



Disadvantaged Business Enterprise Program

October 2016

Santa Monica's Big Blue Bus Disadvantaged Business Enterprise Program

Objectives/Policy Statement

The Santa Monica's Big Blue Bus (BBB) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. BBB has received Federal financial assistance from the DOT and as a condition of receiving this assistance, BBB has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of BBB to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also BBB's policy:

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

The Director of Transit Services has designated Senior Administrative Analyst-Transit Grants as the DBE Liaison Officer. In that capacity, the DBE Liaison Officer is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by BBB in its financial assistance agreements with the DOT.

BBB has disseminated this policy to the City of Santa Monica City Council and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts

Edward F. King
Director of Transit Services

Date

SUBPART A – GENERAL REQUIREMENTS

Objectives

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

Applicability

Santa Monica's Big Blue Bus (BBB) is the recipient of Federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, Titles I, II, and V of the TEA-21, Pub. L 105-178 or Titles I, III and VI of SAFETEA-LU, Pub. L. 109-59.

Definitions

BBB will adopt the definitions contained in 49 CFR Part 26.5. Some of the most common terms are defined below:

Affirmative Action: Positive activities undertaken by BBB and its contractors to eliminate discrimination and effects of past discrimination and to ensure non-discriminatory practices in the future.

Bidders List: A list of all contractors that have expressed an interest in bidding on prime contracts and subcontracts on DOT-assisted projects.

California Unified Certification Program (CUCP): One-stop certification clearinghouse enabling applicants to apply once for DBE certification which will be honored by all DOT recipients in the state.

Commercially Useful Function: Work performed by a DBE firm in a particular transaction that, in light of industry practices and other relevant considerations, has a necessary and useful role in the transaction, i.e., the firm's role is not a superfluous step added in an attempt to obtain credit toward goals. If, in BBB's judgment, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded.

Compliance: A contractor has correctly implemented the requirements of the DBE Program.

Contracting Opportunity: Any decision by BBB or its contractors to institute a procurement action to obtain a product or service commercially (as opposed to intergovernmental actions).

Contract: A legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to construction and professional services) and the buyer to pay them.

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

DBE Directory: List of Certified firms, which is used by BBB and its contractors to identify DBE potential prime contractors and subcontractors and suppliers. BBB utilizes the online DBE Directory of the California Unified Certification Program.

Department or DOT: The U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged Business Enterprise (DBE): A for-profit small business concern – (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; (2) whose management and daily business operations are controlled by one or more of the socially economically disadvantaged individuals who own it; and (3) has been certified as Disadvantaged in accordance with 49 CFR Part 26.

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

Goal: A numerically expressed objective, which BBB or its contractors are required to make good faith efforts to achieve in a race-conscious solicitation contract.

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

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

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

Noncompliance: A contractor has not correctly implemented the requirements of the DBE program.

Operating Administration (OA): Any of the following agencies of the U.S. Department of Transportation (DOT) – the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

Personal Net Worth: The net values 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 participative 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 jointly as a community property with the individual’s spouse.

Primary Industry Classification: The four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm.

Primary Recipient: A recipient of DOT financial assistance who passes some or all of it on to another recipient.

Principal Place of Business: The business location where the individuals who manage the firm’s day to day operations spend most working hours and where top management’s business records are kept. If the offices from which management is directed and where business records are kept are in different locations, BBB will determine the principal place of business for DBE program purposes.

Program: Any undertaking on BBB’s part to use DOT financial assistance authorized by laws to which DBE Program applies.

Race-Conscious Measure or Program: A program or portion thereof that focuses specifically on assisting only DBEs, by the development and inclusion of participation goals or best effort activities.

Race-Neutral Measure or Program: A program or portion thereof that focuses specifically on assisting only DBEs, by the development and inclusion of participation goals or best effort activities.

Set-Aside: A contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration (SBA): The federal United States Small Business Administration.

