



**The San Francisco Bay Area
Water Emergency Transportation
Authority**

Diversity Program for Contracts

Revised August 2016
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DIVERSITY PROGRAM FOR CONTRACTS

I. POLICY (Section 26.23)

The San Francisco Bay Area Water Emergency Transportation Authority (“The AUTHORITY”) is committed to a Diversity Program for the participation of Disadvantaged Business Enterprises (“DBEs”) and Small Business Enterprises (“SBEs”) in the AUTHORITY’s contracting opportunities in accordance with 49 Code of Federal Regulations (CFR) Part 26, revised and effective November 3, 2014, as may be amended (“Regulations”). It is the policy of the AUTHORITY to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and performance of any U.S. Department of Transportation (“U.S. DOT”) assisted contracts or in the administration of its DBE program or the requirements of 49 CFR Part 26. It is the intention of the AUTHORITY to create a level playing field on which DBEs and SBEs can compete fairly for contracts and subcontracts relating to the AUTHORITY’s construction, procurement and professional services activities.

The Board of Directors is responsible for establishing the DBE policy of the AUTHORITY. The Executive Director of the AUTHORITY is responsible for ensuring adherence to this policy. The DBE Program Administrator, in coordination with AUTHORITY Managers, is responsible for the development, implementation and monitoring of the Diversity Program for Contracts in accordance with the AUTHORITY’s nondiscrimination policy. It is the expectation of the Board of Directors and the Executive Director that all AUTHORITY personnel shall adhere to the provisions and procedures, as well as, the spirit of this Program.

This policy will be circulated to all AUTHORITY personnel and to members of the community that perform or are interested in performing work on AUTHORITY contracts. The complete Diversity Program for Contracts and the annual overall DBE goals analysis are available for review on the AUTHORITY’s official internet Website and at the:

DBE Program Office
San Francisco Bay Area
Water Emergency Transportation Authority
Pier 9, Suite 111, The Embarcadero
San Francisco, CA 94111

If you have any questions or would like further information regarding this Program, please contact the DBE Program Administrator, by email gularte@watertransit.org, by telephone at 415-364-3188 or by fax at 415-291-3388.

Date: 09/1/16



Nina Rannells
Executive Director

A. Applicability (Sections 26.3 and 26.21)

The AUTHORITY, a recipient of federal financial assistance from the Federal Transit Administration (“FTA”) and the Federal Highway Administration (“FHWA”) of the U.S. DOT, is required to implement a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 CFR Part 26, which is incorporated herein by this reference. The Program outlined herein applies to all AUTHORITY contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance. In the event of any conflicts or inconsistencies between the Regulations and this DBE Program with respect to U.S. DOT-assisted contracts, the Regulations shall prevail.

The AUTHORITY will submit updates to DOT representing significant changes to this DBE Program.

B. Objectives (Section 26.1)

The objectives of this Program are the following:

1. To remove barriers to DBE participation in the bidding, award and administration of AUTHORITY contracts;
2. To assist DBEs to develop and compete successfully outside of the Program;
3. To ensure that the Program is narrowly tailored in accordance with 49 CFR Part 26;
4. To ensure that only DBEs meeting the eligibility requirements are permitted to participate as DBEs;
5. To identify business enterprises that are eligible as DBEs to provide the AUTHORITY with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;
6. To develop communication programs and procedures which will acquaint prospective DBEs with the AUTHORITY’s contract procedures, activities and requirements and allow DBEs to provide the AUTHORITY with feedback on existing barriers to participation and effective procedures to eliminate those barriers.
7. To administer the Program in close coordination with various managers and staff within the AUTHORITY so as to facilitate the successful implementation of this Program.

C. Prohibited Discrimination (Section 26.7)

The AUTHORITY shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and

performance of any contract governed by 49 CFR Part 26 on the basis of race, color, sex or national origin.

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

II. DEFINITIONS (Section 26.5)

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

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

A DBE is a for-profit, small business concern; 1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and 2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

B. Small Business Concern (Section 26.5)

With respect to firms participating as DBEs in U.S. DOT assisted contracts, a small business concern is an existing small business, as defined by Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121), whose average annual gross receipts for the previous three (3) years does not exceed \$23.98 million (or as adjusted for inflation by the Secretary of U.S. DOT) pursuant to 49 CFR § 26.65(b).

C. Socially and Economically Disadvantaged Individuals (Section 26.5)

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

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

1. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
2. "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;
3. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
4. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
5. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
6. Women;
7. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Additionally, any individual can demonstrate, by a preponderance of evidence, that he or she is socially and economically disadvantaged on a case-by-case basis. The AUTHORITY will follow the guidelines in 49 CFR Part 26, Appendix E for this determination.

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

D. Race-Neutral (Section 26.5)

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

E. Race-Conscious (Section 26.5)

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

F. Personal Net Worth (Section 26.5)

The net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or participating DBE firm, or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of community property with the individual's spouse.

III. RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION

A. Duties of DBE Program Administrator (Section 26.25)

Pursuant to 49 CFR § 26.25 (www.fhwa.dot.gov/HEP/49cfr26.HTM), the Program shall be administered by the DBE Program Administrator ("Administrator"), who shall be appointed by and have direct, independent access to the Executive Director of the AUTHORITY. The DBE Program Administrator is designated as the Disadvantaged Business Enterprise Liaison Officer (DBELO). The DBELO is the primary person responsible for implementing all aspects of this Program and will work closely with other departments and consultants of the AUTHORITY, including legal, procurement, insurance, marine engineering, planning and development and others who are responsible for making decisions relative to the AUTHORITY's construction, procurement and professional service contracts. The Administrator will assist relevant managers and staff participating in a review committee for the evaluation of submittals. The Administrator's specific duties and responsibilities are attached as Exhibit A and incorporated herein.

B. Duties of Diversity Program for Contracts Reconsideration Official (Section 26.53 and 26.87)

The Executive Director, or the Executive Director's designee, will serve as the Diversity Program for Contracts Reconsideration Official ("Reconsideration Official"). The Reconsideration Official will not have played any role in the original good faith efforts or eligibility determination. The Administrator may attend all Reconsideration Official meetings and furnish background information to the Reconsideration Official. The Reconsideration Official will preside over hearings that may be held pursuant to this Program, including administrative reconsideration of the Administrator's determination of a bidder's compliance with good faith efforts requirements or other Diversity Program for Contracts requirements in accordance with 49 CFR §26.53(d) and 26.87(e) respectively.

C. Regional Outreach (Section 26.51)

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

D. California Unified Certification Program (Section 26.81)

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

IV. ADMINISTRATIVE REQUIREMENTS

A. DBE Financial Institutions (Section 26.27)

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

The Administrator has researched the website for The Federal Reserve Board at www.federalreserve.gov/releases/mob/ to identify minority-owned banks derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 through 034) and from other information on the Board's National Information Center database. The Administrator will continue to use this source to continue to solicit minority-owned banks to participate in the AUTHORITY's DBE Program.

