Agenda Item No. (3)

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole
Meeting of November 19, 2026

From: Artemisé Davenport, Manager, SBE Compliance Programs
Kellee J. Hopper, Deputy General Manager, Administration and Development
Denis J. Mulligan, General Manager

Subject: **APPROVE REVISED DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PLAN AND AUTHORIZE STAFF TO SUBMIT THE DBE PROGRAM PLAN TO THE FEDERAL TRANSIT ADMINISTRATION**

Recommendation

The Rules, Policy and Industrial Relations Committee recommends that the Board of Directors approve revisions to the Golden Gate Bridge, Highway and Transportation District's (District) Disadvantaged Business Enterprise (DBE) Program Plan and authorize staff to submit the revised DBE Program Plan to the Federal Transit Administration (FTA) for review and approval.

This matter will be presented to the Board of Directors at its November 20, 2026, meeting for appropriate action.

Summary

The District is a recipient of FTA and Federal Highway Administration (FHWA) funds, awarded through grants that support its Bridge and Bus/Ferry transit operations. As a recipient of these funds, the District is required to comply with the U.S. Department of Transportation's (U.S. DOT) DBE Program and to develop its own DBE Program Plan and Small Business Enterprise (SBE) Element. The District's DBE Program Plan and SBE Element are included in the Business Opportunity Program, formerly known as the Diversity Program for Contracts, and collectively referred to as the "DBE Program Plan" for purposes of this report.

The U.S. DOT DBE Program was originally established to create a level-playing field for small businesses owned and controlled by socially and economically disadvantaged individuals seeking to participate in U.S. DOT financial assistance programs. Historically, certain individuals, including minorities and women, were presumed to be socially and economically disadvantaged and eligible for DBE certification. On October 3, 2025, U.S. DOT issued an Interim Final Rule (IFR), effective immediately, that restructured the DBE Program by eliminating race- and sex-based presumptions of social and economic disadvantage, among other modifications. Under the revised certification standards, individuals seeking DBE certification must now demonstrate their social and economic disadvantage through individualized assessments supported by Personal Narratives and Personal Net Worth statements.

The IFR required each state's Unified Certification Program (UCP) to reevaluate currently certified DBE firms in accordance with the revised eligibility criteria established under 49 C.F.R. §26.111. During this reevaluation period, recipients of federal funds, including the District, were not permitted to count DBE participation toward their overall DBE goals until the applicable UCP notified U.S. DOT that the reevaluation process had been completed. During this regulatory transition, the District placed a moratorium on certain DBE Program requirements, including establishing DBE project goals, counting and monitoring DBE participation, and enforcing prime contractors' and consultants' compliance with DBE participation commitments and related contractual requirements, in accordance with U.S. DOT guidance.

On July 21, 2026, the California Unified Certification Program (CUCP) notified U.S. DOT that it had completed the required reevaluation process. U.S. DOT has confirmed that the CUCP has completed the reevaluation process. The CUCP DBE directory now reflects current DBE certification status under the revised eligibility standards.

On September 25, 2026, U.S. DOT issued a Final Rule adopting the IFR with few modifications. The Final Rule maintains the revised certification standards and requires recipients to base their overall DBE goals on the availability of firms certified under the new eligibility criteria.

To fully resume the District's DBE Program in accordance with the revised federal regulations, the District must complete two primary actions: (1) recalculate its overall triennial DBE goal using a methodology that considers firms certified under the eligibility standards established by the Final Rule for the remaining triennial federal fiscal years; and (2) revise its DBE Program Plan to conform to the Final Rule and submit the Plan to the FTA for review and approval.

At its October 22, 2026 meeting, the Board of Directors, by Resolution No. 2026-056 approved a 100% DBE-neutral overall DBE goal of 0.4% for Federal Fiscal Years 2027-2028. Subsequently, District staff conducted public participation meetings on October 28, 2026, and on November 4, 2026, to discuss the District's proposed DBE goal, the goal-setting process, Step Two adjustment, and to solicit feedback from stakeholders and community-based organizations that may warrant further consideration or revisions to the approved goal. No comments were received that require revisions to the approved goal. Accordingly, District staff incorporated the questions and comments received during both public participation meetings into the final DBE Goal Methodology submitted to FTA on November 10, 2026.

Staff has revised the applicable sections of the District's DBE Program Plan to incorporate the requirements of the Final Rule and establish the framework necessary for the District to resume DBE Program implementation, including DBE project goal setting, counting and monitoring of DBE participation, and enforcing prime contractors' and consultants' compliance with DBE participation commitments and related contractual requirements.

In accordance with U.S. DOT guidance of the Final Rule, the District will begin implementing its revised overall DBE goal and DBE Program Plan following Board approval and submission to the FTA. The following summarizes the proposed changes to the District's DBE Program Plan.

COVER PAGE

The cover page was updated with contact information for the Americans with Disabilities Act (ADA) Compliance and Programs Manager for individuals who may require assistance accessing information or require an alternative format of the District' DBE Program Plan.

TABLE OF CONTENTS

The Table of Contents has been updated to reflect terminology and organizational title changes throughout the District's DBE Program Plan. These revisions include replacing terminology referencing "Race-Neutral" and "Race-Conscious" to "DBE-Neutral" and "DBE-Conscious"; updating "Diversity Program for Contracts" to "Business Opportunity Program"; and revising the applicable position title from the previous designation to "Manager, SBE Compliance Programs." These updates ensure consistency in terminology, program references, and position titles throughout the District's revised DBE Program Plan.

I. POLICY (Section 26.23)

The District is required to sign and date a DBE Policy Statement that expresses its commitment to the DBE Program, identifying its objectives, and outlining responsibilities for Program implementation. Staff updated the DBE Policy Statement to reflect current position titles and revised the language describing the District's SBE Element to clarify its role in expanding contracting opportunities to small businesses without regards to race- or sex-based presumptions or preferences.

Applicability (Sections 26.3 and 26.21)

Language was added to clarify that the District will administer the Program in a manner consistent with the U.S. DOT DBE Program regulations (as amended by the Final Rule and as may be amended in the future) and applicable guidance from U.S. DOT, FTA and the California Department of Transportation (Caltrans).

Objectives (Section 26.1)

Some of the objectives of the District's DBE Program were revised to establish that the Program will be administered without regard to race- or sex-based presumptions or preferences, to assist DBEs to develop and compete successfully in the marketplace outside of the Program, to create a level playing field on which DBEs can compete fairly and ensure the Program is narrowly tailored in accordance with applicable law, and to ensure only DBEs meeting the certification eligibility requirements under the Final Rule are permitted to participate as DBEs.

II. DEFINITIONS (Section 26.5)

Prior to the issuance of the IFR, DBE program methods and contract goals were referenced to as "race-neutral" and "race-conscious" methods or goals. The Final Rule revises this terminology to "DBE-Neutral" and "DBE-Conscious," removing the reference to race to align with the revised DBE certification standards, which no longer rely on race- or sex-based presumptions as

certification eligibility criteria. Additionally, definitions for "DBE-Neutral," "DBE-Conscious," "Personal Narratives," and "Reevaluation Process," have been added. The definition of "Small Business Concern" has also been updated to incorporate the revised DBE size standard of $32.82 million, effective April 1, 2026. Finally, the definition of "Socially and Economically Disadvantaged Individual" was revised to match the language in the regulations.

III. RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION

Revisions to this section include updates to reflect current position titles.

IV. ADMINISTRATIVE REQUIREMENTS

Staff revised this section to align the District's administrative procedures with the updated requirements and terminology of the Final Rule. Additional changes in this section include updated position title changes.

DBE Financial Institutions (Section 26.27)

References to "minority-owned" financial institutions were removed and updated with language to reflect the terminology and eligibility standards under the Final Rule. The revised language focuses on identifying financial institutions owned and controlled by socially and economically disadvantaged individuals in the District's local market area, without referencing minority status.

DBE Database (Section 26.31)

A sentence that states the DBE Database is a directory that identifies firms that have been certified as DBEs by the CUCP under certification standards set forth in 49 C.F. R. Part 26, Subpart D, as amended by the Final Rule was added. The data collection for DBE certification profiles was revised to add zip codes. Duplicative data collection information was removed.

Bidders List (Section 26.11)

Additional revisions clarify the District's procedures for maintaining bidder information and monitoring and reporting DBE participation in a centralized system designated by the U.S. DOT no later than December 1 following the fiscal year in which the relevant contract was awarded.

V. ACHIEVING GOAL(S) AND COUNTING DBE PARTICIPATION

Revisions to this section update terminology consistent with the Final Rule and update position titles. Additionally, new language was added under Section A(3) *Adjusting the Base Figure*, that reinforces the requirement that any disparity or availability study relied upon in a Step Two goal setting adjustment must include a detailed capacity analysis and supporting methodology consistent with the applicable provisions of §26.45. In addition, consistent with U.S. DOT guidance, language was added that limits past participation analysis to contracts issued after July 20, 2026.

References to "the effects of discrimination" were removed or replaced with "effects of social and economic disadvantage" and any references to minority or women was removed. References to the District's Diversity Program for Contracts were changed to Business Opportunity Program.

Language was added to section D(1)(i) stating that the District establishes SBE contract-specific goals on federally and non-federally assisted contracts that present sufficient subcontracting opportunities for ready, willing, and able small business concerns, including DBEs. This practice is consistent with the District's past practice and the regulations.

FHWA/CALTRANS- Funded Projects (Subrecipient)

The District is a subrecipient of FHWA funding through Caltrans and is therefore required to follow the applicable directives, guidance, and procedures outlined in Caltrans' Local Assistance Procedures Manual. The District has an approved *DBE Implementation Agreement* (Exhibit 9-A), through which it formally acknowledges its commitment to implementing Caltrans' DBE Program requirements for FHWA-assisted contracts. In accordance with applicable Caltrans Office Bulletins, the District incorporates Caltrans prescribed DBE provisions, boilerplate language, and required forms into its solicitations. Additionally, for applicable contracts, the District prepares and submits its DBE contract goal-setting methodology using Caltrans Exhibit 9-D, *DBE Contract Goal Methodology*, for review and acceptance by Caltrans Headquarters.

Consistent with Caltrans Division of Local Assistance Office Bulletin 25-01, the minimum contract value thresholds for establishing DBE goals were increased to $4 million for construction contracts and $1 million for consultant contracts. This Office Bulletin has been incorporated by reference into this section to reflect the applicable Caltrans requirements and updated thresholds.

Termination and Replacement of Subcontractors/Subconsultants/Suppliers (Section 26.53)

The revisions to this section provide greater clarity and additional context regarding the District's contractual requirements and oversight procedures governing the termination, replacement, substitution, and removal of DBE subcontractors, subconsultants, truckers, manufacturers, and suppliers (collectively known as "subcontractors") on contracts with an established DBE project or contract-specific goal.

The updated language also instructs prime contractors and consultants to submit all requests to add, substitute, or remove subcontractors through the District's Diversity Compliance Management System (DCMS) for review and approval in addition to a written request to the District.

These revisions reinforce the District's authority to monitor subcontractor changes, protect committed DBE participation, maintain accurate contract compliance records, and ensure that contractors fulfill their DBE contractual commitments in accordance with applicable requirements under §26.53 where contract goals are established.

VII. CERTIFICATION STANDARDS (Subpart D)

Several paragraphs were added to this section that clarifies the revised DBE eligibility requirements established under the U.S. DOT Final Rule. Specifically, the updated language eliminates race- and sex-based presumptions of social and economic disadvantage and requires each individual owner seeking DBE certification to affirmatively demonstrate disadvantage based on their individual experiences and circumstances, without any presumptions based solely on race or sex. Applicants must submit a Personal Narrative supported by a current Personal Net Worth statement to establish eligibility. Additionally, the language clarifies that the applicant firm bears the burden of demonstrating its eligibility by a preponderance of the evidence, consistent with 49 C.F.R. §§ 26.5, 26.61, and 26.67.

VIII. MONITORING AND RECORDKEEPING (Sections 26.11 and 26.37)

Revisions to this section include the removal of race and gender data collection for bidder's list information and the addition of District staff contact information for comments, concerns or to file a complaint regarding the District's DBE Program.

Bidders List (Section 26.11)

Under the April 9, 2024, regulatory modifications, recipients were required to collect race and gender information for the majority owner of all DBE and non-DBE firms bidding as prime contractors or subcontractors on federally assisted contracts. The District removed the race and gender data fields as required information to collect from primes and subcontractors and removed these fields from District forms that requested this information.

Information, Confidentiality, Cooperation (Section 26.109)

The Manager, SBE Compliance Programs contact information was added for firms participating in the District's DBE Program to submit comments, concerns, or file a complaint.

IX. PUBLIC PARTICIPATION AND OUTREACH EFFORTS

Revisions to this section removes terminology that reference minority, women, or the effects of discrimination, consistent with the Final Rule.

EXHIBIT A: MANAGER, SBE COMPLIANCE PROGRAMS DUTIES AND RESPONSIBILITIES

Revisions include a position title change from Manager, DBE and Workforce Inclusion to Manger, SBE Compliance Programs and updates terminology to bullet point 17 from "diversity programs" to "small business programs." Other revisions include grammatical updates to clarify the District's status and responsibilities should it become a certifying member of the CUCP, as well as terminology changes replacing references to "Race-Neutral" with "DBE-Neutral."

Language was added to allow the Manager, SBE Compliance Programs to make minor revisions to the District's DBE Program Plan for administrative purposes or to conform with applicable law and guidance. Significant revisions will be recommended to the Board for approval.

EXHIBIT B: DBE PROGRAM ORGANIZATIONAL CHART

An updated organizational chart was added to reflect current position titles.

EXHIBIT C: SMALL BUSINESS ENTERPRISE ELEMENT (Section 26.39)

Revisions include strengthening and clarifying small business eligibility standards applicable to the District's SBE Program.

Definition of Small Business Enterprise

Effective April 1, 2026, or as subsequently adjusted annually by U.S. DOT, the DBE size standard, average annual gross receipts over the previous three federal fiscal years, was increased to $32.82 million.

Acceptable Comparable Small Business Enterprise Certifications

References to Women Business Enterprise (WBE), Minority Business Enterprise (MBE), State Minority Business Enterprise (SMBE), and State Women Business Enterprise (SWBE) were removed as acceptable comparable SBE certifications. Additionally, the revisions clarify that SBE certifications issued by other state, county, or local government certifying agencies must meet the applicable Small Business Administration size standards under 13 C.F.R. Part 121, including consideration of a firm's affiliates and the applicable industry classifications for the types of work performed and such certifications must establish small business eligibility without relying on race- or sex-based certification requirements.

Termination and Replacement of SBEs on Contracts With SBE Contract Goals

This new section was added to clarify the procedures the District will follow for requested terminations and replacements of SBE for contract subject to an SBE contract goal. These procedures are consistent with the District's past practices.

Staff has provided in Attachment 1, a red-lined version of the District's DBE Program Plan, identifying the proposed revisions and updates made to conform to the Final Rule. Attachment 2 contains the complete, final clean version of the revised DBE Program Plan, incorporating all proposed changes without redlines for ease of review and consideration.

Fiscal Impact

There is no fiscal impact associated with this report. However, the District's updated DBE Program Plan must be submitted to FTA to continue receiving federal funding.

Attachments: 1. Red-line Document of the District's DBE Program Plan
2. Final Clean Version of the District's DBE Program Plan

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GOLDEN GATE BRIDGE®
HIGHWAY & TRANSPORTATION DISTRICT







BUSINESS OPPORTUNITY PROGRAM

DISADVANTAGED AND SMALL BUSINESS ENTERPRISE PROGRAM

BOX 29000
Presidio Station
San Francisco, CA 94129

If you require assistance accessing this information or require it in an alternative format, contact Jon Gaffney, ADA Compliance and Program Manager at 415-257-4416 or jgaffney@goldengate.org.

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I. POLICY (Section 26.23)

As a recipient of federal funds from the United States Department of Transportation (U.S. DOT) the Golden Gate Bridge, Highway and Transportation District ("District") is required to comply with Title 49 of the Code of Federal Regulations ("C.F.R.") Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*, as may be amended ("Regulations"). The District is committed to a Business Opportunity Program (Program) that includes the Disadvantaged Business Enterprise (DBE) Program and Small Business Enterprise (SBE) Element required by the Regulations. It is the policy of the District to ensure nondiscrimination on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT assisted contracts and in the administration of its Program in accordance with the Regulations. It is the intention of the District to create a level playing field on which DBEs and SBEs can compete fairly for contracts and subcontracts relating to the District's construction, procurement, and professional services activities.

The Program includes procedures ~~-~~to remove barriers in the bidding and award process and to assist DBEs to develop and compete successfully outside of the Program. One such procedure includes utilizing the mandated SBE Element of the District's Program. The SBE Element serves as a ~~race-neutral~~ means to encourage small business participation~~, including DBE participation, by~~ without regard to race or gender, thereby fostering greater access to contracting opportunities. Additionally, it allows the District to establish contract-specific SBE goals on both federally and non-federally assisted contracts where subcontracting opportunities are viable.

The Board of Directors is responsible for establishing the DBE policy of the District. The General Manager of the District is responsible for ensuring adherence to this policy. The Manager of ~~DBE and Workforce Inclusion~~SBE Compliance Programs, in coordination with all District Officers, Division Managers, Department Heads, and Procurement staff, is responsible for the development, implementation, and monitoring of the Program in accordance with the District's nondiscrimination policy. It is the expectation of the Board of Directors and the General Manager that all District personnel shall adhere to the spirit, as well as the provisions and procedures, of this Program.

This policy will be circulated to all District personnel and to members of the community that perform or are interested in performing work on District contracts. ~~-~~The complete Program ~~and analysis regarding overall DBE goal(s), established every three years, and/or DBE project goal(s) are~~is available to review at http://goldengate.org.

The Manager of ~~DBE and Workforce Inclusion~~SBE Compliance Programs position is designated as the Disadvantaged Business Enterprise Liaison Officer (DBELO) who implements all aspects of the District's Program with independent and direct access to the General Manager. For questions or further information regarding this Program, please contact the Manager~~-~~ of SBE Compliance Programs~~of DBE and Workforce Inclusion~~, Artemisé Davenport, by telephone at (415) 257-4581, or by e-mail at adavenport@goldengate.org.

Date: _____ _____

David A. Rabbitt

President, Board of Directors

A. Applicability (Sections 26.3 and 26.21)

The District, as a recipient of federal financial assistance from the Federal Transit Administration ("FTA") and the Federal Highway Administration ("FHWA") of the U.S. Department of Transportation (U.S. DOT), is required to implement a DBE Program in accordance with 49 C.F.R. Part 26, as amended by the Final Rule issued by U.S. DOT on September 25, 2026 and as may be amended in the future ("Regulations"). The Regulations are ~~which is~~ incorporated herein by this reference. The District receives funds from FHWA as a subrecipient through California Department of Transportation (Caltrans). The Program outlined herein applies to all District contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance. To the extent that the Program's policy, objectives, and efforts involve DBE~~race~~-neutral ~~and gender-neutral~~ methods, the Program will apply to all District contracts regardless of funding source. The District will administer this Program in a manner consistent with the Regulations and applicable guidance from U.S. DOT, FTA and Caltrans. 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.

B. Objectives (Section 26.1)

The objectives of this Program are the following:

1. To ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts and administer the Program without regard to race- or sex--based presumptions or preferences~~To ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts~~;

2. To remove barriers to DBE participation in the bidding, award and administration of District contracts;

3. To assist DBEs to develop and compete successfully in the marketplace outside of the Program;

4. To create a level playing field on which DBEs can compete fairly and ensure the Program is narrowly tailored in accordance with applicable law; ~~To ensure that the Program is narrowly tailored in accordance with 49 C.F.R. Part 26;~~

5. To ensure that only DBEs meeting the certification eligibility requirements in the Regulations are permitted to participate as DBEs;

6. To identify business enterprises that are eligible as DBEs to provide the District with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers, and sales representatives of those enterprises;

7. To develop communication programs and procedures which will acquaint prospective DBEs with the District's contract procedures, activities, and requirements and allow DBEs to provide the District with feedback on existing barriers to participation and effective procedures to eliminate those barriers;

8. To administer the Program in close coordination with the various divisions and departments within the District so as to facilitate the successful implementation of this Program; and

9. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by the District.

