

Exhibit B: Small Business Enterprise Element (Section 26.39)

The District has established a Small Business Enterprise (SBE) element as one of its 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 race-neutral and gender-neutral methods are employed. 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.

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 CFR Part 121, for the appropriate type(s) of work that a firm performs. The firm must hold one of the acceptable certifications listed in Section B below.

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

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

B. Acceptable Comparable Small Business Enterprise Certifications

The 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 qualified SBEs, WBEs, MBES and other approved certifications. As indicated below, the District may require an affidavit of size for each SBE prime contractor or subcontractor. 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 CFR Part 26. This includes DBE certifications performed by the California Unified Certification Program or by the Unified Certification Program of any other state.

2. State Minority Business Enterprise (SMBE) 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 time of bid submittal.

3. 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 time of bid submittal.

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

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

6. SBE/MBE/WBE certification from other state, county, or local government-certifying agency provided that their certification complies with Section A1a and A1b above. In addition to copies certifications, bidders must submit an affidavit of size for each certified prime contractor or subcontractor at the time of bid submittal.

C. Race-Neutral SBE Measures

The 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 race-neutral means. In addition, the District may take any of the following 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 DBE Program Analyst. 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 Analyst 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 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 Proposal 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 Goal Declaration in a form designated by the District notifying the District of its SBE goal attainment.

1. Evaluation of Bids

Invitation for Bid. The following procedures apply to contracts that are awarded to the lowest responsible bidder. After the bid opening, the Analyst shall evaluate all bids to determine whether the bidders submitted all of the information required by 49 CFR § 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 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 Analyst shall evaluate the bidder with the next lowest bid price. Should the Analyst determine that additional information is needed to evaluate a bidder’s submission with regard to the SBE requirements, the Analyst 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 require completion of a SBE Affidavit in a form designated by the District and submitted at the time of bid opening.

The Analyst shall review the Goal Declaration form and the Prime Contractor and Subcontractor/Subconsultant/Supplier Report and will confirm each SBE firm’s certification status. The Analyst 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 Proposal. This procedure applies to contracts that are awarded based upon a qualitative evaluation. After the submission deadline, the Analyst shall evaluate all proposals to determine whether the proposers submitted all of the information required by 49 CFR § 26.53(b). The highest ranked responsible proposer who also meets the contract-specific SBE goal or demonstrates sufficient good faith efforts 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 Analyst shall evaluate the next highest ranked proposer. Should the Analyst determine that additional information is needed to evaluate a proposer’s submission with regard to the SBE requirements, the Analyst 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 require completion of a SBE Affidavit in a form designated by the District and submitted at the time of bid opening.

The Analyst shall review the Goal Declaration form for the proposer's SBE commitment and shall compare it to the contract-specific goal established for the contract. The Analyst 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 Proposal situations.

2. Determination of Good Faith Efforts. If the amount of SBE participation does not meet the contract-specific goal, the Analyst shall review the good faith efforts documentation submitted by the bidder/proposer. The Analyst 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 CFR Part 26, Appendix A. All bidders/proposers must submit Good Faith Efforts documentation

3. Bidder's Right to Administrative Reconsideration. In the event that the Analyst determines that the apparent low bidder or highest ranked proposer has not met the contract-specific goal and has not demonstrated good faith efforts, the Analyst will notify the bidder/proposer in writing. The notification shall include the reasons for the determination and that the bidder/proposer has the right to submit further written documentation or appear before the Review Committee for reconsideration prior to the time that a recommendation for award of contract is presented to the appropriate committee and then to the Board of Directors or the General Manager, depending on the size of the contract.

a. Within two (2) working days of being informed by the District that it is not responsive/responsible because it has not met the contract-specific goal and has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidder/proposer should make this request in writing to the following reconsideration official: Amorette M. Ko-Wong, Secretary of the District, Golden Gate Bridge, Highway and Transportation District, P.O. Box 9000, Presidio Station, San Francisco, CA 94129-0601; telephone number (415) 923-2223; e-mail address: Ako@goldengate.org. 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 and has not demonstrated sufficient good faith efforts, the Analyst will deem said bidder/proposer not responsive and evaluate the bidder/proposer submitting the next lowest bid.

4. Recommendation for Award. Following the determination of the lowest responsive and responsible bidder/highest ranked proposer, the Analyst 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 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.