

**MEMORANDUM OF UNDERSTANDING
REGARDING THE ADOPTION OF THE TEXAS DEPARTMENT OF
TRANSPORTATION'S FEDERALLY-APPROVED DISADVANTAGED BUSINESS
ENTERPRISE PROGRAM BY ALAMO REGIONAL MOBILITY AUTHORITY**

This Memorandum of Understanding ("MOU") is by and between the **TEXAS DEPARTMENT OF TRANSPORTATION ("TxDOT")**, an agency of the State of Texas; and **ALAMO REGIONAL MOBILITY AUTHORITY ("ALAMO RMA")** a political subdivision of the State of Texas.

Whereas, from time to time the Alamo RMA receives federal funds from the Federal Highway Administration ("FHWA") through TxDOT to assist the Alamo RMA with the construction and design of projects partially or wholly funded through FHWA; and

Whereas, the Alamo RMA, as a sub-recipient of federal funds, is required by 49 CFR 26, to implement a program for disadvantaged business enterprises ("DBEs"), as defined by 49 CFR 26 ("DBE Program"); and

Whereas, TxDOT has implemented a Disadvantaged Business Enterprise Program (DBE Program) that is approved by FHWA pursuant to 49 CFR part 26; and

Whereas, certain aspects of the Alamo RMA's procurement of construction and design services are subject to review and/or concurrence by TxDOT as a condition of receiving federal funds from FHWA through TxDOT; and

Whereas, the Alamo RMA and TxDOT undertake substantially similar roadway construction projects and design projects and construct and design their respective projects using substantially the same pool of contractors; and

Whereas, the Alamo RMA desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

Whereas, TxDOT and the Alamo RMA find it appropriate to enter into this Memorandum of Understanding to memorialize the obligations, expectations and rights each has as related to the Alamo RMA's adoption of the TxDOT DBE Program to meet the federal requirements.

Now, therefore, TxDOT and the Alamo RMA, in consideration of the mutual promises, covenants and conditions made herein, agree to and acknowledge the following:

(1) TxDOT has developed a DBE Program and annually establishes a DBE goal for Texas that is federally approved and compliant with 49 CFR 26 and other applicable laws and regulations.

(2) The Alamo RMA is a sub-recipient of federal assistance for construction projects and design projects and, in accordance with 49 CFR § 26.21, must comply with a federally approved DBE Program. The Alamo RMA receives its federal assistance through TxDOT. As a sub-recipient, the Alamo RMA has the option of developing its own program or adopting and operating under TxDOT's federally approved DBE Program. The FHWA recommends that sub-recipients, such as the Alamo RMA, adopt the DBE program, administered through TxDOT, and the Alamo RMA by its prescribed protocol adopted the TxDOT DBE Program on May 14, 2009.

(3) This Memorandum of Understanding evidences FHWA's and TxDOT's consent to the adoption of the TxDOT DBE Program by the Alamo RMA to achieve its DBE participation in federally assisted

Construction and Design Projects.

(4) The parties will work together in good faith to assure effective and efficient implementation of the DBE Program for the Alamo RMA and for TxDOT.

(5) The Alamo RMA and TxDOT have agreed upon the following delegation of responsibilities and obligations in the administration of the DBE Program adopted by the Alamo RMA:

(a) The Alamo RMA will be responsible for project monitoring and data reporting to TxDOT. The Alamo RMA will furnish to TxDOT any required DBE contractor compliance reports, documents or other information as may be required from time to time to comply with federal regulations. TxDOT will provide the necessary and appropriate reporting forms to the Alamo RMA.

(b) The Alamo RMA will recommend contract-specific DBE goals consistent with TxDOT's DBE guidelines and in consideration of the local market, project size, and nature of the good(s) or service(s) to be acquired. The Alamo RMA's recommendation may be that no DBE goals are set on any particular project or portion of a project or that proposed DBE goals be modified. The Alamo RMA and TxDOT will work together to achieve a mutually acceptable goal; however, TxDOT will retain final decision-making authority regarding DBE goals.

