

Disadvantaged Business Enterprise (DBE) Program

Per 49 CFR Part 26

Sacramento



Regional Transit



REVISED FEBRUARY 2021

**SACRAMENTO REGIONAL TRANSIT DISTRICT
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

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**Sacramento Regional Transit District
Disadvantaged Business Enterprise
POLICY STATEMENT**

Section 26.1, 26.23 Objectives/Policy Statement

The Sacramento Regional Transit District (SacRT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulations (CFR) Part 26. As a recipient of Federal financial assistance from the DOT, SacRT has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of SacRT to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to receive and participate in DOT-assisted contracts. The objectives of this DBE Program are to:


1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by SacRT;
7. Assist in the development of firms to compete successfully in the marketplace outside the DBE program; and
8. Administer the DBE Program in close coordination with the various departments within SacRT so as to facilitate the successful implementation of the DBE Program.

SacRT has a DBE Liaison Officer (DBELO) who is responsible for implementing all aspects of the DBE program. Implementation of the DBE program has the same priority as compliance with all other legal obligations incurred by SacRT in its financial assistance agreements with the DOT.

The complete DBE Program is available for review at SacRT's website:

<http://www.sacrt.com/procurement/dbe.aspx>

SacRT will disseminate via email and employee intranet this policy statement to the Sacramento Regional Transit District Board of Directors and all areas of the SacRT organization. This policy statement will also be disseminated electronically via email and through SacRT's PlanetBids eProcurement system to members of the DBE and non-DBE business community that perform or are interested in performing work on SacRT DOT-assisted contracts, and to local business chambers, and local business associations (both DBE and non-DBE), and minority and women's organizations.



Henry Li
SacRT General Manager/CEO

February 5, 2021

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

Pursuant to 49 CFR Sections 26.3 and 26.21, SacRT, as a recipient of federal financial assistance from the Federal Transit Administration (“FTA”) of the United States Department of Transportation (“DOT”), is required to implement a DBE Program in accordance with 49 CFR Part 26. The DBE Program outlined herein applies to all District contracts that are funded, in whole or in part, by the DOT, including those awarded by SacRT’s subrecipients, in accordance with 49 CFR Parts 26.13, 26.21, 26.23, and 26.37.

Section 26.5 Definitions

SacRT will adopt the definitions contained in 49 CFR Section 26.5 for this DBE program.

The term “Bidders” as used in this document means both Bidders or Proposers, as applicable. The term “Bid” as used in this document means both Bids or Proposals, as applicable.

Section 26.7 Non-Discrimination Requirements

SacRT 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, SacRT 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)

SacRT will report to DOT the following DBE participation using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to 49 CFR Part 26:

1. DBE participation from October 1 through March 31 (submitted by June 1).
2. DBE participation from April 1 through September 30 (submitted by December 1).

The DBELO will regularly collect, review, and track prime and subcontractor contract commitments, awards, and payments including:

1. Prime and subcontractor awards and commitments (submitted by the successful contractor at time of bid).
2. DBE awards and commitments (submitted by the successful contractor at time of bid).
3. Payments to prime contractors, progress payments and final payment at the close of contract.
4. Payments to DBE contractors, subcontractors, and suppliers.

The DBELO will collate these records for the purpose of submitting Uniform Reports of DBE Awards or Commitments and Payments to DOT no later than the deadlines specified above. Detailed procedures for completing Semi-Annual Uniform Reports are contained in SacRT’s DBE Procedures Manual.

Subrecipients that receive DOT pass-through awards will report DBE participation to SacRT on a quarterly basis and semi-annually using the Uniform Report of DBE Awards/Commitments and Payments. These reports will

capture DBE participation for DOT-assisted contracts awarded by subrecipients and actual DBE attainments based on payments made to DBEs on DOT-assisted contracts within the respective reporting period. Subrecipients will comply with these requirements until all contracts awarded with DOT funds are completed, award funds are exhausted, and/or award funds are returned to SacRT.

Bidders List: Section 26.11(c)

SacRT will maintain a Bidders List and collect information regarding all DBE and non-DBE firms that bid and quote on DOT-assisted contracts. The Bidders List is maintained in SacRT's PlanetBids eProcurement system vendor data-base, which: facilitates outreach; tracks all potential bidders; tracks all planholders, all prime bidders and all subcontracts listed with each prime bid; and tracks all primes awarded a contract and all subcontractors on the awarded prime's team. The vendor database tracks any certifications associated with vendors in the database. This Bidders List may be used to help calculate SacRT's overall DBE goals. The Bidders List will include the firm name, address, DBE non-DBE status, the age of firm, and the annual gross receipts of the firm.

Section 26.13 Assurances

SacRT has signed the FTA Master Agreement that includes the following assurances, applicable to all DOT-assisted contracts and their administration:

Federal Financial Assistance Agreement Assurance: 26.13(a)

SacRT must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or DOT-assisted contract, or in the administration of its DBE Program or the requirements of 49 CFR Part 26. SacRT must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. SacRT'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.

Contract Assurance: 26.13(b)

SacRT will ensure that the following assurance is placed in every DOT-assisted subrecipient agreement and third party contract (modified only as necessary to identify the affected parties or agreement) and will obtain the agreement of each of its subrecipients, third party contractors, and third party subcontractors to include the following assurance in every subagreement and third party contract it signs:

The subrecipient, each third party contractor, and each third party subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 CFR Part 26. The subrecipient, third party contractors, and third party subcontractor must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable. Failure by the subrecipient, third party contractor, and third party subcontractor, and any of its third party contractors or third party subcontractors to carry out the requirements of this provision is a material breach of this agreement, third party contract, or third party subcontract, as applicable. The following remedies, or such other remedy as SacRT deems appropriate, include, but are not limited to, withholding progress payments, assessing sanctions, liquidated damages, and/or disqualifying the subrecipient, third party contractor, or third party subcontractor from future bidding as non-responsible. The subrecipient, third party contractors, and third party subcontractors must include these requirements in each contract or subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties or agreement.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since SacRT receives FTA planning, capital and/or operating assistance and awards prime contracts (excluding transit vehicle purchases), the cumulative total value of which exceeds \$250,000 in a federal fiscal year, SacRT will continue to carry out this DBE Program until all funds from DOT financial assistance have been expended. SacRT will provide to DOT updates representing significant changes in the DBE Program.

Section 26.25 DBE Liaison Officer

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

Jessica Shevlin
1400 29th Street, Sacramento CA 95816
Office (916) 556-0198; cell (916) 261-5063
e-mail jshevlin@sacrt.com

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that SacRT complies with all provisions of 49 CFR Part 26. However, all SacRT executives, management and staff share in the responsibility for making SacRT's DBE Program a success and must give their full cooperation to the DBELO in the implementation of this Program. Implementation of the DBE Program has the same priority as all other legal obligations incurred by SacRT as contained within its financial assistance agreement with the U.S. DOT. 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 DBE Program. The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate SacRT officials, executives, management, and staff, as follows:

1. Develops, implements, and updates this DBE Program Plan. Ensures that SacRT's management team is aware of the policy and commitment to DBE participation and achievement. Advises SacRT's General Manager/CEO on DBE matters and achievement.
2. Gathers and reports statistical data and other information as required by DOT. In collaboration with Finance and Grants, Procurement, and project managers, prepares the semi-annual Uniform Report of Commitments, Awards and Payments and the Shortfall Analysis report if SacRT does not meet its overall DBE goal at the end of each fiscal year.
3. Provides oversight of subrecipients' compliance with all DBE regulations.
4. Works with staff including Finance and Grants, Procurement, and project managers to set overall annual goals and Contract-specific race conscious DBE goals, if applicable.
5. Reviews solicitation documents in collaboration with Legal, Finance and Grants, Procurement, and project managers so that appropriate DBE language and applicable goals are included in solicitations (for both race neutral methods and contract-specific goal attainment).
6. Maintains and updates the Bidders List in accordance with 49 CFR Section 26.11(c).
7. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner by providing notice of relevant solicitations posted to SacRT's PlanetBids vendor portal, which is accessible via SacRT's website. Assists Procurement by searching for DBEs and Small Business Enterprises (SBEs) in the CUCP and DGS databases using contract-related NAICS codes and sending those identified firms direct solicitation notices. Participates in pre-bid and pre-proposal meetings to explain the DBE Program and any contract-specific goals.
8. Determines Bidder compliance with good faith efforts. Works in collaboration with Procurement and project managers to resolve inquiries (such as prompt payments, substitutions, quotes, release of retention) between prime contractors and DBEs. Conducts and works with contract administration and project management staff to complete DBE compliance reviews and documents; certifies the reviews on the DBE Contract Compliance Review Checklist (CCRC) form (Attachment 2).
9. Conducts outreach to DBEs and community organizations to advise them on how to do business with SacRT and to promote contracting opportunities. Provides DBEs with information and referrals to

resources for assistance in preparing bids and proposals, understanding of specifications and scopes of work, completing bid and proposal forms, and understanding contract terms and conditions. Plans and participates in DBE training seminars, workshops, and business networking sessions.

10. Acts as liaison to the Uniform Certification Program in California by participating in DBE Certification training workshops (SacRT is a Non-Certifying Member of the CUCP).
11. Investigates services and resources offered by banks and/or financial institutions owned and controlled by socially and economically-disadvantaged individuals.

Section 26.27 DBE Financial Institutions

It is the policy of SacRT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in SacRT's community (State of California) and to make reasonable efforts to use these institutions. When SacRT competitively procures financial services, SacRT will notify any identified minority and women-owned financial institutions of the upcoming procurement. SacRT will encourage prime contractors on DOT-assisted contracts to make use of these institutions in its DBE Program Contract Provisions (Attachment 2).

The Federal Reserve Board compiles data on financial institutions that participate in the Department of the Treasury's Minority Bank Deposit Program. The Federal Reserve maintains lists of these financial institutions that includes identification of minority and gender status and location viewable at:

<https://www.fdic.gov/regulations/resources/minority/mdi.html>

SacRT will review the listing periodically to determine whether any such financial institutions are available in SacRT's community (State of California).

Section 26.29 Prompt Payment Mechanisms

The following procedures will be implemented to comply with 49 CFR 26.29:

Prompt Payment: 26.29(a)

SacRT will include the following clauses in each DOT-assisted prime contract:

- With each application for payment for construction contracts, Contractor must submit to SacRT an unconditional waiver and release upon progress payment executed by the subcontractors that were due payment from the previous partial payment. For each application for payment for non-construction contracts, the Contractor must submit to SacRT a certification, signed by an officer or managing agent of the Contractor, attesting that all subcontractors have been previously paid all amounts due them from prior progress payments within 30 days after CONTRACTOR's receipt of such progress payments. Failure to submit either the unconditional waiver and release or certification with a payment application, as applicable, will be the grounds to reject that payment application.
- That Contractor must make progress payments to its subcontractors not later than 30 days after the receipt of each progress payment from SacRT (49 CFR 26.29(a)). Contractor's obligations under this section may be enforced by a subcontractor who has not been paid in the manner provided herein.

