



METROLINK®

**SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
(SCRRA)**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM MANUAL**

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I. POLICY

A. **Policy Statement (§26.1, §26.3)**

The Southern California Regional Rail Authority (Authority) is a recipient of U.S. Department of Transportation (U.S. DOT) Federal Assistance funds through the Federal Transit Administration (FTA). As a condition of receiving such assistance, the Authority has developed a DBE Program in conformance with the federal Disadvantaged Business Enterprise (DBE) Program and its regulations published under U.S. DOT 49 CFR Part 26. The Authority will continue carrying out this Program as long as it receives funds from U.S. DOT. The Authority is committed to fulfilling the spirit and intent of the federal DBE Program and its regulations by ensuring that DBEs have equitable access to participate in all federally funded Authority contracting opportunities. In accordance with the U.S DOT's DBE Program, the goal of the Authority's DBE Program is to ensure that minority-owned, women-owned, and other disadvantaged small businesses can fairly compete for contracts and subcontracts financed in whole, or in part, with U.S. DOT funds.

B. **Objectives (§26.1, §26.3)**

In accordance with the intent of the U.S. DOT's DBE Program regulations, the Authority's Program objectives are to:

1. Ensure non-discrimination in the award and administration of all Authority U.S. DOT-assisted contracts and subcontracts;
2. Create a level playing field by which DBEs can compete fairly for on the Authority's U.S. DOT-assisted contracts;
3. Ensure the Authority's DBE Program is narrowly tailored in accordance with applicable laws;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Assist in the removal, where feasible, of procurement and contracting barriers in U.S. DOT-assisted contracts that may impede DBE participation;
6. Offer assistance to DBE firms to enable them to compete successfully in the marketplace outside of the DBE Program;
7. Comply with federal regulations and financial assistance agreements;
8. Disseminate timely and accurate information regarding the Authority's contracting opportunities to DBE Program participants and potential participants; and
9. Monitor and enforce contractor compliance in meeting established DBE goals and/or exercising Good Faith Efforts (GFE) to do so as defined in 49 CFR Part 26.

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9. Monitor and enforce contractor compliance in meeting established DBE goals and/or exercising Good Faith Efforts (GFE) to do so as defined in 49 CFR Part 26.

The Authority has designated the Director of Special Projects, Office of the CEO to serve as the Authority's DBE Liaison Officer (DBELO) to oversee the DBE Program. However, all Authority executives, management and staff share in the responsibility for making the Authority's DBE Program a success and shall give their full cooperation to the DBELO in the implementation of the DBE Program. Implementation of the DBE Program has the same priority as all other legal obligations incurred by the Authority as contained within its financial assistance agreement with the U.S. DOT.

The Authority's policy statement and objectives set forth in this Section I of the Program has been signed and dated by the Authority's Chief Executive Officer (CEO) and is disseminated throughout its organization and to the DBE and non-DBE business communities that perform work on the Authority's U.S. DOT-assisted contracts. Furthermore, this DBE Policy Statement and Objectives is posted on the Authority's website and made available to the general business community and the general public.

Stephanie N. Wiggins
Chief Executive Officer
Southern California Regional Rail Authority

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II. GENERAL REQUIREMENTS

A. Objectives (§26.21 and §26.3)

The Authority's objectives have been included in Section I of this DBE Program Manual.

In the event of any conflicts or inconsistencies between the U.S. DOT's DBE Program and the Authority's DBE Program with respect to U.S. DOT-assisted contracts, the U.S. DOT's DBE Program and its regulations shall prevail.

B. Applicability (§26.3)

The Authority, as a direct recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178. These funds were received from the U.S. DOT, and as a condition of Federal financial assistance, the Authority is required to submit for approval, to the U.S. DOT operating administration from which it receives the majority of its federal funding (the FTA), a DBE Program developed in accordance with federal regulations published under Title 49 CFR Part 26 and subsequent guidance. This Program Manual sets forth the policies and procedures to be implemented by the Authority to ensure that DBEs have an equitable opportunity to participate in the Authority's U.S. DOT-assisted contracting opportunities.

Any terms used in this section that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and the Authority's DBE Program with respect to U.S. DOT-assisted contracts, the Regulations shall prevail. In conformance with 49 CFR 26, the Authority will continue to carry out its DBE Program until all funds from U.S. DOT financial assistance have been expended.

C. Non-Discrimination Requirements

The Authority will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE Program, the Authority will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

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III. DEFINITION OF TERMS (§26.5)

Any terms used in this Program that are defined in 49 CFR Part 26 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. Some of the most common terms are defined below:

Affirmative Action: Positive activities undertaken by the Authority and its contractors to eliminate discrimination and effects of past discrimination and to ensure non-discriminatory practices in the future.

Appeal: A formal filing by which a business entity challenges a legal decision made by a lower authority and brings it to a higher authority for review.

Affiliation: Has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121.

(1) Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

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

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

Assets: All the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Bidders List: A list of all firms that have participated or attempted to participate on prime contracts and subcontracts on the Authority's U.S. DOT-assisted projects.

Business, Business Concern or Business Enterprise: An entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a

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significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

California Department of Transportation (CalTrans): The State of California's government department that manages the state highway system and is actively involved with public transportation systems throughout California. CalTrans is the largest recipient of U.S. DOT funds within California.

California Unified Certification Program (CUCP): California's one-stop certification clearinghouse which standardizes DBE certification criteria across all certifying members of the CUCP and enables applicants to apply once for DBE certification, which will be honored by all U.S. DOT recipients within California.

Code of Federal Regulations (CFR): Codification of the general and permanent rules and regulations of the executive departments and agencies of the U.S. federal government.

Commercially Useful Function: Work performed by a DBE that has a necessary and useful role in the contract scope of work and on which the firm's role is not a superfluous step added in an attempt to obtain credit toward goals. If, in the Authority's judgement, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, the firm will not receive DBE credit.

Compliance: Correct and accurate implementation of U.S. DOT DBE Program requirements.

Contingent Liability: A liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

Contract: A legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contracting Opportunity: Any decision by the Authority or its contractors to institute a procurement action to obtain a product or service commercially (as opposed to inter-governmental actions).

Contractor: One who participates, through a prime or subcontract (at any tier), in an Authority contract.

County Business Patterns (CBP): Statistical data authorized by United States Code Titles 13 and 26 and compiled by the U.S. Census Bureau, which provides annual details of geographic, industry, and other information for U.S. business establishments.

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

DBE Directory: The California Unified Certification Program's (CUCP's) list of certified DBEs, which is used by the Authority and its contractors to identify potential DBE prime and subcontractors, suppliers, etc.

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DBE Liaison Officer (DBELO): A staff member of a public agency that receives U.S. DOT financial assistance, who is responsible for implementing all aspects of the agency's DBE Program.

De-certification: The result of the process initiated to remove a firm's DBE eligibility.

Disadvantaged Business Enterprise (DBE): A for-profit small business concern—

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
3. Has been certified as Disadvantaged in accordance with Title 49 CFR Part 26 by a certifying member agency of the CUCP.

Disparity Study: Fact-based technique and methodology used to establish whether or not underutilization of certain groups like minorities and women exists in the purchasing and contracting practices of an entity. A disparity study must be conducted in order to establish the legal validity of any affirmative action program in public contracting.

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

U.S. DOT-Assisted Contract: A contract between a recipient and a contractor (at any tier) funded in whole or in part with U.S. DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land or improved real property.

Federal Fiscal Year (FFY): The annual period beginning October 1st of one year and ending September 30th of the following year. The FFY is different than the Authority's fiscal year, which runs from July 1st through June 30th.

Goal: A numerically expressed objective, which the Authority or its contractors are required to make good faith efforts to achieve.

Good Cause: An acceptable reason for terminating a DBE subcontractor on an Authority contract. "Good cause" is defined as a situation where the DBE subcontractor has failed or refused to perform the work of its subcontract in accordance with normal industry standards.

Good Faith Efforts (GFE): Efforts to achieve a DBE goal or other requirement of this Part, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Home State: The state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

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

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

Liabilities: Financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

Manufacturer: A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by specifications.

Memorandum of Agreement (MOA): A cooperative agreement written between parties to cooperatively work together on an agreed-upon project or meet an agreed-upon objective. A MOA can take the form of a legal document that is binding and holds the parties responsible to their commitment, or just a partnership agreement.

Memorandum of Understanding (MOU): A document describing a bilateral agreement between parties. It expresses a convergence of will between the parties, indicating an intended common line of action, rather than a legal commitment. It is a more formal alternative to a gentlemen’s agreement, but generally lacks the binding power of a contract.

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

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

Non-compliance: Failure, either willful or inadvertent, to correctly and accurately implement DBE Program requirements.

Operating Administration: Any of the following agencies of the U.S. Department of Transportation (U.S DOT), including but not limited to: Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and Federal Railroad Administration (FRA).

Personal Net Worth: The net values 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 participative DBE firm or the individual’s equity in his or her primary place of residence. An

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

Primary Industry Classification: Means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

Primary Recipient: Means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal Place of Business: The business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

Program: Any undertaking on the Authority's part to use U.S. DOT financial assistance as authorized by laws to which the DBE Program applies.

Race-Conscious Measure or Program: A program or measure that focuses specifically on assisting DBEs, i.e., by the development and inclusion of participation goals or good faith effort activities.

Race-Neutral Measure or Program: A program or measure that focuses on assisting all small businesses equally, regardless of gender, ethnicity, or social/economic disadvantage. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient: An entity, public or private, that receives U.S. DOT financial assistance (through the programs of the FHWA, FTA, or FRA), including primary recipient (an entity that passes some or all of the financial assistance to another recipient) and subrecipient (an entity that receives U.S. DOT financial assistance through a primary recipient).

Regular Dealer/Supplier: A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad-hoc or contract by contract basis.

Set-Aside: A contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms or on some other basis not related to qualifications or pricing.

Small Business Administration or SBA: The federal United States Small Business Administration.

SBA Certified: A firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

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Small Business Concern: A business that meets the definition contained in Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and Economically Disadvantaged Individual: Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

1. Found by the CUCP certifying member agency to be socially and economically disadvantaged on a case-by-case basis.
2. A member of any one or more of the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) “Black Americans” which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) “Hispanic Americans” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) “Native Americans” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv) “Subcontinent Asian Americans” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (v) “Asian Pacific Americans” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong.
 - (vi) Women; and
 - (vii) Any additional group whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
3. Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse: A married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit Vehicle: A vehicle used by the Authority, e.g. railcar, bus or van, for the primary purpose of public mass transportation; this definition does not include locomotives or ferry boats.

