

DIVERSITY PROGRAM FOR CONTRACTS

Disadvantaged Business Enterprise Program



Box 29000 Presidio Station

San Francisco, CA 94129-0601

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I. POLICY (Section 26.23)

The Golden Gate Bridge, Highway and Transportation District (“District”) is committed to a Diversity Program for the participation of Disadvantaged Business Enterprises (“DBEs”) and Small Business Enterprises (“SBEs”) in District contracting opportunities in accordance with 49 Code of Federal Regulations (“CFR”) Part 26, revised as of October 2, 2014, as may be amended (“Regulations”). It is the policy of the District to ensure nondiscrimination on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation assisted contracts or in the administration of its DBE Program or the requirements 49 CFR Part 26. It is the intention of the District to create a level playing field on which DBEs and SBEs can compete fairly for contracts and subcontracts relating to the District’s construction, procurement and professional services activities.

In order to achieve DBE participation, the District has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside of the DBE Program. One such procedure includes the establishment of a Small Business Enterprise (SBE) Element of the District’s Diversity Program for Contracts. The SBE Element provides a race-neutral means of encouraging DBE participation, and allows for contract-specific SBE goals when appropriate.

The Board of Directors is responsible for establishing the DBE policy of the District. The General Manager of the District is responsible for ensuring adherence to this policy. The DBE Program Administrator, in coordination with all District Officers, Division Managers, Department Heads, and Purchasing and Buying Staff, is responsible for the development, implementation and monitoring of the Diversity Program for Contracts in accordance with the District’s nondiscrimination policy. It is the expectation of the Board of Directors and the General Manager that all District personnel shall adhere to the spirit, as well as the provisions and procedures, of this Program.

This policy will be circulated to all District personnel and to members of the community that perform or are interested in performing work on District contracts. The complete Diversity Program for Contracts and analysis regarding the overall DBE goal(s) and/or project goal(s) established every three years are available to review at <http://goldengate.org> or by visiting our administrative office at 1011 Andersen Drive, San Rafael, CA 94901.

The DBE Program Administrator position is designated as the Disadvantaged Business Enterprise Liaison Officer (DBELO) who implements all aspects of the District’s DBE Program with independent and direct access to the General Manager. If you have any questions or would like further information regarding this Program, please contact DBE Program Administrator, Artemisé Davenport, by telephone at (415) 257-4581, by fax at (415) 257-4502, or by e-mail at adavenport@goldengate.org.

Date: 26 January 2022



Michael Theriault
President, Board of Directors

A. Applicability (Sections 26.3 and 26.21)

The District, a recipient of federal financial assistance from the Federal Transit Administration (“FTA”) and the Federal Highway Administration (“FHWA”) of the U.S. Department of Transportation (U.S. DOT), is required to implement a DBE Program in accordance with 49 C.F.R. Part 26, which is incorporated herein by this reference. The District receives funds from FHWA as a subrecipient through California Department of Transportation (Caltrans). The Program outlined herein applies to all District contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance. To the extent that the Program’s policy, objectives and efforts involve race-neutral and gender-neutral methods, the Program will apply to all District contracts regardless of funding source. In the event of any conflicts or inconsistencies between the Regulations and this DBE Program with respect to U.S. DOT-assisted contracts, the Regulations shall prevail.

B. Objectives (Section 26.1)

The objectives of this Program are the following:

1. To ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
2. To remove barriers to DBE participation in the bidding, award and administration of District contracts;
3. To assist DBEs to develop and compete successfully outside of the Program;
4. To ensure that the Program is narrowly tailored in accordance with 49 C.F.R. Part 26;
5. To ensure that only DBEs meeting the eligibility requirements are permitted to participate as DBEs;
6. To identify business enterprises that are eligible as DBEs to provide the District with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;
7. To develop communication programs and procedures which will acquaint prospective DBEs with the District’s contract procedures, activities and requirements and allow DBEs to provide the District with feedback on existing barriers to participation and effective procedures to eliminate those barriers;
8. To administer the Program in close coordination with the various divisions and departments within the District so as to facilitate the successful implementation of this Program; and
9. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by the District.

C. Prohibited Discrimination (Section 26.7)

The District shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by 49 C.F.R. Part 26 on the basis of race, color, national origin, or sex.

The District shall 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 this Program with respect to individuals of a particular race, color, national origin, or sex.

II. DEFINITIONS (Section 26.5)

Any terms used in this Program that are defined in 49 C.F.R. § 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. Some of the most common terms are defined below:

A. Disadvantaged Business Enterprise (DBE) (Section 26.5)

A for-profit, small business concern: 1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock 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 and economically disadvantaged individuals who own it.

B. Small Business Concern (Section 26.5)

With respect to firms seeking to participate as DBEs in U.S. DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and the U.S. Small Business Administration regulations implementing it (13 C.F.R. Part 121), whose average annual gross receipts for the previous three (3) years does not exceed \$28.48 million (or as adjusted for inflation by the Secretary of U.S. DOT) pursuant to 49 C.F.R. § 26.65(b).

C. Socially and Economically Disadvantaged Individuals (Section 26.5)

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

There is a rebuttable presumption that an individual is both socially and economically disadvantaged if s/he is a citizen or lawfully admitted permanent resident of the United States and is:

1. “Black American” (including persons having origins in any of the Black racial groups of Africa);
2. “Hispanic American” (including persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race);
3. “Native American” (including persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives or Native Hawaiians);
4. “Asian-Pacific American” (including 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), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, the Federated States of Micronesia, or Hong Kong);
5. “Subcontinent Asian American” (including persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka);
6. A Woman; or
7. A member of any additional group that is designated as socially and economically disadvantaged by the Small Business Administration, at such time as the Small Business Administration designation becomes effective.

Additionally, any individual can demonstrate, by a preponderance of evidence, that he is socially and economically disadvantaged on a case-by-case basis. The District will follow the guidelines in 49 C.F.R. Part 26, Appendix E.

An individual cannot be presumed or determined on a case-by-case basis to be economically disadvantaged if s/he has a personal net worth exceeding \$1.32 Million (excluding the individual’s ownership interests in the small business concern and his or her primary residence) or are able to accumulate substantial wealth as defined in 49 C.F.R. § 26.67.

D. Race-Neutral (Section 26.5)

A procedure or program that is used, or can be used, to assist all small businesses. For the purposes of this Program, race-neutral includes ethnic and gender neutrality.

E. Race-Conscious (Section 26.5)

A measure or program that is specifically focused on assisting only DBEs, including women-owned DBEs.

F. Personal Net Worth (Sections 26.5 and 26.67)

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.

III. RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION

A. Duties of the Disadvantaged Business Enterprise Program Administrator (Section 26.25)

Pursuant to 49 C.F.R. § 26.25, the Program shall be administered by the Disadvantaged Business Enterprise Program Administrator, ("Administrator") who shall be appointed by and have direct, independent access to the General Manager of the District (Refer to Exhibit B, "DBE Program Organizational Chart"). The Administrator is designated as the Disadvantaged Business Enterprise Liaison Officer (DBELO), who is the primary person responsible for implementing all aspects of this Program and will work closely with operating divisions and other departments and consultants of the District, including legal, procurement, engineering, insurance and others who are responsible for making decisions relative to the District's construction, procurement and professional service contracts.

The Administrator's specific duties and responsibilities are attached as Exhibit A and incorporated herein.

B. Duties of Diversity Program for Contracts Review Committee (Sections 26.53 and 26.87)

The District Secretary, the District Engineer and the Auditor-Controller shall comprise the Diversity Program for Contracts Review Committee ("Review Committee"). The Administrator may attend all Review Committee meetings and furnish background information, but shall not be a voting member of the Review Committee. The Review Committee shall assist the Administrator with the implementation of this Program. The Review Committee shall preside over hearings that may be held pursuant to this Program, including administrative reconsideration of the Administrator's original determination of a bidder's compliance with good faith efforts/Diversity Program for Contracts requirements, in accordance with 49 C.F.R. §§ 26.53(d) and 26.87(e), respectively. The Review Committee does not play a part in the initial determination of a bidder's/proposer's documentation of good faith efforts.

