



# ***DIVERSITY PROGRAM FOR CONTRACTS***

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I. POLICY (Section 26.23)

Solano County Transit (SolTrans) is committed to a Diversity Program for the participation of Disadvantaged Business Enterprises (DBEs) in SolTrans' contracting opportunities, in accordance with 49 Code of Federal Regulations (CFR) Part 26, revised as of October 2, 2014, as may be amended (Regulations). It is the policy of SolTrans to ensure nondiscrimination on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (U.S. DOT)-assisted contracts or in the administration of its DBE program or the requirements of 49 CFR Part 26. It is the intention of SolTrans to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to SolTrans' construction, procurement and professional services activities.

The Board of Directors is responsible for establishing the DBE policy of SolTrans. The Executive Director of SolTrans is responsible for ensuring adherence to this policy. The DBE Liaison Officer (DBELO), in coordination with all SolTrans Officers, Division Managers, Department Heads, and Purchasing, is responsible for the development, implementation and monitoring of the Diversity Program for Contracts, in accordance with SolTrans' nondiscrimination policy. It is the expectation of the Board of Directors and the Executive Director that all SolTrans personnel shall adhere to the spirit, as well as the provisions and procedures, of this Program.

This policy will be circulated to all SolTrans personnel and to members of the community that perform or are interested in performing work on SolTrans contracts. The complete Diversity Program for Contracts and analysis regarding the overall DBE goal(s) and/or project goal(s) established are available for review at:

DBE Program Office  
Solano County Transit  
311 Sacramento Street  
Vallejo, CA 94590

If you have any questions or would like further information regarding this Program, please contact DBELO Dennis Ybarra, by telephone at (707) 736-6984, or by e-mail at [dennis@soltransride.com](mailto:dennis@soltransride.com).

Revision Date: March 19, 2019

A. Applicability (Sections 26.3 and 26.21)

SolTrans, a recipient of federal financial assistance from the Federal Transit Administration (“FTA”) of the U.S. Department of Transportation (U.S. DOT), is required to implement a DBE Program in accordance with 49 CFR Part 26, which is incorporated herein by this reference. The Program outlined herein applies to all SolTrans contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance. To the extent that the Program’s policy, objectives and efforts involve race-neutral and gender-neutral methods, the Program will apply to all SolTrans contracts regardless of funding source. In the event of any conflicts or inconsistencies between the Regulations and this DBE Program with respect to U.S. DOT-assisted contracts, the Regulations shall prevail.

B. Objectives (Section 26.1)

The objectives of this Program are the following:

1. To remove barriers to DBE participation in the bidding, award and administration of SolTrans contracts;
2. To assist DBEs to develop and compete successfully outside of the Program;
3. To ensure that the Program is narrowly tailored in accordance with 49 CFR Part 26;
4. To ensure that only DBEs meeting the eligibility requirements are permitted to participate as DBEs;
5. To identify business enterprises that are eligible as DBEs to provide SolTrans with required materials, equipment, supplies and services, and to develop a good rapport with the owners, managers and sales representatives of those enterprises;
6. To develop communication programs and procedures which will acquaint prospective DBEs with SolTrans’ contract procedures, activities and requirements, and allow DBEs to provide SolTrans with feedback on existing barriers to participation and effective procedures to eliminate those barriers;
7. To administer the Program in close coordination within SolTrans so as to facilitate the successful implementation of this Program; and
8. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by SolTrans.

C. Prohibited Discrimination (Section 26.7)

SolTrans shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by 49 CFR Part 26 on the basis of race, color, national origin, or sex.

SolTrans shall not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this Program with respect to individuals of a particular race, color, national origin, or sex.

## II. DEFINITIONS (Section 26.5)

Any terms used in this Program that are defined in 49 CFR § 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. Some of the most common terms are defined below:

### A. Disadvantaged Business Enterprise (DBE) (Section 26.5)

A for-profit, small business concern: 1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and 2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

### B. Small Business Concern (Section 26.5)

With respect to firms seeking to participate as DBEs in U.S. DOT-assisted contracts, a small business concern, as defined pursuant to Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121), whose average annual gross receipts for the previous three (3) years does not exceed \$23.98 million (or as adjusted for inflation by the Secretary of U.S. DOT) pursuant to 49 CFR § 26.65(b).

### C. Socially and Economically Disadvantaged Individuals (Section 26.5)

Socially and economically disadvantaged individuals mean any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

There is a rebuttable presumption that an individual is both socially and economically disadvantaged if she/he is a citizen or lawfully admitted permanent resident of the United States and is:

1. Black American (including persons having origins in any of the Black racial groups of Africa);
2. Hispanic American (including persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race);

3. Native American (including persons who are enrolled members of a federally or state recognized Indian tribe, Alaskan Natives or Native Hawaiians);

4. Asian-Pacific American (including persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, the Federated States of Micronesia, or Hong Kong;

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

6. A Woman; or

7. A member of any additional group that is designated as socially and economically disadvantaged by the Small Business Administration, at such time as the Small Business Administration designation becomes effective.

Additionally, any individual can demonstrate, by a preponderance of evidence, that he is socially and economically disadvantaged on a case-by-case basis. SolTrans will follow the guidelines in 49 CFR Part 26, Appendix E.

An individual cannot be presumed or determined on a case-by-case basis to be economically disadvantaged if she/he has a personal net worth exceeding \$1.32 Million (excluding the individual's ownership interests in the small business concern and his or her primary residence), or are able to accumulate substantial wealth as defined in 49 CFR § 26.67.

D. Race-Neutral (Section 26.5)

A procedure or program that is used, or can be used, to assist all small businesses. For the purposes of this Program, race-neutral includes ethnic and gender neutrality.

E. Race-Conscious (Section 26.5)

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

F. Personal Net Worth (Sections 26.5 and 26.67)

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

### III. RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION

#### A. Duties of DBE Program Analyst (Section 26.25)

Pursuant to 49 CFR § 26.25, the Program shall be administered by the Program Analyst II – Grants, Reporting, and Compliance, who shall be appointed by and have direct, independent access to the Executive Director of SolTrans. The DBE Program Analyst is designated as the Disadvantaged Business Enterprise Liaison Officer (DBELO), who is the primary person responsible for implementing all aspects of this Program, and will work closely with operating divisions and other departments and consultants of SolTrans, including legal, procurement, engineering, insurance and others who are responsible for making decisions relative to SolTrans' construction, procurement and professional service contracts.