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Transit Vehicle Manufacturer (TVM): Any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

A manufacturer of vehicles used by the Authority for the primary purpose of public mass transportation (e.g. railcars, buses, and vans). The term does not apply to firms that rehabilitate old vehicles or to manufacturers or dealers of transit vehicles with respect to requirement of paragraph 26.49 of the regulation.

Tribally-owned Concern: Any concern at least 51 percent owned by an Indian tribe as defined in this section.

Under-Utilized DBE (UDBE): A DBE defined as under-utilized pursuant to the results of a disparity study.

Unified Certification Program (UCP): A one-stop certification clearinghouse which standardizes DBE certification criteria across all certifying members of the UCP and enables applicants to apply once for DBE certification, which will be honored by all DOT recipients within the state.

U.S. Census Bureau: The U.S. government agency responsible for the U.S. Census, as well as other national demographic and economic data.

U.S. Department of Transportation (U.S. DOT): Department of the U.S. federal government that is actively involved with U.S. transportation at the national, state, and local levels. The U.S. DOT includes the Office of the Secretary, FHWA, FTA, and FRA.

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IV. RECORD KEEPING REQUIREMENTS

The Authority maintains a recordkeeping system which identifies U.S. DOT-assisted contract awards and tracks prime contractors' progress in achieving contract-specific DBE goals. The Authority verifies payments made to DBEs and keeps record of actual DBE attainments based on dollars paid. Any areas of identified non-compliance are subject to administrative sanctions against the contractor as outlined in this manual.

The Authority's records serve to document all information, for each U.S. DOT-assisted contract, needed to comply with U.S. DOT regulations. Records will include, but will not be limited to, the following information:

1. Contract funding source(s);
2. Contract title and number;
3. DBE contract goal, if applicable, and methodology used in establishing the goal;
4. Prime and Subcontractor/consultant name, address and primary contact;
5. DBE commitment (percentage and dollar value of contract allocated to DBEs);
6. GFE Responsiveness Analysis and evaluation results, if applicable;
7. Name, certification status (DBE or non-DBE) and subcontract dollar value for each listed subcontractor;
8. DBE status, gender, ethnicity, and dollar value of participation for each listed DBE;
9. Type of work performed by each listed DBE (i.e., subcontractor, regular dealer/supplier, broker, manufacturer, trucking company, etc.);
10. Copy of current certification for each listed DBE or CUCP website printout;
11. Tally of DBE utilization throughout the life of the contract, including final DBE utilization reported at contract close-out;
12. Field observation/on-site interview forms;
13. Report measuring DBE commitment percentage and dollar amount vs. actual attainment;
14. Certification by the Authority, attesting to having monitored contractor compliance, documentation submittal requirements, and on-site performance; and
15. Outreach efforts made by the Authority to inform DBEs of the contracting opportunity and inform prime bidders/proposers of DBE availability and interest in the contract.

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A. Uniform Reports of DBE Awards/Commitments and Payments (§26.11(a))

The Authority's DBELO or designee shall submit for FTA review and approval, a semi-annual *Report of DBE Awards or Commitments and Payments*. In conformance with FTA direction, the Authority will submit reports through FTA's Transit Award Management System (TrAMS) by June 1 and December 1 of each federal fiscal year (FFY). The reports shall list the dollar value of contracts and subcontracts awarded to DBEs and shall demonstrate the Authority's progress toward reaching the FTA-approved overall/triennial DBE goal.

Pursuant to DBE Program regulations effective November 3, 2014, the Authority initiated reporting DBE participation and payments on ongoing contracts.

The Authority will adhere to the following schedule based on the FFY:

- Reporting period: October 1st through March 31st report due June 1st
- Reporting period: April 1st through September 30th due December 1st

B. Bidders List §26.11(c)

49 CFR §26.11 requires the Authority to develop and maintain a Bidders List. All U.S DOT-assisted contracts shall include a contract clause requiring all prime bidders/proposers to submit a completed Bidders List to the Authority, for their firm and for all firms (DBE and non-DBE) that submitted a bid, quote or proposal to the prime bidder/proposer on U.S. DOT-assisted contracts. The Bidders List shall, at a minimum, contain the following information for each firm:

1. Firm name
2. DBE certification status
3. Address
4. Phone #
5. Age
6. Contact name and title
7. Type of product/service provided
8. Range of annual gross receipts

The Authority will use this information to assist in establishing the Authority's market area and as a resource in the Authority's DBE goal-setting process.

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V. ASSURANCES AND REQUIRED CONTRACT PROVISIONS

A. Non-Discrimination Assurances (§26.13(a))

The Authority shall ensure that the following language and/or procedures are included in all bid/RFP specifications and/or contract documents:

“The Authority shall not discriminate on the basis of race, color, national origin or gender in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The Authority shall take all necessary and reasonable steps under Part 26 to ensure non-discrimination in the award and administration of U.S. DOT- assisted contracts. The Authority’s DBE Program, as required by Part 26 and as approved by the U.S. DOT, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Authority of its failure to carry out its approved Program, the Authority may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)”

B. Contractor’s Assurance Clause (49 CFR §26.13b)

The Authority shall ensure that the following language and/or procedures are included in all financial assistance agreements with sub-recipients:

The Authority shall require that the prime contractor include the following clause in every U.S. DOT-assisted contract and subcontract:

“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Authority deems appropriate.”

****Please note the language in Section A and B above is to be used verbatim.****

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VI. ADMINISTRATIVE REQUIREMENTS AND STAFFING

A. DBE Program Updates (§26.21)

As a recipient of more than \$250,000 of U.S. DOT financial assistance over a FFY and pursuant to 49 CFR §26.21, the Authority shall continue to implement the DBE Program unless and until all funds from U.S. DOT financial assistance have been expended.

The Authority will regularly review directives issued by U.S. DOT to update its DBE Program as necessary to fully comply with the intent of the U.S. DOT's DBE Program.

B. DBE Liaison Officer (DBELO) (§26.25)

The CEO, while maintaining ultimate responsibility for the Authority's DBE Program, has designated Vida Mannings to serve as the DBELO and has responsibility for the implementation of all aspects of the Authority's DBE Program and ensuring that the Authority complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Authority's CEO concerning DBE Program matters. A DBE Program Implementation Organizational Chart demonstrating the DBELO's position in the organization can be found in Section D below. Contact information for the Authority's DBELO is as follows:

Vida Mannings
Director, Special Projects, Office of the CEO
Southern California Regional Rail Authority
900 Wilshire Blvd., Suite 1500
Los Angeles, CA 90017
Phone: (213) 452-0385; Email: manningsv@scrra.net

The DBELO and or her support staff's duties include, but are not limited to, the following activities:

- Analyze and revise DBE program policies and procedures as necessary.
- Submit updates to the U.S. DOT, regarding any significant changes to the Authority's DBE Program.
- Works with the Authority departments and DBE consultant to perform goal-setting analysis, establish methodology, and calculate overall triennial DBE goals.
- Facilitate public participation in the overall goal-setting process.
- Conduct an annual review of the Authority's overall DBE goal; adjust and/or re-calculate the goal as necessary and submit to the FTA.
- Review triennial/overall DBE goal commitments at the end of each FFY; analyze any goal shortfall(s); provide to the FTA (under the CEO's signature and within 90 days after FFY end), a written analysis of why the overall goal was not achieved, as well as a written plan for corrective actions that the Authority will take, to remedy the goal shortfall.

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- Analyze contract scope of work and subcontracting opportunities; assist in the calculation of DBE contract goals as applicable.
- Conduct and coordinate outreach efforts to DBEs and small businesses to provide information regarding contracting opportunities with the Authority; utilize the assistance of minority and women business associations, small business development centers, industry/trade organizations, vendor fairs, workshops and minority-focused publications to assist with outreach efforts.
- Coordinate public information and communication programs regarding contracting opportunities ensuring bid notices and requests for proposals are made available to DBEs in a timely manner.
- Ensure that all solicitation documents and contract templates include all relevant DBE Program elements, contractor documentation submittal requirements and required contract provisions.
- Work with the Authority's contracting/procurement staff to arrange solicitations, present bid/proposal requirements, and determine required quantities, specifications, and proposal delivery schedules to facilitate a level playing field for DBEs.
- Work with the Authority's contracting/procurement staff to remove, where feasible, barriers which may limit DBE participation, by ensuring that Invitations for Bids (IFBs) and Requests for Proposals (RFPs) do not contain unduly restrictive requirements; ensure that sufficient time is allowed during the pre-bid phase, for DBEs to schedule attendance at pre-bid/pre-proposal meetings and for non-DBEs to perform adequate good faith efforts GFEs established.
- Maintain a Bidders List of firms that submit a bid, quote or proposal for participation on an Authority contract; ensure that the Bidder List contains all information required by 49 CFR §26.11.
- Evaluate GFEs when bids/proposals do not meet DBE contract goals as applicable.
- Develop and implement technical assistance programs for DBEs, including resources and referrals to supportive services.
- Investigate services and resources offered by banks and/or financial institutions owned and controlled by socially and economically disadvantaged individuals.
- Ensure that, prior to approval of the substitution of any DBE subcontractor, prime contractor's evidence GFEs to replace the original DBE with another eligible DBE.
- Ensure that any DBE subcontractor terminations by the prime Contractor are for "good cause" only, and that any such terminations receive prior written approval by the Authority.
- Monitor and enforce contractor compliance with all DBE Program provisions including goal commitments, documentation submittal requirements, reporting requirements, prompt payment to subcontractors, and DBE utilization requirements; impose administrative sanctions and/or monetary penalties for contractor's willful non-compliance.

