

**TRI-VALLEY – SAN JOAQUIN VALLEY REGIONAL RAIL AUTHORITY
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
(Revised September 10, 2025)**

I. Policy and General Requirements

A. Policy Statement and Objectives (Sections 26.1, 26.3, 26.23)

The Authority's policy statement is included as Exhibit A and has been signed and dated by the Authority's highest-ranking official. The policy has been disseminated throughout the Authority and to the Disadvantaged Business Enterprise (DBE) and non-DBE business communities that perform work on the Authority's United States Department of Transportation (DOT)-assisted contracts through the Authority's contracts and procurement solicitation process.

B. Applicability (Sections 26.3, 26.21)

As a recipient of FTA assistance for planning, capital, and/or operating assistance the Authority is obligated to have and maintain a DBE Program in accordance with Title 49 CFR, Part 26 ("the Regulations") and DOT guidance implementing the Regulation ("Guidance"). The DBE Program outlined herein applies to all Authority contracts that are funded, in whole or in part, by the DOT. In the event of any conflicts or inconsistencies between the Regulations and the Authority's DBE Program with respect to 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 DOT financial assistance has been expended.

C. Definitions (Section 26.5)

Any terms used in this section that are defined in 49 CFR Section 26.5 or elsewhere in the Regulations, shall have the meaning set forth in the Regulations. Some of the most common terms used in the DBE Program are defined below. All references to the phrase "this part" in the following definitions mean 49 CFR Part 26.

Bidders List: A list of all firms that have participated or attempted to participate on prime contracts and subcontracts on the Authority'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 significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

California Unified Certification Program (CUCP) aka Unified Certification Program (UCP): 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 DOT recipients within California.

Commercially Useful Function (CUF): 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 DOT DBE Program requirements by all parties involved in the DOT DBE Program.

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 contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Days: Means calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the Authority'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 Certification: A certification issued to a firm by a certifying member agency of the California Unified Certification Program (CUCP), which has been determined to meet all the requirements in accordance with Title 49 CFR, Part 26. To receive DBE credit toward meeting a contract goal in the context of the prime contract award process, a DBE firm must be certified before the due date for bids or offers on the prime contract. (49 CFR 26.81(c).)

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.

DBE Liaison Officer (DBELO): The person responsible for implementing all aspects of the Authority's DBE Program. The Authority's Deputy Executive Director is designated as the DBELO.

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

Disadvantaged Business Enterprise or 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; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

Disparity Study: Fact-based technique and methodology used to establish whether or not underutilization of certain groups, i.e., minorities and women, exists in the purchasing and contracting practices of an entity. A disparity study must be conducted in order to establish a DBE contract goal.

Distributor: A DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question unlike a regular dealer who maintains sufficient inventory and owns distribution equipment for the products it sells to contractors and the public.

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

FTA Tier I recipient: An FTA recipient to whom this part applies that will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$670,000 in FTA funds in an FFY.

FTA Tier II recipient: An FTA recipient to whom this part applies who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which does not exceed \$670,000 in FTA funds in an FFY.

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.

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.

Noncompliance: A recipient or participant of DOT funds that has not correctly implemented the requirements of this part.

North American Industrial Classification System (NAICS): The six-digit classification numbers that best describes the primary business of a firm. The NAICS is the standard used by federal agencies in classifying entity establishments for purposes of collecting, analyzing, and publishing statistical data related to the US business economy.

Operating Administration or OA: Any of the following departments of the DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA).

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

Race-conscious measure or program: A program that focuses specifically on assisting DBEs, e.g., by the development and inclusion of DBE contract goals.

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, i.e., community outreach and awareness programs. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient or primary recipient: Any entity, public or private, that directly receives DOT financial assistance through the programs of the FAA, FHWA, or FTA.

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.

Small business concern: With respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

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

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if required by the Authority.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea),

Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Mariana Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, Maldives, Nepal, or Sri Lanka;

(vi) Women;

(vii) Any additional groups 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.

Subrecipient: An entity that receives DOT financial assistance through a primary recipient.

Transit vehicle manufacturer (TVM): Any manufacturer whose primary business purpose is to manufacture vehicles built for mass transportation. Such vehicles include, but are not limited to: buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Businesses that perform retrofitting or post-production alterations to vehicles so that such vehicles may be used for public transportation purposes are also considered TVMs. Businesses that manufacture, mass-produce, or distribute vehicles primarily for personal use are not considered a transit vehicle manufacturers.

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 (DOT): Department of the U.S. federal government that is actively involved with U.S. transportation at the national, state, and local levels. The DOT includes the Office of the Secretary, Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA).

D. Nondiscrimination Requirements (Section 26.7)

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 the accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

Through such efforts, the Authority will ensure that its contracting and procurement-related processes promote equity in access, consideration, and opportunity for DBEs in response to the requirements set forth under Title 49 CFR, Part 26: "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs."

E. Business Development Programs and Mentor-Protégé Programs (Section 26.35, and 26.39)

The Authority has not established a business development program or mentor-protégé program, however, the Authority is partnering with government agencies who provide business development assistance to DBEs and small businesses.

DBEs and small businesses seeking business assistance will be referred to existing Small Business Development Centers (SBDC) with centers located statewide. The SBDC's provide counseling and training to small businesses including working with a multitude of consultants and government agencies such as the Small Business Administration to develop and provide informational tools to support business start-ups and existing business expansion.

In addition, the Authority will partner with the Caltrans DBE Supportive Services program and CalMentor (professional services mentoring program) to refer DBEs as additional resources for business development.

II. General Record Keeping Requirements (Sections 26.11, 26.21, 26.27, 26.33, 26.43, 26.47 and 26.49)

The Authority maintains a recordkeeping system which identifies DOT-assisted contract awards and tracks prime contractors' progress in achieving DBE goal commitments throughout the performance of the contract. The Authority verifies payments made to DBEs and keeps record of actual DBE attainments. Any areas of identified non-compliance are subject to administrative sanctions against the contractor as outlined in this program.

The Authority will include the following information in its procurement files, as applicable, to maintain its records and fulfil reporting requirements in compliance with the Regulations:

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

A. Uniform Report of DBE Awards or Commitments and Payments [Section 26.11(a)-(b)]

The Authority's DBELO or designee shall submit for FTA review and approval, a semi-annual Uniform 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.

The reports shall list the Authority's dollar value of DBE participation for DOT-assisted contracts and subcontracts awarded and closed and shall demonstrate the Authority's progress toward reaching the FTA-approved overall/triennial DBE goal. All dollar amounts reported will reflect the federal share of such contracts. The report will identify the federally assisted contract numbers; NAICS codes identified for each DBE on each contract awarded; dollar amount awarded to each

certified DBEs through the use of race conscious methods and race neutral methods; number of firms that were listed at commitment but replaced (as well as an explanation for the replacement); and number of firms decertified during the reporting period. The Authority will also report DBE participation and payments on ongoing contracts.

