



City of Santa Clarita

DBE

DISADVANTAGED BUSINESS ENTERPRISE

PROGRAM PLAN
(Updated July 2021)

Submitted to:

U.S. Department of Transportation
Federal Transit Administration



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I. POLICY STATEMENT AND PROGRAM OBJECTIVES

A. Policy Statement/Objectives (§26.3, §26.7, §26.21, §26.23)

The City of Santa Clarita (hereinafter referred to as "City") is a recipient of U.S. Department of Transportation (U.S. DOT) Federal Assistance funds through the Federal Transportation Administration (FTA). As a condition of receiving this assistance the City has developed a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation, Title 49, Code of Federal Regulations (CFR), Part 26 "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs."

In accordance with the U.S DOT's DBE Program, the goal of the City's DBE Program is to ensure that minority-owned, women-owned, and other disadvantaged small businesses can fairly compete for contracts and subcontracts financed in whole, or in part, with U.S. DOT funds.

Pursuant to the intent of the U.S. DOT's DBE Program regulations, the City is firmly committed to its DBE Program objectives, which are designed to:

1. Ensure non-discrimination in the award and administration of the City's U.S. DOT-assisted contracts and subcontracts.
2. Create a level playing field by which DBEs can fairly compete for and perform in City U.S. DOT-assisted contracts.
3. Ensure that the City DBE Program is narrowly tailored in accordance with applicable law and current legal standards, including the Ninth Circuit Ruling in *Western States Paving vs. Washington State Department of Transportation*.
4. Ensure that only firms meeting 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
5. Help remove procurement and contracting barriers, which impede DBE participation in City U.S. DOT-assisted contracts.
6. Monitor and enforce contractor compliance in meeting established goal objectives and program requirements.
7. Assist DBEs and Small Businesses to increase their ability to compete successfully in the marketplace.
8. Ensure City contractors and subcontractors take all necessary and reasonable steps to comply with these policy objectives.

As evidence of the City's commitment to pursue these policy objectives, the City Purchasing & Risk Administrator, Andrew Adams, has been designated, as the DBE Liaison Officer (DBELO). In this capacity Mr. Adams is responsible for implementing all aspects of the DBE program, however all City staff share in the responsibility for making the City's DBE Program a success and shall give their full cooperation to the DBELO in the implementation of this Policy. The DBELO has direct access to the City Manager for DBE-related matters.

Implementation of the DBE Program is afforded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with U.S. DOT. It is the expectation of the City Manager that all City personnel shall adhere to the full spirit and intent of the DBE Program in pursuing all DBE requirements, accordingly.



Notices setting forth this policy are posted at the City's office and website, and they are available to the public and to the DBE and non-DBE business communities that perform or are interested in performing work on City contracts. Questions regarding City's DBE Program should be addressed to Andrew Adams, DBE Liaison Officer, 23920 Valencia Blvd. Suite 120, Santa Clarita, CA 91355, or by telephone at 661-286-4188.

In response to requirements set forth under 49 CFR Part 26; "Participation of Disadvantaged Business Enterprises in U.S. Department of Transportation Programs," effective March 4, 1999, and subsequently issued U. S. DOT Directives and Final Rules, the City will ensure DOT-assisted contracting and procurement processes promote equity in access, consideration and opportunity for DBEs and other small businesses.



Kenneth W. Striplin, City Manager

8/16/2021
Date



B. Applicability (§26.3, §26.21)

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

In direct response to these regulatory requirements, the City hereby establishes a DBE Program, which will:

1. Comply with federal regulations and financial assistance agreements.
2. Meet legal standards for narrow-tailoring requirements.
3. Ensure non-discrimination in the award of U.S. DOT-assisted contracts.
4. Reaffirm the commitment to fairness and the principles of equal opportunity.

In conformance with 49 CFR Part 26, the City will continue to carry out its DBE Program until all U.S. DOT funds have been expended. The City will advise all applicable U.S. DOT Operating Administrations of any significant updates and/or changes to this DBE Program.

In the event of any conflicts or inconsistencies between the DBE Program Regulations, 49 CFR Part 26, and the City's DBE Program with respect to U.S. DOT-assisted contracts, the Regulations shall prevail.

C. Definition of Terms (§26.5)

All terms used in this DBE Program shall have the meaning set forth in 49 CFR Part 26.

D. Non-Discrimination Requirements (§26.7)

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

Through such efforts, the City 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. Reporting to U.S. DOT (§26.11)

The City maintains a detailed recordkeeping system which identifies U.S. DOT-assisted contract awards and tracks prime contractors' progress in achieving DBE goal commitments throughout the performance of the contract. The City 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 manual.

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

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

Semi-Annual Uniform Reports

The City's DBELO or designee shall submit for FTA review and approval, a semi-annual Uniform Report of DBE Awards or Commitments and Payments (Exhibit C). In conformance with FTA direction, the City 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 dollar value of DBE participation for U.S. DOT-assisted contracts and subcontracts awarded and closed and shall demonstrate the City'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 dollar amount awarded to certified DBEs through the use of race conscious methods and race neutral methods.

Pursuant to DBE Program regulations effective November 3, 2014, the City will also report DBE participation and payments on ongoing contracts.

The City will adhere to the following reporting period based on the Federal Fiscal Year

- Reporting period: October 1st through March 31st report due June 1st



- Reporting period: April 1st through September 30th due December 1st

Transit Vehicle Reporting

Expenditures for FTA-assisted Transit Vehicle Manufacturer (TVM) procurements are not included in the funding base used to calculate the overall goal for DBE participation. The City shall submit TVM purchase information to FTA within 30 days of making an award.

Upon request, the City will compile and submit ad-hoc DBE contract award and progress reports for U.S. DOT-assisted projects. Furthermore, the City will continue to provide reports relative to the City's DBE Program, as directed. These reports will provide DBE participation information on the City's race-neutral and gender-neutral contracts on all U.S. DOT-assisted procurement activities.

F. Bidders List (§26.11c)

The City has developed and maintains a Bidders List consisting of all firms bidding on prime contracts, and bidding or quoting subcontracts on City U.S. DOT-assisted projects/contracts. All U.S. DOT-assisted contracts include a contract clause requiring all prime bidders/proposers to submit a completed Bidders List to the City for their firm and for all firms (DBE and non-DBE) that submitted a bid, proposal or quote to the prime bidder/proposer, including firms who were contracted by the prime bidder. The Bidders List shall, at a minimum, contain the following information for each firm:

- Firm name
- DBE certification status
- Address
- Phone #
- Email
- Age
- Contract amount
- Contact name and title
- Type of product/service provided
- Range of annual gross receipts

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

G. Federal Financial Assistance Agreement Assurance (§26.13)

The City has signed the following assurances as a condition of financial assistance agreements with the U.S. DOT, and which is hereby made applicable to all City U.S. DOT-assisted contracts:

Non-Discrimination Assurance (§26.13a):

This language will appear in financial assistance agreements with sub-recipients:

"The City shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. THE CITY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. The City DBE Program, as required by 49 CFR Part 26 and as approved



by U.S. DOT, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of its failure to carry out its approved program, the Department may impose sanctions as provided 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.).”