C. Duties of District Officers, Division Managers, Department Heads, and Purchasing and Buying Staff (Section 26.51)

All District Officers, Division Managers, Department Heads, and Purchasing and Buying Staff are responsible for the implementation of the DBE Program in their respective areas of authority in coordination with the Administrator.

D. Regional Outreach (Section 26.51)

The Administrator is designated by the General Manager to represent the District as a member of appropriate regional outreach consortia. The District will participate in such group programs, activities and efforts in the San Francisco Bay Area to create a level playing field on which DBEs can compete fairly; to enhance outreach and communication efforts with these firms; to provide appropriate assistance and information for participation in U.S. DOT-assisted contracts and other contracts; and to develop joint resources among recipients. To this end, the Administrator will attend scheduled meetings of such groups and will contribute to the achievement of their projects approved by the District's General Manager.

E. California Unified Certification Program (Section 26.81)

The District is a signatory to the California Unified Certification Program ("CUCP") Memorandum of Agreement ("MOA"). The District will participate in CUCP activities to further the objectives of the DBE Program, consistent with the Regulations and the CUCP MOA, as approved by the U.S. Secretary of Transportation on March 13, 2002, and as may be amended from time to time.

IV. ADMINISTRATIVE REQUIREMENTS

A. DBE Financial Institutions (Section 26.27)

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

The Administrator has researched The Federal Reserve Board website at www.federalreserve.gov/releases/mob/ to identify minority-owned banks. Data is derived from the Federal Deposit Insurance Corporation (FDIC) and the Office of Comptroller of the Currency (OCC) and is updated on a quarterly basis. The Administrator will continue to use this source to solicit minority-owned banks to participate in the District's DBE Program. The Administrator will distribute a list of identified minority-owned financial institutions in the San Francisco Bay Area to each prime contractor doing business with the District.

B. DBE Database (Section 26.31)

The DBE Database is a consolidated and automated directory that identifies firms that have been certified as DBEs by the California Unified Certification Program. The DBE Database is jointly maintained and updated by the CUCP certifying member agencies in coordination with Caltrans, the CUCP DBE Database Manager. The DBE Database is available at Caltrans' website at, <https://californiaucp.dbesystem.com>, and is made available to contractors and to the public. The District will use the DBE Database as a primary resource in developing overall goals, project goals, and contract-specific goals and conducting outreach and other activities to promote DBE participation in U.S. DOT contracts.

The DBE Database shall include the firm's name, address, telephone number, and types of work, utilizing the North American Industry Classification System (NAICS) codes for which the firm is certified as a DBE. Additionally, the DBE Database may include, whenever possible, the date the firm was established, the legal structure of the firm, the percentage owned by disadvantaged individuals, capacity, previous work experience and a contact person. The DBE Database shall not in any way prequalify the identified DBE firms with respect to licensing, bondability, competence or financial responsibility.

C. Bidders List (Section 26.11)

The Administrator has created and is maintaining a bidders list consisting of all firms bidding on prime contracts and bidding or quoting on subcontracts on U.S. DOT-assisted projects. For every firm, the following information will be included: firm name, firm address, firm status as a DBE or non-DBE, the age of the firm, and the annual gross receipts of the firm. Data gathering will be conducted by vendor registration on the District's procurement portal powered by Bonfire Interactive Ltd. In addition, firms bidding on contracts with subcontracting opportunities will be required to submit a form entitled, *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* that also collects most of the above-mentioned firm information. The Administrator will maintain the confidentiality of any proprietary information in accordance with applicable California law and the Regulations. This information will be requested of all bidders as further described in Section IX.

D. Over-Concentration (Section 26.33)

If the Administrator determines that DBE participation is so over-concentrated in certain types of work or contracting opportunities assisted by FTA or FHWA that it unduly burdens the participation of non-DBEs in that type of work, the Administrator will develop appropriate measures to address the over-concentration. The Administrator will seek approval of such measures from FTA or Caltrans on behalf of FHWA and, at that time, the measures will become a part of this Program. Currently, the District is unaware of any types of work that have a burdensome over-concentration of DBE participation.

E. Business Development Program (Section 26.35 and Appendix C)

The District may establish or participate in a DBE business development program to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE Program. As a part of the business development program or separately, the District may establish or participate in a mentor-protégé program in which another DBE or non-DBE firm is the principal source of business development assistance. If the District determines such a program is beneficial, a proposed program will be written and submitted to the U.S. DOT operating administrations for approval, after which it will become part of this DBE Program. Guidelines outlined in Appendices C and D of 49 C.F.R. Part 26 will be utilized in setting up the formal agreements and programs. The District is a participating public agency in Caltrans' Calmentor mentor-protégé program.

F. Dissemination of Policy Statement (Section 26.23)

The Administrator shall issue a signed and dated Policy Statement throughout the District and to the business community, including DBEs and non-DBEs that perform work on U.S. DOT-assisted contracts for the District. The Policy Statement shall be disseminated as follows:

1. Through electronic mail to Division Managers, Department Heads, and Purchasing and Buying Staff;
2. Through electronic mail to DBE and non-DBE firms that are currently performing work on U.S. DOT-assisted contracts;
3. Through electronic mail to DBE and non-DBE firms that are recently awarded U.S. DOT-assisted contracts; and
4. Through the District's website and upon request by the interested public, including the business community.

Additionally, to ensure that potential bidders are aware of the DBE policy, the District makes reference to this policy in its contract specifications and advertisements of all U.S. DOT-assisted contracts.

G. Monitoring Actual DBE Participation (Sections 26.37 and 26.55)

The District will implement appropriate monitoring and enforcement mechanisms to ensure compliance with 49 C.F.R. Part 26. The Administrator shall monitor and track actual DBE participation through an automated diversity compliance management system, as further described in Section VIII. The Administrator will maintain a running tally of real time entry of payments actually made to DBE firms and may require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments. Monitoring will include a written certification that staff has reviewed contracting records and monitored work sites in California for this purpose. Monitoring may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

The Administrator shall ensure that DBE participation is counted toward contract goals and the overall goal or project goal in accordance with the Regulations. Credit toward overall goal, project goal or contract goal will only be given upon satisfactory evidence that payments were actually made to DBEs.

The District will bring to the attention of DOT any firm that, in order to meet DBE contract goals or other DBE Program requirements, uses or attempts to use, on the basis of false, fraudulent, or deceitful statements or representations or any other dishonest conduct in the connection with the program, so that DOT can take the steps provided in 26.107 (e.g., referral to the Department of Justice for criminal prosecution and/or referral to the DOT Inspector General). DOT may take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, against any participant in the DBE Program whose conduct is subject to such action under 49 C.F.R. Part 31.

In addition, the District will consider similar action under its own legal authorities, including responsibility determinations in future contracts.

H. Reporting to U.S. DOT (Section 26.11)

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

The Administrator will report DBE participation on FTA funded contracts on a semi-annual basis (June 1 and December 1), using the *Uniform Report of DBE Awards or Commitments and Payments*, a form provided by U.S. DOT. The report includes prime contract and subcontract awards, as well as ongoing contract payments and actual payments for contracts completed during the reporting period, on FTA-assisted contracts. On June 1, the District will report DBE activity from October 1 through March 31. On December 1, the District will report activity from April 1 through September 30. The Administrator will continue to provide the report regarding DBE participation and overall goal(s) and/or project goal(s) required by the Regulations to FTA.