The Authority's DBELO or designee shall submit for FTA review and approval, the semi-annual DBE Uniform Report by June 1 and December 1 of each Federal Fiscal Year on the following schedule:

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

B. Bidders List [Section 26.11(c)]

Under 49 CFR §26.11(c), it requires the Authority to create and maintain a Bidders List on DOT-assisted contracts. The Bidders List is not only an obligation of the Authority but also for firms who submit bids/proposals to the Authority for participation in DOT-assisted contracts. Firms must submit the Bidders List information with their bids or initial responses to negotiated procurements.

The Bidders List requirement will be included in each DOT-assisted contract and/or solicitation, 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 showed an interest in the solicitation and who submitted a bid, proposal or quote, to the prime bidder/proposer on DOT-assisted contracts, including firms who were actually contracted by the prime bidder/proposer.

The Bidders List shall, at a minimum, contain the following information for each firm:

1. Firm name
2. DBE certification status (DBE or non-DBE)
3. Address including ZIP code
4. Phone #
5. Email
6. Age of the firm
7. Contract or subcontract participation amount, if the firm is a certified DBE
8. Contact name and title
9. Race and gender information for the firm's majority owner
10. NAICS code applicable to each scope of work the firm sought to perform in its bid
11. Type of product/service provided
12. Range of annual gross receipts (each firm may indicate into what gross receipts bracket they fit (e.g., less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million; etc.).

The Authority will enter this data in DOT's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a "design-build" contract, where subcontracts will be solicited throughout the contract period, as defined in a DBE Performance Plan pursuant to 49 CFR [§ 26.53\(e\)](#), a Bidders List is required with each new solicitation for subcontracts and the Authority will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

The Authority will also use the Bidders List to assist in establishing the Authority's business market area and as a resource in the Authority's DBE goal-setting process.

The Authority will submit the Bidders List to a centralized DOT database as prescribed by FTA.

C. DBE Program & Updates (Section 26.21)

The Authority will implement and update its the DBE Program in accordance with the Regulations until all funds from DOT financial assistance have been expended.

The Authority will regularly review directives issued by DOT and update its DBE Program as necessary to fully comply with the intent of the DOT's DBE regulations and when there is a new DBELO.

The Authority will promptly advise FTA, of any significant updates and/or changes to the Authority's DBE Program administration through the submission of an updated DBE Program plan.

D. DBE Financial Institutions (Section 26.27)

The Authority will thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, make reasonable efforts to use these institutions, and encourage prime contractors on DOT-assisted contracts to make use of these institutions. The Authority has made efforts to identify DBE financial institutions and will make a listing of DBE financial institutions available to prime contractors. Information on the availability of such institutions can be obtained from the DBELO.

E. Overconcentration (§26.33)

If the Authority identifies overconcentration of DBE utilization in certain types of work based on the preparation of the overall DBE goal and review of the semi-annual reports for trends, regular tracking of contract awards, and compliance monitoring , the Authority will develop appropriate measures to address the over-concentration and seek approval of such measures from FTA; if approved, such measures will become part of this Program. Currently, the Authority is not aware of any types of work that have a burdensome over-concentration of DBE participation.

F. Shortfall Analysis (Section 26.47)

The Authority monitors DBE participation toward the overall goal based on awards and commitments. If the awards and commitments reported on the Uniform Report of Awards and Commitments and Payments at the end of any federal fiscal year are less than the overall goal applicable to that federal fiscal year, the Authority will analyze factors that may have resulted in a shortfall to meeting the overall DBE goal. The factors will include, but are not limited to:

- ✓ Analyze the awards and commitments in detail to determine the difference between the overall goal and the actual achievement;
- ✓ Establish a corrective action plan with specific steps and milestones to correct the deficiencies identified in order to meet the goal in the new FFY; and

- ✓ Complete the shortfall analysis within 90 days of the end of the FFY in which the DBE goal was not met, but no later than December 30th of each year.

The shortfall analysis will be available to FTA or its delegate upon request.

G. Transit Vehicle Manufacturers (Section 26.49)

Under the DOT DBE regulations, a transit vehicle manufacturer (TVM) means any manufacturer whose primary business purpose is to build vehicles specifically for public mass transportation. Such vehicles include, but are not limited to, buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. The definition includes producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes. Businesses that manufacture vehicles solely for personal use and for sale "off the lot" are not considered transit vehicle manufacturers.

Further, to the extent that a vehicle remanufacturer is responding to a solicitation for new or remanufactured vehicles with a vehicle to which it has provided post-production alterations or retrofitting (e.g., replacing major components such as an engine to provide a "like new" vehicle), the vehicle remanufacturer is considered a transit vehicle manufacturer.

The Authority shall require all 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. Only those transit vehicle manufacturers listed on FTA's eligible TVMs list, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.

The Authority will also utilize the FTA's online TVMs list, 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 DOT-assisted transit vehicle procurements.

The Authority will submit to FTA the transit vehicle award report, within 30 days of a transit vehicle award. The report will be completed as prescribed by FTA and will include the name of the successful TVM and the Federal share of the contractual commitment.

Expenditures for DOT-assisted transit vehicle procurements are not included in the funding base used to calculate the Authority's Overall goal or reported on Semi-Annual Uniform Reports.

III. Assurances and Required Contract Provisions (Sections 26.13, 26.29, and 26.37)

A. Non-Discrimination Assurance [Section 26.13(a)]

Each financial assistance agreement the Authority enters with FTA or a primary recipient, will include the following assurance:

The Authority shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The Authority shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Authority's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Authority of its failure to carry out its approved program, the DOT may impose sanctions as provided for under 49 CFR 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. Contract Assurance [Section 26.13(b)]

Each contract signed by the Authority with a contractor (and each subcontract a prime contractor signs with a subcontractor) must include the following assurance:

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

- (a.) Withholding monthly progress payments;
- (b.) Assessing sanctions;
- (c.) Liquidated damages; and/or
- (d.) Disqualifying the contractor from future bidding as non-responsible.

C. Prompt Payment Clause and Assurance on Prompt Payment Monitoring (Sections 26.29 and 26.37)

Contractor/Consultant shall incorporate the following Prompt Payment Clause verbatim, in all subcontracts, lower-tier subcontracts, broker, dealer, vendor, supplier, purchase orders or other source agreements issued to both DBE and non-DBE firms:

Contractor/Consultant agrees to pay each subcontractor for satisfactory performance of its contract no later than 30 days from the receipt of each payment the Contractor/Consultant receives from the Authority. Contractor/Consultant agrees to pay all retainage owed to each

subcontractor for satisfactory completion of the accepted work within 30 days after the Authority's payment to Contractor/Consultant. If applicable California state law requires Contractor/Consultant to pay subcontractors within a shorter time period than the 30-day time periods set forth above, Contractor/Consultant must comply with the applicable state law. Contractor/Consultant's attention is called to Bus. & Prof. Code, § 7108.5 (requiring prime contractors to pay subcontractors working on public works of improvement within 7 days of receipt of each progress payment) and Civ. Code, § 3321 (requiring prime design professionals to pay subconsultant design professionals working on public works of improvement within 15 days of receipt of each progress payment or final retention payment).

