

**SACRAMENTO  
REGIONAL TRANSIT DISTRICT**



**DISADVANTAGED  
BUSINESS ENTERPRISE  
(DBE) PROGRAM**

**Per 49 CFR Part 26  
2012**

# **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

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## POLICY STATEMENT

### Section 26.1, 26.23 Objectives/Policy Statement

The Sacramento Regional Transit District (RT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. RT has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, RT has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of RT to ensure that DBEs as defined in part 26, have an equal opportunity to receive and participate in DOT- assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Manager, Contracts and DBE has been delegated as the DBE Liaison Officer. In that capacity, the Manager, Contracts and DBE is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by RT in its financial assistance agreements with the Department of Transportation.

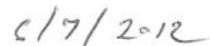
RT will disseminate this policy statement to the Sacramento Regional Transit District Board of Directors and all of the components of the RT organization. This policy statement will also be disseminated by direct mail to members of the DBE and non-DBE business community that perform or are interested in performing work on RT DOT-assisted contracts, and to local business chambers, and local business associations (both DBE and non-DBE), and minority and women's organizations. The complete DBE Program is available for review at RT's website at [www.sacrt.com](http://www.sacrt.com) and at:

Sacramento Regional Transit District  
1400 29<sup>th</sup> Street  
Sacramento CA 95816



Michael R. Wiley

[Signature of RT General Manager/CEO]



Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1, 26.23 Objectives**

The objectives are found in the policy statement on the first page of this program.

### **Section 26.3 Applicability**

RT is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

### **Section 26.5 Definitions**

RT will adopt the definitions contained in Section 26.5 of Part 26 for this program.

RT will (1) ensure that all definitions from the regulations are included and correct; and (2) will add and include any new/amended definitions as they are provided by USDOT; and (3) will not include any definitions for terms not included in the definitions found in Section 26.5 of Part 26.

### **Section 26.7 Non-discrimination Requirements**

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

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

### **Section 26.11 Record Keeping Requirements**

Uniform Report of DBE Awards or Commitments and Payments: 26.11(a)

RT will report DBE participation to FTA using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

Bidders List: 26.11(c)

RT will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

RT will collect this information in the following ways:

The District will require all prime contractors bidding on U.S. DOT-assisted contracts to submit, at the time of bid opening or at any other time specified by RT, a report of the names/addresses, and other information, of all firms who quote to them on subcontracts or were contacted by the prime to provide a quote.

RT will also continue the use of the RT Bidders' Application/Mailing Questionnaire form. The Mailing Questionnaire is provided to all firms interested in doing business with the District and is used to maintain a database of firms that are notified directly of Invitations For Bids and Request For Proposals issued by the District.

### **Section 26.13 Assurances**

RT has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Federal Financial Assistance Agreement Assurance: 26.13(a)

RT 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 recipient 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 recipient'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 RT 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.).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

RT will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

## **SUBPART B – ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

Since RT has received grants of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, RT will continue to carry out this program until all funds from DOT financial assistance have been expended. RT will provide to DOT updates representing significant changes in the program.

### **Section 26.25 DBE Liaison Officer (DBELO)**

We have designated the following individual as our DBE Liaison Officer:

Fernando Barcena, Manager, Contract & DBE  
2816 N Street, Sacramento CA 95816  
(916) 556-0151; fax (916) 557-4519  
e-mail at fbarcena@sacrt.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that RT complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the General Manager/CEO concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of five (5) to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyzes RT's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO\governing body on DBE matters and achievement.
9. Ensures that RT's management team is aware of the policy and commitment to DBE participation, matters and achievement.
10. Participates in pre-bid meetings.
11. Provides DBEs with information and assistance in preparing bids, understanding of specifications, and completing bid forms.
12. Plans and participates in DBE training seminars.
13. RT is a Non-Certifying Member of the California Unified Certification Program. RT's DBELO acts as liaison to the Uniform Certification Program in California.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Have on file an up-to-date DBE directory on certified DBEs obtained from the DBE data-base organized, maintained and continually updated by the California Department of Transportation (Caltrans)..

#### **Section 26.27 DBE Financial Institutions**

It is the policy of RT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. We have made the efforts to identify such institutions through a search of the California UCP DBE directory maintained by Caltrans. RT will re-evaluate the availability of DBE financial institutions every 1 year.

