

THE CITY OF FULLERTON

**DISADVANTAGED BUSINESS
ENTERPRISE (DBE) PROGRAM**

2015

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DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

I. POLICY STATEMENT AND PROGRAM OBJECTIVES

A. Policy Statement (§26.3; §26.7; §26.21; §26.23)

The City of Fullerton (the City) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with Title 49 Code of Federal Regulations (CFR), Part 26: *“Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”* and subsequently issued U.S. Department of Transportation (U. S. DOT) Guidance. The City receives federal financial assistance from the U.S. Department of Transportation (U.S. DOT) and, as a condition of receiving this assistance, the Authority has signed an assurance that it will fully comply with Title 49 CFR, Part 26. These regulatory provisions and the City’s DBE Program will apply to all of the Authority’s U.S. DOT-assisted contracts.

B. Program Objectives (§26.1; §26.23)

It is the policy of the City to ensure that DBEs, as defined in Title 49 CFR, Part 26, have an equitable opportunity to compete for and participate in the City’s U.S. DOT-assisted contracts and subcontracts. The City is firmly committed to its DBE Program and the following objectives, which are designed to:

1. Ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for U.S. DOT-assisted contracts;
3. Ensure the DBE Program is narrowly tailored in accordance with 49 CFR Part 26 and applicable laws;
4. Ensure that only firms that meet the eligibility standards in 49 CFR Part 26 are permitted to participate as DBEs;
5. Identify and help remove barriers to DBE participation in the bidding, award and the administration of U.S. DOT-assisted contracts;
6. Identify business enterprises that are eligible and certified as DBEs to provide Fullerton with required materials, equipment, supplies and services;
7. Assist the development of DBEs so they may compete successfully in the marketplace outside of the DBE Program; and

8. Provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.

Responsibility for developing, implementing, monitoring and evaluating Fullerton's DBE Program is assigned to the City's DBE Liaison Officer, Ronald Bowers. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the Department of Transportation.

Notices setting forth this policy are posted at the City of Fullerton Public Works Department's office and website and they are available to the public and to the DBE and non-DBE business communities that perform or are interested in performing work on City contracts. Questions regarding City's DBE Program should be addressed to Ronald Bowers., DBE Liaison Officer, 303 W. Commonwealth Avenue, Fullerton California 92832, or by telephone at 714-738-6322.

To formalize its commitment, the City of Fullerton's City Council hereby adopts the DBE Program applicable to the City of Fullerton's contracting operations, effective May 5, 2015.



Ronald Bowers,
Senior Civil Engineer
DBELO



Joe Felz
City Manager, City of Fullerton

II. GENERAL REQUIREMENTS

A. Applicability

Pursuant to 49 CFR §26.3 and §26.21, the City of Fullerton ('the City'), a recipient of federal financial assistance from the Federal Transit Administration (FTA) of the United States Department of Transportation (U.S. DOT), is required to implement a DBE Program in accordance with 49 CFR Part 26 (Regulations). The requirements of the Regulations are incorporated by reference. In the event of any conflicts or inconsistencies between the Regulations and the DBE Program with respect to U.S. DOT-assisted contracts, the Regulations shall prevail. The DBE Program outlined herein applies to all Fullerton's contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance.

B. Non-Discrimination (§26.7)

The City will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract governed by Title 49 CFR, Part 26 on the basis of race, color, sex or national origin.

In administering its DBE Program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives in the DBE Program with respect to individuals of a particular race, color, sex or national origin, and will further require such contract assurances in every U.S. DOT-assisted contract and subcontract, regardless of tier.

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

C. DBE Program Updates (§26.21)

The City will advise all applicable U.S. DOT Operating Administrators, of any significant updates and/or changes to the City's DBE Program with its Overall Triennial DBE Goal Submission.

D. Definition of Terms

Any terms used in this DBE Program that are defined in 49 CFR §26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. Some of the most common terms are defined below (for additional and more in depth detail, please refer to 49 CFR, Part 26.5):

Bidders List: A list of all contractors (DBE and non-DBE), which have expressed an interest in bidding on prime contracts and subcontracts on the City's U.S. DOT-assisted projects.

Business Size Standard: The U.S. Small Business Administration (SBA) standards found in 13 CFR Part 121, appropriate to the types of work the firm seeks to perform. In addition, for purposes of this DBE Program, even if the firm meets the SBA requirements, a firm is not an eligible DBE or SBE if the firm (including its affiliates) has had its average annual gross receipts in excess of \$22.41 million over the firm's previous three fiscal years, as adjusted for inflation from time to time by U.S. DOT.

California Unified Certification Program (CUCP): A one-stop certification clearinghouse which enables applicants to apply for DBE Certification accepted by all U.S. DOT recipients in the State of California, thereby eliminating the need for DBE firms to obtain certification from multiple agencies within the state. The CUCP was implemented on January 1, 2002.

Commercially Useful Function (CUF): Work performed by a DBE firm in particular transaction that, in light of industry practices and other relevant considerations, has a necessary and useful role in the transaction (i.e., the firm's role is not a superfluous step added in an attempt to obtain credit towards goals). A DBE performs a commercially useful function when the DBE firm is responsible for the execution of the work of the contract, is carrying out its responsibility by actually performing, managing and supervising the work involved, and also be responsible, with respect to material and supplies used on the contract, for negotiating price, determining quality and quantity, ordering materials and installing (where applicable) and paying for the material itself. If, in the City's judgment, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded.

Compliance: The City or a contractor has correctly implemented the requirements of the DBE Program.

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.

Contractor: One who participates, through a contract or subcontract (at any tier), in a U.S. DOT-assisted program.

CUCP Database of Certified DBE Firms (DBE Directory): A list of certified firms, which is used by the City and its contractors to identify DBE potential prime contractors, subcontractors, and suppliers.

DBELO: Disadvantaged Business Enterprise Liaison Officer. The DBELO shall be responsible for implementing all aspects of the City's DBE program and shall have direct, independent access to the City Manager concerning DBE Program matters.

Department or DOT (or U.S. DOT): U.S. Department of Transportation, including the Office of the Secretary and any other of its operating administrations, such as the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA).

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

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

DBE Certification: A certification issued to a firm by a certifying agency of the California Unified Certification Program (CUCP), which has been determined to meet all the requirements in accordance with Title 49 CFR, Part 26. All certification determinations are evidenced by a letter of DBE certification issued by the certifying CUCP agency.

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

Goal: A numerically expressed objective, which the City or its contractors are required to make Good Faith Efforts to achieve.

Good Faith Efforts: Efforts to achieve a DBE goal or other requirements of this DBE program that, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.

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

Home State: The state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

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

North American Industrial Classification System (NAICS): The five to six-digit classification number that best describes the primary business of a firm. The basis for industry classification changed from the 197 Standard Industrial Classification System (SIC) to the 2004 NAICS.

Noncompliance: The City or a contractor has not correctly implemented the requirements of the DBE program

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

Program: Any undertaking on the City's part to use U.S. DOT financial assistance as authorized by laws to which the DBE Program applies.

Race-Conscious Measure or Program: A program or portion thereof that focuses specifically on assisting only DBEs, including women-owned DBEs, by the development and inclusion of participation goals or Good Faith Effort activities.

Race-Neutral Measure or Program: A program or portion thereof that assists all small businesses, including DBEs, regardless of ownership status, in successfully participating in the City's procurement program. For the purposes of the DBE Program, "race-neutral" includes gender-neutrality.

Recipient: Any entity that receives U.S. DOT financial assistance, whether directly or through another recipient, from one or more U.S. DOT Operating Administrations.

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

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

Small Business Concern: A small business seeking to participate as a DBE or SBE in U.S. DOT-assisted contracts, as defined by Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121) whose average annual gross receipts for the previous three years do not exceed the SBA business size standard and cap of \$22.41 million (as adjusted for inflation by the Secretary of U.S. DOT) pursuant to 49 CFR § 26.65(b).

Small Business Enterprise (SBE): A for-profit Small Business Concern that does not exceed the Business Size Standard.

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

1. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; and
 - vi. Women.
 - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

2. Any individual who the City of Fullerton finds to be a socially and economically disadvantaged individual on a case-by-case basis. To make this determination, the City will follow the guidelines in 49 CFR Part 26, Appendix E. However, an individual cannot be presumed or determined on a case-by-case basis to be economically disadvantaged if he/she has a personal net worth exceeding \$1.32 million (excluding the individual's ownership interests in the small business concern and his or her primary personal residence).

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

E. Prohibited Discrimination

City of Fullerton shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by 49 CFR Part 26 on the basis of race, color, sex or national origin. The City 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 DBE Program with respect to individuals of a particular race, color, sex or national origin.

F. Assurances

The City of Fullerton shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The City of Fullerton shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The City's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of Fullerton of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

III. RESPONSIBILITIES FOR DBE PROGRAM IMPLEMENTATION

A. DBE Liaison Officer (DBELO) (§26.25)

The City has designated the following individual as the Disadvantaged Business Enterprise Liaison Officer (DBELO):

Ronald Bowers
Senior Civil Engineer
City of Fullerton
303 W. Commonwealth Avenue
Fullerton, CA 92832
(714) 738-6322
RonB@ci.fullerton.ca.us

In that capacity, the DBELO along with support staff as may be necessary, shall be responsible for development, implementation, monitoring, and evaluation of the DBE Program.