To date, the Administrator has identified the following minority-owned financial institutions that offer services in the San Francisco Bay Area (as of March 31, 2016):

- Bank of Guam
- Bank of the Orient
- BBCN Bank
- California Pacific Bank
- Cathay Bank
- CTBC Bank Corp USA

East West Bank
First Commercial Bank
Gateway Bank
Metropolitan Bank

Mission National Bank
Preferred Bank
State Bank of India

Information on the availability of these institutions can be obtained from the Administrator.

Together with the AUTHORITY's Manager, Finance and Grants, the Administrator shall explore the full extent of services offered by banks and other financial institutions that qualify as DBEs in the San Francisco Bay Area and determine areas in which the AUTHORITY may reasonably utilize their services. The AUTHORITY shall also encourage its prime contractors to use the services of DBE financial institutions.

B. DBE Database (Section 26.31)

The DBE Database is a consolidated and automated directory that identifies firms that have been certified as DBEs by the CUCP. The DBE Database is jointly maintained and updated by the CUCP certifying member agencies in coordination with the California Department of Transportation (Caltrans), and the CUCP DBE Database Manager. The DBE Database is available at Caltrans' website on the Internet, <https://dot.ca.gov/programs/civil-rights/dbe-search>, and can be made available to contractors and to the public upon request. The AUTHORITY will use the DBE Database as a primary resource in developing overall goals and contract-specific goals, and conducting outreach and other activities to promote DBE participation in U.S. DOT contracts.

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

C. Bidders List (Section 26.11)

The Administrator has created and is maintaining a bidders list consisting of all firms bidding on prime contracts and bidding or quoting on subcontracts on U.S. DOT-assisted projects. The AUTHORITY will require all prime contractors bidding or proposing on U.S. DOT-assisted contracts to submit the following information about the prime contractor and all subcontractors who provide a bid, proposal or quote to the

prime contractor: the firm's name, address, firm's status as a DBE or non-DBE, number of years in business, type of work, and annual gross receipts of the firm.

This information must be received by the AUTHORITY before a recommendation is made to the Board of Directors for award of contract. If the information is not received within the time specified, the bidder/proposer will be deemed non-responsive.

Data gathering will be conducted by requiring firms bidding on contracts to submit a form entitled, Prime Contractor and Subcontractor/Subconsultant/Supplier Report. The Administrator will maintain the confidentiality of any proprietary information in accordance with applicable Federal, State and local law. This information will be requested of all bidders as further described in Section VIII.

D. Over-Concentration (Section 26.33)

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

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

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

The AUTHORITY participates extensively in maritime and transit industry associations (Passenger Vessel Association, Interferry, America Public Transit Association, California Transit Association), and advertises contractor opportunities with the AUTHORITY through those venues. Through those associations, the AUTHORITY purchasing and project management staff will be available for and communicate with representatives of small businesses to become acquainted with the owners and to identify qualified businesses that may furnish services and products. AUTHORITY staff will provide information on how to do business with the AUTHORITY, technical assistance on specified contracts, and other topics of interest to small business concerns.

F. Dissemination of Policy Statement (Section 26.23)

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

1. Through interoffice mail to Managers, and buying staff;
2. Through regular mail to DBE and Non-DBE firms that are currently performing work on U.D. DOT-assisted contracts;
3. Through regular mail to DBE and non-DBE firms that have recently been awarded U.S. DOT-assisted contracts; and
4. Through the AUTHORITY's website and upon request by the interested public, including the business community.

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

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

The Administrator shall monitor and track the actual DBE participation through contractor and subcontractor reports of payments. The Administrator will maintain a running tally of payments actually made to DBE firms and will require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments, including details of each payment. The AUTHORITY will monitor actual DBE participation and will include a written certification that the AUTHORITY has reviewed contracting records and monitored work sites in California for this purpose. Monitoring may be conducted in conjunction with monitoring of contract performance for other purposes (close out revisions for a contract).

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

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

The Administrator will continue to provide data about the AUTHORITY's DBE Program and the reports regarding DBE participation and annual overall goals required by the Regulations to FTA and Caltrans on behalf of FHWA, as required.

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

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

V. ACHIEVING GOALS AND COUNTING DBE PARTICIPATION (Section 26.45)

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

The AUTHORITY's overall goal and/or project goal represents the amount of ready, willing and able DBEs that are available to participate in contracting opportunities and is reflective of the amount of DBE participation the AUTHORITY would expect absent the effects of discrimination. The AUTHORITY intends to meet its goal to the maximum extent feasible through the race-neutral measures described in Section V.D. Where race-neutral measures are inadequate to meet the overall goal or project goal, the AUTHORITY may use race-conscious measures for particular contracts with subcontracting opportunities.

A. Methodology For Setting Overall Goals or Project Goals (Section 26.45)

1. Projecting U.S. DOT-Assisted Contract Expenditures. In consultation with the appropriate AUTHORITY managers and staff responsible for contracting activities, the Administrator 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 goal period or project goal. Consistent with the Regulations, the analysis for overall goals will exclude projected contract expenditures for vessel construction projects.

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

a. Analyzing Available Businesses in the AUTHORITY's Local Market Area. The Administrator will conduct a thorough analysis of its local market area which is determined by the area in which the substantial majority of the contractors and subcontractors with which the AUTHORITY does business are located in the area in which the AUTHORITY spends the substantial majority of its federal contracting dollars. This analysis will include a description of geographical boundaries of its local market area, the NAICS codes for the types of work to be contracted, and any other indicators

that the AUTHORITY determines to be relevant in defining its local market area for the goal period or project goal. The Administrator will then determine the number of all firms in the AUTHORITY's local market area that are available to participate in the AUTHORITY's projected contracts. The Administrator will consider a variety of sources including, but not limited to, the U.S. Census Bureau's County Business Patterns Database, the AUTHORITY's Bidders List, and relevant disparity studies.

b. Analyzing Available DBEs in the AUTHORITY's Local Market Area. The Administrator will conduct a similar analysis to determine the total DBEs that are available to participate as contractors, subcontractors, consultants, subconsultants, manufacturers, and suppliers in the projected contracts for the goal period or project goal. This analysis will include a description of the available DBEs relative to the geographical boundaries of its local market area, the NAICS codes for the types of work to be contracted, and any other factors as described in Section V.A.2.a. The AUTHORITY will consider a variety of sources including, but not limited to, the CUCP DBE Database, its Bidders List, and any relevant disparity studies.

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

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

4. Projection of Percentage of Overall Goal or Project Goal to Be Achieved Through Race-Neutral and Race-Conscious Measures. The AUTHORITY proposes to meet the maximum feasible portion of the overall goal or project goal through race-neutral methods. If the projected portion of the race-neutral goal is less than the overall or project goal, the remaining portion may be achieved by using race-conscious methods for particular projects that have subcontracting opportunities. If there is a need to use race conscious methods the Administrator shall monitor the progress toward achieving the annual overall or project goal and increase or reduce the use of race conscious methods in accordance with 49 CFR § 26.51(f).