SacRT will include the following clause in DOT-assisted prime contracts with a DBE requirement:

- With each application for payment the Contractor must submit reports summarizing DBE activity and payments, and release of retention (Attachment 2). Before final contract payment is authorized by SacRT, Contractor must submit a final DBE activity and payments report (Attachment 2). This report shows for each DBE the contract amount, the amount paid to the DBE this report, and the total amount paid the DBE to date.

Return of Retainage: 26.29(b)

- SacRT 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 SacRT 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 SacRT to Contractor. Contractor's invoice must identify the full amount of the subcontract, less any progress payments previously made by SacRT 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 SacRT.

Monitoring and Enforcement: 26.29(d)

- SacRT has established the following procedure and contract language to monitor and enforce that prompt payment and return of retainage is in fact occurring. Requests for partial payment applications for DOT-assisted contracts prepared by Contract Administration staff must be reviewed by the SacRT DBELO or his/her delegate to verify that prompt payment and release of retainage contract requirements are satisfied. The reviews and documentation of the reviews will be maintained on the DBE Contract Compliance Review Checklist (CCRC) Form (Attachment 2)

Section 26.31 Directory

SacRT is a Non-Certifying Member (NCM) of the California Unified Certification Program (UCP). SacRT 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 <https://dot.ca.gov/programs/civil-rights/dbe-search>.

Section 26.33 Overconcentration

Overconcentration analysis is a monitoring mechanism to ensure that overconcentration can be identified and adequately addressed to ensure that DBEs were not over-utilized in specific areas to the exclusion of non-DBE firms. Overconcentration exists when DBE firms are so over concentrated in a certain type of work (as determined by NAICS code) as to unduly burden the opportunity of non-DBE firms to participate in this type of work.

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

SacRT will evaluate overconcentration every 3 years during the triennial DBE goal-setting process. SacRT will analyze the types of work (by NAICS code) that have been awarded to DBE subcontractors on FTA-assisted contracts that included a Race-Conscious DBE goal during the previous triennial period. The analysis will compare the availability of DBEs to the availability of non-DBEs in SacRT's relevant geographic market area for the identified type of work. This analysis will be performed by comparing the number of DBEs listed in the California Unified Certification Program (CUCP) DBE Directory in SacRT's Market Area to the number of firms listed in the US Census County Business Patterns data in SacRT's Market Area. For the purposes of the overconcentration analysis, SacRT's Market Area will be defined as the counties in Caltrans District 3: Butte, Colusa, El Dorado, Glenn, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo, and Yuba. The CUCP database is searchable by Caltrans District; the search by county has been disabled.

If DBE overutilization for any NAICS code exceeds 175%, SacRT will determine that DBE overconcentration exists, and appropriate action will be taken to address this overconcentration.

If an overconcentration of DBEs is identified, SacRT will notify the CUCP and will submit a plan of action to FTA aimed at eliminating the overconcentration. This plan may include, but not be limited to, incentive programs, technical assistance, contractual consultation, marketing, or other appropriate steps to aid in promoting DBE work in other NAICS codes. SacRT may also consider varying the use of contract goals in accordance with §26.51 to ensure that non-DBEs are not prevented from competing for subcontracts, by declining to set a contract-specific

goal in specific trades or specialty areas (as documented in NAICS Codes) that have been identified to demonstrate overconcentration, and, not include these NAICS Codes in the calculations for setting SacRT's Triennial DBE Goals.

FTA must review SacRT's determination of overconcentration and approve any measures designed to address the issue. Once approved by FTA, the actions to be taken will become part of SacRT's DBE program.

Section 26.35 Business Development Programs

SacRT has not established a business development program. However, SacRT does make race-neutral and gender-neutral efforts aimed at enhancing the growth, development, and self-sufficiency of all DBE and small business firms competing for DOT-assisted contracts and subcontracts. Those efforts are described in detail in the Race-Neutral subsection of 26.51 to this Plan.

SacRT's website contains links to and information about business development resources for DBE and SBE firms. This resource guide can be found on SacRT's website at <http://www.sacrt.com/Procurement/dbe.aspx>

SacRT's DBELO coordinates with regional Small Business Development Centers (SBDCs), Business organizations, Chambers of Commerce, Small Business Administration (SBA), and California Department of General Services (DGS) to refer DBEs and SBEs to resources for small business technical support, access to financing, workshops in areas such as Business Basics, Business Plan Development, and Loan Readiness, etc. SacRT's DBELO also coordinates with regional small business development professionals and organizations to facilitate DBE and small business events and business fairs, to which DBEs and SBEs are invited to attend to learn about SacRT's contracting opportunities. At these events SacRT management and technical staff have an opportunity to become acquainted with qualified DBE and SBE business owners who are interested in supplying services and products to SacRT. In addition, SacRT's DBELO provides information to DBE and SBE attendees on DBE certification and DBE Program requirements and procedures. These events include technical support training workshops explaining procedures on how to do business with SacRT and other government agencies and exploring best business practices to market SBEs to SacRT and other government agencies.

Section 26.37 Monitoring and Enforcement Mechanisms

SacRT will monitor and provide written certification on the DBE Contract Compliance Review Checklist (CCRC) form (Attachment 2) for every contract/project entered into by SacRT and by SacRT's subrecipients on which DBEs are participating, ensuring compliance with the requirements in 49 CFR Sections 26.11, 26.13, 26.29, 26.37, 26.49, and 26.55. The CCRC will also be used to document subrecipient compliance with the same requirements, as applicable. SacRT will follow the DBE Participation Reporting and Monitoring Procedures contained in its DBE Procedures Manual. SacRT will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. SacRT will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the DBE 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 49 CFR Section 26.109.
2. SacRT will consider similar action under SacRT's own legal authorities, including responsibility determinations in future contracts. SacRT has several contract remedies available to enforce DBE compliance, including suspension of any payment or part thereof until such time as the issues concerning compliance are resolved, work stoppage until the contract requirements for substitution or termination of a DBE are satisfied, right to audit and inspect records and work, liquidated damages for failure to comply with DBE requirements, termination, suspension, or cancellation or other breach of contract actions, pursuant to the terms of the contract and applicable statutes. If SacRT determines that the contractor's failure to meet all or part of the DBE contract goal is due to the contractor's inadequate Good Faith Efforts, the contractor may be required to pay DBE Liquidated Damages equal to the dollar amount of the unmet DBE contract goal. 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. SacRT, 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 SacRT's procurement activities.

3. SacRT will also provide a monitoring and enforcement mechanism (Commercially Useful Function Review) to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by conducting field reviews and DBE contractor interviews. SacRT will maintain written certifications on the DBE CCRC form 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 Contract Managers, and engineering and construction management staff.
4. SacRT 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 reports summarizing DBE activity and payments (Attachment 2). Before final contract payment is authorized by SacRT, 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. SacRT will perform compliance reviews of contract payments to DBEs. The review of payments to DBE subcontractors will be conducted 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 Fostering Small Business Participation

In accordance with 49 CFR Section 26.39, SacRT's DBE Program must include an element to structure contracting requirements 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. SacRT has incorporated the following non-discriminatory element into its DBE program in order to facilitate competition on DOT-assisted contracts by small business concerns (both DBEs and non-DBE SBEs) and to ensure that the maximum feasible portion of the SacRT overall DBE goal is met by using race-neutral means. SacRT's Small and Local Business Enterprise (SLBE) Program has been implemented as a part of SacRT's larger DBE program and includes the following strategies (no LBE preferences or set asides apply to federally-assisted contracts):

1. Provide price and point preferences on certain SacRT procurements to SBEs competing as primes or subcontractors.
2. Configuring large contracts into smaller contracts when feasible, when to do so would make contracts more accessible to SBEs and would not impose significant additional cost, delay, or risk to SacRT.
3. Ensuring that a reasonable number of prime contracts are of a size that SBEs, including DBEs, can reasonably perform.
4. Identifying components of the work that have subcontracting opportunities and searching in the California Department of General Services (DGS) SBE database for the availability of SBEs in project related NAICS and work-codes and sending out direct contract notices to those identified SBEs.

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

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

In accordance with 49 CFR Section 26.45, SacRT will submit its triennial overall DBE goal to FTA by August 1 of the year specified by FTA. SacRT is designated under Group B in FTA's DBE Three Year-Goal Setting Reporting Schedule.

SacRT's specific DBE Goal Setting Procedures are contained in its DBE Procedures Manual. The process used by SacRT to establish overall DBE goals conforms with 49 CFR Section 26.45 and is based on the demonstrable evidence of DBE firms ready, able, and willing to participate/perform contracting opportunities derived from SacRT's DOT-assisted projects/contracts.

On October 1 in the year before SacRT's overall DBE goal submission is due to the FTA, the SacRT DBELO will begin the process of collecting and analyzing data necessary to establish triennial overall DBE goals. The DBELO will also review DBE utilization information from Uniform Reports and, if applicable, recent shortfall analysis reports to help calculate and propose reasonable triennial overall DBE Goals. The DBELO will complete the process and goal document preparation for submission to the FTA by August 1.

The data necessary to establish proposed triennial overall DBE goals includes estimates of: projected federal funding available for the triennial period; what goods and services are planned to be procured during the triennial period with the federal fund sources; and what subcontracting opportunities the projected procurements contain. Compilation of this data for triennial DBE goal setting purposes requires the coordination and cooperation of all SacRT executives, management, and staff including the Finance Division, the Procurement Division, and project managers. All SacRT executives, management, and staff must ensure that SacRT's procurement and contracting processes are administered in order to meet or exceed SacRT's FTA approved Overall Triennial DBE participation goals.

SacRT's Overall DBE Goal is established using a two-step process: (1) establishing a base figure for the relative availability of DBEs and (2) determining if an adjustment to the base figure is necessary. Step 1 involves determining a base figure of available DBE firms in SacRT's relevant market area that ready, willing and able to participate in SacRT contracts. The Base Figure of available ready, willing, and able DBE firms is derived using either 1) Caltrans' UCP DBE Directory and Census Bureau data or 2) SacRT's Bidders List (see Section 26.11(c) of this Program). Step 2 requires adjusting the availability base figure to account for other reliable and relevant to factors, such as previous DBE utilization rates in SacRT contracts. After the adjusted DBE goal is identified, SacRT 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, SacRT 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 other public agencies and DBEs to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and SacRT efforts to establish a level playing field for the participation of DBEs.

Pursuant to 49 CFR Section 26.45(g)(2), SacRT may choose, at its discretion, to 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 SacRT's principal office for 30 days following the date of the notice, and informing the public that SacRT and DOT will accept comments on the goals for 30 days from the date of the notice. The notice will be posted on SacRT's website. If SacRT chooses to publish this 30-day notice, SacRT will issue the 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.