The DBELO's specific duties and responsibilities are attached as Exhibit A and incorporated herein.

#### B. Duties of Diversity Program for Contracts Review Committee (Sections 26.53 and 26.87)

The Executive Director and two staff persons shall comprise the Diversity Program for Contracts Review Committee ("Review Committee"). The DBELO shall make recommendations subject to the concurrence of the Review Committee, attend all Review Committee meetings and furnish background information, but shall not be a voting member of the Review Committee. The Review Committee shall assist the DBELO with the implementation of this Program and review recommendations to the Executive Director and, as applicable, the Board of Directors, with respect to the establishment of overall goal(s), project goal(s), and contract-specific goals for appropriate individual contracts. The Review Committee shall preside over hearings that may be held pursuant to this Program, including administrative reconsideration of the DBELO's determination of a bidder's compliance with good faith efforts/diversity program for contracts requirements, in accordance with 49 CFR §§ 26.53(d) and 26.87(e), respectively.

#### C. Duties of SolTrans Officers, Managers, and Program Analyst - Procurement (Section 26.51)

All SolTrans Officers, Managers, and Program Analyst - Procurement are responsible for the implementation of the DBE Program in their respective areas of authority, in coordination with the DBELO.

#### D. Regional Outreach (Section 26.51)

The DBELO is designated by the Executive Director to represent SolTrans as a member of appropriate regional outreach consortia. SolTrans will participate in such group programs, activities and efforts in the San Francisco Bay Area to create a level playing field on which DBEs can compete fairly; to enhance outreach and communication efforts with these firms; to provide appropriate assistance and information for participation in U.S. DOT-assisted contracts and other contracts; and to develop joint resources among recipients. To this end, the DBELO will attend

scheduled meetings of such groups and will contribute to the achievement of their projects approved by SolTrans's Executive Director.

E. California Unified Certification Program (Section 26.81)

The primary source of DBE directory and certification information for the SolTrans Diversity Program for Contracts is the California Department of Transportation (Caltrans) under the California Unified Certification Program.

IV. ADMINISTRATIVE REQUIREMENTS

A. DBE Financial Institutions (Section 26.27)

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

The DBELO has researched the Federal Reserve Board website at [www.federalreserve.gov/releases/mob/](http://www.federalreserve.gov/releases/mob/) to identify minority-owned banks. Data in this website is derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 through 034) and from other information on the Board's National Information Center database. The DBELO will continue to use this source to solicit minority-owned banks to participate in SolTrans' DBE Program.

To date, the DBELO has identified the following minority-owned financial institutions that offer services in the San Francisco Bay Area (as of September 30, 2018), or as updated from time to time:

Bank of Hope  
Bank of the Orient  
California Pacific Bank  
Cathay Bank  
CTBC Bank Corp USA  
East West Bank  
Gateway Bank  
Hanmi Bank  
Bank of Guam  
Open Bank  
Preferred Bank  
State Bank of India

Information on these institutions can be obtained from the Analyst.

B. DBE Database (Section 26.31)

The DBE Database is a consolidated and automated directory that identifies firms that have been certified as DBEs by the California Unified Certification Program (CUCP). The DBE

Database is jointly maintained and updated by the CUCP certifying member agencies, in coordination with the California Department of Transportation (Caltrans), the CUCP DBE Database Manager. The DBE Database is available at Caltrans' website on the Internet, [www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm), and can be made available to contractors and to the public upon request. SolTrans will use the DBE Database as a primary resource in developing overall goals, project goals, and contract-specific goals and conducting outreach and other activities to promote DBE participation in U.S. DOT contracts.

The DBE Database shall include the firm's name, address, telephone number, and types of work, utilizing the North American Industry Classification System (NAICS) codes for which the firm is certified as a DBE. Additionally, the DBE Database may include, whenever possible, the date the firm was established, the legal structure of the firm, the percentage owned by disadvantaged individuals, capacity, previous work experience and a contact person. The DBE Database shall not in any way prequalify the identified DBE firms with respect to licensing, bondability, competence or financial responsibility.

C. Bidders List (Section 26.11)

The DBELO has created and is maintaining a bidders list consisting of all firms bidding on prime contracts and bidding or quoting on subcontracts on U.S. DOT-assisted projects. For every firm, the following information will be included: firm name, firm address, firm status as a DBE or non-DBE, the age of the firm, and the annual gross receipts of the firm. Data gathering will be conducted by requiring firms bidding on contracts with subcontracting opportunities to submit a form entitled, Prime Contractor and Subcontractor/Subconsultant/ Supplier Report. In the case of firms bidding on contracts without subcontracting opportunities, data gathering will be conducted by requesting firms to complete a survey entitled Bidder Information Survey. The DBELO will maintain the confidentiality of any proprietary information, in accordance with applicable California law and the Regulations. This information will be requested of all bidders, as further described in Section IX.

D. Over-Concentration (Section 26.33)

If the DBELO determines that DBE participation is so over-concentrated in certain types of work or contracting opportunities assisted by FTA that it unduly burdens the participation of non-DBEs in that type of work, the DBELO will develop appropriate measures to address the over-concentration. The DBELO will seek approval of such measures from FTA or Caltrans on behalf of FTA and, at that time, the measures will become a part of this Program. Currently, SolTrans is unaware of any types of work that have a burdensome over-concentration of DBE participation.

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

SolTrans may establish or participate in a DBE business development program to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE Program. As a part of the business development program or separately, SolTrans may establish or participate in a mentor-protégé program in which another DBE or non-DBE firm is the principal source of business development assistance. If SolTrans determines such a program is beneficial, a proposed program will be written and submitted to the U.S. DOT operating administrations for approval,

after which it will become part of this DBE Program. Guidelines outlined in Appendices C and D of 49 CFR Part 26 will be utilized in setting up the formal agreements and programs.

F. Dissemination of Policy Statement (Section 26.23)

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

1. Through electronic mail to Managers and Purchasing and Buying Staff;
2. Through regular mail to DBE and non-DBE firms that are currently performing work on U.S. DOT-assisted contracts;
3. Through regular mail to DBE and non-DBE firms that are recently awarded U.S. DOT-assisted contracts; and
4. Through SolTrans' website and upon request by the interested public, including the business community.