Any delay or postponement of payment may take place only for good cause and with the Authority's prior written approval. For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Authority. When the Authority has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code for construction contracts, and Section 3321 of the California Civil Code for consultant contracts.

This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Contractor/Consultant shall include language in their subcontracts that stipulates the Contractor/Consultant and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. Contractor/Consultant will not be reimbursed for work performed by subcontractors unless and until Contractor/Consultant ensures that subcontractors are promptly paid for the work they have performed.

D. Required Clauses and Information (Sections 26.13, 26.23, 26.27, 26.29, 26.31, 26.37, 26.53, 26.55)

The following contract provisions will be included in all DOT-assisted contracts, subject to modification by the DBELO, in consultation with the Authority's legal counsel. Informational elements are also listed:

- a. Non-Discrimination Clause: The nondiscrimination assurance required by Section 26.13(b);
- b. Policy Statement: A copy of or a link to access the Authority's DBE Program Policy Statement and DBE Program (Section 26.23);
- c. Prompt Payment Clause: Prime contractors must pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the prime contractor receives from the Authority as required by Section 26.29(a);

- d. Retainage Clause: This clause ensures that full retainage is released to subcontractors from the prime contractors promptly after the subcontractor's work is satisfactorily completed as required by Section 26.29(b).
- e. A clause explaining the DBE certification standards;
- f. A clause explaining how DBE participation is counted toward contract goals and the overall goal;
- g. A clause explaining the reporting requirements, including a statement that DBE participation is credited toward overall or contract goals only when payments are actually made to DBE firms;
- h. Information regarding DBE financial institutions and a statement encouraging prime contractors to use such institutions (Section 26.27);
- i. The website address for the DBE Database identifying all firms eligible to participate as DBEs in the Authority's DBE Program (Section 26.31);
- j. A clause specifying the mechanisms the Authority will use to ensure compliance with 49 CFR Part 26 and this Program, including contractual and administrative remedies (Section 26.27); and
- k. If applicable, information regarding the contract goal required by Section 26.53.

IV. DBE Program Staffing and Support

A. DBE Liaison Officer (Section 26.25)

The DBE Liaison Officer (DBELO) shall be an Authority staff member who has direct and independent access to the Executive Director to discuss administration of the DBE Program. The DBELO is responsible for implementing all aspects of the DBE Program with coordination from other appropriate Authority staff to ensure that the Authority complies with all provisions of 49 CFR Part 26.

A DBE Program Organizational Chart demonstrating the DBELO's position in the organization can be found in

Exhibit B: "DBE Program Organizational Chart. The DBELO contact information will be maintained on the Authority's website.

The DBELO's duties and responsibilities include but are not limited to:

1. Gather and report statistical data related to the DBE program and other information as required by FTA and DOT
2. Review third party contracts and purchase requisitions for conformance with this Program.
3. Work with various departments to set overall triennial goals.
4. Ensure that bid notices and requests for proposals are available to DBEs through the timely posting of these solicitations on the Authority's website.
5. Work with the Authority's contracting/procurement staff to ensure they consistently arrange solicitations, present bid/ proposal requirements, and determine required quantities, specifications, and proposal delivery schedules to facilitate a level playing field for DBEs under a race-neutral or race-conscious environment.
6. Analyze the Authority's progress toward DBE goal attainment on a semi-annual basis and identify ways to improve goal attainment.
7. Participate in development of DBE information to be presented at pre-bid/pre-proposal meetings for purposes of reviewing DBE solicitation and contract requirements with potential bidders and/or offerors.
8. Advise the Executive Director and Board of Directors on DBE matters and DBE goal achievement.
9. Provide DBEs with information and referral to government agencies (e.g., local SBA) for assistance in preparing bids, obtaining bonds, insurance, and where DBEs may participate in DBE training seminars.
10. 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.
11. 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.
12. Ensure Good Faith Efforts packages are reviewed for responsiveness when bids/proposals do not meet the stated DBE contract goal.

13. Monitor the Design Builder's DBE Performance Plan (DPP) to ensure the DPP provisions for DBE participation are implemented.
14. Implement provisions to facilitate participation of small businesses on the Authority's contracts.
15. When applicable, track Transit Vehicle Manufacturer procurements and report the TVM awards to the FTA Office of Civil Rights within 30 days of award as referenced in Section 26.49(a).

B. DBE Program Support Staff and Resources

The Authority executives, management and staff share the responsibility for making the Authority's DBE Program a success and shall give their full cooperation to the DBELO in the implementation of this program.

The DBELO will receive assistance from:

- Procurement during contract solicitation to contract award.
- Contract Management during contract administration to ensure the contractors are responsive to the DBE provisions.
- Administrative Reconsideration Official to arbitrate DBE related appeals
- Legal for DBE enforcement.

The Executive Director and the DBELO will provide assistance to the Authority in administering its approved DBE Program in accordance with DOT DBE Program set forth under Title 49 CFR Part 26. The consultants will readily assist the Authority in this regard to ensure that the Authority is 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.

C. DBE Organizational Chart

See Exhibit B: DBE Program Organizational Chart.

D. DBE Reconsideration Official and Reconsideration Process (§26.53 (d)(2))

In instances where contract goals are established and the bidder/proposer either fails to satisfy the requirements for meeting the contract 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, within two (2) business days of being informed by the Authority of its non-responsiveness due to its failure to document and provide sufficient and adequate Good Faith Efforts in the subject procurement, request administrative reconsideration. 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 Good Faith Efforts as specified in the subject procurement.

The Authority, at its discretion, may utilize another DOT recipient agency's DBELO or Reconsideration Official who is a member of the California Unified Certification Program as an independent, impartial party to serve in the capacity of Reconsideration Official.

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 Good Faith Efforts 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 Good Faith Efforts to do so. The Authority will document the basis for the reconsideration determination and forward the final written determination to the bidder/proposer within seven (7) working days of the hearing date. All parties shall be advised that reconsideration final decisions are NOT administratively appealable to 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:

1. 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.
2. Reviews bidder/proposer written documentation or argument concerning the issue of whether it met the goal or made adequate Good Faith Efforts to do so.
3. 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 Good Faith Efforts to do so.
4. Maintains records of conducted hearings.
5. Provides determinations in writing to the DBELO.

V. DBE CERTIFICATION

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 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. DBE Directory (§26.31)

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.

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

- DBE name
- Owner name
- Business address
- Regions/Work Districts/County(ies) of performance
- Business telephone number
- Fax number
- Email address
- Website address
- NAICS code(s) under which the firm is certified
- Work category code(s) (optional)
- Business description
- Contractor's license classification (optional)
- Gender
- Ethnicity
- Certification status (DBE or ACDBE)
- Certification number
- 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 interested parties to the CUCP Database of Certified DBE Firms, and includes DBEs listed in the directory in the Authority's outreach efforts. The DBE Directory is published in the California Department of Transportation's (Caltrans). The DBE Database may be accessed directly at: <https://californiaucp.dbesystem.com>.