(c) TxDOT will cooperate with the Alamo RMA in an effort to meet the timing and other requirements of the Alamo RMA projects.

(d) The Alamo RMA will be solely responsible for the solicitation and structuring of bids and bid documents to procure goods and services for its projects that use federal funds and will be responsible for all costs and expenses incurred in its procurements.

(e) The DBEs eligible to participate on TxDOT construction projects or design projects also will be eligible to participate on the Alamo RMA construction projects or design projects that are subject to the DBE Program. The DBEs will be listed on TxDOT's website under the Texas Unified Certification Program (TUCP).

(f) The Alamo RMA will conduct reviews and provide reports with recommendations to TxDOT concerning any DBE Program compliance issues that may arise due to project specific requirements such as Good Faith Effort (GFE), Commercially Useful Function (CUF), etc. The Alamo RMA and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority on those issues and reserves the right to perform compliance reviews by TxDOT's Office of Civil Rights. The Alamo RMA shall provide TxDOT with a listing of sanctions that will be assessed against contractors for violation of federal DBE regulations and its procedures for investigation of violations and assessment of sanctions for documented violations.

(g) The Alamo RMA will designate a liaison officer to coordinate efforts with TxDOT's DBE Program administrators and to respond to questions from the public and private sector regarding The Alamo RMA's administration of the DBE Program through TxDOT.

(h) The Alamo RMA will be responsible for providing TxDOT with DBE project awards and DBE Commitments, monthly DBE reports, DBE Final Reports, DBE shortfall reports, and annual and updated goal analysis and reports.

(i) TxDOT will be responsible for maintaining a directory of firms eligible to participate in the

DBE Program, and providing business development and outreach programs. The Alamo RMA and TxDOT will work cooperatively to provide supportive services and outreach to DBE firms in the Alamo RMA area .

(j) The Alamo RMA will submit DBE semi-annual progress reports to TxDOT.

(k) The Alamo RMA will participate in TxDOT sponsored training classes to include topics on Title VI of the Civil Rights Act of 1964, DBE Annual Goals, DBE Goal Setting for Construction Projects and Design Projects, DBE Contract Provisions, and DBE Contract Compliance, which may include issues such as DBE Commitments, DBE Substitution, and Final DBE Clearance. TxDOT will include DBE contractors performing work on the Alamo RMA projects in the DBE Education and Outreach Programs.

(l) The Executive Director of the Alamo RMA will implement all federal requirements, including those stated in Attachments A through C, which are incorporated as though fully set out herein for all purposes.

(m) In accordance with 23 CFR 200.1, the Alamo RMA shall develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in, and beneficiaries of State highway programs, i.e., relocated person(s), impacted citizens and affected communities; develop a program to conduct Title VI review of program areas; and conduct annual reviews of special emphasis program areas to determine the effectiveness of program area activities at all levels. TxDOT, in accordance with federal law, may conduct compliance reviews by TxDOT's Office of Civil Rights .

(6) In the event there is a disagreement between TxDOT and the Alamo RMA about the implementation of the TxDOT DBE Program by the Alamo RMA the parties agree to meet within ten (10) days of receiving a written request from the other party of a desire to meet to resolve any disagreement. The parties will make good faith efforts to resolve any disagreement as efficiently as is reasonably possible in consultation with FHWA. Non-compliance by the Alamo RMA can result in restitution of federal funds to TxDOT and withholding of further federal funds upon consultation with FHWA.

(7) This Memorandum of Understanding becomes effective upon execution by all parties and automatically renews each year unless a party notifies the other party of its intent to terminate the agreement.

(8) If this Memorandum of Understanding is terminated for any reason, the Alamo RMA will be allowed reasonable time in which to seek approval from FHWA for an alternative DBE Program, without being deemed non-compliant with 49 CFR Part 26.