C. Prohibited Discrimination (Section 26.7)

The District 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 C.F.R. Part 26 on the basis of race, color, national origin, or sex.

The District 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, national origin, or sex.

II. DEFINITIONS (Section 26.5)

Any terms used in this Program that are defined in 49 C.F.R. § 26.5 or elsewhere in the Regulations (49 C.F.R. Part 26) shall have the meaning set forth in the Regulations. Some of the most common terms are defined below:

A. 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.

B. Contractor

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

C. DBE-Conscious

A DBE-Conscious measure or program is one that is focused specifically on assisting only DBEs.

D. DBE-Neutral

A DBE-Neutral measure or program is one that is, or can be, used to assist all small businesses.

~~C.~~E. Department or DOT

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

~~D.~~F. Disadvantaged Business Enterprise (DBE)

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.

~~E.~~G. FTA Tier I Recipient

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

~~F.~~H. FTA Tier II Recipient

An FTA recipient to whom this part applies who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which does not exceed $670,000 in FTA funds in a Federal fiscal year.

~~G.~~I. 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 requirements.

J. Personal Narrative (PN)

A written statement, required of each owner seeking to establish social and economic disadvantage, that establishes disadvantage by a preponderance of the evidence through individualized proof of specific instances of economic hardship, systemic barriers, and denied opportunities that impeded the owner's progress or success in education, employment, or business. A determination of social and economic disadvantage must not be based in whole or in part on a presumption of disadvantaged based on race or sex. The PN must be accompanied by a current Personal Net Worth statement.

~~H.~~K. Personal Net Worth (PNW) ~~(Sections 26.5 and 26.68)~~

The net value of an individual's reportable assets and liabilities, per the calculation rules in §26.68.

L. Recipient

Any entity, public or private, to which U.S. DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or that has applied for such assistance.~~a presumption of disadvantaged based on~~

M. Reevaluation Process

The one-time process, added by the Interim Final Rule, under which each Unified Certification Program must identify every firm certified as of October 3, 2025, give each firm an opportunity to submit documentation demonstrating eligibility under the revised certification standards, and issue a written decision recertifying or decertifying the firm.

As of July 20, 2026, the California Unified Certification Program (CUCP) notified U.S. DOT that the reevaluation process was complete. Effective July 21, 2026, all CUCP certifying agencies resumed accepting new DBE, ACDBE, and Interstate certification applications. The decertification procedures of § 26.87 do not apply to decisions made under § 26.111.

~~I. Race-Conscious~~

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

~~Race-Neutral~~

~~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 neuity.~~

~~Recipient~~

~~Any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or that has applied for such assistance.~~

~~J.~~N. Small Business Concern

With respect to firms seeking to participate as DBEs in U.S. DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and the U.S. Small Business Administration regulations implementing it (13 C.F.R. Part 121), whose average

annual gross receipts for the previous three (3) years does not exceed $32~~0~~.82~~72~~ million (or as adjusted for inflation by the Secretary of U.S. DOT annually) pursuant to 49 C.F.R. § 26.65(b).

~~K.~~O. Socially and Economically Disadvantaged Individual~~s~~

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically disadvantaged on a case-by-case basis. A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on a presumption based on race or sex. For that reason, all owners may qualify as socially and economically disadvantaged only if they meet the relevant criteria described in § 26.67. ~~has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.~~

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

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

~~1. "Black American" (including persons having origins in any of the Black racial groups of Africa);~~

~~2. "Hispanic American" (including persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race);~~

~~3. "Native American" (including persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians);~~

~~4. "Asian-Pacific American" (including 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, the Federated States of Micronesia, or Hong Kong);~~

~~5. "Subcontinent Asian American" (including persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka);~~

~~6. Women; or~~

~~7. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration, at such time as the Small Business Administration designation becomes effective.~~

~~L.~~P. Transit Vehicle Manufacturer (TVM)

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

III. RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION

A. Duties of the Disadvantaged Business Enterprise Liaison Officer (Section 26.25)

Pursuant to 49 C.F.R. § 26.25, the Program shall be administered by the Manager of ~~DBE and Workforce Inclusion~~SBE Compliance Programs ("S~~D~~BE Manager") who shall be appointed by and have direct, independent access to the General Manager of the District (Refer to Exhibit B, "DBE Program Organizational Chart"). The ~~DBE Manager~~SBE Manager is designated as the Disadvantaged Business Enterprise Liaison Officer (DBELO), who is the primary person responsible for implementing all aspects of this Program and will work closely with operating divisions and other departments and consultants of the District, including legal, procurement, engineering, insurance, and others who are responsible for making decisions relative to the District's construction, procurement, and professional service contracts.

The S~~D~~BE Manager specific duties and responsibilities pertaining to the DBE Program are attached as Exhibit A and incorporated herein.

B. Duties of Business Opportunity Program Review Committee (Sections 26.53 and 26.87)

The District Secretary, the District Engineer, and the Auditor-Controller shall comprise the Business Opportunity Program Review Committee ("Review Committee"). The S~~D~~BE Manager may attend all Review Committee meetings and furnish background information, but shall not be

a voting member of the Review Committee. The Review Committee shall assist the SDBE Manager with the implementation of this Program. The Review Committee shall preside over hearings that may be held pursuant to this Program, including administrative reconsideration of the SDBE Manager's original determination of a bidder's compliance with good faith efforts/Business Opportunity Program requirements, in accordance with 49 C.F.R. §§ 26.53(d) and 26.87(e), respectively. The Review Committee does not play a part in the initial determination of a bidder's/proposer's documentation of good faith efforts.

C. Duties of District Officers, Division Managers, Department Heads, and Procurement Staff (Section 26.51)

All District Officers, Division Managers, Department Heads, and Procurement Staff are responsible for the implementation of the DBE Program in their respective areas of authority in coordination with the SDBE Manager.

D. Regional Outreach (Section 26.51)

The SDBE Manager is designated by the General Manager to represent the District as a member of appropriate regional outreach consortia. The District 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 SDBE Manager and/or designated staff will attend scheduled meetings of such groups and will contribute to the achievement of their projects approved by the District's General Manager.

E. California Unified Certification Program (Section 26.81)

The District is a signatory to the California Unified Certification Program ("CUCP") Memorandum of Agreement ("MOA"). The District 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 February 12, 2020, 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 District 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 SDBE Manager has researched The Federal Reserve Board website at www.federalreserve.gov/releases/mob/ to identify ~~minority-owned~~ banks owned and controlled by socially and economically disadvantaged individuals in the District's local market area. Data is derived from the Federal Deposit Insurance Corporation (FDIC) and the Office of Comptroller of

the Currency (OCC) and is updated on a quarterly basis. ~~The DBE Manager will continue to use this source to solicit minority-owned banks to participate in the District's DBE Program.~~ The ~~SD~~BE Manager will continue to use this source to distribute a list of identified ~~minority-owned~~ financial institutions in the San Francisco Bay Area to each prime contractor doing business with the District.

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 California Unified Certification Program under certification standards set forth in 49 C.F.R. Part 26, Subpart D, as amended by the Final Rule. The DBE Database is jointly maintained and updated by the CUCP certifying member agencies in coordination with Caltrans, the CUCP DBE Database Manager. The DBE Database is available at Caltrans' website at, https://californiaucp.dbesystem.com, and is made available to contractors and to the public. The District will use the DBE Database as a primary resource in developing overall goals, project goals, 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, owner's name, physical address (including zip code and county), phone number, e-mail address, firm website, firm certification type (including certification number), certifying agency, and ~~telephone number, website(s), and types of work utilizing the~~ North American Industry Classification System (NAICS) code(s) ~~s for which~~ applicable to each scope of work the firm is certified to perform ~~work~~. ~~the firm is certified as a DBE.~~ 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 DBE Manager 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. For every firm, the following information will be included: firm name, firm address (including zip code), firm status as a DBE or non-DBE, race and gender information for the majority owner, NAICS code applicable to each scope of work the firm sought to perform in its bid, the age of the firm, and the annual gross receipts of the firm~~. Data gathering for bidder's list information will be conducted on a form entitled *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* for construction contracts and *Prime Consultant and Subcontractor/Subconsultant/Supplier Report* for professional service contracts. Using these forms, the following information will be gathered for every firm: firm name, firm address (including zip code), firm status as a DBE or non-DBE, e-mail address, NAICS code applicable to each scope of work the firm sought to perform in its bid/quote, the age of the firm, and the annual gross receipts of the firm. Subsequently, most of a firm's general information is collected on the District's procurement portal powered by Euna Procurement (formerly Bonfire Interactive Ltd.), during vendor registration. The SBE Manager will maintain the confidentiality of any proprietary information in accordance with applicable California law and the Regulations.

Bidder's list information will be entered into a system designated by the U.S. DOT no later than December 1 following the fiscal year in which the relevant contract was awarded. In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract

period as defined in a DBE Performance Plan pursuant to § 26.53(e), the data will be entered no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s). This information will be requested of all bidders as further described in Section VIII.

D. Over-Concentration (Section 26.33)

If the ~~DBE Manager~~SBE Manager 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 ~~DBE Manager~~SBE Manager will develop appropriate measures to address the over-concentration. The ~~DBE Manager~~SBE Manager 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 District is unaware of any types of work that have a burdensome over-concentration of DBE participation.

E. Business Development Program (Section 26.35 and Appendix C)

The District 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 District 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 District determines such a program is beneficial, a proposed program will be written and submitted to the U.S. DOT operating administrations for approval, after which it will become part of this DBE Program. Guidelines outlined in Appendices C and D of 49 C.F.R. Part 26 will be utilized in setting up the formal agreements and programs. The District is a participating public agency in Caltrans' Calmentor mentor-protégé program.

F. Dissemination of DBE Policy Statement (Section 26.23)

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

1. Through electronic mail to Division Managers, Department Heads, and Procurement;

2. Through electronic mail to DBE and non-DBE firms that are currently performing work on U.S. DOT-assisted contracts;

3. Through electronic mail to DBE and non-DBE firms that are recently awarded U.S. DOT-assisted contracts; and

4. Through the District'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 District 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, 26.53 and 26.55)

The District will implement appropriate monitoring and enforcement mechanisms to ensure compliance with 49 C.F.R. Part 26. The ~~DBE Manager~~SBE Manager and department Project Managers shall monitor and track actual DBE participation through an automated Diversity Compliance Management System (DCMS), as further described in Section VIII. The ~~DBE Manager~~SBE Manager will maintain a running tally of real time entry 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. Monitoring will include a written verification that staff 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 such as a commercially useful function review.

The District will rely on DCMS as a running tally mechanism that will provide frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether current implementation of contract goals is projected to be sufficient to meet annual DBE goals.

With respect to each DBE commitment, the District will rely on DCMS as a running tally mechanism that will provide 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 to meet its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to meet the contract goal pursuant to § 26.53(g). Notifications will be sent to Contractors that fall short of meeting their DBE/SBE commitments or contract goals.

The ~~DBE Manager~~SBE Manager shall ensure that DBE participation is counted toward contract goals and the overall goal or project goal in accordance with § 26.55. Credit toward overall goal, project goal or contract-specific goal will only be given upon satisfactory evidence that payments were actually made to DBEs and that DBEs are performing a commercially useful function.

The District will bring to the attention of DOT any firm that, in order to meet DBE contract goals or other DBE Program requirements, uses or attempts to use, on the basis of false, fraudulent, or deceitful statements or representations or any other dishonest conduct in the connection with the program, so that DOT can take the steps provided in 26.107 (e.g., referral to the Department of Justice for criminal prosecution and/or referral to the DOT Inspector General). DOT may take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, against any participant in the DBE Program whose conduct is subject to such action under 49 C.F.R. Part 31. In addition, the District will consider similar action under its own legal authorities, including responsibility determinations in future contracts.

H. Open-Ended DBE Performance Plan for Design Build Contracts (Section 26.53)

For design-build contracts with minimal-project details at the time of advertisement and that are subject to a contract-specific DBE goal, Contractors must submit a DBE "Open-Ended DBE Performance Plan" (OEPP) with their proposal. To be considered responsive, an OEPP must include:

(i) a commitment to meet the DBE goal for the entire project;
(ii) provide details on the types of subcontracting work or services the proposer will solicit to DBEs to perform, including the projected dollar amount(s); and
(iii) estimated time frame when the DBE subcontracts will be executed.

An OEPP may be modified by mutual agreement between the District and Contractor throughout the life of the project, as long as the design-builder continues to use good faith efforts to meet the goal. District staff will conduct ongoing monitoring and oversight to determine whether the Contractor is using good faith efforts to comply with the OEPP and schedule.

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

The District 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.

The ~~DBE Manager~~SBE Manager will report DBE participation on FTA funded contracts on a semi-annual basis (June 1 and December 1), using the *Uniform Report of DBE Awards or Commitments and Payments*, a form provided by U.S. DOT. The report includes prime contract and subcontract awards, as well as ongoing contract payments and actual payments for contracts completed during the reporting period, on FTA-assisted contracts. On June 1, the District will report DBE activity from October 1 through March 31. On December 1, the District will report activity from April 1 through September 30. The ~~DBE Manager~~SBE Manager will continue to provide the report regarding DBE participation and overall goal(s) and/or project goal(s) required by the Regulations to FTA.

District staff will submit bidders list data information required by § 26.11, paragraph (c)(2) in the Department's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded. For "design-build" contracts where subcontracts will be solicited throughout the contract period as defined in a contractor's DBE Open-Ended Performance Plan, the data will be entered no later than December 1 following the federal fiscal year in which the design-build contractor awards the relevant subcontract(s).

Reporting to Caltrans

The District will report final utilization of DBE participation on contracts using Federal Highway Administrative funds to the Department of Local Assistance Engineer using Exhibit 17-F, "Final Report - Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors", a designated form in the Local Assistance Procedures Manual.

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

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

V. ACHIEVING GOAL(S) AND COUNTING DBE PARTICIPATION (Section 26.45)

The District receives U.S. DOT financial assistance as a direct recipient of such funds from FTA and as a subrecipient of such funds from FHWA through 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/FTA funds the District anticipates expending in the three forthcoming federal fiscal years. In appropriate cases, a project goal may be approved and expressed as a percentage of funds for a particular grant or project or group of grants and/or projects.

For contracts funded by FHWA through Caltrans, the District develops contract-specific DBE goals as an effort to meet the statewide DBE goal. The District complies with Caltrans DBE Program on projects and follows the Caltrans Local Assistance Procedures Manual (LAPM).

The District's overall goal(s) and/or project goal(s) represent the amount of ready, willing and able DBEs that are available to participate in contracting opportunities and is reflective of the amount of DBE participation the District would expect absent the effects of ~~discrimination~~social and economic disadvantage. The District intends to meet its goal(s) to the maximum extent feasible through ~~race~~DBE-neutral measures. DBE~~Race~~-neutral ~~DBE~~ participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal. Where ~~race~~DBE-neutral measures are inadequate to meet the overall goal(s) and/or project goal(s), the District may use ~~race~~DBE-conscious measures for particular projects with subcontracting opportunities.

A. Methodology for Setting Overall DBE Goal(s) and/or Project Goal(s) – FTA and FHWA Funded Projects (Section 26.45)

FTA – Funded Projects (Recipient)

1. **Projecting U.S. DOT-Assisted Contract Expenditures**. In conjunction with the preparation and adoption of the budget, the ~~DBE Manager~~SBE Manager, in consultation with the appropriate District 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. This analysis will exclude projected contract expenditures for transit vehicle manufacturers, which are exempt from the District's goal-setting process as described in Section V(C).

2. **Establishing a Base Figure**. The District 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. The District will follow one of the methodologies provided in the Regulations or develop an alternative methodology and provide the appropriate documentation in the Overall Goal(s) and/or Project Goal(s) Analysis Report described in Section V(B).

a. **Analyzing Available Businesses in the District's Local Market Area**. The ~~DBE Manager~~SBE Manager, in conjunction with the appropriate District divisions and departments, will conduct a thorough analysis of its local market area in which the District will solicit participation from contractors, subcontractors, consultants, subconsultants, manufacturers, and suppliers. 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 District determines to be relevant in defining its local market area. The ~~DBE Manager~~SBE Manager will then determine the total available businesses according to its local market area. The ~~DBE Manager~~SBE Manager will consider a variety of sources including, but not limited to, the U.S. Census Bureau's County Business Patterns Database, the District's Bidders List, and relevant disparity or availability studies.

b. **Analyzing Available DBEs in the District's Local Market Area**. The ~~DBE Manager~~SBE Manager 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. 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 District will consider a variety of sources including, but not limited to, the CUCP DBE Database, its Bidders List, and any relevant disparity or availability studies.

c. **Calculating the Base Figure**. The ~~DBE Manager~~SBE Manager will compare the available DBEs in its local market area to the available businesses in its local market area. 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 District will adjust the Step One B~~b~~ase F~~f~~igure based on demonstrable evidence indicating that the availability of DBEs for U.S. DOT-assisted contracts may be higher or lower than the base figure indicates. At minimum, the ~~DBE Manager~~SBE Manager will analyze the results of DBE participation in the District's current and recent past contracts (limited to contracts issued after July 20, 2026), current DBE availability and capacity in prime and subcontracting scopes of work, any available and relevant disparity and/or availability 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 to make a Step Two adjustment.

Any disparity or availability study the District may rely on in establishing and/or adjusting its base figure will provide a detailed capacity analysis, including the methodology used, as required by §§ 26.45(c)(3) and 26.45(d)(1)(ii).

4. **Projection of Percentage of Overall Goal(s) and/or Project Goal(s) to Be Achieved Through DBE-Neutral and DBE-Conscious Measures**. Once the overall goal(s) and/or project goal(s) are proposed, the ~~DBE Manager~~SBE Manager will analyze and project the maximum feasible portion of that goal that can be achieved by using DBE~~race~~-neutral methods. Where the projected portion of the goal using DBE~~race~~-neutral methods is less than the overall goal or project goal, the remaining portion may be achieved by using DBE~~race~~-conscious methods for particular projects that have subcontracting opportunities. The ~~DBE Manager~~SBE Manager shall monitor and adjust the use of DBE~~race~~-conscious methods in accordance with 49 C.F.R. § 26.51(f). When projecting the percentage of the overall goal or project goal to be achieved through using DBE~~race~~-conscious methods, the ~~DBE Manager~~SBE Manager shall analyze the actual achievement of the overall goal or project goal through DBE~~race~~-neutral methods in the current and recent past years. When using DBE~~race~~-conscious methods, the ~~DBE Manager~~SBE Manager shall analyze the progress toward achieving the overall goal or project goal and increase or reduce the use of DBE~~race~~-conscious methods accordingly.

FHWA/CALTRANS- Funded Projects (Subrecipient)

The District, as a subrecipient of FHWA funding through Caltrans, has an approved *DBE Implementation Agreement for Local Agencies* (Exhibit 9-A) to formally acknowledge the District's commitment to implement Caltrans DBE Program. The District adopts Caltrans' overall statewide DBE goal for FHWA-assisted projects and establishes DBE goals on applicable FHWA-assisted contracts in accordance with Caltrans' Local Assistance Procedures Manual. Each federal fiscal year, the District submits to Caltrans the *Local Agency DBE Annual Submittal Form* (Exhibit 9-B) that identifies how the District will comply with Caltrans' DBE Program.

In accordance with Caltrans Division of Local Assistance Office Bulletin #25~~19~~-01~~3~~, the District will prepare and submit for Caltrans approval DBE contract-specific goals for FHWA/Caltrans-funded construction contract estimates greater than $~~4~~2 million and consultant contract estimates greater than $1,0~~5~~00,000 million prior to advertising. The District's DBE goal methodology is submitted to Caltrans for ~~approval~~ acceptance using Caltrans (Exhibit 9-D "DBE Contract Goal Methodology") form.

B. Public Participation and Adoption of Overall Goals and/or Project Goal(s) (Section 26.45(g))

1. **Consultation with Various Groups, Organizations, and Officials**. The District will hold 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~~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, DBEs and non-DBEs, small businesses, ~~minority, women and general contractors groups~~general contractor groups, community based organizations, and other officials.