Contract Assurance Clause (§26.13b)

The City will ensure that the following clause is placed in every U.S. DOT-assisted contract and subcontract:

"The Contractor, City or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by 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 City 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 the Contractor from future bidding/proposing as non-responsible.*

Contractor agrees to include these requirements in all subcontracts at any tier."

II. ADMINISTRATIVE REQUIREMENTS

A. DBE Program Updates (§26.21)

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

The City will regularly review directives issued by U.S. DOT and update its DBE Program as necessary to fully comply with the intent of the US DOT’s DBE Program. The City will promptly advise all applicable U.S. DOT Operating Administrations, of any significant updates and/or changes to the City’s DBE Program.

B. Policy Statement (§26.23)

The Policy Statement is elaborated on the first page of this program document.

C. DBE Liaison Officer (§26.25)

The City Manager, while maintaining ultimate responsibility for the City’s DBE Program, has designated Andrew Adams to serve as the DBELO with responsibility for the implementation all aspects of the City’s DBE Program and ensuring that the City complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager concerning DBE Program matters (Refer to Exhibit B, “DBE Program Organizational Chart”). The DBELO is responsible for developing, implementing, and monitoring the DBE Program, in coordination with other appropriate officials. The DBELO is supported by a dedicated support staff of two and a DBE consultant. The DBELO will work closely with support staff and the management staff of both the Transit and the Capital Services Departments to ensure the DBE Program



is implemented uniformly and that all pertinent DBE information is captured within the City's reports the FTA. Contact information for the City's DBELO is as follows:

Andrew Adams
Purchasing & Risk Administrator
City of Santa Clarita
23920 Valencia Blvd., Suite# 120
Santa Clarita, CA 91355
(661) 286-4188
aadams@santa-clarita.com

The DBELO's and/or designee's duties include, but are not limited to, the following activities:

- Analyze and revise DBE Program policies and procedures as necessary.
- Submit updates to the U.S. DOT, regarding any significant changes to the City's DBE Program.
- Work with City departments and DBE consultant to perform goal-setting analysis, establish methodology, and calculate overall triennial DBE goals.
- Facilitate public participation in the overall goal-setting process.
- Conduct an annual review of the City's overall DBE goal; adjust and/or re-calculate the goal as necessary and submit to the FTA.
- Review triennial/overall DBE goal commitments at the end of each Federal Fiscal Year (FFY); analyze any goal shortfall(s); provide to the FTA (within 90 days after FFY end) a written analysis of why the overall goal was not achieved, as well as a written plan for corrective actions that the City will take to remedy the goal shortfall.
- Conduct and coordinate outreach efforts to DBEs and small businesses to provide information regarding contracting opportunities with the City; utilize the assistance of minority and women business associations, small business development centers, industry/trade organizations, vendor fairs, workshops and minority-focused publications to assist with outreach efforts.
- Coordinate public information and communication programs regarding contracting opportunities ensuring bid notices and requests for proposals are made available to DBEs in a timely manner.
- Participate in the 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.
- Ensure that solicitation documents and contract templates include all relevant DBE Program elements, contractor documentation submittal requirements, and required contract provisions.
- Work with the City'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.
- Work with the City's contracting/procurement staff to remove, where feasible, barriers which may limit DBE participation, by ensuring that Invitations for Bids (IFBs) and Requests for Proposals (RFPs) do not contain unduly restrictive requirements; ensure that sufficient time is allowed during the pre-bid phase for DBEs to schedule attendance at pre-bid/pre-proposal meetings and for non-DBEs to perform adequate good faith efforts established.



- Maintain a Bidders List of firms that submit a bid, quote, or proposal for participation on a City contract; ensure that the Bidder List contains all information required by 49 CFR §26.11.
- Ensure Good Faith Efforts are reviewed for responsiveness when bids/proposals do not meet DBE contract goals.
- Develop and implement technical assistance programs for DBEs, including resources and referrals to supportive services.
- Investigate services and resources offered by banks and/or financial institutions owned and controlled by socially and economically disadvantaged individuals.
- Ensure that any DBE subcontractor terminations by the prime Contractor are for “good cause” only, and that any such terminations receive prior written approval by the City.
- Monitor and enforce contractor compliance with all DBE Program provisions including goal commitments, documentation submittal requirements, reporting requirements, prompt payment to subcontractors, and DBE utilization requirements; impose administrative sanctions and/or monetary penalties for contractor’s willful non-compliance.
- Ensure procedures are in place that require upon completion of each contract on which DBEs were utilized a written affidavit attesting to monitoring and verification of contractor compliance with all DBE Program provisions.
- Maintain all necessary documentation to verify performance of activities included in the DBE Program.
- Provide timely DBE reports to the FTA, including the annual Uniform Report of DBE Awards or Commitments and Payments.
- Implement provisions to facilitate participation of small businesses on U.S. DOT-assisted contracts.
- Advise the governing body on DBE matters and achievements.

D. DBE Financial Institutions (§26.27)

It is the policy of the City to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to utilize these institutions, as available, and to encourage prime contractors on the City’s U.S. DOT-assisted contracts to make use the services of minority and women-owned financial institutions identified from listings posted at the Website of the Financial Management Service, US Department of the Treasury, Minority Bank Deposit Program. The Internet address of this website is <http://www.fms.treas.gov/mbdp>.

E. Prompt Payment Provisions (§26.29)

The DBE Program found at 49 CFR Part 26 requires that any delay or postponement of payment over 30 days may take place only for good cause and with the City’s prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.



Subcontractor Payments

The City has adopted a prompt payment provision on all U.S. DOT-assisted contracts to facilitate timely payment to all subcontractors in accordance with regulatory mandates. Pursuant to 49 CFR Part 26.29, the City will include the following clause in each U.S. DOT-assisted contract:

“Contractor/Consultant agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment Contractor/Consultant receives from the City. Contractor/Consultant agrees further to return retainage payments to each subcontractor within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the Agreement work by the City. Any delay or postponement of payment from the above referenced time frame may take place only for good cause and with the City’s prior written approval.”