B. California Unified Certification Program (§26.81)

49 CFR §26.81 requires all public agencies that receive 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 will use and count for DBE credit only those DBE firms certified by the CUCP. As a non-certifying member of the California Unified Certification Program (CUCP), the Authority relies on the CUCP to administer and implement all DBE certification requirements. CUCP certifying members perform DBE certifications which apply to all DOT funded contracts

The CUCP, authorized by the DOT, operates under an approved Memorandum of Agreement (MOA) and is responsible for making DBE certification determinations and maintaining the official directory of certified DBE firms. The lead certifying Agency is Caltrans; however the Authority does accept DBE certification from all participating CUCP certifying agencies.

For the most current information on how to become certified as a DBE or to access the resource directory of certified firms, stakeholders are encouraged to visit the CUCP's official website at <https://dot.ca.gov/programs/civil-rights/dbe-certification-information> or by email at:

DBE.Certification@dot.ca.gov.

The CUCP no longer issues 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/consultants and awarding agencies should not impose on DBE firms the burden of providing a DBE certificate in their bid packages - it is not required.

C. Notification of Change in Circumstances

If a DBE's circumstances affecting its eligibility change at any time after being identified as a DBE participant on an Authority contract, the DBE must provide written notification of the change(s) to its certifying agency, the Authority, and, if applicable, the prime contractor/consultant. These changes may include, but are not limited to, modifications in business size, gross receipts, disadvantaged status, ownership, or control requirements.

D. Procedures for Written Complaints Regarding 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
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.

VI. Goals, Good Faith Efforts and Counting

A. Set-asides or Quotas (Section 26.43)

The Authority will not use quotas for DBEs on DOT-assisted contracts and will not use quotas in the administration of the DBE Program. The Authority will not set-aside contracts for DBEs on DOT-assisted contracts except in limited and extreme circumstances, when no other method could be reasonably expected to redress egregious instances of discrimination in accordance with Section 26.43.

B. Overall DBE Goals (Section 26.45)

The Authority will establish an overall DBE goal covering a three-year federal fiscal year period if the Authority anticipates awarding DOT/FTA funded prime contracts for a cumulative total value of which exceeds \$670,000 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. A description of the methodology utilized to calculate the overall goal and the goal calculations will be published to 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:

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 divisions and departments responsible for contracting activities, will conduct a thorough analysis of the projected number, types of work and dollar amounts of contracting opportunities that will be funded, in whole or in part, by DOT federal financial assistance for the upcoming three-year fiscal period.

Establishing a Base Figure

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

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 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
- ix. Input from public participation.

C. Public Participation

Consultation with Community Groups and Constituents

Prior to submitting the Authority's proposed overall DBE goal to the FTA, 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.

Advertising of Proposed Overall DBE Goals

The Authority understands that commercial advertising of the overall DBE goal is at the Authority's discretion. Prior to submission to FTA, the Authority may advertise its proposed triennial DBE goal in a:

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

The Authority will post a public notice to the Authority's website announcing the Authority's proposed Overall Goal and methodology before submitting the goal to FTA. At the Authority's discretion, the public notice may include the following:

- i. A statement that the proposed goal and methodology are available for public inspection for a period of 30 days from the date of publication.
- ii. 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.
- iii. Contact information and instructions for viewing the Authority's proposed goal/methodology and/or submitting a public comment.

Public Meeting

Additionally, at the Authority's discretion, it may host a virtual public meeting to allow interested parties access to the goal methodology and an opportunity to ask questions.

Finalizing the Overall DBE Goal

Upon receipt of any public comments, the Authority's DBELO will analyze the comments, summarize the results, and modify the overall goal, if appropriate. The DBELO will obtain final adoption of the triennial goal by the Authority's Board before submission to FTA.

The final DBE Goal and Methodology will be transmitted to FTA for their review and approval. The Authority understands we may begin implementing proactive measures to meet the overall DBE goal prior to FTA's review and approval of the overall DBE goal and methodology.

D. Race-Neutral Methods for Meeting Overall Goals (Section 26.51)

The Authority will endeavor to meet the maximum feasible portion of its overall DBE goal by utilizing race-neutral means. The Authority will use race-conscious measures only when necessary and legally permissible.

E. 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/consultants 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;
- 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/consultants;
- 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.

F. Race and Gender Conscious Measures (Section 26.51)

In preparation of the overall DBE goal, 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 and where legally permissible.

The DBELO will lead the establishment of 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 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.

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.

In any year in which the Authority projects it will meet part of its overall goal through race-neutral means and the remainder through contract goals, the Authority will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively, and report such information to the operating administration as provided in Section 26.11.

G. Evaluation and Award of Contracts with a DBE Contract Goal (§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 either met the DBE goal or has made good faith efforts 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 (RFP or RFQ) 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 AND/OR 2) fails to demonstrate that it made an adequate Good Faith Effort to meet the goal, shall be deemed "non-responsive" and shall be ineligible for contract award.

Evaluation of DBE Certification Status and DBE Eligibility

The DBELO shall require that all DBEs listed by bidders/proposers for participation in contracts with a DBE goal, 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, 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).

After the award of the contract, it is the prime contractor/consultant's responsibility to monitor the DBE certification expiration dates of its DBEs, and to ensure that only eligible credit for DBE participation is applied towards contract goals.

Evaluation of Bids/Proposals for which there is a DBE Contract Goal (§26.53)

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 an established DBE contract goal, the lowest successful bidder or highest ranked proposer who demonstrates its commitment to meet the DBE contract goal or demonstrates an adequate Good Faith Effort (GFE) shall be recommended for contract award.

If 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.

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.

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; and
- k. For each listed DBE, proof of valid and current DBE certification in the NAICS code(s) directly applicable to the work the DBE will perform on the contract.

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.

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 Good Faith Effort (GFE) documentation to determine responsiveness and shall determine whether the bidder/proposer has performed the quality, quantity, and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the 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.

H. Demonstrating Good Faith Efforts

If a bidder/proposer does not list sufficient DBEs on its "DBE Participation Commitment" form, to meet the established DBE contract goal, and/or if the Authority's evaluation of the "DBE Participation Commitment" form reveals that the bidder/proposer did not meet the established DBE contract goal, the bidder/proposer must demonstrate an adequate GFE to be deemed responsive to the Authority's DBE requirements. The bidder/proposer must demonstrate that it took all necessary and reasonable steps to meet the DBE goal, even if not fully successful. Evidence of good faith efforts must be included with the bid/proposal at the time they are due. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

Bidder/proposer should submit the following information even if the "DBE Participation Commitment Form" indicates that the bidder/proposer has met the DBE goal. This will protect the bidder/proposer's eligibility for award of the contract if Authority determines that the bidder/proposer failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening/ proposal due date, or the bidder/proposer made a mathematical error.