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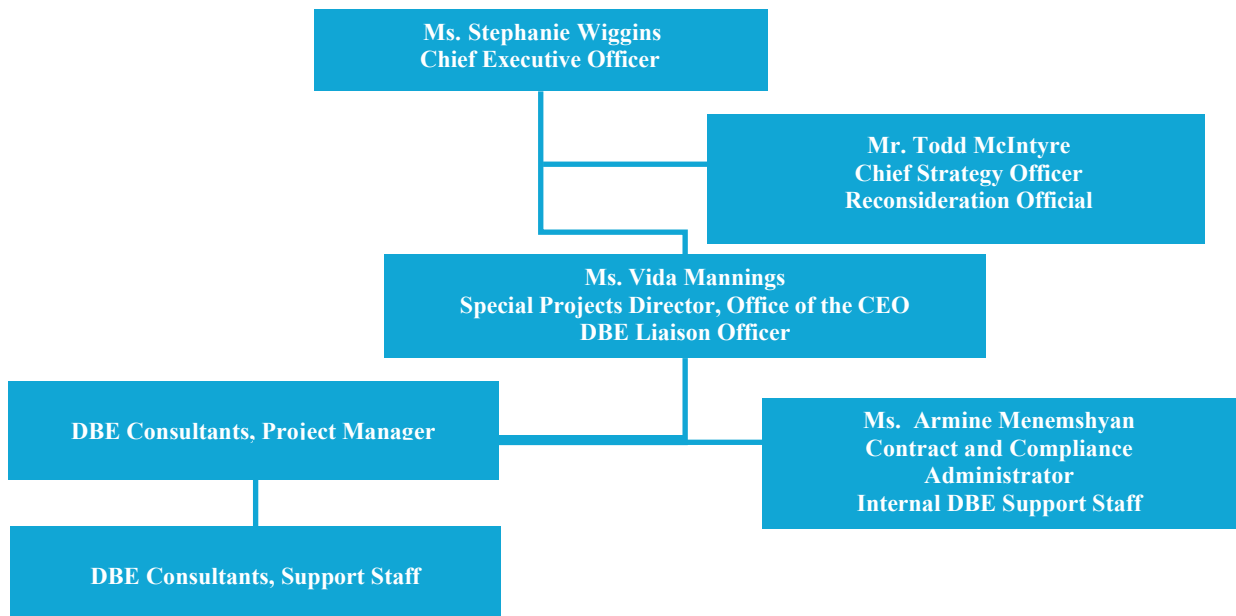
- Ensure procedures are in place that require upon completion of each contract on which DBEs were utilized, a written affidavit attesting to monitoring and verification of contractor compliance with all DBE Program provisions.
- Maintain all necessary documentation to verify performance of activities included in the DBE Program.
- Provide timely DBE reports to the FTA, including the annual *Uniform Report of DBE Awards or Commitments and Payments*.
- Implement provisions to facilitate participation of small businesses on U.S. DOT-assisted contracts.

C. DBE Program Staffing (\$26.25)

As support staff to the DBELO, a Contract and Compliance Administrator has been designated to provide direct support related to DBE matters. Additionally, the Authority utilizes the services of a consulting firms, to provide additional well-qualified and experienced staff to assist in managing the Authority's DBE Program.

The consultants provide assistance to the Authority in administering its approved DBE Program in accordance with the U.S. DOT DBE Program set forth under Title 49 CFR Part 26. With the assistance of external support the Authority will remain compliant with current governing regulations and timely kept abreast of proposed legislation in the area to further ensure it is proactive in implementing policies and practices that advance the goals and objectives of this important regulation.

D. DBE Organizational Chart



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E. DBE Reconsideration Process (§26.53 (d)(2))

In instances where contract-specific DBE goals are established and the bidder/proposer either fails to satisfy the requirements for meeting the contract-specific DBE goal or fails to document a sufficient good faith effort (GFE) to do so, the Authority will afford the bidder/proposer, prior to award of the contract, an opportunity for administrative reconsideration of the Authority's determination of non-responsiveness.

Unless otherwise specified, the bidder/proposer may request administrative reconsideration within three business days of being informed by the Authority of its non-responsiveness due to its failure to document and provide sufficient and adequate GFEs in the subject procurement. Bidders/Proposers must make this request in writing to the Reconsideration Official as designated herein.

To ensure integrity in the process, the Reconsideration Official will not have played any role in the original determination that the bidder/proposer did not meet the established contract-specific DBE goal, or adequately document GFEs as specified in the subject procurement. The Authority has designated the following individual to serve as DBE Reconsideration Official:

Todd McIntyre
Chief Strategy Officer
Southern California Regional Rail Authority
900 Wilshire Blvd., Suite 1500
Los Angeles, CA 90017
Phone: (213) 452-0468; Email:mcintyret@scrra.net

As part of this reconsideration, the bidder/proposer will have the opportunity to provide written evidence/documentation or argument concerning the issue of whether it met the goal or made adequate GFEs to do so. Further, the bidder/proposer will have the opportunity to meet with the Reconsideration Official in person to discuss the issue of whether it met the goal or made adequate GFEs to do so. The Authority will document the basis for the reconsideration determination and forward the final determination to the bidder/proposer within seven working days of the hearing date. All parties shall be advised that reconsideration final decisions are NOT administratively appealable to U.S. DOT.

Further, the Authority's Reconsideration Official and/or designee shall also perform oversight of the reconsideration process. The Reconsideration Official and/or designee's duties include, but are not limited to, the following activities:

- Ensures that all DBE administrative reconsideration procedural actions are consistent with the requirements and standards specified in Title 49 CFR, Sections 26.53 and 26.87, and that the Program's integrity is maintained at all times.
- Reviews bidder/proposer written documentation or argument concerning the issue of whether it met the goal or made adequate GFEs to do so.

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- Upon review of the bidder's/proposer's request for consideration, the Reconsideration Official sends the bidder/proposer a written decision on reconsideration, explaining the basis for finding that the bidder/proposer did or did not meet the goal or make adequate GFEs to do so.
- Maintains records of conducted hearings.
- Provides determinations in writing to the DBELO.

F. Prompt Payment Mechanisms (§26.29)

The Authority requires that all subcontractors performing work on U.S. DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, the Authority established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than seven days from the prime contractor's receipt of each payment from the Authority.

The Authority ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30-days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the Authority has selected the following method to comply with this requirement:

The Authority may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30- days after the subcontractor's work is satisfactorily completed.

G. DBE Financial Institutions (§26.27)

The Authority shall thoroughly investigate the full extent of services offered by banks and/or financial institutions owned and controlled by socially and economically disadvantaged individuals within the Authority's jurisdiction and make the greatest feasible use of these institutions. The Authority will encourage prime bidders/contractors on U.S. DOT-assisted contracts and procurements, to utilize such institutions as well.

The Authority has made efforts to identify these institutions and will make this listing available at request. The Authority will re-evaluate the availability of DBE financial institutions every 24 months. Information on the availability of such institutions can be obtained from the DBELO.

H. DBE Directory (§26.31 and §26.81)

The Authority is a non-certifying member of the California Unified Certification Program (CUCP). 49 CFR §26.81 requires each state's UCP to maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by §26.31.

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The Authority utilizes the CUCP online state-wide DBE Directory, which contains the following information for each certified DBE, as applicable:

1. DBE name
2. Contact name
3. Business address
4. County(ies) of performance
5. Telephone number
6. Fax number
7. Email address
8. NAICS code(s) under which the firm is certified
9. Work category code(s) (optional)
10. Contractor's license classification
11. Gender
12. Ethnicity
13. Certification status (DBE or ACDBE)
14. Certifying agency

This directory is made available to the public electronically (on the internet) and in print. The electronic version is downloadable into a searchable and sortable Excel spreadsheet. The Authority refers prime bidders and proposers to the directory to locate available DBEs, and includes DBEs listed in the directory in the Authority's outreach efforts.

I. Over-Concentration (§26.33)

The Authority has developed policies and procedures to address overconcentration of DBE utilization in certain types of work. This is to be accomplished through regular tracking of contract awards, and compliance monitoring, whereby the Authority will identify and directly respond to overconcentration within specific trades or specialty areas, by modifying contract goal application as required, until such time as DBE availability exceeds utilization.

Areas that have been identified to demonstrate over concentration of DBE participation are not assigned a contract-specific goal and are procured under race-neutral measures. Currently, the Authority assesses areas of the Authority's contracting work that demonstrates over-concentration on an annual basis.

J. Authority Written Certification (§26.37)

At contract close-out, the Authority's DBELO or designee will complete and file, a written certification attesting to having reviewed and monitored contractor documentation, on-site performance when applicable, and payments to DBEs to verify compliance with DBE requirements.

K. Small Business Participation and Small Business Element (§26.39)

The U.S. DOT final rule issued on January 28, 2011 added §26.39 to 49 CFR Part 26. This section required recipients (local agencies) of U.S. DOT financial assistance to include an element in their contracting

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requirements to facilitate competition by small businesses.

While the Authority has historically utilized race and gender-neutral strategies to promote and advance Small Business participation as a part of the Authority's DBE Program implementation efforts, this element of the program serves to unify in a singular location these important efforts within the Authority's DBE Program.

The Authority submitted its proposed Small Business Enterprise (SBE) provisions for FTA approval and received concurrence from the FTA on March 14, 2013. The Authority revised its Small Business element in 2015 in response to the Authority's transition away from a strictly race-neutral DBE Program to a DBE Program inclusive of race-conscious DBE provisions. The revised Small Business element was developed as a supplement to the Authority's existing DBE Program, to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors in direct response to regulatory requirements, 49 CFR Part 26.39 "Fostering Small Business Participation" (Federal Register/ Vol. 76, No. 19/ Friday, January 28, 2011/ Rules and Regulations).

For purposes of capturing Small Business utilization, the Authority adheres to the U.S. DOT's Small Business definition for what constitutes a SBE. This Small Business element will include, but is not limited to the following assertive strategies:

1. The Authority provides Small Business firms the ability to utilize and review bid/procurement documents at no cost through its vendor portal, PlanetBids. The Authority will continue to inform the procurement community and small business firms that this resource is available at proposal/bid conferences. The Authority is confident that providing Small Business firms online access to this crucial documentation at no additional cost will aid in leveling the playing field and enable them to submit quality proposals and bids.
2. The Authority captures Small Business utilization information through their Federal solicitation forms and through PlanetBids, which allows the Authority to actively monitor and track Small Business participation within the Authority's contracting program.
3. The Authority will hold a pre-proposal or pre-bid conference for each federal procurement, which will include a networking component to encourage teaming and partnering between primes and Small Businesses, as well as providing them access to the Authority's key procurement individuals. This networking component will provide Small Businesses valuable access and opportunity needed to promote their capabilities and strengthen competitiveness, marketability and participation within the Authority's contracting program. Additionally, it will encourage Prime Contractors to partner and communicate with the Small Business community.
4. The Authority will continue to survey impacted industries' input (based on the Authority's defined DOT-assisted contracting program) as a resource for further refining and building its Small Business elements within its DBE Program.

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L. Ongoing Small Business Element Efforts (DBE/SBE Outreach)

The Authority's Small Business element also includes additional enhanced and targeted outreach measures, as follows:

1. Partnering with local Agencies within the Authority's market area to reach SBEs.
2. Creating face-to-face opportunities for SBEs to engage with Authority staff to familiarize themselves with the Authority's bid/procurement process.
3. Share upcoming contracting opportunities and tips to promote success within the Authority's contracting program.

The Authority has broadened its outreach efforts to promote direct access and communication between Authority staff and small businesses. These steps have enabled the Authority the ability to connect with qualified businesses who may have not otherwise looked to the Authority to market its services and/or products.

The Authority will actively implement the Small Business elements to foster small business participation as a requirement of good faith implementation of the Authority's DBE program. The small business element applies to sub-recipients in the same way as the Authority's DBE Program. If a sub-recipient has its own DBE Program separate from the Authority's DBE Program, the sub-recipient is responsible for creating and implementing its own small business element.