Contractor/Consultant shall incorporate this clause verbatim, set forth above, in all subcontract, broker, dealer, vendor, supplier, purchase order or other source agreements issued to both DBE and non-DBE firms.

Any violation of the provisions listed above shall subject the violating Contractor/Consultant to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to Contractor/Consultant or subcontractor in the event of a dispute involving late payment or nonpayment by Contractor/Consultant; deficient subcontractor performance and/or noncompliance by a subcontractor.

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

Retention Payments

Pursuant to §26.29 “Prompt Payment Provisions” (DBE Final Rule), the City has selected the following method to comply with the prompt payment of retainage requirement:

The City will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within thirty (30) days after payment to the prime contractor.

Any delay or postponement of payment from the above referenced time frames may take place only for good cause and with the City’s prior written approval. Failure to comply with this provision or delay in payment without prior written approval from City 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.

F. DBE Directory (§26.31, §26.81)

The City is a non-certifying member of the California Unified Certification Program (CUCP). 49 CFR Part 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 City refers interested parties to the CUCP Database of Certified DBE Firms (DBE Directory) to assist in identifying certified DBEs. The DBE Directory is published at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

G. Overconcentration (§26.33)

The City has developed policies and procedures to address overconcentration of DBE utilization in certain types of work. This is accomplished through regular tracking of contract awards and compliance monitoring.

Areas that have been identified to demonstrate over concentration of DBE participation will not be assigned a contract-specific goal and will be procured under race-neutral measures to ensure compliance with regulatory overconcentration provisions. Currently, the City identifies and analyses areas of the City's contracting work that demonstrate over-concentration on an annual basis.

H. Business Development Programs (§26.35)

The City has implemented race and gender-neutral efforts to promote small business concerns, including DBEs. The City's Small Business Element, which was developed to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors can be found within Section J of this Program.

I. Monitoring Responsibilities (§26.37)

The City implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 requirements by all program participants, including prompt payment and commercially useful function reviews.

Monitoring Payments to DBEs and Non-DBEs:

The City undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. The City implemented a web-based payment reporting system and requires prime contractors and subcontractors to report payments sent and verify payments received every month. The City monitors prompt payments to subcontractors using this electronic system and follows up with prime contractors and subcontractors for explanations when prompt payment requirements are not met.

The City conduct periodic audits of contractor invoices. Invoice payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the City by the prime contractor. During these reviews, the City may also review whether payments to DBEs include any lower tier subcontractor payments to non-DBEs, and whether DBE subcontractor is performing a commercially useful function.

The City requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of



the City or U.S. DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

Monthly DBE Trucking Verification Form

Prior to the 15th of each month, Contractor/Consultant must submit documentation on the "Monthly DBE Trucking Verification," Form to the City showing the amount paid to DBE trucking companies. Contractor/Consultant must also obtain and submit documentation to the City showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, Contractor/Consultant may count only the fee or commission the DBE receives as a result of the lease arrangement.

Contractor/Consultant must also obtain and submit documentation to the City showing the truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month.

DBE Subcontract Agreements

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

Semi-Annual Subcontractor/Subconsultant Paid Report Summary

The City will require Contractor/Consultant (inclusive of DBE primes) to report payment data to lower-tiers on a semi-annual basis each year, using the "Semi-Annual Subcontractor Paid Report Summary." These reports will capture payments to Contractor/Consultant and payments to non-DBEs within the respective reporting period. Reported payments to lower-tiers must include a signed payment verification form.

Contractor/Consultant will adhere to the following submittal schedule:

- April 15th Report, reporting period: October 1st through March 31st
- October 15th Report, reporting period: April 1st through September 30th

Final Report-Utilization of Disadvantaged Business Enterprises (DBE)

Upon completion of the project, Contractor/Consultant must complete and submit a "Final Report-Utilization of Disadvantaged Business Enterprises (DBE) Subcontractors," certified correct by Contractor/Consultant or Contractor/Consultant's authorized representative, to facilitate reporting and capturing DBE attainments at conclusion of the project. The form must be furnished to the City within thirty (30) days from the date of project acceptance. The amount of ten-thousand dollars (\$10,000) will be withheld from payment until a satisfactory form is submitted.

Disadvantaged Business (DBE) Certification Status Change

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor must notify Contractor/Consultant in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor must notify Contractor/Consultant in writing with the date of certification (Attach DBE certification/decertification letter). Contractor/Consultant must furnish the written documentation to the City within ten (10) days of receipt. Upon completion of the project, the "Disadvantaged Business Enterprises (DBE) Certification



Status Change," must be signed and certified correct by Contractor/Consultant indicating the DBEs existing certification status. If there are no changes, indicate "No Changes." The signed and certified form must be furnished to the City within thirty (30) days from the date of project acceptance.

Failure to submit any of the required submittals above and their support documentation within the specified timeline shall result in a penalty of ten dollars (\$10) per day, per submittal document.

The City requires Contractor/Consultant to maintain records and documents of payments to lower-tiers, including DBEs, for a period of four (4) years from the date of final payment by the City, unless otherwise provided by applicable record retention requirements for Contractor/Consultant's agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the City. This reporting requirement extends to all lower-tiers, both DBE and non-DBE.

The City reserves the right, at its sole discretion, to demonstrate responsiveness to the requirements of CFR 49 Part 26.37 by implementing the following method(s):

- a) Posting contractor payment data to a website, database, or other place accessible to subcontractors to assist them in determining when they should expect to receive payment.
- b) Requiring Contractor/Consultant to use an automated reporting system, inclusive of, but not limited to, real time entry of payments made and received by Contractor/Consultant and their lower-tiers.

Prompt Payment Dispute Resolution

The City will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of 26.29.

- o The City will host an initial meeting for prime and sub to present evidence to a City representative who has authority to settle the relevant dispute with individuals authorized to bind each interested party.
- o The City will review evidence from both sides and issue a determination.

The City has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

- o Alternative Dispute Resolution (ADR) Contract Clause
Depending on the type of contract, one of the following contract clauses will be used requiring the prime contractor to engage in ADR for any prompt payment and return of retainage to the subcontractor:
- o Any controversy or claim arising out of or relating to prompt payment under a construction contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- o Any controversy or claim arising out of or relating to prompt payment under a contract that is not a construction contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial [or other] Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.



