requirements as a matter of *responsiveness or responsibility*.

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 contractor's commitment and
6. If the contract goal is not met, evidence of good faith efforts.

**Administrative Reconsideration Official (Section 26.53(d))**

Within 10 days of being informed by MARTA that the bidder/offeror is not (*responsive, responsible*) because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. The Bidder/offeror shall make this request in writing to the following reconsideration official: Department of Legal Services, MARTA 2424 Piedmont Road, NE, Atlanta, GA 30324. He/she can be reach at (404)-848-5220. 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. We 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.

**DBE Termination/Replacement on a Contract with Contract Goals (Section 26.53(f))**

The Metropolitan Atlanta Rapid Transit Authority requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without MARTA's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation. Good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.

4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR parts 180, 215 and 1,200 or applicable state law;
6. You have determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to MARTA its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to MARTA prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise MARTA of why it objects to the proposed termination **(the five-day period may be reduced if the matter is one of public necessity, e.g., safety)**.

In those instances where “good cause” exists to terminate a DBE’s contract, MARTA will require the prime 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. We 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, we 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.

#### **Counting DBE Participation (Section 26.55)**

The Metropolitan Atlanta Rapid Transit Authority will count DBE participation toward overall and contract goals as provided in 49 CFR Part 26.55.

### **SUBPART D - CERTIFICATION STANDARDS**

#### **Certification Process - Section 26.61 – 26.73**

The Metropolitan Atlanta Rapid Transit Authority will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole. MARTA utilize an online certification management system.

For information about the certification process or to apply for certification, firms should contact: Manager, Supplier Diversity, 2424 Piedmont Road, NE, Atlanta, GA 30324. Firms can apply for certification on MARTA's website at <https://marta.diversitysoftware.com/?TN=marta>.

### **SUBPART E - CERTIFICATION PROCEDURES**

#### **Unified Certification Programs (Section 26.81)**

The Metropolitan Atlanta Rapid Transit Authority is a certifying member of a Unified Certification Program (UCP) administered by The Georgia Department of Transportation. The UPC will meet all of the requirements of this section. Attached to this document is a segment of the Memorandum of Understanding between the Georgia Department of Transportation and the Metropolitan Atlanta Rapid Transit Authority (**Attachment 6**). We will utilize all certification procedures.

The Metropolitan Atlanta Rapid Transit Authority will implement the following procedures in accordance with the Georgia Unified Certification Program as outlined in (**Attachment 6**):

- **Procedures for Certification Decisions (Section 26.83)**
- **Re-certification 26.83(a) & (c)**
- **“No Change” Affidavits and Notices of Change (Section 26.83(j))**
- **Denials of Initial Requests for Certification (Section 26.85)**

- **Removal of a DBE's Eligibility (Section 26.87)**
- **Certification Appeals (Section 26.89)**

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

## **SUBPARTS F COMPLIANCE AND ENFORCEMENT**

### **Information, Confidentiality, Cooperation (Section 26.109)**

- A. **Availability of records.** (1) In responding to requests for information concerning any aspect of the DBE program, MARTA complies with provisions of the Georgia Open Records Act, 50-18-70, et seq. The Office of Diversity and Inclusion may make available to the public any information concerning the DBE program, release of which is not prohibited by Georgia or Federal law 1) MARTA will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with federal, state and local law. 2) Notwithstanding any contrary provisions of state or local law, MARTA will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without written consent of the submitter, 3) Notwithstanding any provision of federal or state law, MARTA will not release information that may be reasonably construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, MARTA will transmit this information to DOT in any certification appeal proceeding under 49 CFR 26.89 of this part or to any other state to which the individual's firm has applied for certification under 49 CFR 26.85. 4) The Department will safeguard from disclosure to third parties' information that may reasonably be regarded as confidential business information, consistent with federal, state and local law.
- B. **Confidentiality** of information on complainants. Notwithstanding the provisions of Paragraph (A) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

C. **Cooperation.** All participants in MARTA's DBE program (including, but not limited to, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information by the U.S. Department of Transportation or MARTA. Failure to do so shall be a ground for appropriate action against the party involved.

1. **Intimidation and Retaliation.** No contractor or any other participant in the program is allowed to intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. 1. Individuals who have cause to think that they have been subjected to intimidation or retaliation shall follow the procedures below in processing and resolving a complaint. (i) The complainant shall present the complaint in written form to the Executive Director of Diversity and Inclusion. (ii) The Executive Director of Diversity and Inclusion will contact the complainant to acknowledge receipt of the complaint and advise the complainant of his/her right to bring the alleged incident to the attention of the Federal Transit Administration, United States Department of Transportation, United States Department of Justice, or other federal authority, as applicable, (iii) The Executive Director of Diversity and Inclusion will contact the party alleged to have caused the intimidation or retaliation of the complaint and advise the party of the proceedings and his rights during said proceedings. (iv) The Executive Director of Diversity and Inclusion will immediately notify the administrative head of the operational unit and Federal Transit Administration of the complaint and will conduct an investigation within thirty (30) working days. (v) Within fifteen (15) days of completing the investigation, the Executive Director of Diversity and Inclusion shall submit a written report to the administrative head of the operational unit, with copies to the complainant, the party alleged to have caused the intimidation or retaliation, and the Federal Transit Administration. (vi) All documentation relating to the complaint shall be maintained in the Office of Diversity and Inclusion for a period of five (5) years. 2. Violation of this prohibition will constitute noncompliance with this part.

### **Monitoring Payments to DBEs**

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. Records of payments to DBEs will also be entered into MARTA's electronic data system.

MARTA will perform interim audits of contract payments to DBEs. Then 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.

### **COMPLAINTS OF ALLEGED DISCRIMINATION - CONTRACTOR:**

Any individual, group of individuals or entity who believes that they have been subjected to discrimination or retaliation prohibited on federally funded contracts may file a complaint with MARTA's Office of Diversity and Inclusion. Complaints must be filed in writing within 180 days of the date of the alleged discriminatory act or when the alleged discrimination became known to the complainant. The investigation and resolution of complaints related to construction activity is guided by MARTA's Complaint Procedures in its Affirmative Action Plan.

## ATTACHMENTS

**Attachment 1:** Organizational Chart

**Attachment 2:** DBE Directory (link is on MARTA's web site)

<http://www.dot.ga.gov/doingbusiness/dbePrograms/Pages/default.aspx>

**Attachment 3:** Monitoring and Enforcement Mechanisms/Legal Remedies

**Attachment 4:** Goal Setting Methodology

**Attachment 5:** Good Faith Efforts Forms and Letter of Intent

**Attachment 6:** Georgia Unified Certification Program (GUCP)

Certification Application (link on MARTA's web site)

<https://marta.diversitysoftware.com/?TN=marta>

**Attachment 7:** DBE Regulation, 49 CFR Part 26 (link on MARTA's web site)

<http://osdbuweb.dot.gov/DBEProgram/>

**Attachment 8:** Small Business Program

**Attachment 9:** Outreach Events

## EXHIBITS

- Exhibit A:** Bidders' List Procedure
- Exhibit B:** Office of Diversity and Inclusion – Org. Chart (See Attachment 1)
- Exhibit C:** Office of Diversity and Inclusion / DBE Staff Job Description
- Exhibit D:** Mechanism for Prompt Payment and Enforcement
- Exhibit E:** Transit Vehicle Manufacturers Certification
- Exhibit F:** Counting Provisions for Overall and Contract Goals
- Exhibit G:** DBE Bid Specifications