B. Publishing and Adopting the Overall Goals or Project Goals (Section 26.45(g))

1. Consultation with Various Groups, Organizations, and Officials. The AUTHORITY will hold one or more public participation sessions to obtain input in

the goal-setting process, specifically on the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and efforts to establish a level playing field for the participation of DBEs. Members from the public that will be invited to attend the public participation sessions will include, but not be limited to, minority, women and general contractors groups, community organizations and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs.

2. Goal Analysis Report. Upon completion of the analysis described in Section V.A. and after consultation with various groups, organizations and other officials, unless otherwise directed, the Administrator will prepare a Goal Analysis Report for DBE participation in FTA-assisted contracts for the three year triennial period, or for the project goal. Each report shall document the analysis and methodology in arriving at the proposed goal and shall include a projection of the portion of the goal to be achieved through race-neutral and race-conscious measures.

3. Publication of the Proposed Overall DBE Goal or Project Goal. Pursuant to 49 CFR § 26.45(g), AUTHORITY will publish a notice of the proposed overall or project goal on its official Internet Web site before submission to the operating administration.

4. Adoption of the Overall DBE Goal. Following review of the Goal Analysis Report, the Board of Directors shall adopt an overall DBE goal for DBE participation which shall include a projection of portions of that goal that can be achieved through race neutral and race conscious measures. It will also consider authorization of the submission of the Goal Analysis Report to FTA for review by August 1, or by a different submission date established by the concerned operating administration.

C. Transit Vehicle Manufacturers Certification (26.49)

The AUTHORITY shall require transit vehicle manufacturers (TVM) to certify that they have established an overall DBE goal that has been approved or not disapproved by FTA as a condition to bid or propose on any applicable AUTHORITY contract. The AUTHORITY will notify FTA of a contract award to a TVM within 30 days of making such award, in accordance with 49 CFR 26.49(a)(4). Expenditures for FTA-assisted transit vehicle procurements are not included in the funding base to which the overall goal for other FTA-assisted contract expenditures applies.

If TVMs are not available for a transit vehicle procurement (such as for ferry purchases), the AUTHORITY will request authorization from FTA to develop a project-specific goal for such contracts in accordance with 49 CFR 26.49(f) and 49 CFR 26.45(e). The AUTHORITY will notify FTA of a contract award to a non-TVM for a transit vehicle procurement within 30 days of making such award.

If non-transit vehicles are purchased, the AUTHORITY will include expenditures for

such contracts in the AUTHORITY's triennial DBE goal or in a project-specific goal.

D. Achieving the Annual Overall Goal or Project Goal (Section 26.51)

The AUTHORITY shall achieve the overall goal and/or project goal for DBE participation through a combination of race-neutral and gender-neutral measures and race-conscious measures for particular contracts with subcontracting opportunities.

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

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

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

c. Assisting in overcoming limitations in bonding and financing;

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

e. Providing outreach and communication programs on contract procedures and contract opportunities to ensure the inclusion of DBEs which includes facilitating small business events that may be coordinated with other U.S. DOT grantees, federal agencies, or local organizations. These events will include procedures explaining how to do business with the AUTHORITY and explore best business practices, which may be used to market small businesses at the AUTHORITY;

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

g. Providing business development assistance;

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

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

2. Race Conscious Measures. The Board of Directors shall establish contract-specific DBE participation goals on particular prime contracts with subcontracting opportunities to the extent that the AUTHORITY cannot achieve its overall goal with race-neutral methods. Where a contract-specific DBE goal has been established, the bidder or proposer must meet the contract-specific goal or demonstrate that it made sufficient good faith efforts to do so. A bidder shall be ineligible for contract award if it does not meet the goal or demonstrate sufficient good faith efforts.

The contract-specific goal shall be established by the Board of Directors based upon a recommendation from the Executive Director substantiated by information furnished by the Administrator. The contract-specific goal shall apply to the percentage participation of DBEs in the total contract work and be set forth in the Special Provisions of the contract specifications. The AUTHORITY is not required to establish a contract-specific goal for every prime contract with subcontracting opportunities. For each contract involving subcontracting opportunities, the factors outlined below will be considered to determine whether a contract-specific goal should be established for the particular contract and, if so, what the percentage goal shall be:

a The projected portion of the AUTHORITY's overall goal that will be met by establishing contract-specific goals;

b The progress toward achieving the AUTHORITY's overall goal;

c The full range of activities in the proposed contract;

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

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

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

g Any other relevant criteria.

3. Awarding Contracts with Contract-Specific Goals. The AUTHORITY will award contracts in accordance with its Administrative Code and all applicable laws. For

purposes of this section, "successful bidder/proposer" means the lowest responsive and responsible bidder for contracts awarded pursuant to the lowest responsive and responsible bidder standard, or a proposer that submits the highest ranked proposal for contracts awarded pursuant to a Request for Proposals procedure.

A successful bidder/proposer that fails to demonstrate it achieved the contract-specific DBE participation goal and fails to demonstrate that it made sufficient good faith efforts to do so shall not be deemed "responsive" and, therefore, shall be ineligible for award of the contract. However, the AUTHORITY reserves the right to treat compliance with the good faith efforts requirements as a matter of "responsibility" for certain contracts in accordance with 49 CFR § 26.53(b)(3) and the applicable solicitation documents.

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

b. Evaluation of DBE Certification Status: The AUTHORITY shall require that any DBEs listed by bidders or proposers for participation in the contract be certified DBEs as of the bid/proposal due date. The Administrator shall review the bidder's or proposer's DBE forms to confirm each DBE firm's certification status. The AUTHORITY will accept current certifications by any recipients of U.S. DOT funds acceptable to the AUTHORITY in accordance with Section VII of this Diversity Program for Contracts and 49 CFR Part 26, Subpart D and Appendix E.

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

d. Determination of Good Faith Efforts: If the amount of DBE participation does not meet the contract-specific goal, the Administrator shall review the good faith efforts report submitted by the successful bidder/proposer. The Administrator shall determine whether the successful bidder/proposer has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the contract-specific goal in accordance with 49 CFR Part 26, Appendix

A.

e. Right to Administrative Reconsideration: In the event that the Administrator determines the successful bidder/proposer is not responsive to the solicitation (or responsible, if permitted in the solicitation documents) because it has not met the contract-specific goal or demonstrated good faith efforts to meet the contract-specific goal, the Administrator will notify the successful bidder/proposer in writing. The notification shall include the reasons for the determination and inform the successful bidder/proposer of its right to request administrative reconsideration of the determination. The request for administrative reconsideration must be in writing and sent to the designated staff person within the time period specified in the notice of determination.

As part of the administrative reconsideration, the successful bidder/proposer may submit written documentation for the Reconsideration Official's consideration and may appear before the Reconsideration Official. The Reconsideration Official will only consider documentation of good faith efforts made prior to the bid/proposal due date (or within 5 days after the bid/proposal due date, if compliance with good faith efforts requirements is treated as a matter of "responsibility" in the solicitation documents). Any written documentation the successful bidder/proposer wishes the Reconsideration Official to consider must be submitted to the designated staff person within the timeframe specified in the notice of administrative reconsideration.