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

#### **Section 26.29 Prompt Payment Mechanisms**

The following procedures will be implemented to comply with 49 C.F.R. Section 26.29:

Prompt Payment: 26.29(a)

RT will include the following clause in each DOT-assisted prime contract:

- Contractor must make payments to any subcontractor in accordance with the provisions of Business and Professions Code Section 7108.5, notwithstanding that this Contract may not otherwise be subject to said Section. Contractor must make progress payments to its subcontractors not later than 30 days after the receipt of each progress payment from RT, notwithstanding that Section 7108.5 permits Contractor and its subcontractor to

agree otherwise. Contractor's obligations under this section may be enforced by a subcontractor who has not been paid in the manner provided herein.

- With each application for payment, Contractor must submit to RT an unconditional waiver and release upon progress payment executed by the subcontractors that were due payment from the previous partial payment. Failure to submit such unconditional waivers with a payment application will be the grounds to reject that payment application.
- With each application for payment the Contractor must submit monthly reports summarizing DBE activity and payments (Attachment 2). Before final contract payment is authorized by RT, Contractor must submit a final DBE activity and payments report (Attachment 2) This report shows, for each DBE, the contract amount, the amount paid the DBE this report, and the total amount paid the DBE to date.

#### Retainage: 26.29(b)

- RT will release retention for completed subcontractor work subject to the following conditions. When Contractor deems that a particular subcontractor's work is satisfactorily completed, Contractor must certify to RT in writing, with its next application for payment, that the subcontractor's work is satisfactorily completed, and must include in its Contractor's application for payment an invoice for partial release of retention withheld under the Contract to the extent of that portion of the subcontract not previously paid by RT to Contractor. Contractor's invoice must identify the full amount of the subcontract, less any progress payments previously made by RT for any portion of the subcontract. In addition, Contractor must submit, with each application for partial release of retention to a subcontractor, an unconditional waiver and release upon final payment, executed by the subcontractor that all their work is satisfactorily completed. Failure to submit such unconditional waivers with a request for partial release of retention will be the grounds to reject that payment application. The form of unconditional waiver and release will be provided by RT.

#### Monitoring and Enforcement: 26.29(d)

- RT has established the following procedure and contract language to monitor and enforce that prompt payment and return of retainage is in fact occurring.

#### Prompt Payment:

- With each application for payment, Contractor must submit to RT an unconditional waiver and release upon progress payment executed by the subcontractors that were due payment from the previous partial payment. Failure to submit such unconditional waivers with a payment application will be the grounds to reject that payment application.

#### Return of Retainage:

- Contractor must submit, with each application for partial release of retention to a subcontractor, an unconditional waiver and release upon final payment, executed by the subcontractor that all their work is satisfactorily completed. Failure to submit such unconditional waivers with a request for partial release of retention will be the grounds to reject that payment application. The form of unconditional waiver and release will be provided by RT.

### **Section 26.31 Directory**

RT is a Non-Certifying Member (NCM) of the California Unified Certification Program (UCP). RT uses the California UCP DBE directory maintained by Caltrans. that identifies all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the



most recent certification, and the type of work the firm has been certified to perform as a DBE. The Directory is revised and updated daily by Caltrans. The Directory may be found at [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).

### **Section 26.33 Overconcentration**

RT has not identified that overconcentration exists in the types of work that DBEs perform on RT contracts.

We will re-evaluate for overconcentration every 1 year. If RT determines that DBE firms are over concentrated in certain types of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, RT will consider appropriate measures to address over concentration and submit to FTA a plan on how to address over-concentration. Measures considered may include the use of incentives, technical assistance, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field.

### **Section 26.35 Business Development Programs**

RT will provide race-neutral and gender-neutral efforts to promote small business concerns, including DBEs, in RT contracting opportunities through business development programs. Each year the DBE Liaison Officer will facilitate at least two small business events. Small businesses will be invited to meet with RT DBE Programs, Purchasing and Project Management staff, and learn about RT's contracting opportunities. RT staff will have an opportunity to become acquainted with qualified business owners who are interested in supplying services and products to RT. In addition, the DBE Liaison Officer will provide information on DBE certification and DBE Program requirements and procedures. These events will include procedures explaining how to do business with RT and explore best business practices which may be used to market small businesses at RT.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