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VII. GOALS, GOOD FAITH EFFORTS AND COUNTING

A. Use of Set-asides or Quotas (§26.43)

The Authority shall not permit the use of quotas for DBEs on U.S. DOT-assisted contracts, in accordance with 49 CFR Part 26.43. Further, the Authority shall not set aside contracts for DBEs, except in limited and extreme circumstances, where no other method could reasonably be expected to redress egregious instances of discrimination.

B. Overall and Contract-Specific DBE Goals

The DBELO shall establish an overall DBE goal over a period of three federal fiscal years, for the participation of DBEs in all budgeted contracts utilizing U.S. DOT federal financial assistance. The Authority's overall DBE goals 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 Authority would expect, absent the effects of discrimination. The Authority intends to meet those goals to the maximum extent feasible through the race neutral measures described herein. Where race-neutral measures are inadequate to meet the overall goals, the Authority will establish DBE goals on contracts with subcontracting opportunities and relative DBE availability.

C. Overall DBE Goal-Setting Methodology (§26.45)

The Authority will establish an overall DBE goal covering a three-year FFY period if the Authority anticipates awarding U.S. DOT/FTA funded prime contracts for a cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the Authority will submit its overall goal to FTA on August 1 of each three-year goal period. The Authority's current goal covers the goal period of FFY 2019-2021 and the Authority is projected to submit its next overall goal on August 1, 2021. A description of the methodology utilized to calculate the overall goal submitted for FFYs 2019-2021 and the goal calculations can be found on the Authority's website. The following delineates the federally prescribed goal-setting methodology (Step 1 and Step 2) and other components the Authority will follow in establishing an Overall DBE goal, as follows:

1. Projecting Federal Assisted Contract Expenditures for Three Fiscal Year Period

In conjunction with the preparation and adoption of the budget for each fiscal year, the DBELO, in consultation with the appropriate 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 for the upcoming three year fiscal period.

2. Establishing a Base Figure

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Once the Authority defines its contracting markets for the upcoming three fiscal year period, the Authority will establish a base figure following one of the methodologies, in accordance with 49 CFR §26.45, as an initial step in the goal-setting process.

The Authority may determine the relative availability of DBEs accordingly:

- i. Utilize the CUCP online DBE Directory to establish the number of certified DBEs located within the Authority's market area, in each NAICS code/category representing a contract scope of work;
- ii. Utilize the U.S. Census Bureau's County Business Patterns (CBP) data to establish the number of all businesses (DBEs and non-DBEs) located within the Authority's market area, in each NAICS code/category representing a contract scope of work;
- iii. Determine the ratio of DBEs to all business located within the Authority's market area, in each NAICS code/category representing a contract scope of work;
- iv. Apply a weighting factor to each resulting ratio, based on the percentage of federal funds the Authority is projected to award and/or expend on various industries; and/or
- v. Utilize a Bidders List.

3. Adjusting the Base Figure

As a mandatory second step, the Authority will consider, as a basis for adjusting the overall DBE base figure, additional factors/indicators determined to be relevant to DBE availability. These factors may include, but are not limited to:

- i. Demonstrated evidence of DBE capacity to perform work in the Authority's program;
- ii. Real market conditions;
- iii. Disparity studies conducted within the jurisdiction;
- iv. Other recipients' goal results in similar contracting opportunities and markets, and the reasons for the level of those results;
- v. Methods used by the Authority to increase DBE participation in U.S. DOT-assisted contracts;
- vi. Demographics and business activity of the geographical area in which the Authority will solicit bids or proposals;
- vii. Data from statistical disparities of DBEs to obtain financing, bonding and/or insurance;
- viii. Data on employment, self-employment, education and training programs, to the extent that the Authority can relate it to opportunities for DBEs to perform on federally assisted contracts; and

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- ix. Input from public participation.

D. Public Participation (§26.45)

1. Consultation with Community Groups and Constituents

Prior to publication of the Authority's proposed overall DBE goal, the Authority will consult with, and solicit input from, a variety of constituent groups representing minority- and women-owned business organizations, contractor organizations, and other industry, ethnic and community-based organizations reasonably expected to possess information regarding the availability of disadvantaged businesses, their capability to perform on Authority contracts, and the impacts and effects of contracting discrimination on DBEs.

Upon receipt of any comments, the Authority's DBELO will analyze the comments, summarize the results, and modify the proposed overall goal, if appropriate.

2. Commercial Advertising of Proposed Overall DBE Goals

Prior to submission to the U.S. DOT, the Authority may advertise its proposed triennial DBE goal in no less than one of the following types of periodicals:

- i. General circulation publication
- ii. Trade/Industry publication
- iii. Minority focus publication

Pursuant to new DBE Program regulations effective November 3, 2014, the Authority understands that commercial advertising of the overall DBE goal is now at the Authority's discretion. The Authority will post a public notice to the Authority's website announcing the Authority's proposed Overall Goal. If the Authority commercially advertises its proposed triennial goal, the public notice shall include the following:

- i. Proposed triennial goal percentage for DBE participation
- ii. A statement that the proposed goal and methodology are available for public inspection for a period of 30 days from the date of publication.
- iii. A statement that the Authority will accept public comments on the proposed goal and methodology for a period of 30 days from the date of publication.
- iv. Contact information and instructions for viewing the Authority's proposed goal/methodology and/or submitting a public comment.

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Upon receipt of any public comments, the Authority's DBELO will analyze the comments, summarize the results, and modify the overall goal, if appropriate. This will occur prior to final adoption of the triennial goal by the Authority's Board and submission to FTA for review.

E. Annual Review and Remedy Reports (49 CFR §26.47)

The Authority is currently listed as one of the largest 50 transit agencies in the U.S. (based on level of U.S. DOT/FTA assistance). Pursuant to 49 CFR §26.47(c), the Authority is required to analyze, on a semi-annual basis, the DBE awards and commitments reported to the FTA. If the Authority's DBE awards/commitments are less than the Authority's overall DBE goal for that FFY, the Authority is required to develop a written analysis of the shortfall, and to establish specific steps and milestones to correct the problems identified in the analysis. The Authority will submit their written analysis to their FTA Civil Rights Regional Office within 90 day of the FFY end, or by the end of the calendar year.

F. Transit Vehicle Manufacturers (§26.49)

The Authority shall require all Transit Vehicle Manufacturers (TVMs) to certify that they have complied with 49 CFR §26.49 and have established an overall DBE participation goal that has been approved (or not disapproved) by the FTA before they can bid on any Authority transit vehicle procurement. The Authority will also utilize the FTA's online list of approved TVMs, accessible at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>, to verify that the TVM is authorized to bid or propose on U.S. DOT-assisted transit vehicle procurements. The Authority shall submit, within 30 days of making an award, the name of the successful bidder and the total dollar value of the contract to FTA utilizing the TVM Reporting Form.

G. Methods for Meeting Goals (§26.51)

The Authority will endeavor to meet its overall DBE goal and increase DBE participation on, the Authority's U.S. DOT-assisted contracts, by utilizing a combination of race-conscious and race-neutral DBE Program elements.

1. Race and Gender-Neutral Measures

The Authority intends to use race and gender-neutral methods to the maximum extent feasible to achieve its overall DBE goal. DBE participation that is obtained on contracts that have no established DBE contract goal, or where prime contractors use a strictly competitive bidding process and do not consider the DBE's status as a factor in awarding a subcontract shall be considered race and gender-neutral DBE participation.

In addition, the Authority will use the following measures as appropriate:

- i. Identify components of the work which represent subcontracting opportunities and identify the availability of DBE subcontractors to participate in proportion to total available subcontractors. Contractors will be encouraged to consider subcontractors for components of the work for which there is a known supply of ready, willing, and able subcontractors, including DBE subcontractors, in preparing their bids;

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- ii. Provide technical assistance to DBEs, in areas relevant to public contracting success; provide referrals to small/minority business assistance organizations;
- iii. Facilitate the distribution of the CUCP DBE Directory to the widest feasible universe of potential prime contractors;
- iv. Assist DBEs in overcoming limitations in bonding and financing;
- v. Include small and disadvantaged businesses in the Authority's outreach, public information, and communications programs, to ensure that DBEs are made aware of the Authority's contracting opportunities; and
- vi. Provide business development assistance to DBEs, to facilitate business growth and success beyond participation in the Authority's DBE Program.

2. Race and Gender Conscious Measures

In 2007, a joint Disparity Study was commissioned by the Authority, the Los Angeles county Metropolitan Transportation Authority (Metro), the Orange County Transportation Authority (OCTA), San Diego Association of Governments (SANDAG) and San Diego Metropolitan Transit System (MTS) to review the Authority's contracts and procurements and determine whether evidence of discrimination of DBEs exists. On July 18, 2013, the Authority received a letter from the FTA, which granted the Authority permission by the U.S. DOT and the FTA, to re-instate race-conscious DBE Program elements, including DBE contract goals. On April 11, 2014, the Authority received approval from its Board of Directors, to re-instate race-conscious DBE Program elements in conjunction with race-neutral elements.

In accordance with 49 CFR Part 26, the Authority will project how much of the overall DBE goal can be achieved through race and gender-neutral measures, and will use race-conscious measures, such as contract-specific DBE goals, only to meet that portion of the overall goal which is not likely to be met utilizing race-neutral measures.

Further, the Authority shall monitor and adjust the estimated utilization of race-neutral and race-conscious methods as required in accordance with 49 CFR 26.51(f).

H. Contract-Specific Goals (§26.51)

The DBELO shall establish contract-specific DBE goals to meet any portion of the overall DBE goal that the Authority does not project being able to meet using race-neutral means. The Authority will establish contract-specific goals only on those U.S. DOT-assisted contracts that have subcontracting opportunities.

The DBELO will receive from the user department, an advance notification form for each upcoming contract, with cost estimates, scope of work, and possible subcontracting opportunities. The DBELO will determine whether a contract DBE goal should be established and if so, will express each goal as a percentage of the total contract value.

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The Authority may establish a DBE contract goal that is higher or lower than its overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract.

The Authority's contract goals will provide for participation by all certified DBEs and will not be subdivided into group-specific goals.

I. Evaluation and Award of Contracts with DBE Contract Goals (§26.53(a))

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/proposer that has made GFEs to meet the contract goal. The Authority shall award contracts to the lowest responsive and responsible bidder/proposer as required by California Public Contract Code, where applicable. However, for such contracts, as well as for contracts awarded pursuant to a competitive negotiation procedure, a bidder/proposer that 1) fails to demonstrate its commitment to meet the established DBE contract goal by listing sufficient DBEs on its "DBE Participation Commitment" form due with the bid/proposal or within 48 hours after bids/proposals are due AND/OR 2) fails to demonstrate that it made an adequate GFEs to meet the goal, shall be deemed "non-responsive" and shall be ineligible for contract award.