The Reconsideration Official will convene an administrative reconsideration proceeding prior to the time that a recommendation for award of contract is presented to the Board of Directors or the Executive Director, depending on the size of the contract. The Reconsideration Official will consider the good faith efforts documentation submitted with the successful bid/proposal (or within 5 days after the bid/proposal due date, if compliance with good faith efforts requirements is treated as a matter of "responsibility" in the solicitation documents), the Administrator's original good faith efforts determination, and any other written materials the bidder/proposer has submitted to the Reconsideration Official, in accordance with this section, to determine whether the successful bidder/proposer has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the contract-specific goal in accordance with 49 CFR Part 26, Appendix A.

The Reconsideration Official shall provide the successful bidder/proposer with a written decision on reconsideration, explaining the basis for its determination. In the event that the Reconsideration Official finds that the successful bidder/proposer has not met the contract-specific goal or demonstrated good faith efforts to meet the contract-specific goal, the Administrator will deem said bidder/proposer not responsive (or if permitted in the solicitation documents, not responsible) and evaluate the bidder submitting the next lowest bid, or the next highest ranking proposer.

f. Recommendation for Award: Following the determination of the successful bidder/proposer, the Administrator shall prepare a report on the successful bidder/proposer's compliance with the DBE requirements for review by the

Executive Director and for presentation to the Board of Directors, if applicable, at the time the contract award is considered. If the Board or the Executive Director disagrees with the recommendation, the Board or the Executive Director shall reject all bids or refer the matter back to staff for further evaluation and recommendation. The decision of the Board of Directors or the Executive Director on the award of contract, if such a decision is made, shall be final and binding on all parties, subject to compliance with the AUTHORITY's bid protest procedures.

E. Counting and Tracking DBE Participation (Section 26.55)

The Administrator will count DBE participation in accordance with 49 CFR §26.55. Only the work actually performed by a DBE will be counted towards the DBE goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted. The DBE firm must perform a commercially useful function, as defined in 49 CFR §26.55(c).

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

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

DBE achievement will not be counted toward DBE goals until the DBE has been paid. If contract-specific goals are set, the Administrator will track the participation of DBEs in contract-specific goal contracts separately from the participation of DBEs that is considered race-neutral. Additionally, the Administrator will not count that portion of a DBE's participation that is achieved after the certification of the DBE has been removed during the performance of a contract.

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

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

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

F. Failing to Meet Overall Goals (Section 26.47)

If the awards and commitments shown on the AUTHORITY's Uniform Report of Awards or Commitments and Payments at the end of any federal fiscal year are less than the overall goal applicable to that federal fiscal year, the Administrator will analyze in detail the reasons for the difference between the overall goal and awards and commitments. Specific steps and milestones to correct the problems identified and to meet overall goals for future fiscal years will be established. Analysis and corrective actions will be retained for three years and made available to FTA on request for their review.

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

Each financial assistance agreement the AUTHORITY signs with FTA or Caltrans on behalf of FHWA will include a nondiscrimination assurance from the AUTHORITY. U.S. DOT-assisted contracts that the AUTHORITY lets will include, as appropriate, the model contract provisions that are set forth in the current version of the AUTHORITY's Federal Solicitation and Contract Templates, available from the Administrator. The Administrator shall have discretion to modify the provisions for particular contracts as needed, in consultation with Legal Counsel. These required contract provisions consist of:

- ◆ The AUTHORITY's DBE Program policy.
- ◆ The following nondiscrimination assurance from the contractor (and each subcontract the prime contractor signs with a subcontractor): "The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate."
- ◆ A statement that encourages prime contractors to use financial institutions owned and controlled by socially and economically disadvantaged individuals in the community.
- ◆ A clause that requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the AUTHORITY makes to the prime contractor. This clause also requires the prompt return of retainage payments from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

- ◆ U.S. DOT requires recipients to use one of the following methods to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor:
 1. Decline to hold retainage from prime contractors and prohibit prime contractors and subcontractors from holding retainage from subcontractors.
 2. Decline to hold retainage from prime contractors and include a contract clause obligating the prime contractor and subcontractors to make prompt and full payment of any retainage kept by the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.
 3. Hold retainage from the prime contractors and provide for prompt and regular incremental acceptances of portions of the contract, pay retainage to prime contractors based on the acceptances, and include a contract clause obligating the prime contractor and subcontractors to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after payment to the prime contractor.

The AUTHORITY will use Method No. 3 above to comply with the Prompt Payment requirement.

- ◆ The website address for the DBE directory identifying all firms eligible to participate as DBEs in the AUTHORITY's program.
- ◆ The DBE participation goal (where applicable).
- ◆ A section that provides the DBE certification standards.
- ◆ A section that provides how DBE participation is counted toward goal.
- ◆ A section on reporting requirements, including a provision ensuring that DBE participation is credited toward overall or contract goals only when payments are actually made to DBE firms.
- ◆ A section on administrative remedies to ensure compliance with the DBE program.

VII. CERTIFICATION STANDARDS (Subpart D and Appendix E)

The AUTHORITY is a participant of the CUCP, which follows U.S. DOT directives and guidance concerning certification matters. The CUCP MOA provides U.S. DOT recipients the option to be either a certifying member or a non-certifying member. The AUTHORITY has elected to be a non-certifying member. The CUCP makes all DBE certification decisions on behalf of U.S. DOT recipients in the state. The AUTHORITY relies upon the CUCP for the certification of DBE firms and ensures that only firms

certified as eligible DBEs participate in the Program. Should the AUTHORITY decide to change its non-certifying status and elect to become a certifying member, the AUTHORITY will apply the standards of Subpart D and Appendix E of the Regulations.

VIII. MONITORING AND RECORDKEEPING (Sections 26.11 and 26.37)

A. Bidders List (Section 26.11)

The AUTHORITY will require all prime contractors bidding on U.S. DOT-assisted contracts to return, at the time bids/proposals are due (options apply as to the time this information is required so long as it is prior to the award of the contract), the following information about the prime contractor and all subcontractors who provided a bid:

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

The AUTHORITY will use this information to maintain and update its Bidders List.

B. Monitoring Payments to DBEs (Section 26.37)

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

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

The AUTHORITY will maintain a running tally of payments actually made to DBE firms and may require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs.

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

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

The AUTHORITY will continue to report DBE participation and overall goal setting methods to FTA and Caltrans on behalf of FHWA as directed. Statistical data will be maintained as prescribed on a semi-annual basis to provide reports to U.S. DOT Diversity Program for Contracts

administrations reflecting the DBE participation on the AUTHORITY's federally-assisted procurement activities.