- Prompt Payment Contract Clause: A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed:

Contractor will not be reimbursed for work performed by subcontractors unless and until the contractor ensures that the subcontractors are promptly paid for the work performed. Contractor shall include a prompt payment clause that complies with local, state, and federal prompt payment requirements in all subcontracts entered into under this contract. Should contractor fail to meet subcontractor prompt payment requirements for two (2) consecutive subcontractor payments without good cause, the City may impose appropriate penalties for failure to comply with prompt payment requirements.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following steps:

1. *Prime: Subcontractor shall first contact prime contractor in writing regarding late payments. If affected subcontractor is not comfortable contacting prime directly regarding payment or unable to resolve payment discrepancies with prime after several attempts to resolve prompt payment issue, subcontractor should contact DBELO to initiate complaint.*
2. *The City: If subcontractor is unable to timely resolve prompt payment issue after contacting prime contractor, subcontractor shall submit prompt payment complaint in writing to DBELO and include the prime contract number, copy of subcontract or purchase order, and a summary of payment issues. Subcontractor should provide any copies of checks, and correspondence, including emails, that may assist in understanding the facts of any payment issues.*
3. *FTA: If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the City to resolve prompt payment disputes, affected subcontractor may contact the FTA.*

Enforcement Actions for Noncompliance of Participants

The City will provide appropriate means to enforce the requirements of § 26.29, including:

- Prior to the City's issuance of progress payments, commencing with the second invoice, the prime Contractor shall provide the City with evidence that the prime contractor has paid all subcontractors all amounts due for work that the subcontractor has performed.
- The City may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts committed.
- In accordance with the contract, the City may withhold payments up to a specific amount against the prime contractor for each for non-compliance, or impose other sanctions as determined by the City.

To further ensure the integrity of the DBE Program's intent, and in accordance with the City's DBE Compliance Close-Out Report Process, the City's DBELO or designee will complete and file a written certification attesting to having reviewed and monitored contractor DBE documentation, on-site performance 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 City, written certification is provided during the City'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.

The City will bring to the attention of the U.S. DOT any false, fraudulent, or dishonest conduct in connection with the program, so that U.S. DOT can take the steps provided in 26.107 (e.g., referral to the Department of Justice for criminal prosecution, referral to the U.S. DOT Inspector General, take action under suspension and debarment or Program Fraud and Civil Penalties rules). Additionally, the City will consider similar action under its own legal authorities, including responsibility determinations in future contracts.

J. Fostering Small Business Participation (§26.39)

Effective February 28, 2012, the City has established a Small Business Element as a supplement to the existing DBE Program to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors in direct response to regulatory requirements, 49 CFR Part 26.39 "Fostering Small Business Participation" (Federal Register/ Vol. 76, No. 19/ Friday, January 28, 2011/ Rules and Regulations).

While the City has historically utilized race- and gender- neutral strategies to promote and advance small business participation efforts as a part of DBE Program implementation efforts, this element of the program serves to unify in a singular location these important efforts.

For purposes of capturing small business utilization, the City adheres to the U.S. DOT's Small Business definition for what constitutes a Small Business Enterprise.

This Small Business Element includes, but is not limited to the following assertive, active and effective strategies:

- The City will institute regular reviews of procurements during the City's annual Look Ahead Sessions to assess opportunities for unbundling (breaking out scopes of work/services to facilitate small business prime contracting opportunities). The City believes that including the participation of procurement staff in scheduled reviews will increase accountability of the City's procurement options and decisions and in doing so will ultimately improve contracting opportunities for small business firms at the prime level.
- The City currently provides online access to all available project plans for small business firms to utilize to review bid/procurement plans at no cost. The City informs the procurement community and small business firms that this resource has been made available to them at pre-bid/proposal meetings. For non-internet savvy small businesses, the City also allows small business firms the opportunity to come into the City's office and request project plans. The City will print these plans for the requesting small business firm at no cost. The City is confident that providing small business firms online access to these crucial plans at no additional cost will aid in leveling the playing field and enable them to submit quality proposals and bids.
- To the extent feasible, data on small business participation will be collected and maintained by the City which will allow the City to monitor and track small business participation in the City's contracting program.



- The City hosts Small and Local Business Vendor Outreach Events to establish the importance placed on fostering small business opportunities in the City's contracting program and provide small businesses valuable access to key procurement individuals in order to promote their capabilities, strengthen relationships, and increase the participation of small business firms within the City's contracting program.
- The City holds pre-proposal conferences for key procurement releases that include a networking component to encourage teaming and partnering between primes and small businesses as well as providing them access to the City's key procurement individuals. This networking component will provide small business firms valuable access and opportunity needed to promote their capabilities and strengthen competitiveness, marketability and participation of small businesses firms within the City's contracting program. Additionally, it will encourage prime contractors to partner and communicate with the small business community.

The City will actively implement the small business elements to foster small business participation as a requirement of good faith implementation of the City's DBE program.

III. DETERMINING, MEETING & COUNTING PARTICIPATION TOWARDS THE OVERALL DBE GOAL

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

The City shall not permit the use of quotas for DBEs on U.S. DOT-assisted contracts in accordance with 49 CFR Part 26. Further, the City shall not set aside contracts for DBEs on U.S. DOT-assisted contracts subject to the regulatory provisions, except in limited and extreme circumstances where no other method could be reasonably expected to redress egregious instances of discrimination.

B. Methodology for Setting Overall DBE Goals (§26.45; §26.49)

In accordance with §26.45(f), and with FTA approval, the City will establish and submit an overall program DBE goal on a triennial basis if the City anticipates awarding U.S. DOT/FTA funded prime contracts for a cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. The overall program goal will represent the amount of U.S. DOT-assisted funds the City anticipates expending on DBE firms over three years and will be presented as a percentage of the total U.S. DOT-assistance received.

The overall program goal will be developed in accordance with the 2-Step process specified in §26.45 (c) & (d). Step 1 is to determine the goal "base figure" based on the relative availability of DBEs in the City market area. Step 2 is to adjust the goal "base figure" from Step 1 so that it reflects as accurately as possible the DBE participation the City would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to DBE participation. The City will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City's efforts to establish a level playing field for the participation of DBEs. The City will publish a notice on the City's website of the proposed overall DBE goal, informing the public that the proposed goal and its rationale are available for inspection for a 30-day public comment period.

The City will submit the overall program goal to U.S. DOT in accordance with §26.45 (f)(2) by August 1st. The overall goal submission to U.S. DOT will include a summary of information and comments received



during this public comment/participation process and any THE CITY responses. The City will begin using our overall goal on October 1 of each year, unless we have received other instructions from U.S. DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a U.S. DOT-assisted contract for the project.

In accordance with 49 CFR Part 26, the City 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.