Additionally, to ensure that potential bidders are aware of the DBE policy, SolTrans makes reference to this policy in its contract specifications and advertisements of all U.S. DOT-assisted contracts.

G. Monitoring Actual DBE Participation (Sections 26.37 and 26.55)

The DBELO shall monitor and track actual DBE participation through SolTrans and contractor reports of payments and other appropriate monitoring, as further described in Section VIII and Exhibit C. The DBELO will maintain a running tally of payments actually made to DBE firms and may require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments. Monitoring will include a written certification that Staff has reviewed contracting records and monitored work sites in California for this purpose. Monitoring may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

The DBELO shall ensure that DBE participation is counted toward contract goals and the overall goal or project goal in accordance with the Regulations. Credit toward overall goal, project goal or contract goal will only be given upon satisfactory evidence that payments were actually made to DBEs.

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

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

The DBELO will continue to provide the reports regarding DBE participation and overall goal(s) and/or project goal(s) required by the Regulations to FTA and Caltrans on behalf of FTA.

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

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

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

SolTrans receives U.S. DOT financial assistance as a direct recipient of such funds from the Federal Transit Administration (FTA), and as a subrecipient of such funds from Federal Transit Administration through the California Department of Transportation (Caltrans). The Board of Directors shall establish an overall goal for the participation of DBEs in all budgeted contracts utilizing U.S. DOT/FTA financial assistance. The overall goal shall be expressed as a percentage of the total amount of U.S. DOT/FTA funds SolTrans anticipates expending in the three forthcoming fiscal years. In appropriate cases, a project goal may be approved and expressed as a percentage of funds for a particular grant or project or group of grants and/or projects.

SolTrans' overall goal(s) and/or project goal(s) represent the amount of ready, willing and able DBEs that are available to participate in contracting opportunities and is reflective of the amount of DBE participation SolTrans would expect absent the effects of discrimination. SolTrans intends to meet its goal(s) to the maximum extent feasible through the race-neutral measures described in Section V.D. Where race-neutral measures are inadequate to meet the overall goal(s) and/or project goal(s), SolTrans may use race-conscious measures for particular projects with subcontracting opportunities.

A. Methodology for Setting Overall DBE Goal(s) and/or Project Goal(s) (Section 26.45)

1. Projecting U.S. DOT-Assisted Contract Expenditures. In conjunction with the preparation and adoption of the budget, the DBELO, in consultation with the appropriate SolTrans departments responsible for contracting activities, will conduct a thorough analysis of the projected number, types of work and dollar amounts of contracting opportunities that will be funded, in whole or in part, by U.S. DOT federal financial assistance. This analysis will exclude projected contract expenditures for transit vehicle manufacturers, which are exempt from SolTrans' goal-setting process, as described in Section V.C.

2. Establishing a Base Figure. SolTrans will develop a base figure for the relative availability of DBEs by determining the number of ready, willing and able DBEs relative to the number of all businesses ready, willing and able to participate in its U.S. DOT-assisted contracts. SolTrans will follow one of the methodologies provided in the Regulations or develop an alternative methodology and provide the appropriate documentation in the Overall Goal(s) and/or Project Goal(s) Analysis Report described in Section V.B.

a. Analyzing Available Businesses in SolTrans' local market area. The DBELO, in conjunction with the appropriate SolTrans divisions and departments, will conduct

a thorough analysis of its local market area in which SolTrans will solicit participation from contractors, subcontractors, consultants, subconsultants, manufacturers, and suppliers. This analysis will include a description of geographical boundaries of its local market area, the NAICS codes for the types of work to be contracted, and any other indicators that SolTrans determines to be relevant in defining its local market area. The DBELO will then determine the total available businesses according to its local market area. The DBELO will consider a variety of sources including, but not limited to, the U.S. Census Bureau's County Business Patterns Database, SolTrans' Bidders List, and relevant disparity studies.

b. Analyzing Available DBEs in SolTrans' local market area. The DBELO will conduct a similar analysis to determine the total DBEs that are available to participate as contractors, subcontractors, consultants, subconsultants, manufacturers, and suppliers in the projected contracts. This analysis will include a description of the available DBEs relative to the geographical boundaries of its local market area, the NAICS codes for the types of work to be contracted, and any other factors as described in Section V.A.2.a. SolTrans will consider a variety of sources including, but not limited to, the CUCP DBE Database, its Bidders List, and any relevant disparity studies.

c. Calculating the Base Figure. The DBELO will compare the available DBEs in its local market area to the available businesses in its local market area. The calculation will include a weighting factor according to the contract expenditure patterns analyzed in Section V.A.1.

3. Adjusting the Base Figure. SolTrans will adjust the base figure based on demonstrable evidence indicating that the availability of DBEs for U.S. DOT-assisted contracts may be higher or lower than the base figure indicates. At a minimum, the DBELO will analyze the results of DBE participation in SolTrans' current and recent past contracts, any available and relevant disparity studies (to the extent that they are not accounted for in the base figure), and any available and relevant results of other and similar U.S. DOT recipients' efforts to contract with DBEs.

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

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

1. Consultation with Various Groups, Organizations, and Officials. SolTrans will hold public participation sessions to obtain input in the goal-setting process, specifically on the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and efforts to establish a level playing field for the participation of DBEs. Members from the public that will be invited to attend the public participation sessions will include, but not be limited to, minority, women and general contractors' groups, community organizations and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs.

2. Goal Analysis Report. Upon completion of the analysis described in Section V.A. and after consultation with various groups, organizations and other officials, unless otherwise directed, the Administrator will prepare a Goal Analysis Report for DBE participation in FTA-assisted contracts for the three-year triennial period, or for the project goal. Each report shall document the analysis and methodology in arriving at the proposed goal and shall include a projection of the portion of the goal to be achieved through race-neutral and race-conscious measures.

3. Publication of the Proposed Overall Goal(s) and/or Project Goal(s). SolTrans will publish the proposed overall goal(s) and/or project goal(s) on its official website and may post the notice in any other sources (e.g., minority-focused media, trade association publications).