D. Contract Remedies (Section 26.37)

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

E. Confidentiality of Information on Complainants (Section 26.109)

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

F. Cooperation (Section 26.109)

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

G. Intimidation and Retaliation (Section 26.109)

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

All participants in the AUTHORITY's DBE Program (including, but not limited to, all

proposers or bidders subject to this Program, DBE firms, complainants and appellants, and contractors and subcontractors using DBE firms to meet an overall, project or contract goal) must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by the Regulations or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Regulations. A violation of this provision constitutes noncompliance with 49 CFR section 26.109 and will be grounds for appropriate enforcement action against the party involved, as determined by the AUTHORITY and/or U.S. DOT.

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

The AUTHORITY's activities, public participation and outreach efforts, are directed at assisting the AUTHORITY to solicit public input to set DBE participation goals and to widen public awareness of the AUTHORITY's Diversity Program for Contracts to meet AUTHORITY DBE goals.

In establishing DBE goals, the AUTHORITY will provide for public participation. This will include:

- Prior to finalizing the Goals Analysis Report, the AUTHORITY will consult with U.S. DOT agencies, other U.S. DOT grantees, minority, women's and general contractor groups, community organizations, or other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the AUTHORITY's efforts to establish a level playing field for the participation of DBEs.
- The AUTHORITY will publish a notice on its official internet website announcing its proposed overall goal or project goal prior to submission to the operating administration.
- In conjunction with the AUTHORITY's activities to meet its DBE goals, the AUTHORITY will implement various public participation and outreach activities designed to broaden awareness of the AUTHORITY's Diversity Program for Contracts. The measures described in 49 CFR § 26.51 focusing on race-neutral means will be actively pursued, and the AUTHORITY will also encourage its contractors to make similar outreach efforts to include DBE participation in subcontracting opportunities. In conjunction with regional outreach committee and CUCP, the AUTHORITY will continue to participate and help organize and offer training programs for meeting DBE eligibility requirements, familiarize potential contractors with AUTHORITY procurement procedures and requirements, and otherwise develop effective programs to further the inclusion of DBEs in the AUTHORITY's contracting activities.

Exhibit A

DBE Program Administrator's Duties and Responsibilities (Section 26.25)

1. Analyzing and assessing the available resources and evidence for the establishment, achievement, and further improvement of DBE goals for U.S. DOT-assisted contracts;
2. Developing, monitoring and evaluating the Diversity Program for Contracts, and preparing supplemental written procedures and guidelines to implement the Program;
3. If the AUTHORITY is a certifying member of the CUCP, maintaining and updating the DBE Database in accordance with 49 CFR § 26.31;
4. Maintaining and updating the Bidders List in accordance with 49 CFR §26.11;
5. Conducting race-neutral and gender-neutral measures to facilitate the participation of small business concerns, including DBEs, through outreach and other community programs, training and business development programs, restructuring contracting opportunities, informing and assisting with preparing bids, simplifying bonding, surety and insurance requirements or other race-neutral means;
6. Participating in the contract bid and award process, including recommending specific contract goals where appropriate, reviewing contract specifications, attending pre-bid conferences and evaluating bids for contractor responsiveness, responsibility and good faith efforts;
7. Monitoring specific contract performance, actual DBE participation, contract payments, and purchase requisitions;
8. Monitoring overall DBE participation, adjusting overall goals and means of achievement, assessing areas of over-concentration of DBE participation, and reporting to the Executive Director, the AUTHORITY Board of Directors, FTA and Caltrans on behalf of FHWA, as needed;
9. If the AUTHORITY is a certifying member of the CUCP, determining all certification actions including initial certifications, recertifications, denials and removals;
10. Participating in the statewide Unified Certification Program in accordance with 49 CFR § 26.81, and CUCP MOA;
11. Assisting the AUTHORITY's Managers and Staff in the review committee for the evaluation of submittals;
12. Participating in regional outreach activities;
13. Participating in other transit organizations on common issues pertaining to diversity programs for contracts;
14. Establishing, implementing, and monitoring a Small Business Enterprise program;

15. Investigating DBE protests; and
16. Maintaining all appropriate records and documentation of the Program.

Exhibit B

Organization Chart

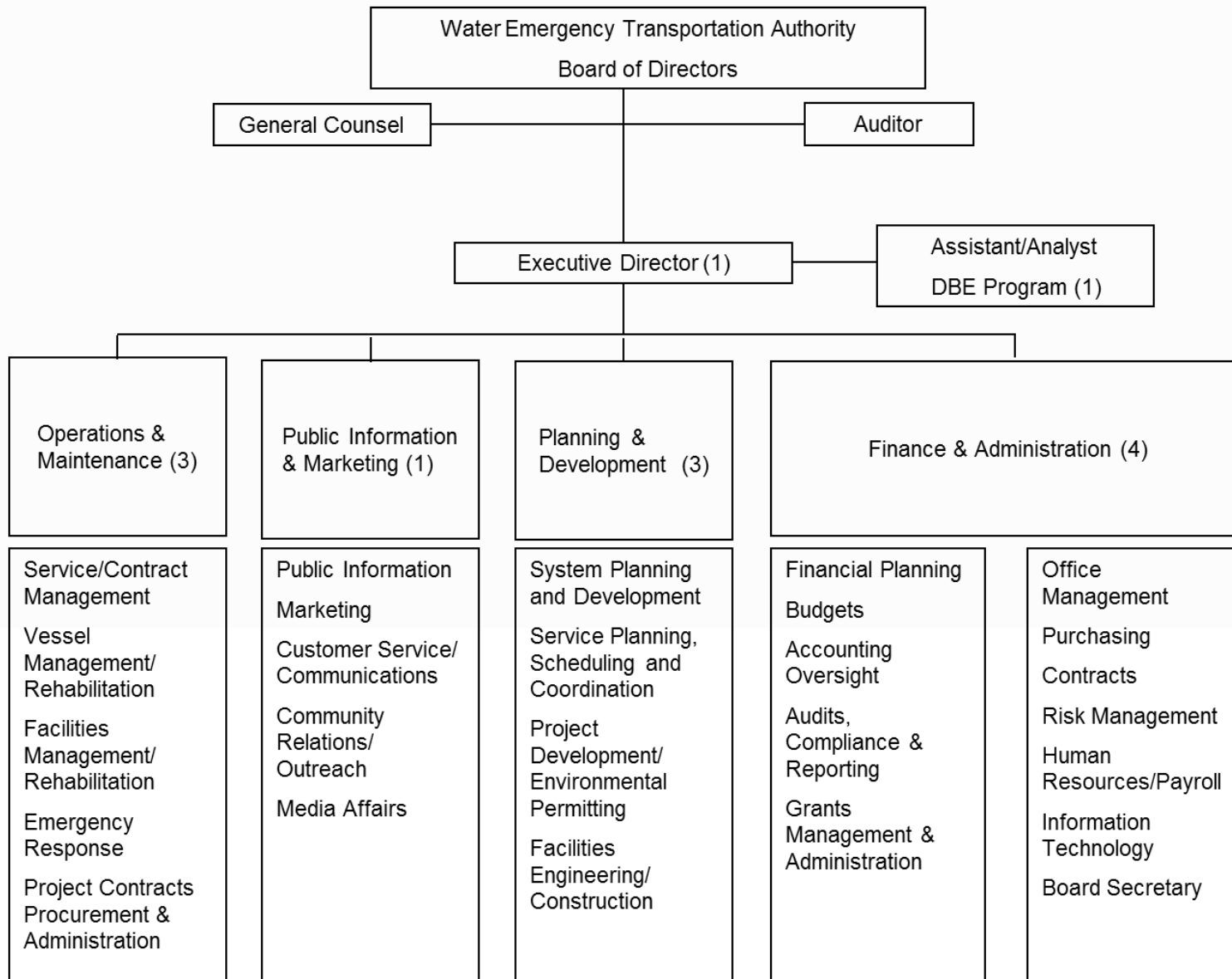


EXHIBIT C

Small Business Enterprise Element (Section 26.39)