RT will monitor and provide written certification for every contract/project on which DBEs are participating, ensuring the DBEs are in fact performing the work. RT will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. RT will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. RT will consider similar action under RT's own legal authorities, including responsibility determinations in future contracts. RT has available several contract remedies to enforce DBE compliance including suspension of any payment or part thereof until such time as the issues concerning compliance are resolved, work stoppage, liquidated damages for failure to meet DBE contract goals, termination, suspension, or cancellation or other breach of contract actions, pursuant to the terms of the contract and applicable statutes. In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in DOT assisted procurements including, suspension or debarment proceedings pursuant to 49 CFR part 26, enforcement action pursuant to 49 CFR part 31, and prosecution pursuant to 18 USC 1001. RT as appropriate will use the regulations, provisions, and contract remedies available in the event of non-compliance with the DBE regulation by a participant in RT's procurement activities.
3. RT will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be

accomplished by conducting monthly field reviews and DBE contractor interviews. RT will maintain written certifications that the contracting records have been reviewed and the work sites have been monitored. DBE monitoring will also be done in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract) and may be at times performed by Project Managers, and engineering and construction management staff.

4. RT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. With each application for payment the Contractor must submit monthly reports summarizing DBE activity and payments (Attachment 2). Before final contract payment is authorized by RT, Contractor must submit a final DBE activity and payments report (Attachment 2) This report shows, for each DBE, the contract amount, the amount paid the DBE this report, and the total amount paid the DBE to date.
5. The District will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation

### **Section 26.39 Small Business Participation**

RT has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses) and to ensure that the maximum feasible portion of the RT overall DBE goal is met by using race-neutral means, RT will establish SBE participation goals on its federally funded contracts. Prime contractors may use DBE and/or SBE firms in order to satisfy these SBE goals. Attachment 3 is the RT Small and Local Business Preference Program Policy. RT's Small and Local Business Preference Program Policy is consistent with the DBE regulation in 26.39. The RT SBE policy has been implemented as a part of RT's larger DBE program, including elements that:

1. remove unnecessary and unjustified bundling of contract requirements;
2. include race-neutral small business set-asides for prime contracts below values requiring full and open competition;
3. require bidders on large contracts to identify and/or provide specific subcontracts appropriate for small business participation;
4. include letting prime contract of a size that small businesses can reasonably compete for and perform. provide outreach, technical assistance and training opportunities for small businesses through various partnerships. RT staff sponsors and participates in business outreach sessions conducted by local municipalities, non-profit agencies, local chambers of commerce, and minority and women business organizations, which are designed to introduce small and minority-owned businesses to RT's procurement processes and practices. RT advertises contracting opportunities through various outlets, including local newspapers, minority-based publications and trade publications as well as on its website

RT's small business program is an active part of RT's DBE program, but does not replace or act as a substitute for other critical elements of RT's DBE program, including use of contract goals (as appropriate), good faith efforts evaluations, etc.]

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

RT does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

In accordance with Section 26.45, RT will submit its triennial overall DBE goal to FTA on August 1 of the year specified by FTA. RT is designated under Group B in FTA's DBE Three Year-Goal Setting Reporting Schedule

RT will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by FTA or as allowed under FTA's Western States Guidance Notice.

The process used by RT to establish overall DBE goals conforms with Section 26.45 of the DBE regulation. and is based on the demonstrable evidence of DBE firms ready, able, and willing to participate/perform contracting opportunities derived from RT's DOT-assisted projects/contracts.

RT's Overall DBE Goal is established using a two-step process. Step 1 involves determining a Base Figure of available DBE firms in RT's relevant market ready, willing and able to participate in RT contracts. The Base Figure of available ready, willing and able DBE firms is derived using Caltrans' UCP DBE Directory and Census Bureau data. Step 2 requires establishment of a DBE goal based on the availability of DBE firms after adjusting the availability Base Figure to account for actual DBE utilization rates in RT contracts and other relevant factors. After the adjusted DBE goal is identified, RT analyzes what proportion of the DBE goal can be achieved using race-and-gender-neutral methods based on the level of utilization of DBEs relative to their availability.

Before establishing the overall three year goal , RT will consult with local business chambers including local minority and ethnic chambers of commerce, small and local business associations (both DBE and non-DBE), and minority and women's organizations, general contractor groups, community organizations, elected public officials and other public agencies. to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and RT efforts to establish a level playing field for the participation of DBEs.

RT will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at RT's principal office for 30 days following the date of the notice, and informing the public that RT and DOT will accept comments on the goals for 45 days from the date of the notice. The notice will be published in newspapers of general circulation and minority- focus publications. RT will issue this notice by June 1 each year that the Three Year Overall DBE Goal is due. The notice will include addresses to which comments may be sent and addresses where the proposal may be reviewed.