The DBELO has direct, independent access to the City Manager (the City's chief executive officer) concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Exhibit A to this program. The DBELO will work closely with Legal Counsel and management staff responsible for construction, procurement and professional service contracts. Specific responsibilities of the DBELO include, but are not limited to:

1. Developing, recommending, monitoring, evaluating, and revising the DBE Program, DBE policies and procedures, and internal and external communications mechanisms. Issuing supplementary policies and procedures for implementation of the DBE Program by Fullerton staff, as necessary.
2. Gathering, analyzing and assessing available resources and evidence for the establishment and achievement of an overall DBE participation goal for three fiscal years. Adjusting an overall DBE goal during that three-year period, if required due to changed circumstances. Preparing and submitting Fullerton's DBE Overall Goal and Goal Setting Methodology (DBE Report).
3. Maintaining and updating the Bidders List in accordance with 49 CFR § 26.11.
4. Conducting race-neutral measures to facilitate participation of small business concerns, including DBEs, through outreach and other communication programs, training and business development programs, restructuring contracting opportunities, simplifying bonding, surety and insurance requirements or other race-neutral means.
5. Identifying contracts and procurements where DBE goals can be included in solicitations (both race-neutral methods and contract specific goals).

6. Participating in the contract solicitation and award process, including recommending specific contract goals, where appropriate, reviewing contract specifications, attending pre-bid and pre-proposal conferences, and evaluating bids and proposals for contractor responsiveness, responsibility and good faith efforts related to the DBE or SBE requirements of the contract.
7. Providing outreach to DBEs, SBEs and community organizations to advise them of contracting opportunities. Ensuring contracting information is available to identified DBEs and SBEs in a timely manner.
8. Providing DBEs and SBEs with information and assistance, as appropriate in preparing bids/proposals and obtaining bonding and insurance.
9. Monitoring specific contract performance and actual DBE and SBE participation and contract payments.
10. Monitoring overall DBE participation, adjusting overall DBE goal and means of achievement, and assessing any areas of over-concentration of DBE participation.
11. Determining DBE certification actions, including initial certification, recertification, denial, and removal of certification.
12. Participating as a member of the California Unified Certification Program (CUCP) in accordance with 49 CFR § 26.81 and the CUCP Memorandum of Agreement (MOA).
13. Maintaining all appropriate records and documentation of the DBE Program.
14. Advising the City Manager, City Council and U.S. DOT officials, as required, on DBE matters and achievement. Preparing and submitting reports and documents, as required.

B. Reconsideration Official ((§26.53 (d)))

The Program's administrative reconsideration process is facilitated by the City's Reconsideration Official (RO):

Patricia Padilla
Small and Disadvantaged Business Enterprise Expert
211 E. City Place Drive
Santa Ana, CA 92705
(714)973-1335
ppadilla@padillainc.com

The City, at its discretion, may utilize another U.S. DOT recipient agency's DBELO or Reconsideration Official who is a member of the California Unified Certification Program as an independent, impartial party to serve in the capacity of Reconsideration Official.

In instances where race-conscious contract-specific DBE goals are established, and the bidder/offeror fails to satisfy the requirements for meeting the contract-specific goal or fails to document sufficient Good Faith Efforts to do so, in accordance with Section VII. D. 2: "Guidance Concerning Good Faith Efforts in Meeting Established Contract-Specific DBE Goals", the City will provide the bidder/offeror, prior to award of the contract, an opportunity for administrative reconsideration of the City's determination of non-responsiveness.

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

To ensure integrity in the process, the Reconsideration Official will not have played any role in the original determination that the bidder/offeror did not meet the established contract-specific DBE goal, or adequately document Good Faith Efforts as specified in the subject procurement.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate Good Faith Efforts to do so. Further, the bidder/offeror will have the opportunity to meet with the Reconsideration Official in person to discuss the issue of whether it met the goal or made adequate Good Faith Efforts to do so. The City will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder/offeror did or did not meet the goal or made adequate Good Faith Efforts to do so. The result of the reconsideration process is not administratively appealable to the U.S. DOT.

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

1. Ensures that all DBE administrative reconsideration procedural actions are consistent with the requirements and standards specified in Title 49 CFR, Sections 26.53 and 26.87, and that the Program's integrity is maintained at all times.
2. Reviews bidder/offeror written documentation or argument concerning the issue of whether it met the goal or made adequate Good Faith Efforts to do so.

3. Upon review of the bidder's/offeror's request for consideration, the Reconsideration Official sends the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate Good Faith Efforts to do so.
4. Maintains records of conducted hearings.
5. Provides determinations in writing to the City's DBELO.

IV. ADMINISTRATIVE REQUIREMENTS

A. Federal Financial Assistance Agreement Assurance ((§26.13 (a))

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

"The City shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE Program or the requirements of Title 49 CFR, Part 26. The City shall take all necessary and reasonable steps under Title 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. The City's DBE Program, as required by Title 49 CFR, Part 26 and as approved by U.S. DOT Operating Administrations, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of its failure to carry out its approved Program, the Department may impose sanctions as provided under Title 49 CFR, Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)."

B. DBE Financial Institutions (§26.27)

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

C. DBE Directory (§26.31)

The City refers interested parties to the California Unified Certification Program (CUCP) Database of Certified DBE Firms (DBE Directory) to assist in identifying certified DBEs.

The DBE Directory is published in the California Department of Transportation's (Caltrans) "Civil Rights" website, which can be accessed at www.dot.ca.gov/hq/bep.

D. Overconcentration (§26.33)

The City will develop policies and procedures to address overconcentration of DBE utilization by work classification. This is to be accomplished through regular tracking of contract awards and through compliance monitoring efforts. The City will identify and directly respond to identified overconcentration of DBEs within specific trades or specialty areas and modify and/or exempt such areas from the Overall DBE Goal and contract-specific goal-setting process as necessary to ensure compliance with regulatory overconcentration provisions. Currently, the City has not identified any types of work that have a burdensome overconcentration of DBE participation. However, should the City determine that overconcentration exists in a work classification, the City will obtain the approval of the concerned U.S. DOT Operating Administration of its overconcentration determination and the measures devised to address it. Once these measures are approved, they will become part of the City's DBE Program.

E. Business Development Programs (§26.35, Appendix C and Appendix D to 49 CFR 26)

The City has implemented race and gender-neutral efforts to promote small business concerns, including DBEs. Additionally, the City has programs in place, which are aimed at increasing competition in its procurement process, one of which is the City's newly implemented Small Business Element.

Small Business Element (§26.39)

The City of Fullerton has established a Small Business Element as a supplement to their existing DBE Program, to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors in direct response to regulatory requirements, 49 CFR Part 26.39 "Fostering Small Business Participation" (Federal Register/ Vol. 76, No. 19/ Friday, January 28, 2011/ Rules and Regulations). While the City of Fullerton has historically utilized race and general neutral strategies to promote and advance Small Business participation efforts as a part of the Fullerton's DBE Program implementation efforts, this element of the program serves to unify in a singular location these important efforts. For purposes of capturing Small Business utilization, the City adheres to the U.S. Department of Transportation's Small Business definition for what constitutes a Small Business Enterprise. This Small Business Element will include, but is not limited to the following assertive strategies:

1. The City of Fullerton provides Small Business firms the ability to utilize and review bid/procurement plans at no cost through the Planwell program. The City of Fullerton will inform the procurement community and small business firms that this resource has been made available to them at proposal/bid

conferences. The City of Fullerton is confident that providing Small Business firms online access to these crucial plans at no additional cost will aid in leveling the playing field and enable them to submit quality proposals and bids.

2. The City of Fullerton will modify their solicitation documents to capture Small Business utilization information and will be developing an additional Small Business reporting tool, which allow the City of Fullerton to actively monitor and track Small Business participation in the City of Fullerton's contracting program.
3. The City of Fullerton will institute regular reviews of procurements during the City's Look Ahead Sessions, occurring (bi-annually, tri-annually, quarterly) to assess opportunities for unbundling (breaking out scopes of work/services to facilitate Small Business prime contracting opportunities). The City believes that including the participation of procurement staff in scheduled reviews will increase accountability of the City's procurement options and decisions and in doing so will ultimately improve contracting opportunities for Small Business Enterprises at the prime level.
4. The City of Fullerton will hold a pre-proposal conference for key procurement releases that meet a threshold of \$750,000.00 or more which will include a networking component to encourage teaming and partnering between primes and Small Businesses as well as providing them access to the City of Fullerton's key procurement individuals. This networking component will provide Small Businesses valuable access and opportunity needed to promote their capabilities and strengthen competitiveness, marketability and participation of Small Businesses firms within the City of Fullerton's contracting program. Additionally, it will encourage Prime Contractors to partner and communicate with the Small Business community.

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

The small business element applies to sub-recipients in the same way as the City's DBE Program. The City will ensure that any sub-recipients implement the City's approved small business element. If a sub-recipient has its own DBE Program separate from the City's DBE Program, the sub-recipient is responsible for creating and implementing its own small business element.

For purposes of this DBE Program, a small business enterprise (SBE) is defined as a Small Business Concern that does not exceed the Business Size Standard. The City's small business element includes a verification process to ensure eligibility of small business firms to participate in its DBE Program. To avoid fraud, a firm's small business status will be verified when the City utilizes SBE contract goals on a project. The City will rely on the certification/verification process used by other agencies, providing their process is to confirm eligibility consistent with those of Part 26, including

the requirement that the SBE firm may not exceed the Business Size Standard. The City will not accept certifications/verifications by agencies that allow companies to self-certify as small businesses. A currently certified DBE is presumed eligible to participate in the small business element of the City's DBE Program. The City of Fullerton will require that all SBEs and any DBEs not certified by the CUCP provide documentation to verify their certification status. The City may require SBEs to submit additional documents, as necessary, to verify their eligibility.

The City will track and report any race-neutral participation by currently certified DBEs achieved through the small business element in the same way it reports race-neutral DBE participation obtained through other methods. To the extent feasible, data on small business participation will be collected and maintained in order to respond to any future questions regarding the results of the City's DBE Program.

The City of Fullerton has submitted their Small Business Element to the appropriate DOT operating administration for approval as a part of their DBE program.

F. Dissemination of Policy Statement

Pursuant to 49 CFR §26.23, the DBELO shall distribute a signed and dated Policy Statement throughout Fullerton at offices, on the Fullerton website and to the business community, including DBEs and non DBEs that perform work on U.S. DOT-assisted contracts for Fullerton. The entire DBE Program will be available to the public upon request.