Reporting to Caltrans

The District will report final utilization of DBE participation on contracts using Federal Highway Administrative funds to the Department of Local Assistance Engineer using Exhibit 17-F, "Final Report - Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors", a designated form in the Local Assistance Procedures Manual.

I. No Quotas or Set-Asides (Section 26.43)

The District does not, and will not, use quotas nor set-asides in any way in the administration of this Program.

V. ACHIEVING GOAL(S) AND COUNTING DBE PARTICIPATION (Section 26.45)

The District receives U.S. DOT financial assistance as a direct recipient of such funds from FTA and as a subrecipient of such funds from FHWA through Caltrans. The Board of Directors shall establish an overall goal for the participation of DBEs in all budgeted contracts utilizing U.S. DOT/FTA financial assistance. The overall goal shall be expressed as a percentage of the total amount of U.S. DOT/FTA funds the District anticipates expending in the three forthcoming federal fiscal years. In appropriate cases, a project goal may be approved and expressed as a percentage of funds for a particular grant or project or group of grants and/or projects.

For contracts funded by FHWA through Caltrans, the District develops contract-specific DBE goals as an effort to meet the statewide DBE goal. The District complies with Caltrans DBE Program on projects and follows the Caltrans Local Assistance Procedures Manual (LAPM).

The District's overall goal(s) and/or project goal(s) represent the amount of ready, willing and able DBEs that are available to participate in contracting opportunities and is reflective of the

amount of DBE participation the District would expect absent the effects of discrimination. The District intends to meet its goal(s) to the maximum extent feasible through the race-neutral measures described in Section V.D. Where race-neutral measures are inadequate to meet the overall goal(s) and/or project goal(s), the District may use race-conscious measures for particular projects with subcontracting opportunities.

A. Methodology for Setting Overall DBE Goal(s) and/or Project Goal(s) – FTA and FHWA Funded Projects (Section 26.45)

FTA – Funded Projects (Recipient)

1. **Projecting U.S. DOT-Assisted Contract Expenditures.** In conjunction with the preparation and adoption of the budget, the Administrator, in consultation with the appropriate District divisions and departments responsible for contracting activities, will conduct a thorough analysis of the projected number, types of work and dollar amounts of contracting opportunities that will be funded, in whole or in part, by U.S. DOT federal financial assistance. This analysis will exclude projected contract expenditures for transit vehicle manufacturers, which are exempt from the District’s goal-setting process as described in Section V.C.

2. **Establishing a Base Figure.** The District will develop a base figure for the relative availability of DBEs by determining the number of ready, willing and able DBEs relative to the number of all businesses ready, willing and able to participate in its U.S. DOT-assisted contracts. The District will follow one of the methodologies provided in the Regulations or develop an alternative methodology and provide the appropriate documentation in the Overall Goal(s) and/or Project Goal(s) Analysis Report described in Section V.B.

a. **Analyzing Available Businesses in the District’s Local Market Area.** The Administrator, in conjunction with the appropriate District divisions and departments, will conduct a thorough analysis of its local market area in which the District will solicit participation from contractors, subcontractors, consultants, subconsultants, manufacturers, and suppliers. This analysis will include a description of geographical boundaries of its local market area, the NAICS codes for the types of work to be contracted, and any other indicators that the District determines to be relevant in defining its local market area. The Administrator will then determine the total available businesses according to its local market area. The Administrator will consider a variety of sources including, but not limited to, the U.S. Census Bureau’s County Business Patterns Database, the District’s Bidders List, and relevant disparity studies.

b. **Analyzing Available DBEs in the District’s Local Market Area.** The Administrator will conduct a similar analysis to determine the total DBEs that are available to participate as contractors, subcontractors, consultants, subconsultants, manufacturers, and suppliers in the projected contracts. This analysis will include a description of the available DBEs relative to the geographical boundaries of its local market area, the NAICS codes for the types of work to be contracted, and any other factors as described in Section V.A.2.a. The District will

consider a variety of sources including, but not limited to, the CUCP DBE Database, its Bidders List, and any relevant disparity studies.

c. **Calculating the Base Figure.** The Administrator will compare the available DBEs in its local market area to the available businesses in its local market area. The calculation will include a weighting factor according to the contract expenditure patterns analyzed in Section V.A.1.

3. **Adjusting the Base Figure.** The District will adjust the base figure based on demonstrable evidence indicating that the availability of DBEs for U.S. DOT-assisted contracts may be higher or lower than the base figure indicates. At minimum, the Administrator will analyze the results of DBE participation in the District's current and recent past contracts, any available and relevant disparity studies (to the extent that they are not accounted for in the base figure), and any available and relevant results of other and similar U.S. DOT recipients' efforts to contract with DBEs.

4. **Projection of Percentage of Overall Goal(s) and/or Project Goal(s) to Be Achieved Through Race-Neutral and Race-Conscious Measures.** Once the overall goal(s) and/or project goal(s) are proposed, the Administrator will analyze and project the maximum feasible portion of that goal that can be achieved by using race-neutral methods. Where the projected portion of the goal using race-neutral methods is less than the overall goal or project goal, the remaining portion may be achieved by using race-conscious methods for particular projects that have subcontracting opportunities. The Administrator shall monitor and adjust the use of race-conscious methods in accordance with 49 C.F.R. § 26.51(f). When projecting the percentage of the overall goal or project goal to be achieved through using race-conscious methods, the Administrator shall analyze the actual achievement of the overall goal or project goal through race-neutral methods in the current and recent past years. When using race-conscious methods, the Administrator shall analyze the progress toward achieving the overall goal or project goal and increase or reduce the use of race-conscious methods accordingly.

FHWA/CALTRANS- Funded Projects (Subrecipient)

The District, as a subrecipient of FHWA funding through Caltrans, has an approved *DBE Implementation Agreement for Local Agencies* (Exhibit 9-A) to formally acknowledge the District's commitment to implement Caltrans DBE Program. The District adopts Caltrans' overall statewide DBE goal for FHWA-assisted projects and establishes DBE goals on applicable FHWA-assisted contracts in accordance with Caltrans' Local Assistance Procedures Manual. Each federal fiscal year, the District submits to Caltrans the *Local Agency DBE Annual Submittal Form* (Exhibit 9-B) that identifies how the District will comply with Caltrans' DBE Program.

In accordance with Caltrans Division of Local Assistance Office Bulletin #19-03, the District will prepare and submit for Caltrans approval DBE contract-specific goals for FHWA/Caltrans-funded construction contract estimates greater than \$2 million and consultant contract estimates greater than \$500,000 prior to advertising. The District's DBE goal methodology is submitted to Caltrans for approval using Caltrans (Exhibit 9-D "DBE Contract Goal Methodology") form.

B. Public Participation and Adoption of Overall Goals and/or Project Goal(s) (Section 26.45(g))

1. **Consultation with Various Groups, Organizations, and Officials.** The District will hold public participation sessions to obtain input in the goal-setting process, specifically on the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and efforts to establish a level playing field for the participation of DBEs. Members from the public that will be invited to attend the public participation sessions will include, but not be limited to, minority, women and general contractors groups, community based organizations and other officials.

2. **Overall Goals Covering a Three-Year Period and/or Project Goal(s) Analysis Report(s).** Upon completion of the analysis described in Section V.A. and after consultation with various groups, organizations and other officials, unless otherwise directed, the Administrator will prepare an Overall Goal(s) and/or Project Goal(s) Analysis Report for DBE participation in FTA-assisted contracts. Each report shall document the analysis and methodology in arriving at the proposed goal(s) and shall include a projection of the portion of the goal(s) to be achieved through race-neutral and race-conscious measures. The Administrator will furnish the reports to all District staff included in the goal setting process for review and concurrence. Upon District staff concurrence, the Administrator shall furnish the General Manager with the proposed overall goal(s) and/or project goal(s) to be submitted to the Rules, Policy and Industrial Relations Committee. Upon the Rules, Policy and Industrial Relations Committee's recommendation, the Board of Directors will consider authorization of the establishment of the proposed goal(s). It will also consider authorization of the submission of the Overall Goal(s) and/or Project Goal(s) Analysis Reports to FTA for review by August 1 or by a different submission date established by the concerned operating administration.