4. Adoption of Final Overall Goal(s) Following review of the Goal Analysis Report, the Board of Directors shall adopt an overall DBE goal for DBE participation which shall include a projection of portions of that goal that can be achieved through race neutral and race conscious measures. It will also consider authorization of the submission of the Goal Analysis Report to FTA for review by August 1, or by a different submission date established by the concerned operating administration.

C. Transit Vehicle Manufacturers Certification (Section 26.49)

SolTrans shall require any transit vehicle manufacturers to certify that they have established an overall DBE goal that has been approved or not disapproved by FTA as a condition to bid on any SolTrans contracts. Expenditures for FTA-assisted transit vehicle procurements are not included in the funding base to which the overall goal and/or project goal for other FTA-assisted contract expenditures applies.

SolTrans will report each transit vehicle award in the FTA online Transit Vehicle Award Reporting Form.

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

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

1. Race-Neutral Methods. SolTrans intends to use race-neutral methods to the maximum extent feasible to achieve its overall goal(s) and/or project goal(s). DBE participation that is obtained on contracts that have no specific DBE goal, or where prime contractors use a strictly competitive bidding process that did not consider the DBE's status as a DBE in awarding a subcontract shall be considered race-neutral DBE participation. In addition, SolTrans will use the following measures as appropriate:

a. Configuring large contracts into smaller contracts, when feasible, when to do so would make contracts more accessible to small businesses and would not impose significant additional cost, delay or risk to SolTrans;

b. Identifying components of the work that represent subcontracting opportunities and identifying the availability of DBE subcontractors. Contractors will be encouraged to consider small businesses for components of the work for which there is a known supply of ready, willing, and able small businesses, including DBEs, in preparing their bids;

c. Assisting in overcoming limitations in bonding and financing;

d. Providing technical assistance in orienting small businesses to public contract procedures, use of the Internet, and facilitating introductions to SolTrans' and other U.S. DOT recipients' contracting activities;

e. Carrying out information and communication programs on contract procedures and contract opportunities to ensure the inclusion of DBEs, which includes facilitating small business events that may be coordinated with other U.S. DOT grantees, federal agencies, or local organizations. These events will include procedures explaining how to do business with SolTrans, and explore best business practices which may be used to market small businesses at SolTrans;

f. Ensuring the distribution of the DBE Database to the widest feasible universe of potential prime contractors;

g. Providing business development assistance;

h. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses; and

i. (Section 26.39) Establishing a race-neutral small business enterprise (SBE) element as part of its DBE program to facilitate competition by small business concerns,

taking all reasonable steps to eliminate obstacles to their participation in procurements as prime contractors or subcontractors. Details of the SBE element are attached as Exhibit B and incorporated herein.

2. Race-Conscious Methods. The Board of Directors shall use race-conscious methods by establishing contract-specific DBE goals on particular prime contracts with subcontracting opportunities to the extent that SolTrans cannot achieve its overall goal(s) and/or project goal(s) with race-neutral methods. Where a contract-specific DBE goal has been established, the bidder or proposer must meet the contract-specific goal or demonstrate that it made sufficient good faith efforts to do so. A bidder shall be ineligible for contract award if it does not meet the goal or demonstrate sufficient good faith efforts.

a. Establishing Contract-Specific Goals. The goal shall be established by the Executive Director, substantiated by information furnished by the DBELO. The contract-specific goal shall apply to the percentage of DBE participation in the total contract work and be set forth in the Special Provisions of the contract specifications. SolTrans is not required to establish a contract-specific goal for every prime contract with subcontracting opportunities. For each contract involving subcontracting opportunities, the factors outlined below will be considered to determine whether a contract-specific goal should be established for the particular contract and, if so, what the percentage goal shall be:

- 1) The projected portion of the overall goal(s) and/or project goal(s) that will be met by establishing contract-specific goals;
- 2) The progress toward achieving the overall goal(s) and/or project goal(s);
- 3) The full range of activities in the proposed contract;
- 4) The availability of DBEs as prime contractors or subcontractors in the types of work involved in the performance of the proposed contract;
- 5) The unique conditions of the project that might affect the ability of the prime contractor to coordinate, utilize or incorporate subcontractors or suppliers into the project. (Projects consisting of only one or two sub-trades may not be appropriate for a contract-specific goal due to the fact that establishing a goal could result in restrictive bidding.);
- 6) The effect that the contract-specific goal might have on the time of completion; and
- 7) Any other relevant criteria.

b. Awarding Contracts with Contract-Specific Goals. SolTrans shall award contracts to the lowest responsible bidder, as required by the California Public Contracts Code Sections 20914 and 20916, where applicable. For such contracts, as well as for contracts awarded pursuant to a Request for Proposal procedure, where the lowest responsible bidder standard does not apply, a bidder that fails to demonstrate that it achieved the contract-specific

DBE goal and fails to demonstrate that it made sufficient good faith efforts to do so shall not be deemed “responsive” and, therefore, shall be ineligible for award of the contract.

1) Evaluation of Bids or Proposals. After the bid opening, or submission deadline for proposals, the DBELO shall evaluate all bids/proposals to determine whether the bidders/proposers submitted all of the information required by 49 CFR § 26.53(b). The responsible bidder with the lowest apparent bid price, or the highest ranking proposer, who also meets the contract-specific DBE goal or demonstrates sufficient good faith efforts shall be recommended for the contract award. In the event that the bidder with the lowest monetary bid price fails to meet the contract-specific goal or fails to demonstrate sufficient good faith efforts, or is otherwise unresponsive or not responsible, the DBELO shall evaluate the bidder with the next lowest bid price. Should the DBELO determine that additional information is needed to evaluate a bidder’s or proposer’s submission with regard to the DBE requirements, the DBELO shall request said bidder or proposer to submit the required information, or may contact the listed DBEs directly.

2) Evaluation of DBE Certification Status. SolTrans shall require that any DBEs listed by bidders for participation in the contract be certified DBEs as of the time of bid opening. The DBELO shall review the Prime Contractor and Subcontractor/Subconsultant/Supplier Report to confirm each DBE firm’s certification status. SolTrans will accept current certifications by any recipients of U.S. DOT funds acceptable to SolTrans in accordance with 49 CFR Part 26.