1. Evaluation of Bids and Proposals

After the bid opening or proposal due date, the DBELO shall evaluate all bids/proposals to determine whether the bidders/proposers submitted all information required by 49 CFR §26.53(b). On contracts with established DBE contract goals, the lowest successful bidder or highest ranked proposer who demonstrates its commitment to meet the DBE contract goal or demonstrates an adequate GFEs shall be recommended for contract award. In the event that the lowest bidder or highest ranked proposer fails to either meet the contract goal or demonstrate an adequate GFE, or is otherwise unresponsive or not responsible, the DBELO shall evaluate the second lowest bidder or second highest ranked proposer. Should the DBELO determine that additional information is needed to evaluate a bid or proposal with regard to DBE requirements, the DBELO shall request the bidder/proposer to submit the required information, or may contact the listed DBE(s) directly.

2. Evaluation of DBE Certification Status and DBE Eligibility

The DBELO shall require that all DBEs listed by bidders/proposers for participation in contracts with goals, be certified as such before bids/proposals are due, in order for the DBE participation to be counted towards meeting the DBE contract goal.

The Authority accepts DBE certifications from all certifying members of the California UCP, and any other U.S. DOT recipients, which certify DBEs in accordance with 49 CFR Part 26. It is the bidder's/proposer's responsibility to verify certification status of all proposed DBEs, prior to listing them on the "DBE Participation Commitment" form which is due with the bid or proposal.

When evaluating DBE certification status, the Authority ensures that the DBE: 1) is certified before bids/proposals are due (§26.81(c)) and 2) is certified in the NAICS code that represents the scope of work to be performed by the DBE on the contract (§26.71).

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After award of the contract, it is the prime contractor's responsibility to monitor the DBE certification expiration dates of its DBEs, and to ensure that credit for DBE participation is only granted to DBEs with current DBE certification status.

J. Meeting Established Goals or Demonstrating Good Faith Efforts (§26.53; Appendix A)

If a bidder's/proposer's value of DBE participation does not meet the established DBE contract goal, the DBELO shall review the bidder's/proposer's GFEs documentation to determine responsiveness and shall determine whether the bidder/proposer has performed the quality, quantity, and intensity of efforts that demonstrate a reasonably active and aggressive attempt to meet the DBE contract goal.

The following sections outline the requirements of firms competing for Authority contracts to comply with either meeting the DBE contract goal by committing to utilizing sufficient DBEs or by documenting an adequate GFE. Failure for a bidder/proposer to meet a DBE goal or demonstrate that an adequate GFE was made will deem the bid/proposal non-responsive.

1. Meeting Established Goals

For each solicitation on which a DBE contract goal has been established, the Authority shall require bidders/proposers to submit the following information to the Authority at the time of bid/proposal submission, or within 48 hours after bids/proposals are due.

- i. Written and signed documentation of the bidder's/proposer's commitment to utilize DBEs, to be submitted on the Authority's "DBE Participation Commitment" form. Information listed on the form shall include:
 - a. Name, address and contact information for each DBE listed on the contract;
 - b. Description of the work that each DBE will perform;
 - c. Dollar amount of participation of each DBE;
 - d. Percentage of total contract value allocated to each DBE;
 - e. Prime bidder's/proposer's name, title and contact information;
 - f. The Authority's contract number;
 - g. Total dollar amount of participation of all DBEs;
 - h. Percentage of total contract value allocated to all DBEs;
 - i. DBE commitment percentage;
 - j. Prime bidder's/proposer's signature and date

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- k. For each listed DBE, proof of valid and current DBE certification in the NAICS code directly applicable to the work the DBE will perform on the contract.
- ii. The bidder/proposer shall also submit, for each DBE to perform under this contract, a written confirmation signed and dated from each the DBE listed, acknowledging that the DBE is participating in the contract for a specified dollar value and scope of work listed on the DBE Participation Commitment Form.

2. Demonstrating Good Faith Efforts (§26.53(b)(2)(vi))

The bidder/proposer must make good faith efforts to meet the DBE goal. Bidder/Proposer can meet this requirement by actually meeting the DBE goal by documenting commitments for participation by DBE firms sufficient for this purpose. Alternatively, a bidder/proposer may submit a “Good Faith Effort” Form, demonstrating that it took all necessary and reasonable steps to achieve the DBE goal that by their scope, intensity, and appropriateness to the objective could reasonably be expected to obtain sufficient DBE participation, even if the bidder/proposer was not fully successful in obtaining the participation.

If a bidder/proposer submits a “DBE Participation Commitment Form” that does not list sufficient DBE participation to meet the established DBE contract goal, the bidder/proposer should submit the “DBE Good Faith Effort” Form and all applicable documentation with its bid/proposal submission to demonstrate that an adequate Good Faith Effort was made to meet the established DBE contract goal.

Bidder/Proposer must demonstrate real and substantive good faith efforts. The Authority will consider the quality, quantity, and intensity of the different kinds of efforts. Mere pro forma efforts are not GFEs to meet DBE goal requirements. The Authority will make a fair and reasonable judgment whether a bidder/proposer that did not meet the established contract-specific DBE goal made adequate good faith efforts to do so. In applying the Authority's judgment, the Authority will consider any meaningful evidence the bidder/proposer provides to the Authority under 49 CFR §26.53(b)(2)(vi)."

Only those efforts made prior to the bid/proposal submittal due date will be considered in the evaluation of the bidder's/proposer's good faith efforts. If a firm does not propose to meet a contract-specific goal and fails to submit the required good faith efforts documentation by the time specified within the solicitation, that will be grounds for finding the bid/proposal to be non-responsive.

3. Bidder's Right to Administrative Reconsideration

In the event that the DBELO determines that the apparent successful bidder/proposer has not demonstrated its commitment to meet the DBE contract goal and has not demonstrated an adequate good faith effort, the bidder/proposer will be notified in writing. Please refer to Section VI. E of this Program Manual for further details regarding the Administrative Reconsideration process.

K. Counting DBE Participation (§26.55)

The Authority will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

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1. DBE "Frauds" and "Fronts"

Only legitimate DBEs are eligible to participate in federally funded contracts. Therefore, bidders/proposers are cautioned against knowingly and willfully using "fronts" to meet DBE goals. The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of Federal funds should be immediately reported to the Office of Inspector General (OIG), U.S. Department of Transportation, via the toll-free hotline at 800-424-9071, email at hotline@oig.dot.gov, or U.S. mail at DOT Inspector General, 1200 New Jersey Avenue SE, West Bldg. 7th Floor, Washington, CA 20590. The hotline is open 24 hours per day, seven days per week. Additional information can be found on www.oig.dot.gov/hotline.

2. Commercially Useful Function (§26.55)

To be considered as performing a commercially useful function, the DBE shall meet all of the following:

- i. The DBE is responsible for the execution of a distinct element of work in the Contract;
- ii. The DBE carries out its obligation by actually performing, managing, and supervising the work involved;
- iii. The DBE performs work that is normal for its business, services, and function; and
- iv. The DBE performs or exercises responsibility for at least 30 percent of the total cost of its Contract with its own workforce and is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practice.

The following factors shall be used in determining whether a DBE trucking company is performing a commercially useful function:

- i. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- ii. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- iii. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- iv. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- v. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of

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transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Authority Operating Administration.

During the course of the contract containing a DBE commitment, the Authority or an agent of the Authority may conduct on-site monitoring interview/observation to ensure that work committed to DBEs is actually being performed by DBEs in the same capacity as the DBE participation being reported. This monitoring effort is fully incorporated into the Authority's DBE On-site Compliance field observation process. This observed work will be reconciled against the DBE subcontractor agreement(s) and Prime Contractor Form 103.

3. DBE Participation Credit

The Authority requires that all DBEs listed by bidders/proposers for participation in contracts with goals, be certified as eligible DBEs at the time of bid/proposal submission, in order for their participation to be counted towards meeting the established DBE contract goal and/or the Authority's overall DBE goal.

In accordance with 49 CFR §26.55 and §26.71, the following guidelines apply in calculating/counting DBE participation:

- i. Only the participation of firms certified in accordance with 49 CFR Part 26 may be counted as DBE participation.
- ii. Only work (represented by NAICS code(s)) for which the firm is certified as a DBE may be counted as DBE participation.
- iii. Only work performed by a DBE's own workforces (including cost of supplies, materials and equipment leases obtained by the DBE for the work of the contract, except supplies and equipment the subcontractor purchases and/or leases from the prime contractor or its affiliate), may be counted as DBE participation.
- iv. When a DBE subcontracts part of its work of its contract to another firm, the value of the subcontracted work may be counted as DBE participation only if the DBE subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count as DBE participation. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce.
- v. When a DBE performs as a participant in a joint venture with a non-DBE, only the portion of the total contract dollar value equal to the distinct, clearly defined portion of the work to be performed by the DBE's own forces may be counted as DBE participation.
- vi. Only work considered to perform a commercially useful function may be counted as DBE participation.
- vii. For transportation services that are required under the contract and provided by a DBE trucking company, DBE participation is counted on the total value of the transportation

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services the DBE trucking company provides using trucks it owns, insures, and operates and using drivers it employs.

- viii. For materials and supplies that are required under the contract and obtained from a DBE manufacturer, one hundred percent (100%) of the materials/supplies may be counted as DBE participation. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials and supplies obtained by the contractor.
- ix. For materials and supplies that are required under the contract and obtained from a DBE supplier/regular dealer, sixty percent (60%) of the materials/supplies may be counted as DBE participation. For purposes of this section, a supplier/regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.
- x. A bidder/proposer may count as DBE participation, fees and commissions paid to DBE firms that are not manufacturers or regular dealers, provided that the fees or commissions are determined to be reasonable and not excessive, as compared with fees customarily allowed for similar services.
- xi. A bidder/proposer may count as DBE participation, all transportation services provided by a DBE trucking firm that can demonstrate control of trucking operations for which it seeks credit and it owns, insures, and operates, using drivers it employs in the performance of the contract. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract. The DBE trucking firm may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. The DBE who leases trucks from a non-DBE is entitled to credit only for the fees or commissions it receives as a result of the lease arrangement.
- xii. Prime contractors are advised to not count participation of DBE subcontractors towards DBE attainment until the amount being counted has been paid to the DBE.
- xiii. In cases where a DBE's certification has ceased during the performance period of the contract, although the prime contractor will continue to report to the Authority, the dollar value of the work performed by the firm, any work performed after the DBE ceases to be certified will not count towards DBE participation credit or the Authority's Overall DBE Goal.