The City's overall DBE goals represent the amount of ready, willing, and able DBEs that are available to participate in contracting opportunities and is reflective of the amount of DBE participation the City would expect, absent the effects of discrimination. The City intends to meet those goals to the maximum extent feasible through the race neutral measures described herein. Where race-neutral measures are inadequate to meet the overall goals, the City will establish DBE goals on contracts with subcontracting opportunities and relative DBE availability.

The City will further follow accountability mechanisms in instances where the City has failed to meet its overall goal for a given fiscal year. The City will thoroughly analyze why it fell short of meeting its overall goal for a given goal period and establish specific steps and milestones for correcting identified problems so that the City will meet its overall goal in subsequent years. The City will complete its proposed plan within 90 days of the end of the fiscal year, as applicable, to ensure compliance. The plan will be available to FTA upon request.

C. Transit Vehicle Manufacturers (TVM) Certifications (§26.49)

Under the U.S. 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. 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 City requires all TVMs to certify that they have complied with 49 CFR Part 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 City transit vehicle procurement. Only those TVMs 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 City will 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 U.S. DOT-assisted transit vehicle procurements.

The City will submit, within 30 days of making a TVM award, the name of the successful bidder and the total dollar value of the contract through FTA'S online Transit Vehicle Award Reporting Form located at <https://www.surveymonkey.com/r/vehicleawardreportsurvey>.



Expenditures for U.S. DOT-assisted transit vehicle procurements are not included in the funding base used to calculate the City's Overall goal or reported on Semi-Annual Uniform Reports. If non-TVM vehicles are purchased or DBE TVMs are not available, contracts will be included in the City's Overall DBE goal Methodology and Semi-Annual Uniform Reporting. In lieu of complying through the procedures of this section, the agency may, with FTA approval, establish project-specific goals per 49 CFR 26.49(f).

D. Race-Neutral Measures (§26.51)

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

Race and Gender-Neutral Measures

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

The City will use the following measures as appropriate:

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

Race and Gender Conscious Measures

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

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

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



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

The City 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 U.S. DOT requirements and subsequent guidance.

E. Meeting DBE Contract Goals or Demonstrating Good Faith Efforts (§26.53)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/proposer that has made Good Faith Efforts (GFE) to meet the contract goal. The City 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 or within 48 hours after bids/proposals are due AND/OR 2) fails to demonstrate that it made an adequate GFE to meet the goal, shall be deemed "non-responsive" and shall be ineligible for contract award.

Evaluation of Bids and Proposals

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

DBE Participation Commitment form

For each solicitation on which a DBE contract goal has been established, the City shall require bidders/proposers to submit written and signed documentation of the bidder's/proposer's commitment to utilize DBEs, to be submitted on the City's "DBE Participation Commitment" form. Information listed on the form shall include:

- Name, address and contact information for each DBE listed on the contract.
- Description of the work that each DBE will perform.
- Dollar amount of participation of each DBE.
- Percentage of total contract value allocated to each DBE.
- Prime bidder's/proposer's name, title and contact information.
- The City's contract number.
- Total dollar amount of participation of all DBEs.
- Percentage of total contract value allocated to all DBEs.
- DBE commitment percentage.
- Prime bidder's/proposer's signature and date.
- For each listed DBE, proof of valid and current DBE certification in the NAICS code directly applicable to the work the DBE will perform on the contract.



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 the it is participating in the contract for a specified dollar value and scope of work listed on the DBE Participation Commitment Form.

Evaluation of DBE Certification Status and DBE Eligibility

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

The City accepts DBE certifications from all certifying members of the California UCP 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 City 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 award of the contract, it is the prime contractor's responsibility to monitor the DBE certification expiration dates of its DBEs, and to ensure that credit for DBE participation is only granted to DBEs with current DBE certification status.

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 City'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 City'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.

Bidder/proposer shall submit the following information to document adequate GFE to the City no later than 4:00 p.m. on the 2nd business day after the City's bid/proposal due date, or as otherwise specified in the solicitation, but never to exceed 5 days after bid/proposal due date. 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 the City 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 GFE were made.

The following GFE items (1 through 8) shall be performed prior to bid/proposal submission. Bidder/proposer to complete the following items in sufficient detail to effectively demonstrate that good faith efforts were undertaken to meet the established DBE goal:

1. 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.

2. 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 City'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.
3. 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.
4. 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 City's bid/proposal due date. If bid/proposal due date is extended, bidder/proposer is to re-advertise new bid/proposal due date.
5. 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).
6. 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.
7. 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:



8. Additional Data to Support a Demonstration of Good Faith Efforts; in determining whether a bidder/proposer made adequate good faith efforts, the City 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.

Recommendation for Award

Following the determination of the bidder's/proposer's responsiveness and responsibility to DBE requirements set forth in the solicitation, the DBELO shall prepare a responsiveness report relative to contract-specific DBE requirements. Recommendations for award are subject to compliance with the City's bid/proposal protest procedures.

Administrative Reconsideration

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 sufficient Good Faith Efforts (GFE) to do so, the City will afford the bidder/proposer, prior to award of the contract, an opportunity for administrative reconsideration of the City's determination of non-responsiveness.

Unless otherwise specified, the bidder/proposer may, within two (2) business days of being informed by the City 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.

As part of this reconsideration request, the bidder/offeror will provide written documentation concerning the issue of whether it met the goal or made adequate Good Faith Efforts to do so. Upon submittal of the written documentation, the bidder/offeror may also request a meeting with the Reconsideration Official to discuss whether it met the goal or made adequate Good Faith Efforts to do so.

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 reconsideration official will review the administrative record concerning the request for administrative reconsideration.

The reconsideration official will review the provided reconsideration request in a timely manner and may hold an informal internal meeting if deemed necessary in order to complete its investigation. The reconsideration official will prepare a recommendation regarding the bidder/offeror's reconsideration request, in writing, to the City Manager within seven (7) business days of the date of receipt of the reconsideration request documentation. Only materials included with the reconsideration request at time of submittal will be considered. The City Manager or his/her designee will either sustain or reject the administrative reconsideration request in writing based upon the recommendation of the administrative official and in the best interests of the City. This decision will be communicated in writing to the party requesting reconsideration. The result of the reconsideration process is not administratively appealable to the U.S. DOT or FTA.



The City, at its discretion, may utilize another U.S. 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.

Further, the City'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:

- Ensure that all DBE administrative reconsideration procedural actions are consistent with the requirements and standards specified in Title 49 CFR Part 26.53 and 26.87, and that the Program's integrity is maintained at all times.
- Review bidder/proposer written documentation or argument concerning the issue of whether it met the goal or provided adequate documentation that it performed Good Faith Efforts to do so.
- Upon review of the bidder's/proposer's request for consideration, send 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.
- Maintain records of conducted hearings.
- Provide determinations in writing to the DBELO.