SacRT'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 SacRT's responses; and proof of publication of the goal on SacRT's website.

SacRT will begin using the overall goal on October 1 of the specified year, unless SacRT receives other

instructions from DOT. SacRT's overall goal will remain effective for the duration of the three-year period established and approved by FTA.

SacRT is located within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit and SacRT is subject to *Western States Paving, Inc. v. Washington State Department of Transportation*, 407 F.3d 983 (9th Cir. 2005). SacRT will verify with DOT whether SacRT may use DBE contract goals and/or race-conscious measures when implementing SacRT's DBE program. Absent such approval from DOT, SacRT will operate an entirely race-neutral DBE program.

SacRT will 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 Paving vs Washington DOT*, Ninth Circuit Court of Appeals Guidance Notice. SacRT will use contract goals (when allowed under FTA's *Western States* Guidance Notice) to meet any portion of the overall goal SacRT 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 SacRT's overall goal that is not projected to be met through the use of race-neutral means. When allowed, SacRT will establish contract goals only on those DOT-assisted contracts that have subcontracting opportunities. SacRT 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, the results of searches by relevant work codes for the availability of CUCP certified DBEs to perform the particular type of work). SacRT will express a contract goal as a percentage of the total amount of a DOT-assisted contract. If SacRT establishes a goal on a project basis, SacRT will begin using the goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.47 Meeting the Overall Goals and Accountability

If the awards and commitments shown on SacRT's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the SacRT DBELO must, in accordance with 49 CFR Section 26.47(c), conduct a Shortfall Analysis and:

1. Analyze in detail what efforts SacRT made in attempting to meet the goal, what reasons may have played a role in the shortfall and caused the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the shortfall analysis; and
3. Submit the Shortfall Analysis Report and corrective plan to FTA within 90 days of the end of the affected fiscal year.

Section 26.49 Transit Vehicle Manufacturers (TVM) Goals

SacRT will require all transit vehicle manufacturers to certify that they have complied with the requirements of 49 CFR Section 26.49 and have established an overall DBE participation goal that has been approved (or not disapproved) by the FTA before they can bid or propose on any SacRT TVM procurement. Alternatively, SacRT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles.

Only those TVM manufacturers that at the time of solicitation are listed on FTA's eligible TVMs list, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, are eligible to bid or propose. Prior to award, SacRT will verify that the TVM is authorized to bid or propose on U.S. DOT-assisted transit vehicle procurements. When SacRT uses a government purchasing schedule to acquire transit vehicles, SacRT will verify that the appropriate documentation/certification was included in the original solicitation and separately verify eligibility to bid or propose. To confirm TVMs are certified prior to award, SacRT will create a "print screen", with printing date, of the certified TVM list and keep a copy of the list in the procurement file to document that the requirement was met.

FTA's certified list of TVMs is posted on the FTA website at:

<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>

As required in Section 26.49(a)(4), within 30 days of making an award SacRT will submit notification to FTA the name of the successful bidder, and the total dollar value of the TVM contract. SacRT will submit the required post-award TVM report online at <https://www.surveymonkey.com/r/vehicleawardreportsurvey>. To confirm notification of TVM award has been made to FTA, SacRT will create a “print screen” of the notification of TVM award and keep a copy of the print screen in the procurement file to document that the requirement was met.

Section 26.51 Meeting Overall Goals/Contract Goals

SacRT 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 is considered race-neutral DBE participation. In addition, SacRT’s race-neutral efforts may include, but are not limited to, the following:

1. Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other SBEs (through use of PlanetBids eProcurement system), and arrange for the provision of information in languages other than English when requested and where appropriate;
2. For DOT-assisted contracts managed by the Procurement department, identify potential subcontracting opportunities and search in the CUCP DBE database for the availability of DBEs in related NAICS and work-codes to send out direct notices to identified DBEs;
3. Disseminate lists of potential DBE and small business subcontractors to potential prime bidders and ensure notification of the availability of the California UCP DBE Database to the widest feasible universe of potential prime contractors;
4. Provide technical assistance and refer DBEs to resources provided by partner agencies including Small Business Development Centers (SBDC), the Small Business Administration (SBA), and local Chambers of Commerce to help DBEs and other small businesses to overcome limitations. Assistance may include advice for developing their capability to utilize emerging technology and conduct business through electronic media, obtaining bonding and financing, and other technical and business development assistance such as immediate and long-term business management, record keeping, and financial and accounting capability; and
5. Conduct internal training seminars to facilitate better understanding among SacRT staff regarding DBE Program objectives.

Section 26.53 Good Faith Efforts Procedures

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

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, SacRT will award the contract only to a bidder that has either: (1) met the contract goal with verified, countable DBE participation; or (2) documented that it has made adequate good faith efforts to meet the DBE contract goal. 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: Section 26.53(b)

Each solicitation for which a contract goal has been established will require the bidders to submit the following information with its bid no later than 5 days after the due date of the bid or offer (DBE Commitments Form; DBE Good Faith Efforts Checklist Form (Attachment 2)):

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 contractor commitment; and
6. If the contract goal is not met, evidence of good faith efforts will be required to be submitted to SacRT. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

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

SacRT treats bidder compliance with good faith efforts' requirements as a matter of responsibility.

The SacRT DBELO, in collaboration with other SacRT staff, is responsible for determining whether a bidder that has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible. In accordance with 49 CFR Section 26.53 and Appendix A, Guidance Concerning Good Faith Efforts, the following is a list of types of actions which SacRT will consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

1. Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project. The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.
4. Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

5. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the contract goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals. A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.
6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
7. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to aid in the recruitment and placement of DBEs.

Administrative Reconsideration: Section 26.53(d)

SacRT's Bid Protest procedures are available as administrative reconsideration to bidders that are determined by the DBELO to be non-responsible with regard to the Good Faith Efforts requirements of the Invitation for Bid or Request for Proposal. Within ten (10) days of being informed by SacRT that it is not responsible because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidders must 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 SacRT's Bid Protest procedures, will designate a reconsideration official who has not played any role in the original determination that the bidder did not make or document sufficient good faith efforts.

As part of this reconsideration, the bidder 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 will have the opportunity to meet in person with SacRT's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. SacRT will must send the bidder 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.

SacRT's Bid/Proposal Protest Procedures must be followed to provide administrative reconsideration for a bidder that has been determined by the DBELO to be not responsible with regard to the DBE Program requirements of SacRT's solicitation document.

Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals: Section 26.53

The following applies to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements and post-award terminations and substitutions of DBE subcontractors:

SacRT requires that a prime contractor not terminate a DBE subcontractor listed with the bid to participate in the contract (or an approved substitute DBE firm) without SacRT'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 the prime contractor's own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

SacRT will include in each prime contract a provision stating:

1. That the contractor must use the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains SacRT's written consent; and
2. That, unless SacRT's consent is provided under 49 CFR Section 26.53(f), the contractor is not entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

SacRT may provide such written consent only if SacRT agrees, for reasons stated in SacRT's 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. SacRT 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 SacRT 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 SacRT determines 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 SacRT 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 SacRT, of its intent to request to terminate and/or substitute, and the reason for the request.

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

When a DBE subcontractor is terminated as provided in this section or fails to complete its work on the contract for any reason, SacRT must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts must be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal SacRT established for the procurement. The good faith efforts must be documented by the contractor. If SacRT requests documentation under this provision, the contractor must submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and SacRT will provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

The requirement that DBEs must be certified by the bid opening date does not apply to DBE substitutions after award of the Contract. DBEs substituted after award must be certified at the time of the substitution.

SacRT will include in each prime contract the contract clause required by Section 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the

termination of the contract or such other remedies set forth in that section SacRT deems appropriate if the prime contractor fails to comply with the requirements of this section.

SacRT will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, SacRT counts the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

SacRT will require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor must ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with 49 CFR Part 26.

Contractors will be required to request DBE substitutions approval on forms for this purpose provided by SacRT.

Section 26.55 Counting DBE Participation

SacRT will count DBE participation toward overall and contract goals as provided in 49 CFR Section 26.55:

1. When a DBE participates in a contract, SacRT will count only the value of the work actually performed by the DBE toward DBE goals.
2. When a DBE performs as a participant in a joint venture, SacRT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
3. SacRT will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract (Commercially Useful Function (CUF) Report Form (Attachment 2)).
4. SacRT will use the following factors in determining whether a DBE trucking company is performing a commercially useful function (Disadvantaged Business Enterprises (DBE) Trucking Verification form (Attachment 2)):
 - a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - d. The DBE 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.
 - e. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate DOT operating administration.
 - f. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
 - g. For purposes of determining whether a DBE trucking company is performing a commercially useful function, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

5. SacRT will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
 - a. If the materials or supplies are obtained from a DBE manufacturer, SacRT will count 100 percent of the cost of the materials or supplies toward DBE goals.
 - b. If the materials or supplies are purchased from a DBE regular dealer, SacRT will count 60 percent of the cost of the materials or supplies toward DBE goals.
 - c. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, SacRT will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided SacRT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. SacRT will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.
 - d. SacRT must determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expeditor) on a contract-by-contract basis.
6. If a firm is not currently certified as a DBE in accordance with the standards of 49 CFR Part 26 Subpart D Certification Standards, at the time of the execution of the contract, SacRT will not count the firm's participation toward any DBE goals, except as provided for in 49 CFR Section 26.87(i).
7. SacRT will not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward SacRT's overall goal.
8. SacRT will not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

SUBPARTS D & E– CERTIFICATION

Section 26.61 – 26.73 Certification Process

Section 26.65 What Rules Govern Business Size Determinations?

1. To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. Recipients must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.
2. Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$23.98 million.
3. The DOT adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

Section 26.81 Unified Certification Programs

SacRT is a Non-Certifying member of the California Unified Certification Program (UCP) administered by Caltrans. The California UCP meets all of the requirements of Section 26.81. SacRT 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:

<https://dot.ca.gov/programs/civil-rights/dbe-search>

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- 0449
Fax: (916) 324-1949
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
External Policy & Program Development Division
1200 New Jersey Avenue SE.
Washington, DC 20590-0001.

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- 0449
Fax: (916) 324- 1949
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.

In accordance with Section 26.89(c), firms wanting to file an appeal must send a letter to the DOT within 90 days of the date of the recipient's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. The DOT may accept an appeal filed later than 90 days after the date of the decision if the DOT determines that there was good cause for the late filing of the appeal or in the interest of justice.

SUBPART F – COMPLIANCE AND ENFORCEMENT

SacRT will enforce contract compliance with the DBE requirements, in accordance with 49 CFR Section 26.107.

Section 26.107 What enforcement actions apply to firms participating in the DBE program?