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VIII. DBE CERTIFICATION AND ELIGIBILITY

Certification is the process by which all businesses seeking to participate in the Authority's DBE Program are determined to be legitimate DBEs as defined by U.S. DOT at 49 CFR Part 26.61-26.91, Subpart D and Appendix E, as amended and as defined by SBA at 13 CFR Part 121.

A. California Unified Certification Program (§26.81)

49 CFR §26.81 requires all public agencies that receive U.S. DOT financial assistance to participate in a statewide Unified Certification Program (UCP). A UCP is a "one-stop shopping" certification program that standardizes DBE eligibility criteria and the application process and eliminates the need for a DBE to certify with multiple agencies within the state.

The Authority is a non-certifying member of a Unified Certification Program (UCP) administered by the California Unified Certification Program (CUCP). The UCP will meet all of the requirements of this section. The Authority will use and count for DBE credit only those DBE firms certified by the CUCP.

CUCP agencies are classified as certifying and non-certifying members. CUCP certifying members perform DBE certifications which apply to all U.S. DOT funded contracts. Certification activities include processing applications, reviewing financial and company ownership information, performing site visit and employee interviews, making certification decisions, investigating certification complaints and appeals, and maintaining a single Statewide directory of certified DBEs. A business certified as a DBE by any CUCP certifying member is automatically accepted by all U.S. DOT recipients in California.

Effective August 1, 2013, the California UCP (including Caltrans) is no longer issuing DBE Certificates as evidence of certification. A copy of a printout from the DBE Database should be sufficient proof of a firm's certification. Prime contractors and awarding agencies should not impose on DBE firms the burden of providing a DBE certificate in their bid packages - it is not required.

A non-certifying member agency adheres to all aspects of the U.S. DOT DBE program, except that it does not perform DBE certification activities. The Authority is a NON-certifying member of the CUCP; therefore, the Authority accepts DBE certifications from all CUCP certifying members. The Authority maintains a copy of the latest CUCP Memorandum of Agreement (MOA) on file, as well as a Declaration of Status Letter signed by the Authority's Department Manager and the CUCP Secretary and Chair.

For certification inquiries, contact one of the agencies listed below:

Agency	Business Address	Telephone No.
City of Los Angeles Office of Contract Compliance	1149 South Broadway Street, Suite 300 Los Angeles, CA 90015	(213) 847-2684

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Los Angeles County Metropolitan Transportation City (METRO) Diversity and Economic Opportunity Department	One Gateway Plaza Los Angeles, CA 90012	(213) 922-2600
S. F. Bay Area Rapid Transit District (BART) Office of Civil Rights	300 Lakeside Drive, 18 th Floor Oakland, CA 94612	(510) 464-7580
City of Fresno DBE Program	2600 Fresno St., Room 2156 Fresno, CA 93721-3622	(559) 621-1163
Santa Clara Valley Transportation Authority (VTA) Small & Disadvantaged Businesses	3331 North First Street San Jose, CA 95134	(408) 321-5962
San Francisco Municipal Transportation Agency (SFMTA) Contract Compliance Office San Francisco Municipal Railway <i>www.sfmuni.org</i>	1 South Van Ness Avenue, 6 th Floor San Francisco, CA 94103	(415) 701-4436
San Mateo County Transit District (SAMTRANS) / Peninsula Corridor Joint Powers Board (JPB) DBE Office	1250 San Carlos Avenue San Carlos, CA 94070	(650) 508-7939
California Department of Transportation (CALTRANS) Office of Business & Economic Opportunity	1823 14 th Street Sacramento, CA 95811	(916) 324-1700

B. Scope of Work Covered by Certification (§26.71(n))

Firms must be DBE certified in the scope of work (represented by NAICS code(s)) directly applicable to their performance on a contract. If a firm wishes to participate on a contract under a scope of work for which the firm is not currently certified (i.e., if the firm wishes to add one or more NAICS codes to its certification), the firm must contact its certifying agency and submit all required documentation to demonstrate DBE ownership and control of the specific type(s) of work the firm wishes to add to its DBE certification. The firm shall then submit proof of DBE certification in the applicable scope(s) of work to the Authority, in order to receive DBE credit for performing that scope of work. For a firm's DBE participation to be counted towards a bidder's/proposer's initial DBE commitment, the firm must be DBE certified in the applicable scope of work prior to the bid/proposal due date.

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C. Annual Affidavit of Continuing Eligibility

Each certified DBE is required to submit a written affidavit to its certifying agency once annually, on the anniversary date of the firm's initial certification, to certify that the firm continues to meet DBE eligibility criteria as defined in 49 CFR Part 26. The affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet DBE eligibility, including size, gross receipts, DBE status, ownership, or control requirements. The affidavit must also affirm that there have been no material changes to the information provided in the original certification application.

If the DBE fails to submit an affidavit, or any required supporting documentation, in a timely manner, it will be deemed to have failed to cooperate with 49 CFR Part 26 and will no longer be considered a certified DBE. It is the DBE's sole responsibility to maintain its certification status with the certifying agency and the Authority.

D. Notification of Change in Circumstances

If a DBE's circumstances affecting the firm's DBE eligibility change at any time after the firm has been identified as a DBE participant on an Authority contract, the DBE must provide written notification of such change(s) to its certifying agency, the Authority and the prime contractor, if applicable. Such changes include, but are not limited to, business size, gross receipts, disadvantaged status, ownership, and/or control requirements. The written notification shall be provided by the DBE within thirty (30) days of occurrence of the change(s). If the DBE fails to make timely notification of such changes, it will be deemed to have failed to cooperate with 49 CFR Part 26.

E. Lapse in Certification Status

If a DBE participant on an Authority contract ceases to be certified at any time during the life of the contract, any participation by that DBE after the firm ceases to be certified will not count as DBE participation.

F. Procedures for Removal of DBE Eligibility (§26.87)

Pursuant to 49 CFR §26.87, any person may file a written complaint alleging that a currently certified DBE is ineligible to be certified as such and specifying the alleged reasons why the firm is ineligible. Because the Authority is a NON-certifying member of the CUCP, the Authority will implement the following procedures upon receipt of a written complaint challenging a firm's DBE certification status. The Authority will also protect the confidentiality of complainants' identities as required by 49 CFR §26.09(b).

1. Obtain the name of the CUCP certifying member agency that issued the DBE's certification;
2. Provide the complainant(s) with contact information for the CUCP certifying member agency;
3. Provide the complainant(s) with a copy of 49 CFR §26.87, which outlines the DBE eligibility removal process; and

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4. Provide a written notification to the DBE in question, stating that the firm's DBE eligibility has been challenged and that the complainant has been referred to the DBE's certifying agency; include a copy of 49 CFR §26.87. If the DBE in question is a current participant in the Authority's DBE Program, remind the DBE of its obligation to notify the Authority of any change in the DBE's certification status within 30 days of the change.

G. Certification Denials and Appeals (§26.89)

Firms that have applied for and were denied DBE certification under one or more NAICS codes, and/or firms whose certification has been removed by a CUCP certifying member agency, may file an administrative appeal with the U.S. DOT within 90 days from the date of denial, in accordance with 49 CFR §26.89. Certification decisions are not appealable to the Authority.

To file a DBE certification appeal, firms should send a letter to the U.S. DOT Office of Civil Rights. The appeal should, at a minimum, include information and arguments concerning why the recipient's decision should be reversed, a copy of the denial letter, and any additional information the denied firm believes to be pertinent to the appeal. Firms must provide the name(s) and address(es) of any DOT recipient the firm is currently certified with or who has rejected its application for certification or removed the firm's eligibility within one year prior to the date of the appeal. This includes applications currently pending certification action.

All appeals should be submitted to:

U.S. Department of Transportation
Office of Civil Rights
External Policy & Programs Division
400 7th Street SW – Room 5414
Washington, DC 20590
Phone: (202) 366-4754
TTY: (202) 366-9696
Fax: (202) 366-5575

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IX. COMPLIANCE AND ENFORCEMENT OVERSIGHT

A. Information, Confidentiality, Cooperation (§ 26.109)

The Authority will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, the Authority will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than U.S. DOT) without the written consent of the submitter.

B. Monitoring Payments to DBEs (§ 26.37)

The Authority requires prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Authority or U.S. DOT. This reporting requirement also extends to any certified DBE subcontractor.

The Authority will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts committed in the “DBE Participation Commitment” form or DBE subcontract.

Additionally, the Authority’s DBE Program will include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. Such mechanism will provide a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. The Authority will display both DBE commitments and attainments in its reports of DBE participation to the U.S. DOT.

C. Compliance Monitoring (§26.37)

The Authority shall implement appropriate mechanisms to ensure prime and subcontractor compliance with DBE Program requirements as stated in 49 CFR Part 26, including but not limited to the following activities:

1. Once a DBE begins work, obtain proof of each DBE’s participation on the contract, by collecting a copy of a signed subcontractor agreement between the prime contractor/consultant and the DBE;
2. Collecting/reviewing monthly DBE utilization reports (Authority Form 103);
3. Verifying payments made to DBEs;
4. Tracking DBE participation throughout the life of the contract;
5. Conducting site visits, field observations and construction worker interviews on applicable contracts;
6. Imposing administrative sanctions for contractor’s willful contractor non-compliance with DBE Program requirements;

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7. Recording and reporting final DBE participation at contract close-out; and
8. Measuring achieved DBE participation in comparison to committed participation.

In addition, at contract close-out, the Authority will certify that it has monitored the contract to ensure compliance with DBE Program regulations and requirements.

D. DBE Substitutions and Terminations (§26.53 (f) and (g))

1. DBE Substitutions/Additions

If a contractor wishes to add or substitute a DBE firm during the contract term, the contractor will be required to submit a completed “DBE Commitment Change Request” or “Request to Add DBE Subcontractor/Subconsultant/Supplier” form for the Authority’s approval, along with sufficient information to justify such change(s). When substituting a DBE with another firm, whether DBE or non-DBE, the contractor shall fully comply with DBE subcontractor termination regulations detailed in 49 CFR §26.53 (f) and (g). Requests for DBE substitutions and additions shall be subject to prior written approval by the Authority.