The City has designated the following individual to serve as DBE Reconsideration Official:

Edward Salcedo
President, GCAP Services, Inc.
3525 Hyland Avenue, Suite 120
Costa Mesa, CA 92626
(714) 800-1795
esalcedo@gcapervices.com

DBE Additions

In the event Contractor/Consultant identifies additional DBE Subcontractor/subconsultants or suppliers not previously identified by Contractor/Consultant for DBE participation under the Agreement, Contractor/Consultant must notify the City by submitting a "Request for Additional DBE Firm," to enable the City to verify the firm's eligibility, capacity, CUF and ensure there is not a scope conflict with another listed firm. Proposed firms cannot be applied towards Contractor/Consultant's DBE participation until approved by the City.

Contractor/Consultant must also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

DBE Substitution, Termination and On-going Good Faith Efforts

The City requires that Contractor/Consultant not terminate a DBE without the City's prior written consent. This includes, but is not limited to, instances in which Contractor/Consultant seeks to perform work originally designated for a DBE with its own work force or those of an affiliate, a non-DBE firm, or with another DBE firm.



The City will provide such written consent only if it agrees, for reasons stated in the concurrence document, that Contractor/Consultant has good cause to terminate the DBE firm. For purposes of this section, good cause includes the following circumstances:

- The listed DBE subcontractor/subconsultant fails or refuses to execute a written contract.
- The listed DBE subcontractor/subconsultant 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/subconsultant to perform its work on the subcontract results from the bad faith or discriminatory action of Contractor/Consultant.
- The listed DBE subcontractor/subconsultant fails or refuses to meet Contractor/Consultant's reasonable, nondiscriminatory bond requirements.
- The listed DBE subcontractor/subconsultant becomes bankrupt, insolvent, or exhibits credit unworthiness.
- The listed DBE subcontractor/subconsultant 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.
- Contractor/Consultant has determined that the listed DBE subcontractor/subconsultant is not a responsible contractor.
- The listed DBE subcontractor/subconsultant voluntarily withdraws from the project and provides to you written notice of its withdrawal.
- The listed DBE is ineligible to receive DBE credit for the type of work required.
- A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract.
- Other documented good cause that you determine compels the termination of the DBE. Provided, that good cause does not exist if Contractor/Consultant seeks to terminate a DBE it relied upon to obtain the Agreement so that Contractor/Consultant can self-perform the work for which the DBE contractor was engaged or so that Contractor/Consultant can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the City its request to terminate and/or substitute a DBE subcontractor/subconsultant, contractor/consultant must give notice in writing to the DBE, with a copy to the City, of its intent to request to terminate and/or substitute, and the reason for the request.

Contractor/Consultant must give the DBE five (5) days to respond to Contractor/Consultant's notice and advise the City and Contractor/Consultant of the reasons, if any, why it objects to the proposed termination of its subcontract or purchase order and why the City should not approve Contractor/Consultant's action. If required in a particular case as a matter of public necessity (e.g., safety), Contractor/Consultant may provide a response period shorter than five (5) days.

In the event of an approved DBE substitution, 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 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 Contractor/Consultant.



The substitute DBE must be certified as a DBE at the time of request for substitution. Contractor/Consultant shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section and is approved by the City.

Should Contractor/Consultant elect to submit good faith effort documentation in lieu of proposing additional DBE participation, the City will review the documentation and provide a written determination to Contractor/Consultant stating whether or not good faith efforts have been adequately demonstrated.

The substitute DBE cannot work on the Agreement until its work eligibility has been confirmed and required subcontracts, supplies, trucking commitments, or other services have been approved by the City.

Dispute Resolution

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

Contractors/Consultants shall incorporate this Section into each subcontract related to work arising under a U.S. DOT-assisted agreement and shall not incorporate by reference.

Contractor/Consultant and subcontractor/subconsultant agree to notify the City within five (5) business days of any prompt payment and/or DBE Program disputes which cannot be settled by discussions between the parties involved.

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

- **Informal Meetings:**
The City is available to assist Contractor/Consultant with coordination of informal meeting requests to assist in the resolution of disputes between Contractor/Consultant and subcontractor/subconsultant. The City's DBELO or a designated DBE support representative will conduct the informal meetings with parties in dispute. Representatives from Contractor/Consultant and subcontractor/subconsultant for the purpose of dispute resolution, must include individuals authorized to bind each interested party. All parties must agree to the procedure.
- **Mediation**
The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third-party organizations. The City's DBELO and her designated support staff is considered an independent third party. Submission to informal mediation is voluntary; it is not binding and offers advisory opinions.



Performance During Dispute: Unless otherwise directed by the City, 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 City. These provisions do not alter in any way or waive compliance with other provisions in the Agreement.

Administrative Sanctions for Non-Compliance

Contractor/Consultant must fully comply with the DBE Agreement requirements, including the City'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 City deems appropriate, which may include, but is not limited to:

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

In instances of identified non-compliance, a Cure Notice will be issued to Contractor/ Consultant identifying the DBE non-compliance matter(s) and specifying the required course of action for remedy.

Contractor/Consultant must be given ten (10) working days from the date of the Cure Notice to remedy or to: (1) File a written appeal accompanied with supporting documentation; and/or (2) Request a hearing with the City to reconsider the City's DBE determination.

Failure to respond within the ten (10) working day period will constitute a waiver of Contractor/Consultant's right to appeal. If Contractor/Consultant files an appeal, the City, must issue a written determination and/or set a hearing date within ten (10) working days of receipt of the written appeal, as applicable. A final Determination will be issued within ten (10) working days after the hearing, as applicable.

If after review of Contractor/Consultant's appeal, the City decides to uphold the decision to impose DBE administrative remedies on Contractor/Consultant, the written determination must state the specific remedy(ies) to be imposed.

Failure to comply with the Cure Notice and/or to remedy the identified DBE non-compliance matter(s) is a material breach of the Agreement and is subject to administrative remedies including withholding at a minimum of two percent (2%) of the invoice amount due per month for every month that the identified non-compliance matter(s) is not remedied. Upon satisfactory compliance, the City will release all withholdings.

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



F. Counting DBE Participation (\$26.55)

The City will count DBE participation toward overall goals as provided in 49 CFR 26.55.

Notification of Reporting Responsibilities

Prior to execution of all contracts containing DBE goals, the prime contractor shall be directed to the contract specification for the City's specific DBE reporting and record keeping requirements.