RT's overall three year goal submission to DOT will include: the goal including the breakout of estimated race-neutral and race-conscious participation, as appropriate; a copy of the methodology, used to develop the goal; a summary of information and comments received during this public participation process and RT's responses; and proof of publication of the goal in the media outlets listed above.

RT will begin using the overall goal on October 1 of the specified year, unless RT receives other instructions from DOT. If RT establishes a goal on a project basis, RT will begin using the goal by the time of the first solicitation for a DOT-assisted contract for the project. RT's goal will remain effective for the duration of the three-year period established and approved by FTA.

### **Section 26.47 Goal Setting and Accountability**

If the awards and commitments shown on RT's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, RT will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. Submit the plan to FTA within 90 days of the end of the affected fiscal year.

### **Section 26.49 Transit Vehicle Manufacturers Goals**

RT will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, RT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

### **Section 26.51 Meeting Overall Goals/Contract Goals**

RT will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. DBE participation that is obtained on contracts that have no specific DBE goal, or where prime contractors use a strictly competitive bidding process or do not consider the DBE's status as a DBE in awarding a subcontract shall be considered race-neutral DBE participation. In addition, RT will use the following measures as appropriate:

1. Configuring large contracts into smaller contracts when feasible, when to do so would make contracts more accessible to small businesses, and would not impose significant additional cost, delay or risk to RT;
2. Identifying components of the work that have subcontracting opportunities and identifying the availability of DBE subcontractors to participate in an equitable proportion to total available subcontractors when it is infeasible to configure large contracts into smaller separate contracts.
3. Assisting in overcoming limitations in bonding and financing by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing;
4. Providing technical assistance and other services in orienting small businesses to public contract procedures, and facilitating introductions to RT's and other U.S. DOT recipients' contracting activities;
5. Providing outreach and communications programs on contract procedures and specific contract opportunities to ensure the inclusion of DBEs and other small businesses, on RT mailing lists for bidders; ensuring the dissemination to potential prime bidders of lists of potential DBE and small business subcontractors; and provision of information in languages other than English, where appropriate;
6. Ensuring notification of the availability of the California UCP DBE Database to the widest feasible universe of potential prime contractors; and
7. Providing business development assistance 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;
8. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation. Prime Contractors will be encouraged to consider subcontractors for components of the work that they might otherwise perform with their own forces, including DBEs, subcontractors, in preparing their bids.
9. Ensuring notification of the availability of the California UCP DBE directory, to potential prime contractors bidding RT projects;
10. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media

RT will use contract goals (as allowed under FTA's Western States Guidance Notice) to meet any portion of the overall goal RT does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of RT's overall goal that is not projected to be met through the use of race-neutral means.

RT will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. RT need not establish a contract goal on every such contract, and the size of contract goals will be reasonable and adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

RT will express a contract goal as a percentage of the total amount of a DOT-assisted contract.

RT is located within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit and RT is subject to *Western States Paving, Inc. v. Washington State Department of Transportation*, 407 F.3d 983. RT will verify with DOT whether RT may use DBE contract goals and/or race-conscious measures when implementing RT's DBE program. Absent such approval from DOT, RT will operate an entirely race-neutral DBE programs.

### **Section 26.53 Good Faith Efforts Procedures**

Award of Contracts with a DBE Contract Goal: 26.53(a)

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, RT will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

Information to be Submitted: 26.53(b)

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts will be required to be submitted to RT within three business days of the due date of the bid or offer..

Evaluation of Good Faith Efforts: 26.53(a) & (c)

RT treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

The RT DBELO, in collaboration with RT staff, is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. RT's evaluation of good faith efforts will be conducted in accordance with **Appendix A to Part 26 - Guidance Concerning Good Faith Efforts**

The processes used by RT to determine whether good faith efforts have been made by a bidder

are as follows:

If bidder or proposer does not meet the established DBE goal, and is required to submit documentation of good faith effort, then a good faith efforts submission shall be provided within three business days from the bid/proposal submittal date, which shall include a signed DBE Good Faith Efforts Checklist (form provided by RT) and supporting documentation that the bidder/proposer made a good faith effort to meet the goal. RT may allow a longer period based on submittal of a request demonstrating good cause for such extension. Good faith efforts at a minimum include, without limitation, the following where applicable:

- A. Attendance at the pre-bid meeting.
- B. Advertisement in trade association newsletters and minority-focused media within a reasonable time before bids are due for specific sub-bids that would be at least equal to the percentage goal for DBE utilization specified for the project.
- C. Notification in writing to minority contractor associations within a reasonable time before bids are due of a solicitation for specific sub-bids.
- D. Direct negotiation with DBEs for specific sub-bids.
- E. A report with:
  - 1. A detailed statement of the efforts made to negotiate with DBEs including at a minimum (a) the names, addresses, and telephone numbers of DBEs who were contacted; (b) a description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed; and (c) a detailed statement of the reasons why additional prospective agreements with DBEs, if needed to meet the stated goal, were not reached.
  - 2. A detailed statement of the efforts made to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal.
  - 3. As to each DBE contacted which the bidder considers unqualified, a detailed statement of the reasons for the bidder's conclusion.
  - 4. As to each DBE contacted which the bidder considers to be unavailable, an Unavailability Certificate signed by a DBE, or a statement from the bidder that the DBE refused to give such written certification after reasonable request, and a detailed statement from the bidder of the reasons for the bidder's conclusion.
  - 5. The name(s) of the certified DBEs whose bid(s) were rejected, the description of the work, price quote(s), and an explanation why they were rejected. Also provide the name(s), description of the work, and price quote(s) of the non-DBE subcontractors whose bids were accepted.

RT will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before RT commits to the performance of the contract by the bidder/offeror.

#### Administrative Reconsideration: 26.53(d)

The RT's Bid Protest procedures will be available as administrative reconsideration to bidders/proposers who are determined by the DBE Liaison Officer to be nonresponsive to the Good Faith Efforts requirements of the Invitation for Bid or Request for Proposal. Within ten (10) days of being informed by RT that it is not responsive because it has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidders/proposers should make this request in writing to the General Manager/CEO at P.O. Box 2110, Sacramento, CA 95812-2110. The General Manager/CEO, pursuant to RT's Bid Protest procedures, shall designate a reconsideration official who has not played any role in the original determination that the bidder/proposer did not make or document sufficient good faith efforts.

As part of this reconsideration, the bidder/proposer 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. The bidder/proposer will have the opportunity to meet in person with RT's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. RT will send the bidder/proposer 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. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Attachment 4 is RT's Bid/Proposal Protest Procedures. These procedures will be followed to provide Administrative Reconsideration for a bidder that has been determined by the DBE Liaison Officer to be non-responsive to the DBE Program requirements of RT's bid specifications.

#### Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals: 26.53(f)

RT requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without RT's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to RT its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to RT prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise RT of why it objects to the proposed termination. The five day period may be reduced if the matter is one of public necessity (e.g., safety.)

In those instances where "good cause" exists to terminate a DBE's contract, RT will require the prime contractor 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 extent needed to meet the contract goal. RT will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, RT will require the prime contractor to obtain RT's prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of RT to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of \_\_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 5), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

**Section 26.55 Counting DBE Participation**

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

**SUBPARTS D & E– CERTIFICATION**

**Section 26.61 – 26.73 Certification Process**

**Section 26.81 Unified Certification Programs**

RT is a Non-Certifying member of the California Unified Certification Program (UCP) administered by Caltrans. The California UCP meets all of the requirements of this section **26.81**. RT will use and count for DBE credit only those DBE firms certified by the California UCP.

The following is a description of the California UCP:

The California Unified Certification Program (CUCP) provides “one-stop shopping” certification services to small, minority and women businesses seeking to participate in the United States Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) Program. Certification services are offered to businesses seeking to obtain either DBE or airport concessionaire disadvantaged business enterprise (ACDBE) status.

As mandated by USDOT in the DBE Program, Final Rule 49 Code of Federal Regulations (CFR), Parts 23 and 26, all public agencies that receive USDOT federal financial assistance must participate in a statewide unified certification program. These public agencies, commonly referred to as “recipients” of USDOT funds, include municipalities, counties, special districts, airports, transit agencies, and the State Department of Transportation (Caltrans).



The California Unified Certification Program (CUCP) went into effect on January 1, 2002. It is a "One-Stop Shopping" certification program that eliminates the need for a DBE or ACDBE firm to obtain certifications from multiple agencies within the State. A business certified as a DBE or ACDBE through the CUCP is automatically accepted by all USDOT recipients in California.