3. **Publication of the Proposed Overall Goal(s) and/or Project Goal(s).** The District will publish the proposed overall goal(s) and/or project goal(s) on its official Internet Web site and may post the notice in any other sources (e.g., minority-focused media, trade association publications).

4. **Adoption of Final Overall Goal(s) and/or Project Goal(s).** The District will submit the proposed overall goal(s), and/or project goal(s) to the Rules, Policy and Industrial Relations Committee for recommendation. The Board of Directors will consider adoption of the proposed Overall Goal(s) and/or Project Goal(s). If the Board of Directors adopts the proposed Overall Goal(s) and/or Project Goal(s), the District will submit the proposed Overall Goal(s) and/or Project Goal(s) to the U.S. DOT operating administration. If the U.S. DOT operating administration approves the proposed Overall Goal(s) and/or Project Goal(s), the goals will be final, and the General Manager will provide an updated report to the Board of Directors. If the proposed goal changes following review by the U.S. DOT operating administration, the revised goal will be posted on the District's official Internet Web site, and the General Manager will notify the Board of Directors of the change(s), and, if applicable, the Board of Directors will take all necessary actions to implement the changes.

C. Transit Vehicle Manufacturers Certification (Section 26.49)

The District shall require any transit vehicle manufacturers to certify that they have established an overall DBE goal that has been approved or not disapproved by FTA as a condition to bid on any District contracts. Before awarding to a TVM, the District shall verify that the bidder is listed on FTA's eligible TVM list at, <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>. The District shall complete the Vehicle Award Report to notify FTA of the TVM procurement award within 30 days of making such award.

Expenditures for FTA-assisted transit vehicle procurements are not included in the funding base to which the overall goal and/or project goal for other FTA-assisted contract expenditures applies.

D. Achieving the Overall Goal(s) and/or Project Goal(s) (Section 26.51)

The District shall achieve the overall goal(s) and/or project goal(s) for DBE participation through a combination of race-neutral methods and race-conscious methods for particular contracts with subcontracting opportunities.

1. **Race-Neutral Methods.** The District intends to use race-neutral methods to the maximum extent feasible to achieve its overall goal(s) and/or project goal(s). DBE participation that is obtained on contracts that have no specific DBE goal, or where prime contractors use a strictly competitive bidding process that did not consider the DBE's status as a DBE in awarding a subcontract shall be considered race-neutral DBE participation. In addition, the District will use the following measures as appropriate:

a. Configuring large contracts into smaller contracts, when feasible, when to do so would make contracts more accessible to small businesses and would not impose significant additional cost, delay or risk to the District;

b. Identifying components of the work that represent subcontracting opportunities and identifying the availability of DBE subcontractors. Contractors will be encouraged to consider small businesses for components of the work for which there is a known supply of ready, willing, and able small businesses, including DBEs, in preparing their bids;

c. Assisting in overcoming limitations in bonding and financing;

d. Providing technical assistance in orienting small businesses to public contract procedures, use of the Internet, and facilitating introductions to the District's and other U.S. DOT recipients' contracting activities;

e. Carrying out information and communication programs on contract procedures and contract opportunities to ensure the inclusion of DBEs, which includes facilitating small business events that may be coordinated with other U.S. DOT grantees, federal agencies, or local organizations. These events will include procedures explaining how to do business with the

District and explore best business practices which may be used to market small businesses at the District;

f. Ensuring the distribution of the DBE Database to the widest feasible universe of potential prime contractors;

g. Providing business development assistance;

h. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses; and

i. (Section 26.39) Establishing a race-neutral small business enterprise (SBE) Element as part of its DBE program to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation in procurements as prime contractors or subcontractors. Details of the SBE Element are attached as Exhibit C, "Small Business Enterprise Element", and incorporated herein.

2. **Race-Conscious Methods.** The Board of Directors shall use race-conscious methods by establishing contract-specific DBE goals on particular prime contracts with subcontracting opportunities to the extent that the District cannot achieve its overall goal(s) and/or project goal(s) with race-neutral methods. Where a contract-specific DBE goal has been established, the bidder or proposer must meet the contract-specific goal or demonstrate that it made sufficient good faith efforts to do so. A bidder shall be ineligible for contract award if it does not meet the goal or demonstrate sufficient good faith efforts.

a. **Establishing Contract-Specific Goals.** The goal shall be established by the General Manager, substantiated by information furnished by the Administrator. The contract-specific goal shall apply to the percentage of DBE participation in the total contract work and be set forth in the Special Provisions of the contract specifications. The District is not required to establish a contract-specific goal for every prime contract with subcontracting opportunities. For each contract involving subcontracting opportunities, the factors outlined below will be considered to determine whether a contract-specific goal should be established for the particular contract and, if so, what the percentage goal shall be:

1) The projected portion of the overall goal(s) and/or project goal(s) that will be met by establishing contract-specific goals;

2) The progress toward achieving the overall goal(s) and/or project goal(s);

3) The full range of activities in the proposed contract;

4) The availability of DBEs as prime contractors or subcontractors in the types of work involved in the performance of the proposed contract;

5) The unique conditions of the project that might affect the ability of the prime contractor to coordinate, utilize or incorporate subcontractors or suppliers into the project. (Projects consisting of only one or two sub-trades may not be appropriate for a contract-specific goal due to the fact that establishing a goal could result in restrictive bidding.);

6) The effect that the contract-specific goal might have on the time of completion; and

7) Any other relevant criteria.

b. **Awarding Contracts with Contract-Specific Goals.** The District shall award contracts to the lowest responsible bidder as required by the California Public Contracts Code Sections 20914 and 20916, where applicable. For such contracts, as well as for contracts awarded pursuant to a Request for Proposals procedure where the lowest responsible bidder standard does not apply, a bidder that fails to demonstrate that it achieved the contract-specific goal and fails to demonstrate that it made sufficient good faith efforts to do so shall not be deemed "responsive" and, therefore, shall be ineligible for award of the contract. All references to "bidder" or "bid" include proposer and proposal.

1) **Evaluation of Bids or Proposals.** After submission deadline stated in the solicitation documents for bids and proposals, the Administrator shall evaluate all bids/proposals to determine whether the bidders/proposers submitted all of the information required by 49 C.F.R. § 26.53(b). The responsible bidder with the lowest apparent bid price, or the highest ranking proposer, who also meets the contract-specific goal or demonstrates sufficient good faith efforts, shall be recommended for the contract award. In the event that the responsible bidder with the lowest bid price, or the highest ranking proposer, fails to meet the contract-specific goal or fails to demonstrate sufficient good faith efforts in accordance with the solicitation requirements, or is otherwise unresponsive or not responsible, the Administrator shall evaluate the bidder with the next lowest bid price, or next highest ranked proposer. Should the Administrator determine that additional information is needed to evaluate a bidder's or proposer's submission with regard to the DBE requirements, the Administrator shall request said bidder or proposer to submit the required information, or may contact the listed DBE(s) directly.

2) **Evaluation of DBE Certification Status.** The District shall require that any DBE listed by bidders for participation in the contract be certified DBEs as of the time of bid opening. The Administrator shall review the *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* to confirm each DBE firm's certification status. The District will accept current certifications by any recipients of U.S. DOT funds acceptable to the District in accordance with Section VII of this Diversity Program for Contract and 49 C.F.R. Part 26, Subpart D and Appendix E.