Submittal of only the form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The DBELO will evaluate evidence of good faith efforts in accordance with 49 CFR 26.53 and Appendix A of 49 CFR Part 26, considering the following factors:

- a) Items of Work the Bidder/Proposer Made Available to DBE Firms; a description of work items and approximate dollar amounts made available to DBE firms by the bidder/proposer, value of work items as a percentage of total contract work, breakdown of bid/proposal items or larger scopes of contract work (including those items normally performed by the bidder/proposer with its own forces) into economically feasible units to facilitate DBE participation sufficient to meet the DBE contract goal. It is the bidder/proposer's responsibility to demonstrate that sufficient work was made available to facilitate DBE participation.
- b) Solicitation Effort Documentation; the names and dates of written notices sent to certified DBEs soliciting bids/proposals for this project and the dates and methods used to following up initial solicitations to determine with certainty whether the DBEs were interested (attach all copies of solicitation, telephone records, fax confirmations, email communications, etc.), amount of DBEs to respond, documentation to demonstrate DBE firms were provided information about the contract (location of project, contract number, bid/proposal date, items of work made available and contact information) in the Invitation to Bid/Propose from the bidder/proposer, the bidder/proposer solicited through all reasonable means (e.g. attendance at pre-bid/proposal meetings, advertising and written notices) the interest of all certified DBEs who have the capability to perform the work of the contract, bidder/proposer to provide proof of aforementioned items.(Note: Solicitations should occur at a minimum no later than 14 calendar days prior to the Authority's bid/proposal due date and follow up to the solicitations should allow DBE firms reasonable time to respond). DBE firms solicited must be advised if the original bid/proposal due date has been extended.
- c) Rejected DBE Bid/proposal Documentation; the names, addresses, phone numbers, and amount of rejected DBE firms, the reasons for the bidder/proposer's rejection of the DBE firms, the firms selected and accepted for that work (attach all copies of quotes from all firms involved inclusive of a detailed cost breakdown if opted to self-perform work) and the price difference for each DBE if the selected firm is not a DBE, include an explanation of quote(s) rejected.
- d) Publication Efforts Made to Advertise the Projects to Solicit DBE Participation; names and dates of each publication in which a request for DBE participation for this project was placed by the bidder/proposer (attach copies of advertisements or proof of publications). Publications should be placed at a minimum 14 calendar days before the Authority's bid/proposal due date. If bid/proposal due date is extended, bidder/proposer is to re-advertise new bid/proposal due date.
- e) Agencies, Organizations, or Groups Contacted to Provide Assistance in Contracting, Recruiting, and Using DBEs; the names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting, and using DBE firms (Attach copies of requests to agencies, responses received, and efforts made by the bidder/proposer in response).
- f) Efforts to Provide Information About the Plans, Specifications, and Contract Requirements; efforts made to assist interested DBEs in obtaining necessary materials, or related assistance or services, bidder/proposer to provide evidence of effort.

- g) Assistance with Lines of Credit, Insurance, and/or other Services: efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs, bidder/proposer to provide a list of any assistance provided to DBEs:
- h) Additional Data to Support a Demonstration of Good Faith Efforts: in determining whether a bidder/proposer made adequate good faith efforts, the Authority will take into account the performance of other bidder/proposers in meeting the DBE contract goal. Attach any additional information to support demonstration of good faith in this section.

Pursuant to Section 26.53(b)(3)(ii), for negotiated procurements, such as a procurement for professional services, the Authority may permit bidders/offerors to make a contractually binding commitment to meet the goal at the time of bid/proposal submission or the presentation of initial bids/proposals but provide the required information listed above before the final selection for the contract is made by the Authority. If the Authority determines to permit bidders/offerors to make contractually binding commitments, the Authority will expressly state so in the solicitation. Otherwise, bidders/offerors must submit the required information listed above with their bids/proposals at the time they are due. This paragraph does not apply to a design-build procurement, which must follow the provisions in Section 26.53(e).

I. DBE Performance Plan (DPP) Requirement for Design-Build Procurements (§26.53(e))

The Authority recognizes that certain modifications are necessary to adapt the DBE Program for use in connection with Design-Build projects and will therefore follow the prescribed regulatory DOT requirements and subsequently published guidance.

Prime contractors/consultants responding to a Request for Proposal (RFP) for design-build procurements are required to submit a comprehensive and open-ended DBE Performance Plan (DPP) with their proposal.

- i. The DPP must clearly specify the types of work the prime contractor/consultant will solicit from DBEs and provide a detailed timeline for when actual subcontracting opportunities will come to fruition.
- ii. The Authority will rigorously monitor the prime contractor/consultants' compliance with the DPP throughout the life of the contract to ensure alignment with project progress and fulfillment of DBE participation commitments. Failure to adhere to the DPP may result in corrective actions or other contractually specified remedies.
- iii. Any revisions to the DPP must be formally documented and agreed upon in writing by the Authority to maintain accountability and alignment with project requirements.

Additionally, the contract boilerplate requirements shall be reviewed for further guidance and detailed provisions related to the DPP and DBE compliance. These requirements provide critical information to ensure the DPP remains consistent with the evolving scope and progress of the project.

J. Recommendation for Award

Following the determination of the bidder's/proposer's responsiveness to DBE requirements set forth in the solicitation, the DBELO shall prepare a report relative to contract-specific DBE requirements, to be submitted for presentation to the Board of Directors at the time the contract award is considered. The decision of the Board of Directors on award of the contract shall be final and binding on all parties, subject to compliance with the Authority's bid/proposal protest procedures.

K. Bidder/Proposer's Right to Administrative Reconsideration

If 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 IV. D of this Program for further details regarding the Administrative Reconsideration process.

L. Counting DBE Participation (§26.55(c))

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

Expenditures to a DBE contractor can only be counted toward the DBE contract goal if the DBE is performing a commercially useful function (CUF) on the contract. A DBE is considered to be performing a CUF only if it meets all of the following criteria:

- a. The DBE is responsible for the execution of a distinct element of work in the contract.
- b. The DBE carries out its obligation by performing, managing, and supervising the work involved including being responsible for ordering, negotiating price, installing (where applicable), determining quality and quantity, and paying for the materials and supplies used on the contract;
- c. The DBE performs work that is normal for its business, services, and function;
- d. The DBE performs or exercises responsibility for at least 30 percent of the total cost of its contract with its own workforce for and is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practice; and
- e. Its role is not limited to that of an extra participant in a transaction, contract or project through which funds are passed to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Authority will examine similar transactions, particularly those in which DBEs do not participate.

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

- a. 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

- b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- c. 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.
- d. 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.
- e. 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 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. The Authority shall implement this approach and crediting provision on its federally assisted contracts as permitted.

During the course of the contract containing a DBE commitment, the Authority or an agent of the Authority will 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 the Prime contractor's/consultant's monthly reporting.

M. 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 shall 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 workforce (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/consultant 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 certified 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.

Only work considered to the performance of a commercially useful function may be counted as DBE participation.

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

DBE Manufacturer Purchases (§26.55(e)(1))

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 owns (or leases) and operates a factory or establishment that produces on the premises the materials and supplies obtained by the contractor. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.

DBE Regular Dealer Purchases (§26.55(e)(2))

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 (including transportation costs). For purposes of this section, a supplier/regular dealer is a firm that owns, (or leases) and operates, a store, warehouse, or other establishment in which the materials, supplies, or equipment of the general character described by the specifications and required for performance under the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business.

