



# ORANGE COUNTY TRANSPORTATION AUTHORITY

## DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM MANUAL

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Orange, CA 92868  
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(Administrative Revisions 05/202201/202401/2025)

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**I. POLICY AND GENERAL REQUIREMENTS**

**A. Policy Statement (~~§26.1, §26.3, )~~ §26.23)**

As a Federal Transit Administration (FTA) Tier I recipient of U.S. Department Of Transportation (DOT) federal financial assistance, ~~the~~ the Orange County Transportation Authority's (hereinafter referred to as "Authority") policy statement included at the start of this program has been signed and dated by the Authority's highest officer, and has been disseminated throughout ~~its organization~~ the Authority and to the Disadvantaged Business Enterprise (DBE) and non-DBE business communities that perform work on the Authority's U.S. DOT-assisted contracts through the Authority's contracts and procurement solicitation process.

Notices setting forth this policy are posted at the Authority's office and ~~website~~ 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 Authority contracts. Questions regarding the Authority's DBE Program should be addressed to Pia Veesapen, DBE Liaison Officer, 550 South Main Street, Orange California 92868, or by telephone at 714-560-5619.

**B. Objectives (~~§26.1, §26.23~~)**

In accordance with the intent of the U.S. DOT's DBE Program regulations, the Authority is firmly committed to its DBE Program objectives, which are designed to:

Ensure non-discrimination in the award and administration of Authority's U.S. DOT-assisted contracts;

Create a level playing field by which DBEs can fairly compete for the Authority's U.S. DOT-assisted contracts;

Ensure that the DBE Program and Overall DBE Goal are narrowly tailored in accordance with applicable law;

Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs in the Authority's DBE program;

Help remove barriers which impede the participation of DBEs in the Authority's U.S DOT-assisted contracts;

Promote the use of DBEs in all types of U.S. DOT-assisted agreements and procurement activities conducted by the Authority;

Provide training and other assistance through our resource partners to address capital, bonding, and insurance needs;

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Assist in the development of DBE firms that can compete successfully in the marketplace outside of the DBE Program; and

Establish and provide opportunities for DBEs by providing flexibility in the implementation of the Authority's DBE Program.

~~Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.~~

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

### C. Applicability (§26.3)

The Authority, is a direct recipient of federal transit funds authorized by Titles I, III, V, and VI of ~~the~~ Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), ~~Pub. L. Public Law~~ 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of ~~the~~ Transportation Equity Act for the 21st Century the (TeasTEA-21), ~~Pub. L. Public Law~~ 105-178. Titles I, III and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144, Divisions A and B of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), Public Law 112-114, 126 Stat.405, Titles I, II, III and VI of the Fixing America's Surface Transportation Act (FAST Act), Public Law 114-94; and Divisions A and C of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58.

These funds were received from the U.S. DOT, and as a condition of receiving U.S. DOT assistance, the Authority is required to submit for approval, to the U.S. DOT Operating Administration from which it receives the majority of its federal funding, a DBE Program developed in accordance with federal regulations published under Title 49 CFR, Part 26 and subsequent Guidance. This Program sets forth the policies and procedures to be implemented by the Authority to ensure that DBEs have an equitable opportunity to participate in the Authority's U.S. DOT-assisted contracting opportunities.

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

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**D. Non-Discrimination Requirements (§26.7)**

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

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

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

**II. DEFINITION OF TERMS (§26.5)**

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

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

**Alaska Native:** A citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The

term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

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

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

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**Business, Business Concern or Business Enterprise:** An entity organized for profit with a place of business located in the United States, and which operates primarily within the United States, or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

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

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

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

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

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

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

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

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

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

**Days:** In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or

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Federal holiday. Similarly, in circumstances where the Authority's offices are closed for all or part of the last day, the period extends to the next day on which the Authority is open.

**DBE Certification:** A certification issued to a firm by a certifying member agency of the California Unified Certification Program (CUCP), which has been determined to meet all the requirements in accordance with Title 49 CFR, Part 26. To receive DBE credit toward meeting a contract goal in the context of the prime contract award process, a DBE firm must be certified before the due date for bids or offers on the prime contract 49 CFR 26.81(c).

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

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

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



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

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

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

**Distributor:** ~~means a~~ A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance ~~DBE distributor that does neither maintain sufficient inventory nor uses its own distribution equipment for the products in question unlike a regular dealer who maintains sufficient inventory and owns distribution equipment for the products it sells to contractors and the public.~~

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

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

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

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

**FTA Tier II Recipient:** means an FTA recipient to whom this part applies that will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which does not exceeds \$670,000 in FTA funds in a Federal fiscal year.

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

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

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

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

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

**Local Assistance Procedures Manual (LAPM)** The Caltrans Local Assistance Procedures Manual (LAPM) is a comprehensive guide published by the California Department of Transportation (Caltrans) that outlines the policies, procedures, and requirements for local agencies managing federally or state-funded transportation projects. For subrecipients, the LAPM serves as a foundational resource to structure their DBE program and achieve compliance with both Caltrans and federal standards, helping to facilitate equitable participation of small and disadvantaged businesses in transportation projects.

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

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

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

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

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

**North American Industrial Classification System (NAICS):** The ~~five to~~ six-digit classification numbers that best describes the primary business of a firm. ~~The basis for industry classification changed from the 1987 Standard Industrial Classification System (SIC) to the 2004 NAICS. The NAICS is the standard used by federal agencies in classifying entity establishments for purposes of collecting, analyzing and publishing statistical data related to the US business economy.~~

**Operating Administration (OA):** Any of the following agencies of the U.S. Department of Transportation (U.S. DOT): Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and Federal Aviation Administration (FAA).

**Personal Net Worth (PNW):** The net values of ~~the assets of~~ an individual's reportable assets and liabilities, per the calculation rules in 49 CFR 26.68, remaining after total liabilities are deducted. ~~An individual's personal net worth does not include: The individual's ownership interest in an applicant or participative DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets, jointly or as community property, with the individual's spouse.~~

**Primary recipient:** means a recipient who ~~iech~~ receives direct U.S. DOT financial assistance, ~~and passes some or all of it on to another recipient.~~

~~**Principal Place of Business:** The business location where the individuals who manage the~~  
**Program:** Any undertaking on the Authority's part to use U.S. DOT financial assistance as authorized by laws to which the DBE Program applies.

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

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

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

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

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

**Small Business or SB:** The Authority adheres to the U.S. Department of Transportation's definition of a Small Business Enterprise.

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

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

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

1. Found by the CUCP certifying member agency to be socially and economically disadvantaged on a case-by-case basis.
2. A member of any one or more of the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) "Black Americans" which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) "Hispanic Americans" which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (iii) "Native Americans" which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (iv) "Subcontinent Asian Americans" which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, ~~the Maldives Islands~~, Nepal or Sri Lanka;

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- (v) "Asian Pacific Americans" which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (vi) Women; and
  - (vii) Any additional group whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
3. Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

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

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

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

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

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

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

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

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Unsworn declaration means an unsworn statement, dated and in writing, subscribed as true under penalty of perjury.

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

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

**You:** refers to the Authority, unless a statement in the text of this part or the context requires otherwise.

### III. GENERAL RECORD KEEPING REQUIREMENTS (§26.11)

The Authority maintains a 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 Authority verifies payments made to DBEs and keeps record of actual DBE attainments. Any areas of identified non-compliance are subject to administrative sanctions against the contractor as outlined in this manual.

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

1. Contract funding source(s);
2. Contract title and number;
3. Type of contract (e.g., construction, professional services, material supplies, TVM or other);
4. DBE contract goal, if applicable, and methodology used in establishing the goal;
5. Prime contractor/consultant name, address and primary contact;
6. DBE commitment (percentage and dollar value of contract allocated to DBEs);
7. Good Faith Effort (GFE) analysis and evaluation results, if applicable;
8. Name, certification status (DBE or non-DBE) and subcontract dollar value for each listed subcontractor;
9. DBE status, gender, ethnicity, and dollar value of participation for each listed DBE;

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10. Type of work performed by each listed DBE (i.e., subcontractor, regular dealer/supplier, broker, manufacturer, trucking company, etc.);
11. Copy of current certification for each listed DBE or CUCP website printout;
12. Tally of DBE utilization throughout the life of the contract, including final DBE utilization reported at contract close-out;
13. Field observation/on-site interview forms;
14. Report measuring DBE commitment percentage and dollar amount vs. actual attainment;
15. Certification by the Authority, attesting to having monitored contractor compliance, documentation submittal requirements, and on-site performance; and
16. Outreach efforts made by the Authority to inform DBEs of the contracting opportunity and inform prime bidders/proposers of DBE availability and interest in the contract.

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

The Authority's DBELO or designee shall submit for FTA review and approval, a semi-annual Uniform Report of DBE Awards or Commitments and Payments ~~(Exhibit D)~~. In conformance with FTA direction the Authority will submit reports through FTA's Transit Award Management System (TrAMS) by June 1 and December 1 of each federal fiscal year.

The reports shall list the Authority's and any subrecipient's dollar value of DBE participation for U.S. DOT-assisted contracts and subcontracts awarded and closed and shall demonstrate the Authority's progress toward reaching the FTA-approved overall/triennial DBE goal. All dollar amounts reported will reflect the federal share of such contracts. The report will identify the federally assisted contract numbers, NAICS codes identified for each DBE on each contract awarded, and dollar amount awarded to each certified DBEs through the use of race conscious methods and race neutral methods. The Uniform Report will further capture the names of DBE contractors that performed work and the work categories/trades performed, dollar value of contracts, number of firms that were listed at commitment but replaced (as well as an explanation for the replacement); and number of firms decertified during the reporting period.