Small Business Concern: With respect to firms seeking to participate as DBEs in DOT-assisted contracts, a business which meets the definition contained in Section 3 of the Small Business

Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

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

- (1) Found by BBB to be a socially and economically disadvantaged individual on a case by case basis.
- (2) A member of any one or more of the following groups, members of which are presumed to be social and economically disadvantaged;
 - a. Black Americans – which includes persons having origins in any of the Black racial groups of Africa;
 - b. Hispanic Americans – which includes person of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - c. Native Americans – which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d. Asian Pacific Americans – which includes person whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, Philippines, Brunei, Samoa, Guam, the U.S. Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - e. Subcontinent Asian Americans – which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - f. Women; and
 - g. Any additional group whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

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

Transit Vehicle: A vehicle used by BBB, e.g. bus, railcar, or van, for the primary program purpose of public mass transportation; this definition does not include locomotives or ferry boats.

Transit Vehicle Manufacturer (TVM): A manufacturer of vehicles used by BBB for the primary program purpose of public mass transportation (e.g. bus, railcar, and van). The term does not apply to firms which rehabilitate old vehicles, or to manufacturers of dealers in transit vehicles with respect to requirement of paragraph 26.49 of the Regulation.

Tribally Owned Concern: Any concern at least 51 percent owned by an Indian tribe as defined in this Program.

Underutilized Disadvantaged Business Enterprise (UDBE): The term “Underutilized Disadvantaged Business Enterprise” is a firm meeting the definition of a DBE as specified in 49 CFR and is owned and operated by one of the following groups:

- Black American
- Asian-Pacific American
- Native American
- Women

Non-discrimination Requirements

BBB 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, BBB 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.

Record Keeping Requirements

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

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

We will collect bidder’s list information in the following ways:

1. BBB’s online vendor database for solicitations where registrants may submit DBE status.
2. Contract clause requiring prime bidders to report information on firms who quote them on subcontracts.

Assurances

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

Federal Financial Assistance Agreement Assurance:

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

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

Contract Assurance:

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

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

SUBPART B – ADMINISTRATIVE REQUIREMENTS

DBE Program Updates

BBB will continue to carry out this program until all funds from DOT financial assistance have been expended. BBB will provide DOT updates representing significant changes in the program as they occur. BBB understands that all changes must be approved prior to implementation.

DBE Liaison Officer

BBB has designated the following individual as its DBE Liaison Officer (DBELO):

Enny Chung Graham
Senior Administrative Analyst – Transit Grants
Big Blue Bus
1660 7th Street
Santa Monica, CA 90401

Phone: (310) 458-1975 x2296
FAX: (310) 396-2356
Email: enny.chung@smgov.net

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that BBB complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Director of Transit Services concerning DBE program matters. The DBELO devotes a portion of her time to the DBE Program. The DBELO is also responsible for all procurements and contracting activities utilizing Federal funds. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this Program.

The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate officials. Duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to determine projected Annual Anticipated DBE Participation Level.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Participates in pre-bid meetings.

7. Advises the Director of Transit Services and City Council on DBE matters and DBE race-neutral issues.
8. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organization to fully advise them of contracting opportunities.

DBE Financial Institutions

It is the policy of BBB to investigate services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. A list of financial institutions was obtained from the State of California, Department of General Services, Office of Small Business Certification and Resources, and the website for the Federal Reserve Board www.federalreserve.gov/releases/mob to identify minority-owned banks derived from the Consolidated Reports of Condition and income filed quarterly by banks (FFIEC 031 through 041). The DBELO will continue to use these sources to continue to solicit minority-owned banks to participate in the BBB’s DBE Program. To date, the DBELO has identified the following minority-owned financial institutions, which offer services in California:

OLYMPIC BR	EASTERN INTL BR	EVERGREEN INTL BR
PAN AMER BK	PREMIER BUS BK	PROAMERICA BUS BK
SAEHAN BK	GARDENA BR	TORRANCE BR

BBB shall also encourage its prime contractors to use the services of DBE financial institutions.

Prompt Payment Mechanism

Prompt Payment:

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from receipt of each payment the prime contract receives from BBB. Any delay or postponement of the payment from the above referenced time frame may occur only for good cause following written approval of BBB. This clause applies to both DBE and non-DBE subcontracts.

Directory

BBB maintains a directory identifying 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 firms has been certified to perform as DBE. We will revise the directory in accordance with UCP database changes. The directory may be found at:

http://www.dot.ca.gov/hq/bep/find_certified.htm.