The CUCP is charged with the responsibility of overseeing the certification activities performed by various certifying agencies, and compiling and maintaining a single Statewide database of certified DBEs. The Database is intended to expand the use of DBE and ACDBE firms by maintaining complete and current information on those businesses and the products and services they can provide to all USDOT recipients in California.

The CUCP certifying agencies are responsible for certifying DBE firms. You only need to apply for DBE certification at one agency. If your firm meets the General Criteria for DBE certification as provided on the Application Package, submit your completed application, along with the requested documentation, to one of the Certifying Agencies serving the geographical area where your firm has its principal place of business

### **Section 26.83-26.91 Procedures for Certification Decisions**

The California UCP follows the certification processes of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. A copy of the California UCP certification procedures and UCP program is available at:

<http://californiaucp.org/>

For information in northern California about the certification process or to apply for certification, firms should contact:

**CALIFORNIA DEPARTMENT OF TRANSPORTATION**  
**Office of Business & Economic Opportunity**  
**Attn: Certification Unit**  
**1823 14th Street,**  
**Sacramento, CA 95811**  
**(916) 324-1700 or (866) 810-6346**  
**Fax: (916) 324-1862**  
**DBE\_Certification@dot.ca.gov**

Any firm or complainant may appeal a California UCP's decision in a certification matter to DOT. Such appeals may be sent to:

**U.S. Department of Transportation**  
**Office of Civil Rights Certification Appeals Branch**  
**1200 New Jersey Ave. SE**  
**West Building, 7th Floor**  
**Washington, D.C. 20590**

The California UCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for DOT-assisted contracting (e.g., certify a firm if DOT has determined that the California UCP denial of its application was erroneous).

For information in northern California about the certification appeals process, firms should contact:

**CALIFORNIA DEPARTMENT OF TRANSPORTATION**  
Office of Business & Economic Opportunity  
Attn: Certification Unit  
1823 14th Street, Sacramento, CA 95811  
(916) 324-1700 or (866) 810-6346  
Fax: (916) 324-1862  
[DBE\\_Certification@dot.ca.gov](mailto:DBE_Certification@dot.ca.gov)

Firms can make a certification appeal directly to DOT under section 26.89. without first exhausting all the remedies available under the California UCP certification appeal procedures.

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.109 Information, Confidentiality, Cooperation**

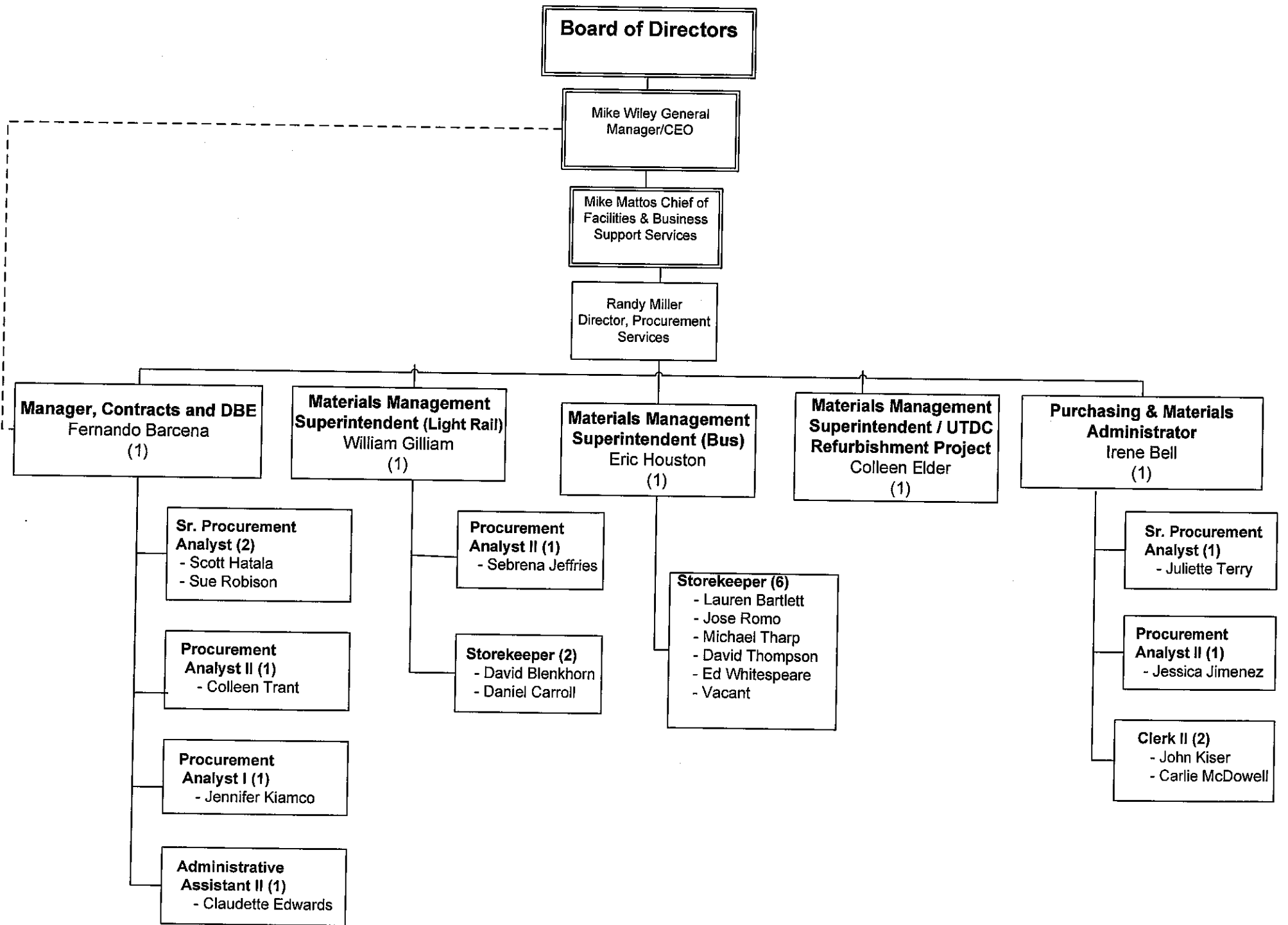
The California UCP will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