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

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

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

### **B. Annual Review and Remedy Reports (§26.47)**

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

### **C. Overconcentration (§26.33)**

The Authority has developed policies and procedures to address overconcentration of DBE utilization in certain types of work. This was accomplished through regular tracking of contract awards, and compliance monitoring, whereby the Authority identified and directly responded to identify overconcentration within specific trades or specialty areas, by modifying or making exempt such areas from the Overall DBE Goal and contract-specific goal-setting process as necessary to ensure compliance with regulatory overconcentration provisions.

Areas that have been identified to demonstrate over concentration of DBE participation are not assigned a contract-specific goal and are procured under race-neutral measures. Currently, the Authority identifies and analyses areas of the Authority's contracting work that may demonstrates over-concentration on an annual basis. The Authority maintains the annual analysis of race-neutral participation electronically and any interested person can request this information from the Authority's DBELO.

### **B.D. Bidders List: §26.11(c)**

DBE Bidders List—recipients would enter into an online USDOT system of data about companies bidding on contracts or subcontracts, such as company name, DBE or non-DBE status, fields of work bid and related NAICS codes, etc.



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

1. Firm name
2. Firm DBE certification status (DBE or non-DBE)
3. Firm Address-address including ZIP code
4. Firm Phone-phone #
5. Firm Email-email
6. Age of the firm
- ~~7.1. Contract or subcontract amount if DBE successful~~
- ~~1. Contact name and title~~
- ~~7. Race and gender information demographic for the firm's majority owner~~
8. NAICS code applicable to each scope of work the firm sought to perform in its bid
- ~~9. Contract or subcontract amount if DBE successful~~
- ~~10. Contact name and title~~
- ~~9.11. Type of product/service provided~~
- ~~10.12. Range of annual gross receipts (each firm may indicate into what gross receipts bracket they fit (e.g., less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million; etc.) rather than requesting an exact figure from the firm.~~

The Bidders List shall be collected from all bidders/proposers with their bids or initial proposal response as a part of the Authority's federally assisted procurement and solicitation process.

The Authority will use this information to assist in establishing the Authority's market area and as a resource in allowing the use of the Bidders List approach in calculating the Authority's contract-specific and overall DBE goals-setting process.

The Authority will submit the Bidders List to a centralized U.S. DOT database as prescribed by the FTA within the timelines established.

### **E. Transit Vehicle Manufacturers (§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

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vehicles solely for personal use and for sale "off the lot" are not considered transit vehicle manufacturers.

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

The Authority shall require all TVMs to certify that they have complied with 49 CFR §26.49 and have established an overall DBE participation goal that has been approved (or not disapproved) by the FTA before they can bid on any Authority transit vehicle procurement. Only those transit vehicle manufacturers listed on FTA's eligible TVMs list, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.

The Authority will also utilize the FTA's online TVMs list, accessible at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>, to verify that the TVM is authorized to bid or propose on U.S. DOT-assisted transit vehicle procurements.

The Authority will submit, within 30 days of becoming contractually required to procure a transit vehicle, the Authority will report to FTA the name of the successful bidder and the Federal share of the contractual commitment at that time.

Expenditures for U.S. DOT-assisted transit vehicle procurements are not included in the funding base used to calculate the Authority's Overall goal or reported on Semi-Annual Uniform Reports. If non-TVM vehicles are purchased, contracts will be included in the Authority's Overall DBE goal Methodology and Semi-Annual Uniform Reporting.

#### IV. ASSURANCES AND REQUIRED CONTRACT PROVISIONS

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

Pursuant to the requirements of this Part, the Authority and its designated subrecipients will sign the following assurance as a condition of financial assistance agreements with the U.S. DOT, and which is hereby made applicable to all of the Authority's U.S. DOT-assisted contracts:

*"The Authority and subrecipients 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 Title 49 CFR, Part 26. The Authority and subrecipients shall take all necessary and reasonable steps under Title 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. The Authority's DBE Program, as required by Title 49 CFR, Part 26 and as approved by U.S. DOT*

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*Operating Administrations, is incorporated by reference in this agreement. The Authority's subrecipient shall adopt and implement the Authority's DBE Program as approved by U. S. DOT and is incorporated by reference in agreements between the Authority and the subrecipients.*

*Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Authority of its failure to carry out its approved Program, the Department may impose sanctions as provided under Title 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.)."*

This language will appear in financial assistance agreements with sub-recipients. This language is to be used verbatim, as it is stated in 26.13(a).

**B. Contractor Assurance Clause (§26.13b)**

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

*"The Contractor, Authority, subrecipient 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 Authority deems appropriate, which may include, but is not limited to:*

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

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

This language is to be used verbatim, as it is stated in 26.13(b).

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**C. ~~C.~~ Prompt Payment Clause**

The Authority shall hold retainage from the prime contractor/consultant and shall make prompt and regular incremental acceptances of portions, as determined by the Authority of the contract work and pay retainage to the prime contractor/consultant based on these acceptances. The Authority 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 Authority will include the following clause in each U.S. DOT-assisted contract:

*“Contractor/Consultant agrees to pay each subcontractor/subconsultant under this Contract for satisfactory performance of its contract no later than seven (7) days for construction contracts and fifteen (15) days for consultant contracts from the receipt of each payment Contractor/Consultant receives from the Authority.*

*Contractor/Consultant agrees further to pay any retainage kept in full to the earning subcontractor/subconsultant in seven (7) days for construction contracts and fifteen (15) days for consultant contracts after the subcontractor/subconsultant’s work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the Authority’s prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code for construction contracts, and Section 3321 of the California Civil Code for consultant contracts. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.”*

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

Failure to comply with this provision without prior approval from the Authority 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.

**V. ADMINISTRATIVE REQUIREMENTS AND RESOURCES**

**~~C.A.~~ DBE Program Updates (§26.21)**

As aan FTA Tier I recipient of more than \$~~2567~~0,000 of U.S. DOT financial assistance over a Federal Fiscal Year and pursuant to 49 CFR §26.21, the Authority shall continue

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to implement the DBE Program unless and until all funds from U.S. DOT financial assistance have been expended.

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

The Authority will promptly advise all applicable U.S. DOT Operating Administrations, of any significant updates and/or changes to the Authority's DBE Program.

### **D.B. DBE Liaison Officer (DBELO) (\$26.25)**

The CEO/Executive Director, while maintaining ultimate responsibility for the Authority's DBE Program, has designated Pia Veesapen to serve as the DBE Liaison Officer (DBELO) with responsibility for the implementation all aspects of the Authority's DBE Program and ensuring that the Authority complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Authority's Director concerning DBE Program matters. The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate officials. A DBE Program Implementation Organizational Chart demonstrating the DBELO's position in the organization can be found in Exhibit B "DBE Program Organizational Chart". Contact information for the Authority's DBELO is as follows:

Pia Veesapen  
Director, Contracts Administration & Materials Management  
Orange County Transportation Authority  
550 S. Main Street  
Orange, CA 92868  
Phone: (174) 560-5619; Fax: (714) 560-5791  
Email: [pveesapen@octa.net](mailto:pveesapen@octa.net)

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

- Analyze and revise DBE program policies and procedures as necessary.
- Submit updates to the U.S. DOT, regarding any significant changes to the Authority's DBE Program.
- Works with the Authority departments and DBE consultant to perform goal-setting analysis, establish methodology, and calculate overall triennial DBE goals.
- Facilitate public participation in the overall goal-setting process.
- Conduct an annual review of the Authority's overall DBE goal; adjust and/or re-

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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 (under the CEO's signature and within 90 days after FFY end), a written analysis of why the overall goal was not achieved, as well as a written plan for corrective actions that the Authority will take, to remedy the goal shortfall.
- Conduct and coordinate outreach efforts to DBEs and small businesses to provide information regarding contracting opportunities with the Authority; utilize the assistance of minority and women business associations, small business development centers, industry/trade organizations, vendor fairs, workshops and minority-focused publications to assist with outreach efforts.
- Coordinate public information and communication programs regarding contracting opportunities ensuring bid notices and requests for proposals are made available to DBEs in a timely manner.
- Participate in development of DBE information to be presented at pre-bid/pre-proposal meetings for purposes of reviewing DBE solicitation and contract requirements with potential bidders and/or offerors.
- Ensure that solicitation documents and contract templates include all relevant DBE Program elements, contractor documentation submittal requirements and required contract provisions.
- Work with the Authority's contracting/procurement staff to 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 Authority's contracting/procurement staff to remove, where feasible, barriers which may limit DBE participation, by ensuring that Invitations for Bids (IFBs) and Requests for Proposals (RFPs) do not contain unduly restrictive requirements; ensure that sufficient time is allowed during the pre-bid phase, for DBEs to schedule attendance at pre-bid/pre-proposal meetings and for non-DBEs to perform adequate good faith efforts established.
- Maintain a Bidders List of firms that submit a bid, quote or proposal for participation on an Authority contract; ensure that the Bidder List contains all information required by 49 CFR §26.11.
- Ensure Good Faith Efforts are reviewed for responsiveness when bids/proposals do not meet DBE contract goals.

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- Develop and implement technical assistance programs for DBEs, including resources and referrals to supportive services.
- Investigate services and resources offered by banks and/or financial institutions owned and controlled by socially and economically disadvantaged individuals.
- Ensure that, prior to approval of the substitution of any DBE subcontractor, prime contractor's evidence Good Faith Efforts to replace the original DBE with another eligible DBE.
- Ensure that any DBE subcontractor terminations by the prime Contractor are for "good cause" only, and that any such terminations receive prior written approval by the Authority.
- Monitor and enforce contractor compliance with all DBE Program provisions including goal commitments, documentation submittal requirements, reporting requirements, prompt payment to subcontractors, and DBE utilization requirements; impose administrative sanctions and/or monetary penalties for contractor's willful non-compliance.
- 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.
- Oversee and monitor subrecipients in their proper implementation of the Authority's DBE Program requirements.
- Advises the CEO and/or the governing body on DBE matters and achievements.