2. **Overall Goals Covering a Three-Year Period and/or Project Goal(s) Analysis Report(s)**. Upon completion of the analysis described in Section V(A),~~,~~ and after consultation with various groups, organizations and other officials, unless otherwise directed, the

~~DBE Manager~~SBE Manager will prepare an Overall Goal(s) and/or Project Goal(s) Analysis Report for DBE participation in FTA-assisted contracts. Each report shall document the analysis and methodology in arriving at the proposed goal(s) and shall include a projection of the portion of the goal(s) to be achieved through DBE~~race~~-neutral and DBE~~race~~-conscious measures. The ~~DBE Manager~~SBE Manager will furnish the reports to all District staff included in the goal setting process for review and concurrence. Upon District staff concurrence, the ~~DBE Manager~~SBE Manager shall furnish the General Manager with the proposed overall goal(s) and/or project goal(s) to be submitted to the Rules, Policy and Industrial Relations Committee. Upon the Rules, Policy and Industrial Relations Committee's recommendation, the Board of Directors will consider authorization of the establishment of the proposed goal(s). It will also consider authorization of the submission of the Overall Goal(s) and/or Project Goal(s) Analysis Reports to FTA for review by August 1 or by a different submission date established by the concerned operating administration.

3. **Publication of the Proposed Overall Goal(s) and/or Project Goal(s)**. The District will publish the proposed overall goal(s) and/or project goal(s) on its official Internet Web site at goldengate.org and may post the notice in any other sources ~~(e.g., minority-focused media and trade association publications)~~(e.g., small business and trade association publications).

4. **Adoption of Final Overall Goal(s) and/or Project Goal(s)**. The District will submit the proposed overall goal(s), and/or project goal(s) to the Rules, Policy and Industrial Relations Committee for recommendation. The Board of Directors will consider adoption of the proposed Overall Goal(s) and/or Project Goal(s). If the Board of Directors adopts the proposed Overall Goal(s) and/or Project Goal(s), the District will submit the proposed Overall Goal(s) and/or Project Goal(s) to the U.S. DOT operating administration. If the U.S. DOT operating administration approves the proposed Overall Goal(s) and/or Project Goal(s), the goals will be final, and the General Manager will provide an updated report to the Board of Directors. If the proposed goal changes following review by the U.S. DOT operating administration, the revised goal will be posted on the District's official Internet Web site, and the General Manager will notify the Board of Directors of the change(s), and, if applicable, the Board of Directors will take all necessary actions to implement the changes.

C. Transit Vehicle Manufacturers Procurements and Certification (Section 26.45 and 26.49)

The District shall require any transit vehicle manufacturers to certify that they have established an overall DBE goal that has been approved or not disapproved, at the time of solicitation, by FTA as a condition to bid on any District contracts. Before awarding to a TVM, the District shall verify that the bidder is listed on FTA's eligible TVM list at, https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers. The District shall complete the Vehicle Award Report to notify FTA of the TVM procurement award within 30 days of making such award. This reporting requirement is extended to subrecipients.

Expenditures for FTA-assisted transit vehicle procurements are not included in the funding base to which the overall goal and/or project goal for other FTA-assisted contract expenditures applies.

Project-specific goals for DBE participation may be established for procurements of transit vehicles from specialized manufacturers when a TVM cannot be identified, such as in the case of new ferry vessel procurements, if the requirements of Section 26.49 are met. The District will obtain FTA's approval of the decision to use a DBE project-specific goal before the issuance of a public solicitation for such vehicles. The District will follow the procedures for goal-setting in Section 26.45 to establish project-specific DBE goals.

D. Achieving the Overall Goal(s) and/or Project Goal(s) (Section 26.51)

The District shall achieve the overall goal(s) and/or project goal(s) for DBE participation through a combination of DBE~~race~~-neutral methods and DBE~~race~~-conscious methods for particular contracts with subcontracting opportunities.

1. **DBE~~Race~~-Neutral Methods**. The District intends to use DBE~~race~~-neutral methods to the maximum extent feasible to achieve its overall goal(s) and/or Small Business Enterprise (SBE) project-specific goal(s). DBE participation that is obtained on contracts that have no specific DBE 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 DBE~~race~~-neutral ~~DBE~~ participation. In addition, the District 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 District;

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 District's and other U.S. DOT recipients' contracting activities;

e. Carrying out information 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 District and explore best business practices which may be used to market small businesses at the District;

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 DBE~~race~~-neutral Small Business Enterprise 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 District procurements as prime contractors or subcontractors. Through the SBE Element, the District sets SBE contract-specific goals on federally and non-federally assisted contracts that present sufficient subcontracting opportunities for ready, willing, and able small business concerns, including DBEs. Details of the District's SBE Element are attached as Exhibit C, "Small Business Enterprise Element", and incorporated herein.

2. **DBE~~Race~~-Conscious Methods**. The Board of Directors shall use DBE~~race~~-conscious methods by establishing contract-specific DBE goals on particular prime contracts with subcontracting opportunities to the extent that the District cannot achieve its overall goal(s) and/or project goal(s) with DBE~~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.

a. **Establishing Contract-Specific Goals**. The goal shall be established by the General Manager, substantiated by information furnished by the ~~DBE Manager~~SBE Manager. The contract-specific goal shall apply to the percentage of DBE participation in the total contract work and be set forth in the Special Provisions of the contract specifications. The District 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:

1) The projected portion of the overall goal(s) and/or ~~-~~project goal(s) that will be met by establishing contract-specific goals;

2) The progress toward achieving the overall goal(s) and/or project goal(s);

3) The full range of activities in the proposed contract;

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

5) 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 a contract-specific goal due to the fact that establishing a goal could result in restrictive bidding.);

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

7) Any other relevant criteria.

b. **Awarding Contracts with Contract-Specific Goals**. The District shall award contracts to the lowest responsible bidder as required by the California Public Contracts Code Sections 20914 and 20916, where applicable. For such contracts, as well as for contracts awarded pursuant to a Request for Proposals procedure where the lowest responsible bidder standard does not apply, a bidder that fails to demonstrate that it achieved the contract-specific 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. All references to "bidder" or "bid" include proposer and proposal.

1) **Evaluation of Bids or Proposals**. After submission deadline stated in the solicitation documents for bids and proposals, the ~~DBE Manager~~SBE Manager shall evaluate all bids/proposals to determine whether the bidders/proposers submitted all of the information required by 49 C.F.R. §§ 26.11 and 26.53(b). The responsible bidder with the lowest apparent bid price, or the highest-ranking proposer, who also meets the contract-specific goal or demonstrates sufficient good faith efforts, shall be recommended for the contract award. In the event that the responsible bidder with the lowest bid price, or the highest-ranking 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 ~~DBE Manager~~SBE Manager shall evaluate the bidder with the next lowest bid price, or next highest-ranked proposer. Should the ~~DBE Manager~~SBE Manager determine that additional information is needed to evaluate a bidder's or proposer's submission with regard to the DBE requirements, the ~~DBE Manager~~SBE Manager shall request said bidder or proposer to submit the required information, or may contact the listed DBE(s) directly.

2) **Evaluation of DBE Certification Status**. The District shall require that any DBE listed by bidders for participation in the contract be certified DBEs as of the time of bid opening. The ~~DBE Manager~~SBE Manager shall review the *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* and/or *Prime Consultant and Subcontractor/Subconsultant/Supplier Report* to confirm each DBE firm's certification status. The District will accept current certifications by any recipients of U.S. DOT funds acceptable to the District in accordance with Section VII of this ~~Diversity Program for Contract~~Business Opportunity Program and 49 C.F.R. Part 26, Subpart D.

3) **Determination of Amount of DBE Participation**. The ~~DBE Manager~~SBE Manager 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* or *Prime Consultant and Subcontractor/Subconsultant~~recipient~~/Supplier Report* for accuracy and shall compare it to the contract-specific goal established for the contract.

4) **Determination of Good Faith Efforts**. Good faith efforts can be met by either 1) bidder/proposer can demonstrate that it has obtained enough DBE participation to meet the goal; or 2) bidder/proposer can demonstrate that it has made adequate good faith effort to try to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the amount of DBE participation does not meet the contract-specific goal, the ~~DBE Manager~~SBE Manager shall review the good faith efforts report submitted by the bidder/proposer. The ~~DBE Manager~~SBE Manager 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 contract-specific goal in accordance with 49 C.F.R. Part 26, Appendix A.

5) **Bidder's Right to Administrative Reconsideration**. In the event that the ~~DBE Manager~~SBE Manager determines that the apparent low responsible bidder, or the highest-~~-~~ranking proposer, is not responsive to the solicitation because it has not met the contract-specific goal or has not demonstrated sufficient good faith efforts to meet the contract-specific goal, the ~~DBE Manager~~SBE Manager will notify the bidder in writing. The notification shall include the reasons for the determination and inform the bidder of its right to request administrative reconsideration of the determination. The bidder's 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 bidder may submit written documentation for the Review Committee's consideration and may appear before the Review Committee. The Review Committee will only consider documentation of good faith efforts made prior to the bid due date. Any written documentation the bidder wishes the Review Committee to consider must be submitted to the designated staff person within the timeframe specified in the notice of administrative reconsideration. The Review Committee will convene for the administrative reconsideration prior to the time that a recommendation for award of the contract is presented to the appropriate committee and then to the Board of Directors or to the General Manager, as applicable.

The Review Committee will consider the bidder's good faith efforts documentation submitted with its bid, the ~~DBE Manager~~SBE Manager's original good faith efforts determination, and any other written materials the bidder has submitted to the Review Committee, in accordance with this section, to determine whether the bidder 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 C.F.R. Part 26, Appendix A.

The Review Committee shall provide the bidder with a written decision on reconsideration, explaining the basis for its determination. In the event that the Review Committee finds that the bidder has not met the contract-specific goal or has not demonstrated sufficient good faith efforts to meet the contract-specific goal, the ~~DBE Manager~~SBE Manager will deem said bidder not responsive and evaluate the responsible bidder submitting the next lowest bid, or the next highest-~~-~~ranking proposer. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation, Federal Transit Administration, or Caltrans.

6) **Recommendation for Award**. Following the determination of the lowest responsive and responsible bidder or highest-ranked proposer, the ~~DBE Manager~~SBE Manager shall prepare a report on the bidder's or proposer's compliance with the DBE requirements for review by the General Manager or for presentation to the Board of Directors, as applicable. If the General Manager or the Board of Directors disagrees with the recommendation, the General Manager or the Board of Directors shall reject all bids or refer the matter back to staff for further evaluation and recommendation. The decision of the General Manager or the Board of Directors on the award of contract, if such a decision is made, shall be final and binding on all parties, subject to compliance with the District's bid protest procedures.

E. Counting and Tracking DBE Participation (Section 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.

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.

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, 40 percent (40%) of the cost of materials or supplies (including transportation costs) will be counted. A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance. A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor. If these conditions are met, DBE distributors may receive 40% of the cost 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. Primes are required to submit with their bid the *DBE Regular Dealer/Distributor Affirmation Form*, a form designated by the District.

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, or maintaining a place of business as provided in § 26.55 (e)(2)(ii) 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.

DBE achievement will not be counted toward the goal until the DBE has been paid. The ~~DBE Manager~~SBE Manager will track the participation of DBEs in contract-specific goal contracts separately from the participation of DBEs that is considered DBE~~race~~-neutral. Additionally, the ~~DBE Manager~~SBE Manager 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, with the exception of 49 C.F.R. 26.87(j)(3).

If an agreement has been executed between a prime contractor and a DBE subcontractor, before the certifying agency has notified the DBE subcontractor of its decertification, the prime contractor may continue to use the decertified DBE subcontractor. The prime contractor may also continue to receive DBE credit for the full payment made to the decertified DBE subcontractor, but the District cannot count the continued performance by the decertified DBE subcontractor towards the District's overall DBE program goal.

If the decertified DBE subcontractor merges or is purchased by a non-DBE, the prime contractor will not receive DBE credit for utilizing that subcontractor and the District may not count the decertified DBE subcontractor's participation towards the District's overall DBE program goal. The prime contractor may not add work to the decertified DBE subcontractor's scope of work after notification of decertification without the consent of the District.

F. Termination and Replacement of Subcontractors/Sub~~cs~~onsultants/Suppliers (Section 26.53)

The following requirements apply to contracts with established DBE project or contract-specific DBE goals.

A Contractor may not terminate, replace, or otherwise remove a DBE subcontractor listed on a *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* or *Prime Consultant and Subcontractor/Subconsultant/Supplier Report* (or an approved replacement DBE firm) without prior written District consent. For purposes of this requirement, subcontractors include subcontractors, subconsultants, truckers, manufacturers, or suppliers performing work or providing materials or services under the contract.

Th~~is~~ese requirements apply to any proposed termination or replacement of a DBE firm, including circumstances ~~includes, but is not limited to, instances~~ in which a Contractor seeks to perform work or supply materials originally designated for a DBE subcontractor/supplier with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. Contractor shall notify the District in writing of any request to replace or terminate a DBE subcontractor and provide appropriate documentation substantiating the replacement or termination in accordance with this section. Contractor shall not proceed with the termination or replacement of a DBE's committed work until the District has provided written approval.

All requests to add new subcontractors, substitute or remove previously approved DBE subcontractors must also be submitted through the District's Diversity Compliance Management System for review and District approval in addition to any written request.

Contractor must make good faith efforts to replace an original DBE subcontractor with a ~~small business concern~~different DBE. ~~Any replacement of an DBE on a contract is subject to the written approval of the District.~~ Unless the District's consent is provided, Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

District may provide such written and/or electronic consent only if it agrees that there is good cause for the termination~~,~~ for reasons stated in 26.53(f)(3)(i-x).

Contractor must comply with the following procedures for terminating a DBE subcontractor:

1. ~~Before transmitting to District Contractor's request to terminate and/or replace a DBE subcontractor,~~ Contractor must send a written notice to the DBE subcontractor it seeks to terminate, with a copy to District, of its intent to terminate the DBE. The notice must~~use other forces or material sources and~~ include one or more of the acceptable reasons for termination ~~justifiable reasons~~ found in 26.53(f)(3). Contractor's written notice to the DBE must request the DBE respond to the notice~~provide any responses~~ by submitting a letter within five (5) business days of the date of Contractor's notice~~to both the Contractor and District~~. The DBE's response must ~~by~~ either agree or object to the proposed termination; ~~acknowledging their agreement or~~objections should be supported by an explanation ~~documenting their reasoning~~ as to why the ~~use~~termination ~~of other forces or sources of materials~~ should not occur. If required in a particular case as a matter of public necessity (e.g., safety), Contractor may require the DBE response to the notice in less~~provide a response period shorter~~ than five (5) business days.

2. If the DBE does not respond within five (5) business days, Contractor may move forward with the request as if the DBE had agreed to the Contractor's written notice.

3. Contractor must s~~S~~ubmit a ~~Contractor's~~ DBE termination request by written letter to the District and include one or more of the~~above listed justifiable~~ acceptable reasons for termination found in 26.53(f)(3) along with supporting documentation, Contractor's written notice to the DBE regarding the request~~,~~ (including proof of transmission and tracking documentation of Contractor's written notice), and the DBE's response to Contractor's written notice, if received. If written response from the DBE was not provided, provide a statement to that effect.

4. After receiving the District's written authorization of DBE termination request, Contractor must obtain the District's written agreement for DBE replacement. Contractor is required to find, or demonstrate adequate good faith efforts (GFE)~~,~~ in accordance with Title 49 C.F.R. Part 26.53~~,~~ to find, a qualified DBE replacement firm(s) 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 established.

Contractor must use the following procedures to request the District's authorization for the replacement of a terminated DBE:~~.~~

1. Submit a request to replace a DBE with other forces or material sources in writing to the District which must include:

a. Description of remaining uncommitted work items made available for replacement DS~~S~~BE solicitation and participation.

b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:

• Quote for bid item work and description of work to be performed.
• Proposed subcontract agreement and written confirmation of agreement to perform on the Contract.

2. ____If Contractor has not identified a DBE replacement firm, submit documentation of the Contractor's GFE to use DBE replacement firms within 7 days of District's authorization to terminate the DBE. The Contractor may request the District's approval to extend this submittal period to a total of 14 business days. Submit documentation of actions taken to find a DBE replacement firm, such as:

• Search results of certified DBEs available to perform the original DS~~S~~BE work identified and/or other work the Contractor had intended to self-perform, to the extent needed to meet the DBE contract goal.

• Solicitations of DBEs for performance of work identified.

• Correspondence with interested DBEs that may have included contract details and Requirements.

• Negotiation efforts with DBEs that reflect why an agreement was not reached.

• If a DBE's quote was rejected, provide Contractor's reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive.

• Copies of each DBE's and non-DBE's price quotes for work identified, as the District may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher.

• Additional documentation that supports the Contractor's GFE.

The District shall provide a written determination to the Contractor stating whether or not the proposed replacement DBE firm is approved, or whether the Contractor has demonstrated good faith efforts ~~have been demonstrated~~. Failure by the Contractor to carry out the requirements of Title 49 C.F.R. ~~Part~~ 26.53, to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment, or to make sufficient good faith efforts to do so, is a material breach of the contract and may result in the termination of the contract or such other remedy as the District deems appropriate.

In addition to post-award terminations, the provisions of this section apply to pre-award

deletions of or replacements for DBE firms put forward by offerors in negotiated procurements.

Contractor must promptly provide to the District a copy of all DBE subcontracts upon District request. All subcontractor contracts with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with 49 C.F.R. Part 26.

G. Failing to Meet Overall Goals (Section 26.47)

If the awards and commitments shown on the District's *Uniform Report of Awards or Commitments and Payments* at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the ~~DBE Manager~~SBE Manager will conduct a Shortfall Analysis to analyze in detail the reasons for the difference between the overall goal and awards and commitments. To ensure the District is implementing its DBE Program in good faith, specific steps and milestones to correct the problems identified and to meet overall goals for future fiscal years will be established. The District is not among the 50 largest transit authorities determined by FTA; therefore, the District's 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 District signs with FTA or Caltrans on behalf of FHWA will include a nondiscrimination assurance from the District. U.S. DOT-assisted contracts that the District lets will include, as appropriate, the model contract provisions that are set forth in the current edition of the District's Standard Disadvantaged Business Enterprise Contract Language/Forms Manual, available from the ~~DBE Manager~~SBE Manager. The ~~DBE Manager~~SBE Manager shall have discretion to modify the provisions for particular contracts as needed, in consultation with the District's Attorney. These required contract provisions consist of:

- The District's DBE Program policy statement.
- A nondiscrimination assurance (26.13(b)) from the contractor (and each subcontract the prime contractor signs with a subcontractor).
- A statement that encourages prime contractors to use financial institutions owned and controlled by socially and economically disadvantaged individuals in the community.
- A Prompt Payment clause that requires a) the prime contractor or subcontractor (i.e. construction contractors) to pay any subcontractor(s) not later than seven (7) days after receipt of each progress payment the District makes to the prime contractor, unless otherwise agreed to in writing, and b) the prime professional to pay any subconsultant(s) not later than fifteen (15) days after receipt of each progress payment or final retention payment. The payment cannot be delayed because of disagreements on other contracts. Any delay or postponement of payment may take place only for good cause and with District's prior written approval.

A contract clause that states any violation of the prompt payment provisions shall subject the violating Contractor 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. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by Contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. Contractors shall include language in their subcontracts that stipulates Contractor and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. Contractor will not be reimbursed for work performed by subcontractors unless and until Contractor ensures that subcontractors are promptly paid for the work they have performed.

A contract clause that states in the event Contractor does not make progress payments or release retentions to the subcontractors in accordance with the time periods in this Section, Contractor will be subject to a charge of two percent (2%) per month by the District on the untimely or improperly withheld payment to subcontractor.

A contract clause that requires the prime contractors to pay all retainage owed to construction subcontractors for satisfactory completion of accepted work within seven (7) days after the date the prime contractor receives a payment from the District. For consultant contracts, retainage must be paid not later than fifteen (15) days after receipt of final retention received after the subconsultant'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 or subcontractor to all subcontractors within the following timeframes:

    a. For construction subcontracts, retainage must be paid within seven (7) days of receipt unless otherwise agreed to in writing for construction work completed (Section 7108.5 of the CBPC and Section 10262 of the CPCC), and

    b. For consultant contracts, retainage must be paid not later than fifteen (15) days after receipt of final retention received after the subconsultant's work is satisfactorily completed (Section 3321 of the CCC).to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

3. Hold retainage from the prime contractor 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 all subcontractors within the following timeframes:

    a. For construction subcontracts, retainage must be paid within seven (7) days of receipt unless otherwise agreed to in writing for construction work completed (Section 7108.5 of the CBPC and Section 10262 of the CPCC), and

    b. For consultant contracts, retainage must be paid not later than fifteen (15) days after receipt of final retention received after the subconsultant's work is satisfactorily completed (Section 3321 of the CCC).