G. DBE Database

The DBE Database is a consolidated and automated directory that identifies firms that have been certified as DBEs pursuant to the CUCP and the certification standards listed in 49 CFR Part 26, Subpart D. The DBE Database is jointly maintained and updated by the CUCP certifying member agencies, in coordination with the California Department of Transportation (CalTrans) as the CUCP DBE Database Manager.

The City of Fullerton will use the DBE Database as a resource when developing overall and contract-specific DBE participation goals and conducting outreach and other activities to promote DBE participation on U.S. DOT-assisted contracts. The CUCP DBE Database is available in printed form and electronically on the Internet at the CalTrans website, www.dot.ca.gov/hq/bep. It will be made available, on request to contractors, DBE firms, other public agencies and the public.

Potential contractors will be apprised of the availability of the DBE Database as a means of identifying DBEs with capabilities relevant to general contracting requirements and particular solicitations, thereby facilitating contractors' efforts to meet DBE requirements. DBE firms that come to the attention of the City of Fullerton, but are not included in the DBE Database, will be advised of its existence. The importance of taking advantage of this resource as a means of increasing likely use of DBE firms will

be emphasized, and the procedure by which their businesses can be included in the DBE Database will be explained.

H. Bidders List

The City will require all prime contractors bidding or proposing on U.S. DOT-assisted contracts to submit the following information about the prime contractor and all subcontractors who provided a bid, proposal or quote to the prime contractor:

1. Firm's name
2. Firm's address
3. Firm's status as a DBE or non-DBE
4. The age of the firm
5. The annual gross receipts of the firm
6. Description of work to be performed or type of materials/supplies to be furnished on the contract
7. Dollar amount of that prime or subcontract.

The City of Fullerton will use this information to maintain and update its Bidders List. The City will maintain the confidentiality of any proprietary information in accordance with applicable California laws and the Regulations.

I. Monitoring Actual DBE and SBE Participation and Payments

1. It is the prime contractor's responsibility to maintain records and documents for three (3) years following performance of the contract. This reporting requirement is extended also to any DBE or SBE subcontractors. Records maintained by prime contractors and DBE or SBE subcontractors will be made available for inspection, upon request of any authorized representative of the City or U.S. DOT.
2. The DBELO shall monitor and track actual DBE and SBE participation through contractor reports of payments and other appropriate monitoring mechanisms. The DBELO will maintain a running tally of payments actually made to DBE and SBE firms and may require prime contractors and DBE or SBE subcontractors and suppliers to provide appropriate documentation to verify such payments.
3. The DBELO shall ensure that DBE and SBE participation is counted toward contract goals and DBE participation is counted toward the overall DBE goal in accordance with the Regulations. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs and SBEs.

4. The City may perform interim audits of contract payments to DBEs and SBEs. The audit will review payments to DBE and SBE subcontractors to ensure that the actual amount paid to them equals or exceeds the dollar amounts stated on the List of Prime Contractor and Subcontractors/Suppliers form and any contract amendments.

J. Monitoring the Performance of Program Participants

The City of Fullerton will apply legal and contract remedies available under federal, state and local laws to ensure all program participants comply with the requirements. The DBELO and project managers will monitor contractor performance to ensure that work committed to DBEs or SBEs at contract award, and subsequent contract amendments, is actually performed by the identified DBEs or SBEs and payments are made to those firms in accordance with the contract requirements.

This monitoring mechanism will include a written certification that the DBELO and/or the project manager has reviewed contracting records and monitored work sites in the City's service area of firms performing City contracts. This monitoring may be conducted in combination with monitoring of contract performance for other purposes (e.g., close-out review for contract).

The DBELO will continue to report DBE participation, overall goal setting methodology, revisions in the DBE Program, and other information and documentation to FTA as directed. Statistical data will be maintained as prescribed and the Uniform Report of DBE Awards or Commitments, and Payments form will be submitted to FTA at the required intervals on the TEAM system, reflecting the DBE participation on City's federally assisted procurement activities. These reports will provide DBE participation on the City's race-neutral contracts, race-conscious contracts, and the combined DBE participation on all U.S. DOT-assisted procurement activities.

K. DBE Financial Institutions

It is the policy of the City of Fullerton to investigate the full extent of services offered by financial institutions located in its service area that are owned and controlled by socially and economically disadvantaged individuals, to make reasonable efforts to use these institutions and to encourage prime contractors on U.S. DOT-assisted contracts to use these institutions.

The DBELO researched the website for the Federal Reserve Board at www.federalreserve.gov to identify minority-owned banks derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database. As of March 31, 2013, the Federal Reserve Board listed no minority-owned financial institutions located in the City's service area. The DBELO will continue to use this source to identify and solicit minority-owned banks to participate in the City's DBE Program.

V. DETERMINING, MEETING AND COUNTING DBE PARTICIPATION TOWARDS THE OVERALL DBE GOAL (§26.45; §26.51; §26.55)

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

Pursuant to 49 CFR Part 26, Section § 26.45, the City shall establish overall DBE goals on a fiscal-year basis every three years for the participation of DBEs in all budgeted contracts utilizing U.S. DOT financial assistance, provided that the anticipated expenditures have viable subcontracting possibilities and corresponding DBE availability. The overall DBE goal shall be expressed as percentage of the total amount of U.S. DOT funds the City of Fullerton anticipates expending during those three fiscal years.

The City of Fullerton's overall DBE goal represents the amount of ready, willing and able DBEs that are available to participate in U.S. DOT-assisted contracting opportunities. The overall DBE goal is reflective of the amount of DBE participation the City would expect absent the effects of discrimination. The City intends to meet its goal to the maximum extent feasible through race-neutral measures. Where race-neutral measures are inadequate to meet the overall DBE goal, the City will establish specific contract goals for particular projects with subcontracting opportunities.

The City is required, as a condition of receiving U.S. DOT financial assistance when established funding thresholds are met or exceeded, to establish an overall agency DBE goal; the City will utilize both race and gender neutral and race conscious measures towards meeting its overall DBE goal as applicable based on the U.S. DOT Operating Administration's guidance.

In conjunction with the preparation and adoption of the City will conduct a thorough analysis of the contract scopes of work for purposes of identifying industries impacted to facilitate the goal-setting process. This analysis will exclude projected contract expenditures with transit vehicle manufacturers, which are exempt from the DBE Program.

If required by FTA, the City will express its overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects. A project goal may be adjusted to reflect changed circumstances with the concurrence of FTA. A project goal is an overall goal and meets all of the substantive and procedural requirements pertaining to overall goals. A project goal covers the entire length of the project to which it applies. A project goal includes a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the City's regular overall goal applicable to contracts not part of the project covered by a project goal is calculated.

The City will submit an Overall DBE goal to the following U.S. DOT Operating Administration(s), as applicable:

Federal Transit Administration (FTA) – A three year goal submitted by August 1 of each triennial period.

The City will annually review its DBE attainments in contrast to its overall DBE goal to determine if any measures would need to be instituted to effectively meet its established overall DBE goal. The City will further follow accountability mechanisms in instances where the City has failed to meet its overall goal for a given fiscal year. The City will thoroughly analyze why it fell short of meeting its overall goal for a given goal period and establish specific steps and milestones for correcting identified problems so that the City will meet its overall goal in subsequent years. The City will prepare its proposed plan to DOT within 90 days of the end of each fiscal year, as applicable to ensure compliance.

Transit Vehicle Manufacturers - While transit vehicle purchases are excluded from the City's overall DBE goal-setting process, the City shall require Transit Vehicle Manufacturers (TVM) to certify that they have fully complied with applicable provisions and that they have established an overall DBE participation goal that has been approved by the FTA before they can bid or propose on any of the City's U.S. DOT-assisted transit vehicle procurements (Refer to Section VII. B: "Transit Vehicle Manufacturers (TVM) Certifications").

Federal Highway Administration (FHWA/Caltrans)

In instances where the City is a Subrecipient of FHWA-assistance, the City will give full consideration to establishing a contract-specific goal for every FHWA-assisted procurement/contract. The City will develop contract goals based on Caltrans currently prescribed goal setting methodology, conduct Pre-Award DBE Compliance Reviews for each FHWA-assisted contract to determine if the prospective contractor demonstrates responsiveness towards meeting the DBE goal good faith effort requirements and all other applicable DBE requirements of the solicitation and contract. The City will continue to monitor and enforce contractor's compliance throughout the life of the contract.

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

1. Step One: Base Figure

After the City defines its U.S. DOT-assisted contracting program and corresponding market area for a given federal fiscal year, the City will establish a Base Figure (Step 1) of ready, willing, and able DBEs in contrast to all firms available to participate in the

City's U.S. DOT-assisted contracts, in accordance with Title 49 CFR, Part 26.45 provisions.

The City may survey the relative availability of DBEs to establish its Base Figure utilizing any one of the following:

- i. The most readily available data, which may include the California Unified Certification Program (CUCP) DBE Database and other certifying agencies' databases, to assess the number of ready, willing and able DBEs, and the U.S. Census Bureau's County Business Patterns (CBP) database to determine the corresponding number of all firms available to bid on the City's contracting opportunities by work classification.
- ii. The City's Bidders List.
- iii. Data from disparity studies, as available.
- iv. Another U.S. DOT-recipient's DBE Goal in the same or substantially similar market.

To determine the relative availability of DBEs, the City will divide the numerator representing the ratio of ready, willing and able DBE firms within its defined market area by the denominator representing all firms (DBEs and non-DBEs) available by each work category within the defined market area. Application of this formula will yield the following baseline information:

$$\frac{\text{Number of Ready, Willing and Able DBEs}}{\text{Number of All Available Firms (Including DBEs and non-DBEs)}} = \text{BASE FIGURE}$$

The Base Figure will be adjusted by weighting the relative availability of DBEs grouped within the major work categories, giving more weight to the work categories in which the City projects to spend more U.S. DOT-assisted dollars.