The AUTHORITY's Board of Directors adopted a Small Business Enterprise element (SBE Program) on February 16, 2012 as one of the AUTHORITY's race-neutral methods of achieving small business participation, including disadvantaged business participation, on particular contracts with subcontracting opportunities. This SBE Program applies to all federally funded AUTHORITY contracts where race-neutral and gender-neutral methods are employed. The AUTHORITY will take all reasonable steps to eliminate obstacles for SBEs to participate as prime contractors or subcontractors in the AUTHORITY's procurement activities.

A. Definition of Small Business Enterprise

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

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

2. Even if a firm meets the above requirement, the firm's (including affiliates') average annual gross receipts over the previous three years cannot exceed a maximum cap of \$23.98 million (or as adjusted for inflation by the Secretary of U.S. DOT). SBA size standards vary by industry, and for certain industries may be higher than the \$23.98 million cap. For example, the SBA size standard for a general construction contractor is \$36.5 million. If a general construction contractor's average annual gross receipts over the previous three years is \$25 million, while it is below \$36.5 million and meets the SBA size standard, it would be ineligible to participate as a small business for AUTHORITY purposes as it exceeds \$23.98 million.

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

B. Acceptable Comparable Small Business Enterprise Certifications

The AUTHORITY will accept the small business enterprise certifications performed by other agencies, provided that the size standards described in Section A1 and A1 above are met. If a firm is certified in one or more of the following programs, and meets AUTHORITY size standards, the firm is automatically deemed a small business for AUTHORITY purposes. The term "SBE" will be used collectively for qualified SBEs, WBEs, MBES and other approved certifications. As indicated below, the AUTHORITY may require an affidavit of size for each SBE prime contractor or subcontractor. Certifications from self-certification programs are not acceptable. The

AUTHORITY may request and review financial information provided by SBE firms if necessary to confirm eligibility. Firms must be certified as of the time of bid/proposal submittal.

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

2. **State Minority Business Enterprise (SMBE) State Women Business Enterprise (SWBE) certification by the State of California or by any other state** provided that their certification complies with Section A1 and A1 above. In addition to copies of SMBE/SWBE certifications, bidders certified out-of-state must submit an affidavit of size for each SMBE/SWBE prime contractor or SMBE/SWBE subcontractor at the time of bid submittal.

3. **Small Business (SB) certification by the California Department of General Services (DGS)** provided that their certification complies with Section A1 and A1 above. In addition to copies of SB certifications, bidders must submit an affidavit of size for each SB prime contractor or subcontractor at the time of bid submittal.

4. **Microbusiness (MB) certification by the California Department of General Services for ALL industries.**

5. **SBA 8(a) by the Small Business Administration** provided that their certification complies with Section A1 and A1 above. In addition to copies of SBA 8(a) certifications, bidders must submit an affidavit of size for each SBA 8(a) prime contractor or SBA 8(a) subcontractor at the time of bid submittal.

6. **SBE/MBE/WBE certification from other state, county, or local government-certifying agency** provided that their certification complies with Section A1 and A1 above. In addition to copies of certifications, bidders must submit an affidavit of size for each certified prime contractor or subcontractor at the time of bid submittal.

C. Race-Neutral SBE Measures

The AUTHORITY will continue its efforts to enhance small business participation through the regional outreach committee and other community programs, training and business development programs, restructuring contracting opportunities, simplifying bonding, surety and insurance requirements or other race-neutral means.

D. Determining and Adopting the Overall SBE Goal

The AUTHORITY will establish an overall SBE goal on a triennial basis for participation by Small Business Enterprises in all federally funded contracts the AUTHORITY expects to award during the triennial goal period. The AUTHORITY will set its overall SBE goal

on the same three-year cycle as the overall DBE goal. The overall SBE goal will be determined based on an analysis of the number and type of federally funded contracting opportunities the AUTHORITY expects to release in the next three year reporting period, the AUTHORITY's history of attracting SBEs, as well as the availability of SBEs in the types of work involved in upcoming opportunities. As part of this analysis staff will consult the California Unified Certification Program (http://www.dot.ca.gov/hq/bep/find_certified.htm) and Department of General Services databases for information on the availability of SBEs for various types of work. The overall SBE goal will be expressed as a percentage of the total amount of U.S. DOT funds the AUTHORITY anticipates expending in the three forthcoming fiscal years.

Following the review of the board report, the Board of Directors shall adopt an overall SBE goal which will subsequently be published in solicitations for federally funded contracts (that are not excluded from the AUTHORITY's SBE Program) and will also be published on the AUTHORITY's website.

The AUTHORITY may choose to exclude certain eligible contracts from the AUTHORITY's SBE Program after consideration of the following factors:

1. The full range of activities in the proposed contract
2. The availability of SBEs as prime contractors or subcontractors in the types of work involved in the performance of the proposed contract;
3. The unique conditions of the project that might affect the ability of the prime contractor to coordinate, utilize, or incorporate subcontractors or suppliers into the project. (Projects consisting of only one or two sub-trades may not be appropriate for inclusion in the AUTHORITY's SBE program.)
4. The effect that SBE participation may have on timing for the completion of the contract.
5. Any other relevant criteria.

E. Achieving The Overall SBE Goal

The AUTHORITY will seek to achieve the overall SBE goal for each year in the three-year reporting period. Although the AUTHORITY will not set contract specific goals, submitters are strongly encouraged to obtain SBE participation, including DBEs, in their bid or proposal. The bidder or proposer is required to provide a commitment of SBE achievement on a form provided by the AUTHORITY in their submittal notifying the AUTHORITY of the bidder's or proposer's SBE goal commitment for that contract. The Administrator shall review the SBE goal commitment and will confirm each SBE firm's certification status. If a firm receives SBE status during the completion of the contract, the AUTHORITY may include the firms' participation in its SBE program achievement. Acceptable comparable Small Business Enterprise certifications are listed in Section B

of this document. Certain certifications require completion of a SBE Affidavit Form in a form designated by the AUTHORITY, and submitted at the time of bid/proposals are due.