### E.C. DBE Program Staffing and Resources (§26.25)

As support staff to the DBELO, ~~the Authority's Ms. Laura Foster~~, DBE Specialist has been designated to provide direct support related to DBE matters. Should the DBELO identify that there may be a conflict of interest between performing her duties as DBELO and her duties as the Director of Contracts Administration & Materials Management, she will defer to Mr. Andrew Oftelie, Authority's Chief Financial Officer. Mr. Oftelie has

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a long history and strong background regarding DBE Program objectives and implementation requirements.

Additionally, ~~a~~ consulting firm~~s~~, Padilla & Associates, Inc. and Jaquith Consulting, Inc. provides well-qualified and experienced staff to assist in managing the Authority's DBE Program.

The consultant~~s~~ provides assistance to the Authority in administering its approved ~~Disadvantaged Business Enterprise (DBE)~~ Program in accordance with ~~U.S. Department of Transportation (U.S. DOT)~~ DBE Program set forth under Title 49 ~~Code of Federal Regulations (CFR)~~ Part 26. The consultant~~s~~ will readily assist the Authority in this regard to ensure that the Authority is compliant with current governing regulations and timely kept abreast of proposed legislation in the area to further ensure it is proactive in implementing policies and practices that advance the goals and objectives of this important regulation.

### **F.D. DBE Organizational Chart (\$26.25)**

See Exhibit ~~A~~B "DBE Program Organizational Chart.

### **G.E. DBE Reconsideration Official and Reconsideration Process (\$26.53 (d)(2))**

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

Unless otherwise specified, the bidder/proposer may, within two (2) business days of being informed by the Authority of its non-responsiveness due to its failure to document and provide sufficient and adequate Good Faith Efforts in the subject procurement, request administrative reconsideration. Bidders/Proposers must make this request in writing to the Reconsideration Official as designated herein.

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

**Jennifer L. Bergener, Deputy Chief Executive Officer  
Reconsideration Official  
Orange County Transportation Authority 550 South Main Street  
Orange, CA 92868  
Telephone: (714) 560-5462 Email: [jbergener@octa.net](mailto:jbergener@octa.net)**



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The Authority, 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.

As part of this reconsideration, the bidder/proposer will have the opportunity to provide written evidence/documentation or argument concerning the issue of whether it met the goal or made adequate Good Faith Efforts to do so. Further, the bidder/proposer will have the opportunity to meet with the Reconsideration Official in person to discuss the issue of whether it met the goal or made adequate Good Faith Efforts to do so. The Authority will document the basis for the reconsideration determination and forward the final written determination to the bidder/proposer within seven (7) working days of the hearing date. All parties shall be advised that reconsideration final decisions are NOT administratively appealable to U.S. DOT.

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

1. Ensures that all DBE administrative reconsideration procedural actions are consistent with the requirements and standards specified in Title 49 CFR, Sections 26.53 and 26.87, and that the Program's integrity is maintained at all times.
2. Reviews bidder/proposer written documentation or argument concerning the issue of whether it met the goal or made adequate Good Faith Efforts to do so.
3. Upon review of the bidder's/proposer's request for consideration, the Reconsideration Official sends the bidder/proposer a written decision on reconsideration, explaining the basis for finding that the bidder/proposer did or did not meet the goal or make adequate Good Faith Efforts to do so.
4. Maintains records of conducted hearings.
5. Provides determinations in writing to the DBELO.

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### ~~H. — F. Prompt Payment Mechanisms (§26.29)~~

~~The Authority 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 §26.29 "Prompt Payment Provisions" (DBE Final Rule), the Authority has selected the following method to comply with the prompt payment of retainage requirement:~~

~~The Authority shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Authority of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld~~

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~~in retention from all any lower tier subcontractors within seven (7) days for construction contracts and fifteen (15) days for consultant contracts after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the Authority. Any delay or postponement of payment may take place only for good cause and with the Authority's prior written approval.~~

~~The Authority will perform monthly audits of contract payments to DBE's. Please refer to Section VIII. B. of this Program for further details regarding the method for monitoring payments to DBEs.~~

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

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

**I.G. - DBE Financial Institutions (§26.27)**

The Authority shall thoroughly investigate the full extent of services offered by banks and/or financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to utilize these institutions, as available, and to encourage prime contractors on the Authority's U.S. DOT-assisted contracts to make use of these institutions. The Authority has made efforts to identify these institutions and has provided a list of them on their website and as an Exhibit to the program. The Authority will re-evaluate the availability of DBE financial institutions every 24 months.

Information on the availability of such institutions can be obtained from the DBE LO Liaison Officer.

**J.G. - DBE Directory (§26.31 and §26.81)**

The Authority is a non-certifying member of the California Unified Certification Program (CUCP).

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49 CFR §26.81 requires each state's UCP to maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by §26.31.

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

1. DBE name
2. ~~Contact~~Owner name
3. Business address
4. Regions/Work Districts/County(ies) of performance
5. Business tTelephone number
6. Fax number
7. Email address
- ~~7-8.~~ Website address
- ~~8-9.~~ NAICS code(s) under which the firm is certified
- ~~10.~~ Work category code(s) (optional)
- ~~9-11.~~ Business description
- ~~10-12.~~ Contractor's license classification (optional)
- ~~11-13.~~ Gender
- ~~12-14.~~ Ethnicity
- ~~15.~~ Certification status (DBE or ACDBE)
- ~~13-16.~~ Certification number
- ~~17.~~ Certifying agency

~~14- This directory is made available to the public electronically (on the internet) and in print. The electronic version is downloadable into a searchable and sortable Excel spreadsheet. The Authority refers interested parties to the CUCP Database of Certified DBE Firms, and includes DBEs listed in the directory in the Authority's outreach efforts. The DBE Directory is published in the California Department of Transportation's (Caltrans). The DBE Database may be accessed directly at: <https://californiaucp.dbesystem.com>.~~

~~This directory is made available to the public electronically (on the internet) and in print. The electronic version is downloadable into a searchable and sortable Excel spreadsheet. The Authority refers interested parties to the California Unified Certification Program (CUCP) Database of Certified DBE Firms, and includes DBEs listed in the directory in the Authority's outreach efforts. The DBE Directory is published in the California Department of Transportation's (Caltrans). The DBE Database may be accessed directly at: "Business and Economic Opportunity" website, which can be accessed at <https://dot.ca.gov/programs/business-and-economic-opportunity>~~

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### **K. ~~Overconcentration (§26.33)~~**

~~The Authority has developed policies and procedures to address overconcentration of DBE utilization in certain types of work. This was accomplished through regular tracking of contract awards, and compliance monitoring, whereby the Authority identified and directly responded to identify overconcentration within specific trades or specialty areas, by modifying or making exempt such areas from the Overall DBE Goal and contract specific goal setting process as necessary to ensure compliance with regulatory overconcentration provisions.~~

~~Areas that have been identified to demonstrate over concentration of DBE participation are not assigned a contract specific goal and are procured under race neutral measures. Currently, the Authority identifies and analyses areas of the Authority's contracting work that demonstrates over concentration on an annual basis. The Authority maintains the annual analysis of race neutral participation electronically and an interested person can request this information from the Authority's DBELO.~~

### **L.H. Business Development Programs (§26.35)**

The Authority has implemented several race and gender-neutral efforts to promote business development to small business concerns, including DBEs to gain the ability to compete successfully in the marketplace outside of the Authority's DBE Program.

Each year the DBELO and/or the Authority's DBE support staff will facilitate and/or participate in at least two small business events, which may be coordinated with other U.S. DOT recipients to promote DBE outreach programs. Small businesses will be invited to meet with the Authority's DBE Program, purchasing and project management staff and learn about the Authority's contracting program. The Authority staff will have an opportunity to become acquainted with qualified business owners who are interested in supplying services and products to the Authority. In addition, the DBELO will provide information on DBE certification and DBE program requirements and procedures. These events will include procedures explaining how to do business with the Authority and explore best business practices, which may be used to market small businesses with the Authority.

Additionally, the Authority has several programs in place, ~~which are~~ aimed at increasing competition in its procurement process. These programs provide procurement information, fostering small business participation, as well as training for interested vendors, on various aspects of the Authority's procurement process.

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### 1. **Vendor Orientation Meetings**

A key measure of any firm's success is how well they network with other vendors, including prime and subcontractors. The Authority has implemented a quarterly program where vendors come together with the Authority staff to learn about the procurement process and share information about their firm's services and products with other vendors. The Orientation session includes a Power Point Presentation detailing the Authority's procurement process.

The Vendor Orientation sessions are unique in that they are designed to bring together both small and large vendors who may ultimately combine resources in response to contract solicitations from the Authority. The Orientation sessions are, additionally, a valuable tool for vendors to receive a comprehensive snapshot of the Authority's procurement process.

### 2. **~~2.~~ CAMMNET**

CAMMNET is a web-enabled procurement system that has been fully incorporated into its procurement process. Businesses register their companies on-line in order to access the system. Businesses should ensure that all applicable work classification codes are included in their vendor profile. By doing so, they maximize business opportunities. This feature enables classifications codes to be fixed to specific scopes and alerts that inform the business when procurements are released that correspond to their identified scopes.

CAMMNET also provides accessible bidding information to all interested vendors. Businesses are able to obtain, view and download information regarding upcoming solicitations, update their business profile, acquire information about "How to do Business with the Authority" and in certain instances, submit a bid on-line.

CAMMNET has expanded its use of social media platforms to create opportunities for small businesses to network and market their services through "CAMMNET Connect," the Authority's online networking tool. This enhancement is designed to help small businesses showcase their services and capabilities to prospective prime contractors participating in upcoming Authority procurements.