3) **Determination of Amount of DBE Participation.** The Administrator shall review the total dollar value of the work to be performed by DBEs and the total contract bid price reported on the *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* for accuracy and shall compare it to the contract-specific goal established for the contract.

4) **Determination of Good Faith Efforts.** Good faith efforts can be met by either 1) bidder/proposer can demonstrate that it has obtained enough DBE participation to meet the goal; or 2) bidder/proposer can demonstrate that it has made adequate good faith effort to try to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the amount of DBE participation does not meet the contract-specific goal, the Administrator shall review the good faith efforts report submitted by the bidder/proposer. The Administrator shall determine whether the bidder/proposer has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the contract-specific goal in accordance with 49 C.F.R. Part 26, Appendix A.

5) **Bidder's Right to Administrative Reconsideration.** In the event that the Administrator determines that the apparent low responsible bidder, or the highest ranking proposer, is not responsive to the solicitation because it has not met the contract-specific goal or has not demonstrated sufficient good faith efforts to meet the contract-specific goal, the Administrator will notify the bidder in writing. The notification shall include the reasons for the determination and inform the bidder of its right to request administrative reconsideration of the determination. The bidder's request for administrative reconsideration must be in writing and sent to the designated staff person within the time period specified in the notice of determination. As part of the administrative reconsideration, the bidder may submit written documentation for the Review Committee's consideration and may appear before the Review Committee. The Review Committee will only consider documentation of good faith efforts made prior to the bid due date. Any written documentation the bidder wishes the Review Committee to consider must be submitted to the designated staff person within the timeframe specified in the notice of administrative reconsideration. The Review Committee will convene for the administrative reconsideration prior to the time that a recommendation for award of the contract is presented to the appropriate committee and then to the Board of Directors or to the General Manager, as applicable.

The Review Committee will consider the bidder's good faith efforts documentation submitted with its bid, the Administrator's original good faith efforts determination, and any other written materials the bidder has submitted to the Review Committee, in accordance with this section, to determine whether the bidder has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the contract-specific goal in accordance with 49 C.F.R. Part 26, Appendix A.

The Review Committee shall provide the bidder with a written decision on reconsideration, explaining the basis for its determination. In the event that the Review Committee finds that the bidder has not met the contract-specific goal or has not demonstrated sufficient good faith efforts to meet the contract-specific goal, the Administrator will deem said bidder not responsive and evaluate the responsible bidder submitting the next lowest bid, or the next highest ranking proposer. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation, Federal Transit Administration, or Caltrans.

6) **Recommendation for Award.** Following the determination of the lowest responsive and responsible bidder or highest ranked proposer, the Administrator shall

prepare a report on the bidder's or proposer's compliance with the DBE requirements for review by the General Manager or for presentation to the Board of Directors, as applicable. If the General Manager or the Board of Directors disagrees with the recommendation, the General Manager or the Board of Directors shall reject all bids or refer the matter back to staff for further evaluation and recommendation. The decision of the General Manager or the Board of Directors on the award of contract, if such a decision is made, shall be final and binding on all parties, subject to compliance with the District's bid protest procedures.

E. Counting and Tracking DBE Participation (Section 26.55)

Only the work actually performed by a DBE will be counted towards the DBE goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted.

Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. Expenditures may only be counted if the DBE is performing a commercially useful function. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own work force.

If materials or supplies are obtained from a DBE manufacturer, 100 percent (100%) of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, 60 percent (60%) of the cost will be counted.

DBE achievement will not be counted toward the goal until the DBE has been paid. The Administrator will track the participation of DBEs in contract-specific goal contracts separately from the participation of DBEs that is considered race-neutral. Additionally, the Administrator will not count that portion of a DBE's participation that is achieved after the certification of the DBE has been removed during the performance of a contract, with the exception of 49 C.F.R. 26.87(j)(3).

A DBE subcontractor (or an approved substitute DBE firm) may not be terminated without prior written District consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. For contracts with DBE contract goals, the District will consent to the termination of a DBE subcontractor only for good cause, which includes, but is not limited to, the circumstances enumerated in 49 C.F.R. 26.53(f)(3).

If a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If the District requests documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days at the prime contractor's written request, if the District deems necessary. The District shall provide

a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

F. Failing to Meet Overall Goals (Section 26.47)

If the awards and commitments shown on the District's *Uniform Report of Awards or Commitments and Payments* at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the Administrator will conduct a Shortfall Analysis to analyze in detail the reasons for the difference between the overall goal and awards and commitments. To ensure the District is implementing its DBE Program in good faith, specific steps and milestones to correct the problems identified and to meet overall goals for future fiscal years will be established. The District is not among the 50 largest transit authorities determined by FTA; therefore, the District's analysis and corrective actions will be retained for three years and made available to FTA on request for their review.

VI. REQUIRED CONTRACT PROVISIONS (Sections 26.13, 26.23, 26.27, 26.29, 26.31, 26.37, 26.55, and Subpart D)

Each financial assistance agreement the District signs with FTA or Caltrans on behalf of FHWA will include a nondiscrimination assurance from the District. U.S. DOT-assisted contracts that the District lets will include, as appropriate, the model contract provisions that are set forth in the current edition of the District's Standard Disadvantaged Business Enterprise Contract Language/Forms Manual, available from the Administrator. The Administrator shall have discretion to modify the provisions for particular contracts as needed, in consultation with the Attorney. These required contract provisions consist of:

- The District's DBE Program policy.
- A nondiscrimination assurance from the contractor (and each subcontract the prime contractor signs with a subcontractor).
- A statement that encourages prime contractors to use financial institutions owned and controlled by socially and economically disadvantaged individuals in the community.
- A Prompt Payment clause that requires a) the prime contractor or subcontractor (i.e. builders) to pay any subcontractor(s) not later than seven (7) days after receipt of each progress payment the District makes to the prime contractor, unless otherwise agreed to in writing, and b) the prime professional to pay any subconsultant(s) not later than fifteen (15) days after receipt of each progress payment or final retention payment. The payment cannot be delayed because of disagreements on other contracts. This requirement applies to both DBE and non-DBE subcontractors. The payment cannot be delayed because of disagreements on other contracts. This clause also requires the prime contractors to pay all retainage owed to construction subcontractors for satisfactory completion of accepted work within seven (7) days after the date the prime contractor receives a payment from the District. For consultant contracts, retainage

must be paid not later than fifteen (15) days after receipt of final retention received after the subconsultant's work is satisfactorily completed.

U.S. DOT requires recipients to use one of the following methods to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor:

1. Decline to hold retainage from prime contractors and prohibit prime contractors and subcontractors from holding retainage from subcontractors.
2. Decline to hold retainage from prime contractors and include a contract clause obligating the prime contractor and subcontractors to make prompt and full payment of any retainage kept by the prime contractor or subcontractor to all subcontractors within the following timeframes:
 - a. For construction subcontracts, retainage must be paid within seven (7) days of receipt unless otherwise agreed to in writing for construction work completed (Section 7108.5 of the CBPC and Section 10262 of the CPCC), and
 - b. For consultant contracts, retainage must be paid not later than fifteen (15) days after receipt of final retention received after the subconsultant's work is satisfactorily completed (Section 3321 of the CCC).to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.
3. Hold retainage from the prime contractor and provide for prompt and regular incremental acceptances of portions of the contract, pay retainage to prime contractors based on the acceptances and include a contract clause obligating the prime contractor and subcontractors to pay all retainage owed to all subcontractors within the following timeframes:
 - a. For construction subcontracts, retainage must be paid within seven (7) days of receipt unless otherwise agreed to in writing for construction work completed (Section 7108.5 of the CBPC and Section 10262 of the CPCC), and
 - b. For consultant contracts, retainage must be paid not later than fifteen (15) days after receipt of final retention received after the subconsultant's work is satisfactorily completed (Section 3321 of the CCC).