Submittals that fail to document the solicitation of SBE participation may not be considered. The Administrator shall determine whether the bidder/proposer has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to attain SBE participation. All bidders/proposers must submit a description of the process that was followed to select the subcontractors and suppliers proposed to be included in this work and the steps taken to obtain small business participation. The AUTHORITY will consider SBE utilization, and the AUTHORITY's ability to meet its overall SBE goal in the evaluation of submittals of federally funded contracts included in the AUTHORITY's SBE Program.

Work that a SBE subcontracts to a non-SBE firm does not count toward the overall SBE achievement. Expenditures may only be counted if the SBE is performing a commercially useful function. Only the work actually performed by a SBE will be counted toward the AUTHORITY's overall SBE achievement. The cost of supplies and materials obtained by the SBE or equipment leased (except from the prime contractor or its affiliate) may also be counted. The Administrator will not count that portion of a SBE's participation that is achieved after the certification of the SBE had been removed during the performance of a contract.

If the amount of SBE participation at the end of any federal fiscal year is less than the overall SBE goal, the Administrator will analyze the reasons for the difference between the goal and actual participation in contract awards and commitments and take reasonable steps to increase SBE participation.

PRIME CONSULTANT AND SUBCONTRACTOR/SUBCONSULTANT/SUPPLIER REPORT

Section A: Prime Consultant/Contractor Information:

1. RFQ # and Name: _____
2. Offeror's Name: _____
3. Address: _____
4. Phone: _____ Email: _____
5. Owner or Contact Person: _____
6. Title: _____
7. Prime Consultant NAICS Codes: _____

8. Is your firm a Small Business Enterprise (SBE)?: Yes _____ No _____
9. If your firm is a DBE or SBE please list certification type or No. and Certifying Agency: _____
10. If your firm is an SBE, please read and fill out, if applicable, the SBE Affidavit of Size form and attach a copy of your firm's certification.
11. Age of your firm: _____
12. Annual Gross Receipts (please check one): Below \$500K: _____ \$500K-\$1M: _____ \$1M-\$4M: _____ \$6M-\$13M: _____ Above \$13M: _____

Section B: Subcontractor/Subconsultant/Suppliers Information

You must include the DBE/SBE certification number in column 7 for each DBE/SBE subcontractor listed, and if applicable fill out SBE Affidavit of Size form included in proposal document. Attach "Intent to Perform" letter signed by each subcontractor who will perform work should this contract be awarded to the Prime listed above. Offerors MUST provide the following information on ALL subcontractors/subconsultants/ suppliers that provided Offeror a bid, quote, or proposal for work, services or supplies associated with this RFQ pursuant to Authority's sub-proposal reporting requirements. **Include all sub-proposal acceptance(s) AND rejection(s).** Please carefully read all instructions on page 3.

			DBE/SBE PARTICIPATION						
1. Subcontractor/Subconsultant/Supplier	2. Annual Gross Receipts (check one)	3. Contractor's License No. (if applicable)	4. Certified DBE (Yes/No)	5. Certified SBE (Yes/No)	6. DBE/SBE Certifying Agency	7. DBE Certification No. &/or SBE Type	8. Describe Work or Type of Materials/Supplies and list NAICS Codes	9. Proposal Accepted (Yes/No)	10. Percentage of Contract Participation
Name:	Below \$500K								
Address:	\$500K-\$1M								
	\$1M-\$4M								
Contact Person:	\$4M-\$6M						NAICS Codes:		
Phone:	\$6M-\$13M								
Email:	Above \$13M								
Age of Firm:									
Name:	Below \$500K								
Address:	\$500K-\$1M								
	\$1M-\$4M								
Contact Person:	\$4M-\$6M						NAICS Codes:		
Phone:	\$6M-\$13M								
Email:	Above \$13M								
Age of Firm:									
Name:	Below \$500K								
Address:	\$500K-\$1M								
	\$1M-\$4M								
Contact Person:	\$4M-\$6M						NAICS Codes:		
Phone:	\$6M-\$13M								
Email:	Above \$13M								
Age of Firm:									

			DBE/SBE PARTICIPATION						
1. Subcontractor/Subconsultant/Supplier	2. Annual Gross Receipts (check one)	3. Contractor's License No. (if applicable)	4. Certified DBE (Yes/No)	5. Certified SBE (Yes/No)	6. DBE/SBE Certifying Agency	7. DBE Certification No. & Type / SBE Type	8. Describe Work or Type of Materials/Supplies and list NAICS Codes	9. Proposal Accepted (Yes/No)	10. Percentage of Contract Participation
Name:	Below \$500K								
Address:	\$500K-\$1M								
	\$1M-\$4M								
Contact Person:	\$4M-\$6M						NAICS Codes:		
Phone:	\$6M-\$13M								
Email:	Above \$13M								
Age of Firm:									
Name:	Below \$500K								
Address:	\$500K-\$1M								
	\$1M-\$4M								
Contact Person:	\$4M-\$6M						NAICS Codes:		
Phone:	\$6M-\$13M								
Email:	Above \$13M								
Age of Firm:									
Name:	Below \$500K								
Address:	\$500K-\$1M								
	\$1M-\$4M								
Contact Person:	\$4M-\$6M						NAICS Codes:		
Phone:	\$6M-\$13M								
Email:	Above \$13M								
Age of Firm:									

Attach additional sheets as necessary.

11. DBE Participation: _____ %

12. SBE Participation: _____ %

The undersigned will enter into a formal agreement with the subcontractor(s), subconsultant(s) and/or supplier(s) whose sub-proposal was accepted conditioned upon execution of a contract with the San Francisco Bay Area Water Emergency Transportation Authority. I certify under penalty of perjury that the information included on this form is accurate and true.

Signature: _____

Name (Print): _____

Title: _____

Date: _____

How to fill out Prime Consultant and Subcontractor/Subconsultant/Supplier Report Form

Section A: Prime Consultant/Contractor Information:

1. RFQ/RFP # and Name: Insert name of the Authority Request for Proposals/Qualifications (RFP/RFQ) or Invitation for Bids (IFB)
2. Offeror's Name: Insert company name.
3. Address: Insert address of company.
4. Phone & Email: Insert phone number and email address of person responsible for filling out information contained in this form.
5. Owner or Contact Person: Insert contact name for the prime contractor.
6. Title: Insert title of person listed in #5.
7. Prime Consultant/Contractor NAICS Codes: List the North American Industry Classification System Code(s) for work performed by the Prime. Codes can be found at www.census.gov/naics.
8. Is your firm a Small Business Enterprise (SBE)?: Indicate, by checkmark, if your firm is a Small Business Enterprise as defined in the attached description of WETA's SBE Program Eligibility. Please see instructions for Section B #7, below, for SBE Certifications accepted by WETA.
9. If your firm is a DBE or SBE list certification type or No. and Certifying Agency: For DBE firms list the certification number provided by the California Unified Certification Program and the certifying agency. For SBE firms please list the type of certification (eg. SMBE, SWBE, SB, MB, SBA, SBE/MBE/WBE) and the certifying agency. Please see the description of WETA's Small Business Enterprise Program Eligibility on the following pages for SBE Certifications accepted by WETA.
10. If your firm is an SBE, read and fill out, if applicable, the SBE Affidavit of Size form included in this RFQ/RFP and attach a copy of your firm's certification.
11. Age of your firm: Provide the number of years your firm has been in business.
12. Annual Gross Receipts: Indicate, by checkmark, the range of annual gross receipt your firm receives.