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of any DOT-assisted 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 the contract, which may result in the termination of the contract or such other remedy as the recipient deems appropriate, which may include, but is 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-responsible.

Section 26.109 Information, Confidentiality, Cooperation, and Intimidation or Retaliation

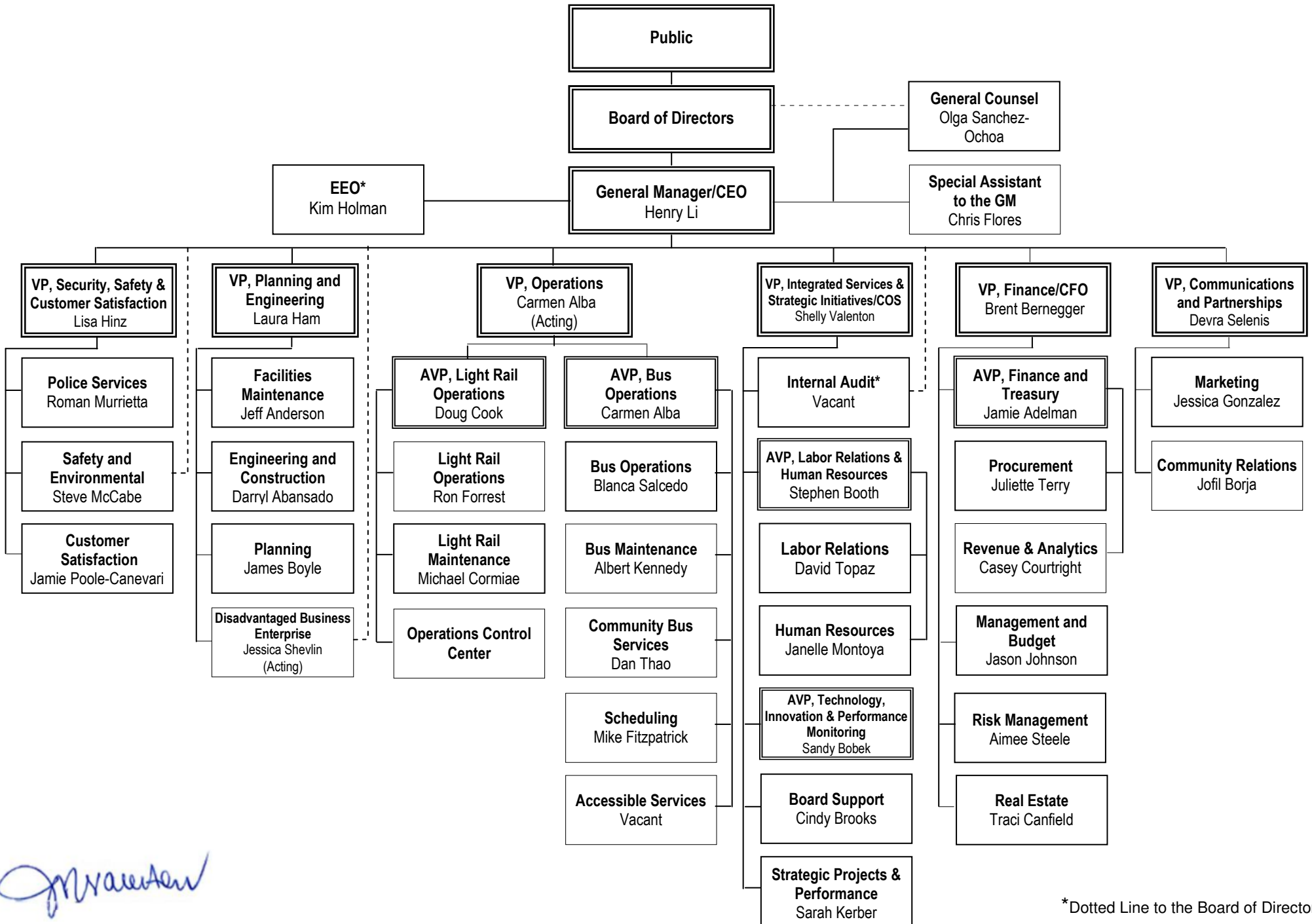
Information and Confidentiality

SacRT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law, and 49 CFR 26.109.

Cooperation, Intimidation and Retaliation

1. Cooperation. SacRT will fully and promptly cooperate, and require its contractors to fully and promptly cooperate, with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved.
2. Intimidation and Retaliation. Neither SacRT nor its contractors will intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. Contractors in violation of this requirement will be subject to appropriate action.

**Sacramento Regional Transit District
Functional Organization Chart
As of: September 25, 2020**



Handwritten signature in blue ink.

*Dotted Line to the Board of Directors

ATTACHMENT 2
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM CONTRACT PROVISIONS

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- A7. Eligibility/Certification of DBE's
- A8. Contract Award Criteria
- A9. Review Process
- A10. Substitution of Subcontractors and Suppliers
- A11. DBE Directory
- A12. DBE Records
- A13. Monitoring and Enforcement Mechanisms (49 CFR Section 26.37)
- A14. DBE Financial Institutions

DBE Form 1 Confirmation by DBE

DBE Form 2 DBE Commercially Useful Function Report

DBE Form 3 DBE Good Faith Effort Checklist

DBE Form 4 Substitution Request for Disadvantaged Business Enterprise (DBE) Form

DBE Form 5 Disadvantaged Business Enterprises (DBE) Payment Form

DBE Form 6 Disadvantaged Business Enterprises (DBE) Trucking Verification Form

DBE Form 7 Final Report, Utilization of Disadvantaged Business Enterprises (DBE)

DBE Form 8 DBE Contract Compliance Review Checklist

A1. GENERAL

It is the policy of SacRT to create a level playing field on which Disadvantaged Business Enterprises (DBE) can complete fairly for DOT-assisted contracts as defined in Title 49 Code of Federal Regulations Part 26 (49 CFR Part 26). Consequently, the DBE requirements of 49 CFR Part 26 apply to this contract.

In accordance with 49 CFR Part 26, Section 26.13(b), each contract SacRT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The subrecipient, each third party contractor, and each third party subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 CFR Part 26. The subrecipient, third party contractors, and third party subcontractor must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable. Failure by the subrecipient, third party contractor, and third party subcontractor, and any of its third party contractors or third party subcontractors to carry out the requirements of this provision is a material breach of this agreement, third party contract, or third party subcontract, as applicable. The following remedies, or such other remedy as SacRT deems appropriate, include, but are not limited to, withholding progress payments, assessing sanctions, liquidated damages, and/or disqualifying the subrecipient, third party contractor, or third party subcontractor from future bidding as non-responsible. The subrecipient, third party contractors, and third party subcontractors must include these requirements in each contract or subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties or agreement.

A2. CONTRACTS WITH AN ESTABLISHED GOAL

For contracts where SacRT has established a participation goal for Disadvantaged Business Enterprises (DBE), as set out in the solicitation document, meeting the DBE goal or making good faith efforts to do so is a condition for receiving the award of the contracts.

A3. DEFINITIONS

SacRT has adopted the definitions contained in 49 CFR Part 26, Section 26.5 for its DBE program.

Days mean calendar days. In computing any period of time described in this Attachment, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where SacRT's offices are closed for all or part of the last day, the period extends to the next day on which SacRT is open (49 CFR Section 26.5).

The term "Bidders" as used in this document means both Bidders or Proposers, as applicable. The term "Bid" as used in this document means both Bids or Proposals, as applicable.

A4. REQUIRED DBE SUBMISSION

The **DBE COMMITMENTS FORM** is required for all solicitations with an established goal. A Bidder may submit the DBE Commitments Form with its bid. If the DBE Commitments Form is required and not submitted with the bid, the apparent low Bidder, the 2nd low Bidder, and the 3rd low Bidder must complete and submit the DBE Commitments Form to SacRT no later than 5 days after bid opening.

Bidders required to submit the DBE Commitments Form must also submit a **CONFIRMATION BY DBE FORM (DBE FORM 1)**, signed by each DBE, stating that it is participating in the Contract as provided in the Bidder's DBE Commitments Form, or, alternatively, a copy of a DBE's quote. The 3 lowest Bidders must submit the **CONFIRMATION BY DBE FORM(S)** or a copy of DBE's quote to SacRT, no later than 5 days after bid opening.

Other Bidders do not need to submit the DBE Commitment Form, Confirmation by DBE Form or DBE's quote unless SacRT requests those documents. If SacRT requests that that a Bidder to submit a **DBE COMMITMENTS FORM, CONFIRMATION BY DBE FORM(S)**, or a copy of DBE's quote, those documents must be received by SacRT no later than 5 days after the request.

Days mean calendar days. In computing any period of time described in this Attachment, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where SacRT's offices are closed for all or part of the last day, the period extends to the next day on which SacRT is open (49 CFR Section 26.5).

If a Bidder does not submit the **DBE COMMITMENT FORM**, the **CONFIRMATION BY DBE FORM(S)**, or a copy of DBE's quote within the specified time, SacRT will find the Bidder nonresponsive and ineligible for award of a contract.

The submitted **DBE COMMITMENTS FORM** must contain the following information:

1. **Bidder's Name** - Enter the contractor's firm name.
2. **Prime Certified DBE** - Check box if prime contractor is a certified DBE.
3. **Bid Amount** - Enter the total contract bid dollar amount for the prime contractor.
4. **Bid Item Number** - Enter bid item number for work, services, or materials to be supplied.
5. **Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be supplied. Indicate all work to be performed by DBEs including work performed by the prime contractor's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. (See, **DISADVANTAGED BUSINESS ENTERPRISES (DBE) PAYMENT FORM (DBE FORM 5)**, for how to count full/partial participation, in accordance with 49 CFR Section 26.55).
6. **DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
7. **Name of DBEs** - Enter the name of all DBEs committed to this Contract. Also, enter the prime contractor's name, if the prime is a DBE.
8. **DBE Dollar Amount** - Enter the dollar amount of the work to be performed or service to be provided by all DBEs committed to this Contract. Include the prime

contractor if the prime is a DBE. (See, **DISADVANTAGED BUSINESS ENTERPRISES (DBE) PAYMENT FORM (DBE FORM 5)**, for how to count full/partial participation, in accordance with 49 CFR Section 26.55.)

9. **Total Claimed DBE Participation - \$:** Enter the sum total dollar amounts entered in the "DBE Dollar Amount" column. **%:** Enter the percent total DBE participation claimed ("Total Claimed DBE Participation Dollars" divided by item "Bid Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see **Section A6. BIDDERS NOT MEETING DBE GOAL** for instructions on submitting Good Faith Efforts).
10. **Preparer's Signature** - The person completing the **DBE COMMITMENTS FORM** on behalf of the contractor's firm must sign their name.
11. **Date** - Enter the date the **DBE COMMITMENTS FORM** is signed by the contractor's preparer.
12. **Preparer's Name** - Enter the name of the person preparing and signing the contractor's **DBE COMMITMENTS FORM**.
13. **Phone** - Enter the area code and phone number of the person signing the contractor's **DBE COMMITMENTS FORM**.
14. **Preparer's Title** - Enter the position/title of the person signing the contractor's **DBE COMMITMENTS FORM**.