The District will use Method No. 3 above to comply with the Prompt Payment requirement, subject to state prompt payment requirements that do not conflict with federal regulations.

Prompt payment and return of retainage requirements apply to both DBE and non-DBE subcontractors at all tiers.

- The website address for the DBE directory identifying all firms eligible to participate as DBEs in the District's Program.

- The DBE participation goal (whenever applicable).

- A section that provides the DBE certification standards.

- A section that provides how DBE participation is counted toward contract goals.

- 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 and DBE firms are performing a commercially useful function.

- A section on administrative and contractual remedies to ensure compliance with the DBE Program.

VII. CERTIFICATION STANDARDS (Subpart D)

The District 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 District 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 District 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 District decide to change its non-certifying status and elect to become a certifying member, the District will apply the standards of Subpart D of the Regulations.

Under the Final Rule, there are no race- or sex-based presumptions of social and economic disadvantage. Each owner seeking DBE certification, except as stated in §26.63(c), must demonstrate social and economic disadvantage affirmatively, based on his or her own experiences and circumstances within American society, and without any presumptions based solely on race or sex.

A Personal Narrative (PN) must identify at least one objective basis for the owner's disadvantaged status. The basis may be any identifiable status or condition. The PN must describe this objective distinguishing feature in sufficient detail to justify the owner's conclusion that it prompted economic hardship, social barriers, or denied opportunities that impeded the owner's progress or success in education, employment, or business, including obtaining financing on terms available to non-disadvantaged individuals with comparable qualifications. The PN must state how and to what extent the impediments caused the owner economic harm, including a full description of the type and magnitude. A PN must be supported by a current Personal Net Worth statement (§§ 26.5, 26.61, and 26.67). The firm bears the burden of demonstrating its eligibility by a preponderance of the evidence.

For online DBE certification information through the CUCP, visit https://caltrans.dbesystem.com/.

VIII. MONITORING AND RECORDKEEPING (Sections 26.11, ~~and~~ 26.37 and 26.109)

A. Bidders List (Section 26.11)

The District will require all prime contractors bidding on U.S. DOT-assisted contracts to return, at a time specified in the solicitation documents, the following information about the prime contractor and all subcontractors who provide a bid/quote:

Firm name
Firm address, including zip code
Firm's status as a DBE or non-DBE
~~Race and gender information for the majority owner~~
NAICS code applicable to each scope of work expected to perform

Age of the firm
Annual gross receipts

The District will enter this information in the Department's designated centralized database no later than December 1 following the fiscal year in which the relevant contract was awarded. In the case of "design-build" contracts where an Open Ended DBE Performance Plan is required, the District will enter the data in the centralized database no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s). The District reserves the right to request additional information, including information relative to improperly completed DBE/SBE forms.

B. Monitoring Prompt Payments (Section 26.37)

The contractor shall maintain records of all DBE and non-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 District or U.S. DOT. This reporting requirement is also extended to any certified DBE subcontractor.

The District will maintain a running tally of real time entry of payments actually made to DBE firms by use of an automated cloud-based system known as the District's Diversity Compliance Management System (DCMS) powered by B2Gnow software. Prime contractors are required to report all payment information in DCMS, which must be confirmed by all DBE and non-DBE subcontractors, subconsultants, and suppliers, up to ten tiers. Documentation to verify such payments may be requested. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs and that DBEs performed a commercially useful function.

The District 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. District staff may, as necessary, review subcontract agreements for the inclusion of prompt payment clauses required by the District's DBE Program.

Prime contractors are expected to complete a Final Audit for each subcontractor and state that a final payment has been made. Subcontractors confirming final payments are required to upload a copy of their final check as supporting documentation to confirm final payment reported by the Contractor. The District will request all prime contractors to provide the District with executed copies of subcontractor agreements to verify dollar amounts stated for all DBEs.

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

The District's DBELO will continue to report DBE participation and overall and/or project 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 operating

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

D. Information, Confidentiality, Cooperation (Section 26.109)

The District will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), California Public Records Act (Government Code §6250), and local law. The District may make available to the public any information concerning the DBE Program release of which is not prohibited by Federal law.

Participants of the District's DBE Program are required to cooperate fully and promptly with compliance reviews, investigations, and other request for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to a complainant, 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).

Participants of the District's DBE Program must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by §26.109, or because the individual or firm has made a compliant, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing. Failure to comply with this part is a violation.

Participants of the District's DBE Program may submit comments, concerns, or file a complaint to:

Golden Gate Bridge, Highway & Transportation District
Artemisé Davenport, Manager, SBE Compliance Programs
1011 Andersen Drive
San Rafael, CA 94901
Phone: 415-257-4581
E-mail: adavenport@goldengate.org

Complainants must include facts and supporting documentation regarding the complaint.

E. Contract Remedies (Section 26.37)

The District will monitor compliance of its contractors on federally-assisted contracts with the requirements of the Regulations and the DBE Program. The District 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 monthly progress payments, assessing sanctions, imposition of liquidated damages, disqualifying the contractor from future bidding as non-responsible, and/or termination of the contract in whole or in part.

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

The District's public participation and outreach effort activities are directed at assisting the District to solicit public input to set overall DBE goal(s) and/or project goal(s) and to broaden public awareness of the District's Business Opportunity Program to meet overall DBE goal(s) and/or project goal(s).

In establishing and meeting overall DBE goal(s) and/or project goal(s), the District will provide for public participation. This will include:

Prior to finalizing the Overall Goal(s) and/or Project Goal(s) Analysis Report, the District will consult with U.S. DOT agencies, other U.S. DOT grantees, ~~minority, women's~~small businesses, ~~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 District's efforts to establish a level playing field for the participation of DBEs.

Every three years, or more often if an overall goal and/or project goal is adjusted, the District will publish a notice announcing its proposed overall goal(s) and/or project goal(s), on the District's internet website and may post the notice in any other sources (e.g., ~~minority-focused media~~small business or trade association publications).

In conjunction with the District's activities to meet its overall DBE goal(s) and/or project goal(s), the District will implement various public participation and outreach activities designed to broaden awareness of the District's Business Opportunity Program. The measures described in 49 C.F.R. § 26.51 focusing on DBE~~race~~-neutral means will be actively pursued, and the District will also encourage its contractors to make similar outreach efforts to include DBE participation in subcontracting opportunities. In conjunction with regional outreach consortia and CUCP, the District will continue to organize and offer training programs for meeting DBE eligibility requirements, familiarize potential contractors with District procurement procedures and requirements, and otherwise develop effective programs to further the inclusion of DBEs in the District's contracting activities.

E~~xhibit~~XHIBIT A: MANAGER, ~~DBE AND WORKFORCE INCLUSION~~SBE COMPLIANCE PROGRAMS DUTIES AND RESPONSIBILITIES

In accordance with 49 C.F.R. § 26.25 and Section III.A. of this Program, the specific duties and responsibilities of the Manager, SBE Compliance Programs~~DBE and Workforce Inclusion~~ shall include, but not be limited to, the following:

1. Administering the Business Opportunity Program in compliance with FTA and FHWA guidelines and District business operational goals to ensure continued FTA grant funding;

2. Making recommendations to and advising executive management and the Board of Directors regarding DBE/SBE program policy changes;

3. Serving as the District's Disadvantaged Business Enterprise Liaison Officer (DBELO) with independent and direct access to the District's General Manager;

4. Analyzing and assessing the available resources and evidence for the establishment and achievement of overall DBE goal(s) and/or project goal(s) for U.S. DOT-assisted contracts each fiscal year;

5. Analyzing data and regularly craft and submit financial reports to FTA and DOT;

6. Developing, monitoring and evaluating the Business Opportunity Program, and preparing supplemental written procedures and guidelines to implement the Program;

7. ~~If the~~Should the District's status change to ~~is~~ a certifying member of the CUCP, maintaining and updating the DBE Database in accordance with 49 C.F.R. § 26.31;

8. ~~If the~~Should the District's status change to ~~is~~ a certifying member of the CUCP, determining all certification actions including initial certifications, recertifications, denials and removals;

9. Maintaining and updating the Bidders List in accordance with 49 C.F.R. § 26.11;

10. Conducting ~~race~~DBE-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, simplifying bonding, surety and insurance requirements or other DBE~~race~~-neutral means;

11. Participating in the contract bid and award process, including recommending specific contract goals where appropriate, reviewing contract specifications, attending pre-bid/proposal conferences and evaluating bids for contractor responsiveness, responsibility and good faith efforts;

12. Monitoring specific contract performance and actual DBE participation and contract payments;

13. Monitoring overall DBE participation, adjusting overall goals and means of achievement, assessing areas of over-concentration of DBE participation and reporting to the General Manager, the District's Board of Directors, FTA and Caltrans on behalf of FHWA, as needed;

14. Participating in the CUCP in accordance with 49 C.F.R. § 26.81 and CUCP MOA;

15. Assisting the District's Business Opportunity Program Review Committee;

16. Representing the District on a variety of committees conducting and/or coordinating regional outreach events and activities;

17. Participating in other transit organizations on common issues pertaining to ~~diversity~~ small business programs for contracts;

18. Establishing Disadvantaged and Small Business Enterprise contract-specific goals on applicable District contracts and proposals and analyzing all related DBE/SBE forms for bid/proposal submittal;

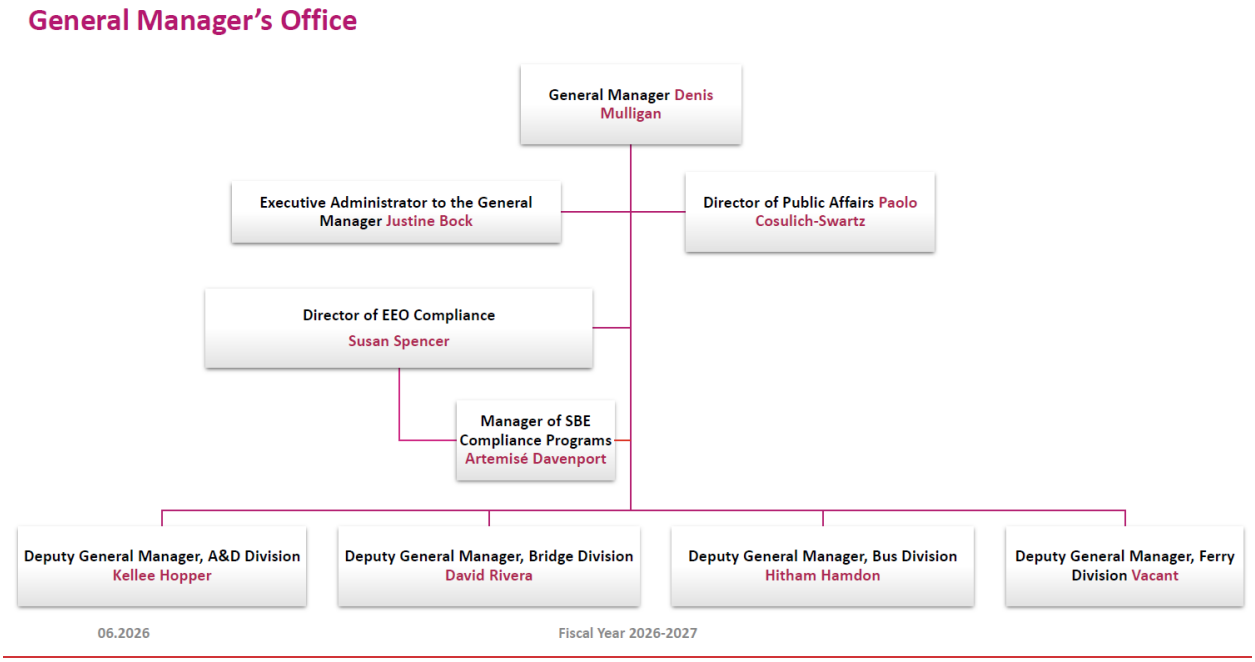
19. Investigating DBE protests;

20. Training and instructing District staff on new DBE/SBE processes and procedures; ~~and~~

21. Maintaining all appropriate records and documentation of the Program~~.~~; and

~~21.~~22. Make any necessary minor revisions to the Program for administrative purposes or to conform with applicable law and guidance. Any significant changes will be presented to the Board for approval.

EXHIBIT~~xhibit~~ B: DBE PROGRAM ORGANIZATIONAL CHART



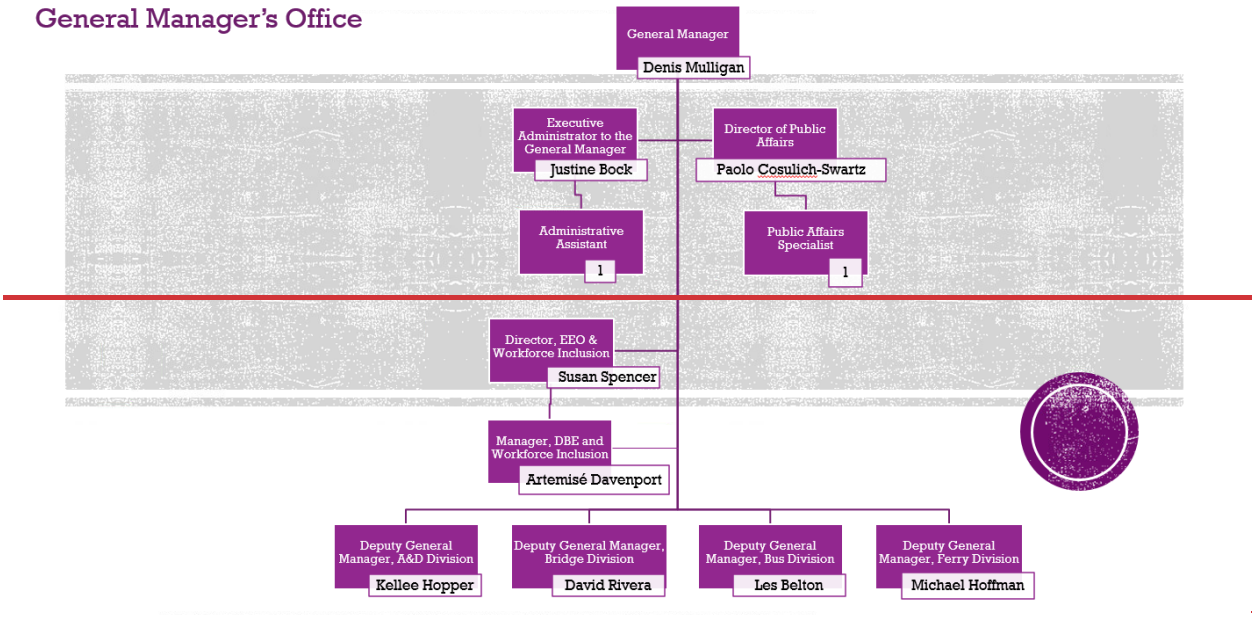


EXHIBIT C: SMALL BUSINESS ENTERPRISE ELEMENT (Section 26.39)

The District has established a Small Business Enterprise (SBE) Element as one of its DBE~~race~~-neutral methods of achieving small business participation, including disadvantaged business participation, on particular contracts with subcontracting opportunities. This SBE Element applies to all District contracts, regardless of funding source, where DBE~~race~~-neutral ~~and gender-neutral~~ methods are employed, without regard to race or sex. The District will take all reasonable steps to eliminate obstacles to SBE prime contractor or subcontractor participation in District procurement activities.

On August 2, 2013, the District received approval from the Federal Transit Administration to implement the SBE Element as part of the District's DBE Program.

For convenience, the District follows the DBE contract goal procedures set forth in 49 C.F.R. 26.53 to administer its SBE contract goals in a DBE-neutral manner. For purposes of this SBE Element, all references to "DBE" in 49 C.F.R. 26.53 are changed to "SBE."

A. **Definition of Small Business Enterprise**

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

a. A firm (including affiliates) must be an existing small business as defined by Small Business Administration (SBA) regulations, 13 C.F.R. 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.

b. Even if a firm meets the above requirement, the firm's (including affiliates') average annual gross receipts over the previous three federal fiscal years cannot exceed

a maximum cap of $320.872 million. The Department will adjust the amount annually and will post on its website at https://www.transportation.gov/DBEsizestandards. SBA size standards vary by industry, and for certain industries may be higher than the $321.824 million cap. For example, the SBA size standard for a general construction contractor is $45 million. If a general construction contractor's average annual gross receipts over the previous three years is $332 million, while it is below $45 million and meets the SBA size standard, it would be ineligible to participate as a small business for District purposes as it exceeds $321.824 million.

For information on SBA size standards, visit: https://www.sba.gov/document/support-table-size-standards. Affiliates are defined in SBA regulations 13 C.F.R. Part 121.103.

B. **Acceptable Comparable Small Business Enterprise Certifications**

The District will accept the small business enterprise certifications performed by other agencies, provided that the size standards described in Section A1a and A1b above are met. If a firm is certified in one or more of the following programs, and meets District size standards, the firm is automatically deemed a small business for District purposes. The term "SBE" will be used collectively for all DBEs and qualified SBEs~~, WBEs, MBEs~~ and other approved certifications. As indicated below, the District requires an affidavit of size for each SBE prime contractor or subcontractor that is not certified as a DBE. Certifications from self-certification programs are not acceptable. District may request and review financial data provided by SBE firms on a case-by-case basis to confirm eligibility.

Firms must be certified as of the time of bid submittal.

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

~~**2. State Minority Business Enterprise (SMBE) and State Women Business Enterprise (SWBE) certification by the State of California** or by any other state provided that their certification complies with Section A1a and A1b 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 specified time in the bid solicitation.~~

23. Small Business (SB) certification by the California Department of General Services (DGS) provided that their certification complies with Section A1a and A1b above. In addition to copies of SB certifications, bidders must submit an affidavit of size for each SB prime contractor or subcontractor at the specified time in the bid solicitation.

34. Microbusiness (SB (Micro)) certification by the California Department of General Services for ALL industries, provided that their certification complies with Section A1a and A1b above. In addition to copies of SB Micro certifications, bidders must submit an affidavit of size for each Micro prime contractor or subcontractor at the specified time in the bid solicitation.

45. Small Business for the Purpose of Public Works (SB-PW) certification by the California Department of General Services provided that their certification complies with Section A1a and A1b above. In addition to copies of SB-PW certifications, bidders must submit an affidavit of size for each SB-PW prime or subcontractor at the specified time in the bid solicitation.

56. SBA 8(a) by the Small Business Administration provided that their certification complies with Section A1a and A1b 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 subcontractor at the specified time of the bid solicitation.

67. SBE~~/MBE/WBE~~ certification from other state, county, or local government-certifying agency provided that their certification complies with Section A1a and A1b above and is not based on race or sex eligibility requirements. In addition to copies of certifications, bidders must submit an affidavit of size for each certified prime contractor or subcontractor at the specified time in the bid solicitation.

C. **DBE~~Race~~-Neutral SBE Measures**

The District will continue its efforts to enhance small business participation through outreach and other community programs, training and business development programs, restructuring contracting opportunities, simplifying bonding, surety and insurance requirements or other DBE~~race~~-neutral means. In addition, the District may take any of the following DBE~~race~~-neutral SBE measures:

1. Endeavor to unbundle large contracts to ensure that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform. During the project planning stage, project managers and engineering staff will evaluate the potential for a large project to be split into smaller contract opportunities.

2. In multi-year design-build contracts or other large contracts (e.g., for "megaprojects"), require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

3. On prime contracts not having DBE contract goals, establish contract-specific SBE goals where appropriate. Contract-specific SBE goals may be established on particular prime contracts with subcontracting opportunities as a means of increasing small business, including DBE participation. Availability of subcontracting opportunities will be evaluated on a contract-by-contract basis by project managers and the ~~DBE Manager~~SBE Manager. Where a contract-specific SBE 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.

D. **Determining SBE Goals** (Referencing C.3. above)

The SBE goal shall be determined by the ~~DBE Manager~~SBE Manager in cooperation with project managers and with the concurrence of the General Manager. The contract-specific goal shall apply to the percentage of SBE participation in the total contract work and be set forth in the Special Provisions of the contract specifications.