Monthly Payment Reporting Requirements

All prime contractors must report monthly prime and subcontractor payments in the web-based payment reporting system. Failure to submit these reports in a timely manner may result in a penalty of \$10 per day, per report.

Contracting in Good Faith

During the term of the contract, the contractor shall continue to make good faith efforts to ensure that DBEs have an opportunity to successfully perform on the contract and that the contractor meets its DBE goal. The following guidelines apply in calculating DBE participation toward meeting established goals in accordance with Title 49CFR, Part 26.55:

- Only work proposed to be performed by a DBE's own work forces (including cost of supplies, materials and equipment leases) obtained by the DBE for the work of the contract, except supplies and equipment the subcontractor purchases and/or leases from the prime contractor or its affiliate.
- When a DBE subcontracts part of its work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce.
- In instances of joint venture, a Bidder/Proposer may only count toward its DBE goal the portion of the bid which meets certification, ownership and control standards.
- A Bidder/Proposer may count toward its DBE goal, only expenditures to firms that are proposed to perform a commercially useful function on that contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved.
- A Bidder/Proposer may count toward its DBE goal, sixty percent (60%) of its expenditures for materials and supplies required under the contract and obtained from a DBE regular dealer, and one hundred (100%) percent of such expenditures to a DBE manufacturer. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials and supplies obtained by the contractor. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.
- A Bidder/Proposer may count towards its DBE goal, fees and commissions paid to DBE firms that are not manufacturers or regular dealers, provided that the fees or commissions are determined to be reasonable and not excessive, as compared with fees customarily allowed for similar services.



- Special Provisions for Trucking – A Bidder/Proposer may count towards its goal, all transportation services provided by DBE trucking firms, who can demonstrate control of trucking operations for which it seeks credit and it owns, insures, and operates, using drivers it employs in the performance of the contract. The DBE must itself own and operate at least one fully licensed, insured, and operation truck used on the contract. 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. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
- In cases where DBE certification has ceased during the performance period of the contract, although the prime contractor will continue to report the dollar value of the work performed to the City through the web-based payment reporting system, the City will not count the participation towards its overall goal.

Commercially Useful Function Standards

The City will count payments to a DBE firm for DBE credit only if the DBE is performing a Commercially Useful Function (CUF) on that contract. A DBE performs a CUF when it is responsible for execution of the work of the contract or a distinct element of the work by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing the material (where applicable), and paying for the material itself.

To determine whether a DBE is performing a commercially useful function, the City will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, the DBE credit claimed for its performance of the work, and other relevant factors. The City will conduct site visits and phone interviews of DBEs performing on FTA-assisted contracts to determine if a commercially useful function is being provided by DBEs. A DBE questionnaire has been developed to monitor DBE compliance with CUF requirements. The City will interview various types of DBE firms, including, construction, services, materials, supplies and trucking firms to determine if the DBE firm is providing a commercially useful function.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the City may examine similar transactions, particularly those in which DBEs do not participate. The firm's role must not be a superfluous step added in an attempt to obtain credit towards the goal.

If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force or, if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the City will presume that it is not performing a commercially useful function.



If the City determines that a DBE is not performing a CUF, the DBE may present evidence to rebut this determination. The City's decisions on commercially useful function matters are subject to review by the U.S. DOT Operating Administration.

A DBE's repeated failure to perform a CUF may raise questions regarding the firm's control, as it relates to independence, and perhaps ownership. If there is evidence of a pattern of failing to perform a CUF that raises serious issues with the firm's ability to control the work and its independence from a non-DBE firm, the City will address this matter with the DBE firm. The City may commence a proceeding under Section 26.87 to determine the continued eligibility of the DBE firm.

DBE Participation Credit

The City 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 City's overall DBE goal.

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

- Only the participation of firms certified in accordance with 49 CFR Part 26 may be counted as DBE participation.
- Only work (represented by NAICS code(s)) for which the firm is certified as a DBE may be counted as DBE participation.
- Only work performed by a DBE's own work forces (including cost of supplies, materials and equipment leases obtained by the DBE for the work of the contract, except supplies and equipment the subcontractor purchases and/or leases from the prime contractor or its affiliate), may be counted as DBE participation.
- 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.
- When a DBE performs as a participant in a joint venture with a non-DBE, only the portion of the total contract dollar value equal to the distinct, clearly defined portion of the work to be performed by the DBE's own forces may be counted as DBE participation.
- Only work considered to perform 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, and operates and using drivers it employs.
- For materials and supplies that are required under the contract and obtained from a DBE manufacturer, one hundred percent (100%) of the materials/supplies may be counted as DBE participation. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials and supplies obtained by the contractor.



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

DBE "Frauds" and "Fronts"

Only legitimate DBEs are eligible to participate in federally funded contracts. Therefore, bidders/proposers are cautioned against knowingly and willfully using "fronts" to meet DBE goals. The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations.

In cases of deliberate attempts to circumvent the intent of the DBE program, or fraud, these actions may lead to criminal prosecution of both the prime contractor and the DBE. 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 U.S. 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.

IV. CALIFORNIA UNIFIED CERTIFICATION PROGRAM (§26.81)

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



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

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

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

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

For more information about the certification process or to apply for certification, firms should visit the California Department of Transportation Office of Civil Rights website at: <https://dot.ca.gov/programs/civil-rights>.

V. DBE CERTIFICATION

As a non-certifying member of the CUCP, the City will accept DBE certifications from certifying member agencies of the CUCP (§26.61-§26.73; §26.81; §26.83a). The CUCP DBE Certification application is located at: <https://dot.ca.gov/programs/business-and-economic-opportunity/dbe-certification-information>.

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

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

Annual Affidavit of Continuing Eligibility

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



receipts, DBE status, ownership, or control requirements. The affidavit must also affirm that there have been no material changes to the information provided in the original certification application.

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

Notification of Change in Circumstances

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

Lapse in Certification Status

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

Procedures for Removal of DBE Eligibility (§26.87)

Pursuant to 49 CFR §26.87, any person may file a written complaint alleging that a currently certified DBE is ineligible to be certified as such and specifying the alleged reasons why the firm is ineligible. Because the City is a NON-certifying member of the CUCP, the Department will implement the following procedures upon receipt of a written complaint challenging a firm's DBE certification status. The City 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.
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 City's DBE Program, remind the DBE of its obligation to notify the City of any change in the DBE's certification status within 30 days of the change.