2. Step Two: Adjusting the Base Figure

Pursuant to CFR 49 § 26.45(d), the DBELO will adjust the base figure based on demonstrable evidence indicating that the availability of DBEs for U.S. DOT-assisted contracts for each fiscal year may be higher or lower than the base figure indicates. At a minimum, the DBELO will analyze:

- i. Demonstrated evidence of DBE capacity to perform work in the City's U.S. DOT-assisted contracting program.
- ii. The City's Bidders List, if not utilized in Step I.
- iii. Real market conditions.

- iv. Disparity studies conducted within the City's jurisdiction to the extent that they are not already accounted for in the Step 1 Base Figure; and
- v. Other relevant factors may include:
 - a) Other recipients' goal results in similar contracting opportunities and markets, and the reasons for the level of those results.
 - b) The methods used by the City to increase DBE participation in federally assisted contracts.
 - c) The demographics and business activity of the market area in which the City will solicit bids and/or proposals.
 - d) The ability of DBEs to obtain financing, bonding, and insurance requirements to participate in the City's DBE Program.
 - e) The data from studies of employment and self-employment, education, training and union apprenticeship programs, to the extent that the City can relate it to the opportunities for DBEs to perform in the City's DBE Program.

In accordance with 49 CFR 26.45, the City's overall DBE goals will be expressed as a percentage of all Federal-aid funds the City will expend in U.S. DOT-assisted contracts in the forthcoming fiscal years.

3. Projection of percentage of overall DBE Goal to be achieved through Race-Neutral and Race-Conscious Measures

Once the overall DBE goal is calculated, the DBELO will analyze and project the maximum feasible portion of the goal that can be achieved by using race-neutral methods. Where the projected portion of the goal using race-neutral methods is less than the overall DBE goal, the remaining portion may be achieved by establishing contract goals for particular projects that have subcontracting opportunities.

The DBELO shall monitor and adjust the use of contract-specific goals in accordance with 49 CFR § 26.51(f). When projecting the percentage of the overall goal to be achieved through establishing contract-specific goals, the DBELO shall analyze the actual achievement of the overall goal through race-neutral methods in the current and recent years. When establishing contract-specific goals during the current fiscal years, the DBELO shall analyze the progress toward achieving the overall goal and increase, reduce or eliminate the use of contract-specific goals accordingly. Contract goals will provide for participation by certified DBEs or SBEs and will not be subdivided into group-specific goals.

4. Public Participation and Outreach Efforts (§26.45; §26.51)

5. Publication of Proposed Overall Goals

Administration(s), the City will publish the proposed overall DBE goal in one general circulation, trade associations, and available minority-focused media. Said publications shall include:

- i. A statement that the methodology and proposed overall goal for DBE participation in the City's federally-assisted contracts are available for public inspection for a period of thirty (30) days from the date of publication.
- ii. Notification that the City will accept public comments on the proposed goal and rationale for a period of forty-five (45) days from the date of publication. Instructions for the submission of comments will also be included.
- iii. The address of the City and U.S. DOT, to which comments may be sent.

Concurrently, the DBELO shall notify DBE resource and community organizations of the availability of the DBE Report for review and comment. Upon receipt of any public comments, the DBELO will prepare a summary report analyzing the public comments and recommending any modifications to the overall DBE goal or methodology and will furnish it to the Alternative Transportation Manager for review and concurrence. If no comments are received that would substantially change the goal analysis, the results of the public comment period may be presented as an informational item to the Fullerton's City Council with no further action required.

Upon receipt of any and all responses from the general public, the City's DBELO will analyze the comments, summarize the results, and determine its impact on the proposed overall DBE goal or methodology. The proposed overall goal may be adjusted as necessary and will be forwarded to the Chief Executive Officer for submission to the affected U.S. DOT Operating Administration.

6. Consultation with Various Groups, Organization and Officials

In a joint effort, the City will continue to 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 a level playing field for the participation of DBEs. Members of the public will be invited to attend public participation sessions, which will include, but not be limited to, minority, women and general contractor groups, community organizations, and other U.S. DOT recipients.

7. Adoption of the Overall Goal

Upon completion of the analysis described above and after consultation with various groups, organizations and officials, the DBELO will prepare the DBE Report for a three-year period for review and approval by the City Manager. The report shall document the analysis and methodology as well as the proposed goal and estimated percentages to be achieved through race-neutral and race-conscious measures. Upon the City Manager's approval, he/she will authorize publication of the proposed goal for public comment and adoption of the goal thereafter.

The Fullerton's City Council shall adopt the overall DBE goal for DBE participation in U.S. DOT-assisted contracts. Unless otherwise directed, the DBE Report will be submitted on a three year interval by August 1st to FTA for review and approval.

The overall goal applies to each fiscal year during that three-year period. The City may adjust the overall goal during that three-year period to which it applies in order to reflect changed circumstances. Such an adjustment shall be submitted to FTA for review and approval. Additionally, the City will regularly consult with

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

The City shall require Transit Vehicle Manufacturers to certify that they have fully complied with this section and that they have established an overall DBE participation goal that has been approved by the FTA before they can bid or propose on any City FTA-assisted transit vehicle procurements. Expenditures for U.S. DOT-assisted transit vehicle procurements are not included in the funding base used to calculate the City's goal for DBE participation.

C. Race-Neutral Measures (§26.51)

The City will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, a DBE is awarded a subcontract on a prime contract that does not carry a DBE goal or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (i.e. a prime contractor that uses a strict low bid system to award subcontracts). In addition the City of Fullerton will use the following race-neutral measures, as appropriate, to facilitate DBE participation.

1. Ensuring contracting barriers do not exist by using contracting arrangements (such as, arranging solicitation, times for the presentation of bids, quantities, specifications and delivery schedules) that facilitate participation by DBEs and other small businesses and make contracts more accessible to them.
2. Configuring large contracts into smaller contracts to make contracts more accessible to small businesses, when feasible, providing it would not impose significant additional cost, delay or risk to the City.
3. Providing prompt payment clauses in all contracts.
4. Providing technical assistance and other business related services, as requested and as appropriate.
5. Assisting in overcoming limitations in bonding and financing, when requested and as appropriate.

6. Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects and achieve eventual self-sufficiency.
7. Providing outreach and communications programs related to contracting opportunities and procedures to ensure the inclusion of DBEs and other small businesses on mailing lists soliciting bids and proposals.
8. Requiring prime bidders on multi-year design-build contracts or other large contracts to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs can reasonably perform.
9. Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform them.
10. Providing information about the availability of the CUCP DBE Database, through print and electronic means, to potential prime contractors, DBEs, public agencies and the general public. Encouraging prime contractors to use the DBE Database to solicit DBE firms. Encouraging eligible DBEs to become certified, and to remain certified, so they will be listed in the DBE Database.

D. Race-Conscious Measures

The City will implement race-conscious measures, including establishing contract-specific DBE goals to drive DBE participation to meet its overall DBE goal if in conformance with the directives issued by funding authorities.

1. Methodology for Setting Contract-Specific Goals (§26.51)

The DBELO shall establish a contract-specific DBE participation goal to meet any portion of the overall goal the City does not project being able to meet by utilizing race-neutral means, as applicable based on funding directives. Contract goals are established over the period to which the overall goal applies and will cumulatively result in meeting any portion of the City's overall goal that is not projected to be met through the use of race-neutral means.

The City will establish contract-specific goals only on those DOT-assisted contracts for which subcontracting possibilities have been identified with corresponding availability of DBEs. The City will not establish a contract-specific goal on every DOT-assisted contract; consideration and individual assessment will be conducted specific to the City's overall goal attainment status to determine if warranted. Further, contract-specific goals may be adapted to the circumstances of each contract (e.g. type and location of work, subcontracting opportunities, and availability of DBEs to perform) and will be expressed as a percentage of the total contract value.

2. Evaluation of Bids or Proposals for Contracts with Established Contract-Specific Goals (§26.53 (b))

After the bid opening, or submission deadline for proposals, the DBELO shall evaluate all bids/proposals with regard to the DBE requirements to determine whether the bidder/proposers submitted all the information required by 49 CFR § 26.53. Prior to making a recommendation to the Fullerton's City Council for award of contract, bidders/proposers will be required to meet the requirements of 49 CFR § 26.53.

The responsible bidder with the lowest apparent bid price, or the most highly ranked proposer, who also meets the contract-specific DBE goal or demonstrates sufficient good faith efforts, shall be recommended for award of contract. In the event that the bidder with the lowest monetary bid price (or the proposer ranked first), fails to meet the contract-specific goal or fails to demonstrate sufficient good faith efforts, or is otherwise nonresponsive or not responsible, the DBELO shall evaluate the bidder with the next lowest bid price (or the proposer ranked second).

Bidder/proposer will be required to submit with their bids/proposals the completed List of Prime Contractor and Subcontractor/Supplier form. This form requests the following information about DBE and non-DBE firms that will participate in the contract: name and address of firm, phone number, owner's name, DBE or SBE, age of firm, annual gross receipts, description of work and type of materials/supplies to be furnished for the contract, and dollar amount of the work or supplies. By submitting the List of Prime Contractor and Subcontractors/Suppliers form, a bidder/proposer certifies that it is committed to using the identified DBEs or SBEs in the performance of the contract.

In addition, DBEs not currently certified by the CUCP will be required to submit information verifying their current certification status. The City of Fullerton may require that DBEs submit additional documentation, as necessary to verify their eligibility.

If the DBELO determines additional information is needed to evaluate a bidder's or proposer's submission regarding the DBE requirements, the DBELO shall request the bidder/proposer to submit the required information. The DBELO may also contact the listed DBEs and SBEs directly to obtain the information.

3. Evaluation of DBE Eligibility Status for Contracts with Established Contract-Specific Goals

The City requires that the DBEs listed by Bidders/Offerors for participation in a contract with goals be certified as an eligible DBE at the time of bid/proposal submission in order for their participation to be counted towards meeting the established contract-specific DBE goal. The DBELO will assess eligibility for crediting as a part of the evaluation process utilizing the CUCP DBE Database and/or other valid proof of DBE certification.