Items kept and regularly sold by the DBE are of the "general character" when they share the same material characteristics and application as the items specified by the contract.

The Authority will establish a system to determine that a DBE supplier/regular dealer keeps sufficient quantities and regularly sells the items in question over a reasonable period of time. This system must also ensure that a regular dealer of bulk items as described below owns/leases and operates distribution equipment for the products it sells. This requirement may be administered through questionnaires, inventory records reviews, or other methods to determine whether each DBE supplier has the demonstrated capacity to perform a commercially useful function (CUF) as a regular dealer prior to its participation. The system you implement must be

maintained and used to identify all DBE suppliers with capacity to be eligible for 60 percent credit, contingent upon the performance of a CUF.

- i. To be a regular dealer, the firm must be an established business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A DBE supplier performs a CUF as a regular dealer and receives credit for 60 percent of the cost of materials or supplies (including transportation cost) when all, or at least 51 percent of, the items under a purchase order or subcontract are provided from the DBE's inventory, and when necessary, any minor quantities delivered from and by other sources are of the general character as those provided from the DBE's inventory.
- ii. A DBE may be a regular dealer in such bulk items as petroleum products, steel, concrete or concrete products, gravel, stone, or asphalt without owning and operating a place of business if the firm both owns and operates distribution equipment used to deliver the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term operating lease and not on an ad hoc or contract-by-contract basis.
- iii. A DBE supplier of items that are not typically stocked due to their unique characteristics (e.g., limited shelf life or items ordered to specification) should be considered in the same manner as a regular dealer of bulk items. If the DBE supplier of these items does not own or lease distribution equipment, as described above, it is not a regular dealer.
- iv. Packagers, brokers, manufacturers' representatives, or other persons who arrange, facilitate, or expedite transactions are not regular dealers within the meaning of this section.

DBE Distributor Purchases (§26.55 (e)(3))

If the materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, count 40 percent (40%) of the cost of materials or supplies (including transportation costs). A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance. A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor. If these conditions are met, DBE distributors may receive 40 percent (40%) for drop-shipped items. Terms that transfer liability to the distributor at the delivery destination (e.g., FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.

A bidder/proposer may count as DBE participation, fees and commissions paid to DBE firms that are not manufacturers, regular dealers or distributors, provided that the fees or commissions are determined to be reasonable and not excessive, as compared with fees customarily allowed for similar services.

F. Firms Fraudulently Participating in the DBE Program – Reporting and Enforcement Actions (Section 26.107)

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 <https://www.oig.dot.gov/hotline> 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

VII. Compliance and Enforcement Oversight

A. Confidentiality, Cooperation, Intimidation and Retaliation (Section 26.109)

If requested to do so by a participant in this Program, 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 federal, 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 DOT) without the written consent of the submitter. This includes applications for DBE certification and supporting information. However, the Authority will transmit this information to DOT in any certification appeal proceeding under § 26.89 or to any other state to which the individual's firm has applied for certification under § 26.85.

A.1 Confidentiality of Information on Complainants

To the extent permitted by law, the identity of an individual who submits a complaint related to the administration of this Program ("complainant") will be kept confidential, at the complainant's election. If such confidentiality will hinder an investigation, proceeding or hearing conducted by the Authority or DOT or result in a denial of appropriate administrative due process to other parties, the Authority will advise the complainant for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

A.2 Cooperation

The Authority agrees to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information by DOT. All participants in the Authority's DBE Program (including, but not limited to, all proposers or bidders subject to this Program, DBE firms, complainants and appellants, and contractors and subcontractors using DBE firms to meet an overall, project or contract goal) are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information by DOT or the Authority. Failure to do so will be grounds for appropriate action against the party involved, as determined by the Authority and/or DOT (e.g., with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

A.3 Intimidation and Retaliation

The Authority will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 49 CFR Part 26.

All participants in the Authority's DBE Program (including, but not limited to, all proposers or bidders subject to this Program, DBE firms, complainants and appellants, and contractors and subcontractors using DBE firms to meet an overall, project or contract goal) must not intimidate,

threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 49 CFR Part 26. A violation of this provision constitutes noncompliance with Section 26.109 and will be grounds for appropriate enforcement action against the party involved, as determined by the Authority and/or DOT.

B. Monitoring Payments to DBEs (§26.29 and § 26.37)

The Authority has adopted a prompt payment provision on all DOT-assisted contracts to facilitate timely payment to all subcontractors in accordance with regulatory mandates. Pursuant to §26.29, the Authority has selected the following method to comply with the prompt payment of retainage requirement:

The Authority may elect to hold retainage from the prime contractor/consultant and shall make prompt and regular incremental acceptances of portions, as determined by the Authority of the contract work and pay retainage to the prime contractor/consultant based on these acceptances. The prime contractor/consultant or subcontractor/subconsultant shall return all monies withheld in retention from any lower-tier subcontractors within the applicable time period included in the prompt payment contract provision.

The Authority will perform monthly audits of contract payments to DBE's utilizing an electronic data base management and reporting system.

Any violation of these provisions shall subject the violating prime contractor/consultant or subcontractor/subconsultant to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code for construction contracts, and Section 3321 of the California Civil Code for consultant contracts. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Failure to comply with the prompt payment provision or delay in payment without prior written approval from the Authority will constitute noncompliance, which may result in appropriate administrative sanctions, including, but not limited to a withhold of two percent (2%) of the invoice amount due per month for every month that payment is not made.

The Authority requires prime contractors/consultants 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 DOT. This reporting requirement also extends to any certified DBE subcontractor. The use of joint checks will not be allowed without prior written authorization from the Authority.

The Authority will perform monthly 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.

C. Compliance Monitoring (§26.37)

As required by 49 CFR §26.37(c), the Authority's DBE Program includes the following monitoring and enforcement mechanisms to ensure that work committed to DBEs at contract award is actually performed by DBEs. Such mechanisms 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. A running tally is required and is essential so the Authority can intervene in real-time if they observe a prime contractor/consultant falling short of a contract goal. Prime contractors/consultants must complete and submit within the specified timelines, running tally DBE documentation through the Authority-approved submission method. These mechanisms are designed to ensure work committed to DBEs, whether race-neutral or race-conscious, is actualized in conformance with the regulatory requirements in compliance with 49 CFR 26.37(b). Mechanisms include but are not limited to the following activities:

1. Conducting a review of procurement and contracting records to validate each DBE's participation commitment against executed subcontractor agreement between the prime contractor/consultant and the DBE;
2. Utilizing a proactive electronic reporting system to monitor and validate prime contractor and sub-tier compliance with prompt payment and release of retainage provisions;
3. Utilizing an electronic reporting tool to enable lower tiers to validate receipt of payments in real time and confirm payment details reported by prime contractor;
4. Assessing sanctions of late payment interest and/or withholding of proportional progress payments in accordance with identified violations of the Authority's prompt payment provisions;
5. Tracking DBE participation throughout the life of the contract;
6. Conducting site visits and/or observation of work performed to ensure the counting of each DBE's participation is consistent with its function on the contract, including worker interviews on applicable contracts;
7. Imposing administrative sanctions for contractor's willful contractor non-compliance with DBE Program requirements;
8. Measuring achieved DBE participation in comparison to committed participation; and
9. Recording and reporting final DBE participation at contract close-out.