Certification Denials and Appeals (§26.89)

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

To file a DBE certification appeal, firms should send a letter to the U.S. DOT Office of Civil Rights. The appeal should, at a minimum, include information and arguments concerning why the recipient's decision should be reversed, a copy of the denial letter, and any additional information the denied



firm believes to be pertinent to the appeal. Firms must provide the name(s) and address(es) of any U.S. DOT recipient the firm is currently certified with or who has rejected its application for certification or removed the firm's eligibility within one year prior to the date of the appeal. This includes applications currently pending certification action.

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

VI. REQUIRED CONTRACT PROVISIONS AND ENFORCEMENT

Information, Confidentiality, Cooperation (§26.109)

The City will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), California Public Records Act (Government Code §6250) state, and local law. Notwithstanding the preceding provision, the City will not release any information that may reasonably be construed as confidential business information to any third party (other than U.S. DOT) without the written consent of the firm that submitted the information.

Intimidation and Retaliation

Neither the City nor its contractors will 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 this part. Contractors in violation of this requirement will be subject to appropriate action.



EXHIBIT A: DBE PROGRAM REGULATIONS, 49 CFR PART 26

The DBE program regulations can be found at the following website:

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl



EXHIBIT B: DBE PROGRAM ORGANIZATIONAL CHART

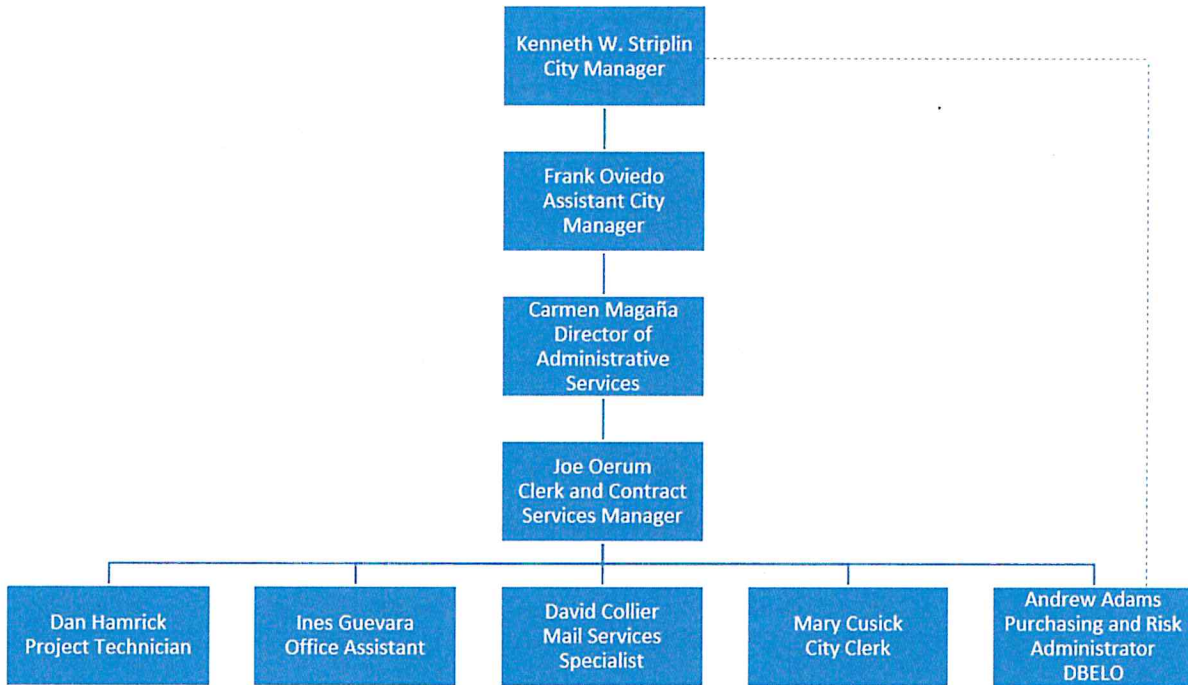




EXHIBIT C: UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS											
Please refer to the instruction sheet for directions on filling out this form											
1	Submitted to (check only one) <input type="checkbox"/> FHWA <input type="checkbox"/> FAA <input type="checkbox"/> FTA - Recipient ID Number										
2	AIP Numbers (FAA Recipients); Grant Number (FTA Recipients):										
3	Federal Fiscal year in which reporting period falls				4. Date This Report Submitted:						
5	Reporting Period <input type="checkbox"/> Report due June 1 (for period Oct 1-Mar 31) <input type="checkbox"/> Report due Dec 1 (for period April 1-Sep 30) <input type="checkbox"/> FAA annual report due Dec 1										
6	Name and address of Recipient:										
7	Annual DBE Goal(s):			Race Conscious Projection:			Race Neutral Projection:		OVERALL Goal:		
Awards/Commitments this Reporting Period											
A	AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (Total contracts and subcontracts committed during this reporting period)	A	B	C	D	E	F	G	H	I	
		Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs	
		8	Prime contracts awarded this period	\$ -	0	\$ -	0		\$ -	0	#DIV/0!
		9	Subcontracts awarded/committed this period	\$ -	0	\$ -	0	\$ -	0	\$ -	0
10	TOTAL			\$ -	0	\$ -	0	\$ -	0	#DIV/0!	
B BREAKDOWN BY ETHNICITY & GENDER											
B		Total to DBE (dollar amount)			Total to DBE (number)						
		Women	Men	Total	Women	Men	Total				
11	Black American	\$ -	\$ -	\$ -	0	0	0				
12	Hispanic American	\$ -	\$ -	\$ -	0	0	0				
13	Native American	\$ -	\$ -	\$ -	0	0	0				
14	Asian-Pacific American	\$ -	\$ -	\$ -	0	0	0				
15	Subcontinent Asian Americans	\$ -	\$ -	\$ -	0	0	0				
16	Non-Minority	\$ -	\$ -	\$ -	0	0	0				
17	TOTAL	\$ -	\$ -	\$ -	0	0	0				
Payments Made this Period											
C	PAYMENTS ON ONGOING CONTRACTS	A	B	C	D	E	F				
		Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs				
18	Prime and subcontracts currently in progress	0	\$ -	0	\$ -	0	#DIV/0!				
D	TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A		B		C		D		E	
		Number of Contracts Completed		Total Dollar Value of Contracts Completed		DBE Participation Needed to Meet Goal (Dollars)		Total DBE Participation (Dollars)		Percent to DBEs	
		19		Race Conscious		\$ -		\$ -		#DIV/0!	
		20		Race Neutral		\$ -		\$ -		#DIV/0!	
21		Totals		\$ -		\$ -		#DIV/0!			
22	Submitted by:			23. Signature:			24. Phone Number:				