3) Determination of Amount of DBE Participation. The DBELO shall review the total dollar value of the work to be performed by DBEs and the total contract bid price reported on the Prime Contractor and Subcontractor/Subconsultant/Supplier Report for accuracy and shall compare it to the contract-specific goal established for the contract.

4) Determination of Good Faith Efforts. If the amount of DBE participation does not meet the contract-specific goal, the DBELO shall review the good faith efforts report submitted by the bidder. The DBELO shall determine whether the bidder has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the contract-specific goal in accordance with 49 CFR Part 26, Exhibit A.

5) Bidder’s Right to Administrative Reconsideration. In the event that the DBELO determines that the apparent low bidder has not met the contract-specific goal and has not demonstrated good faith efforts, the DBELO will notify the bidder in writing. The notification shall include the reasons for the determination and that the bidder has the right to submit further written documentation or appear before the Review Committee for reconsideration prior to the time that a recommendation for award of contract is presented to the appropriate committee, and then to the Board of Directors or to the Executive Director, as applicable.

Within two (2) working days of being informed by SolTrans that it is not responsive/responsible because it has not met the contract-specific goal, and has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidder should make this request in writing to the following reconsideration official: Suzanne

Fredriksen, Clerk of the Board, Solano County Transit, 311 Sacramento Street, Vallejo, CA 94590; telephone number (707) 736-6993; email address: suzanne@soltransride.com. The Review Committee shall provide the bidder with a written decision on reconsideration, explaining the basis for its determination. In the event that the Review Committee finds that the bidder has not met the contract-specific goal and has not demonstrated good faith efforts, the DBELO will deem said bidder not responsive and evaluate the bidder submitting the next lowest bid.

6) Recommendation for Award. Following the determination of the lowest responsive and responsible bidder, the DBELO shall prepare a report on the lowest responsive and responsible bidder's compliance with the DBE requirements for review by the Executive Director. If the Executive Director disagrees with the recommendation, he/she shall reject all bids or refer the matter back to Staff for further evaluation and recommendation. The decision of the Executive Director on the award of contract, if such a decision is made, shall be final and binding on all parties, subject to compliance with SolTrans' bid protest procedures.

E. Counting and Tracking DBE Participation (Section 26.55)

The DBELO will only count DBE participation in accordance with 49 CFR § 26.55. Only the work actually performed by a DBE will be counted towards the DBE goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted. The DBE firm must provide a Commercially Useful Function, as defined in 49 CFR § 26.55©.

Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. Expenditures may only be counted if the DBE is performing a commercially useful function. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own work force.

If materials or supplies are obtained from a DBE manufacturer, 100 percent (100%) of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, sixty percent (60%) of the cost will be counted.

DBE achievement will not be counted toward the goal until the DBE has been paid. The DBELO will track the participation of DBEs in contract-specific goal contracts separately from the participation of DBEs that is considered race-neutral. Additionally, the DBELO will not count that portion of a DBE's participation that is achieved after the certification of the DBE has been removed during the performance of a contract.

A DBE subcontractor may not be terminated (or an approved substitute DBE firm) without prior written SolTrans consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. For contracts with DBE contract goals, SolTrans will consent to the termination of a DBE subcontractor only for good cause, which includes, but is not limited to, the circumstances enumerated in 49 C.F.R. 26.53(f)(3).

F. Failing to Meet Overall Goals (Section 26.47)

If the awards and commitments shown on SolTrans' 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 DBELO will analyze in detail the reasons for the difference between the overall goal and awards and commitments. Specific steps and milestones to correct the problems identified and to meet overall goals for future fiscal years will be established. Analysis and corrective actions will be retained for three years and made available to FTA on request for their review.

VI. REQUIRED CONTRACT PROVISIONS (Sections 26.13, 26.23, 26.27, 26.29, 26.31, 26.37, 26.55, and Subpart D)

Each financial assistance agreement SolTrans signs with FTA or Caltrans on behalf of FTA will include a nondiscrimination assurance from SolTrans. U.S. DOT-assisted contracts that SolTrans lets will include, as appropriate, the model contract provisions that are set forth in the current SolTrans federal contract provisions, available from the Program Analyst - Procurement. The DBELO shall have discretion to modify the provisions for particular contracts as needed, in consultation with the Legal Counsel. These required contract provisions consist of:

- SolTrans' DBE Program Policy.
- A nondiscrimination assurance from the contractor (and each subcontract the prime contractor signs with a subcontractor).
- A statement that encourages prime contractors to use financial institutions owned and controlled by socially and economically disadvantaged individuals in the community.
- A clause that requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment SolTrans makes to the prime contractor. This clause also requires the prompt return of retainage payments from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

U.S. DOT requires recipients to use one of the following methods to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor:

1. Decline to hold retainage from prime contractors and prohibit prime contractors and subcontractors from holding retainage from subcontractors.
2. Decline to hold retainage from prime contractors and include a contract clause obligating the prime contractor and subcontractors to make prompt and full payment of any retainage kept by the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

3. Hold retainage from the prime contractors and provide for prompt and regular incremental acceptances of portions of the contract, pay retainage to prime contractors based on the acceptances, and include a contract clause obligating the prime contractor and subcontractors to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after payment to the prime contractor.

SolTrans will use Method No. 3 above to comply with the Prompt Payment Requirement.

- The website address for the DBE directory identifying all firms eligible to participate as DBEs in SolTrans' program.
- The DBE participation goal (whenever applicable).
- A section that provides the DBE certification standards.
- A section that provides how DBE participation is counted toward goal.
- A section on reporting requirements, including a provision ensuring that DBE participation is credited toward overall or contract goals only when payments are actually made to DBE firms.
- A section on administrative remedies to ensure compliance with the DBE program.

VII. CERTIFICATION STANDARDS (Subpart D and Appendix E)

SolTrans is a user of the CUCP, which follows U.S. DOT directives and guidance concerning certification matters.

The CUCP makes all DBE certification decisions on behalf of U.S. DOT recipients in the state. SolTrans relies upon the CUCP for the certification of DBE firms and ensures that only firms certified as eligible DBEs participate in the Program.

Should SolTrans decide to change its non-certifying status and elect to become a certifying member, SolTrans will apply the standards of Subpart D and Appendix E of the Regulations.