The District will use Method No. 3 above to comply with the Prompt Payment requirement, subject to state prompt payment requirements that do not conflict with federal regulations.

- The website address for the DBE directory identifying all firms eligible to participate as DBEs in the District's program.

- The DBE participation goal (whenever applicable).
- A section that provides the DBE certification standards.
- A section that provides how DBE participation is counted toward goal.
- A section on reporting requirements, including a provision ensuring that DBE participation is credited toward overall or contract goals only when payments are actually made to DBE firms.
- A section on administrative and contractual remedies to ensure compliance with the DBE program.

VII. CERTIFICATION STANDARDS (Subpart D and Appendix E)

The District is a participant of the CUCP, which follows U.S. DOT directives and guidance concerning certification matters. The CUCP MOA provides U.S. DOT recipients the option to be either a certifying member or a non-certifying member. The District has elected to be a non-certifying member.

The CUCP makes all DBE certification decisions on behalf of U.S. DOT recipients in the state. The District relies upon the CUCP for the certification of DBE firms and ensures that only firms certified as eligible DBEs participate in the Program.

Should the District decide to change its non-certifying status and elect to become a certifying member, the District will apply the standards of Subpart D and Appendix E of the Regulations.

VIII. MONITORING AND RECORDKEEPING (Sections 26.11 and 26.37)

A. Bidders List (Section 26.11)

The District will require all prime contractors bidding on U.S. DOT-assisted contracts to return, at a time specified in the solicitation documents, the following information about the prime contractor and all subcontractors who provided a bid:

- Firm name
- Firm address
- Firm's status as a DBE or non-DBE
- Age of the firm
- Annual gross receipts
- Type of work

The District will use this information to maintain and update its Bidders List. The District reserves the right to request additional information including the completion of all forms.

B. Monitoring Payments to DBEs (Section 26.37)

The contractor shall maintain records of all DBE and non-DBE participation in the performance of the contract, including subcontracts entered into with certified DBEs and all materials purchased from certified DBEs.

It is the contractor's responsibility to maintain records and documents for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the District or U.S. DOT. This reporting requirement is also extended to any certified DBE subcontractor.

The District will maintain a running tally of real time entry of payments actually made to DBE firms by use of an automated cloud-based system known as the District's Diversity Compliance Management System (DCMS) powered by B2Gnow software. Prime contractors are required to report all payment information in DCMS, which must be confirmed by all DBE and

non-DBE subcontractors, subconsultants and suppliers. Documentation to verify such payments may be requested. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs.

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

The District will request all prime contractors to provide the District with executed copies of subcontractor agreements to verify dollar amounts stated for all DBEs.

C. Reporting to U.S. DOT (Section 26.11)

The District's DBELO will continue to report DBE participation and overall and/or project goal-setting methods to FTA and Caltrans on behalf of FHWA as directed. Statistical data will be maintained as prescribed on a semi-annual basis to provide reports to U.S. DOT operating administrations reflecting the DBE participation on the District's federally-assisted procurement activities.

D. Information, Confidentiality, Cooperation (Section 26.109)

The District will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), California Public Records Act (Government Code §6250), and local law. The District may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

Participants of the District's DBE Program are required to cooperate fully and promptly with compliance reviews, investigations, and other request for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to a complainant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

Participants of the District's DBE Program must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by §26.109, or because the individual or firm has made a compliant, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing. Failure to comply with this part is a violation.

E. Contract Remedies (Section 26.37)

The District will monitor compliance of its contractors on federally-assisted contracts with the requirements of the Regulations and the DBE Program. The District may impose such contract remedies as are available under federal, state, and local law and regulations for non-compliance. Such remedies may include, but are not limited to, withholding of progress payments and contract retentions, imposition of liquidated damages, and termination of the contract in whole or in part.

IX. PUBLIC PARTICIPATION AND OUTREACH EFFORTS (Sections 26.45 and 26.51)

The District's public participation and outreach effort activities are directed at assisting the District to solicit public input to set overall DBE goal(s) and/or project goal(s) and to broaden public awareness of the District's Diversity Program for Contracts to meet overall DBE goal(s) and/or project goal(s).

In establishing and meeting overall DBE goal(s) and/or project goal(s), the District will provide for public participation. This will include:

Prior to finalizing the Overall Goal(s) and/or Project Goal(s) Analysis Report, the District will consult with U.S. DOT agencies, other U.S. DOT grantees, minority, women's and general contractor groups, community organizations, or other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the District's efforts to establish a level playing field for the participation of DBEs.

Every three years, or more often if an overall goal and/or project goal is adjusted, the District will publish a notice announcing its proposed overall goal(s) and/or project goal(s), on the District's internet website and may post the notice in any other sources (e.g., minority-focused media, trade association publications).

In conjunction with the District's activities to meet its overall DBE goal(s) and/or project goal(s), the District will implement various public participation and outreach activities designed to broaden awareness of the District's Diversity Program for Contracts. The measures described in 49 C.F.R. § 26.51 focusing on race-neutral means will be actively pursued, and the District will also encourage its contractors to make similar outreach efforts to include DBE participation in subcontracting opportunities. In conjunction with regional outreach consortia and CUCP, the District will continue to organize and offer training programs for meeting DBE eligibility requirements, familiarize potential contractors with District procurement procedures and requirements, and otherwise develop effective programs to further the inclusion of DBEs in the District's contracting activities.

Exhibit A: Disadvantaged Business Enterprise Program Administrator Duties and Responsibilities

In accordance with 49 C.F.R. § 26.25 and Section III.A. of this Program, the specific duties and responsibilities of the Administrator shall include, but not be limited to, the following:

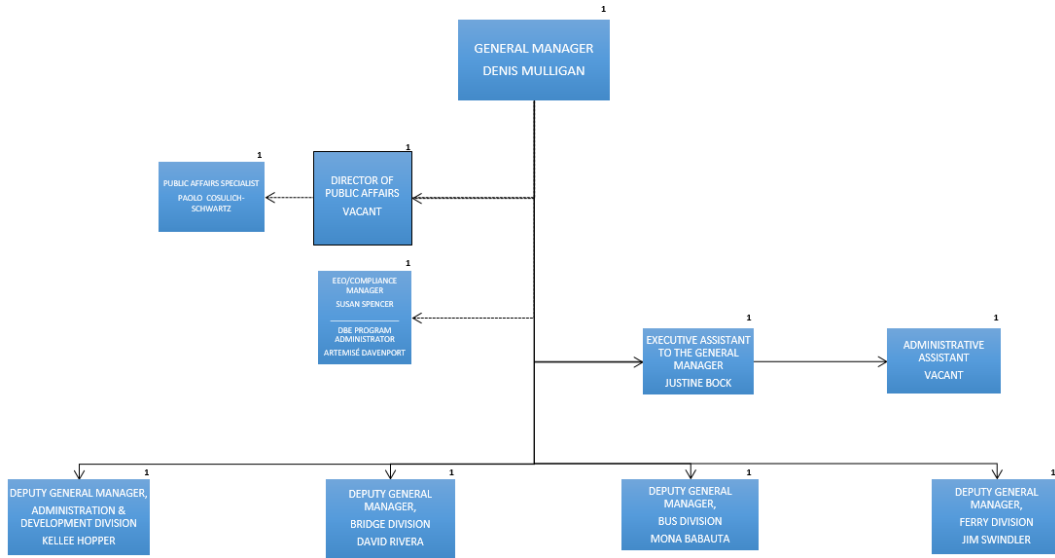
1. Administering the Diversity Program for Contracts in compliance with FTA and FHWA guidelines and District business operational goals to ensure continued FTA grant funding;
2. Making recommendations to and advising executive management and the Board of Directors regarding DBE/SBE program policy changes;
3. Serving as the District's Disadvantaged Business Enterprise Liaison Officer (DBELO) with independent and direct access to the District's General Manager;
4. Analyzing and assessing the available resources and evidence for the establishment and achievement of overall DBE goal(s) and/or project goal(s) for U.S. DOT-assisted contracts each fiscal year;
5. Analyzing data and regularly craft and submit financial reports to FTA and DOT;
6. Developing, monitoring and evaluating the Diversity Program for Contracts, and preparing supplemental written procedures and guidelines to implement the Program;
7. If the District is a certifying member of the CUCP, maintaining and updating the DBE Database in accordance with 49 C.F.R. § 26.31;
8. If the District is a certifying member of the CUCP, determining all certification actions including initial certifications, recertifications, denials and removals;
9. Maintaining and updating the Bidders List in accordance with 49 C.F.R. § 26.11;
10. Conducting race-neutral measures to facilitate the participation of small business concerns, including DBEs, through outreach and other community programs, training and business development programs, restructuring contracting opportunities, simplifying bonding, surety and insurance requirements or other race-neutral means;
11. Participating in the contract bid and award process, including recommending specific contract goals where appropriate, reviewing contract specifications, attending pre-bid/proposal conferences and evaluating bids for contractor responsiveness, responsibility and good faith efforts;
12. Monitoring specific contract performance and actual DBE participation and contract payments;
13. Monitoring overall DBE participation, adjusting overall goals and means of achievement, assessing areas of over-concentration of DBE participation and reporting to the General