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:

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 a contract-specific goal due to the fact that establishing a goal could result in restrictive bidding.);

4. The effect that the contract-specific goal might have on the time of completion;

5. Any other relevant criteria.

E. **Awarding and Administering Contracts with Contract-Specific SBE Goals**

The District shall award contracts to the lowest responsible bidder as required by the California Public Contracts Code Sections 20914 and 20916, where applicable. For such contracts, as well as for contracts awarded pursuant to a Request for Proposals procedure where the lowest responsible bidder standard does not apply, a bidder that fails to demonstrate that it achieved the contract-specific SBE 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. The bidder or proposer will include in its bid or proposal a *SBE Goal Declaration* in a form designated by the District notifying the District of its SBE goal attainment. All DBE/SBE forms required must be completed and submitted at the time specified in the solicitation to be deemed "responsive" to the solicitation requirements.

1. **Evaluation of Bids**

Invitation for Bid. The following procedures apply to contracts that are awarded to the lowest responsible bidder. No later than five (5) business days after bid opening as a matter of responsiveness, the ~~DBE Manager~~SBE Manager shall evaluate all bids to determine whether the bidders submitted all of the information required by 49 C.F.R. § § 26.11(2) & 26.53(b). The responsible bidder with the lowest apparent bid price who also meets the contract-specific SBE goal, or demonstrates sufficient good faith efforts to meet the contract-specific SBE goal, shall be recommended for the contract award. In the event that the bidder with the lowest monetary bid price fails to meet the contract-specific goal or fails to demonstrate sufficient good faith efforts, or is otherwise unresponsive or not responsible, the ~~DBE Manager~~SBE Manager shall evaluate the bidder with the next lowest bid price. Should the ~~DBE Manager~~SBE Manager determine that additional information is needed to evaluate a bidder's submission with regard to the SBE requirements, the ~~DBE Manager~~SBE Manager shall request said bidder to submit the required information, or may contact the listed SBEs directly.

The District shall require that any SBEs listed by bidders for participation in the contract be certified SBEs as of the time of bid opening. Acceptable comparable Small Business Enterprise certifications are listed in this document. Some certifications require completion of a *Small Business Enterprise Affidavit of Size* in a form designated by the District and submitted at the time specified in the bid solicitation.

The ~~DBE Manager~~SBE Manager shall review the *SBE Goal Declaration* form and the *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* and will confirm each SBE firm's certification status. The ~~DBE Manager~~SBE Manager will review the total dollar value of the work to be performed by SBEs and the total contract bid price for accuracy and comparison with the contract-specific SBE goal established for the contract.

Request for Proposals. This procedure applies to contracts that are awarded pursuant to a Request for Proposals procedure, in which the lowest responsible bidder standard does not apply and contract award is based upon a qualitative evaluation of multiple factors, including costs. After the submission deadline, the ~~DBE Manager~~SBE Manager shall evaluate all proposals to determine whether the proposers submitted all of the information required by 49 C.F.R. § § 26.11(2) & 26.53(b). The highest ranked responsible proposer who also meets the contract-specific SBE goal, or demonstrates sufficient good faith efforts to meet the contract-specific SBE goal, shall be recommended for the contract award. In the event that the highest ranked proposer fails to meet the contract-specific goal or fails to demonstrate sufficient good faith efforts, or is otherwise unresponsive or not responsible, the ~~DBE Manager~~SBE Manager shall evaluate the next highest ranked proposer. Should the ~~DBE Manager~~SBE Manager determine that additional information is needed to evaluate a proposer's submission with regard to the SBE requirements, the ~~DBE Manager~~SBE Manager shall request said proposer to submit the required information, or may contact the listed SBEs directly.

The District shall require that any SBEs listed by proposers for participation in the contract be certified SBEs at the proposal submission deadline. Acceptable comparable Small Business Enterprise certifications are listed in this document. Some certifications require completion of a *Small Business Enterprise Affidavit of Size* in a form designated by the District and submitted at the time specified in the solicitation.

The ~~DBE Manager~~SBE Manager shall review the *SBE Goal Declaration* form for the proposer's SBE commitment and shall compare it to the contract-specific goal established for the contract. The ~~DBE Manager~~SBE Manager shall review the list of SBEs submitted by the proposer and confirm each SBE firm's certification status.

The following applies to both Invitation for Bid and Request for Proposals.

2. **Determination of Good Faith Efforts**. Bidder/proposer is obligated to make good faith efforts. Bidder/proposer can demonstrate that it has made good faith efforts by either meeting the contract-specific goal or documenting good faith effort to meet the contract-specific goal. If the amount of SBE participation does not meet the contract-specific goal, the ~~DBE Manager~~SBE Manager shall review the good faith efforts documentation submitted by the bidder/proposer. The ~~DBE Manager~~SBE Manager 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 contract-specific goal in accordance with 49 C.F.R. Part 26, Appendix A. All bidders/proposers must submit Good Faith Efforts documentation in accordance with the solicitation documents.

3. **Bidder's Right to Administrative Reconsideration**. In the event that the ~~DBE Manager~~SBE Manager determines that the apparent low responsible bidder, or highest ranked proposer, is not responsive to the solicitation because it has not met the contract-specific goal and has not demonstrated sufficient good faith efforts to meet the contract-specific goal, the ~~DBE Manager~~SBE Manager will notify the bidder/proposer in writing. The notification shall include the reasons for the determination and inform the bidder/proposer of its right to request administrative reconsideration of the determination. The bidder's/proposer's 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 bidder/proposer may submit written documentation for the Review Committee's consideration and may appear before the Review Committee. The Review Committee will only consider documentation of good faith efforts made prior to the bid/proposal due date. Any written documentation the bidder/proposer wishes the Review Committee to consider must be submitted to the designated staff person within the timeframe specified in the notice of administrative reconsideration. The Review Committee will convene for the administrative reconsideration prior to the time that a recommendation for award of the contract is presented to the appropriate committee and then to the Board of Directors or to the General Manager, as applicable.

The Review Committee will consider the bidder's/proposer's good faith efforts documentation submitted with its bid/proposal, the ~~DBE Manager~~SBE Manager's original good faith efforts determination, and any other written materials the bidder/proposer has submitted to the Review Committee, in accordance with this section, to 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 contract-specific goal in accordance with 49 C.F.R. Part 26, Appendix A.

The Review Committee shall provide the bidder /proposer with a written decision on reconsideration, explaining the basis for its determination. In the event that the Review Committee finds that the bidder/proposer has not met the contract-specific goal or has not demonstrated sufficient good faith efforts to meet the contract-specific goal, the ~~DBE Manager~~SBE Manager

will deem said bidder not responsive and evaluate the responsible bidder submitting the next lowest bid, or the next highest ranking proposer. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation or Federal Transit Administration.

4. **Recommendation for Award**. Following the determination of the lowest responsive and responsible bidder/highest ranked proposer, the ~~DBE Manager~~SBE Manager shall prepare a report on the firm's compliance with the SBE requirements for review by the General Manager. The determination will be included in a report for presentation to the appropriate committee and then to the Board of Directors, if applicable, at the time the contract award is considered. If the appropriate committee, the Board of Directors or the General Manager disagrees with the recommendation, it 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 General Manager on the award of contract, if such a decision is made, shall be final and binding on all parties, subject to compliance with the District's bid protest procedures.

5. **Termination and Replacement of SBEs on Contracts With SBE Contract Goals**. A Contractor may not terminate, replace, or otherwise remove a SBE subcontractor listed on a *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* or *Prime Consultant and Subcontractor/Subconsultant/Supplier Report* (or an approved replacement SBE firm) without prior written District consent. For purposes of this requirement, subcontractors include subcontractors, subconsultants, truckers, manufacturers, or suppliers performing work or providing materials or services under the contract.

These requirements apply to any proposed termination or replacement of a SBE firm, including circumstances in which a Contractor seeks to perform work or supply materials originally designated for a SBE subcontractor/supplier with its own forces or those of an affiliate, a non-SBE firm, or with another SBE firm. Contractor shall notify the District in writing of any request to replace or terminate a SBE subcontractor and provide appropriate documentation substantiating the replacement or termination in accordance with this section. Contractor shall not proceed with the termination or replacement of a SBE's committed work until the District has provided written approval.

All requests to add new subcontractors, substitute or remove previously approved SBE subcontractors must also be submitted through the District's Diversity Compliance Management System for review and District approval in addition to any written request.

Contractor must make good faith efforts to replace an original SBE subcontractor with a different SBE. Unless the District's consent is provided, Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed SBE.

District may provide such written and/or electronic consent only if it agrees that there is good cause for the termination for reasons stated in 26.53(f)(3)(i-x).

Contractor must comply with the following procedures for terminating a SBE subcontractor:

1. Contractor must send written notice to the SBE subcontractor it seeks to terminate, with a copy to District, of its intent to terminate the SBE. The notice must include one or more of the acceptable reasons for termination found in 26.53(f)(3). Contractor's written notice to the SBE must request the SBE respond to the notice by submitting a letter within five (5) business days of the date of Contractor's notice. The SBE's response must either agree or object to the proposed termination; objections should be supported by an explanation as to why the termination should not occur. If required in a particular case as a matter of public necessity (e.g., safety), Contractor may require the SBE response to the notice in less than five (5) business days.

2. If the SBE does not respond within five (5) business days, Contractor may move forward with the request as if the SBE had agreed to the Contractor's written notice.

3. Contractor must submit a SBE termination request by written letter to the District and include one or more of the acceptable reasons for termination found in 26.53(f)(3) along with supporting documentation, Contractor's written notice to the SBE regarding the request (including proof of transmission and tracking documentation of Contractor's written notice), and the SBE's response to Contractor's written notice, if received. If written response from the SBE was not provided, provide a statement to that effect.

4. After receiving the District's written authorization of SBE termination request, Contractor must obtain the District's written agreement for SBE replacement. Contractor is required to find, or demonstrate adequate good faith efforts (GFE) in accordance with Title 49 C.F.R. Part 26.53 to find, a qualified SBE replacement firm(s) to perform at least the same amount of work under the contract as the SBE that was terminated, to the extent needed to meet the contract goal established.

Contractor must use the following procedures to request the District's authorization for the replacement of a terminated SBE:

1. Submit a request to replace a SBE with other forces or material sources in writing to the District which must include:

a. Description of remaining uncommitted work items made available for replacement SBE solicitation and participation.

b. The proposed SBE replacement firm's business information, the work they have agreed to perform, and the following:

• Quote for bid item work and description of work to be performed.
• Proposed subcontract agreement and written confirmation of agreement to perform on the Contract.

2. If Contractor has not identified a SBE replacement firm, submit documentation of the Contractor's GFE to use SBE replacement firms within 7 days of District's authorization to terminate the SBE. The Contractor may request the District's approval to extend this submittal period to a total of 14 business days. Submit documentation of actions taken to find a SBE replacement firm, such as:

• Search results of certified SBEs available to perform the original SBE work identified and/or other work the Contractor had intended to self-perform, to the extent needed to meet the SBE contract goal.

• Solicitations of SBEs for performance of work identified.

• Correspondence with interested SBEs that may have included contract details and Requirements.

• Negotiation efforts with SBEs that reflect why an agreement was not reached.

• If a SBE's quote was rejected, provide Contractor's reasoning for the rejection, such as why the SBE was unqualified for the work, or why the price quote was unreasonable or excessive.

• Copies of each SBE's and non-SBE's price quotes for work identified, as the District may contact the firms to verify solicitation efforts and determine if the SBE quotes are substantially higher.

• Additional documentation that supports the Contractor's GFE.

The District shall provide a written determination to the Contractor stating whether or not the proposed replacement SBE firm is approved, or whether the Contractor has demonstrated good faith efforts. Failure by the Contractor to carry out the requirements of Title 49 C.F.R. 26.53, to find qualified SBE replacement firms to perform the work to the extent needed to meet the SBE commitment, or to make sufficient good faith efforts to do so, is a material breach of the contract and may result in the termination of the contract or such other remedy as the District deems appropriate.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or replacements for SBE firms put forward by offerors in negotiated procurements.

Contractor must promptly provide to the District a copy of all SBE subcontracts upon District request. All subcontractor contracts with SBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with 49 C.F.R. Part 26.

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GOLDEN GATE BRIDGE®
HIGHWAY & TRANSPORTATION DISTRICT







BUSINESS OPPORTUNITY PROGRAM

DISADVANTAGED AND SMALL BUSINESS ENTERPRISE PROGRAM

BOX 29000
Presidio Station
San Francisco, CA 94129

If you require assistance accessing this information or require it in an alternative format, contact Jon Gaffney, ADA Compliance and Program Manager at 415-257-4416 or jgaffney@goldengate.org.

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I. POLICY (Section 26.23)

As a recipient of federal funds from the United States Department of Transportation (U.S. DOT) the Golden Gate Bridge, Highway and Transportation District ("District") is required to comply with Title 49 of the Code of Federal Regulations ("C.F.R.") Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*, as may be amended ("Regulations"). The District is committed to a Business Opportunity Program (Program) that includes the Disadvantaged Business Enterprise (DBE) Program and Small Business Enterprise (SBE) Element required by the Regulations. It is the policy of the District to ensure nondiscrimination on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT assisted contracts and in the administration of its Program in accordance with the Regulations. It is the intention of the District to create a level playing field on which DBEs and SBEs can compete fairly for contracts and subcontracts relating to the District's construction, procurement, and professional services activities.

The Program includes procedures to remove barriers in the bidding and award process and to assist DBEs to develop and compete successfully outside of the Program. One such procedure includes utilizing the mandated SBE Element of the District's Program. The SBE Element serves as a means to encourage small business participation without regard to race or gender, thereby fostering greater access to contracting opportunities. Additionally, it allows the District to establish contract-specific SBE goals on both federally and non-federally assisted contracts where subcontracting opportunities are viable.

The Board of Directors is responsible for establishing the DBE policy of the District. The General Manager of the District is responsible for ensuring adherence to this policy. The Manager of SBE Compliance Programs, in coordination with all District Officers, Division Managers, Department Heads, and Procurement staff, is responsible for the development, implementation, and monitoring of the Program in accordance with the District's nondiscrimination policy. It is the expectation of the Board of Directors and the General Manager that all District personnel shall adhere to the spirit, as well as the provisions and procedures, of this Program.

This policy will be circulated to all District personnel and to members of the community that perform or are interested in performing work on District contracts. The complete Program is available to review at http://goldengate.org.

The Manager of SBE Compliance Programs position is designated as the Disadvantaged Business Enterprise Liaison Officer (DBELO) who implements all aspects of the District's Program with independent and direct access to the General Manager. For questions or further information regarding this Program, please contact the Manager of SBE Compliance Programs, Artemisé Davenport, by telephone at (415) 257-4581, or by e-mail at adavenport@goldengate.org.

Date: _____

_____
David A. Rabbitt
President, Board of Directors

A. Applicability (Sections 26.3 and 26.21)

The District, as a recipient of federal financial assistance from the Federal Transit Administration ("FTA") and the Federal Highway Administration ("FHWA") of the U.S. Department of Transportation (U.S. DOT), is required to implement a DBE Program in accordance with 49 C.F.R. Part 26, as amended by the Final Rule issued by U.S. DOT on September 25, 2026 and as may be amended in the future ("Regulations"). The Regulations are incorporated herein by this reference. The District receives funds from FHWA as a subrecipient through California Department of Transportation (Caltrans). The Program outlined herein applies to all District contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance. To the extent that the Program's policy, objectives, and efforts involve DBE-neutral methods, the Program will apply to all District contracts regardless of funding source. The District will administer this Program in a manner consistent with the Regulations and applicable guidance from U.S. DOT, FTA and Caltrans. 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.

B. Objectives (Section 26.1)

The objectives of this Program are the following:

1. To ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts and administer the Program without regard to race- or sex-based presumptions or preferences;

2. To remove barriers to DBE participation in the bidding, award and administration of District contracts;

3. To assist DBEs to develop and compete successfully in the marketplace outside of the Program;

4. To create a level playing field on which DBEs can compete fairly and ensure the Program is narrowly tailored in accordance with applicable law;

5. To ensure that only DBEs meeting the certification eligibility requirements in the Regulations are permitted to participate as DBEs;

6. To identify business enterprises that are eligible as DBEs to provide the District with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers, and sales representatives of those enterprises;

7. To develop communication programs and procedures which will acquaint prospective DBEs with the District's contract procedures, activities, and requirements and allow DBEs to provide the District with feedback on existing barriers to participation and effective procedures to eliminate those barriers;

8. To administer the Program in close coordination with the various divisions and departments within the District so as to facilitate the successful implementation of this Program; and

9. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by the District.

C. Prohibited Discrimination (Section 26.7)

The District 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 C.F.R. Part 26 on the basis of race, color, national origin, or sex.

The District 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, national origin, or sex.

II. DEFINITIONS (Section 26.5)

Any terms used in this Program that are defined in 49 C.F.R. § 26.5 or elsewhere in the Regulations (49 C.F.R. Part 26) shall have the meaning set forth in the Regulations. Some of the most common terms are defined below:

A. 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.

B. Contractor

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

C. DBE-Conscious

A DBE-Conscious measure or program is one that is focused specifically on assisting only DBEs.

D. DBE-Neutral

A DBE-Neutral measure or program is one that is, or can be, used to assist all small businesses.

E. Department or DOT

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

F. Disadvantaged Business Enterprise (DBE)

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

G. FTA Tier I Recipient

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

H. FTA Tier II Recipient

An FTA recipient to whom this part applies who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which does not exceed $670,000 in FTA funds in a Federal fiscal year.

I. 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 requirements.

J. Personal Narrative (PN)

A written statement, required of each owner seeking to establish social and economic disadvantage, that establishes disadvantage by a preponderance of the evidence through individualized proof of specific instances of economic hardship, systemic barriers, and denied opportunities that impeded the owner's progress or success in education, employment, or business. A determination of social and economic disadvantage must not be based in whole or in part on a presumption of disadvantaged based on race or sex. The PN must be accompanied by a current Personal Net Worth statement.

K. Personal Net Worth (PNW)

The net value of an individual's reportable assets and liabilities, per the calculation rules in §26.68.

L. Recipient

Any entity, public or private, to which U.S. DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or that has applied for such assistance.

M. Reevaluation Process

The one-time process, added by the Interim Final Rule, under which each Unified Certification Program must identify every firm certified as of October 3, 2025, give each firm an opportunity to submit documentation demonstrating eligibility under the revised certification standards, and issue a written decision recertifying or decertifying the firm.

As of July 20, 2026, the California Unified Certification Program (CUCP) notified U.S. DOT that the reevaluation process was complete. Effective July 21, 2026, all CUCP certifying agencies resumed accepting new DBE, ACDBE, and Interstate certification applications. The decertification procedures of § 26.87 do not apply to decisions made under § 26.111.

N. Small Business Concern

With respect to firms seeking to participate as DBEs in U.S. DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and the U.S. Small Business Administration regulations implementing it (13 C.F.R. Part 121), whose average annual gross receipts for the previous three (3) years does not exceed $32.82 million (or as adjusted for inflation by the Secretary of U.S. DOT annually) pursuant to 49 C.F.R. § 26.65(b).

O. Socially and Economically Disadvantaged Individual

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically disadvantaged on a case-by-case basis. A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on a presumption based on race or sex. For that reason, all owners may qualify as socially and economically disadvantaged only if they meet the relevant criteria described in § 26.67.

P. Transit Vehicle Manufacturer (TVM)

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

III. RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION

A. Duties of the Disadvantaged Business Enterprise Liaison Officer (Section 26.25)

Pursuant to 49 C.F.R. § 26.25, the Program shall be administered by the Manager of SBE Compliance Programs ("SBE Manager") who shall be appointed by and have direct, independent access to the General Manager of the District (Refer to Exhibit B, "DBE Program Organizational Chart"). The SBE Manager is designated as the Disadvantaged Business Enterprise Liaison Officer (DBELO), who is the primary person responsible for implementing all aspects of this Program and will work closely with operating divisions and other departments and consultants of the District, including legal, procurement, engineering, insurance, and others who are responsible for making decisions relative to the District's construction, procurement, and professional service contracts.

The SBE Manager specific duties and responsibilities pertaining to the DBE Program are attached as Exhibit A and incorporated herein.