Overconcentration

If the DBELO determines that DBE participation is so over-concentrated in certain types of work or contracting opportunities 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 and, at that time, the measures will become a part of this Program. Currently, BBB is unaware of any types of work that have a burdensome over-concentration of DBE participation.

Business Development Programs

BBB will not operate a business development or mentor-protégé program at the present time. If BBB implements such a program in the future, BBB will describe the rationale for having the program element, the specific provisions of the element (e.g. who is eligible to participate, how the program element works, and how interested persons would obtain information about the program element). At the time of a decision to implement a business development or mentor-protégé program, the DBELO will seek approval of such program from FTA and, at that time, the program will become part of the overall DBE program.

Monitoring and Enforcement Mechanisms

BBB will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g. referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment C lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.

3. We will also provide monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by DBEs. This will be accomplished by regular visits to jobsites and interviews of the personnel performing work.
4. We will keep a running tally of actual payment to DBE firms for work committed to them at the time of contract award.

Small Business Participation

BBB will implement a Small Business Element to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors in direct response to regulatory requirements, 49 CFR Part 26.39.

While BBB has historically utilized race and general neutral strategies to promote and advance Small Business participation efforts as a part of BBB's DBE Program implementation efforts, this element of the program serves to unify in a singular location these important efforts.

BBB will implement the following mechanisms to ensure compliance with 49 CFR Part 26.

1. On prime contracts not having contract goals, we will require the prime contractor to provide subcontracting opportunities that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
2. In multi-year design build contracts or other large contracts we will require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small business, including DBEs, can reasonably perform.
3. To meet the portion of our overall goal we project to meet through race-neutral measures, we will ensure that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
4. We will identify alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint venture consisting of small businesses, including DBEs, to compete for and perform prime contracts.

For the purposes of capturing Small Business utilization, BBB adheres to the U.S. Department of Transportation's Small Business definition for what constitutes a Small Business Enterprise.

This Small Business Element will include, but is not limited to the following assertive, active and effective strategies:

- A. BBB will continue to conduct regular reviews of procurements, to assess opportunities for unbundling (breaking out scopes of work/services to facilitate small business prime contracting opportunities). BBB believes that including the participation of procurement staff in scheduled reviews will increase accountability of BBB's procurement options and decisions and in doing so will ultimately improve contracting opportunities for Small Business Enterprises at the prime level.
- B. BBB will notify and as part of its pre-proposal and pre-bid meetings process prior to submission of bids and proposals, a recommendation stating that prime contractors shall create subcontract opportunities when no DBE goal has been set for that procurement. The DBELO shall participate in all pre-bid and pre-proposal meetings to assure this information is made a part of the procurement process to encourage and establish small business concerns.
- C. BBB will establish a small business set aside to be incorporated within FTA funded procurements under competitive conditions under \$100,000. Under the definition of a small business concern this would mean, with respect to firms seeking to participate as DBE's in DOT-assisted contracts, a small business concern as defined pursuant to Section of the Small Business Act and Small Business Administration regulations implementing it (13 CFR, Part 121) that also does not exceed the cap on average annual gross receipts specified in 26.65(b).
- D. BBB will institute a professional development program in partnership with Access Services, California Association of Coordinated Transportation (CalACT), UCLA Extension, National Transit Institute and Transportation Safety Institute. This program will aim at the development of small business skills and awareness, which is essential to improve the quality and effectiveness of specialized transportation services in Los Angeles County.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Set-asides or Quotas

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

Overall Goals

In accordance with Section 26.45(f) BBB will submit its triennial overall DBE goal to the Federal Transit Administration on August 1 of the year specified by FTA.

BBB will also request use of project-specific DBE goals as appropriate, and/or will establish project specific DBE goals as directed by FTA. Before establishing the three year overall goal, BBB obtains information concerning the availability for disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs and BBB's efforts to establish a level playing field for the participation of DBEs.

BBB will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our office for 30 days following the date of the notice, and informing the public that BBB will accept comments on the goals for 45 days from the date of notice. This notice will be published in the Santa Monica Daily Press. Normally, we will issue this notice by June 1 of the year of goal submission. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall 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, worksheets, etc., used to develop the goal; a summary of information and comments received during this public participation process and our responses; and proof of publication of the goal in media outlets listed above.