4. Guidance Concerning Good Faith Efforts in Meeting Established Contract-Specific DBE Goals (§26.53; Appendix A to 49 CFR 26)

Following the determination of the Bidder's/Offeror's responsiveness and responsibility to DBE requirements set forth in the solicitation, the DBELO shall prepare a report relative to contract-specific DBE requirements, to be submitted for presentation to the Board of Directors at the time the contract award is considered.

If a contract-specific DBE goal has been established by the City for a given DOT-assisted contract, a Bidder/Offeror must, in order to be responsible and/or responsive to the solicitation and/or contract requirements, make good faith efforts to meet the goal. A Bidder/Offeror can meet this requirement in either of two ways. First, a Bidder/Offeror can meet the goal by documenting commitments for participation by DBE firms sufficient to meet the established contract-specific DBE goal. Second, if a Bidder/Offeror does not meet the contract-specific DBE goal, the Bidder/Offeror can document adequate good faith efforts undertaken to do so to demonstrate that the Bidder/Offeror took all necessary and reasonable steps to achieve the DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if the Bidder/Offeror was not fully successful in obtaining such.

The following sections outline the requirements firms competing for City contracts shall comply with to demonstrate responsiveness in either meeting the goal, documenting commitments for participation by DBE firms sufficient for this purpose, or documenting adequate Good Faith Efforts to do so. Failure of a Bidder/Offeror to meet the established contract-specific DBE goal, or failure to demonstrate that sufficient Good Faith Efforts were undertaken, will deem the respective Bidder/Offeror as non-responsive.

For projects funded by FHWA funds, the City will prepare and submit to the State of California Department of Transportation (Caltrans) an Evaluation of Good Faith Effort Memorandum that cites reasons as to why the Good Faith Effort is adequate or not for review and approval.

5. Meeting Established Contract-Specific DBE Goals

If the City establishes a contract-specific DBE goal for a given contract, the City must only award such contract to a Bidder/Offeror that meets the goal or makes good faith efforts to meet it. As such, a Bidder/Offeror is required to submit the following DBE information to the City within the prescribed timeline set forth in each solicitation to enable the City to assess a Bidder's/Offeror's responsiveness to contract-specific DBE participation goal requirements:

- i. The names and addresses of DBE firms that will participate in the contract;
- ii. A description of the work that each DBE firm will perform;
- iii. The dollar amount of the participation of each DBE firm participating;

- iv. Written and signed confirmation from the DBE firm that it is participating in the contract as provided in the prime contractor's commitment;
- v. Written and signed confirmation that the proposed DBE is certified in accordance with Title 49 CFR, Part 26 at the time the bid/proposal is submitted; and
- vi. If partial or no DBE participation has been attained, evidence of Good Faith Efforts must be submitted (Refer to Section VII. D. 2: "Guidance Concerning Good Faith Efforts in Meeting Established Contract-Specific DBE Goals" and Appendix A to Title 49 CFR, Part 26).

Any DBE participation in excess of the established contract-specific DBE goal shall be monitored and tracked as race-neutral DBE participation.

6. Documenting Adequate Good Faith Efforts to Meet Contract-Specific DBE Goals

The City will require Bidders/Offerors to comply with Good Faith Efforts requirements, as a matter of responsiveness. The obligation of the bidder/offeror is to undertake and document Good Faith Efforts towards meeting the established contract-specific DBE goal.

In the event the Bidder's/Offeror's efforts to meet the established goal result in partial or no DBE participation, all Bidders/Offerors must document adequate Good Faith Efforts documentation (which were undertaken prior to bid submittal or proposal submission due date and timeline) and submit such unless otherwise specified in the solicitation to the City with their bid or proposal. Bidders/Offerors must provide Good Faith Effort information at the time of bid (as a matter of responsiveness) or as indicated in the solicitation requirements but not later than 7 days after bid opening (as a matter of responsibility).

Mere pro forma efforts are not Good Faith efforts to meet DBE goal requirements. The City will make a fair and reasonable judgment whether a Bidder/Offeror that did not meet the established contract-specific DBE goal made adequate Good Faith Efforts to do so.

Only those efforts made prior to the bid/proposal submittal due date will be considered in the evaluation of the Bidder's/Offeror's Good Faith Efforts. If a firm does not propose to meet a contract-specific goal and fails to submit the required Good Faith Efforts documentation by the time specified, that will be grounds for finding the bid/proposal to be non-responsive.

The DBELO or designee will be responsible for determining whether a Bidder/Offeror who has not met the established contract DBE goal has documented sufficient Good Faith Efforts to be deemed responsive.

The factors delineated below represent the types of efforts that the City will consider as part of the Bidder's/Offeror's Good Faith Efforts to obtain DBE participation sufficient to meet the goal. However, the foregoing is not intended to be an exclusive or exhaustive list of all Good Faith Efforts that can be performed to meet the objectives of this part.

Bidder/Offeror must demonstrate real and substantive good faith efforts. The Bidder/Offeror must have undertaken all necessary and reasonable steps to achieve a DBE goal that by their scope, intensity, and appropriateness to the objective could reasonably be expected to obtain sufficient DBE participation. The City will consider the quality, quantity, and intensity of the different kinds of efforts.

Good Faith Efforts documentation must include the following information and supporting documents, as necessary:

1. **Items of work the Bidder/Offeror made available to DBE firms;** a description of work and approximate dollar amount, a percentage of total work made available to DBEs by the Bidder/Offeror, a breakdown of contract work provided (including those items normally performed by the Bidder/Offeror with its own forces) into economically feasible units to facilitate DBE participation sufficient to meet the DBE contract goal. It is the Bidder/Offeror's responsibility to demonstrate that sufficient work was identified and made available to DBE firms to meet the goal.
2. **Solicitation effort documentation;** names of certified DBEs and dates on which they were solicited to bid on the project. Include the items of work offered and method of solicitation. Describe the methods used for following up on initial solicitations to determine with certainty if the DBEs were interested, and the dates of follow-up solicitations. Attach supporting documents such as copies of solicitations, telephone records, telephone billing statements, fax confirmations and other evidence of solicitation. Bidder/Offeror to submit documentation that authenticates DBE firms were provided information about the contract (location of project, contract number, relevant bid dates, items of work made available, addendum information and contact information) in the Invitation For Bid/Proposal from the Bidder/Offeror. Bidder/Offerors are reminded to solicit certified DBEs in the City's market area through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising, written notices, etc.) and provide sufficient time to allow DBEs to respond. Notification of any extension of the bid/proposal opening must be shared with DBEs in an effort to afford DBEs with additional time to bid.
3. **Rejected DBE documentation;** the names, addresses, phone numbers, bid/proposal items and amounts of all firms involved (rejected DBE firms and firms selected and/or accepted). Bidder/Offeror to include the reasons for the bidder/offeror's rejection of the DBEs, the firms selected and accepted for that work (attach all copies of quotes from the firms involved) and the price difference for each DBE if the selected firm is not a DBE. Include an

explanation if a DBE quote was rejected when only marginally higher than the selected firm and could have substantially increased commitment or even allowed Bidder/Offeror to meet the goal.

4. **Publication efforts made to advertise the projects to include DBE participation;** names and dates of each publication in which a request for DBE participation for this project was placed by the Bidder/Offeror. Attach copies of advertisements, proof of publications, tear sheets and list of publications utilized (at least one general, one trade and one minority publication required). Bidders/Offerors are reminded published advertisements must be made both available and visible to the general public and be accessible by any and all DBEs who have the capability to perform the work on the contract.
5. **Agencies, organizations, minority resources or groups contacted to provide assistance in contracting, recruiting, and identifying DBEs;** Names of agencies, organizations, minority resources or groups contacted to provide assistance in contracting, recruiting, and utilizing DBE firms. Supporting documentation must be provided for agencies contacted including dates of contact, copies of requests and any responses received (i.e. lists, Internet page download, etc.).
6. **Supporting documentation that demonstrates efforts made to provide interested DBEs with assistance;** Attach documentation provided to interested DBEs providing assistance in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the Prime contractor or its affiliate. Bidder/Offeror to provide list of assisted DBEs, the nature of the information provided, and date of contact.
7. **Assistance with bonding, lines of credit, insurance, equipment, supplies, materials, and/or services;** supporting documentation that demonstrates efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBE's. Bidder/Offeror to provide list of assisted DBEs, nature of the assistance provided, and date of contact.
8. **Any additional data to support demonstration of good faith efforts.**
The City, as part of its evaluation of the low Bidder/ Successful Offeror, will consider the good faith effort commitment of the second and third Bidders/Offerors when determining whether the low bidder has made good faith efforts to meet the DBE goal. If the apparent low bidder/successful Offeror fails to meet the goal and other Bidder/Offerors meet the goal, the City may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful Bidder/Offeror could have met the goal.

For projects funded by FHWA funds and awarded on or after May 1, 2011, the City will prepare and submit with the award package to the State of California Department of Transportation (Caltrans) an Evaluation of Good Faith Effort Memorandum that cites reasons as to why the Good Faith Effort is adequate or not.

7. Bidder's/Offeror's Right to Administrative Reconsideration

In the event the DBELO determines that the apparent successful Bidder/Offeror has not met the contract-specific goal and has not demonstrated adequate Good Faith Efforts to do so, the DBELO will notify the bidder/offeror in writing. The notification shall include the reasons for the determination and that the bidder/offeror has the right to submit written documentation or appear before the Reconsideration Official or designee for reconsideration prior to the time that a recommendation for award of contract is presented to the Board of Directors. The Reconsideration Official or designee shall provide the bidder/offeror with a written decision on reconsideration, including the basis for the determination.

In the event that the Reconsideration Official or designee determines that the said bidder/offeror has not met the contract-specific DBE goal nor demonstrated adequate Good Faith Efforts to do so, the bidder/offeror will no longer be eligible to be considered for that particular contract award.