A4.1 COUNTING DBE PARTICIPATION

SacRT will count DBE participation toward contract goals as provided in 49 CFR Section 26.55.

A4.2 EFFECT OF CONTRACT CHANGE ORDERS AND AMENDMENTS

Circumstances may arise during the performance of work requiring changes to the scope of the work contained in the Contract. If the scope of work increases, the prime contractor must ensure that it has obtained sufficient DBE participation to meet the Contract goal on the final Contract value or has made good faith efforts to do so. The dollar amount of any Contract Change Order, Amendment or any other Contract modification that increases the dollar amounts of the Contract or any subcontract will be subject to the DBE Contract goal established for the Contract, and the Contractor and its subcontractors will be required to solicit DBE participation for such increases. Revised total Contract dollar values must be reflected in the Contractor's **DISADVANTAGED BUSINESS ENTERPRISES (DBE) PAYMENT FORM (DBE FORM 5)** and **FINAL REPORT, UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) (DBE FORM 7)** Reports submitted to SacRT.

If a Contract Change Order or Amendment eliminates work designated in a DBE commitment, the prime contractor must follow the termination procedures and must make a good faith effort to meet the DBE Contract goal on the final Contract value.

A5. CONSTRUCTION CONTRACTS

For public works (construction) contracts, the provisions of the Subletting and Subcontracting Fair Practices Act (Cal. Public Contract Code § 4100 *et seq.*) are also applicable to this bid. Bidders must list in their bid all subcontractors whose portion of the work is in an amount in excess of one-half of one percent of the Bidder's total bid. This requirement is separately addressed in the bid specifications for construction contracts.

A6. BIDDERS NOT MEETING DBE GOAL

If any of the three low Bidders do not meet the established contract DBE goal, then a good faith efforts submission must be provided no later than 5 days after bid opening (49 CFR Section 26.53), which must include a signed **DBE GOOD FAITH EFFORTS CHECKLIST (DBE FORM 3)** and supporting documentation that the Bidder made a good faith effort to meet the goal. SacRT may allow a longer period based on submittal of a request before expiration of the five-day period demonstrating good cause for such extension. In addition, if SacRT determines, after review of the **DBE COMMITMENT FORM**, that the goal has not been met for any reason (e.g., named firm is not a DBE, dollar value was counted incorrectly, etc.), Bidder must submit a DBE good faith efforts submission no later than 5 days after SacRT provides notice that the goal has not been met.

Only good faith efforts directed towards obtaining participation by DBEs will be considered.

Bidder may reference the checklist provided in 49 CFR Section 26.53 Appendix A, Guidance Concerning Good Faith Efforts, to help guide Bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A7. ELIGIBILITY/CERTIFICATION OF DBES

DBEs listed by Bidders for participation in the Contract work must be certified as eligible DBEs by the Bid opening date. It is the Bidders' responsibility to verify that the DBE firm is certified as a DBE at date of Bid opening. For a list of DBEs certified by the California Unified Certification Program, go to: <https://dot.ca.gov/programs/civil-rights/dbe-search>.

A8. CONTRACT AWARD CRITERIA

If a Bidder submitting an otherwise responsive bid fails to meet the established DBE participation goal, SacRT will determine whether, given all relevant circumstances, the efforts undertaken by the Bidder to secure DBE participation were those of a competitor actively and aggressively seeking to meet the goal would make. SacRT must make its determination based upon the good faith effort submission provided by the Bidder in accordance with the criteria set forth above. If SacRT determines that a Bidder failing to meet the established DBE participation goal did not undertake adequate good faith efforts to secure DBE participation, SacRT will declare Bidder to be not responsible due to failure to comply with the DBE requirements and ineligible for award of a contract.

A9. REVIEW PROCESS

A. Request for Additional Information

SacRT must review all information submitted by the Bidders in accordance with this section. If SacRT determines that additional explanatory information is needed to assess whether a particular DBE listed by a Bidder will be performing a commercially useful function in the contract work, whether a particular DBE listed by the Bidder is certified, or for any other reason pertaining to the **DBE COMMITMENTS FORM** or the DBE Good Faith Efforts submission, SacRT may request submission of explanatory information.

B. Determination that Bidder is Not Responsible

If SacRT determines that the apparent low Bidder did not include the required information pertaining to the **DBE COMMITMENTS FORM** or DBE Good Faith Efforts submission, the Bidder may be deemed not responsible and the Bidder will not be eligible for the contract award. The next apparent low Bidder will then be evaluated in accordance with the requirements of this Attachment.

If SacRT determines that a Bidder has not demonstrated good faith efforts to achieve the goal, SacRT will:

1. Inform the Bidder that its bid may be rejected and the Bidder found not responsible;
2. Give the reasons; and
3. Notify the Bidder that it has a right to respond pursuant to SacRT's Protest Procedure.

C. Award Recommendation

Upon completion of the review process described above, a recommendation will be presented to the SacRT Board or the GM/CEO, as applicable, for Contract award.

A10. SUBSTITUTION OF SUBCONTRACTORS AND SUPPLIERS

Substitution of listed DBE subcontractors and suppliers will be subject to the provisions of 49 CFR Section 26.53 and, additionally, in the case of public works construction contracts, the Subcontracting and Subletting Fair Practices Act (Cal. Public Contract Code § 4100 *et seq.*). Contractor must submit to SacRT a completed **SUBSTITUTION REQUEST FOR DISADVANTAGED BUSINESS ENTERPRISE (DBE) FORM (DBE FORM 4)**. Approval may be given or withheld by SacRT in its sole and absolute discretion. In considering a request to substitute, the Contractor must provide any and all information that SacRT deems appropriate. SacRT's approval may be given on any conditions that SacRT deems appropriate, including the condition that the Contractor must make a Good Faith Effort to substitute a listed DBE contractor or supplier with another contractor or supplier that meets the DBE requirements in the Contract specifications.

A11. DBE DIRECTORY

SacRT is a Non-Certifying Member (NCM) of the California Unified Certification Program (UCP). SacRT 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 can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

A12. DBE RECORDS

The successful Bidder must maintain records, regardless of tier, of all subcontracts entered into with certified DBE subcontractors, DBE service providers, DBE trucking

services, and records of materials purchased from certified DBE suppliers. Such records must show the name and business address of each DBE subcontractor and vendor and the total dollar amount actually paid each DBE subcontractor or vendor. Copies of said records must be furnished to SacRT upon its written request. Bidder must submit to SacRT records summarizing DBE activity and payment to DBEs, on the **DISADVANTAGED BUSINESS ENTERPRISES (DBE) PAYMENT FORM (DBE FORM 5)**, and on the **DISADVANTAGED BUSINESS ENTERPRISES (DBE) TRUCKING VERIFICATION FORM (DBE FORM 6)**. After completion of Work and before final payment will be authorized by SacRT, the Bidder must prepare and submit a summary of these records on **FINAL REPORT, UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) (DBE FORM 7)** and certify their correctness.

Contractor must make prompt payment and release of retention to subcontractors in accordance with the General Contract Provisions. With each application for payment for construction contracts, Contractor must submit to SacRT an unconditional waiver and release upon progress payment executed by the subcontractors that were due payment from the previous partial payment. For each application for payment for non-construction contracts, the Contractor must submit to SacRT a certification, signed by an officer or managing agent of the Contractor, attesting that all subcontractors have been previously paid all amounts due them from prior progress payments within 30 days after CONTRACTOR's receipt of such progress payments. Failure to submit either the unconditional waiver and release or certification with a payment application, as applicable, will be the grounds to reject that payment application.

A13. MONITORING AND ENFORCEMENT MECHANISMS (49 CFR SECTION 26.37)

SacRT will monitor and provide written certification on the **DBE CONTRACT COMPLIANCE REVIEW CHECKLIST FORM (DBE FORM 8)** for every contract/project entered into by SacRT and subrecipients on which DBEs are participating, ensuring the DBEs are in fact performing the work. SacRT will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. SacRT will bring to the attention of the DOT 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 49 CFR Section 26.109.
2. SacRT will consider similar action under SacRT's own legal authorities, including responsibility determinations in future contracts. SacRT 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 until the contract requirements for substitution or termination of a DBE are satisfied, SacRT reserves right to audit and inspect records and work, liquidated damages for failure to comply with DBE requirements, termination, suspension, or cancellation or other breach of contract actions, pursuant to the terms of the contract and applicable statutes. If SacRT determines that the Contractor's failure to meet all or part of the DBE Contract goal is due to the Contractor's inadequate Good Faith Efforts, the Contractor may be required to pay DBE Liquidated Damages equal to the dollar amount of the unmet DBE Contract goal. 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.

SacRT, 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 SacRT's procurement activities.

3. SacRT 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 field reviews and DBE contractor interviews. SacRT will maintain written certifications on the **DBE CONTRACT COMPLIANCE REVIEW CHECKLIST FORM (DBE FORM 8)** 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 Contract Managers, and engineering and construction management staff.
4. SacRT will evaluate, audit, and document on the **DBE COMMERCIALY USEFUL FUNCTION REPORT (DBE FORM 2)** that DBEs are performing commercially useful functions.
5. SacRT 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 a **DBE ACTIVITY AND PAYMENTS REPORT (DBE FORMS 5 and 6, as applicable)**. This report shows, for each DBE, the Contract amount, the amount paid the DBE in the period covered by the report, and the total amount paid the DBE to date. Before final Contract payment is authorized by SacRT, Contractor must submit a final **DBE ACTIVITY AND PAYMENTS REPORT (DBE FORMS 5 and 6, as applicable)** and the **FINAL REPORT, UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) (DBE FORM 7)**.
6. SacRT will perform compliance reviews of Contract payments to DBEs. The review of payments to DBE subcontractors will be conducted to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

A14. DBE FINANCIAL INSTITUTIONS

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

The Federal Reserve Board compiles data on financial institutions that participate in the Department of the Treasury's Minority Bank Deposit Program. The Federal Reserve maintains lists of these financial institutions that includes identification of minority and gender status and location viewable at

<https://www.fdic.gov/regulations/resources/minority/mdi.html>

SacRT encourages prime Contractors to research the Federal Reserve Board website and use such institutions on USDOT assisted contracts; however, use of financial institutions in the Treasury's Minority Bank Deposit Program will not be counted toward the DBE contract goal.

CONFIRMATION BY DBE*

The undersigned DBE owner or his/her designee confirms that it is currently certified by the State Department of Transportation as a DBE in the field of work indicated below, and if selected for this contract, will perform work as specified by the apparent successful prime contractor.