Section B: Subcontractor/Subconsultant/Suppliers Information

PLEASE NOTE THE IMPORTANT REQUIREMENTS BELOW:

Offerors **MUST** provide the following information on ALL subcontractors/subconsultants/suppliers that provided Offeror a bid, quote, or proposal for work, services or supplies associated with this RFQ pursuant to Authority's sub-proposal reporting requirements. This information shall be provided for all sub-proposers regardless of tier for DBEs, SBEs, non-DBEs and non-SBEs. **Include all sub-proposal acceptance(s) AND rejection(s).**

Attach "Intent to Perform" letter signed by each subcontractor who will perform work should this contract be awarded to the Prime listed above.

1. Insert the name, address, contact person, phone number, email address and age of firm for each subcontractor, subconsultant, or supplier.
2. Annual Gross Receipts: Indicate, by checkmark, the range of the firm's annual gross receipts.
3. Contractor's License No.: If applicable, insert the contractor's license number.
4. Certified DBE (Yes/No): Indicate if the firm is a certified DBE firm accepted by WETA. WETA accepts DBE participation only from firms currently certified in the California Unified Certification Program

(CUCP), go to www.californiaucp.org for further information. Do not indicate more than one “Yes” for alternative subcontractors/subconsultants for the same work.

5. Certified SBE (Yes/No): Indicate if the firm is a certified SBE accepted by WETA. Please see WETA’s SBE Program Eligibility description on the following pages for more information on certification types accepted and other requirements. Proof SBE certification and, if applicable, SBE Affidavit of Size must be attached to your submittal.
6. DBE/SBE Certifying Agency: If you marked yes as a Certified DBE or SBE, note which agency your certification letter is from—BART, SFMTA, SamTrans etc.
7. DBE Certification No. & Type / SBE Type: If you marked yes as a Certified DBE, you must provide the CUCP Certification Number AND the number corresponding to the type of DBE as follows: 1. African-American, 2. Hispanic, 3. Native American, 4. Asian-Pacific, 5. Asian-Indian, 6. Female-Woman, 7. Other. If you marked yes as a Certified SBE please list the type of certification (eg. SMBE, SWBE, SB, MB, SBA, SBE/MBE/WBE). Please see the description of WETA’s Small Business Enterprise Program Eligibility on the following pages for SBE Certifications accepted by WETA.
8. Describe Work or Type of Materials/Supplies and list NAICS Codes: DBE/SBE participation includes that portion of the work actually performed by a certified DBE/SBE with its own forces. For example, for DBE supplier, count 60% of the costs of materials and supplies. List the North American Industry Classification System Code(s) for the work to be performed by the Subcontractor/Subconsultant/ Supplier. Codes can be found at www.census.gov/naics.
9. Proposal Accepted (Yes/No): Indicate if the subcontractor/subconsultant/supplier’s proposal has been accepted. If yes, please attach “Intent to Perform” letter signed by each subcontractor who will perform work should this contract be awarded to the Prime listed above.
10. Percentage of Contract Participation: Insert the percentage of the prime contract participation for each subcontract. Prime consultant/contractor understands that the percentage of contract participation from DBE or SBE firms listed on this form is a firm commitment and will become a condition of the contract should it be awarded.
11. DBE Participation: Insert the sum of column 10 for each DBE listed.
12. SBE Participation: Insert the sum of column 10 for each SBE listed.

Use additional sheets if necessary. If there are no subcontractors proposed, Section B will remain blank.

SMALL BUSINESS ENTERPRISE AFFIDAVIT OF SIZE

If your business was certified by any of the following, please complete and submit this form with a copy of your certification. This form may be used for Prime Contractors, Subcontractors, Subconsultants, and Suppliers. See WETA Diversity Program for Contracts Exhibit C, section A1, A2, and B for further information.

- SMBE/SWBE Certification by state other than California, provided that your firm's average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$23.98 million.
- SB Certification by the California DGS, provided that your firm's average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$23.98 million.
- SBA 8(a) Certification by the Small Business Administration provided that your firm's average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$23.98 million.
- SBE/MBE/WBE Certification by any California county or local government-certifying agency or out-of-state government-certifying agency, provided that your firm's average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$23.98 million.

I HEREBY DECLARE AND AFFIRM that I am the _____(Title)
and duly authorized representative of _____
(Name of Firm)

whose address is _____

and whose phone number is _____

I HEREBY DECLARE AND AFFIRM that the firm is a Small Business Enterprise (SBE) in accordance with the Water Emergency Transportation Authority (AUTHORITY) standards as defined in its Diversity Program for Contracts. The firm is certified as of the date that the AUTHORITY receives the bid/proposal for:

(RFP/RFQ Name)

and I will provide the certification to document this fact with this enclosure.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING STATEMENTS ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

(Date) (Affiant) (Title)

Description of the Selection Process of Subcontractors/Subconsultants/Suppliers

RFP/RFQ # and Name: _____
Offeror's Name: _____
Address: _____
Phone: _____ Fax: _____
Owner or Contact Person: _____ Title: _____

Provide a narrative description of how the Offeror selected its subcontractors/
subconsultants/suppliers, including the following elements (please attach additional sheets as
necessary):

1. Soliciting small businesses, including DBEs, to participate through all reasonable and available means.

Example: Include attendance at pre-bid meeting, advertisements, written notices and agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using small business concerns.

2. Selecting portions of the work that are economically feasible for small businesses, including DBEs.

Example: List items of work which the Contractor made available to small business concerns, including, where appropriate, any breaking down of the scope of Services (including those items normally performed by the Contractor with its own forces) into economically feasible units to facilitate DBE/SBE participation.

3. Providing adequate information about the Scope of Services in a timely manner to DBEs/SBEs.

Example: List dates of written notices soliciting bids from DBEs/SBEs and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs/SBEs were interested.

4. Negotiating in good faith with DBEs/SBEs.

5. Not rejecting DBEs/SBEs as unqualified without sound business reasons.

Example: Explain reasons for rejecting bids from DBEs/SBEs and accepting proposals from selected firms.

6. Making efforts to assist DBEs/SBEs in obtaining required insurance.

7. Making efforts to assist DBEs/SBEs in obtaining necessary equipment, supplies or materials.

8. Describe any other steps that the Contractor used to select its subcontractors/
subconsultants/suppliers.

The undersigned certifies that the above narrative description is true and accurate.

Signature: _____

Name: _____

Title: _____

Date: _____