VIII. MONITORING AND RECORDKEEPING (Sections 26.11 and 26.37)

A. Bidders List (Section 26.11)

SolTrans will require all prime contractors bidding on U.S. DOT-assisted contracts to return, at the time of bid opening (options apply as to the time this information is required so long as it is prior to the award of the contract), the following information about the prime contractor and all subcontractors who provided a bid:

- Firm name
- Firm address
- Firm's status as a DBE or non-DBE
- Age of the firm
- Annual gross receipts
- Type of work

SolTrans will use this information to maintain and update its Bidders List.

B. Monitoring Payments to DBEs (Section 26.37)

The contractor shall maintain records of all DBE participation in the performance of the contract, including subcontracts entered into with certified DBEs and all materials purchased from certified DBEs.

It is the contractor's responsibility to maintain records and documents for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of SolTrans or U.S. DOT. This reporting requirement is also extended to any certified DBE subcontractor.

SolTrans will maintain a running tally of payments actually made to DBE firms and may require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs.

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

**A more detailed explanation of the procedures for tracking payments is included in Exhibit C.**

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

SolTrans will continue to report DBE participation and overall and/or project goal-setting methods to FTA and Caltrans on behalf of FTA as directed. Statistical data will be maintained as prescribed on a semi-annual basis to provide reports to U.S. DOT operating administrations reflecting the DBE participation on SolTrans' federally-assisted procurement activities.

D. Contract Remedies (Section 26.37)

SolTrans will monitor compliance of its contractors on federally-assisted contracts with the requirements of the Regulations and the DBE Program. SolTrans may impose such contract remedies as are available under federal, state and local law and regulations for non-compliance. Such remedies may include, but are not limited to, withholding of progress payments and contract retentions, imposition of liquidated damages, and termination of the contract in whole or in part.

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

SolTrans' public participation and outreach effort activities are directed at assisting SolTrans to solicit public input to set overall DBE goal(s) and/or project goal(s), and to broaden public awareness of SolTrans' Diversity Program for Contracts to meet overall DBE goal(s) and/or project goal(s).

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

Prior to finalizing the Overall Goal(s) and/or Project Goal(s) Analysis Report, SolTrans will consult with U.S. DOT agencies, other U.S. DOT grantees, minority, women's and general contractor groups, community organizations, or other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and SolTrans' efforts to establish a level playing field for the participation of DBEs.

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

In conjunction with SolTrans' activities to meet its overall DBE goal(s) and/or project goal(s), SolTrans will implement various public participation and outreach activities designed to broaden awareness of SolTrans Diversity Program for Contracts. The measures described in 49 CFR § 26.51 focusing on race-neutral means will be actively pursued, and SolTrans will also

encourage its contractors to make similar outreach efforts to include DBE participation in subcontracting opportunities. In conjunction with regional outreach consortia and CUCP, SolTrans will continue to organize and offer training programs for meeting DBE eligibility requirements, familiarize potential contractors with SolTrans procurement procedures and requirements, and otherwise develop effective programs to further the inclusion of DBEs in SolTrans' contracting activities.

## **EXHIBIT A: DBE Program Analyst (DBELO) Duties and Responsibilities**

In accordance with 49 CFR § 26.25 and Section III.A. of this Program, the specific duties and responsibilities of the Analyst shall include, but not be limited to, the following:

1. Analyzing and assessing the available resources and evidence for the establishment and achievement of overall DBE goal(s) and/or project goal(s) for U.S. DOT-assisted contracts each fiscal year;
2. Developing, monitoring and evaluating the Diversity Program for Contracts, and preparing supplemental written procedures and guidelines to implement the Program;
3. If SolTrans is a certifying member of the California Unified Certification Program (CUCP), maintaining and updating the DBE Database in accordance with 49 CFR § 26.31;
4. Maintaining and updating the Bidders List in accordance with 49 CFR § 26.11;
5. Conducting race-neutral measures to facilitate the participation of small business concerns, including DBEs, through outreach and other community programs, training and business development programs, restructuring contracting opportunities, simplifying bonding, surety and insurance requirements or other race-neutral means;
6. Participating in the contract bid and award process, including recommending specific contract goals where appropriate, reviewing contract specifications, attending pre-bid conferences and evaluating bids for contractor responsiveness, responsibility and good faith efforts;
7. Monitoring specific contract performance and actual DBE participation and contract payments;
8. Monitoring overall DBE participation, adjusting overall goals and means of achievement, assessing areas of over-concentration of DBE participation and reporting to the Executive Director, SolTrans Board of Directors, FTA and Caltrans on behalf of FTA, as needed;
9. If SolTrans is a certifying member of the CUCP, determining all certification actions, including initial certifications, recertifications, denials and removals;
10. Participating in the CUCP in accordance with 49 CFR § 26.81 and CUCP MOA if a certifying member;
11. Assisting SolTrans' Diversity Program for Contracts Review Committee for each proposal or bid;
12. Participating in regional outreach activities;
13. Participating in other transit organizations on common issues pertaining to diversity programs for contracts;
14. Establishing Small Business Enterprise contract-specific goals on applicable SolTrans contracts and proposals and analyzing all related SBE forms for bid/proposal submittal;
15. Investigating DBE protests; and

16. Maintaining all appropriate records and documentation of the Program.

## **EXHIBIT B: Small Business Enterprise Element (Section 26.39)**

SolTrans has established a Small Business Enterprise (SBE) element as one of its race-neutral methods of achieving small business participation, including disadvantaged business participation, on particular contracts with subcontracting opportunities. This SBE element applies to all SolTrans contracts, regardless of funding source, where race-neutral and gender-neutral methods are employed. SolTrans will take all reasonable steps to eliminate obstacles to SBE prime contractor or subcontractor participation in their procurement activities.

### **A. Definition of Small Business Enterprise**

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

a. A firm (including affiliates) must be an existing small business as defined by Small Business Administration (SBA) regulations, 13 CFR Part 121, for the appropriate type(s) of work that a firm performs. The firm must hold one of the acceptable certifications listed in Section B below.

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

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

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

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

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

**1. Disadvantaged Business Enterprise (DBE) Certification** pursuant to U.S. Department of Transportation regulations, 49 CFR Part 26. This includes DBE certifications

performed by the California Unified Certification Program or by the Unified Certification Program of any other state.