- Licensed Subcontractor Trucker Supplier Manufacturer
- Consultant Broker Vendor
- Other, please specify _____ Primary NAICS Code: _____

Secondary NAICS Codes: _____

Description of Work to be Performed: _____

Name of DBE Firm: _____

DBE Address: _____

Average Annual Gross Receipts Bracket: Less Than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; \$6-15 million; \$16-25 million; \$26-30 million; \$31-38.5 million; Greater than \$38.5 million.

Gender: Male Female

Race/Ethnicity: Asian Pacific Asian Subcontinent Black Caucasian
 Hispanic Native American Other

DBE Certification No.

The undersigned submitted a bid/proposal for:

_____ (Contract Name / Number)

_____ (Name of Prime Contractor)

Print Name of DBE Representative _____

Signature of DBE Representative _____

Title _____

Date _____

**DBE COMMERCIALY USEFUL FUNCTION REPORT
(Federally Funded Contracts Only)**

| | | |
|------------------------------|--------------------------------------|--------------|
| SACRT CONTRACT NAME & NUMBER | SACRAMENTO REGIONAL TRANSIT DISTRICT | Review Date: |
|------------------------------|--------------------------------------|--------------|

Prime Contractor:

| | |
|-----------|---------------|
| DBE Firm: | DBE Function: |
|-----------|---------------|

Provide a brief description of the DBE's scope of work. (Obtain copy of Subcontract Agreement and/or Purchase Order if needed.)

For any question marked 'No', please explain in the 'Comments' section below and fax the form as indicated on

PERFORMANCE

| | YES | NO | N/A |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| 1. Does the DBE have its own employees on the job to perform the work? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Does the DBE own the equipment being utilized to perform its work? If No, attach equipment list, ownership documents, and rental/lease agreements. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Is the DBE self-performing the subcontract defined task for a specific item of work (distinct element) on the contract? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

HAULING FIRMS

| | YES | NO | N/A |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| 1. Does the DBE hauling firm own and/or lease their trucks? (review ownership/vehicle registration and/or lease documents to verify) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Does the DBE employ drivers for trucks owned by the company? (If leased trucks include operators, this should be indicated in the agreement/purchase order.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Do the haul tickets and/or bills of lading associated with the Contract confirm that hauling is being performed by the DBE? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

MATERIAL SUPPLIERS OR MANUFACTURERS/FABRICATORS

| | YES | NO | N/A |
|---------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| 1. Does the DBE's name appear on all applicable invoices, haul tickets, and/or bills of lading? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Did the DBE provide documentation showing that the funds used to pay a supplier in fact came from the DBE's own funds? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. If the DBE had any materials drop shipped to the work site, was the invoice addressed to the DBE? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Did the DBE deliver materials to the site with their own and/or leased trucks? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

SUPERVISION

| | YES | NO | N/A |
|------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| 1. Is the DBE self-performing work without assistance from the prime or another subcontractor? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Is the DBE providing supervision of its employees and their work? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Is the supervisor a full-time employee of the DBE? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

COMMENTS (This section may be used to describe other concerns not described above or to provide additional information – attach additional pages, if needed).

FEDERAL AID PROJECT NUMBER _____ DBE Firm _____

SACRT RESIDENT ENGINEER OR CONTRACT MANAGER

Signature _____ Date _____

Print Name _____ Phone Number _____

SacRT Resident Engineer or Contract Manager must complete one form for each DBE participating on any federally-funded contract within five (5) days after the DBE firm starts work. If all supporting records and documents are not yet available, please indicate those that still need to be reviewed in the 'Comments' section above and complete the form to the extent possible. As those records become available, they should be reviewed and any unanswered questions should be completed. This form and any supporting documentation must be kept with the Contract files.

If any question is marked 'No', please explain in the 'Comments' section above and forward a one copy of the completed form to the, SacRT Disadvantaged Business Enterprise Liaison Officer (DBELO). DBELO must perform a CUF evaluation and determination for each DBE performing on the Contract, before final acceptance of the Contract and final payment.

FOR THE SACRT DBELO USE ONLY

Action Taken:

Signature _____ Date _____

Print Name _____ Phone Number _____

SEE THE FOLLOWING PAGES FOR GUIDANCE FOR COMPLETING THE COMMERCIALY USEFUL FUNCTION (CUF) REPORT FORM

GUIDANCE FOR COMPLETING THE COMMERCIALLY USEFUL FUNCTION (CUF) REPORT FORM

The guidance below is included to assist you in determining whether or not a Disadvantaged Business Enterprise (DBE) is performing a Commercially Useful Function (CUF) as required under Section 26.55 of Title 49 Code of Federal Regulations Part 26 (Part 26). Federal DBE regulations provide that a DBE is performing a CUF when it is responsible for execution of the work it committed to perform under a contract with the prime and is, in fact, carrying out its contractual responsibilities by performing, managing, and supervising the work. CUF is evaluated under the portion of Part 26 that indicates when DBE participation can be counted towards the Contract goal (49 CFR Part 26.55), is included as an attachment to this document). If it is determined that a DBE is not performing a CUF on some or all of the work subcontracted to them, the prime contractor will lose DBE credit.

Please note that it does not cover every potential CUF issue. Whenever you are unsure of whether a DBE is performing a CUF, contact the SacRT DBELO at 916-261-5063 or for further guidance.

SacRT will maintain the completed CUF form in the Contract files. If all supporting documentation is not yet available, please complete the form to the extent possible indicating in the 'Comments' field any items that still need to be reviewed. Upon receipt of the additional documentation the CUF form should be completed. Continue to monitor the DBE firm to ensure that Commercially Useful Function requirements are being met during the life of the Contract. A CUF form **must be completed for all DBEs performing on any federally funded contract**, regardless if they are being used to meet the DBE Contract goal. Every time a DBE performs a new or different function on the Contract, a new CUF form should be completed. When in doubt contact the SacRT DBELO for additional guidance and/or assistance.

Please note that there is no cookbook or exhaustive list of CUF situations as they tend to be fact-specific. The following are examples of some of the more common incidences:

PERFORMANCE

RED FLAGS

- Employee(s) working for both the Prime and the DBE
- Equipment used by DBE belongs to the Prime Contractor
- Equipment used by DBE belongs to another contractor with no formal lease agreement
- Equipment signs and markings cover another contractor's identity
- Equipment has another contractor's name on it
- A portion of the DBE's work being done by the Prime Contractor or jointly with another contractor

RECORDS/DOCUMENTS

- Certified payrolls
- Equipment ownership, rental, or lease documents (require copy along with subcontract submittal if requested by SacRT)
- Subcontract Agreement or Purchase Order if requested by SacRT.

HAULING FIRMS

RED FLAGS

- Trucks used by DBE belong to the Prime Contractor.
- Trucks used by DBE belong to another contractor with no formal lease agreement
- Truck signs and markings conceal another contractor's identity
- Trucks have another contractor's name on them
- Operator(s) working for both the Prime and DBE
- Use of operator(s) for leased trucks is/are not specified in the lease agreement and operator(s) is not an/are not employee(s) of the DBE

- Haul tickets and/or bills of lading have a firm other than the DBE listed

RECORDS/DOCUMENTS

- Certified payrolls
- Truck ownership/vehicle registration, purchase orders, rental, or lease documents (require copy along with subcontract submittal if requested)

MATERIAL SUPPLIERS OR MANUFACTURERS/FABRICATORS

RED FLAGS

- Invoices do not indicate that DBE is the customer
- A Prime Contractor's employee is listed as the contact person on invoices
- Materials are ordered, billed to, and/or paid, by the Prime Contractor
- Drop shipped materials are addressed to the Prime Contractor
- Materials for DBE credited work are delivered by the Prime Contractor
- Evidence is provided that the DBE supplier is not actually supplying material
- Evidence is provided that the DBE manufacturer is not actually manufacturing material
- Two Party checks or joint checks are sent by the Prime to the supplier or manufacturer

RECORDS/DOCUMENTS

- Invoices/Purchase Orders
- Copies of cancelled checks, electronic bill transfers, bank statements, credit card statement, etc.
- Bills of Lading

SUPERVISION

RED FLAGS

- Prime Contractor or another subcontractor is performing the DBE's work
- The DBE's employees are being supervised by the Prime Contractor or another subcontractor
- The DBE provides little or no supervision of work
- The DBE supervisor is not a full-time employee of the DBE

RECORDS/DOCUMENTS

- Document communication with DBE owner or Superintendent (recommend note in field inspector's diary report)
- Certified Payrolls

DBE REGULATIONS REGARDING COMMERCIALLY USEFUL FUNCTION (CUF)
49 Code of Federal Regulations Part 26.55

- (c) Count expenditures to a DBE contractor toward 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 the contract and 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, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and 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, you must examine similar transactions, particularly those in which DBEs do not participate.
 - (3) If a DBE does not perform or exercise responsibility for at least 30 percent 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, you 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 paragraph (c) (3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - (5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.
- (d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - (2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - (4) The DBE 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.
 - (5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE 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.
 - (6) For purposes above, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

DBE GOOD FAITH EFFORTS CHECKLIST

If any of the three low bidders do not meet the established contract DBE goal, then a good faith efforts submission must be provided no later than 5 days after bid opening (49 CFR Section 26.53).

CONTRACT NAME: _____ CN: _____

Bid Amount: \$ _____ DBE Contract Goal: _____%

Bid Opening Date: _____

Bidder: _____ Committed Participation: DBE% _____

Address: _____

Contact Person: _____ Phone #: (____) _____

If the DBE goal cannot be reached, the following information is required with the DBE submittal to determine Good Faith Efforts:

- 1. Name of person who attended pre-bid conference.
- 2. The names and date(s) of advertisements soliciting DBEs (attach photocopies).
- 3. Date(s) and name(s) of certified DBEs that were given written notices, and/or emails soliciting DBE quotes (attach photocopies).
- 4. Date(s) and name(s) of certified DBEs and the contact persons that were telephoned for quotes (attach copy of telephone log).
- 5. Date(s) and name(s) of certified DBEs that your firm followed up with using written notices and/or telephone calls to determine with certainty if the DBEs you initially solicited are interested (attach copies of written notices and/or emails, and/or follow-up telephone log).
- 6. What work items were made available to the certified DBEs?
- 7. What work item(s) that your firm would normally perform were made available to the certified DBEs?
- 8. What work items were broken down into economically feasible units to facilitate DBE participation? It is the Bidder's responsibility to demonstrate that sufficient work to meet the goal was made available to DBE firms.
- 9. What assistance was provided to certified DBEs (i.e., bonding, plans, specifications, certification, etc.)? Attach description of assistance and names of DBEs provided assistance.
- 10. Provide the name(s) of the certified DBEs whose bid(s) were rejected, the description of work, the price quote(s), and an explanation of why they were rejected. Provide the name(s), description of work, and price quote(s) of the subcontractors whose bids were accepted.
- 11. Provide the name(s) and date(s) of the DBE referral agency contacted for assistance in locating DBEs and in regards to #9 above.
- 12. Any other Good Faith Efforts undertaken (provide documentation).