The tool allows prime contractors seeking subcontractors to easily identify small business firms interested in and qualified for specific projects. It highlights the firm's areas of specialization and availability, facilitating effective teaming opportunities. Additionally, "CAMMNET Connect" provides a platform for one-on-one communication between small businesses and potential primes, fostering collaboration and stronger partnerships. CAMMNET has also enhanced its use of social media outlets to provide a forum for Small Businesses to network and market

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~~their services to facilitate teaming via “GAMMNET Connect,” the Authority’s new online networking tool. The Authority has designed this networking enhancement to enable Small Businesses to market their respective services and/or capabilities to prospective primes participating on upcoming Authority Procurements. This component aims at allowing Prime contractors who are looking for subcontractors to readily see a Small Business Firm’s interest and specializations in response to a particular project, this also enables prospective Primes to readily identify firms interested, available and capable of teaming on the project they are looking to propose or bid on. The enhancement provides one-on-one communication for Small Businesses.~~

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**3. 3. Vendor Bid List Database**

Vendor registration is maintained through CAMM's on-line procurement system, CAMMNET. Database registration enables a vendor to be notified of all solicitations within the specific commodity that the vendor has identified within their vendor profile.

**M.I. Small Business Business Element Participation and Small Business Participation Element (§26.39)**

The Authority 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 in the Authority's contract opportunities regardless of funding sources.

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

For purposes of capturing Small Business utilization, the Authority adheres to the U.S. Department of Transportation's Small Business definition for determining what constitutes a Small Business Enterprise. The Authority accepts Small Business certifications certified through the State of California's Department of General Services.

This Small Business Element will include, but is not limited to the following assertive strategies:

1. The Authority's CAMM Department will continue to conduct regular reviews of procurements, to assess opportunities for unbundling (breaking out scopes of work/services to facilitate small business prime contracting opportunities). The Authority believes that including the participation of procurement staff in scheduled reviews will increase accountability of the Authority's procurement options and decisions and in doing so will ultimately improve contracting opportunities for Small Business Enterprises at the prime level.
2. The Authority has enhanced its use of social media outlets to provide a forum for Small Businesses to advertise, market and that facilitate teaming. This enhancement offers a section for Small Businesses to offer their services and/or capabilities to participate on upcoming Authority procurements. This component aims at allowing prime contractors who are looking for subcontractors to readily see a Small Business firm's interest and specializations on the Authority's site. The Authority believes that the implementation of this strategy will greatly enhance the use of small businesses and provide for a more proficient tool for future partnerships between the Authority's Prime and Small Business communities.

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3. The Authority conducts pre-proposal or pre-bid meetings to discuss and clarify requirements and answer questions. Each pre-proposal or pre-bid includes a networking component where Prime contractor/consultants are encouraged to engage with Small Business and DBE firms in an effort to partner for teaming opportunities.
4. The Authority's CAMM Department makes itself available to meet with firms whose proposal was not selected to debrief them on their proposal's strengths and weaknesses.
- ~~5. The Authority will continue to survey the contracting community through various focus groups to assess the implementation of their Small Business Program and applicable efforts.~~
- ~~6.5.~~ The Authority has revamped its CAMMNET website to provide Small Businesses web-based access to extensive resource materials and tutorials.
- ~~7.6.~~ The Authority will continue to capture the utilization of Small Business Firms by industry, to actively monitor and track Small Business participation and to facilitate attainment reporting.
- ~~8.7.~~ The Authority encourages development of Business Partnering relationships using CAMM NET's Planholders List Report.

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

**VI. GOALS, GOOD FAITH EFFORTS AND COUNTING**

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

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

~~**O.B. Overall and Contract-Specific DBE Goals**~~

The ~~Authority~~ ~~DBE~~ ~~LO~~ shall establish an overall DBE goal over a three-year (Federal Fiscal Year) period, for the participation of DBEs in all budgeted contracts utilizing each Operating Administration's federal financial assistance. ~~The Authority's overall DBE goals~~ represent the amount of ready, willing, and able DBEs that are available to



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participate in contracting opportunities and is reflective of the amount of DBE participation the Authority would expect, absent the effects of discrimination. The Authority intends to meet those goals to the maximum extent feasible through the race neutral measures described herein. ~~Where race-neutral measures are inadequate to meet the overall goals, the Authority will establish~~ contract-specific DBE goals on contracts with subcontracting opportunities and relative DBE availability.

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

The Authority will establish an overall DBE goal covering a three-year federal fiscal year period if the Authority anticipates awarding U.S. DOT/FTA funded prime contracts for a cumulative total value of which exceeds \$~~25670~~,000 during any one or more of the reporting fiscal years within the three-year goal period.

In accordance with Section 26.45(f) the Authority will submit its overall goal to FTA on August 1 of each ~~three-year~~three-year goal period. ~~The Authority's current goal covers the goal period of Federal Fiscal Years 2022-2024 and the Authority is projected to submit its next overall goal on August 1, 2024.~~

A description of the methodology utilized to calculate the overall goal and the goal calculations ~~will be published to~~can be found on the Authority's website.

The following delineates the federally prescribed goal-setting methodology (Step 1 and Step 2) and other components the Authority will follow in establishing an Overall DBE goal, as follows:

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

In conjunction with the preparation and adoption of the budget for each fiscal year, the DBELO, in consultation with the appropriate divisions and departments responsible for contracting activities, will conduct a thorough analysis of the projected number, types of work and dollar amounts of contracting opportunities that will be funded, in whole or in part, by U.S. DOT federal financial assistance for the upcoming three~~-~~year fiscal period.

#### **2. Establishing a Base Figure**

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

The Authority may determine the relative availability of DBEs accordingly:

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

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**3. Adjusting the Base Figure**

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

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

**Q.D. Public Participation (§26.45)**

**1. Consultation with Community Groups and Constituents**

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

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

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### 2. Commercial Advertising of Proposed Overall DBE Goals

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

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

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

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

Additionally, the Authority hosts a virtual public hearing to allow all interested parties access to the goal methodology and an opportunity to ask questions.

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

### ~~**R. Annual Review and Remedy Reports (49 CFR §26.47)**~~

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

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FTA Civil Rights Regional Office within 90 day of the FFY end, or by the end of the calendar year.

### **S. Transit Vehicle Manufacturers (§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.~~

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

~~The Authority shall require all TVMs to certify that they have complied with 49 CFR §26.49 and have established an overall DBE participation goal that has been approved (or not disapproved) by the FTA before they can bid on any Authority transit vehicle procurement. Only those transit vehicle manufacturers listed on FTA's eligible TVMs list, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.~~

~~The Authority will also utilize the FTA's online TVMs list, accessible at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>, to verify that the TVM is authorized to bid or propose on U.S. DOT-assisted transit vehicle procurements.~~

~~The Authority 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 Authority's Overall goal or reported on Semi-Annual Uniform Reports. If non-TVM vehicles are purchased, DBE TVMs are not available, contracts will be included in the Authority's Overall DBE goal Methodology and Semi-Annual Uniform Reporting.~~

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### **F.E. Methods for Meeting Goals (§26.51)**

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

#### **1. Race and Gender-Neutral Measures**

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

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

- i. Identify components of the work which represent subcontracting opportunities and identify the availability of DBE subcontractors to participate in proportion to total available subcontractors. Contractors will be encouraged to consider subcontractors for components of the work for which there is a known supply of ready, willing, and able subcontractors, including DBE subcontractors, in preparing their bids;
- ii. Provide technical assistance to DBEs, in areas relevant to public contracting success; provide referrals to small/minority business assistance organizations;
- iii. Facilitate the distribution of the CUCP DBE Directory to the widest feasible universe of potential prime contractors/~~consultants~~;
- iv. Assist DBEs in overcoming limitations in bonding and financing;
- v. Include small and disadvantaged businesses in the Authority's outreach, public information, and communications programs, to ensure that DBEs are made aware of the Authority's contracting opportunities; and
- vi. Provide business development assistance to DBEs, to facilitate business growth and success beyond participation in the Authority's DBE Program.

#### **2. Race and Gender Conscious Measures**

~~In 2007, a Disparity Study was commissioned to review the Authority's contracts and procurements and determine whether evidence of discrimination of DBEs exists.~~ On December 18, 2013, the Authority received a letter from the FTA, which granted the Authority permission by the U.S. DOT and the FTA, to re-instate race-

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conscious DBE Program elements, including DBE contract goals. On April 11, 2014, the Authority received approval from its Board of Directors, to re-instate race-conscious DBE Program elements in conjunction with race-neutral elements.

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

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

### **U.F. Contract-Specific Goals (§26.51(d))**

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

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

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

For Caltrans-assisted contracts the Authority will comply with the goal-setting methodology provided within the LAPM and secure appropriate contract-specific goal approvals prior to advertisements.

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

### **V.G. DBE Performance Plan (DPP) Requirement for Design-Build Contracts Procurements (Federal Register / Vol. 68, No. 1151; (§26.53(e)))**

The Authority recognizes that certain modifications are necessary to adapt the DBE Program for use in connection with Design-Build projects and will therefore follow the prescribed regulatory U.S. DOT requirements and subsequently published g Guidance, as partially expressed in Exhibit A, "Supplemental DBE Program

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~~Requirements Specific to Design-Build Contracts with Established Overall Project DBE Goal” of the Authority’s DBE Program.~~

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

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

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

~~In a design-build contracting situation, in which the recipient solicits proposals to design and build a project with minimal project details at time of letting, the recipient may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information listed in paragraph 1. Meeting Established Goals, under K. Meeting Established Goals or Demonstrating Good Faith Efforts of this document that applies to design-bid-build contracts. To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amount) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, the recipient must provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. The recipient and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.~~



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

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

**1. Evaluation of Bids and Proposals**

~~After the bid opening or proposal due date, the DBELO shall evaluate all bids/proposals to determine whether the bidders/proposers submitted all information required by 49 CFR §26.53(b). On contracts with an 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 Good Faith Effort (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.~~

**12. Evaluation of DBE Certification Status and DBE Eligibility**

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

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

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

As part of the Authority's pre-award procedures the DBELO and/or designee will conduct a commercially useful function standards review to validate that proposed subcontractors, subconsultants, trucker, suppliers, manufacturers, distributors, and brokers meet CUF standards and DBE crediting eligibility requirements prior to contract award.