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

D. Submission of DBE Information and Ongoing Reporting Requirements (Post-Award)

A prime contractor/consultant must take appropriate actions to ensure that it will satisfy good faith efforts to attain the DBE contract goal and/or the DBE contract goal commitment made at award (whichever is higher), when change orders or other modifications alter the dollar amount of the Agreement or the distribution of work. A prime contractor/consultant must apply and report its DBE contract goal commitment against the total current Agreement value, including any change orders and/or amendments.

If there is a DBE contract goal and/or DBE contract goal commitment within the Agreement, a prime contractor/consultant must complete and submit within the specified timelines, DBE documentation electronically through the reporting method designated within the contract or as otherwise advised by the Authority:

Submittal	Frequency of Submission
Monthly DBE Attainment and Subcontractor Prompt Payment Verification Report	Monthly by the 15 th of each month
DBE Subcontract Agreements	Within ten (10) days of prime contract award, or with Request to Add for DBE firms added post-award
Request to Additional DBE Subcontractor/Firms	As needed (see instructions below)
DBE Commitment Change Requests, DBE Substitutions, etc.	As needed (see instructions below)
On-Going Good Faith Efforts (GFE) Post-Award	As needed (see instructions below)

A penalty of ten dollars (\$10) per day, per Form/Electronic submittal will be implemented for late submission of any of the above.

Monthly DBE Attainment and Subcontractor Prompt Payment Verification Data Submission

This submission serves to ensure a prime contractor's/consultant's DBE commitments are attained, properly reported, and credited in accordance with DBE crediting provisions based on the capacity the DBE performs the scope of work/service.

This submission further serves to monitor prompt payment to both DBE and non-DBE firms and collect DBE utilization data as required under 49 CFR, Part 26.

Prime contractor/consultant is required to submit by the 15th of each month until completion of the Agreement. Prime contractor/consultant's first submission is due following the first month of

Agreement activity. Even if no DBE participation will be reported within a period, prime contractor/consultant must complete and submit Monthly by the required timelines.

Additionally, upon completion of the contract, a final report must be submitted and marked final.

DBE Subcontract Agreements

Prime contractor/consultant must electronically submit to the Authority copies of executed subcontracts and/or purchase orders (PO) for all DBE firms participating on the contract within ten (10) working days of award. Prime contractor/consultant must immediately notify the Authority in writing of any problems it may have in obtaining the subcontract agreements from listed DBE firms within the specified time.

Request for Additional DBE Participation

In the event prime contractor/consultant identifies additional DBE firms not previously identified by prime contractor/consultant for DBE participation under the Agreement, prime contractor/consultant must notify the Authority by filling out and submitting a "Request to Add," inclusive of required support documentation. Proposed firms will not be applied to prime contractor/consultant's DBE participation until approved by the Authority in writing.

DBE Commitment Change Requests, DBE Replacements, Termination and Increasing or Decreasing Commitment Values (Section 26.53(f))

Prime contractor/consultant shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the prime contractor/consultant obtains the Authority's written consent. Prime contractor/consultant should not terminate, decrease or substitute a listed DBE for convenience and perform work originally designated for a DBE with its own work force or those of an affiliate, a non-DBE firm, another DBE firm, or obtain materials from other sources without prior written authorization from the Authority. Prime contractor/consultant shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBE on the DBE Participation Commitment form, unless the DBE is terminated in accordance with this section and is approved by the Authority. This includes partial terminations.

Prime contractor/consultant shall provide written notification to the Authority in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

The Authority shall only provide written consent to a request to use other forces or sources of materials if prime contractor/consultant has good cause to terminate or decrease its DBE commitment to a DBE firm. For the purposes of this section good cause includes any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on the requirements of the project.
2. Listed DBE firm fails or refuses to perform the work of its subcontract in a way

consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE Subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of prime contractor/consultant.

3. Listed DBE firm fails or refuses to meet the prime contractor/consultant's reasonable, nondiscriminatory bond requirements.
4. Listed DBE becomes bankrupt or insolvent or exhibits credit unworthiness.
5. Listed DBE firm is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law.
6. Authority has determined that the listed DBE firm is not a responsible firm.
7. Listed DBE firm voluntarily withdraws from the project and provides written notice of its withdrawal.
8. Listed DBE is ineligible to receive credit for the type of work required.
9. Listed DBE owner dies or becomes disabled resulting in the inability of the DBE to perform the work on the Contract.
10. Other documented good cause that the Authority determines compels the termination (inclusive of decreases to commitment values and substitutions) of a DBE firm.

To submit a request to substitute, decrease or terminate a DBE subcontractor commitment, prime contractor/consultant is required to submit a DBE Commitment Change Request to the Authority inclusive of required support documentation.

Prime contractor/consultant must give notice in writing to the DBE, with a copy to the Authority, of its intent to decrease, substitute and/or terminate, and provide justification, allowing the DBE five (5) days to respond to prime contractor/consultant of the reasons, if any, why it objects to the proposed termination of its contract and why the Authority should not approve prime contractor/consultant's request.

In the event of an approved DBE replacement, termination, or failure of a DBE to complete its work on the contract for any reason, the DBE must be substituted with another DBE or adequate good faith efforts must be documented by prime contractor/consultant within five (5) days, to the extent needed to meet the contract-specific DBE goal. Note: The five (5) day period may be extended for an additional five (5) days, if necessary, at the request of the prime contractor/consultant. The substitute DBE must be certified as a DBE within the appropriate NAICS categories at the time of request for substitution.

Should prime contractor/consultant elect to submit a good faith effort documentation in lieu of proposing additional DBE participation, the Authority will review the documentation and provide a determination to the prime contractor/consultant stating whether good faith efforts have been adequately demonstrated.

The replacement DBE cannot work on the Agreement until its work eligibility has been confirmed by the Authority.

E. Decertification (Section 26.87(j))

Decertification has the following effects on contract and overall goals and DBE participation:

- ii. When a prime contractor/consultant has made a commitment to use a DBE, but a subcontract has not been executed before the certifier issues the Notice of Decision (NOD) as provided for in §26.87(g), the committed firm does not count toward the contract goal. The Authority will direct the prime contractor/consultant to meet the contract goal with an eligible DBE or demonstrate to the Authority that it has made good faith efforts to do so.
- iii. When the Authority has made a commitment to using a DBE prime contractor/consultant, but a contract has not been executed before the certifier issues the NOD, the decertified firm does not count toward the Authority's overall DBE goal.
- iv. If a prime contractor/consultant has executed a subcontract with a DBE before the certifier issues the NOD, the prime contractor/consultant may continue to receive credit toward the contract goal for the firm's work. In this case, however, the prime contractor/consultant may not extend or add work to the contract without prior written consent from the Authority.
- v. If a prime contractor/consultant has executed a subcontract with a DBE before the certifier issues the NOD, the prime contractor/consultant may continue to receive credit toward the contract goal as set forth in iii. above; however, the portion of the decertified firm's continued performance of the contract must not count toward the Authority's overall goal.
- vi. If the Authority executed a prime contract with a DBE that was later decertified, the portion of the decertified firm's performance of the contract remaining after the certifier issued the NOD must not count toward an overall goal, but the DBE's performance of the contract may continue to count toward satisfying any contract goal.