Signature: _____ Printed Name: _____

Title: _____ Date: _____

SACRAMENTO REGIONAL TRANSIT DISTRICT (SacRT)

SUBSTITUTION REQUEST FOR DISADVANTAGED BUSINESS ENTERPRISE

| | | |
|--------------------------|-------------------------------------------------------------------------|------|
| CONTRACT NAME AND NUMBER | REVIEW | |
| | SACRT RESIDENT ENGINEER OR CONTRACT MANAGER (Print Name & Signature) | DATE |
| REQUEST DATE | APPROVAL | |
| PRIME CONTRACTOR | SACRT DBELO (Print Name & Signature) | DATE |

| Listed or Previously Approved Firm <input type="checkbox"/> DBE | | | | Proposed Firm <input type="checkbox"/> DBE <input type="checkbox"/> NON DBE | | |
|-----------------------------------------------------------------|------------------|-------------------------|-------------------------|-----------------------------------------------------------------------------|------------------|---------------|
| ITEM NUMBER | WORK DESCRIPTION | COMPLETED DOLLAR AMOUNT | REMAINING DOLLAR AMOUNT | ITEM NUMBER | WORK DESCRIPTION | DOLLAR AMOUNT |
| | | | | | | |
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| | | | | | | |
| | | | | | | |
| | | | | | | |
| TOTAL \$ | | | | TOTAL \$ | | |

REASONS FOR SUBSTITUTION
Check appropriate box – see Instructions on next page

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <input type="checkbox"/> 1. The listed DBE subcontractor fails or refuses to execute a written contract. <input type="checkbox"/> 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. <input type="checkbox"/> 3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements. <input type="checkbox"/> 4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness. <input type="checkbox"/> 5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceeding pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law. | <ul style="list-style-type: none"> <input type="checkbox"/> 6. You have determined that the listed DBE subcontractor is not a responsible contractor. <input type="checkbox"/> 7. The listed DBE subcontractor voluntarily withdraws from the Contract and provides to you written notice of its withdrawal. <input type="checkbox"/> 8. The listed DBE is ineligible to receive DBE credit for the type of work required. <input type="checkbox"/> 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. <input type="checkbox"/> 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. |
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REMARKS:

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SUBSTITUTION REQUEST FOR DISADVANTAGED BUSINESS ENTERPRISE (DBE) INSTRUCTIONS

Contractor must complete the substitution request form and submit the request to the SacRT Resident Engineer or Contract Manager. Contractor must provide the names of the firms involved, and check the box for DBE, or non-DBE, as applicable, and provide the original item number, work description, completed dollar amount, remaining dollar amount and the proposed item number, work description and dollar amount. If a portion of the work has already been completed by the listed or previously approved firm, Contractor must provide an explanation in the remarks section. Contractor must have good cause to terminate the DBE firm and must check the box for one or more of the ten listed reasons. If the substitution request requires a good faith effort to substitute a listed DBE with a firm that is not certified as a DBE, Contractor must submit the documentation of good faith effort to the SacRT resident engineer or project manager.

The SacRT Resident Engineer or Contract Manager must review the substitution request upon receipt of a written request for substitution of a listed (DBE) and after review, must sign the request form and forward (along with good faith effort documentation if applicable) with recommendations to the SacRT Disadvantaged Business Enterprise Liaison Officer (DBELO) for approval.

The SacRT DBELO may provide written consent for substitution of the listed DBE firm only if the SacRT DBELO agrees, for reasons stated in SacRT's Substitution Request for DBE Form, that the Contractor has good cause to terminate the DBE firm, and if applicable the SacRT DBELO has reviewed and approved the good faith effort.

The SacRT DBELO can approve the substitution request if:

- 1) One DBE is to be substituted for another DBE if the same items of work are involved or, if different items, the dollar value is equal to or greater than the original bid or proposal;
- 2) The new DBE is certified at the time of substitution; and
- 3) The good cause reason for substitution is based on one or more of the ten listed reasons.

SACRAMENTO REGIONAL TRANSIT DISTRICT (SACRT)
DISADVANTAGED BUSINESS ENTERPRISES (DBE) PAYMENT

| | | | |
|---------------------------|-------------------|-------|---------------------|
| CONTRACT NAME AND NUMBER: | MONTH: | YEAR: | FEDERAL AID NUMBER: |
| PRIME CONTRACTOR: | BUSINESS ADDRESS: | | |

| ITEM NUMBER(S) OF WORK PERFORMED | DBE FIRM NAME AND BUSINESS ADDRESS | DBE CERT. NUMBER | DATE OF PAYMENT | AMOUNT PAID | PERCENT OF PARTICIPATION CREDIT TOWARDS COMMITMENT | TOTAL PERCENT OF DBE WORK COMPLETED TO DATE | COMMENTS |
|----------------------------------|------------------------------------|------------------|-----------------|-------------|----------------------------------------------------|---------------------------------------------|----------|
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List all Disadvantaged Business Enterprises (DBEs) regardless of tier, whether or not the firms were originally listed for goal credit. If actual DBE utilization (or item of work) was different than that approved at the time of award, provide comments. List actual amount paid to each entity.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT

| | | | |
|--------------------------------------|-------------------------------------------|------------------------|-------|
| CONTRACTOR REPRESENTATIVE SIGNATURE: | CONTRACTOR'S REPRESENTATIVE NAME: (PRINT) | BUSINESS PHONE NUMBER: | DATE: |
|--------------------------------------|-------------------------------------------|------------------------|-------|

SACRT REVIEW

 PRINT NAME SIGNATURE DATE
 SACRT DISADVANTAGED BUSINESS ENTERPRISE LIAISON OFFICER (DBELO)

DISADVANTAGED BUSINESS ENTERPRISES (DBE) PAYMENT INSTRUCTIONS

Contractor must enter the contract number, reporting month and year, federal aid number, prime contractor name and address. For each DBE, Contractor must identify the item(s) of work performed, the DBE firm name, address, certification number, amount paid, payment date, percent of participation credited towards contract commitment (as detailed below), and total percent of work completed to date. Contractor must use the comments section to explain any differences in the original commitment and the payments to the DBE firms.

If a subcontractor performing work as a non-DBE on the Contract becomes certified as a DBE, Contractor must enter the amount paid for work performed after certification as a DBE.

Contractor must sign, print name, and date the form indicating that the information provided is completed and correct.

Credit for materials or supplies purchased from DBEs will be evaluated on a contract-by-contract basis and counts toward the goal in the following manner:

1. 100 percent if the materials or supplies are obtained from a DBE manufacturer.
2. 60 percent if the materials or supplies are obtained from a DBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies if they are obtained from a DBE that is neither a manufacturer nor a regular dealer. 49 CFR 26.55 defines manufacturer and regular dealer.

Contractor receives credit toward the goal by employing a DBE trucking company that is performing a commercially useful function. The Department of Transportation uses the following factors in determining whether a DBE trucking company is performing a commercially useful function:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE 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.
- The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

References:

Section 49 CFR 26.55 How is DBE participation counted toward goals?

Section 49 CFR 26.87(j) Effects of Removal of DBE Certification Eligibility

DISADVANTAGED BUSINESS ENTERPRISES (DBE) TRUCKING VERIFICATION INSTRUCTIONS

Contractor must enter the contract number, reporting month and year, federal aid number, prime contractor name and address.

The form has a column to enter the name of the Truck Owner, DBE Cert. No. (if DBE Certified) and the Name and Address of the trucking company. The form also requires the Truck No. and the California Highway Patrol CA No.

For any contract that includes trucking, Contractor must submit the form each month, showing the dollar amount paid to the DBE trucking company(s) for trucking work performed by DBE certified trucks and for any fees or commissions of non-DBE trucks utilized each month on the Contract. The amount paid to each trucking company must be entered in the Commission or Amount Paid column. Payment information is derived using the following:

100% for the trucking services provided by the DBE using trucks it owns, operates, and insures.

100% for the trucking services provided by the trucks leased from other DBE firms.

The fee or commission paid to non-DBEs for the lease of trucks. Contractor does not receive 100% credit for these services because they are not provided by a DBE company.

The total dollar figure of the Commission or Amount Paid column must be placed in the box labeled Total Amount Paid. The Date Paid column requires the date that each trucking company was paid for services rendered. The Lease Arrangement column requires information if a lease arrangement is applicable.

Contractor and the SacRT Disadvantaged Business Enterprise Liaison Officer (DBELO) sign and date the form indicating that the information provided is completed and correct and the DBE paperwork and worksites have been monitored for participation.

FINAL REPORT - UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES

| CONTRACT NAME & NUMBER | | | FEDERAL AID PROJECT NUMBER | | | CONTRACT COMPLETION DATE | |
|------------------------|------------------------------------------------------|-----------------------------------|----------------------------|-------------------|-----|---------------------------|-----------------------|
| PRIME CONTRACTOR | | BUSINESS ADDRESS | | | | ESTIMATED CONTRACT AMOUNT | |
| ITEM NO. | DESCRIPTION OF WORK PERFORMED AND MATERIALS PROVIDED | COMPANY NAME AND BUSINESS ADDRESS | DBE CERT. NUMBER | CONTRACT PAYMENTS | | DATE WORK COMPLETE | DATE OF FINAL PAYMENT |
| | | | | NON-DBE | DBE | | |
| | | | | \$ | \$ | | |
| | | | | \$ | \$ | | |
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| | | | | \$ | \$ | | |
| | | | | \$ | \$ | | |
| | | | | \$ | \$ | | |
| | | | TOTAL | \$ | \$ | | |

ORIGINAL DBE COMMITMENT: \$ _____ / % FINAL TOTAL DBE UTILIZATION PAYMENTS AND PERCENTAGE OF FINAL TOTAL CONTRACT AMOUNT: \$ _____ / %

Comments:

Contractor must list all first tier subcontractors and all Disadvantaged Business Enterprises (DBEs) regardless of tier, whether or not the firms were originally listed for DBE goal credit. If actual DBE utilization (or item of work) was different than that approved at the time of award, Contractor must provide comments. If more space is needed, Contractor must add comments on the following page after the instructions. Contractor must list actual amount paid to each entity.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT

| | | | |
|--------------------------------------|-------------------------------------------|------------------------|-------|
| CONTRACTOR REPRESENTATIVE SIGNATURE: | CONTRACTOR'S REPRESENTATIVE NAME: (PRINT) | BUSINESS PHONE NUMBER: | DATE: |
|--------------------------------------|-------------------------------------------|------------------------|-------|

I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAS BEEN MONITORED

| | | | |
|----------------------------------------------------------------------|-------------------------------------------------------------------------|------------------------|-------|
| Disadvantaged Business Enterprise Liaison Officer (DBELO) SIGNATURE: | Disadvantaged Business Enterprise Liaison Officer (DBELO) NAME: (PRINT) | BUSINESS PHONE NUMBER: | DATE: |
|----------------------------------------------------------------------|-------------------------------------------------------------------------|------------------------|-------|

FINAL REPORT - UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES INSTRUCTIONS

This form has three columns for entering the dollar value for the item(s) of work performed or provided by the firm. The Non-DBE column is used to enter the dollar value of work performed by first-tier subcontracting firms who are not certified as a DBE.