**2. State Minority Business Enterprise (SMBE) and State Women Business Enterprise (SWBE) certification by the State of California** or by any other state provided that their certification complies with Section A1a and A1b above. In addition to copies of SMBE/SWBE certifications, bidders certified out-of-state must submit an affidavit of size for each SMBE/SWBE prime contractor or SMBE/SWBE subcontractor at the time of bid submittal.

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

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

**5. SBA 8(a) by the Small Business Administration** provided that their certification complies with Section A1a and A1b above. In addition to copies of SBA 8(a) certifications, bidders must submit an affidavit of size for each SBA 8(a) prime contractor or SBA 8(a) subcontractor at the time of bid submittal.

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

**C. Race-Neutral SBE Measures**

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

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

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

3. On prime contracts not having DBE contract goals, establish contract-specific SBE goals where appropriate. Contract-specific SBE goals may be established on particular prime contracts with subcontracting opportunities as a means of increasing small business,

including DBE, participation. Availability of subcontracting opportunities will be evaluated on a contract-by-contract basis by project managers and DBELO. Where a contract-specific SBE goal has been established, the bidder or proposer must meet the contract-specific goal or demonstrate that it made sufficient good faith efforts to do so. A bidder shall be ineligible for contract award if it does not meet the goal or demonstrate sufficient good faith efforts.

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

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

For each contract involving subcontracting opportunities, the factors outlined below will be considered to determine whether a contract-specific goal should be established for the particular contract and, if so, what the percentage goal shall be:

1. The full range of activities in the proposed contract;
2. The availability of SBEs as prime contractors or subcontractors in the types of work involved in the performance of the proposed contract;
3. The unique conditions of the project that might affect the ability of the prime contractor to coordinate, utilize, or incorporate subcontractors or suppliers into the project. (Projects consisting of only one or two sub-trades may not be appropriate for a contract-specific goal due to the fact that establishing a goal could result in restrictive bidding.);
4. The effect that the contract-specific goal might have on the time of completion;
5. Any other relevant criteria.

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

SolTrans shall award contracts to the lowest responsible bidder as required by the California Public Contracts Code Sections 20914 and 20916, where applicable. For such contracts, as well as for contracts awarded pursuant to a Request for Proposal procedure where the lowest responsible bidder standard does not apply, a bidder that fails to demonstrate that it achieved the contract-specific SBE goal and fails to demonstrate that it made sufficient good faith efforts to do so shall not be deemed “responsive” and, therefore, shall be ineligible for award of the contract. The bidder or proposer will include in its bid or proposal a Goal Declaration in a form designated by SolTrans notifying SolTrans of its SBE goal attainment.

1. Evaluation of Bids

**Invitation for Bid.** The following procedures apply to contracts that are awarded to the lowest responsible bidder. After the bid opening, the DBELO shall evaluate all bids to determine whether

the bidders submitted all of the information required by 49 CFR § 26.53(b). The responsible bidder with the lowest apparent bid price who also meets the contract-specific SBE goal or demonstrates sufficient good faith efforts shall be recommended for the contract award. In the event that the bidder with the lowest monetary bid price fails to meet the contract-specific goal or fails to demonstrate sufficient good faith efforts, or is otherwise unresponsive or not responsible, the DBELO shall evaluate the bidder with the next lowest bid price. Should the DBELO determine that additional information is needed to evaluate a bidder's submission with regard to the SBE requirements, the DBELO shall request said bidder to submit the required information or may contact the listed SBEs directly.

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

The DBELO shall review the the Prime Contractor and Subcontractor/Subconsultant/Supplier Report (see Appendix 1) and will confirm each SBE firm's certification status. The DBELO will review the total dollar value of the work to be performed by SBEs and the total contract bid price for accuracy and comparison with the contract-specific SBE goal established for the contract.

**Request for Proposal.** This procedure applies to contracts that are awarded based upon a qualitative evaluation. After the submission deadline, the DBELO shall evaluate all proposals to determine whether the proposers submitted all of the information required by 49 CFR § 26.53(b). The highest ranked responsible proposer who also meets the contract-specific SBE goal or demonstrates sufficient good faith efforts shall be recommended for the contract award. In the event that the highest ranked proposer fails to meet the contract-specific goal or fails to demonstrate sufficient good faith efforts, or is otherwise unresponsive or not responsible, the DBELO shall evaluate the next highest ranked proposer. Should the DBELO determine that additional information is needed to evaluate a proposer's submission with regard to the SBE requirements, the DBELO shall request said proposer to submit the required information, or may contact the listed SBEs directly.

SolTrans shall require that any SBEs listed by proposers for participation in the contract be certified SBEs at the proposal submission deadline. Acceptable comparable Small Business Enterprise certifications are listed in this document. Some require completion of an SBE Affidavit in a form designated by SolTrans and submitted at the time of bid opening.

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

**The following applies to both Invitation for Bid and Request for Proposal situations.**

2. Determination of Good Faith Efforts. If the amount of SBE participation does not meet the contract-specific goal, the DBELO shall review the good faith efforts documentation submitted by the bidder/proposer. The DBELO shall determine whether the bidder/proposer has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and

aggressive attempt to meet the contract-specific goal in accordance with 49 CFR Part 26, Appendix A. All bidders/proposers must submit Good Faith Efforts documentation

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

a. Within two (2) working days of being informed by SolTrans that it is not responsive/responsible because it has not met the contract-specific goal and has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidder/proposer should make this request in writing to the following reconsideration official: Susan Fredriksen, Clerk of the Board, Solano County Transit, 311 Sacramento Street, Vallejo, CA 94590; telephone number (707) 736-6990; e-mail address: [suzanne@soltransride.com](mailto:suzanne@soltransride.com). The Review Committee shall provide the bidder/proposer with a written decision on reconsideration, explaining the basis for its determination. In the event that the Review Committee finds that the bidder/proposer has not met the contract-specific goal and has not demonstrated sufficient good faith efforts, the DBELO will deem said bidder/proposer not responsive and evaluate the bidder/proposer submitting the next lowest bid.