Manager, the District's Board of Directors, FTA and Caltrans on behalf of FHWA, as needed;

14. Participating in the CUCP in accordance with 49 C.F.R. § 26.81 and CUCP MOA;
15. Assisting the District's Diversity Program for Contracts Review Committee;
16. Representing the District on a variety of committees conducting and/or coordinating regional outreach events and activities;
17. Participating in other transit organizations on common issues pertaining to diversity programs for contracts;
18. Establishing Disadvantaged and Small Business Enterprise contract-specific goals on applicable District contracts and proposals and analyzing all related DBE/SBE forms for bid/proposal submittal;
19. Investigating DBE protests;
20. Training and instructing District staff on new DBE/SBE processes and procedures; and
21. Maintaining all appropriate records and documentation of the Program.

Exhibit B: DBE PROGRAM ORGANIZATIONAL CHART

GENERAL MANAGER'S OFFICE



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EXHIBIT C: Small Business Enterprise Element (Section 26.39)

The District has established a Small Business Enterprise (SBE) element as one of its race-neutral methods of achieving small business participation, including disadvantaged business participation, on particular contracts with subcontracting opportunities. This SBE element applies to all District contracts, regardless of funding source, where race-neutral and gender-neutral methods are employed. The District will take all reasonable steps to eliminate obstacles to SBE prime contractor or subcontractor participation in District procurement activities.

On August 2, 2013, the District received approval from the Federal Transit Administration to implement the SBE Element as part of the District's DBE Program.

A. Definition of Small Business Enterprise

1. To participate as an eligible small business in programs administered by the District, a firm must meet both of the following requirements:

a. A firm (including affiliates) must be an existing small business as defined by Small Business Administration (SBA) regulations, 13 C.F.R. Part 121, for the appropriate type(s) of work that a firm performs. The firm must hold one of the acceptable certifications listed in Section B below.

b. Even if a firm meets the above requirement, the firm's (including affiliates') average annual gross receipts over the previous three years cannot exceed a maximum cap of \$28.48 million (or as adjusted for inflation by the Secretary of U.S. DOT). SBA size standards vary by industry, and for certain industries may be higher than the \$28.48 million cap. For example, the SBA size standard for a general construction contractor is \$39.5 million. If a general construction contractor's average annual gross receipts over the previous three years is \$29 million, while it is below \$39.5 million and meets the SBA size standard, it would be ineligible to participate as a small business for District purposes as it exceeds \$28.48 million.

For information on SBA size standards, visit: <http://www.sba.gov/content/determining-size-standards>. Affiliates are defined in SBA regulations 13 C.F.R. Part 121.103.

B. Acceptable Comparable Small Business Enterprise Certifications

The District will accept the small business enterprise certifications performed by other agencies, provided that the size standards described in Section A1a and A1b above are met. If a firm is certified in one or more of the following programs, and meets District size standards, the firm is automatically deemed a small business for District purposes. The term "SBE" will be used collectively for all DBEs and qualified SBEs, WBEs, MBEs and other approved certifications. As indicated below, the District requires an affidavit of size for each SBE prime contractor or subcontractor that is not certified as a DBE. Certifications from self-certification programs are not acceptable. District may request and review financial data provided by SBE firms on a case-by-case basis to confirm eligibility.

Firms must be certified as of the time of bid submittal.

1. Disadvantaged Business Enterprise (DBE) certification pursuant to U.S. Department of Transportation regulations, 49 C.F.R. Part 26. This includes DBE certifications performed by the California Unified Certification Program or by the Unified Certification Program (UCP) of any other state.

2. State Minority Business Enterprise (SMBE) and State Women Business Enterprise (SWBE) certification by the State of California or by any other state provided that their certification complies with Section A1a and A1b above. In addition to copies of SMBE/SWBE certifications, bidders certified out-of-state must submit an affidavit of size for each SMBE/SWBE prime contractor or SMBE/SWBE subcontractor at the specified time in the bid solicitation.

3. Small Business (SB) certification by the California Department of General Services (DGS) provided that their certification complies with Section A1a and A1b above. In addition to copies of SB certifications, bidders must submit an affidavit of size for each SB prime contractor or subcontractor at the specified time in the bid solicitation.

4. Microbusiness (SB (Micro)) certification by the California Department of General Services for ALL industries, provided that their certification complies with Section A1a and A1b above. In addition to copies of SB Micro certifications, bidders must submit an affidavit of size for each Micro prime contractor or subcontractor at the specified time in the bid solicitation.

5. Small Business for the Purpose of Public Works (SB-PW) certification by the California Department of General Services provided that their certification complies with Section A1a and A1b above. In addition to copies of SB-PW certifications, bidders must submit an affidavit of size for each SB-PW prime or subcontractor at the specified time in the bid solicitation.

6. SBA 8(a) by the Small Business Administration provided that their certification complies with Section A1a and A1b above. In addition to copies of SBA 8(a) certifications, bidders must submit an affidavit of size for each SBA 8(a) prime contractor or subcontractor at the specified time of the bid solicitation.

7. SBE/MBE/WBE certification from other state, county, or local government-certifying agency provided that their certification complies with Section A1a and A1b above. In addition to copies of certifications, bidders must submit an affidavit of size for each certified prime contractor or subcontractor at the specified time in the bid solicitation.

C. Race-Neutral SBE Measures

The District will continue its efforts to enhance small business participation through outreach and other community programs, training and business development programs, restructuring contracting opportunities, simplifying bonding, surety and insurance requirements or

other race-neutral means. In addition, the District may take any of the following race-neutral SBE measures:

1. Endeavor to unbundle large contracts to ensure that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform. During the project planning stage, project managers and engineering staff will evaluate the potential for a large project to be split into smaller contract opportunities.

2. In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”), require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

3. On prime contracts not having DBE contract goals, establish contract-specific SBE goals where appropriate. Contract-specific SBE goals may be established on particular prime contracts with subcontracting opportunities as a means of increasing small business, including DBE participation. Availability of subcontracting opportunities will be evaluated on a contract-by-contract basis by project managers and the Administrator. Where a contract-specific SBE goal has been established, the bidder or proposer must meet the contract-specific goal or demonstrate that it made sufficient good faith efforts to do so. A bidder shall be ineligible for contract award if it does not meet the goal or demonstrate sufficient good faith efforts.