The following exceptions apply:

- i. If a certifier decertifies a firm solely because it exceeds the business size standard during the performance of the contract, the Authority may continue to count the portion of the decertified firm's performance of the contract remaining after the certifier issued the NOD toward the Authority's overall goal as well as toward the contract goal.

If the certifier decertifies the DBE because it was acquired by or merged with a non-DBE, the Authority may not continue to count the portion of the decertified firm's performance on the contract remaining, after the certifier issued a NOD, toward either the contract goal or the overall goal, even if a prime contractor/consultant has executed a subcontract with the firm or the Authority has executed a prime contract with the DBE that was later decertified. In this case, if eliminating the credit of the decertified firm will affect the prime contractor's/consultant's ability to meet the contract goal, the Authority must direct the prime contractor/consultant to subcontract to an eligible DBE to the extent needed to meet the contract goal or demonstrate to the Authority that it has made good faith efforts to do so.

G. Dispute Resolution

All contracts 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 DOT-assisted agreement and shall not incorporate by reference.

Contractor/Consultant and subcontractor/subconsultant may proceed through informal meetings, mediation, or any combination thereof. Contractor/Consultant and subcontractor/subconsultant agree to notify the Authority within five (5) business days of any prompt payment and/or DBE Program disputes which cannot be settled by discussions between the parties involved.

Performance During Dispute: Unless otherwise directed by the Authority, Contractor/Consultant and its sub tiers shall continue performance under the Agreement while matters in dispute are being resolved.

Flow Down Requirements: The dispute resolution provisions flow down to all tiers.

These provisions shall not apply to disputes between Contractor/Consultant and the Authority. These provisions do not alter in any way or waive compliance with other provisions in the Agreement.

H. Administrative Sanctions for Non-Compliance

Contractor/Consultant must fully comply with the DBE Agreement requirements, including the Authority's DBE Program and Title 49 CFR Part 26 "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," and ensure that all subcontractors, regardless of tier, are also fully compliant. Failure by Contractor/Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement, or such other remedy as the Authority deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying Contractor/Consultant from future bidding as non-responsible.

In addition to the administrative remedies defined in this section, the Authority is not precluded from invoking other contractual and/or legal remedies available under federal, state or local laws.

I. Authority's Written Verification (§26.37)

To further ensure the integrity of the DBE Program's intent, and in accordance with the Authority's DBE Compliance Close-Out Report Process, the Authority's DBELO or designee will complete

and file, a written verification attesting to having reviewed and monitored the contract, contractor DBE documentation, through on-site performances when applicable, and payments to DBEs to verify compliance with DBE requirements.

Additionally, as part of the Commercially Useful Function monitoring procedures conducted by the Authority, written verification will be provided during the Authority's commercially useful function review process that includes an on-site observation, survey and a desk audit to compare on-site observations against submitted DBE reporting.



Tri-Valley San Joaquin Valley
REGIONAL RAIL AUTHORITY

Disadvantaged Business Enterprise (DBE) Policy Statement

The Tri-Valley – San Joaquin Valley Regional Rail Authority (hereinafter referred to as “Authority”) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Authority anticipates receiving federal financial assistance from the DOT, and in anticipation of receiving this assistance, the Authority has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Authority to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy to:

- (a) Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- (b) Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) Ensure that the DBE program is narrowly tailored in accordance with applicable law;
- (d) Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- (e) Help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) Promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by the Authority;
- (g) Assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (h) Provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.

The Executive Director has assigned the role of DBE Liaison Officer (DBELO) to an Authority staff member with direct, independent access to the Executive Director concerning DBE Program matters. The DBELO will be responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the Authority in its financial assistance agreements with the DOT.

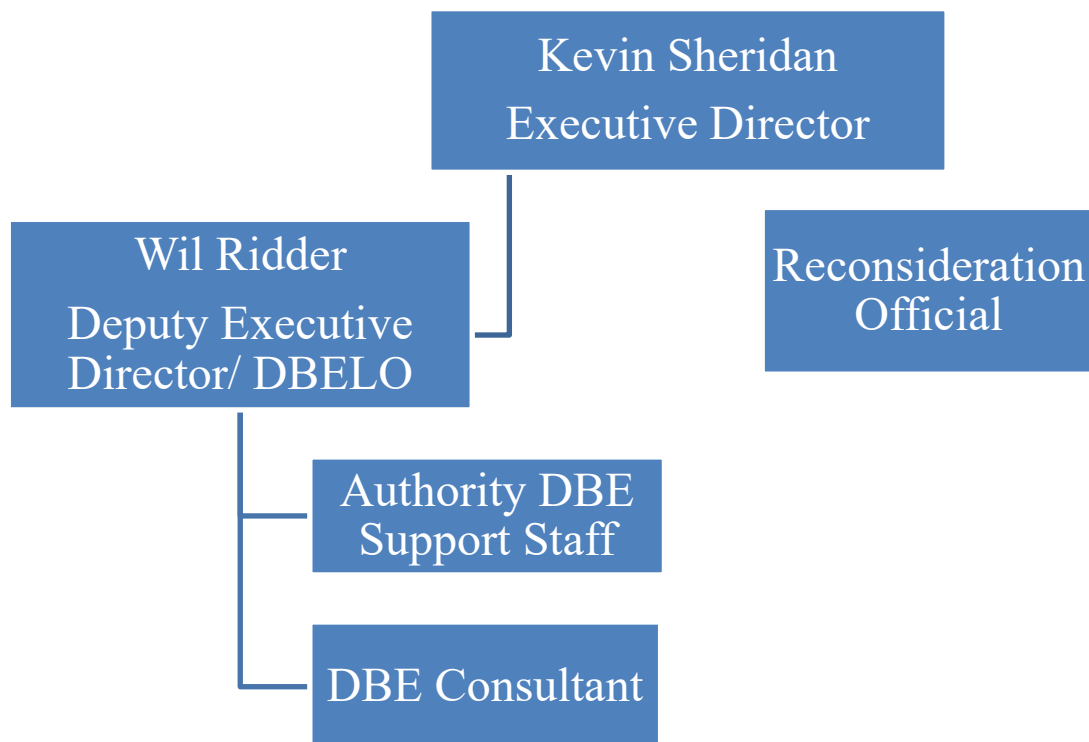
This Policy Statement has been posted to the Authority’s website.

Kevin Sheridan, Executive Director

09/26/2025

Date

Tri-Valley – San Joaquin Valley Regional Rail Authority
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM ORGANIZATIONAL CHART



DBE Liaison Office Contact Information

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