2. DBE Terminations

Contractors shall be required to comply with 49 CFR §26.53 regarding DBE subcontractor terminations, including the following:

- i. A Contractor shall not terminate a listed DBE subcontractor without the Authority’s prior written consent.
- ii. A Contractor may only terminate a DBE subcontractor for “good cause.”
- iii. Prior to the termination request, the prime contractor must notify the DBE, in writing, of the intent to terminate, allowing for five days of response time in opposition of the rejection.
- iv. “Good cause” includes the following circumstances:
 - a. DBE subcontractor fails or refuses to execute a written contract;
 - b. DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards;
 - c. DBE subcontractor fails or refuses to meet the prime Contractor's reasonable, nondiscriminatory bond requirements;
 - d. DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - e. DBE subcontractor is ineligible to work on public works projects because of suspension or debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;

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- f. DBE subcontractor is determined to be not a responsible contractor;
 - g. DBE subcontractor voluntarily withdraws, with written notification, from the project;
 - h. DBE subcontractor is ineligible to receive DBE credit for the type of work required;
 - i. DBE subcontractor's owner dies or becomes disabled, resulting in the DBE's inability to complete the contract work;
 - j. Other documented compelling reason(s), including violating the Authority's on-site safety rules and requirements.
 - k. The Contractor's reason(s) for terminating the DBE subcontractor must make the termination essential, not merely discretionary or advantageous.
- v. Good cause does NOT exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime Contractor (e.g., failure of the prime contractor to make timely payments or the unnecessary placing of obstacles in the path of the DBE's work). Good cause also does NOT exist if the prime Contractor seeks to terminate a DBE so that it can self-perform the work of the terminated DBE.
- vi. In the event of an Authority-approved substitution for good cause, a DBE must be substituted with another DBE for value equal to the value of commitment lost or documented GFEs to do so must be made, in order to demonstrate responsiveness to the contract DBE goal and contract requirements.
- vii. Failure by the Contractor to adhere to these requirements may constitute a material breach of contract, which may result in the termination of the contract or such other remedy as the Authority deems appropriate.

E. Dispute Resolution

All U.S. DOT-assisted contracts shall contain provisions or conditions which will allow for dispute resolution remedies in instances where contractors/consultants violate or breach DBE Program requirements, inclusive but not limited to, prompt payment and provide for such sanctions and penalties as may be appropriate.

Contractors/Consultants shall incorporate this Section into each subcontract related to work arising under a U.S. DOT-assisted agreement and shall not incorporate by reference. Contractor/Consultant and subcontractor/subconsultant agree to notify the Authority within five business days of any prompt payment and/or DBE Program disputes which cannot be settled by discussions between the parties involved. Only when resolution of DBE disputes attempted through informal meetings, mediation, and/or arbitration has failed may the Contractor formally request substitution of a DBE subcontractor/subconsultant.

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Contractor/Consultant and subcontractor/subconsultant further agree to proceed through informal meetings, mediation, arbitration, or any combination thereof as further detailed below. Dispute submittals shall include the method(s) of dispute resolution selected, terms, timeframes, and a detailed summary of assistance being requested (as applicable).

i. **INFORMAL MEETINGS:**

The Authority is available to assist Contractor/Consultant with coordination of informal meeting requests to assist in the resolution of disputes between Contractor/Consultant and subcontractor/subconsultant. The Authority's DBELO or a designated DBE support representative will conduct the informal meetings with parties in dispute. Representatives from Contractor/Consultant and subcontractor/subconsultant for the purpose of dispute resolution, must include individuals authorized to bind each interested party. All parties must agree to the procedure.

ii. **Mediation**

The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third-party organizations. The Authority's DBELO and designated support staff is considered an independent third party. Submission to informal mediation is voluntary; it is not binding and offers advisory opinions.

iii. **Arbitration**

Should the parties fail to resolve any DBE related dispute arising out of or related to the contract via informal meetings or mediation, the parties are contractually obligated to submit the claims for arbitration within 120 days from date the Authority is notified of dispute. Arbitration conducted pursuant to the contract shall be binding upon all parties to the arbitration. All arbitration is to be conducted in a manner consistent with section 1020 et seq. of the Public Contract Code and Section 1296 of Code of Civil Procedure.

Local mediation and arbitration services that are available within the Authority's market area can be found at: https://www.dca.ca.gov/consumers/mediation_programs.shtml

Arbitration findings are binding upon the parties. However, the findings do not in any way relieve the contractor of its obligation to meet the DBE goals. Should the parties proceed to arbitration, moneys due, if any, shall be placed in a trust account. Such funds shall be released to the appropriate party within five (5) working days of a determination being issued by the arbitrator.

F. Administrative Sanctions for Non-Compliance

Non-compliance with DBE Program requirements may subject the Contractor to administrative sanctions as outlined below:

1. A non-compliant contractor may be notified by the DBELO or designee, that administrative remedies shall be imposed for failure to: (a) meet the contractor's DBE commitment by contract

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end, (b) submit documentation of GFEs, (c) submit required DBE utilization reports, (d) submit verification of prompt payment to DBE subcontractors, and/or (e) comply with proper DBE termination procedures. The notice shall state the administrative remedy(ies) to be imposed.

2. The contractor shall be given 10 working days from the date of the notice to file a written appeal to the Authority's Chief Executive Officer. Failure to respond within the 10-day period shall constitute a waiver of appeal.
3. The DBELO or their designee may schedule a hearing to gather additional facts and evidence, and shall issue a final written determination on the matter within 30 working days following receipt of the written appeal. The written decision of the Chief Executive Officer or designee is final and there is no further appeal.

Administrative remedies shall be determined by the DBELO and may include, but not be limited to:

1. Suspension of progress payments to the contractor or of any monies held by the Authority as retention on the contract until the contractor is brought into compliance; and/or
2. Termination of the contract in part or in whole.

G. Contractor Reporting and Documentation Submittal Requirements

The Authority shall define all required DBE-related forms to be submitted by the bidder/proposer and/or selected contractor, as applicable, and shall list its contract monitoring mechanisms to ensure contractor compliance with all DBE provisions set forth in the Authority's DBE Program.

1. Notification of Contractor Reporting Responsibilities

Prior to execution of all contracts containing DBE goals and/or DBE commitments, the prime contractor shall be directed to the contract specifications for the Authority's specific DBE reporting and recordkeeping requirements. The Authority will include templates of required reporting forms in the bid/RFP documents and sample contracts.

2. Bidders List

All prime bidders/proposers are required to complete and submit to the Authority, a Bidders List for their firm and for all firms (DBEs and non-DBEs) that submitted a bid, quote or proposal to the prime bidder/proposer.

3. Pre-Award: DBE Participation Commitment Form

All prime bidders/proposers are required to complete and submit a "DBE Participation Commitment" form with their bid/proposal. Bidders/proposers shall also submit a written and signed confirmation from each DBE firm listed on the "DBE Participation Commitment" form to the Authority, acknowledging that the DBE is participating on the contract for the specified scope and value the prime bidder/proposer has listed them to perform.

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4. Contract Compliance Reporting Responsibilities

If a contractor/consultant is a DBE firm and/or has proposed to utilize DBE firms, the contractor/consultant will be required to complete and submit to the Authority, electronically through e-mail or a web-based compliance reporting system, a monthly and a final DBE utilization reports (Authority Form 103 and Payment Verification) by the 15th of each month until completion of their contract or agreement to facilitate reporting of DBE participation, following the first month of contract activity. Failure to submit these reports in a timely manner shall result in a penalty of \$10 per day, per report. Failure to submit required reports may also result in additional administrative sanctions against the contractor pursuant to the Authority's DBE Policy and 49 CFR Part 26. The Contractor is advised not to credit the participation of DBEs on the respective reporting form until the amount being credited has been paid to the DBE firm. The Authority Form 103 Report shall include the following information:

- a) Name of each DBE subcontractor/consultant.
- b) General work assignment of each DBE subcontractor/consultant.
- c) The specific portion of work executed by each DBE subcontractor/consultant during the reporting period.
- d) The dollars committed to each DBE subcontractor/consultant.
- e) The dollar value committed to lower-tier subcontractors/consultants under each listed DBE.
- f) The dollars paid to each DBE subcontractor/consultant during the reporting period.
- g) The dollars paid to date for each DBE subcontractor.
- h) The dollar value paid to date for lower tier subcontractors/consultant under each listed DBE.
- i) The dollars paid to the DBE as a result of a change order or other cost modification.
- j) The dollars paid to date as a percentage of the total commitment to each DBE.
- k) Date of the last progress payment
- l) Prime contractor/consultant signature under penalty of perjury that it has complied with all requirements of 49 CFR, Part 26 and prompt payment requirements of the California Public Contract Code.

For each payment reflected to a DBE firm in Form 103 Reporting Month, an associated Payment Verification must be submitted. The Payment Verification shall include the following information:

- a) Invoice number, amount & invoice date;
- b) Payment value and associated payment date to DBE firm;

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- c) Check Number or wire transfer number;
- d) Invoice number corresponding to last payment to subcontractor;
- e) Retention, as applicable;
- f) Clear detailing of payment to lower-tiers under the DBE firm; and
- g) DBE signature under penalty of perjury that payment data reported is accurate.

5. Good Faith Efforts (GFE)

During the term of the contract, the contractor/consultant shall take appropriate actions that will satisfy the GFEs to ensure that DBEs have an opportunity to successfully perform in the contract, and that the contractor meets the established DBE contract goal and the DBE Commitment at the minimal level committed to at award. These efforts shall include but shall not be limited to the following:

- i. Negotiating in good faith to attempt to finalize and execute a subcontract agreement with the DBEs committed to in the bid or proposal;
- ii. Documenting efforts to seek out and utilize additional DBE suppliers and subcontractors when necessary and authorized by the Authority;
- iii. Continuing to provide assistance to DBE subcontractors or suppliers in obtaining bonding, lines of credit, etc.;
- iv. Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting Authority approval to substitute the DBE.
- v. Paying all subcontractors (DBEs and non-DBEs) in a timely manner, as listed in the contract specifications;
- vi. Alerting the Authority in a timely manner of any problems anticipated in attaining the DBE participation goal committed to in the bid or proposal;
- vii. If a DBE substitution is necessary, making a GFEs to replace the DBE with another DBE, subject to the approval of the Authority.

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X. DBE AND SMALL BUSINESS DEVELOPMENT PROGRAMS AND INITIATIVES

The Authority has established business development tools to assist disadvantaged firms in enhancing their firms' skills and abilities to successfully compete for contracts within their respective industries in the marketplace. The Authority's contracting program consists of an array of contracting needs. Two significant efforts include individual project procurements for the Southern California Optimized Rail Expansion (SCORE) Program, and the operations and maintenance of the Authority's commuter rail service.

The SCORE Program represents the largest single award of grant funds (Senate Bill 1 and Cap and Trade Funds) ever received by the Authority. It is designed to transform regional passenger rail service in Southern California in preparation of the 2028 Olympics. These funds will be leveraged with Federal and other funding in partnership with freight and intercity rail operators (SCRRA, LOSSAN, California High-Speed Rail Authority and BNSF Railway) for significant investments in Authority infrastructure. The second program is for the operations and maintenance of the Authority's commuter rail service that will include track and structure maintenance, signal and communications maintenance, rolling stock maintenance, operator services and materials management. The operations and maintenance contracts will also be a mix of Federal and State funds.