D. Determining SBE Goals (Referencing C.3. above)

The SBE goal shall be determined by the Administrator in cooperation with project managers and with the concurrence of the General Manager. The contract-specific goal shall apply to the percentage of SBE participation in the total contract work and be set forth in the Special Provisions of the contract specifications.

For each contract involving subcontracting opportunities, the factors outlined below will be considered to determine whether a contract-specific goal should be established for the particular contract and, if so, what the percentage goal shall be:

1. The full range of activities in the proposed contract;
2. The availability of SBEs as prime contractors or subcontractors in the types of work involved in the performance of the proposed contract;
3. The unique conditions of the project that might affect the ability of the prime contractor to coordinate, utilize, or incorporate subcontractors or suppliers into the project. (Projects consisting of only one or two sub-trades may not be appropriate for a contract-specific goal due to the fact that establishing a goal could result in restrictive bidding.);
4. The effect that the contract-specific goal might have on the time of completion;

5. Any other relevant criteria.

E. **Awarding Contracts with Contract-Specific SBE Goals**

The District shall award contracts to the lowest responsible bidder as required by the California Public Contracts Code Sections 20914 and 20916, where applicable. For such contracts, as well as for contracts awarded pursuant to a Request for Proposals procedure where the lowest responsible bidder standard does not apply, a bidder that fails to demonstrate that it achieved the contract-specific SBE goal and fails to demonstrate that it made sufficient good faith efforts to do so shall not be deemed “responsive” and, therefore, shall be ineligible for award of the contract. The bidder or proposer will include in its bid or proposal a *SBE Goal Declaration* in a form designated by the District notifying the District of its SBE goal attainment.

1. **Evaluation of Bids**

Invitation for Bid. The following procedures apply to contracts that are awarded to the lowest responsible bidder. No later than five (5) business days after bid opening as a matter of responsiveness, the Administrator shall evaluate all bids to determine whether the bidders submitted all of the information required by 49 C.F.R. § 26.53(b). The responsible bidder with the lowest apparent bid price who also meets the contract-specific SBE goal, or demonstrates sufficient good faith efforts to meet the contract-specific SBE goal, shall be recommended for the contract award. In the event that the bidder with the lowest monetary bid price fails to meet the contract-specific goal or fails to demonstrate sufficient good faith efforts, or is otherwise unresponsive or not responsible, the Administrator shall evaluate the bidder with the next lowest bid price. Should the Administrator determine that additional information is needed to evaluate a bidder’s submission with regard to the SBE requirements, the Administrator shall request said bidder to submit the required information, or may contact the listed SBEs directly.

The District shall require that any SBEs listed by bidders for participation in the contract be certified SBEs as of the time of bid opening. Acceptable comparable Small Business Enterprise certifications are listed in this document. Some certifications require completion of a *Small Business Enterprise Affidavit of Size* in a form designated by the District and submitted at the time specified in the bid solicitation.

The Administrator shall review the *SBE Goal Declaration* form and the *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* and will confirm each SBE firm’s certification status. The Administrator will review the total dollar value of the work to be performed by SBEs and the total contract bid price for accuracy and comparison with the contract-specific SBE goal established for the contract.

Request for Proposals. This procedure applies to contracts that are awarded pursuant to a Request for Proposals procedure, in which the lowest responsible bidder standard does not apply and contract award is based upon a qualitative evaluation of multiple factors, including costs. After the submission deadline, the Administrator shall evaluate all proposals to determine whether the proposers submitted all of the information required by 49 C.F.R. § 26.53(b). The highest ranked responsible proposer who also meets the contract-specific SBE goal, or demonstrates sufficient good faith efforts to meet the contract-specific SBE goal, shall be recommended for the contract

award. In the event that the highest ranked proposer fails to meet the contract-specific goal or fails to demonstrate sufficient good faith efforts, or is otherwise unresponsive or not responsible, the Administrator shall evaluate the next highest ranked proposer. Should the Administrator determine that additional information is needed to evaluate a proposer's submission with regard to the SBE requirements, the Administrator shall request said proposer to submit the required information, or may contact the listed SBEs directly.

The District shall require that any SBEs listed by proposers for participation in the contract be certified SBEs at the proposal submission deadline. Acceptable comparable Small Business Enterprise certifications are listed in this document. Some certifications require completion of a *Small Business Enterprise Affidavit of Size* in a form designated by the District and submitted at the time specified in the solicitation.

The Administrator shall review the *SBE Goal Declaration* form for the proposer's SBE commitment and shall compare it to the contract-specific goal established for the contract. The Administrator shall review the list of SBEs submitted by the proposer and confirm each SBE firm's certification status.

The following applies to both Invitation for Bid and Request for Proposals.

2. **Determination of Good Faith Efforts.** Bidder/proposer is obligated to make good faith efforts. Bidder/proposer can demonstrate that it has made good faith efforts by either meeting the contract-specific goal or documenting good faith effort to meet the contract-specific goal. If the amount of SBE participation does not meet the contract-specific goal, the Administrator shall review the good faith efforts documentation submitted by the bidder/proposer. The Administrator shall determine whether the bidder/proposer has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the contract-specific goal in accordance with 49 C.F.R. Part 26, Appendix A. All bidders/proposers must submit Good Faith Efforts documentation in accordance with the solicitation documents.

3. **Bidder's Right to Administrative Reconsideration.** In the event that the Administrator determines that the apparent low responsible bidder, or highest ranked proposer, is not responsive to the solicitation because it has not met the contract-specific goal and has not demonstrated sufficient good faith efforts to meet the contract-specific goal, the Administrator will notify the bidder/proposer in writing. The notification shall include the reasons for the determination and inform the bidder/proposer of its right to request administrative reconsideration of the determination. The bidder's/proposer's request for administrative reconsideration must be in writing and sent to the designated staff person within the time period specified in the notice of determination. As part of the administrative reconsideration, the bidder/proposer may submit written documentation for the Review Committee's consideration and may appear before the Review Committee. The Review Committee will only consider documentation of good faith efforts made prior to the bid/proposal due date. Any written documentation the bidder/proposer wishes the Review Committee to consider must be submitted to the designated staff person within the timeframe specified in the notice of administrative reconsideration. The Review Committee will convene for the administrative reconsideration prior to the time that a recommendation for

award of the contract is presented to the appropriate committee and then to the Board of Directors or to the General Manager, as applicable.

The Review Committee will consider the bidder's/proposer's good faith efforts documentation submitted with its bid/proposal, the Administrator's original good faith efforts determination, and any other written materials the bidder/proposer has submitted to the Review Committee, in accordance with this section, to determine whether the bidder/proposer has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the contract-specific goal in accordance with 49 C.F.R. Part 26, Appendix A.

The Review Committee shall provide the bidder /proposer with a written decision on reconsideration, explaining the basis for its determination. In the event that the Review Committee finds that the bidder/proposer has not met the contract-specific goal or has not demonstrated sufficient good faith efforts to meet the contract-specific goal, the Administrator will deem said bidder not responsive and evaluate the responsible bidder submitting the next lowest bid, or the next highest ranking proposer. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation or Federal Transit Administration.

4. **Recommendation for Award.** Following the determination of the lowest responsive and responsible bidder/highest ranked proposer, the Administrator shall prepare a report on the firm's compliance with the SBE requirements for review by the General Manager. The determination will be included in a report for presentation to the appropriate committee and then to the Board of Directors, if applicable, at the time the contract award is considered. If the appropriate committee, the Board of Directors or the General Manager disagrees with the recommendation, it shall reject all bids or refer the matter back to staff for further evaluation and recommendation. The decision of the Board of Directors or the General Manager on the award of contract, if such a decision is made, shall be final and binding on all parties, subject to compliance with the District's bid protest procedures.