We will begin using our three-year goal on October 1 of the calendar year following the August 1 submission to FTA, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Transit Vehicle Manufacturers Goals

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

Overall Goals/Contract Goals

BBB will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, BBB will:

- Encourage participation of DBEs in pre-bid conferences;
- Outreach to DBE trade associations to provide information on BBB contracting opportunities;
- Solicit support of DBE trade associations to distribute bid announcements including bid specifications;
- Encourage DBEs to discuss their capabilities with prime contractors at pre-bid conferences.

BBB will use contract goals to meet any portion of the overall goal BBB 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 our overall goal that is not projected to be met through the use of race-neutral means.

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

BBB will express our contract goals as a percentage of total amounts of DOT-assisted contracts.

As a transit agency operating in California and covered by the decision of the U.S. Court of Appeals for the Ninth Circuit in the case of *Western Sates Paving Co., Inc. v. Washington State DOT*, BBB will not adopt race-conscious measures of DBE participation prior to the implementation of a disparity study.

In order to ensure that BBB's DBE Program will be narrowly tailored to overcome the effects of discrimination, BBB will adjust the estimated breakout of race neutral and race conscious participation as needed to reflect actual DBE participation (see Part 26.51(f)) and we will track and report race neutral and race conscious participation separately. For reporting purposes, race neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Data will be maintained separately on DBE achievements in those contracts with and without contract goals, respectively.

Good Faith Efforts Procedure

Award of Contracts with a DBE Contract Goal

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

Evaluation of Good Faith Efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

Information to be Submitted

BBB treats bidder/offeror's compliance with good faith efforts' requirements as a matter of responsiveness.

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

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative Reconsideration

Within two business days of being informed by BBB that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Edward F. King
1660 Seventh Street
Santa Monica, CA 90401
(310) 458-1975

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. BBB will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts When a DBE is Terminated/Replaced on a Contract with Contract Goals

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

Before transmitting to BBB its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to BBB prior to consideration of the request to terminate. The DBE will then have five days to respond and advise BBB of why it objects to the proposed termination.

In those instances where "good cause" exists to terminate a DBE's contract, BBB will require the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent

needed to meet the contract goal. BBB will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

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

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

Sample Bid Specification

The requirement of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Santa Monica's Big Blue Bus to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of _____ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

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

Counting DBE Participation

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

SUBPARTS D & E – CERTIFICATION

Certification Process

BBB will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

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

Olivia Fonseca
Deputy Director
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Certification application forms and documentation requirements are found at:
<http://www.dot.ca.gov/hq/bep/>

Unified Certification Programs

BBB is a member of the Unified Certification Program (UCP) administered by California Department of Transportation (Caltrans). The UPC will meet all of the requirements of this section. The following is a description of the 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), Part 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 projects and services they can provide to all USDOT recipients in California. Select the "Directory" link on the stop to access the Statewide database.

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.

Procedures for Certification Decisions

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

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

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

SUBPART F – COMPLIANCE AND ENFORCEMENT

Information, Confidentiality, Cooperation

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state and local law as applicable in the State of California.

The statement below is included in all Requests for Proposals (RFPs):

The Proposals received become the exclusive property of City of Santa Monica's Big Blue Bus. At such time as a contract award is made by Santa Monica, all Proposals submitted in response to this RFP shall become a matter of public record and shall be regarded as public records, with the exception of those elements of each Proposal which are trade secrets as the term is defined in California Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL" or "PROPRIETARY." Santa Monica shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, without limitation, those so marked if disclosure is deemed required by law or by an order of a court. Proposals that indiscriminately identify all or most of the Proposal as exempt from disclosure without justification may be found technically unacceptable.