The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation (Refer to Section V.B: "Reconsideration Official").

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

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

F. Counting DBE Participation (§26.55)

The City will count DBE participation toward overall and contract-specific goals as provided in the solicitation and contract specifications for the prime contractor, subcontractor, joint venture partner, or vendor of material or supplies.

The following guidelines apply in calculating eligible DBE participation toward meeting established contract-specific DBE goals and the City's overall DBE goal in accordance with Title 49 CFR, Part 26.55:

1. Only work proposed to be performed by a DBE's own work forces (including cost of supplies, materials, and equipment leases) obtained by the DBE for the work of the contract, except supplies and equipment the subcontractor purchases and/or leases from the prime contractor or its affiliate, can be counted toward DBE goals.
2. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted towards DBE goals only if the lower tier subcontractor is itself a certified DBE and performs the work with their own work force. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
3. In instances of a joint venture, a bidder/offeror may only count, toward the DBE goal, the portion of the work proposed to be performed by the certified DBE partnering firm that meets certification, ownership, and control standards.
4. A bidder/offeror may count, towards its DBE goal, only expenditures to firms that are proposed to perform a commercially useful function on that contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. If a DBE does not perform or exercise responsibility for at least 30 percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE is presumed not to be performing a commercially useful function. When a DBE is presumed to not be performing a commercially useful function, the DBE may present evidence to rebut this presumption. The City's decisions on commercially useful function matters are subject to review by the concerned Operating Administration, but are not administratively appealable to the U.S. DOT.
5. A bidder/offeror may count, toward its DBE goal, 60 percent (60%) of its expenditures for materials and supplies required under the contract and obtained from a DBE Regular Dealer and, a bidder/offeror may count 100 percent (100%) of such expenditures obtained from a DBE Manufacturer. For purposes of this section, a Manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials and supplies obtained by the contractor. A Regular Dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.

6. A bidder/offeror may count, toward its DBE goal, the entire amount of fees or commissions charged by a DBE for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the contract if the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.
7. Special Provisions for DBE Trucking Firms - A bidder/offeror may count, toward the DBE goal, all transportation services provided by DBE trucking firms who can demonstrate control of trucking operations for which it seeks credit and which it owns, insures, and operates, using drivers it employs, in the performance of the contract. The DBE must itself own and operate at least one, fully licensed, insured, and operational truck used on the contract. The DBE trucking firm may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. A DBE who leases trucks from a non-DBE is entitled to credit the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. In addition, the DBE may also lease trucks from a non-DBE firm, including trucks from an owner-operator. The DBE who leases trucks from a non-DBE is entitled only for the fee or commission it receives as a result of the lease arrangement. The DBE, therefore, does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE. If a recipient chooses this approach, it must obtain written consent from the appropriate Operating Administration.
8. In cases where DBE certification has lapsed or has been terminated during the performance period of the contract, the prime contractor is eligible to continue to report the dollar value of the work performed by the affected DBE firm to the City on the "Monthly DBE Subcontractors Paid Report Summary and Payment Verification" (Form 103). The City will not credit the DBE participation towards its overall agency DBE goal.
9. The City will not credit the participation of DBE subcontractors toward a contractor's DBE goal obligation until the amount has actually been paid to the DBE.

G. Commercially Useful Function Standards (§26.55)

The City will count expenditures to a DBE contractor/consultant toward the DBE goals only if the DBE is performing a commercially useful function on that contract:

1. A DBE performs a commercially useful function when it is responsible for execution of the work of its contract and when it is carrying out its responsibilities

by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing the material (where applicable), and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the City will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract commensurate with the work it is actually performing, the DBE credit claimed for its performance of the work, and other relevant factors.

2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the City may examine similar transactions, particularly those in which DBEs do not participate.
3. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force or, if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, one must presume that it is not performing a commercially useful function.
4. When a DBE is presumed not to be performing a commercially useful function as provided in the previous bullet, the DBE may present evidence to rebut this presumption. The City will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
5. The City's decisions on commercially useful function matters are subject to review by the U.S. DOT Operating Administration.

REQUIRED CONTRACT PROVISIONS AND ENFORCEMENT

H. Contractor's Assurance Clause Regarding Non-Discrimination (§26.13(b))

The City will ensure that the following clause is placed in all U.S. DOT-assisted contracts and subcontracts:

"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR, Part 26 in the award and administration of the City's U.S. DOT-assisted contracts. Failure to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City deems appropriate, which may include, but not limited to, (1) withholding monthly progress payments, (2) assessing sanctions, (3) liquidated damages, and/or (4) disqualifying the contractor from future bidding as non-responsive."

I. Prompt Payment Provisions (§26.29)

Prompt Progress Payments to Subcontractors

The City has adopted a prompt payment provision on all U.S. DOT-assisted contracts to facilitate timely payment to all subcontractors in accordance with regulatory mandates. This provision requires a contractor to issue payment to all subcontractors (DBEs and non-DBEs), for satisfactory performance of their contracts, no later than seven (7) calendar days from receipt of each payment made to the contractor by the City.

Commencing with the contractor's second invoice, the contractor shall provide the City with evidence, in the form of a signed assurance, for which the contractor affirms that it has paid all subcontractors all amounts due for work that the subcontractor has satisfactorily performed. The statement of compliance, signed under penalty of perjury, may be included within the invoice document or as an attachment to the invoice. The City reserves the right to request additional documentation from the contractor evidencing payment to the subcontractor in conformance with these provisions.

Payment of Retention Withheld from Subcontractor

In addition to the prompt progress payment requirement set forth above, the City has also adopted a prompt payment provision on all U.S. DOT-assisted contracts to facilitate timely disbursement of retention proceeds withheld by the prime contractor.

In accordance with Revised §26.29, "Prompt Payment Provisions", the City, at its discretion, may elect to utilize one of the following methods to comply with the prompt payment of retainage requirement:

1. Decline to hold retainage from prime contractors and prohibit prime contractors

from holding retainage from subcontractors.

2. Decline to hold retainage from the prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed.
3. Hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within thirty (30) days after payment to the prime contractor.

Any delay or postponement of payment from the above-referenced timeframes may occur only for good cause following written approval from the City. Failure to comply with this provision without prior approval from the City will constitute noncompliance, which may result in the application of appropriate administrative sanctions, including, but not limited to, a penalty of two percent (2%) of the invoice amount due per month, for every month that full payment is not made.

These prompt payment provisions must be incorporated in all subcontract agreements issued by the contractor.

J. Post-Award Contractor Reporting Requirements (§26.55)

Notification of Reporting Responsibilities

Prior to execution of all U.S. DOT-assisted contracts, which are subject to DBE Program provisions, the prime contractor shall be directed to the contract specification for the City's specific DBE reporting and recordkeeping requirements.

DBE Activity Reporting Forms

All prime contractors/consultants shall submit monthly progress reports on DBE utilization to the City on Form 103: "Monthly DBE Subcontractors Paid Report Summary and Payment Verification". The City will keep a running tally of actual payments to DBE firms for work committed to DBEs at the time of contract award and subsequent to award. The City's Summary of Subcontractors Paid Report (Form 103) is used to keep a running tally.

Failure to submit these reports in a timely manner shall result in a penalty of \$10 per day, per report. The FORM 103, "Monthly DBE Subcontractors Paid Report Summary and Payment Verification", includes the following information:

1. Name of each DBE Subcontractor.
2. General work assignment of each DBE Subcontractor.

3. The specific portion of work executed by each DBE Subcontractor during the reporting period.
4. The dollars committed to each DBE Subcontractor.
5. The dollars paid to each DBE Subcontractor during the reporting period.
6. The dollars paid to date for each DBE Subcontractor.
7. The dollars paid to the DBE as a result of a change order or other cost modification.
8. The dollars paid to date as a percentage of the total commitment to each DBE.
9. Date of last progress payment
10. Invoice amount & Invoice Date
11. Invoice number corresponding to last payment to subcontractor
12. Prime Contractor Signature under penalty of perjury that it has complied with all requirements of 49 CFR, Part 26 and prompt payment requirements of the California Public Contract Code.

Contractor Good Faith Efforts and Reporting Obligations for Contracts with DBE Participation Goals

During the term of the contract, the contractor shall continue to make Good Faith Efforts to ensure that DBEs have an opportunity to successfully perform in the contract, and to ensure that the contractor meets its DBE goal. These efforts shall include, but shall not be limited to, the following:

1. Negotiating in good faith to attempt to finalize and execute a subcontract agreement with the DBEs committed to in the bid or proposal.
2. Documenting efforts to seek out and utilize additional DBEs when additional subcontractors and/or subconsultants are necessary and are authorized by the City.
3. Continuing to provide assistance to DBEs in obtaining bonding, lines of credit, etc., if required by the contractor.
4. Notifying a DBE, in writing, of any potential problem and making concerted efforts (efforts must be documented) to resolve the problem prior to formally requesting the City's written approval to substitute the DBE for cause.
5. As with all subcontractors and/or subconsultants, timely payment of all monies due and owing to DBEs.
6. Notifying the City in a timely manner, in writing, of any problems anticipated in attaining the DBE participation goal committed to in the bid/proposal.

7. The prime contractor/consultant may not count the participation of DBE subcontractors towards that prime contractor's/consultant's DBE achievements until and unless that amount which is being credited toward the goal has been paid to the DBE.
8. Termination of DBE Subcontractor for Good Cause (§26.53 (f))

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

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

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
6. The Prime contractor has determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

10. Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

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

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

Good Faith Efforts when a DBE is replaced on a contract for Good Cause (26.53(g))

Pursuant to 49 CFR, Part 26(g) the City will require a Contractor/Consultant to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the same extent needed to meet the contract goal established. The City will require the Contractor/Consultant to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

Substitutions of an approved DBE subcontractor/subconsultant, or changes in any scope of work to be performed by any approved DBE subcontractors/subconsultants must be requested, in writing, by the contractor and must be approved by the City. The contractor shall complete and submit to the City the corresponding "Request for DBE Subcontractor/Supplier Substitution" form. The City requires that the Contractor/Consultant provide the City with copies of the new or amended subcontracts. If the candidate contractor to be substituted is not a DBE, the City also requires the prime contractor to submit documentation of their good faith efforts.