The Authority will validate the proposed DBEs' certification status and corresponding NAICS for scopes(s) of work to be performed, in conjunction with assessing the DBEs capacity and ability to perform the respective scope(s) of work.

The Authority will determine whether a DBE supplier has demonstrated the ability and intent to perform either as a regular dealer or distributor during the contract. This will ensure preliminary DBE crediting determinations and contract goal attainment decisions are based on the DBE's ability and intent to comply with commercially useful function (CUF) requirements.

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

### **2. Evaluation of Bids/Proposals (§26.53)**

After the bid opening or proposal due date, the DBELO shall evaluate all bids/proposals to determine whether the bidders/proposers submitted all information required by 49 CFR §26.53(b). On contracts with an established DBE contract goal, the lowest successful bidder or highest ranked proposer who demonstrates its commitment to meet the DBE contract goal or demonstrates an adequate Good Faith Effort (GFE) shall be recommended for contract award.

If the lowest bidder or highest ranked proposer fails to either meet the contract goal or demonstrate an adequate GFE, or is otherwise unresponsive or not responsible, the DBELO shall evaluate the second lowest bidder or second highest ranked proposer. Should the DBELO determine that additional information is needed to evaluate a bid or proposal with regard to DBE requirements, the DBELO shall request the bidder/proposer to submit the required information or may contact the listed DBE(s) directly.

For each solicitation on which a DBE contract goal has been established, the Authority shall require bidders/proposers to submit the following information to the Authority at the time of bid/proposal submission.

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Written and signed documentation of the bidder's/proposer's commitment to utilize DBEs, to be submitted on the Authority's "DBE Participation Commitment" form. Information listed on the form shall include:

- a. Name, address and contact information for each DBE listed on the contract;
- b. Description of the work that each DBE will perform;
- c. Dollar amount of participation of each DBE;
- d. Percentage of total contract value allocated to each DBE;
- e. Prime bidder's/proposer's name, title and contact information;
- f. The Authority's contract number;
- g. Total dollar amount of participation of all DBEs;
- h. Percentage of total contract value allocated to all DBEs;
- i. DBE commitment percentage;
- j. Prime bidder's/proposer's signature and date; and
- k. For each listed DBE, proof of valid and current DBE certification in the NAICS code(s) directly applicable to the work the DBE will perform on the contract.

The bidder/proposer shall also submit, for each DBE to perform under this contract, a written confirmation signed and dated from each the DBE listed, acknowledging that the DBE is participating in the contract for a specified dollar value and scope of work listed on the DBE Participation Commitment Form.

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

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

### **3. Demonstrating Good Faith Efforts**

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

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

~~When evaluating DBE certification status, the Authority ensures that the DBE: 1) is certified before bids/proposals are due (§26.81(c)) and 2) is certified in the NAIGS 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.~~

~~K.~~

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

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

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

~~1. Meeting Established Goals~~

~~For each solicitation on which a DBE contract goal has been established, the Authority shall require bidders/proposers to submit the following information to the Authority at the time of bid/proposal submission.~~

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- ~~i. Written and signed documentation of the bidder's/proposer's commitment to utilize DBEs, to be submitted on the Authority's "DBE Participation Commitment" form. Information listed on the form shall include:
  - ~~a. Name, address and contact information for each DBE listed on the contract;~~
  - ~~b. Description of the work that each DBE will perform;~~
  - ~~c. Dollar amount of participation of each DBE;~~
  - ~~d. Percentage of total contract value allocated to each DBE;~~
  - ~~e. Prime bidder's/proposer's name, title and contact information;~~
  - ~~f. The Authority's contract number;~~
  - ~~g. Total dollar amount of participation of all DBEs;~~
  - ~~h. Percentage of total contract value allocated to all DBEs;~~
  - ~~i. DBE commitment percentage;~~
  - ~~j. Prime bidder's/proposer's signature and date; and~~
  - ~~k. For each listed DBE, proof of valid and current DBE certification in the NAICS code(s) directly applicable to the work the DBE will perform on the contract.~~~~
- ~~ii. The bidder/proposer shall also submit, for each DBE to perform under this contract, a written confirmation signed and dated from each the DBE listed, acknowledging that the DBE is participating in the contract for the it is participating in the contract for a specified dollar value and scope of work listed on the DBE Participation Commitment Form.~~

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

If a bidder/proposer does not list sufficient DBEs on its "DBE Participation Commitment" form, to meet the established DBE contract goal, and/or if the Authority's evaluation of the "DBE Participation Commitment" form reveals that the bidder/proposer did not meet the established DBE contract goal, the bidder/proposer must demonstrate ~~an~~ adequate ~~Good Faith Effort (GFE)~~ to be deemed responsive to the Authority's DBE requirements. The bidder/proposer must demonstrate that it took all necessary and reasonable steps to meet the DBE goal, even if not fully successful.

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Bidder/~~proposer~~/proposer shall submit the following information to document adequate good faith efforts to the Authority no later than 4:00 p.m. on the 2nd business day after the Authority'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 Authority determines that the bidder/proposer failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening/ proposal due date, or the bidder/proposer made a mathematical error.

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

The following good faith efforts items (~~A-a~~ through ~~Hh~~) shall be minimally 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:

~~a.~~ Items of Work the Bidder/Proposer Made Available to DBE Firms; a description of work items and approximate dollar amounts made available to DBE firms by the bidder/proposer, value of work items as a percentage of total contract work, breakdown of bid/proposal items or larger scopes of contract work (including those items normally performed by the bidder/proposer with its own forces) into economically feasible units to facilitate DBE participation sufficient to meet the DBE contract goal. It is the bidder/proposer's responsibility to demonstrate that sufficient work was made available to facilitate DBE participation.

~~a.~~

~~i.~~ b. Solicitation Effort Documentation; the names and dates of written notices sent to certified DBEs soliciting bids/proposals for this project and the dates and methods used to following up initial solicitations to determine with certainty whether the DBEs were interested (attach all copies of solicitation, telephone records, fax confirmations, email communications, etc.), amount of DBEs to respond, documentation to demonstrate DBE firms were provided information about the contract (location of project, contract number, bid/proposal date, items of work made available and contact information) in the Invitation to Bid/Propose from the bidder/proposer, the bidder/proposer solicited through all reasonable means (e.g. attendance at pre-bid/proposal meetings, advertising and written notices) the interest of all certified DBEs who have the capability to perform the work of the contract, bidder/proposer to provide proof of aforementioned items. (Note: Solicitations should occur at a minimum no later than 14 calendar days prior to the Authority's bid/proposal due date and follow up to the solicitations should allow DBE firms reasonable time to respond). DBE firms

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solicited must be advised if the original bid/proposal due date has been extended.

~~b.~~ 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.

~~c.~~

~~e.~~ Publication Efforts Made to Advertise the Projects to Solicit DBE Participation; names and dates of each publication in which a request for DBE participation for this project was placed by the bidder/proposer (attach copies of advertisements or proof of publications). Publications should be placed at a minimum 14 calendar days before the Authority's bid/proposal due date. If bid/proposal due date is extended, bidder/proposer is to re-advertise new bid/proposal due date.

~~d.~~

~~e.~~ Agencies, Organizations, or Groups Contacted to Provide Assistance in Contracting, Recruiting, and Using DBEs; the names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (Attach copies of requests to agencies, responses received, and efforts made by the bidder/proposer in response).

~~e.~~

~~f.~~ Efforts to Provide Information About the Plans, Specifications, and Contract Requirements; efforts made to assist interested DBEs in obtaining necessary materials, or related assistance or services, bidder/proposer to provide evidence of effort.

~~g.~~ Assistance with Lines of Credit, Insurance, and/or other Services; efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs, bidder/proposer to provide a list of any assistance provided to DBEs.

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- ~~—Additional Data to Support a Demonstration of Good Faith Efforts; in determining whether a bidder/proposer made adequate good faith efforts, the Authority will take into account the performance of other bidder/proposers in meeting the DBE contract goal. Attach any additional information to support demonstration of good faith in this section~~
  
- ~~e. 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.~~
  
- ~~f. 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:~~
  
- ~~ii.h. Additional Data to Support a Demonstration of Good Faith Efforts; in determining whether a bidder/proposer made adequate good faith efforts, the Authority will take into account the performance of other bidder/proposers in meeting the DBE contract goal. Attach any additional information to support demonstration of good faith in this section.~~

**3.4. 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 report relative to contract-specific DBE requirements, to be submitted for presentation to the Board of Directors at the time the contract award is considered. The decision of the Board of Directors on award of the contract shall be final and binding on all parties, subject to compliance with the Authority's bid/proposal protest procedures.