The statement below is included in all Invitations for Bids (IFBs):

The Bids received become the exclusive property of City of Santa Monica's Big Blue Bus. At such time Santa Monica publishes its City Council agenda containing a recommended action concerning a contract award, all Bids submitted in response to this IFB shall become a matter of public record and shall be regarded as public records, with the exception of those elements of each Bid which are trade secrets as that term is defined in California Government Code 6254.7 and which are so marked as "TRADE SECRET", "CONFIDENTIAL" or "PROPRIETARY." Santa Monica shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, without limitation, those so marked if disclosure is deemed required by law or by an order of a court. Bids that indiscriminately identify all or most of the Bid as exempt from disclosure without justification may be found technically unacceptable.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

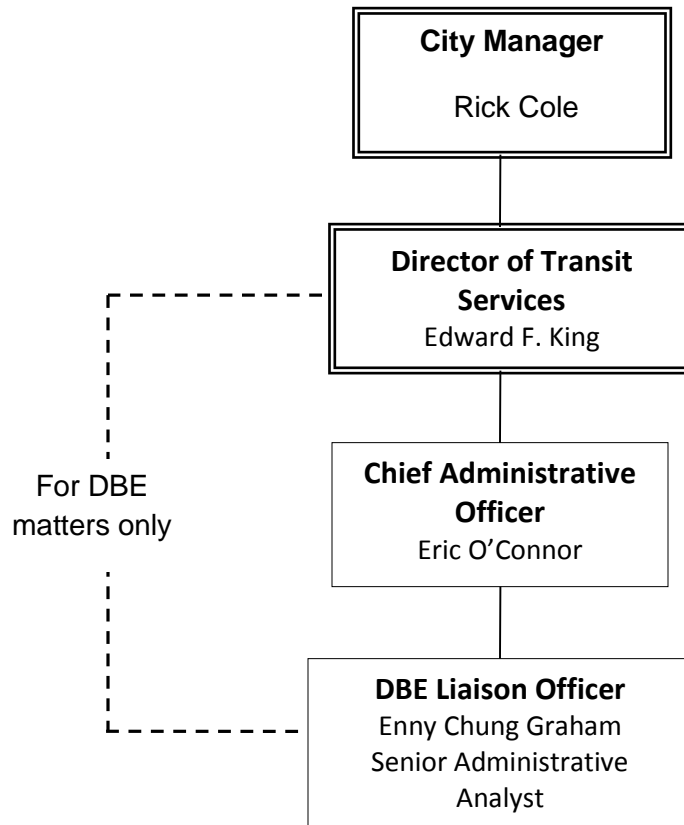
We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of Big Blue Bus or DOT. This reporting requirement also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

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

ATTACHMENTS

Attachment A	Organizational Chart
Attachment B	DBE Directory
Attachment C	Monitoring and Enforcement Mechanisms
Attachment D	Breakout of Estimated

CITY OF SANTA MONICA
BIG BLUE BUS
DBE ORGANIZATION CHART



The City of Santa Monica does not maintain additional staff to support the DBE Liaison Officer (DBELO) activities. Various divisions report their project information and provide annual updates to the DBELO for reporting annually to FTA.

DBE Directory

Please reference the California Department of Transportation DBE Database:

http://www.dot.ca.gov/hq/bep/find_certified.htm

Monitoring and Enforcement Mechanisms

Santa Monica's Big Blue Bus (BBB) will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

The following regulations, provisions, and contract remedies are available to BBB in the event of non-compliance with the DBE regulations by a contractor in its procurement activities:

1. DBE
 - A. BBB has established a DBE Program pursuant to 49 CFR Part 26. The requirements and procedures of BBB's DBE Program are hereby incorporated by reference into this Contract. Failure by any Party to carry out BBB's DBE Program procedures and requirements or applicable requirements of 49 CFR Part 26 shall be considered a material breach of this Agreement, and may be grounds for termination of this Agreement, or other such appropriate administrative remedy. Each Party shall ensure that compliance with BBB's DBE Program shall be included in any and all sub-agreements entered into which arise out of or are related to this Agreement.
 - B. The Contractor agrees that it will take necessary and reasonable steps to ensure that DBEs as defined in 49 CFR Part 26 have a fair opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Contract. Neither the Contractor nor any of its sub-contractors shall discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of FTA-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in termination of this Contract or such other remedy as BBB deems appropriate. The Contractor agrees that it will adapt and use the race-neutral means identified in 49 CFR Part 26.51(b) as appropriate for application to services under this Contract and will, to the maximum extent feasible, undertake these means of encouraging race neutral participation in the performance of its work. Each subcontract the Contractor signs with a sub-contractor will include the above statement.
 - C. The Contractor will be required to demonstrate that it has undertaken "good faith efforts" to achieve DBE participation as that term is defined in Section 26.5 of Title 49 of the Code of Federal Regulations and in accordance with the guidance provided in Appendix A to Part 26 of Title 49. The Contractor's failure to make good faith efforts shall be considered a material breach of the Agreement, and may give rise to