B. Duties of Business Opportunity Program Review Committee (Sections 26.53 and 26.87)

The District Secretary, the District Engineer, and the Auditor-Controller shall comprise the Business Opportunity Program Review Committee ("Review Committee"). The SBE Manager may attend all Review Committee meetings and furnish background information, but shall not be a voting member of the Review Committee. The Review Committee shall assist the SBE Manager with the implementation of this Program. The Review Committee shall preside over hearings that may be held pursuant to this Program, including administrative reconsideration of the SBE Manager's original determination of a bidder's compliance with good faith efforts/Business Opportunity Program requirements, in accordance with 49 C.F.R. §§ 26.53(d) and 26.87(e), respectively. The Review Committee does not play a part in the initial determination of a bidder's/proposer's documentation of good faith efforts.

C. Duties of District Officers, Division Managers, Department Heads, and Procurement Staff (Section 26.51)

All District Officers, Division Managers, Department Heads, and Procurement Staff are responsible for the implementation of the DBE Program in their respective areas of authority in coordination with the SBE Manager.

D. Regional Outreach (Section 26.51)

The SBE Manager is designated by the General Manager to represent the District as a member of appropriate regional outreach consortia. The District 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 SBE Manager and/or designated staff will attend scheduled meetings of such groups and will contribute to the achievement of their projects approved by the District's General Manager.

E. California Unified Certification Program (Section 26.81)

The District is a signatory to the California Unified Certification Program ("CUCP") Memorandum of Agreement ("MOA"). The District 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 February 12, 2020, 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 District 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 SBE Manager has researched The Federal Reserve Board website at www.federalreserve.gov/releases/mob/ to identify banks owned and controlled by socially and economically disadvantaged individuals in the District's local market area. Data is derived from the Federal Deposit Insurance Corporation (FDIC) and the Office of Comptroller of the Currency (OCC) and is updated on a quarterly basis. The SBE Manager will continue to use this source to distribute a list of identified financial institutions in the San Francisco Bay Area to each prime contractor doing business with the District.

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 California Unified Certification Program under certification standards set forth in 49 C.F.R. Part 26, Subpart D, as amended by the Final Rule. The DBE Database is jointly maintained and updated by the CUCP certifying member agencies in coordination with Caltrans, the CUCP DBE Database Manager. The DBE Database is available at Caltrans' website at, https://californiaucp.dbesystem.com, and is made available to contractors and to the public. The District will use the DBE Database as a primary resource in developing overall goals, project goals, 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, owner's name, physical address (including zip code and county), phone number, e-mail address, firm website, firm certification type (including certification number), certifying agency, and North American Industry Classification System (NAICS) code(s) applicable to each scope of work the firm is certified to perform. 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)

. Data gathering for bidder's list information will be conducted on a form entitled *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* for construction contracts and *Prime Consultant and Subcontractor/Subconsultant/Supplier Report* for professional service contracts. Using these forms, the following information will be gathered for every firm: firm name, firm address (including zip code), firm status as a DBE or non-DBE, e-mail address, NAICS code applicable to each scope of work the firm sought to perform in its bid/quote, the age of the firm, and the annual gross receipts of the firm. Subsequently, most of a firm's general information is collected on the District's procurement portal powered by Euna Procurement (formerly Bonfire Interactive Ltd.), during vendor registration. The SBE Manager will maintain the confidentiality of any proprietary information in accordance with applicable California law and the Regulations.

Bidder's list information will be entered into a system designated by the U.S. DOT no later than December 1 following the fiscal year in which the relevant contract was awarded. In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), the data will be entered no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s). This information will be requested of all bidders as further described in Section VIII.

D. Over-Concentration (Section 26.33)

If the SBE Manager 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 SBE Manager will develop appropriate measures to address the over-concentration. The SBE Manager 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 District is unaware of any types of work that have a burdensome over-concentration of DBE participation.

E. Business Development Program (Section 26.35 and Appendix C)

The District 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 District 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 District determines such a program is beneficial, a proposed program will be written and submitted to the U.S. DOT operating administrations for approval, after which it will become part of this DBE Program. Guidelines outlined in Appendices C and D of 49 C.F.R. Part 26 will be utilized in setting up the formal agreements and programs. The District is a participating public agency in Caltrans' Calmentor mentor-protégé program.

F. Dissemination of DBE Policy Statement (Section 26.23)

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

1. Through electronic mail to Division Managers, Department Heads, and Procurement;

2. Through electronic mail to DBE and non-DBE firms that are currently performing work on U.S. DOT-assisted contracts;

3. Through electronic mail to DBE and non-DBE firms that are recently awarded U.S. DOT-assisted contracts; and

4. Through the District'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 District 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, 26.53 and 26.55)

The District will implement appropriate monitoring and enforcement mechanisms to ensure compliance with 49 C.F.R. Part 26. The SBE Manager and department Project Managers shall monitor and track actual DBE participation through an automated Diversity Compliance Management System (DCMS), as further described in Section VIII. The SBE Manager will maintain a running tally of real time entry 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. Monitoring will include a written verification that staff 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 such as a commercially useful function review.

The District will rely on DCMS as a running tally mechanism that will provide frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether current implementation of contract goals is projected to be sufficient to meet annual DBE goals.

With respect to each DBE commitment, the District will rely on DCMS as a running tally mechanism that will provide 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 to meet its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to meet the contract goal pursuant to § 26.53(g). Notifications will be sent to Contractors that fall short of meeting their DBE/SBE commitments or contract goals.

The SBE Manager shall ensure that DBE participation is counted toward contract goals and the overall goal or project goal in accordance with § 26.55. Credit toward overall goal, project goal or contract-specific goal will only be given upon satisfactory evidence that payments were actually made to DBEs and that DBEs are performing a commercially useful function.

The District will bring to the attention of DOT any firm that, in order to meet DBE contract goals or other DBE Program requirements, uses or attempts to use, on the basis of false, fraudulent, or deceitful statements or representations or any other dishonest conduct in the connection with the program, so that DOT can take the steps provided in 26.107 (e.g., referral to the Department of Justice for criminal prosecution and/or referral to the DOT Inspector General). DOT may take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, against any participant in the DBE Program whose conduct is subject to such action under 49 C.F.R. Part 31. In addition, the District will consider similar action under its own legal authorities, including responsibility determinations in future contracts.

H. Open-Ended DBE Performance Plan for Design Build Contracts (Section 26.53)

For design-build contracts with minimal-project details at the time of advertisement and that are subject to a contract-specific DBE goal, Contractors must submit a DBE "Open-Ended DBE Performance Plan" (OEPP) with their proposal. To be considered responsive, an OEPP must include:

(i) a commitment to meet the DBE goal for the entire project;
(ii) provide details on the types of subcontracting work or services the proposer will solicit to DBEs to perform, including the projected dollar amount(s); and
(iii) estimated time frame when the DBE subcontracts will be executed.

An OEPP may be modified by mutual agreement between the District and Contractor throughout the life of the project, as long as the design-builder continues to use good faith efforts to meet the goal. District staff will conduct ongoing monitoring and oversight to determine whether the Contractor is using good faith efforts to comply with the OEPP and schedule.

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

The District 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.

The SBE Manager will report DBE participation on FTA funded contracts on a semi-annual basis (June 1 and December 1), using the *Uniform Report of DBE Awards or Commitments and Payments*, a form provided by U.S. DOT. The report includes prime contract and subcontract awards, as well as ongoing contract payments and actual payments for contracts completed during the reporting period, on FTA-assisted contracts. On June 1, the District will report DBE activity from October 1 through March 31. On December 1, the District will report activity from April 1 through September 30. The SBE Manager will continue to provide the report regarding DBE participation and overall goal(s) and/or project goal(s) required by the Regulations to FTA.

District staff will submit bidders list data information required by § 26.11, paragraph (c)(2) in the Department's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded. For "design-build" contracts where subcontracts will be solicited throughout the contract period as defined in a contractor's DBE Open-Ended Performance Plan, the data will be entered no later than December 1 following the federal fiscal year in which the design-build contractor awards the relevant subcontract(s).

Reporting to Caltrans

The District will report final utilization of DBE participation on contracts using Federal Highway Administrative funds to the Department of Local Assistance Engineer using Exhibit 17-F, "Final Report - Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors", a designated form in the Local Assistance Procedures Manual.

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

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

V. ACHIEVING GOAL(S) AND COUNTING DBE PARTICIPATION (Section 26.45)

The District receives U.S. DOT financial assistance as a direct recipient of such funds from FTA and as a subrecipient of such funds from FHWA through 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/FTA funds the District anticipates expending in the three forthcoming federal fiscal years. In appropriate cases, a project goal may be approved and expressed as a percentage of funds for a particular grant or project or group of grants and/or projects.

For contracts funded by FHWA through Caltrans, the District develops contract-specific DBE goals as an effort to meet the statewide DBE goal. The District complies with Caltrans DBE Program on projects and follows the Caltrans Local Assistance Procedures Manual (LAPM).

The District's overall goal(s) and/or project goal(s) represent the amount of ready, willing and able DBEs that are available to participate in contracting opportunities and is reflective of the amount of DBE participation the District would expect absent the effects of social and economic disadvantage. The District intends to meet its goal(s) to the maximum extent feasible through DBE-neutral measures. DBE-neutral participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal. Where DBE-neutral measures are inadequate to meet the overall goal(s) and/or project goal(s), the District may use DBE-conscious measures for particular projects with subcontracting opportunities.

A. Methodology for Setting Overall DBE Goal(s) and/or Project Goal(s) – FTA and FHWA Funded Projects (Section 26.45)

FTA – Funded Projects (Recipient)

1. **Projecting U.S. DOT-Assisted Contract Expenditures**. In conjunction with the preparation and adoption of the budget, the SBE Manager, in consultation with the appropriate District 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. This analysis will exclude projected contract expenditures for transit vehicle manufacturers, which are exempt from the District's goal-setting process as described in Section V(C).

2. **Establishing a Base Figure**. The District 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. The District will follow one of the methodologies provided in the Regulations or develop an alternative methodology and provide the appropriate documentation in the Overall Goal(s) and/or Project Goal(s) Analysis Report described in Section V(B).

a. **Analyzing Available Businesses in the District's Local Market Area**. The SBE Manager, in conjunction with the appropriate District divisions and departments, will conduct a thorough analysis of its local market area in which the District will solicit participation from contractors, subcontractors, consultants, subconsultants, manufacturers, and suppliers. 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 District determines to be relevant in defining its local market area. The SBE Manager will then determine the total available businesses according to its local market area. The SBE Manager will consider a variety of sources including, but not limited to, the U.S. Census Bureau's County Business Patterns Database, the District's Bidders List, and relevant disparity or availability studies.

b. **Analyzing Available DBEs in the District's Local Market Area**. The SBE Manager 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. 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 District will consider a variety of sources including, but not limited to, the CUCP DBE Database, its Bidders List, and any relevant disparity or availability studies.

c. **Calculating the Base Figure**. The SBE Manager will compare the available DBEs in its local market area to the available businesses in its local market area. 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 District will adjust the Step One Base Figure based on demonstrable evidence indicating that the availability of DBEs for U.S. DOT-assisted contracts may be higher or lower than the base figure indicates. At minimum, the SBE Manager will analyze the results of DBE participation in the District's current and recent past contracts (limited to contracts issued after July 20, 2026), current DBE availability and capacity in prime and subcontracting scopes of work, any available and relevant disparity and/or availability 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 to make a Step Two adjustment.

Any disparity or availability study the District may rely on in establishing and/or adjusting its base figure will provide a detailed capacity analysis, including the methodology used, as required by §§ 26.45(c)(3) and 26.45(d)(1)(ii).

4. **Projection of Percentage of Overall Goal(s) and/or Project Goal(s) to Be Achieved Through DBE-Neutral and DBE-Conscious Measures**. Once the overall goal(s) and/or project goal(s) are proposed, the SBE Manager will analyze and project the maximum feasible portion of that goal that can be achieved by using DBE-neutral methods. Where the projected portion of the goal using DBE-neutral methods is less than the overall goal or project goal, the remaining portion may be achieved by using DBE-conscious methods for particular projects that have subcontracting opportunities. The SBE Manager shall monitor and adjust the use of DBE-conscious methods in accordance with 49 C.F.R. § 26.51(f). When projecting the percentage of the overall goal or project goal to be achieved through using DBE-conscious methods, the SBE Manager shall analyze the actual achievement of the overall goal or project goal through DBE-neutral methods in the current and recent past years. When using DBE-conscious methods, the SBE Manager shall analyze the progress toward achieving the overall goal or project goal and increase or reduce the use of DBE-conscious methods accordingly.

FHWA/CALTRANS- Funded Projects (Subrecipient)

The District, as a subrecipient of FHWA funding through Caltrans, has an approved *DBE Implementation Agreement for Local Agencies* (Exhibit 9-A) to formally acknowledge the District's commitment to implement Caltrans DBE Program. The District adopts Caltrans' overall statewide DBE goal for FHWA-assisted projects and establishes DBE goals on applicable FHWA-assisted contracts in accordance with Caltrans' Local Assistance Procedures Manual. Each federal fiscal year, the District submits to Caltrans the *Local Agency DBE Annual Submittal Form* (Exhibit 9-B) that identifies how the District will comply with Caltrans' DBE Program.

In accordance with Caltrans Division of Local Assistance Office Bulletin #25-01, the District will prepare and submit for Caltrans approval DBE contract-specific goals for FHWA/Caltrans-funded construction contract estimates greater than $4 million and consultant contract estimates greater than $1,000,000 million prior to advertising. The District's DBE goal methodology is submitted to Caltrans for acceptance using Caltrans (Exhibit 9-D "DBE Contract Goal Methodology") form.

B. <u>Public Participation and Adoption of Overall Goals and/or Project Goal(s)</u> (Section 26.45(g))

1. **Consultation with Various Groups, Organizations, and Officials**. The District will hold public participation sessions to obtain input in the goal-setting process, specifically on the availability of disadvantaged and non-disadvantaged businesses, 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, DBEs and non-DBEs, small businesses,-general contractor groups, community based organizations, and other officials.

2. **Overall Goals Covering a Three-Year Period and/or Project Goal(s) Analysis Report(s)**. Upon completion of the analysis described in Section V(A), and after consultation with various groups, organizations and other officials, unless otherwise directed, the SBE Manager will prepare an Overall Goal(s) and/or Project Goal(s) Analysis Report for DBE participation in FTA-assisted contracts. Each report shall document the analysis and methodology in arriving at the proposed goal(s) and shall include a projection of the portion of the goal(s) to be achieved through DBE-neutral and DBE-conscious measures. The SBE Manager will furnish the reports to all District staff included in the goal setting process for review and concurrence. Upon District staff concurrence, the SBE Manager shall furnish the General Manager with the proposed overall goal(s) and/or project goal(s) to be submitted to the Rules, Policy and Industrial Relations Committee. Upon the Rules, Policy and Industrial Relations Committee's recommendation, the Board of Directors will consider authorization of the establishment of the proposed goal(s). It will also consider authorization of the submission of the Overall Goal(s) and/or Project Goal(s) Analysis Reports to FTA for review by August 1 or by a different submission date established by the concerned operating administration.

3. **Publication of the Proposed Overall Goal(s) and/or Project Goal(s)**. The District will publish the proposed overall goal(s) and/or project goal(s) on its official Internet Web site at goldengate.org and may post the notice in any other sources (e.g., small business and trade association publications).

4. **Adoption of Final Overall Goal(s) and/or Project Goal(s)**. The District will submit the proposed overall goal(s), and/or project goal(s) to the Rules, Policy and Industrial Relations Committee for recommendation. The Board of Directors will consider adoption of the proposed Overall Goal(s) and/or Project Goal(s). If the Board of Directors adopts the proposed Overall Goal(s) and/or Project Goal(s), the District will submit the proposed Overall Goal(s) and/or Project Goal(s) to the U.S. DOT operating administration. If the U.S. DOT operating administration approves the proposed Overall Goal(s) and/or Project Goal(s), the goals will be final, and the General Manager will provide an updated report to the Board of Directors. If the proposed goal changes following review by the U.S. DOT operating administration, the revised goal will be posted on the District's official Internet Web site, and the General Manager will notify the Board of Directors of the change(s), and, if applicable, the Board of Directors will take all necessary actions to implement the changes.

C. Transit Vehicle Manufacturers Procurements and Certification (Section 26.45 and 26.49)

The District shall require any transit vehicle manufacturers to certify that they have established an overall DBE goal that has been approved or not disapproved, at the time of

solicitation, by FTA as a condition to bid on any District contracts. Before awarding to a TVM, the District shall verify that the bidder is listed on FTA's eligible TVM list at, https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers. The District shall complete the Vehicle Award Report to notify FTA of the TVM procurement award within 30 days of making such award. This reporting requirement is extended to subrecipients.

Expenditures for FTA-assisted transit vehicle procurements are not included in the funding base to which the overall goal and/or project goal for other FTA-assisted contract expenditures applies.

Project-specific goals for DBE participation may be established for procurements of transit vehicles from specialized manufacturers when a TVM cannot be identified, such as in the case of new ferry vessel procurements, if the requirements of Section 26.49 are met. The District will obtain FTA's approval of the decision to use a DBE project-specific goal before the issuance of a public solicitation for such vehicles. The District will follow the procedures for goal-setting in Section 26.45 to establish project-specific DBE goals.

D. Achieving the Overall Goal(s) and/or Project Goal(s) (Section 26.51)

The District shall achieve the overall goal(s) and/or project goal(s) for DBE participation through a combination of DBE-neutral methods and DBE-conscious methods for particular contracts with subcontracting opportunities.

1. **DBE-Neutral Methods**. The District intends to use DBE-neutral methods to the maximum extent feasible to achieve its overall goal(s) and/or Small Business Enterprise (SBE) project-specific goal(s). DBE participation that is obtained on contracts that have no specific DBE 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 DBE-neutral participation. In addition, the District 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 District;

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 District's and other U.S. DOT recipients' contracting activities;

e. Carrying out information 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 District and explore best business practices which may be used to market small businesses at the District;

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 DBE-neutral Small Business Enterprise 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 District procurements as prime contractors or subcontractors. Through the SBE Element, the District sets SBE contract-specific goals on federally and non-federally assisted contracts that present sufficient subcontracting opportunities for ready, willing, and able small business concerns, including DBEs. Details of the District's SBE Element are attached as Exhibit C, "Small Business Enterprise Element", and incorporated herein.

2. **DBE-Conscious Methods**. The Board of Directors shall use DBE-conscious methods by establishing contract-specific DBE goals on particular prime contracts with subcontracting opportunities to the extent that the District cannot achieve its overall goal(s) and/or project goal(s) with DBE-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.

a. **Establishing Contract-Specific Goals**. The goal shall be established by the General Manager, substantiated by information furnished by the SBE Manager. The contract-specific goal shall apply to the percentage of DBE participation in the total contract work and be set forth in the Special Provisions of the contract specifications. The District 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:

1) The projected portion of the overall goal(s) and/or project goal(s) that will be met by establishing contract-specific goals;

2) The progress toward achieving the overall goal(s) and/or project goal(s);

3) The full range of activities in the proposed contract;

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

5) 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 a contract-specific goal due to the fact that establishing a goal could result in restrictive bidding.);

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

7) Any other relevant criteria.

b. **Awarding Contracts with Contract-Specific Goals**. The District shall award contracts to the lowest responsible bidder as required by the California Public Contracts Code Sections 20914 and 20916, where applicable. For such contracts, as well as for contracts awarded pursuant to a Request for Proposals procedure where the lowest responsible bidder standard does not apply, a bidder that fails to demonstrate that it achieved the contract-specific 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. All references to "bidder" or "bid" include proposer and proposal.

1) **Evaluation of Bids or Proposals**. After submission deadline stated in the solicitation documents for bids and proposals, the SBE Manager shall evaluate all bids/proposals to determine whether the bidders/proposers submitted all of the information required by 49 C.F.R. §§ 26.11 and 26.53(b). The responsible bidder with the lowest apparent bid price, or the highest-ranking proposer, who also meets the contract-specific goal or demonstrates sufficient good faith efforts, shall be recommended for the contract award. In the event that the responsible bidder with the lowest bid price, or the highest-ranking 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 SBE Manager shall evaluate the bidder with the next lowest bid price, or next highest-ranked proposer. Should the SBE Manager determine that additional information is needed to evaluate a bidder's or proposer's submission with regard to the DBE requirements, the SBE Manager shall request said bidder or proposer to submit the required information, or may contact the listed DBE(s) directly.