Failure to Secure Prior Approval

If the Contractor/Consultant fails or refuses to comply in the time specified the City may take appropriate actions, including but not limited to those set forth in its Monitoring and Enforcement Mechanisms.

Request for Additional DBE Subcontractor

If the contractor requests to award additional work to a DBE firm beyond the original list of DBEs provided with their respective bid or proposal, the contractor must complete and submit to the City the "Request for Additional DBE Subcontractor/Supplier" form.

Change in Contract Amount

Change orders, or any other contract modifications that impact DBE scopes of work, must be reviewed by the City prior to the Contractor/Consultant effectuating any modifications. The City will determine impact on the Contractor's/Consultant's goal commitments and resultant goal attainments.

K. Administrative Remedies for DBE Non-Compliance

The Contractor/Consultant shall fully comply with the DBE contract requirements, including the City's DBE Program and Title 49 CFR, Part 26 "*Participation of Disadvantaged Businesses in Department of Transportation Financial Assistance Programs*" and ensure that all subcontractors regardless of tier are also fully compliant. Contractor/Consultant's failure to comply constitutes a material breach of contract, wherein the City will impose all available administrative sanctions, necessary to effectuate full compliance. All contractors deemed to be in non-compliance with the City of Fullerton's DBE policies and requirements shall be informed in writing, by certified mail, by the CEO or designee, that administrative remedies shall be imposed for failure to meet DBE utilization goals and/or for failure to submit documentation of Good Faith Efforts. The contractor shall be given five (5) working days from the date of the notice to remedy or to (1) File a written appeal accompanied with supporting documentation and/or (2) Request a hearing with the City to reconsider the City's DBE determination. Failure to respond within the five (5) working day period shall constitute a waiver of the Contractor/Consultant's right to appeal. The notice shall state the specific administrative remedy to be imposed.

The Contractor/Consultant shall be given five (5) working days from the date of the Notice. If the Contractor/Consultant files an appeal, the City, shall issue a written determination and/or set a hearing date within ten (10) working days of receipt of the written appeal, as applicable. A final Determination will be issued within ten (10) working days after the hearing, as applicable.

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

Failure to comply with the Notice and/or to remedy the identified DBE non-compliance matter(s) is a material breach of contract and is subject to administrative remedies, including, withholding at minimum of two (2%) percent of the invoice amount due per

month for every month that the identified non-compliance matter(s) is not remedied. Upon satisfactory compliance the City will release all withholdings.

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

The City will bring to the attention of the U.S. DOT Operating Administration, in writing, any false, fraudulent, or dishonest conduct in connection with the City's DBE program, to enable the U.S. DOT Operating Administration to take the necessary and appropriate steps (e.g. referral to the Department of Justice for criminal prosecution, referral to the U.S. DOT Inspector General, or action under suspension and debarment or Program Fraud and Civil Penalties rules) as provided in Title 49 CFR, Part 26, Section 26.109. The City also will consider similar action under its own legal authorities, including, but not limited to, responsibility determinations in future contracts.

L. Administrative Remedies for Non-Compliance by Contractors for Contracts with DBE Participation Goals

In the event that the contractor is unable to meet the DBE goal, the City reserves the right to initiate Administrative Remedies, which shall include, but shall not be limited to, the following:

1. Withholding of payments due equivalent to the difference between the actual DBE attainment and the contract DBE goal;
2. Suspension of payment to the Contractor of any other monies held by the City;
3. Termination of the Contract, in part or in whole.

The Administrative Remedies shall not apply if the Contractor is able to demonstrate, to the satisfaction of the City, that it exercised Good Faith Efforts in an attempt to meet the contract DBE goal.

The Reconsideration Official (RO), at his/her sole discretion, may schedule a hearing to gather additional facts and evidence and shall issue a final determination on the matter within five (5) working days of receipt of the written appeal. The written decision of the RO or designee is final and cannot be further appealed.

VI. DBE CERTIFICATION STANDARDS

A. Unified Certification Program (UCP) (§ 26.81)

A listing of DBEs certified by the CUCP is available from Caltrans' Office of Business & Economic Opportunity (OBEO) website (<http://www.dot.ca.gov/hq/bep>). The following table represents a list of current Certifying Member Agencies:

Agency	Business Address	Telephone No.	Fax No.
City of Los Angeles Office of Contract Compliance www.lacity.org/bca	1149 South Broadway Street, Room 300 Los Angeles, CA 90015	(213) 847-1922	(213) 847-2777
Los Angeles County Metropolitan Transportation Authority (METRO) Diversity and Economic Opportunity Department www.metro.net	One Gateway Plaza Los Angeles, CA 90012	(213) 922-2600	(213) 922-7660
S. F. Bay Area Rapid Transit District (BART) Office of Civil Rights www.bart.gov	300 Lakeside Drive, 18 th Floor Oakland, CA 94612	(510) 464-7580	(510) 464-7587
City of Fresno DBE Program www.ci.fresno.ca.us	2101 G Street, Building A Fresno, CA 93706	(559) 621-1182	(559) 488-1069
Santa Clara Valley Transportation Authority (VTA) Small & Disadvantaged Businesses www.vta.org	3331 North First Street San Jose, CA 95134	(408) 321-5962	(408) 955-9729
Central Contra Costa Transit Authority (CCCTA) Office of Civil Rights www.cccta.org	2477 Arnold Industrial Way Concord, CA 94520	(925) 676-1976	(925) 686-2630
San Francisco Municipal Transportation Agency (SFMTA) Contract Compliance Office San Francisco Municipal Railway www.sfmuni.org	1 South Van Ness Avenue, 3 rd Floor San Francisco, CA 94103	(415) 701-4443	(415) 701-4347
San Mateo County Transit District (SAMTRANS) / Peninsula Corridor Joint Powers Board (CALTRAIN) DBE Office www.samtrans.com	1250 San Carlos Avenue San Carlos, CA 94070	(650) 508-7939	(650) 508-7738

California Department of Transportation (CALTRANS) Office of Business & Economic Opportunity – MS #79 www.dot.ca.gov	1823 14 th Street Sacramento, CA 95814	(916) 324-1700 (866) 810-6346	(916) 324-1862
Yolo County Transportation District (YOLOBUS) DBE Program www.yctd.org	350 Industrial Way Woodland, CA 95776	(530) 661-0816	(530) 661-1732

VII. RECORDKEEPING AND MONITORING (§26.11, §26.37)

The City has developed a detailed recordkeeping system as a mechanism for monitoring and tracking DBE contract awards and prime contractors' progress in attaining DBE goal commitments throughout the performance of the contract.

The City's internal Recordkeeping System will document the following:

1. Procedures adopted by the City to comply with the U.S. DOT regulations.
2. Support documentation used to compile U.S. DOT reports, which includes the following data for each U.S. DOT-assisted contract:
3. Type of contract (e.g., construction, professional services, material supplies, TVM or other);
4. Award commitments, including name(s) and address(es) of all proposed/listed DBE(s);
5. The corresponding dollar amount of each contract and subcontract, and established contract DBE goal, as applicable;
6. Reports ("Monthly DBE Subcontractors Paid Report Summary" (Form 103)) from prime contractors and suppliers with an accounting of actual expenditures to DBEs and the progress to date in meeting their DBE participation commitment, to monitor and report actual DBE attainments including segregating race-neutral and race-conscious attainments.

The City will also develop and maintain a hard-copy of contract-specific project management file which thoroughly includes all DBE-related compliance monitoring and enforcement activities.

A. Monitoring Payments to DBEs (§ 26.37)

The City will implement appropriate mechanisms to ensure compliance with 49 CFR Part 26 requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law).

Additionally, the City's DBE Program will include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. Such mechanism will provide a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. The City will display both DBE commitments and attainments (race-neutral and race-conscious) in its reports of DBE participation to the U.S. DOT.

The City of Fullerton will include the following clause in each DOT-assisted prime contract:

"The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the City of Fullerton. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Fullerton. This clause applies to both DBE and non-DBE subcontractors."

The City may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts committed.

B. On-Site Performance Monitoring

During the course of the contract containing a DBE goal, the City or an agent of the City will conduct on-site monitoring to ensure that work committed to DBEs is actually being performed by DBEs. This monitoring effort is fully incorporated into the City's DBE On-site Compliance field observation process. The City will ensure that the City's staff and inspectors know what items of work each DBE is responsible for performing. Inspectors will notify the City's DBE team immediately of apparent violations. This observed work will be reconciled against the DBE subcontractor agreement(s), Prime Contractor DBE reporting form and DBE commitment.

C. Written Certification

To further ensure the integrity of the DBE Program's intent, the City maintains a written certification mechanism. The mechanism includes a written certification that the City has reviewed contracting records and monitored work sites for DBE participation. The Resident Engineer (RE) will monitor every contract with DBE requirements, on paper

and in the field and will include a written certification that this compliance monitoring effort took place in accordance with the Contract Close-Out Report. The mechanisms include comparing the DBE commitments to actual DBE attainments and work performed.

D. Bidders List (§ 26.11)

The City will develop and maintain a Bidders List consisting of all firms bidding on prime contracts, and bidding or quoting subcontracts on the City's U.S. DOT-assisted projects/contracts. The following information will be included in the Bidders List:

1. Firm Name;
2. Address;
3. Years in Business;
4. Status as a DBE or non-DBE;
5. Type of Work; and
6. Annual Range of Gross Receipts.