**54. Bidder/Proposer's Right to Administrative Reconsideration**

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



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**~~Y.~~ IK. Counting DBE Participation (§26.55)**

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

**~~1. DBE "Frauds" and "Fronts"~~**

~~Only legitimate DBEs are eligible to participate in federally funded contracts. Therefore, bidders/proposers are cautioned against knowingly and willfully using "fronts" to meet DBE goals. The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of Federal funds should be immediately reported to the Office of Inspector General (OIG), U.S. Department of Transportation, via the toll-free hotline at 800-424-9071, email at <https://www.oig.dot.gov/hotline> or U.S. mail at U.S. DOT Inspector General, 1200 New Jersey Avenue SE, West Bldg. 7<sup>th</sup> 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](http://www.oig.dot.gov/hotline).~~

**~~2. Commercially Useful Function (CUF) (§26.55(c))~~**

~~1.~~

~~Expenditures to a DBE contractor can only be counted toward the DBE contract goal if the DBE is performing a commercially useful function (CUF) on the contract. A DBE is considered to be performing a CUF only if it meets all of the following criteria: Expenditures may be counted to a DBE contractor toward DBE the DBE contract goals only if the DBE is performing a commercially useful function on that contract. To be considered as performing a commercially useful function, the DBE shall meet all of the following:~~

- ~~i. The DBE is responsible for the execution of a distinct element of work in the Ccontract;~~
- ~~a. The DBE is responsible for the execution of a distinct element of work in the contract;contract.~~
- ~~ii.b. The DBE carries out its obligation by actually performing, managing, and supervising the work involved including being responsible for ordering, negotiating price, installing (where applicable), determining quality and quantity, and paying for the materials and supplies used on the contract;~~
- ~~iii.c. The DBE performs work that is normal for its business, services, and function; and~~
- ~~d. The DBE performs or exercises responsibility for at least 30 percent of the total cost of its Ccontract with its own work force for and is not further subcontracting~~

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a portion of the work that is greater than that expected to be subcontracted by normal industry practice; ~~and-~~

~~iv.e. Its role is not limited to that of an extra participant in a transaction, contract or project through which funds are passed to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Authority will examine similar transactions, particularly those in which DBEs do not participate.~~

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

- a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- e. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. ~~If a recipient chooses this~~ The Authority shall implement this approach and crediting provision on its federally assisted contracts as permitted. ~~it must obtain written consent from the appropriate Authority Operating Administration.~~

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

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agreement(s) and the Prime contractor's/consultant's monthly reporting. Contractor Form 103.

**23. DBE Participation Credit**

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

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

- i. Only the participation of firms certified in accordance with 49 CFR Part 26 may be counted as DBE participation.
- ii. Only work (represented by NAICS code(s)) for which the firm is certified as a DBE may be counted as DBE participation.
- iii. Only work performed by a DBE's own 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/consultant or its affiliate), may be counted as DBE participation.
- iv. When a DBE subcontracts part of its work of its contract to another firm, the value of the subcontracted work may be counted as DBE participation only if the DBE subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count as DBE participation. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce.
- v. When a DBE performs as a participant in a certified joint venture with a non-DBE, only the portion of the total contract dollar value equal to the distinct, clearly defined portion of the work to be performed by the DBE's own forces may be counted as DBE participation.

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

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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 insures,~~ operates and using drivers it employs.

**34. DBE Manufacturer Purchases (§26.55(e)(1))**

For materials and supplies that are required under the contract and obtained from a DBE manufacturer, one hundred percent (100%) of the materials/supplies may be counted as DBE participation. For purposes of this section, a manufacturer is a firm that ~~operates or maintains~~ owns (or leases) and operates a factory or establishment that produces on the premises the materials and supplies obtained by the contractor. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.

**45. DBE Regular Dealer Purchases (§26.55(e)(2))**

For materials and supplies that are required under the contract and obtained from a DBE supplier/regular dealer, sixty percent (60%) of the materials/supplies may be counted as DBE participation (including transportation costs). For purposes of this section, a supplier/regular dealer is a firm that owns, (or leases) and operates, ~~or maintains~~ a store, warehouse, or other establishment in which the materials, ~~or supplies, or equipment of the general character described by the specifications and~~ required for performance under of the contract are bought, kept in ~~stock~~ sufficient quantities, and regularly sold or leased to the public in the usual course of business.

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

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

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(CUF) as a regular dealer prior to its participation. The system you implement must be maintained and used to identify all DBE suppliers with capacity to be eligible for 60 percent credit, contingent upon the performance of a CUF.

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

**56. DBE Distributor Purchases (§26.55 (e)(3))**

If the materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, count 40 percent (40%) of the cost of materials or supplies (including transportation costs). A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance. A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or

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damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor. If these conditions are met, DBE distributors may receive 40 percent (40%) for drop-shipped items. Terms that transfer liability to the distributor at the delivery destination (e.g., FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.

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

~~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.~~

~~Post Award—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 Authority, the dollar value of the work performed by the firm. The prime contractor may not extend or add, any work performed after the DBE ceases to be certified will not and count towards DBE participation credit. The or the Authority's Authority may not count the DBE utilization towards the Overall DBE Goal after the DBE has been decertified.~~

### **67. DBE "Frauds" and "Fronts"**

Only legitimate DBEs are eligible to participate in federally funded contracts. Therefore, bidders/proposers are cautioned against knowingly and willfully using "fronts" to meet DBE goals. The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of Federal funds should be immediately reported to the Office of Inspector General (OIG), U.S. Department of Transportation, via the toll-free hotline at 800-424-9071, email at <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

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is open 24 hours per day, seven days per week. Additional information can be found on [www.oig.dot.gov/hotline](http://www.oig.dot.gov/hotline).

**7. ~~Consequences of~~ Effects On Decertification on a Contract and Overall Goals and DBE Participation from Decertification (§26.87(j))**

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

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

The following exceptions apply:

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

**VII. DBE CERTIFICATION AND ELIGIBILITY**

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

**A. California Unified Certification Program (§26.81)**

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

The Authority is a non-certifying member of a UCP) administered by the California Unified Certification Program (CUCP). ~~The CUCP will meet all of the requirements of this section.~~ The Authority will use and count for DBE credit only those DBE firms certified by the CUCP. As a non-certifying member of the California Unified Certification Program (CUCP), the Authority relies on the CUCP to administer and implement all DBE certification requirements. CUCP agencies are classified as certifying and non-certifying members. CUCP certifying members perform DBE certifications which apply to all U.S. DOT funded contracts



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

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

~~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, t~~The CUCP ~~(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/consultants and awarding agencies should not impose on DBE firms the burden of providing a DBE certificate in their bid packages - it is not required.

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

### ~~Interstate Certifications~~

~~In regard to Interstate Certifications, when a DBE applies to the CUCP for certification, the CUCP must accept the DBE's certification from its jurisdiction of original certification (JOC). The JOC is the State in which the firm maintains its principal place of business at the time of application unless and until the firm loses certification in that jurisdiction. The Authority will rely on the CUCP regarding certification standards and determinations, and the Authority will not participate in the certification, recertification, or decertification process.~~

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

<b>Agency</b>	<b>Business Address</b>	<b>Telephone No.</b>	<b>Fax No.</b>
<b>City of Los Angeles Office of Contract Compliance <a href="http://www.lacity.org/bca">www.lacity.org/bca</a></b>	<b>1149 South Broadway Street, Room 300 Los Angeles, CA 90015</b>	<b>(213) 847-2684</b>	<b>(213) 847-2777</b>
<b>Los Angeles County Metropolitan Transportation City (METRO) Diversity and Economic Opportunity Department <a href="http://www.metro.net">www.metro.net</a></b>	<b>One Gateway Plaza Los Angeles, CA 90012</b>	<b>(213) 922-2600</b>	<b>(213) 922-7660</b>
<b>S. F. Bay Area Rapid Transit District (BART) Office of Civil Rights <a href="http://www.bart.gov">www.bart.gov</a></b>	<b>300 Lakeside Drive, 18<sup>th</sup> Floor Oakland, CA 94612</b>	<b>(510) 464-7580</b>	<b>(510) 464-7587</b>
<b>City of Fresno DBE Program <a href="http://www.ci.fresno.ca.us">www.ci.fresno.ca.us</a></b>	<b>2101 G Street, Building A Fresno, CA 93706</b>	<b>(559) 621-1182</b>	<b>(559) 488-1069</b>
<b>Santa Clara Valley Transportation Authority (VTA) Small &amp; Disadvantaged Businesses <a href="http://www.vta.org">www.vta.org</a></b>	<b>3331 North First Street San Jose, CA 95134</b>	<b>(408) 321-5962</b>	<b>(408) 955-9729</b>
<b>Central Contra Costa Transit Authority (CCCTA) Office of Civil Rights <a href="http://www.cccta.org">www.cccta.org</a></b>	<b>2477 Arnold Industrial Way Concord, CA 94520</b>	<b>(925) 676-1976</b>	<b>(925) 686-2630</b>
<b>San Francisco Municipal Transportation Agency (SFMTA) Contract Compliance Office San Francisco Municipal Railway <a href="http://www.sfmuni.org">www.sfmuni.org</a></b>	<b>1 South Van Ness Avenue, 3<sup>rd</sup> Floor San Francisco, CA 94103</b>	<b>(415) 701-4443</b>	<b>(415) 701-4347</b>
<b>San Mateo County Transit District (SAMTRANS) / Peninsula Corridor Joint Powers Board (CALTRAIN) DBE Office <a href="http://www.samtrans.com">www.samtrans.com</a></b>	<b>1250 San Carlos Avenue San Carlos, CA 94070</b>	<b>(650) 508-7939</b>	<b>(650) 508-7738</b>
<b>California Department of Transportation (CALTRANS) Office of Business &amp; Economic Opportunity – MS #79 <a href="http://www.dot.ca.gov">www.dot.ca.gov</a></b>	<b>1823 14<sup>th</sup> Street Sacramento, CA 95814</b>	<b>(916) 324-1700 (866) 810-6346</b>	<b>(916) 324-1862</b>

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

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

**C. Annual Affidavit of Continuing Eligibility**

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

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

**B. Notification of Change in Circumstances**

**D.**

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

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**E. Lapse in Certification Status**

~~As a general rule, if a DBE participant on an Authority contract ceases to be certified at any time during the life of the contract, any participation by that DBE after the firm ceases to be certified will not count as DBE participation. Please refer to Section VI. K. 7. of this Program for further details regarding counting DBE participation goals after decertification.~~

**F.C. Procedures for Written Complaints Regarding Removal of DBE Eligibility (§26.87)**

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

1. Obtain the name of the CUCP certifying member agency that issued the DBE's certification;
2. Provide the complainant(s) with contact information for the CUCP certifying member agency;
3. Provide the complainant(s) with a copy of 49 CFR §26.87, which outlines the DBE eligibility removal process; and
4. Provide a written notification to the DBE in question, stating that the firm's DBE eligibility has been challenged and that the complainant has been referred to the DBE's certifying agency; include a copy of 49 CFR §26.87. If the DBE in question is a current participant in the Authority's DBE Program, remind the DBE of its obligation to notify the Authority of any change in the DBE's certification status within 30 days of the change.