2) **Evaluation of DBE Certification Status**. The District shall require that any DBE listed by bidders for participation in the contract be certified DBEs as of the time of bid opening. The SBE Manager shall review the *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* and/or *Prime Consultant and Subcontractor/Subconsultant/Supplier Report* to confirm each DBE firm's certification status. The District will accept current certifications by any recipients of U.S. DOT funds acceptable to the District in accordance with Section VII of this Business Opportunity Program and 49 C.F.R. Part 26, Subpart D.

3) **Determination of Amount of DBE Participation**. The SBE Manager 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/Sub-consultant/Supplier Report* or *Prime Consultant and Subcontractor/Subconsultant/Supplier Report* for accuracy and shall compare it to the contract-specific goal established for the contract.

4) **Determination of Good Faith Efforts**. Good faith efforts can be met by either 1) bidder/proposer can demonstrate that it has obtained enough DBE participation to meet the goal; or 2) bidder/proposer can demonstrate that it has made adequate good faith effort to try to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the amount of DBE participation does not meet the contract-specific goal, the SBE Manager shall review the good faith efforts report submitted by the bidder/proposer. The SBE Manager 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 contract-specific goal in accordance with 49 C.F.R. Part 26, Appendix A.

5) **Bidder's Right to Administrative Reconsideration**. In the event that the SBE Manager determines that the apparent low responsible bidder, or the highest-ranking proposer, is not responsive to the solicitation because it has not met the contract-specific goal or has not demonstrated sufficient good faith efforts to meet the contract-specific goal, the SBE Manager will notify the bidder in writing. The notification shall include the reasons for the determination and inform the bidder of its right to request administrative reconsideration of the determination. The bidder's 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 bidder may submit written documentation for the Review Committee's consideration and may appear before the Review Committee. The Review Committee will only consider documentation of good faith efforts made prior to the bid due date. Any written documentation the bidder wishes the Review Committee to consider must be submitted to the designated staff person within the timeframe specified in the notice of administrative reconsideration. The Review Committee will convene for the administrative reconsideration prior to the time that a recommendation for award of the contract is presented to the appropriate committee and then to the Board of Directors or to the General Manager, as applicable.

The Review Committee will consider the bidder's good faith efforts documentation submitted with its bid, the SBE Manager's original good faith efforts determination, and any other written materials the bidder has submitted to the Review Committee, in accordance with this section, to determine whether the bidder 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 C.F.R. Part 26, Appendix A.

The Review Committee shall provide the bidder with a written decision on reconsideration, explaining the basis for its determination. In the event that the Review Committee finds that the bidder has not met the contract-specific goal or has not demonstrated sufficient good faith efforts to meet the contract-specific goal, the SBE Manager will deem said bidder not responsive and evaluate the responsible bidder submitting the next lowest bid, or the

next highest-ranking proposer. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation, Federal Transit Administration, or Caltrans.

6) **Recommendation for Award**. Following the determination of the lowest responsive and responsible bidder or highest-ranked proposer, the SBE Manager shall prepare a report on the bidder's or proposer's compliance with the DBE requirements for review by the General Manager or for presentation to the Board of Directors, as applicable. If the General Manager or the Board of Directors disagrees with the recommendation, the General Manager or the Board of Directors shall reject all bids or refer the matter back to staff for further evaluation and recommendation. The decision of the General Manager or the Board of Directors on the award of contract, if such a decision is made, shall be final and binding on all parties, subject to compliance with the District's bid protest procedures.

E. Counting and Tracking DBE Participation (Section 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.

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.

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, 40 percent (40%) of the cost of materials or supplies (including transportation costs) will be counted. A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance. A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor. If these conditions are met, DBE distributors may receive 40% of the cost 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. Primes are required to submit with their bid the *DBE Regular Dealer/Distributor Affirmation Form*, a form designated by the District.

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, or maintaining a place of business as provided in § 26.55 (e)(2)(ii) 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.

DBE achievement will not be counted toward the goal until the DBE has been paid. The SBE Manager will track the participation of DBEs in contract-specific goal contracts separately from the participation of DBEs that is considered DBE-neutral. Additionally, the SBE Manager 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, with the exception of 49 C.F.R. 26.87(j)(3).

If an agreement has been executed between a prime contractor and a DBE subcontractor, before the certifying agency has notified the DBE subcontractor of its decertification, the prime contractor may continue to use the decertified DBE subcontractor. The prime contractor may also continue to receive DBE credit for the full payment made to the decertified DBE subcontractor, but the District cannot count the continued performance by the decertified DBE subcontractor towards the District's overall DBE program goal.

If the decertified DBE subcontractor merges or is purchased by a non-DBE, the prime contractor will not receive DBE credit for utilizing that subcontractor and the District may not count the decertified DBE subcontractor's participation towards the District's overall DBE program goal. The prime contractor may not add work to the decertified DBE subcontractor's scope of work after notification of decertification without the consent of the District.

F. Termination and Replacement of Subcontractors/Subconsultants/Suppliers (Section 26.53)

The following requirements apply to contracts with established DBE project or contract-specific DBE goals.

A Contractor may not terminate, replace, or otherwise remove a DBE subcontractor listed on a *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* or *Prime Consultant and Subcontractor/Subconsultant/Supplier Report* (or an approved replacement DBE firm) without prior written District consent. For purposes of this requirement, subcontractors include subcontractors, subconsultants, truckers, manufacturers, or suppliers performing work or providing materials or services under the contract.

These requirements apply to any proposed termination or replacement of a DBE firm, including circumstances in which a Contractor seeks to perform work or supply materials originally designated for a DBE subcontractor/supplier with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. Contractor shall notify the District in writing of any request to replace or terminate a DBE subcontractor and provide appropriate documentation substantiating the replacement or termination in accordance with this section. Contractor shall not proceed with the termination or replacement of a DBE's committed work until the District has provided written approval.

All requests to add new subcontractors, substitute or remove previously approved DBE subcontractors must also be submitted through the District's Diversity Compliance Management System for review and District approval in addition to any written request.

Contractor must make good faith efforts to replace an original DBE subcontractor with a different DBE. Unless the District's consent is provided, Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

District may provide such written and/or electronic consent only if it agrees that there is good cause for the termination for reasons stated in 26.53(f)(3)(i-x).

Contractor must comply with the following procedures for terminating a DBE subcontractor:

1. Contractor must send a written notice to the DBE subcontractor it seeks to terminate, with a copy to District, of its intent to terminate the DBE. The notice must include one or more of the acceptable reasons for termination found in 26.53(f)(3). Contractor's written notice to the DBE must request the DBE respond to the notice by submitting a letter within five (5) business days of the date of Contractor's notice. The DBE's response must either agree or object to the proposed termination; objections should be supported by an explanation as to why the termination should not occur. If required in a particular case as a matter of public necessity (e.g., safety), Contractor may require the DBE response to the notice in less than five (5) business days.

2. If the DBE does not respond within five (5) business days, Contractor may move forward with the request as if the DBE had agreed to the Contractor's written notice.

3. Contractor must submit a DBE termination request by written letter to the District and include one or more of the acceptable reasons for termination found in 26.53(f)(3) along with supporting documentation, Contractor's written notice to the DBE regarding the request (including proof of transmission and tracking documentation of Contractor's written notice), and the DBE's response to Contractor's written notice, if received. If written response from the DBE was not provided, provide a statement to that effect.

4. After receiving the District's written authorization of DBE termination request, Contractor must obtain the District's written agreement for DBE replacement. Contractor is required to find, or demonstrate adequate good faith efforts (GFE) in accordance with Title 49 C.F.R. Part 26.53 to find, a qualified DBE replacement firm(s) 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 established.

Contractor must use the following procedures to request the District's authorization for the replacement of a terminated DBE:

1. Submit a request to replace a DBE with other forces or material sources in writing to the District which must include:

a. Description of remaining uncommitted work items made available for replacement DBE solicitation and participation.

b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:

• Quote for bid item work and description of work to be performed.
• Proposed subcontract agreement and written confirmation of agreement to perform on the Contract.

2. If Contractor has not identified a DBE replacement firm, submit documentation of the Contractor's GFE to use DBE replacement firms within 7 days of District's authorization to terminate the DBE. The Contractor may request the District's approval to extend this submittal period to a total of 14 business days. Submit documentation of actions taken to find a DBE replacement firm, such as:

• Search results of certified DBEs available to perform the original DBE work identified and/or other work the Contractor had intended to self-perform, to the extent needed to meet the DBE contract goal.

• Solicitations of DBEs for performance of work identified.

• Correspondence with interested DBEs that may have included contract details and Requirements.

• Negotiation efforts with DBEs that reflect why an agreement was not reached.

• If a DBE's quote was rejected, provide Contractor's reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive.

• Copies of each DBE's and non-DBE's price quotes for work identified, as the District may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher.

• Additional documentation that supports the Contractor's GFE.

The District shall provide a written determination to the Contractor stating whether or not the proposed replacement DBE firm is approved, or whether the Contractor has demonstrated good faith efforts. Failure by the Contractor to carry out the requirements of Title 49 C.F.R. 26.53, to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment, or to make sufficient good faith efforts to do so, is a material breach of the contract and may result in the termination of the contract or such other remedy as the District deems appropriate.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or replacements for DBE firms put forward by offerors in negotiated procurements.

Contractor must promptly provide to the District a copy of all DBE subcontracts upon District request. All subcontractor contracts with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with 49 C.F.R. Part 26.

G. Failing to Meet Overall Goals (Section 26.47)

If the awards and commitments shown on the District's *Uniform Report of Awards or Commitments and Payments* at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the SBE Manager will conduct a Shortfall Analysis to analyze in detail the reasons for the difference between the overall goal and awards and commitments. To ensure the District is implementing its DBE Program in good faith, specific steps and milestones to correct the problems identified and to meet overall goals for future fiscal years will be established. The District is not among the 50 largest transit authorities determined by FTA; therefore, the District's 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 District signs with FTA or Caltrans on behalf of FHWA will include a nondiscrimination assurance from the District. U.S. DOT-assisted contracts that the District lets will include, as appropriate, the model contract provisions that are set forth in the current edition of the District's Standard Disadvantaged Business Enterprise Contract Language/Forms Manual, available from the SBE Manager. The SBE Manager shall have discretion to modify the provisions for particular contracts as needed, in consultation with the District's Attorney. These required contract provisions consist of:

- The District's DBE Program policy statement.
- A nondiscrimination assurance (26.13(b)) from the contractor (and each subcontract the prime contractor signs with a subcontractor).
- A statement that encourages prime contractors to use financial institutions owned and controlled by socially and economically disadvantaged individuals in the community.
- A Prompt Payment clause that requires a) the prime contractor or subcontractor (i.e. construction contractors) to pay any subcontractor(s) not later than seven (7) days after receipt of each progress payment the District makes to the prime contractor, unless otherwise agreed to in writing, and b) the prime professional to pay any subconsultant(s) not later than fifteen (15) days after receipt of each progress payment or final retention payment. The payment cannot be delayed because of disagreements on other contracts. Any delay or postponement of payment may take place only for good cause and with District's prior written approval.

A contract clause that states any violation of the prompt payment provisions shall subject the violating Contractor 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. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by Contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. Contractors shall include language in their subcontracts that stipulates Contractor and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. Contractor will not be reimbursed for work performed by subcontractors unless and until Contractor ensures that subcontractors are promptly paid for the work they have performed.

A contract clause that states in the event Contractor does not make progress payments or release retentions to the subcontractors in accordance with the time periods in this Section, Contractor will be subject to a charge of two percent (2%) per month by the District on the untimely or improperly withheld payment to subcontractor.

A contract clause that requires the prime contractors to pay all retainage owed to construction subcontractors for satisfactory completion of accepted work within seven (7) days after the date the prime contractor receives a payment from the District. For consultant contracts, retainage must be paid not later than fifteen (15) days after receipt of final retention received after the subconsultant'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 or subcontractor to all subcontractors within the following timeframes:

    a. For construction subcontracts, retainage must be paid within seven (7) days of receipt unless otherwise agreed to in writing for construction work completed (Section 7108.5 of the CBPC and Section 10262 of the CPCC), and

    b. For consultant contracts, retainage must be paid not later than fifteen (15) days after receipt of final retention received after the subconsultant's work is satisfactorily completed (Section 3321 of the CCC).to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

3. Hold retainage from the prime contractor 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 all subcontractors within the following timeframes:

    a. For construction subcontracts, retainage must be paid within seven (7) days of receipt unless otherwise agreed to in writing for construction work completed (Section 7108.5 of the CBPC and Section 10262 of the CPCC), and

    b. For consultant contracts, retainage must be paid not later than fifteen (15) days after receipt of final retention received after the subconsultant's work is satisfactorily completed (Section 3321 of the CCC).

The District will use Method No. 3 above to comply with the Prompt Payment requirement, subject to state prompt payment requirements that do not conflict with federal regulations.

Prompt payment and return of retainage requirements apply to both DBE and non-DBE subcontractors at all tiers.

- The website address for the DBE directory identifying all firms eligible to participate as DBEs in the District's Program.

- The DBE participation goal (whenever applicable).

- A section that provides the DBE certification standards.

- A section that provides how DBE participation is counted toward contract goals.

- 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 and DBE firms are performing a commercially useful function.

- A section on administrative and contractual remedies to ensure compliance with the DBE Program.

VII. CERTIFICATION STANDARDS (Subpart D)

The District 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 District 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 District 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 District decide to change its non-certifying status and elect to become a certifying member, the District will apply the standards of Subpart D of the Regulations.

Under the Final Rule, there are no race- or sex-based presumptions of social and economic disadvantage. Each owner seeking DBE certification, except as stated in §26.63(c), must demonstrate social and economic disadvantage affirmatively, based on his or her own experiences and circumstances within American society, and without any presumptions based solely on race or sex.

A Personal Narrative (PN) must identify at least one objective basis for the owner's disadvantaged status. The basis may be any identifiable status or condition. The PN must describe this objective distinguishing feature in sufficient detail to justify the owner's conclusion that it prompted economic hardship, social barriers, or denied opportunities that impeded the owner's progress or success in education, employment, or business, including obtaining financing on terms available to non-disadvantaged individuals with comparable qualifications. The PN must state how and to what extent the impediments caused the owner economic harm, including a full description of the type and magnitude. A PN must be supported by a current Personal Net Worth statement (§§ 26.5, 26.61, and 26.67). The firm bears the burden of demonstrating its eligibility by a preponderance of the evidence.

For online DBE certification information through the CUCP, visit https://caltrans.dbesystem.com/.

VIII. MONITORING AND RECORDKEEPING (Sections 26.11, 26.37 and 26.109)

A. Bidders List (Section 26.11)

The District will require all prime contractors bidding on U.S. DOT-assisted contracts to return, at a time specified in the solicitation documents, the following information about the prime contractor and all subcontractors who provide a bid/quote:

Firm name
Firm address, including zip code
Firm's status as a DBE or non-DBE
NAICS code applicable to each scope of work expected to perform
Age of the firm
Annual gross receipts

The District will enter this information in the Department's designated centralized database no later than December 1 following the fiscal year in which the relevant contract was awarded. In the case of "design-build" contracts where an Open Ended DBE Performance Plan is required, the District will enter the data in the centralized database no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s). The District reserves the right to request additional information, including information relative to improperly completed DBE/SBE forms.

B. Monitoring Prompt Payments (Section 26.37)

The contractor shall maintain records of all DBE and non-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 District or U.S. DOT. This reporting requirement is also extended to any certified DBE subcontractor.

The District will maintain a running tally of real time entry of payments actually made to DBE firms by use of an automated cloud-based system known as the District's Diversity Compliance Management System (DCMS) powered by B2Gnow software. Prime contractors are required to report all payment information in DCMS, which must be confirmed by all DBE and non-DBE subcontractors, subconsultants, and suppliers, up to ten tiers. Documentation to verify such payments may be requested. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs and that DBEs performed a commercially useful function.

The District 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. District staff may, as necessary, review subcontract agreements for the inclusion of prompt payment clauses required by the District's DBE Program.

Prime contractors are expected to complete a Final Audit for each subcontractor and state that a final payment has been made. Subcontractors confirming final payments are required to upload a copy of their final check as supporting documentation to confirm final payment reported by the Contractor. The District will request all prime contractors to provide the District with executed copies of subcontractor agreements to verify dollar amounts stated for all DBEs.

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

The District's DBELO will continue to report DBE participation and overall and/or project 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 operating administrations reflecting the DBE participation on the District's federally-assisted procurement activities.

D. Information, Confidentiality, Cooperation (Section 26.109)

The District will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), California Public Records Act (Government Code §6250), and local law. The District may make available to the public any information concerning the DBE Program release of which is not prohibited by Federal law.

Participants of the District's DBE Program are required to cooperate fully and promptly with compliance reviews, investigations, and other request for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to a complainant, 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).

Participants of the District's DBE Program must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by §26.109, or because the individual or firm has made a compliant, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing. Failure to comply with this part is a violation.

Participants of the District's DBE Program may submit comments, concerns, or file a complaint to:

Golden Gate Bridge, Highway & Transportation District
Artemisé Davenport, Manager, SBE Compliance Programs
1011 Andersen Drive
San Rafael, CA 94901
Phone: 415-257-4581
E-mail: adavenport@goldengate.org

Complainants must include facts and supporting documentation regarding the complaint.

E. Contract Remedies (Section 26.37)

The District will monitor compliance of its contractors on federally-assisted contracts with the requirements of the Regulations and the DBE Program. The District 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 monthly progress payments, assessing sanctions, imposition of liquidated damages, disqualifying the contractor from future bidding as non-responsible, and/or termination of the contract in whole or in part.

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

The District's public participation and outreach effort activities are directed at assisting the District to solicit public input to set overall DBE goal(s) and/or project goal(s) and to broaden public awareness of the District's Business Opportunity Program to meet overall DBE goal(s) and/or project goal(s).

In establishing and meeting overall DBE goal(s) and/or project goal(s), the District will provide for public participation. This will include:

Prior to finalizing the Overall Goal(s) and/or Project Goal(s) Analysis Report, the District will consult with U.S. DOT agencies, other U.S. DOT grantees, small businesses, 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, and the District's efforts to establish a level playing field for the participation of DBEs.

Every three years, or more often if an overall goal and/or project goal is adjusted, the District will publish a notice announcing its proposed overall goal(s) and/or project goal(s), on the District's internet website and may post the notice in any other sources (e.g., small business or trade association publications).

In conjunction with the District's activities to meet its overall DBE goal(s) and/or project goal(s), the District will implement various public participation and outreach activities designed to broaden awareness of the District's Business Opportunity Program. The measures described in 49 C.F.R. § 26.51 focusing on DBE-neutral means will be actively pursued, and the District will also encourage its contractors to make similar outreach efforts to include DBE participation in subcontracting opportunities. In conjunction with regional outreach consortia and CUCP, the District will continue to organize and offer training programs for meeting DBE eligibility requirements, familiarize potential contractors with District procurement procedures and requirements, and otherwise develop effective programs to further the inclusion of DBEs in the District's contracting activities.