E. Reporting to the U.S. DOT (§ 26.11)

Semi-Annual Reports of DBE Awards/Commitments and Payments (49 CFR 26, Appendix B)

The City's DBELO or designee shall submit for FTA review and approval, a semi-annual *Uniform Report of DBE Awards or Commitments and Payments*. These reports will capture DBE participation for DOT-assisted for contracts awarded and actual DBE attainments based on payments made to DBEs on DOT-assisted contracts active or closed within the respective reporting period. All dollar amounts reported will reflect the federal share of such contracts. The report will separate the dollar amount awarded to certified DBEs through the use of race conscious methods and race neutral methods. The reports are submitted electronically via the TEAM online reporting system.

The City will adhere to the following submittal schedule based on the Federal Fiscal Year:

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

Annual Review and Remedy Reports (49 CFR §26.47)

Pursuant to 49 CFR §26.47, the City is required to analyze, on an annual basis, the DBE awards and commitments reported to the FTA on a semi-annual basis. If the City's DBE awards/commitments are less than the City's overall DBE goal for that Federal Fiscal Year (FFY), the City is required to develop and prepare, a written analysis of the

shortfall, as well as corrective actions which will be implemented to remedy the shortfall and increase DBE participation over the next federal fiscal year.

Although the City is not currently listed as one of the largest 50 transit agencies in the U.S. (based on level of DOT/FTA assistance), the City will comply with 49 CFR §26.47 and maintain this report for FTA's review and concurrence.

APPENDIX A
Sample Race – Neutral DBE Forms

Project Name: _____

BIDDERS LIST
[EXHIBIT xx]

Bidder/Offeror: _____ IFB/RFP No.: _____

The Department of Transportation requires the City to create and maintain a "Bidders List" containing information about all firms (DBE and Non-DBE) that bid, propose or quote on the City's DOT-assisted contracts, in accordance with 49 CFR Part 26.11 and 49 CFR Part 23. The "Bidders List" is intended to be a count of all firms that are participating, or attempting to participate, on DOT-assisted contracts, whether successful or unsuccessful in their attempt to obtain a contract.

The Bidder/Offeror is to complete all requested information on **Exhibit xx: "Bidders List"** for every firm who submitted a bid, proposal or quote, including the primary Bidder/Offeror, and submit this information at the time of bid submission. However, if not elected to do so at the time of bid submission, Bidders/Offerors must submit such information at the request of the Authority within the prescribed timeline set forth in the solicitation. The City will utilize this information to assist in the City's overall DBE goal-setting process. **The "Bidders List" content will not be considered in evaluating the bid/proposal or determining award of any contract.**

Prime Bidder's/Offeror's Information:	
Name of Prime's Firm:	Phone: ()
Firm Address:	Fax: ()
Number of years in business:	Type of work/services/materials provided:
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? <input type="checkbox"/> Yes <input type="checkbox"/> No	Check the box below for your firm's annual gross receipts last year:
Is the firm currently certified as a SB? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please identify SB certification number:	
If yes, please identify Certifying Agency:	
	noillim 1\$ naht sseL <input type="checkbox"/>
	noillim 5\$ naht sseL <input type="checkbox"/>
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Project Name: _____

Prime Bidder's/Offeree's Information:	
Name of Prime's Firm:	Phone: ()
Firm Address:	Fax: ()
Number of years in business:	Type of work/services/materials provided:
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? <input type="checkbox"/> Yes <input type="checkbox"/> No	Check the box below for your firm's annual gross receipts last year:
Is the firm currently certified as a SB? <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Less than \$5 million
If yes, please identify SB certification number:	<input type="checkbox"/> \$5 million to \$9,999,999
If yes, please identify Certifying Agency:	<input type="checkbox"/> \$10 million to \$49,999,999
	<input type="checkbox"/> \$50 million to \$99,999,999
	<input type="checkbox"/> \$100 million or more

Prime Bidder's/Offeree's Information:	
Name of Prime's Firm:	Phone: ()
Firm Address:	Fax: ()
Number of years in business:	Type of work/services/materials provided:
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? <input type="checkbox"/> Yes <input type="checkbox"/> No	Check the box below for your firm's annual gross receipts last year:
Is the firm currently certified as a SB? <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Less than \$5 million
If yes, please identify SB certification number:	<input type="checkbox"/> \$5 million to \$9,999,999
If yes, please identify Certifying Agency:	<input type="checkbox"/> \$10 million to \$49,999,999
	<input type="checkbox"/> \$50 million to \$99,999,999
	<input type="checkbox"/> \$100 million or more

If necessary, this "Bidders List" form can be duplicated to include all firms (DBE and non-DBE) that have submitted a bid, proposal or quote on this DOT-assisted project, whether successful or unsuccessful in their attempt to obtain a contract.

Failure of the Bidder/Offeree to submit the required "Bidders List" form will deem the Bidder/Offeree non-responsive.

DBE RACE-NEUTRAL PARTICIPATION LISTING

Bidder/Offeror shall complete and submit the **“DBE Race-Neutral Participation Listing”** in a **sealed envelope** with the bid/proposal, but no later than 48 hours following bid opening or proposal due date and timeline. (NOTE: In the event of no race-neutral DBE participation, Bidder/Offeror shall mark **“None”** under the column entitled **“DBE Firm Name”**. (Additional sheets may be duplicated as necessary.)

The DBE information and content provided under the “DBE Race-Neutral Participation Listing” will not be considered in evaluating the bid/proposal or determining award of any contract.

DBE Firm Name*:		DBE Certification No. and Expiration Date:	Provide Complete Description of Work to be Performed:		
SB Certified y/n:		SB Certification Number and Certifying Agency:	_____		
Business Address:		Check Appropriate Box Describing Subcontractor/Supplier Activity:			
Contact Person:		Subcontractor (100%)	Supplier (60%)		
Telephone:	Fax:	Regular Dealer (60%)	Broker		
License No., Classification and Expiration:		Manufacturer (100%)	Trucker		
Subcontract Amount:					

*DBE certification letter must be attached for each listed DBE firm. DBEs must be certified on the date bids/proposals are opened.

DBE Firm Name*:		DBE Certification No. and Expiration Date:	Provide Complete Description of Work to be Performed:		
SB Certified y/n:		SB Certification Number and Certifying Agency:	_____		
Business Address:		Check Appropriate Box Describing Subcontractor/Supplier Activity:			
Contact Person:		Subcontractor (100%)	Supplier (60%)		

Telephone:	Fax:	
License No., Classification and Expiration:		
Subcontract Amount:		

*DBE certification letter must be attached for each listed DBE firm. DBEs must be certified on the date bids/proposals are opened.

DBE Firm Name*:	DBE Certification No. and Expiration Date:	Provide Complete Description of Work to be Performed:		
SB Certified y/n:	SB Certification Number and Certifying Agency:	_____		
Business Address:		Check Appropriate Box Describing Subcontractor/Supplier Activity:		
Contact Person:		Subcontractor (100%)	Supplier (60%)	
Telephone:	Fax:	Regular Dealer (60%)	Broker	
License No., Classification and Expiration:		Manufacturer (100%)	Trucker	
Subcontract Amount:				

*DBE certification letter must be attached for each listed DBE firm. DBEs must be certified on the date bids/proposals are opened.

Bidder/Offeror:	
Business Address:	
Contact Name:	Title:
Phone: ()	Fax: ()

Total Contract Amount:	\$
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DBE Race-Neutral Participation Value (% of Total Contract Value): <i>(NOTE: Mark "NONE" if no DBEs will be utilized.)</i>	%	DBE Race-Neutral Participation Dollar (\$) Value: <i>(NOTE: Mark "NONE" if no DBEs will be utilized.)</i>	\$
SB Race-Neutral Participation Value (% of Total Contract Value): <i>(NOTE: Mark "NONE" if no SBs will be utilized.)</i>	%	DBE Race-Neutral Participation Dollar (\$) Value: <i>(NOTE: Mark "NONE" if no SBs will be utilized.)</i>	\$

Signature of Authorized Representative	Printed Name
Date	Title

MONTHLY DBE SUBCONTRACTORS PAID REPORT SUMMARY AND PAYMENT VERIFICATION (Form 103)

Reporting Period (month): _____, 20____

Contract/Project Number: _____ Report Number: _____ Report prepared by: _____
 Project Name: _____ Original Contract Award Amount: _____ Title: _____
 Contract Award Date: _____ Current Contract Value: _____ Report reviewed by: _____
 Prime Name: _____ % of Project Complete: _____ Signature: _____
 Address: _____ The City's Payment This Month: _____ Title: _____
 Telephone Number: () _____ Total \$ Paid to Prime to date: _____ Date of Last Progress Payment recvd from City: _____
 Contract DBE Goal: _____ % (% of total Contract) Total \$ Paid to DBEs this Reporting Period: _____
 Prime's DBE Commitment: _____ % Total \$ Paid to DBEs to date: _____ DBE Goal Attainment to date: _____ %

SUBCONTRACTORS	Dollar Amount Paid This Month	Eligible DBE Amount Paid This Month	Dollar Amount Paid to Date	Eligible DBE Amount Paid To Date	Type of Work Performed (Scope)	Original DBE Contract Value at Award	Current DBE Contract Value	% of Work Completed	FOR CITY USE ONLY
	Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: () _____ Subcontractor <input type="checkbox"/> Broker <input type="checkbox"/> Supplier: Regular Dealer <input type="checkbox"/> or Manufacturer <input type="checkbox"/> Attach verification of payment _____								
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: () _____ Subcontractor <input type="checkbox"/> Broker <input type="checkbox"/> Supplier: Regular Dealer <input type="checkbox"/> or Manufacturer <input type="checkbox"/> Attach verification of payment _____									
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: () _____ Subcontractor <input type="checkbox"/> Broker <input type="checkbox"/> Supplier: Regular Dealer <input type="checkbox"/> or Manufacturer <input type="checkbox"/> Attach verification of payment _____									

Comments/Issues and/or documented Good Faith Efforts performed during this reporting period: _____

If necessary, this form can be duplicated to list all DBE subcontractors paid in this reporting period.