**G. Certification Denials and Appeals (§26.89)**

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

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

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~~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 7<sup>th</sup> Street SW— Room 5414, Washington, DC 20590, Phone: (202) 366-4754, TTY: (202) 366-9696, Fax: (202) 366-5575.~~

**VIII. COMPLIANCE AND ENFORCEMENT OVERSIGHT**

**A. Information, Confidentiality, Cooperation (§ 26.109)**

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

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

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

If the Authority elects not to hold retainage from the prime contractor/consultant, the prime contractor/consultant shall not hold retainage from any of its lower-tier subcontractor(s)/subconsultant(s). The Authority shall may elect to hold retainage from the prime contractor/consultant and shall make prompt and regular incremental acceptances of portions, as determined by the Authority of the contract work and pay retainage to the prime contractor/consultant based on these acceptances. The prime contractor/consultant or subcontractor/subconsultant shall return all monies withheld in retention from any lower-tier subcontractors within seven (7) days for construction contracts and fifteen (15) days for consultant contracts after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the Authority. Any delay or postponement of payment and invoices may take place only for good cause and with the Authority’s prior written approval.

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

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

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

The Authority requires prime contractors/consultants to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Authority or U.S. DOT. This reporting requirement also extends to any certified DBE subcontractor. The use of joint checks will not be allowed without prior written Authorization from the Authority.

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

As required by 49 CFR §26.37(c), ~~t~~Additionally, the Authority’s DBE Program ~~will~~ includes ~~a~~ monitoring and enforcement mechanisms ~~s~~ to ensure that work committed to DBEs at contract award, is actually performed by DBEs. Such ~~mechanisms will~~ provide a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. A running tally is required and is essential so the Authority can intervene in real-time if they observe a prime contractor/consultant falling short of a contract goal. Prime contractor/consultants— must complete and submit within the specified timelines, running tally DBE documentation electronically through the Authority-approved electronic reporting system (ECAT). The Authority will display both DBE commitments and attainments in its reports of DBE participation to the U.S. DOT.

As required by 49 CFR §26.37(c), the Authority will effectively implement the following tally mechanisms:

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- ~~1. To monitor the achievement of the Authority's overall goal, a running tally will be used that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether the Authority's current implementation of contract goals is projected to be sufficient to meet the annual goal. This mechanism will inform decisions to implement goals on contracts to be advertised according to the Authority's established contract goal setting process.~~
- ~~2. To monitor each DBE commitment, the Authority will use a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).~~

**C. Compliance Monitoring (§26.37)**

The Authority shall implement appropriate monitoring and enforcement mechanisms to ensure prime and subcontractor/subconsultant compliance with DBE Program requirements as ~~stated set forth~~ in 49 CFR Part 26, ~~26.7~~. ~~to ensure that~~ These mechanisms are designed to ensure work committed to DBEs, whether race-neutral or race-conscious, is actualized in conformance with the regulatory requirements, ~~or in the case of race neutral participation, the work subcontracted is monitored.~~ Mechanisms include ~~ing~~ but are not limited to the following activities:

- ~~1. Conducting a~~ Once a DBE begins work, review of procurement and contracting records by obtaining proof of to validate each DBE's participation commitment against on the contract, by collecting a copy of a signed executed subcontractor agreement between the prime contractor/consultant and the DBE;
- ~~2. Utilizing proactive electronic reporting system to monitor and validate prime contractor and sub-tier compliance with prompt payment and release of retainage provisions; Collecting/reviewing DBE Attainment and Subcontractor Prompt Payment Verification Data Submission reports;~~
- ~~3. Utilizing an electronic reporting tool to allow enable~~ lower-tiers to validate the receipt payments of payments in real time and confirm payment details reported by prime contractor;
- ~~4. Verifying Assessing sanctions of late payment interest and/or withholding of proportional progress payments made in accordance with identified violations of the Authority's prompt payment provisions to lower tier occur within the prompt payment standards;~~

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5. Tracking DBE participation throughout the life of the contract;
6. Conducting site visits and/or work-site visits~~observation of work performed to ensure the counting of each DBE's participation is consistent with its function on the contract, field observations, and construction~~including worker interviews on applicable contracts;
7. Imposing administrative sanctions for contractor's willful contractor non-compliance with DBE Program requirements;
8. Measuring achieved DBE participation in comparison to committed participation~~Recording and reporting final DBE participation at contract close-out;~~ and
9. Recording and reporting final DBE participation at contract close-out~~Measuring achieved DBE participation in comparison to committed participation.~~

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

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

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

~~—If there is a DBE goal and/or DBE commitment on the Agreement, Prime must complete and submit within the specified timelines, DBE documentation electronically through the Authority-approved electronic reporting system (ECAT), through the submission process detailed below:~~

If there is a DBE goal and/or DBE commitment within the Agreement, a prime contractor/consultant must complete and submit within the specified timelines, DBE documentation electronically through the Authority-approved electronic reporting system (ECAT), through the submission process detailed below:

<u>Form/Electronic Submittal</u>	<u>Frequency of Submission</u>
<u>a. Monthly DBE Attainment and</u>	<u>Monthly by the 10<sup>th</sup> of each month</u>



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<u><b>Subcontractor Prompt Payment Verification Report</b></u>	
<u><b>b. DBE Subcontract Agreements</b></u>	<u>Within ten (10) days of prime contract award, or with Request to Add for DBE firms added post-award</u>
<u><b>c. Request to Additional DBE Subcontractor/Firms</b></u>	<u>As needed (see instructions below)</u>
<u><b>d. DBE Commitment Change Requests, DBE Substitutions, etc.</b></u>	<u>As needed (see instructions below)</u>
<u><b>e. On-Going Good Faith Efforts (GFE) Post-Award</b></u>	<u>As needed (see instructions below)</u>
<u><b>f. Final Report-Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors</b></u>	<u>Within thirty (30) days from the date of project completion.</u>
<u><b>g. Disadvantaged Business Enterprises (DBE) Certification Status Change</b></u>	<u>Within thirty (30) days from the date of project completion.</u>
<u><b>h. Semi-Annual Subcontractor/Subconsultant Paid Report Summary</b></u>	<u>Semi-annual basis (see instructions below)</u>

<b>Form/Electronic Submittal</b>	<b>Frequency of Submission</b>
<u><b>a. Monthly DBE Attainment and Subcontractor Prompt Payment Verification Report</b></u>	<u>Monthly by the 10<sup>th</sup> of each month</u>
<u><b>b. DBE Subcontract Agreements</b></u>	<u>Within ten (10) days of prime contract award, or with Request to Add for DBE firms added post-award</u>
<u><b>c. Request to Additional DBE Subcontractor/Firms</b></u>	<u>As needed (see instructions below)</u>

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<del><b>d. DBE Commitment Change Request(s), DBE Substitutions, Etc.etc.</b></del>	<del>As needed (see instructions below)</del>
<del><b>e. On-Going Good Faith Efforts (GFE) Post-Award</b></del>	<del>As needed (see instructions below)</del>
<del><b>f. Final Report Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors</b></del>	<del>Within thirty (30) days from the date of project completion.</del>
<del><b>g. Disadvantaged Business Enterprises (DBE) Certification Status Change</b></del>	<del>Within thirty (30) days from the date of project completion.</del>
<del><b>h. Semi-Annual Subcontractor/Subconsultant Paid Report Summary</b></del>	<del>Semi-annual basis (see instructions below)</del>

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

**Monthly DBE Attainment and Subcontractor Prompt Payment Verification Data Submission**

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

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

PrimePrime contractor/consultant is required to enter data directly into ECAT and submit by the 10th of each month until completion of the Agreement. PrimePrime contractor/consultant's first submission is due following the first month of Agreement activity. Even if no DBE participation will be reported within a period, Primeprime contractor/consultant must complete and submit Monthly by the required timelines.

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If there is not a DBE goal and no DBE commitment has been made by ~~Prime~~prime contractor/consultant, ~~Prime~~prime contractor/consultant is required to enter data directly into ECAT and submit by bi-annually on April 10th and October 10th of each year. Additionally, upon completion of the contract, a final report must be submitted and marked final.