(9) This Memorandum of Understanding applies only to projects for which the Alamo RMA is a sub-recipient of federal funds through TxDOT. The Alamo RMA may also implement a Minority and Women-Owned Small Business Enterprise (M/W/SBE) policy and program that applies to projects for which it is not a sub-recipient of federal funds through TxDOT and which are not subject to the TxDOT DBE Program. The Alamo RMA may, at its option, use some aspects of the TxDOT DBE Program and other similar programs in implementing its other policies and programs for its non-federally funded projects.

(10) The following attachments to this Memorandum of Understanding are incorporated as if fully set out herein for all purposes: Attachment A - FHWA Memorandum HCR-1/HIF-1 (relating to access required by the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act

of 1973); Attachment B - SPECIAL PROVISION 000-461; and Attachment C - 49 CFR §26.13 (contractual assurances).

(11) The following procedure shall be observed by the parties in regard to any notifications:

(a) Any notice required or permitted to be given under this Memorandum of Understanding shall be in writing and may be effected by personal delivery, by hand delivery through a courier or a delivery service, or by registered or certified mail, postage prepaid, return receipt requested, addressed to the proper party, at the following address:

ALAMO REGIONAL MOBILITY AUTHORITY
Terry M. Brechtel
Executive Director

Hand Delivery:

1222 North Main Avenue, Suite 1000
San Antonio, Texas 78212

Registered or Certified Mail (Return receipt requested):

1222 North Main Avenue, Suite 1000
San Antonio, Texas 78212

TEXAS DEPARTMENT OF TRANSPORTATION
R. D. Brown, BOP Development Section Director
Office of Civil Rights
125 E. 11th Street
Austin, Texas 78701-2483

(b) Notice by personal delivery or hand delivery shall be deemed effective immediately upon delivery, provided notice is given as required by Paragraph (a) hereof. Notice by registered or certified mail shall be deemed effective three (3) days after deposit in a U.S. mailbox or U.S. Post Office, provided notice is given as required by Paragraph (a) hereof.

(c) Either party hereto may change its address by giving notice as provided herein.

(12) This Memorandum of Understanding may be modified or amended only by written instrument, signed by both the Alamo RMA and the Texas Department of Transportation and dated subsequent to the effective date of this MOU. Except as authorized by the respective parties, no official, employee, agent, or representative of the parties has any authority, either express or implied, to modify or amend this MOU.

(13) The provisions of this MOU are severable. If any clause, sentence, provision, paragraph, or article of this MOU, or the application of this MOU to any person or circumstance is held by any court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality, or unenforceability shall not impair, invalidate, nullify, or otherwise affect the remainder of this MOU, but the effect thereof shall be limited to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or unenforceable, and the application of such clause, sentence, provision, paragraph, or

article to other persons or circumstances shall not be affected; provided, however, The Alamo RMA and TxDOT may mutually agree to terminate this Memorandum of Understanding.

(14) This Memorandum of Understanding shall not be construed in any way as a waiver by the parties of any immunity from suit or liability that parties may have by operation of law, and the parties hereby retain all of their respective affirmative defenses.

(15) In accordance with 49 CFR part 26.13, the Alamo RMA will ensure that all contractors or subcontractors working on any Federal DOT-assisted contracts for the Alamo RMA comply with the applicable requirements concerning discrimination. Failure by the contractor to carry out these requirements is a material breach of contract and the the Alamo RMA will terminate the contract or other such remedy as deemed appropriate by TxDOT.

(16) In accordance with 49 CFR part 26.29, the Alamo RMA will ensure that all contractors or subcontractors working on any Federal DOT-assisted contracts for the Alamo RMA comply with the prompt pay provisions established by TxDOT.

EXECUTED in duplicate originals by TxDOT and the Alamo RMA, acting through each duly authorized official and effective on the latest date signed.

The signatories below confirm that they have the authority to execute this MOU and bind their principles.

TEXAS DEPARTMENT OF TRANSPORTATION

Alamo Regional Mobility Authority

By: Amadeo Saenz, Jr. P.E.
Amadeo Saenz, Jr. P.E.
Executive Director

By: Terry M. Brechtel
Terry M. Brechtel
Executive Director

Date: 6/29/09

Date: 6/16/09