EXHIBIT A: MANAGER, SBE COMPLIANCE PROGRAMS DUTIES AND RESPONSIBILITIES

In accordance with 49 C.F.R. § 26.25 and Section III.A. of this Program, the specific duties and responsibilities of the Manager, SBE Compliance Programs shall include, but not be limited to, the following:

1. Administering the Business Opportunity Program in compliance with FTA and FHWA guidelines and District business operational goals to ensure continued FTA grant funding;

2. Making recommendations to and advising executive management and the Board of Directors regarding DBE/SBE program policy changes;

3. Serving as the District's Disadvantaged Business Enterprise Liaison Officer (DBELO) with independent and direct access to the District's General Manager;

4. Analyzing and assessing the available resources and evidence for the establishment and achievement of overall DBE goal(s) and/or project goal(s) for U.S. DOT-assisted contracts each fiscal year;

5. Analyzing data and regularly craft and submit financial reports to FTA and DOT;

6. Developing, monitoring and evaluating the Business Opportunity Program, and preparing supplemental written procedures and guidelines to implement the Program;

7. Should the District's status change to a certifying member of the CUCP, maintaining and updating the DBE Database in accordance with 49 C.F.R. § 26.31;

8. Should the District's status change to a certifying member of the CUCP, determining all certification actions including initial certifications, recertifications, denials and removals;

9. Maintaining and updating the Bidders List in accordance with 49 C.F.R. § 26.11;

10. Conducting DBE-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, simplifying bonding, surety and insurance requirements or other DBE-neutral means;

11. Participating in the contract bid and award process, including recommending specific contract goals where appropriate, reviewing contract specifications, attending pre-bid/proposal conferences and evaluating bids for contractor responsiveness, responsibility and good faith efforts;

12. Monitoring specific contract performance and actual DBE participation and contract payments;

13. Monitoring overall DBE participation, adjusting overall goals and means of achievement, assessing areas of over-concentration of DBE participation and reporting to the General

Manager, the District's Board of Directors, FTA and Caltrans on behalf of FHWA, as needed;

14. Participating in the CUCP in accordance with 49 C.F.R. § 26.81 and CUCP MOA;

15. Assisting the District's Business Opportunity Program Review Committee;

16. Representing the District on a variety of committees conducting and/or coordinating regional outreach events and activities;

17. Participating in other transit organizations on common issues pertaining to small business programs for contracts;

18. Establishing Disadvantaged and Small Business Enterprise contract-specific goals on applicable District contracts and proposals and analyzing all related DBE/SBE forms for bid/proposal submittal;

19. Investigating DBE protests;

20. Training and instructing District staff on new DBE/SBE processes and procedures;

21. Maintaining all appropriate records and documentation of the Program; and

22. Make any necessary minor revisions to the Program for administrative purposes or to conform with applicable law and guidance. Any significant changes will be presented to the Board for approval.

EXHIBIT B: DBE PROGRAM ORGANIZATIONAL CHART

General Manager's Office

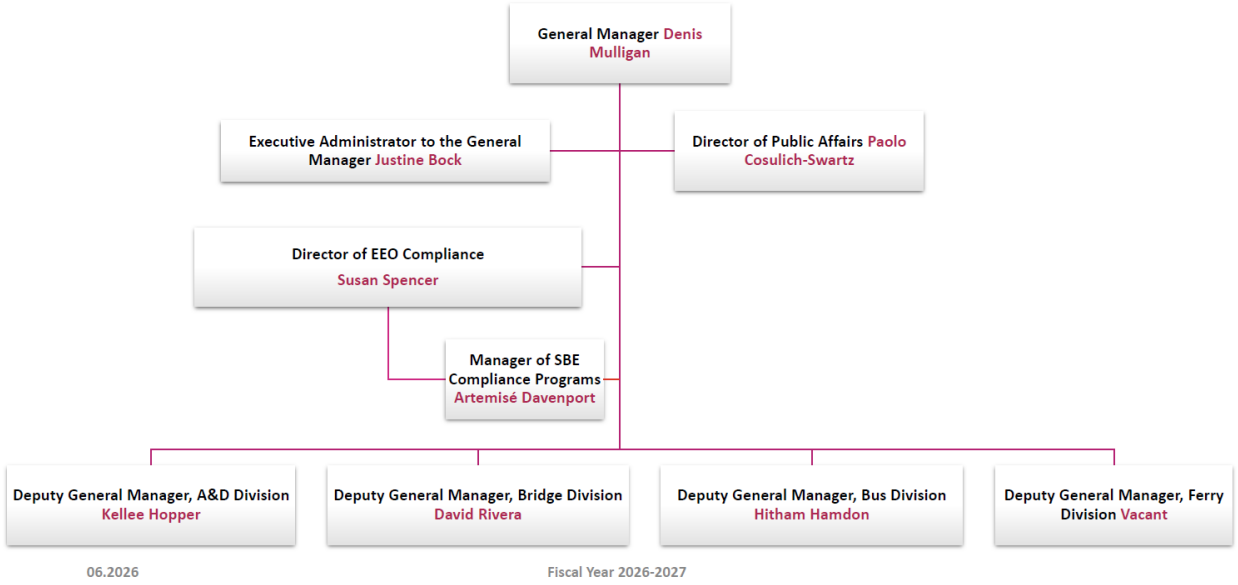


EXHIBIT C: SMALL BUSINESS ENTERPRISE ELEMENT (Section 26.39)

The District has established a Small Business Enterprise (SBE) Element as one of its DBE-neutral methods of achieving small business participation, including disadvantaged business participation, on particular contracts with subcontracting opportunities. This SBE Element applies to all District contracts, regardless of funding source, where DBE-neutral methods are employed, without regard to race or sex. The District will take all reasonable steps to eliminate obstacles to SBE prime contractor or subcontractor participation in District procurement activities.

On August 2, 2013, the District received approval from the Federal Transit Administration to implement the SBE Element as part of the District's DBE Program.

For convenience, the District follows the DBE contract goal procedures set forth in 49 C.F.R. 26.53 to administer its SBE contract goals in a DBE-neutral manner. For purposes of this SBE Element, all references to "DBE" in 49 C.F.R. 26.53 are changed to "SBE."

A. Definition of Small Business Enterprise

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

a. A firm (including affiliates) must be an existing small business as defined by Small Business Administration (SBA) regulations, 13 C.F.R. 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.

b. Even if a firm meets the above requirement, the firm's (including affiliates') average annual gross receipts over the previous three federal fiscal years cannot exceed a maximum cap of $32.82 million. The Department will adjust the amount annually and will post on its website at https://www.transportation.gov/DBEsizestandards. SBA size standards vary by industry, and for certain industries may be higher than the $32.82 million cap. For example, the SBA size standard for a general construction contractor is $45 million. If a general construction contractor's average annual gross receipts over the previous three years is $33 million, while it is below $45 million and meets the SBA size standard, it would be ineligible to participate as a small business for District purposes as it exceeds $32.82 million.

For information on SBA size standards, visit: https://www.sba.gov/document/support-table-size-standards. Affiliates are defined in SBA regulations 13 C.F.R. Part 121.103.

B. Acceptable Comparable Small Business Enterprise Certifications

The District will accept the small business enterprise certifications performed by other agencies, provided that the size standards described in Section A1a and A1b above are met. If a firm is certified in one or more of the following programs, and meets District size standards, the firm is automatically deemed a small business for District purposes. The term "SBE" will be used collectively for all DBEs and qualified SBEs and other approved certifications. As indicated

below, the District requires an affidavit of size for each SBE prime contractor or subcontractor that is not certified as a DBE. Certifications from self-certification programs are not acceptable. District may request and review financial data provided by SBE firms on a case-by-case basis to confirm eligibility.

Firms must be certified as of the time of bid submittal.

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

2. Small Business (SB) certification by the California Department of General Services (DGS) provided that their certification complies with Section A1a and A1b above. In addition to copies of SB certifications, bidders must submit an affidavit of size for each SB prime contractor or subcontractor at the specified time in the bid solicitation.

3. Microbusiness (SB (Micro)) certification by the California Department of General Services for ALL industries, provided that their certification complies with Section A1a and A1b above. In addition to copies of SB Micro certifications, bidders must submit an affidavit of size for each Micro prime contractor or subcontractor at the specified time in the bid solicitation.

4. Small Business for the Purpose of Public Works (SB-PW) certification by the California Department of General Services provided that their certification complies with Section A1a and A1b above. In addition to copies of SB-PW certifications, bidders must submit an affidavit of size for each SB-PW prime or subcontractor at the specified time in the bid solicitation.

5. SBA 8(a) by the Small Business Administration provided that their certification complies with Section A1a and A1b 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 subcontractor at the specified time of the bid solicitation.

6. SBE certification from other state, county, or local government-certifying agency provided that their certification complies with Section A1a and A1b above and is not based on race or sex eligibility requirements. In addition to copies of certifications, bidders must submit an affidavit of size for each certified prime contractor or subcontractor at the specified time in the bid solicitation.

C. **DBE-Neutral SBE Measures**

The District will continue its efforts to enhance small business participation through outreach and other community programs, training and business development programs, restructuring contracting opportunities, simplifying bonding, surety and insurance requirements or other DBE-neutral means. In addition, the District may take any of the following DBE-neutral SBE measures:

1. Endeavor to unbundle large contracts to ensure that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform. During the project planning stage, project managers and engineering staff will evaluate the potential for a large project to be split into smaller contract opportunities.

2. In multi-year design-build contracts or other large contracts (e.g., for "megaprojects"), require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

3. On prime contracts not having DBE contract goals, establish contract-specific SBE goals where appropriate. Contract-specific SBE goals may be established on particular prime contracts with subcontracting opportunities as a means of increasing small business, including DBE participation. Availability of subcontracting opportunities will be evaluated on a contract-by-contract basis by project managers and the SBE Manager. Where a contract-specific SBE 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.

D. **Determining SBE Goals** (Referencing C.3. above)

The SBE goal shall be determined by the SBE Manager in cooperation with project managers and with the concurrence of the General Manager. The contract-specific goal shall apply to the percentage of SBE participation in the total contract work and be set forth in the Special Provisions of the contract specifications.

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:

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 a contract-specific goal due to the fact that establishing a goal could result in restrictive bidding.);

4. The effect that the contract-specific goal might have on the time of completion;

5. Any other relevant criteria.

E. Awarding and Administering Contracts with Contract-Specific SBE Goals

The District shall award contracts to the lowest responsible bidder as required by the California Public Contracts Code Sections 20914 and 20916, where applicable. For such contracts, as well as for contracts awarded pursuant to a Request for Proposals procedure where the lowest responsible bidder standard does not apply, a bidder that fails to demonstrate that it achieved the contract-specific SBE 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. The bidder or proposer will include in its bid or proposal a *SBE Goal Declaration* in a form designated by the District notifying the District of its SBE goal attainment. All DBE/SBE forms required must be completed and submitted at the time specified in the solicitation to be deemed "responsive" to the solicitation requirements.

1. Evaluation of Bids

Invitation for Bid. The following procedures apply to contracts that are awarded to the lowest responsible bidder. No later than five (5) business days after bid opening as a matter of responsiveness, the SBE Manager shall evaluate all bids to determine whether the bidders submitted all of the information required by 49 C.F.R. § § 26.11(2) & 26.53(b). The responsible bidder with the lowest apparent bid price who also meets the contract-specific SBE goal, or demonstrates sufficient good faith efforts to meet the contract-specific SBE goal, shall be recommended for the contract award. In the event that the bidder with the lowest monetary bid price fails to meet the contract-specific goal or fails to demonstrate sufficient good faith efforts, or is otherwise unresponsive or not responsible, the SBE Manager shall evaluate the bidder with the next lowest bid price. Should the SBE Manager determine that additional information is needed to evaluate a bidder's submission with regard to the SBE requirements, the SBE Manager shall request said bidder to submit the required information, or may contact the listed SBEs directly.

The District shall require that any SBEs listed by bidders for participation in the contract be certified SBEs as of the time of bid opening. Acceptable comparable Small Business Enterprise certifications are listed in this document. Some certifications require completion of a *Small Business Enterprise Affidavit of Size* in a form designated by the District and submitted at the time specified in the bid solicitation.

The SBE Manager shall review the *SBE Goal Declaration* form and the *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* and will confirm each SBE firm's certification status. The SBE Manager will review the total dollar value of the work to be performed by SBEs and the total contract bid price for accuracy and comparison with the contract-specific SBE goal established for the contract.

Request for Proposals. This procedure applies to contracts that are awarded pursuant to a Request for Proposals procedure, in which the lowest responsible bidder standard does not apply and contract award is based upon a qualitative evaluation of multiple factors, including costs. After the submission deadline, the SBE Manager shall evaluate all proposals to determine whether the proposers submitted all of the information required by 49 C.F.R. § § 26.11(2) & 26.53(b). The highest ranked responsible proposer who also meets the contract-specific SBE goal, or demonstrates sufficient good faith efforts to meet the contract-specific SBE goal, shall be recommended for the contract award. In the event that the highest ranked proposer fails to meet

the contract-specific goal or fails to demonstrate sufficient good faith efforts, or is otherwise unresponsive or not responsible, the SBE Manager shall evaluate the next highest ranked proposer. Should the SBE Manager determine that additional information is needed to evaluate a proposer's submission with regard to the SBE requirements, the SBE Manager shall request said proposer to submit the required information, or may contact the listed SBEs directly.

The District shall require that any SBEs listed by proposers for participation in the contract be certified SBEs at the proposal submission deadline. Acceptable comparable Small Business Enterprise certifications are listed in this document. Some certifications require completion of a *Small Business Enterprise Affidavit of Size* in a form designated by the District and submitted at the time specified in the solicitation.

The SBE Manager shall review the *SBE Goal Declaration* form for the proposer's SBE commitment and shall compare it to the contract-specific goal established for the contract. The SBE Manager shall review the list of SBEs submitted by the proposer and confirm each SBE firm's certification status.

The following applies to both Invitation for Bid and Request for Proposals.

2. **Determination of Good Faith Efforts**. Bidder/proposer is obligated to make good faith efforts. Bidder/proposer can demonstrate that it has made good faith efforts by either meeting the contract-specific goal or documenting good faith effort to meet the contract-specific goal. If the amount of SBE participation does not meet the contract-specific goal, the SBE Manager shall review the good faith efforts documentation submitted by the bidder/proposer. The SBE Manager 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 contract-specific goal in accordance with 49 C.F.R. Part 26, Appendix A. All bidders/proposers must submit Good Faith Efforts documentation in accordance with the solicitation documents.

3. **Bidder's Right to Administrative Reconsideration**. In the event that the SBE Manager determines that the apparent low responsible bidder, or highest ranked proposer, is not responsive to the solicitation because it has not met the contract-specific goal and has not demonstrated sufficient good faith efforts to meet the contract-specific goal, the SBE Manager will notify the bidder/proposer in writing. The notification shall include the reasons for the determination and inform the bidder/proposer of its right to request administrative reconsideration of the determination. The bidder's/proposer's 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 bidder/proposer may submit written documentation for the Review Committee's consideration and may appear before the Review Committee. The Review Committee will only consider documentation of good faith efforts made prior to the bid/proposal due date. Any written documentation the bidder/proposer wishes the Review Committee to consider must be submitted to the designated staff person within the timeframe specified in the notice of administrative reconsideration. The Review Committee will convene for the administrative reconsideration prior to the time that a recommendation for

award of the contract is presented to the appropriate committee and then to the Board of Directors or to the General Manager, as applicable.

The Review Committee will consider the bidder's/proposer's good faith efforts documentation submitted with its bid/proposal, the SBE Manager's original good faith efforts determination, and any other written materials the bidder/proposer has submitted to the Review Committee, in accordance with this section, to 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 contract-specific goal in accordance with 49 C.F.R. Part 26, Appendix A.

The Review Committee shall provide the bidder /proposer with a written decision on reconsideration, explaining the basis for its determination. In the event that the Review Committee finds that the bidder/proposer has not met the contract-specific goal or has not demonstrated sufficient good faith efforts to meet the contract-specific goal, the SBE Manager will deem said bidder not responsive and evaluate the responsible bidder submitting the next lowest bid, or the next highest ranking proposer. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation or Federal Transit Administration.

4. **Recommendation for Award**. Following the determination of the lowest responsive and responsible bidder/highest ranked proposer, the SBE Manager shall prepare a report on the firm's compliance with the SBE requirements for review by the General Manager. The determination will be included in a report for presentation to the appropriate committee and then to the Board of Directors, if applicable, at the time the contract award is considered. If the appropriate committee, the Board of Directors or the General Manager disagrees with the recommendation, it 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 General Manager on the award of contract, if such a decision is made, shall be final and binding on all parties, subject to compliance with the District's bid protest procedures.

5. **Termination and Replacement of SBEs on Contracts With SBE Contract Goals**. A Contractor may not terminate, replace, or otherwise remove a SBE subcontractor listed on a *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* or *Prime Consultant and Subcontractor/Subconsultant/Supplier Report* (or an approved replacement SBE firm) without prior written District consent. For purposes of this requirement, subcontractors include subcontractors, subconsultants, truckers, manufacturers, or suppliers performing work or providing materials or services under the contract.

These requirements apply to any proposed termination or replacement of a SBE firm, including circumstances in which a Contractor seeks to perform work or supply materials originally designated for a SBE subcontractor/supplier with its own forces or those of an affiliate, a non-SBE firm, or with another SBE firm. Contractor shall notify the District in writing of any request to replace or terminate a SBE subcontractor and provide appropriate documentation substantiating the replacement or termination in accordance with this section. Contractor shall not proceed with the termination or replacement of a SBE's committed work until the District has provided written approval.

All requests to add new subcontractors, substitute or remove previously approved SBE subcontractors must also be submitted through the District's Diversity Compliance Management System for review and District approval in addition to any written request.

Contractor must make good faith efforts to replace an original SBE subcontractor with a different SBE. Unless the District's consent is provided, Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed SBE.

District may provide such written and/or electronic consent only if it agrees that there is good cause for the termination for reasons stated in 26.53(f)(3)(i-x).

Contractor must comply with the following procedures for terminating a SBE subcontractor:

1. Contractor must send written notice to the SBE subcontractor it seeks to terminate, with a copy to District, of its intent to terminate the SBE. The notice must include one or more of the acceptable reasons for termination found in 26.53(f)(3). Contractor's written notice to the SBE must request the SBE respond to the notice by submitting a letter within five (5) business days of the date of Contractor's notice. The SBE's response must either agree or object to the proposed termination; objections should be supported by an explanation as to why the termination should not occur. If required in a particular case as a matter of public necessity (e.g., safety), Contractor may require the SBE response to the notice in less than five (5) business days.

2. If the SBE does not respond within five (5) business days, Contractor may move forward with the request as if the SBE had agreed to the Contractor's written notice.

3. Contractor must submit a SBE termination request by written letter to the District and include one or more of the acceptable reasons for termination found in 26.53(f)(3) along with supporting documentation, Contractor's written notice to the SBE regarding the request (including proof of transmission and tracking documentation of Contractor's written notice), and the SBE's response to Contractor's written notice, if received. If written response from the SBE was not provided, provide a statement to that effect.

4. After receiving the District's written authorization of SBE termination request, Contractor must obtain the District's written agreement for SBE replacement. Contractor is required to find, or demonstrate adequate good faith efforts (GFE) in accordance with Title 49 C.F.R. Part 26.53 to find, a qualified SBE replacement firm(s) to perform at least the same amount of work under the contract as the SBE that was terminated, to the extent needed to meet the contract goal established.

Contractor must use the following procedures to request the District's authorization for the replacement of a terminated SBE:

1. Submit a request to replace a SBE with other forces or material sources in writing to the District which must include:

a. Description of remaining uncommitted work items made available for replacement SBE solicitation and participation.

b. The proposed SBE replacement firm's business information, the work they have agreed to perform, and the following:

• Quote for bid item work and description of work to be performed.
• Proposed subcontract agreement and written confirmation of agreement to perform on the Contract.

2. If Contractor has not identified a SBE replacement firm, submit documentation of the Contractor's GFE to use SBE replacement firms within 7 days of District's authorization to terminate the SBE. The Contractor may request the District's approval to extend this submittal period to a total of 14 business days. Submit documentation of actions taken to find a SBE replacement firm, such as:

• Search results of certified SBEs available to perform the original SBE work identified and/or other work the Contractor had intended to self-perform, to the extent needed to meet the SBE contract goal.

• Solicitations of SBEs for performance of work identified.

• Correspondence with interested SBEs that may have included contract details and Requirements.

• Negotiation efforts with SBEs that reflect why an agreement was not reached.

• If a SBE's quote was rejected, provide Contractor's reasoning for the rejection, such as why the SBE was unqualified for the work, or why the price quote was unreasonable or excessive.

• Copies of each SBE's and non-SBE's price quotes for work identified, as the District may contact the firms to verify solicitation efforts and determine if the SBE quotes are substantially higher.

• Additional documentation that supports the Contractor's GFE.

The District shall provide a written determination to the Contractor stating whether or not the proposed replacement SBE firm is approved, or whether the Contractor has demonstrated good faith efforts. Failure by the Contractor to carry out the requirements of Title 49 C.F.R. 26.53, to find qualified SBE replacement firms to perform the work to the extent needed to meet the SBE commitment, or to make sufficient good faith efforts to do so, is a material breach of the contract and may result in the termination of the contract or such other remedy as the District deems appropriate.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or replacements for SBE firms put forward by offerors in negotiated procurements.

Contractor must promptly provide to the District a copy of all SBE subcontracts upon District request. All subcontractor contracts with SBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with 49 C.F.R. Part 26.