~~Data required for submission includes the amount(s) received by Prime from the Authority and the amount(s) paid to lower tier subcontractors during the Month. Prime to submit pertinent payment details for any firm (DBE and Non-DBE) to whom they have reported a payment within the reporting period. Prime is advised not to report the participation of DBE(s) toward the Prime's DBE attainment until the amount being claimed has been paid to the DBE.~~

~~Pertinent payment details include::~~

- ~~• Invoice Number~~
- ~~• Invoice Amount~~
- ~~• Payment Amount~~
- ~~• Invoice Date~~
- ~~• Check Number~~
- ~~• Date of Payment~~
- ~~• Corresponding Prime Invoice (associated to subcontractors' invoice)~~
- ~~• Retention~~
- ~~• Disputed or Withheld invoice amounts~~

~~If DBE trucking credit is being claimed, Prime must electronically report through ECAT the amount paid to DBE trucking companies and their lower tier firms (including owner operators for the leasing of trucks). Pertinent payment details required for submission will include 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 paid during that month. If the DBE leases trucks from a non-DBE, Prime may count only the fee or commission the DBE receives as a result of the lease arrangement.~~

~~Firms will receive a notification from ECAT when a payment is reported to them and will be required to log in to ECAT to verify the payment information provided by Prime. A reported payment to a lower tier DBE firm will not be credited towards the DBE goal until the DBE firm has validated the payment through ECAT. All payments reported by Prime must be validated by the affected firm, prior to the 10<sup>th</sup> of each month following the reporting period.~~

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~~Electronic submission of the Monthly DBE Commitment and Attainment Summary and Subcontractor Prompt Pay Verification Data includes a certification under penalty of perjury of the prompt payment assurance statement of compliance, providing assurance that timely payments have been issued to all subcontractors in accordance with regulatory mandates and as required by 49 CFR Part 26.29.~~

## **DBE Subcontract Agreements**

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

## **Request for Additional DBE ParticipationSubcontractors/Firms**

In the event Prime~~prime contractor/consultant~~ identifies additional DBE firms ~~Subcontractors or suppliers~~ not previously identified by Prime~~prime contractor/consultant~~ for DBE participation under the Agreement, Prime~~prime contractor/consultant~~ must notify the Authority by filling out and submitting a “Request to Add,” through ECAT inclusive of required support documentation. ~~This will enable Authority to verify the firm’s eligibility, capacity, CUF and ensure there is not a scope conflict with another listed firm.~~ Proposed firms will not be applied towards Prime~~prime contractor/consultant~~’s DBE participation until approved by the Authority.

~~Prime 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 specific value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation). This supporting documentation is a required upload by ECAT when submitting a Request to Add.~~

## **d. DBE Commitment Change Request(s), DBE Replacements, Termination and Increasing or Decreasing Commitment Values**

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

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

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

1. Listed DBE fails or refuses to execute a written contract based on the requirements of the project.
2. Listed DBE firm fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE Subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of ~~Prime~~prime contractor/consultant.
3. Listed DBE firm fails or refuses to meet the ~~Prime~~prime contractor/consultant's reasonable,

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nondiscriminatory bond requirements.

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

To submit a request to substitute, decrease or terminate a DBE subcontractor commitment, Primeprime contractor/consultant is required to submit a DBE Commitment Change Request through ECAT inclusive of required support documentation. ~~The DBE Commitment Change Request includes options to increase, decrease, substitute or terminate a DBE commitment.~~

~~If decrease, substitute or terminate is selected,~~ PrimePrime contractor/consultant must give notice in writing to the DBE, with a copy to the Authority, of its intent to decrease, substitute and/or terminate, and provide justification, allowing the DBE five (5) days to respond to Primeprime contractor/consultant of the reasons, if any, why it objects to the proposed termination of its contract and why the Authority should not approve Primeprime contractor/consultant's request. ~~The following documentation will be required by ECAT when submitting the DBE Commitment Change Request.~~

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- ~~1. One or more of the good cause justifications listed above.~~
- ~~2. Notices from Prime to the DBE regarding the request.~~
- ~~3. Responses from the DBEs to Prime regarding the request.~~
- ~~4. Any documentation necessary to validate the good cause justification.~~
- ~~5. Proof of DBE certification of proposed firm (if requesting to substitute).~~
- ~~6. Written confirmation of work and amount signed by proposed firm (if requesting to substitute).~~

In the event of an approved DBE replacement, termination, or failure of a DBE to complete its work on the contract for any reason, the DBE must be substituted with another DBE or adequate good faith efforts must be documented by Primeprime 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 Primeprime contractor/consultant. The substitute DBE must be certified as a DBE within the appropriate NAICS categories at the time of request for substitution.

~~Prime 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 Authority in writing. This includes partial terminations.~~

Should Primeprime contractor/consultant elect to submit a good faith effort documentation in lieu of proposing additional DBE participation, the Authority will review the documentation and provide a determination through ECAT to Primeprime contractor/consultant stating whether or not good faith efforts have been adequately demonstrated.

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

### On-Going Good Faith Efforts Post-Award

During the term of the Agreement, Primeprime contractor/consultant shall continue to make a Good Faith Effort (GFE) to ensure that DBEs have an opportunity to successfully perform in the Agreement, and that the PrimePrime contractor/consultant meets the DBE contract goal. These efforts shall include, but shall not be limited to, the following:

1a. Negotiating in good faith to attempt to finalize and execute a subcontractor agreement with the DBEs committed ~~to~~to.

2b. Continuing to provide assistance to DBE firms in obtaining bonding, lines of credit, etc.

3e. Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting the Authority approval to substitute the DBE.

4d. Paying all firms (DBEs and non-DBEs) in a timely manner, as listed in the Agreement specifications;

5e. Alerting the Authority in a timely manner of any problems anticipated in attaining the DBE participation committed to in the proposal;

6f. If a DBE substitution is necessary, making a Good Faith Effort to replace the DBE with another DBE, subject to the approval of the Authority.

Should Primeprime contractor/consultant's DBE commitment fall below the DBE contract goal, submittal of good faith effort documentation will be required on a monthly basis until the goal has been met through executed DBE contract agreements. Documentation should include but is not limited to:



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a. ~~1.~~ Conducting market research to identify and solicit DBE firms that have the capability to perform the work on the Agreement. All reasonable and available means should be utilized. This may include attendance at matchmaking meetings and events, advertising, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired and which are located in the area or surrounding areas of the project.

a. —

1.

b. ~~2.~~ Prime contractor/consultant should solicit this interest as early in the process as practicable to allow the DBEs to respond to the solicitation and submit a timely proposal. ~~Prime~~ prime contractor/consultant should determine with certainty if the DBEs are interested by taking appropriate steps to follow up on initial solicitations.

2.

—

c. ~~3.~~ Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out Agreement work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when Prime ~~prime contractor/consultant~~ might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance.

3.

—

b. ~~4.~~ Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

4.

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### **Final Report-Utilization of Disadvantaged Business Enterprises and First-Tier Subcontractors**

Upon completion of the project, Primeprime contractor/consultant must electronically designate their last Monthly DBE Attainment and Subcontractor Prompt Payment Verification Report as final and submit to the Authority utilizing ECAT within thirty (30) days from the date of project completion. The amount of ten-thousand dollars (\$10,000) will be withheld from payment until a satisfactory form is submitted.

### **Disadvantaged Business Enterprises Certification Status Change**

If a DBE Subcontractor is decertified during the life of the project, the decertified subcontractor must notify the Primeprime contractor/consultant in writing with the date of decertification and last date of work on the project while still certified. Within ten (10) days of receipt of decertification documentation, Primeprime contractor/consultant must electronically furnish the written documentation to the Authority via ECAT. ~~Upon completion of the project, "Disadvantaged Business Enterprises Certification Status Change" must be signed and certified correct by the Prime indicating each DBE's existing certification status utilizing ECAT.~~

~~If there are no changes, Prime indicates "No Changes."~~ The signed and certified form must be furnished to the Authority within thirty (30) days from the date of project completion.

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 Authority requires Primeprime 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 Authority, unless otherwise provided by applicable record retention requirements for Primeprime contractor/consultant's agreement,

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whichever is longer. These records will be made available for inspection upon request in accordance with Article 21 entitled "Access to Records and Reports", of this Agreement. This reporting requirement extends to all lower-tiers, both DBE and non-DBE.

The Authority reserves the right, at its sole discretion, to demonstrate responsiveness to requirements of CFR 49 Part 26.37 by posting Primeprime contractor/consultant payment data to a website, database, or other place accessible to Subcontractors to assist them in determining when they should expect to receive payment.

Caltrans-assisted contracts have additional reporting requirements under the Local Assistance Procedures Manual (LAPM) post-award, prime contractor/consultants should . ~~If prime's contract was funded with funds received via Caltrans,~~ refer to the executed~~your~~ agreement for additional reporting details.

### **Semi-Annual Subcontractor/Subconsultant Paid Report Summary**

The Authority will require Contractor/Consultant's whose contracts do not have a DBE goal or commitment to report payment data to lower-tiers on a semi-annual basis each year via ECAT. These reports will capture payments to Contractor/Consultant and payments to non-DBEs within the respective reporting period. Contractor/Consultant will adhere to the following submittal schedule:

- Submittal Date: April 10th Report, Reporting Period: October 1st through March 31st
- Submittal Date: October 10th Report, Reporting Period: April 1st through September 30th

### **E. 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.

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

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).

i. Informal Meetings:

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

ii. Mediation

The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third-party organizations. The Authority's DBELO and 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 Authority, Contractor/Consultant and its sub tiers shall continue performance under the Agreement while matters in dispute are being resolved.

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

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

### **F. Administrative Sanctions for Non-Compliance**

Contractor/Consultant must fully comply with the DBE Agreement requirements, including the Authority's DBE Program and Title 49 CFR Part 26 "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," and ensure that all subcontractors, regardless of tier, are also

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fully compliant. Failure by Contractor/Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement, or such other remedy as the Authority deems appropriate, which may include, but is not limited to:

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

In 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 Authority to reconsider the Authority'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 Authority, 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 Authority 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 Authority will release all withholdings.

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

### **G. Authority's Written Verification (§26.37)**

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To further ensure the integrity of the DBE Program's intent, and in accordance with the Authority's DBE Compliance Close-Out Report Process, the Authority's DBELO or designee will complete and file, a written verification attesting to having reviewed and monitored the contract, contractor DBE documentation, through on-site performances when applicable, and payments to DBEs to verify compliance with DBE requirements.

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