In light of the above procurements, the Authority has enhanced business development programs and initiatives to promote the success and growth of the Authority's DBE contracting community and ensure ongoing compliance with state and federal laws and regulations.

A. Vendor Electronic Registration and Notification of Contracting Opportunities

The Authority will post all procurements through an online purchasing management system to ensure an open, fair and competitive supplier selection process. This system allows firms to register for consideration for future Invitations for Bids (IFB), Requests for Proposals (RFP) or Requests for Qualifications (RFQ) opportunities and receive instant alerts regarding pre-proposals/ bids, addendums and contract documents.

B. Pre-Bid and Pre-Proposal Meetings

The Authority holds pre-bid/pre-proposal meetings for U.S. DOT-assisted bid and RFP opportunities. These meetings provide a venue for prime and subcontractor teaming and partnering. Sign-in sheets include fields for noting DBE and SBE status and whether the firm is a prime or sub bidder/proposer. The Authority also provides an opportunity for networking at the end of the meeting.

C. DBE Program Website

The Authority maintains a DBE Program website which is accessible via the following link: <https://www.metrolinktrains.com/about/doing-business-with-metrolink/disadvantaged-business-enterprise-and-labor-compliance-programs/>. The website contains an overview of the Authority's DBE Program, a link to a copy of the Authority's DBE Program Policy Statement, contact information for the Authority's DBELO, a link to the CUCP website and DBE certification information, a link to the

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CUCP state-wide online DBE directory, a link to detailed instructions for locating DBEs on the online DBE directory, and additional DBE resources and supportive services.

D. External Outreach Events

The Authority participates in a variety of outreach events hosted/sponsored by other public agencies, local/ethnic chambers of commerce, community- and business-based organizations, and professional/trade associations. The Authority's participation goals are to promote contracting and procurement opportunities, recruit new contractors/vendors, and disseminate timely and accurate information regarding the Authority's small and disadvantaged business inclusion initiatives.

E. Mentor Protégé Program

The Authority's Mentor-Protégé Program (MPP) serves to foster a more competitive environment for SCRRRA projects by building a broader base of DBEs able to perform work within the Authority's contracting program. The Authority will operate a Mentor-Protégé Program within the guidelines set forth in Appendix D, 49 CFR, Part 26.

The Authority's immediate objective in application of MPP requirements is to strengthen the long-term stability of DBE firms by focusing resources on those critical business skills and assets that contractors and consultants require to compete successfully in the open market. Goals of the MPP will include:

- Enhancing the business skills of CUCP certified DBE firms;
- Broadening the base of DBE firms' design, engineering and construction activity; and
- Building long-term stability of DBE firms.

Involving larger and more established firms in the development of growing DBEs is crucial to the success of the MPP. The Authority is committed to fostering a climate that allows DBE firms to benefit from the knowledge and experience of the larger and more established firms.

The Authority will review upcoming procurements on a case by case basis to determine if DBE utilization on the procurement would benefit from application of MPP requirements. Factors considered in the application of MPP requirements will include review of the procurement's value, scope, requirements, and term to determine the likelihood to which the MPP may enhance the capabilities and technical development of each protégé, improve its ability to grow and compete, and assist the protégé with building relationships with other firms for future teaming. The Authority will also consider how the application of MPP requirements may decrease the likelihood of common barriers for DBE firms:

- Inability to accommodate size or volume of work;
- Inability to secure adequate financing; and
- Inability to secure adequate bonding.

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When MPP requirements are included in a procurement the bidder/proposer must submit as part of its bid/proposal a MPP setting forth the bidder/proposer's approach to provide business development assistance to DBE firms through a mentoring program. The MPP must include:

- (1) A description of the approach, general requirements, and description of how the mentor and any contractor will carry out this component;
- (2) Definitions and roles for the protégé, mentor and, if applicable, the Contractor;
- (3) Defined mentor and protégé selection criteria, including eligibility requirements, the percentage of the work that a protégé will perform on the contract, and assurances that protégé and mentor arrangements comply with commercial useful function standards;
- (4) The types of business developmental assistance a mentor will provide to the protégé for inclusion in the mentor protégé agreement, an explanation of how the assistance will be beneficial, and the duration of the mentor protégé arrangement. Examples of business development assistance may include:
 - Training in technical aspects of operating the business, such as invoicing, marketing, business forecasting and budgeting, staffing and selection techniques for insurance and banking relationships.
 - Assistance in preparing change orders, training forms, inspection reports, filing claims, resolving disputes, scheduling and other aspects of meeting contract requirements and performance.
 - Assistance in the preparation of contract documents, proposals, and Statements of Interest, staff qualifications, and developing information technology.
- (5) A signed Mentor Protégé Agreement for each selected protégé. The Mentor Protégé Agreement must include the following:
 - Names of the mentor and protégé and key contacts;
 - Description of the protégé's scope of work;
 - Description of mentoring activities and associated levels of effort, including an estimate of hours;
 - Deliverables associated with mentoring work;
 - Duties and responsibilities of Mentor and Protégé, including a list of key personnel;
 - Process for evaluating mentor/protégé relationship;
 - Benchmarks to measure mentoring progress, which must include bi-annual reviews; and
 - Termination provisions.

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F. DBE Contracting Plan

Federal regulations recognize the difficulties associated with achievement of project goals when detailed project scopes and costs have not yet been determined and encourages the use of alternative DBE compliance approaches for these types of projects. The Authority will review upcoming procurements on a case by case basis to determine if a project scope creates an increased likelihood of difficulties with project goal achievement. Examples of these types of projects may include on-call work, CTO/JOC, long-term, and design-build projects.

When DBE Contracting Plan requirements are included in a procurement the bidder/proposer must submit as part of its bid/proposal a DBE Contracting Plan demonstrating how the DBE commitment will be met through use of their proposed DBE firms. The bidder/proposer will be required to include creative strategies and innovative approaches to involve DBE's in all phases of the work. The bidder/proposer's DBE Contracting Plan will be required to address the elements specified below.

1. DBE CONTRACTING PLAN APPROACH

- a) Contractor must list the names, addresses and e-mails of DBE firms that have been identified and will participate in the contract along with a description of the work that each DBE will perform and the eligible dollar amount of participation for each DBE firm participating on an annual basis if applicable. At time of proposal submission, the DBEs identified, their description of work and values should mirror the "DBE Participation Commitment Form." As the contract progresses, the DBE Contracting Plan must be updated to capture the total overall dollars planned to be subcontracted and the total dollars planned to be subcontracted to DBEs to successfully meet or exceed the Contractor DBE commitment made (inclusive of changes, modifications or amendment) to achieve the DBE goal after contract award;
- b) Contractor must provide a contract schedule, inclusive of projected work timeframes on an annual basis if applicable for identified DBEs and advise the Authority of any anticipated changes to the contract schedule. Advisement to the Authority should include a revised contract schedule.
- c) Contractor must comply with prompt payment requirements and release of retainage upon satisfactory completion of the subcontractor work. Contractor to comply with prompt payment and retainage reporting requirements and ensure compliance of all lower tier DBE and non-DBE subcontractors to report payments, verify payments and resolve payment discrepancies.
- d) Contractor will identify a DBE Liaison and detail their qualifications to assume responsibility for implementing, managing and reporting on achievement of the DBE commitments, communicating subcontracting, business development and supportive services activity at all

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tiers and ensuring compliance with nondiscrimination provisions. The DBE Liaison will be responsible for the following:

- Day-to-day operational components of the DBE Contracting Plan;
- Effectively responding to and reporting to the Authority on the status of any DBE, regardless of the tier;
- Submitting executed DBE subcontracts/purchase orders and any subsequent change orders revisions, or material amendments to the Authority within 10 days of the Subcontractor Agreement Execution (however, no DBE shall commence any work or provide any material/supply without an executed subcontract/purchase order or the appropriate change order/amendment having been submitted to the Authority). Change Orders or Amendments to committed values may also be approved by the Authority through the annual budget approval process;
- Interfacing with the Authority regarding DBE issues and obtaining approvals for all DBE replacements, substitutions or terminations;
- Carrying out technical assistance activities so that the playing field is level for DBEs; and
- Participating in the procurement process, acting as an advocate for DBEs firms committed to and prospective DBEs and sets forth what the process will be when there is a conflict or disagreement between the Contractor and DBE.

2. DBE OUTREACH AND SUPPORTIVE SERVICES

Bidder/Proposer must provide an assessment of their pre-award DBE outreach event(s) and describe the steps taken to follow-up with DBE firms contacted during the solicitation process. Contractor/Consultant may be required to hold an additional DBE outreach event during the course of the contract as a demonstration of good faith if their DBE commitment falls below the contract DBE goal.

Contractor/Consultant must identify potential barriers to DBE participation and describe plans to mitigate these barriers, including, but not limited to, bonding and insurance requirements, subcontract scope, specialized railroad safety and technical training, bidding process, communications, financing, outreach and recruitment strategies and prompt payment and payment of retainage;

Contractor will conduct outreach and/or workshop events with the DBE community and stakeholders throughout the life of the contract. The Contractor will document such efforts, successes and assessments as part of its progress reporting.

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3. DBE CONTRACTING PLAN REQUIREMENTS

- a) Contractor will submit a quarterly written narrative of progress in meeting the DBE requirements set forth in the approved DBE Contracting Plan. The Contractor must provide a summary of the activities undertaken during the reporting period, including but not limited to:
- Updates to DBE commitments and attainments
 - DBE participation status
 - Key accomplishments
 - DBE program challenges
 - Activities anticipated for the next reporting period
 - Supportive services provided to aid in the successful participation of DBEs
 - DBE communication
 - DBE strategies and training offered
 - Requests to Add/Substitute/Terminate
 - Progress in actualizing DBE commitments made at award with executed subcontract agreement(s) and/or purchase order(s)
- b) Contractor to meet with the Authority on a minimum of a quarterly basis to report on the progress of the Contractor's DBE Contracting Plan and discuss any issues or concerns;
- c) Contractor to provide quarterly presentation for use at Board of Directors and/or community relation events, inclusive of DBE goal commitments, status of DBE utilization, outreach, supportive services, technical assistance offered, and an overall summary of achievements.

The bidder/proposer's DBE Contracting Plan will be subject to the Authority's review and approval. The Authority must approve the DBE Contracting Plan prior to awarding the Contract. The DBE Contracting Plan will be required to be updated on a quarterly basis and more frequently as necessary to reflect current contract circumstances.