#### **Monitoring Payments to DBEs**

RT will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of RT or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

## **Attachment 1: Organizational Chart**



## **Attachment 2**

### **Monthly and Final Payments to DBE Reports**

**MONTHLY REPORT, UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE)  
FOR THE MONTH OF \_\_\_\_\_**

PROJECT NAME/NO.: \_\_\_\_\_  
 CONTRACTOR: \_\_\_\_\_  
 CONTRACT NO.: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_

EXPECTED COMPLETION DATE: \_\_\_\_\_  
 INITIAL CONTRACT BID AMOUNT: \_\_\_\_\_

NAME OF DBE	WOMEN-OWNED OR ETHNIC GROUP	CONTRACT ITEM NUMBERS AND DESCRIPTION OF WORK PERFORMED/MATERIALS PROVIDED	CONTRACT PAYMENTS		COMMENTS
			DBE		
<b>TOTAL THIS REPORT</b>			\$		DBE utilization proposed at time of bidding (if none proposed, indicate "0")  DBE _____%
				%*	
<b>TOTAL TO DATE</b>			\$		
				%*	

\*percentage of initial  
contract bid amount

To the best of my information and belief, the above information  
is complete and correct.

I certify that the above information is complete and correct.

\_\_\_\_\_  
Signature - Resident Engineer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Representative

\_\_\_\_\_  
Date

**FINAL REPORT, UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

PROJECT NAME/NO.: \_\_\_\_\_  
 CONTRACTOR: \_\_\_\_\_  
 CONTRACT NO.: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_

EXPECTED COMPLETION DATE: \_\_\_\_\_  
 INITIAL CONTRACT BID AMOUNT: \_\_\_\_\_  
 FINAL CONTRACT AMOUNT: \_\_\_\_\_

NAME OF DBE	WOMEN-OWNED OR ETHNIC GROUP	CONTRACT ITEM NUMBERS AND DESCRIPTION OF WORK PERFORMED/MATERIALS PROVIDED	<u>CONTRACT PAYMENTS</u>		COMMENTS
			DBE		
FINAL TOTAL			\$		DBE utilization proposed at time of bidding (if none proposed, indicate "0")  DBE _____%
				%*	

\*percentage of final  
contract amount

To the best of my information and belief, the above information  
is complete and correct.

I certify that the above information is complete and correct.

\_\_\_\_\_  
Signature - Resident Engineer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Representative

\_\_\_\_\_  
Date

**Attachment 3**  
**RT SBE Program and Policy**