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

## **EXHIBIT C: Monitoring for Prompt Payment and DBE Compliance of Contractors**

### **PROMPT PAYMENT MONITORING**

#### **49 CFR § 26.29- Prompt Payment Mechanisms**

- Solano County Transit (SolTrans) requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.
- In accordance with 49 CFR § 26.29, SolTrans established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from SolTrans. In addition, DBE or SBE vendors holding standalone contracts will be paid within 30 days.
- SolTrans ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to § 26.29, SolTrans has selected method number 3 of following list to comply with this requirement:

*(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.*

*(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.*

*(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.*

#### **Section 26.37 Monitoring Responsibilities**

- SolTrans implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including

prompt payment, and describes and set forth these mechanisms in SolTrans' DBE program.

#### Monitoring Payments to DBEs and Non-DBEs

- SolTrans undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

SolTrans will use two forms to collect information from prime contractors about their payments to subcontractors:

- SolTrans Contractor and Subcontractor Payment Summary Form (all the information in Part 1 of this form is already required by SolTrans procedures for every construction contract)
- SolTrans Contractor and Subcontractor Payment Detail Form

The DBELO will use the information from these two forms to contact each subcontractor paid and verify the date of receipt and amount of the payment. The results of the survey will be compiled on the Subconsultant Monitoring Form no less than quarterly during the contract as well as at the end. (The three forms mentioned in this section are included in Appendix 1 of this Attachment.) The Subconsultant Monitoring Form will also be used to document the prompt payment of DBEs and SBEs holding standalone contracts with SolTrans.

- SolTrans requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the SolTrans' financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of SolTrans or DOT. *This reporting requirement extends to all subcontractors, both DBE and non-DBE.*
- SolTrans will proactively review contract payments to subcontractors, including DBEs, quarterly. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to SolTrans by the prime contractor.

#### Prompt Payment to Subcontractors.

**The following language will be added to contracts with a prime contractor having subcontractors:**

The Contractor shall pay any Subcontractor approved by SolTrans for work that has been satisfactorily performed no later than thirty (30) calendar days from the date of the Contractor's receipt of progress payments by SolTrans.

SolTrans shall hold retainage from the Contractor and shall make prompt and regular incremental acceptances of portions of the contract work, as determined by SolTrans, and pay retainage to the Contractor based on these acceptances. The Contractor or subcontractor shall return all monies withheld in retention from all subcontractors within thirty (30) calendar days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by SolTrans. Any delay or postponement of payment may take place only for good cause and with SolTrans' prior written approval.

Any violation of these provisions shall subject the violating Contractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the Contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both SBE/DBE and non-DBE/SBE subcontractors.

In the event the Contractor does not make progress payments or release retentions to the Subcontractors in accordance with the time periods in this section, the Contractor will be subject to a charge of two percent (2%) per month on the untimely or improperly withheld payment. Any subcontract entered into as a result of this AGREEMENT shall contain all the provisions of this Section.

## **MONITORING DBE COMPLIANCE OF CONTRACTORS – COMMERCIALY USEFUL FUNCTION AND TERMINATION AND SUBSTITUTION**

### Commercially Useful Function

SolTrans will demonstrate that it is sufficiently monitoring every contract on which DBE participation is claimed by implementing the following measures: (1) developing a monitoring process to ensure that program participants are complying with 49 CFR part 26; (2) confirming that the monitoring process ensures that the work committed to a DBE is performed by the DBE to which the work was committed; and (3) confirming that the monitoring process includes a written certification that the recipient has reviewed contracting records and monitored work sites for this purpose.

SolTrans will use the DBE On-Site Monitoring/Commercially Useful Function Form (a sample is included in Appendix 1 of this Attachment) to ensure contracts with DBE participation claimed properly credit DBE participation. SolTrans will require a copy of the prime's contract with its DBE subcontractors to be supplied to them at the time of the execution of their contract with the prime. The DBELO will review the contracts that prime contractors enter with DBE subcontractors to ensure that the terms of the agreement, including the termination (§ 26.53(f)(1)(i)), prompt payment/return of retainage (§26.29), and assurance (§ 26.13(b))

provisions are included and consistent with the recipient's DBE Program Plan and federal regulations.

Having reviewed the DBE's subcontract to identify their scope of work, the DBELO will complete this form for each DBE within 5 days after the DBE starts work. The DBELO will compile the information available, noting any information that is not yet available. The DBELO will certify the review and each update as needed.

The DBELO will repeat the process, no less than quarterly, during the life of the contract.

#### Termination and Substitution

The following contract language will be included in the prime contractor's contract with SolTrans for every contract in which DBE and/or SBE participation is claimed. This language also describes the process SolTrans will use in the case of need for termination and/or substitution.

**Substitution of Subcontractors/Suppliers** A contractor may not terminate or substitute an SBE/DBE subcontractor listed in the bid documents without prior written SolTrans consent. This includes, but is not limited to, instances in which a contractor seeks to perform work originally designated for a DBE/SBE subcontractor with its own forces or those of an affiliate, a non-SBE/DBE firm, or with another SBE/DBE firm.

SolTrans may provide such written consent only if it agrees, for reasons listed below, that the Contractor has good cause to terminate the SBE/DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- The listed SBE/DBE subcontractor fails or refuses to execute a written contract;
- The listed SBE/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 SBE/DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor;
- The listed SBE/DBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
- The listed SBE/DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- The listed SBE/DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law;
- Contractor has determined that the listed SBE/DBE subcontractor is not a responsible contractor;
- The listed SBE/DBE subcontractor voluntarily withdraws from the project and provides to Contractor written notice of its withdrawal;
- The listed SBE/DBE is ineligible to receive SBE/DBE credit for the type of work required;
- An SBE/DBE owner dies or becomes disabled with the result that the listed SBE/DBE contractor is unable to complete its work on the contract;

- Other documented good cause that SolTrans determines compels the termination of the SBE/DBE subcontractor. Provided, that good cause does not exist if the Contractor seeks to terminate an SBE/DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the SBE/DBE contractor was engaged or so that the Contractor can substitute another SBE/DBE or non-SBE/DBE contractor after contract award.

Before transmitting a Contractor's request to terminate and/or substitute an SBE/DBE subcontractor to SolTrans, the Contractor must give notice in writing to the SBE/DBE subcontractor, with a copy to SolTrans, of intent to request to terminate and/or substitute, and the reason for the request.

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

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

The Contractor must make good faith efforts to substitute an original SBE subconsultant/subcontractor/supplier with a small business concern.

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