The DBE column is used to enter the dollar value of work performed by firms that are certified DBEs.

DBE prime contractors are required to show the corresponding dollar value of work performed by their own forces.

If a firm performing work as a DBE under the Contract becomes decertified and still performs work after the decertification date, Contractor must enter the total value performed by this firm under the appropriate DBE. If a subcontractor performing work as a non-DBE on the Contract becomes certified as a DBE, Contractor must enter the dollar value of all work performed after certification as a DBE under the appropriate identification column.

Contractor must enter the Date Work Completed as well as the Date of Final Payment (the date when the prime contractor made the "final payment" to the firm for the portion of work listed as being completed). DBE prime contractors are required to show the date of work performed by their own forces.

Contractor must use the comments section to explain any differences in the original commitment and the final utilization of DBE firms.

Contractor and the SacRT Disadvantaged Business Enterprise Liaison Officer (DBELO) sign and date the form indicating that the information provided is completed and correct and the DBE paperwork and worksites have been monitored for participation.

DBE CONTRACT COMPLIANCE REVIEW CHECKLIST (CCRC)

Contract Name: _____
Contract CN: _____
Contract PO #: _____
 Contract Manager Name(s), Department, Phone, Email: _____
 SacRT DBELO Name, Phone, Email: _____
 SacRT Procurement Analyst Name, Phone, Email: _____

Prime Contractor: _____
 Prime Contract Award Amount: _____
 Prime Contractor Main Point of Contact: _____
 Contract Type (check one): Construction Service Supply/Material

Copy this section for multiple DBE Awards

DBE Name: _____
 DBE Caltrans CUCP (<https://dot.ca.gov/programs/civil-rights/dbe-search>) Registration Number: _____
 DBE Business Type, see 49 CFR §26.55 (check one): service/construction supplier manufacturer trucking
 DBE Award Amount: _____

Pre-Award Contract Checklist (Procurement and DBELO)

| | |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | DBE Commitment Form completed and signed by the prime contractor or, alternatively, DBE subcontractor quote is provided. Reviewed and approved by SacRT DBELO. |
| <input type="checkbox"/> | If prime contractor is unable to meet the DBE goal, collect documentation of its good faith effort and submit to SacRT DBELO for review for approval prior to award. |
| <input type="checkbox"/> | Ensure subcontractor quotes for both DBEs and non-DBEs are included as part of the good faith effort documentation in those instances where a non-DBE's quote is selected over a DBE's quote due to the prime's determination that the DBE firm's quote was too high or unreasonable. |
| <input type="checkbox"/> | Ensure that DBEs are registered with Caltrans CUCP (https://dot.ca.gov/programs/civil-rights/dbe-search); save to procurement file a PDF of CUCP search results as proof of registration. |
| <input type="checkbox"/> | Ensure that the NAICS codes included on the bid accurately reflect the items of work to be performed by the DBE firm(s). Also ensure that the DBE firm is certified with the applicable NAICS codes for that type of work (https://dot.ca.gov/programs/civil-rights/dbe-search). |
| <input type="checkbox"/> | Ensure that all DBE subcontractors are registered in SacRT's eProcurement vendor database, including the DBE registration number and expiration, gross receipts, and business age data. |

Post Award Contract Checklist (DBELO)

| | |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | Collect fully-executed (signed) subcontracts for all DBE firms listed. |
| <input type="checkbox"/> | Ensure that DBE contract assurance and prompt payment requirement language is included in all prime and subcontractor agreements. (49 CFR §26.13 Assurances & 49 CFR §26.29 Prompt Payment) |
| <input type="checkbox"/> | Review DBE subcontract(s) to ensure firms listed and scope of work is consistent with what is listed on the bid. |
| <input type="checkbox"/> | Ensure dollar value of DBE subcontract(s) is/are equal to or greater than the amount(s) listed on the bid. |

Contract Compliance Checklist (Contract Manager)

| | |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | Complete DBE Commercially Useful Function review within 5 days of DBE commencing work to verify that the DBEs are performing a commercially useful function. This must be completed for all DBE firms participating on the Contract, including those not used to meet a DBE goal. (49 CFR §26.55(c) and (d)) |
| <input type="checkbox"/> | Verify that business names on equipment and vehicles are not covered with paint or magnetic signs (visual inspection of vehicles on site) |
| <input type="checkbox"/> | Verify who employs the workers on site (visually inspect badges/IDs; establish reporting relationships of workers on site/review certified payrolls) |
| <input type="checkbox"/> | Review supplier invoices and cancelled checks to verify what firm orders and pays for the necessary supplies being used by the DBE subcontractor. (49 CFR §26.55(e)) |
| <input type="checkbox"/> | Collect and review Certified Payroll Reports, Unconditional Waiver Releases, Construction Progress Meeting Minutes, and Inspector Daily Reports. Save all documentation to contract file. |
| <input type="checkbox"/> | Ensure all DBE firms are paid promptly (within 30 days of payment to prime contractor) by collecting and reviewing DBE Payment Reports (DBE Forms 5 and 6). Submit copies to DBELO for review. Ref: 49 CFR §26.29 Prompt Payment |
| <input type="checkbox"/> | Collect Final DBE Utilization Report (DBE Form 7) and submit to DBELO. |

Contract Compliance Checklist (DBELO)

| | |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | Collect and review DBE invoices and corresponding cancelled checks (or other proof of payment such as bank statements, electronic funds transfer, etc.) |
| <input type="checkbox"/> | Record DBE payments below. Check this box after the last payment is made for all DBEs listed in the Payments section below. |

Copy this section for multiple DBE Awards.

Add a row for each additional payment. Keep running total of all payments to compare to award amount.

DBE Payment Record for Vendor: _____

DBE Award Amount: _____

Completed (Check this box when all payments to this DBE are completed)

| Date | Payment Amount | Paid-to-Date Total |
|------|----------------|--------------------|
| | | |

Subrecipient Monitoring Compliance (DBELO/Grants/Procurement)

Reference: SacRT Federal Grant Program Subrecipient Monitoring, Management, and Administration Plan

| | |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | Verify that Subrecipient has an approved DBE Program. |
| <input type="checkbox"/> | Verify receipt and review by SacRT Procurement and Legal of FTA Mandatory Procurement Standards Worksheet from subrecipient. The worksheet and requirements are contained in Exhibit 1 of SacRT's Subrecipient Monitoring Plan document. |
| <input type="checkbox"/> | Verify that Subrecipients have a contract clause that requires primes to pay subcontractors for satisfactory performance of their contract work no later than 30 days from receipt of payment for such work from the subrecipient. |
| <input type="checkbox"/> | Verify that Subrecipients have a process to monitor contractors for compliance with applicable DBE requirements. Subrecipients may request a copy of SacRT's CCRC to use for this purpose if they do not have their own monitoring mechanism. |
| <input type="checkbox"/> | Verify that Subrecipients follow all Transit Vehicle Manufacturer (TVM) requirements specified below. |
| <input type="checkbox"/> | Quarterly: subrecipients must submit DBE payment information to SacRT DBELO for inclusion in FTA Uniform Reports. Procedures are contained in Appendix E of SacRT's Subrecipient Monitoring Plan document. |

DBE Termination and Substitution Checklist (Contract Manager)

| | |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | Document and file any correspondence related to terminations, substitutions, or deletions of DBE firms. |
| <input type="checkbox"/> | Ensure documentation is included which verifies DBE firm received sufficient notice and time to respond to the notice of intent to terminate or substitute (minimum 5 day notice per 49 CFR §26.53) |
| <input type="checkbox"/> | Ensure written approval was received from SacRT DBELO prior to making any substitutions for an approved DBE subcontractor - complete DBE Form 4 and submit to DBELO for review and approval. |
| <input type="checkbox"/> | If terminations, substitutions, or deletions were approved, collect documentation of prime contractor's good faith effort to find a replacement firm (Contractor must submit good faith effort documentation to SacRT within 7 days of the request for documentation) prior to performance of the work originally to be performed by the DBE firm being replaced. |

Transit Vehicle Manufacturer (TVM) DBE Requirement Checklist (49 CFR §26.49) (Procurement)

This section applies only to Transit Vehicle Procurements

| | |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | Confirm that there is a provision in the bid specifications requiring the certification from TVMs as a condition of permission to bid. |
| <input type="checkbox"/> | Confirm receipt from each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, a certification that it has complied with the requirements of 49 CFR §26.49. |
| <input type="checkbox"/> | Verify that the TVM is authorized to bid or propose on U.S. DOT-assisted transit vehicle procurements. Save a PDF of the certified TVM list in the procurement file to document that the requirement was met. FTA's certified list of TVMs is posted on the FTA website at: https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers |
| <input type="checkbox"/> | Within 30 days of making an award, submit the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement. SacRT will submit the required post-award TVM report online at: https://www.surveymonkey.com/r/vehicleawardreportsurvey . To confirm notification of TVM award has been made to FTA, save a PDF of the notification of TVM award in the procurement file to document that the requirement was met. |
| <input type="checkbox"/> | FOR SUBRECIPIENTS: within 30 days of making an award to purchase transit vehicles, subrecipients must send to SacRT a letter on agency letterhead stating the name of the successful TVM bidder and the total dollar value of the contract. SacRT must in turn send the subrecipient's letter and verification of confirmation that the TVM is on the FTA certified list of TVMs Eligible to Bid on Federally Funded Transit Agency Contracts to the FTA RCRO,. |

Post Contract Checklist (DBELO)

| | |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | Ensure DBE goal has been achieved by reviewing Final DBE Utilization Report (DBE Form 7) when submitted by Contract Manager. |
| <input type="checkbox"/> | If a shortfall exists, request and review Good Faith Effort documentation from prime contractor explaining reasons shortfall took place. |

Certification pursuant to 49 CFR 26.37(b): I hereby certify that the contracting records for the Contract listed above have been reviewed and the work site has been visited/monitored, as applicable.

Contract Manager Signature: _____ Date: _____

Contract Manager Printed Name: _____

Contract Manager Title: _____

DBELO Signature: _____ Date: _____

DBELO Printed Name: _____

Title: Disadvantaged Business Enterprise Liaison Officer (DBELO)