certain administrative penalties and proceedings, including, but not limited to, those set forth in 49 CFR Part 26.107.

2. Prompt Payment

- A. Within thirty (30) calendar days from receipt by BBB of an invoice for each payment described in this Section and upon notification to the Contractor by BBB that Contractor has performed the professional services necessary for payment, BBB will pay Contractor the amount due. Neither payment of amounts due by BBB nor acceptance of any such payment by the Contractor shall constitute a waiver of any claim for errors or omission in invoices or payments.
- B. No later than thirty (30) days after receiving payment from BBB for work satisfactorily performed by any of its sub-contractors for series rendered arising out of or related to this Agreement, the Contractor shall make full payment to its sub-contractors of all compensation due and owing under the relevant subcontract agreement, unless executed by BBB for good cause pursuant to provisions set out below.
- C. The Contractor may only delay or postpone any payment obligation to any of its sub-contractors for services rendered arising out of or related to this Agreement where, in BBB's sole estimation, good cause exists for such a delay or postponement. All such determinations on BBB's part that good cause exists for the delay or postponement of the Contractor's payment obligation to its sub-contractors must be made in writing prior to the time when payment to the sub-contractor's would have been otherwise due by the Contractor.

3. Performance Requirement

- A. The Contractor shall, at all times during the term of the Contract, perform all of its professional services in accordance with appropriate prevailing professional practice standards; and shall furnish all labor, supervision, material and supplies necessary therefor. Notwithstanding the provisions of any drawings, technical specifications or other data by BBB, the Contractor shall have the responsibility of supplying all items and details to perform the professional services specified in this Contract.
- B. The Contractor shall perform all of its professional services in its own name and as an independent Contractor, and not in the name of, or as an agent for, BBB. Under the terms of the Contract, the Contractor is an independent contractor and has and retains full control and supervision of the services performed by and full control over the employment and direct compensation and discharge of all persons, other than BBB representatives, assisting in the performance of its services. The Contractor

agrees to be solely responsible for all matters relating to wages, hours of work, and working conditions and payment of employees, including compliance with social security, all payroll taxes and withholdings, unemployment compensation, and all other requirements relating to such matters. The Contractor agrees to be responsible for its own acts and those of its subordinates, employees, and any and all sub-contractors during the term of the Contract.

- C. The Contractor shall prepare, complete, and submit to BBB the necessary reports, plans, specifications and the supporting data required to complete the Scope of Work set forth in this Contract.

4. Indemnification

- A. The Contractor agrees to indemnify, defend, indemnify and hold harmless BBB against any claims, losses, costs, liability or damages in any way related to a claim that BBB is violating Federal, state, or local laws, or any contractual provisions, relating to copyrights, trade names, licenses, franchises, patents or other means of protecting interests in products or inventions. The Contractor shall bear all costs arising from the use if patented, copyrighted, trade secret or trademarked materials, equipment, devices or processes used on or incorporated in the services provided and works produced under this Agreement. In case such materials, equipment, devices or processes are held to constitute an infringement and their use is enjoined, the Contractor, at its expense, shall (a) secure for BBB the right to continue using the materials, equipment, devices or processes by suspension of any injunction or by procuring a license or licenses for BBB; or (b) modify the materials, equipment, devices, or processes so that they become non-fringing. This covenant shall survive the termination of this Agreement.

5. Disputes

- A. Any dispute between the Contractor and BBB relating to the implementation or administration of the Contract shall be resolved in accordance with this Section.
- B. The Parties shall first attempt to resolve the dispute informally in meetings or communications between the Contractor and BBB's representative. If the dispute remains unresolved 15 days after it first arises, the Contractor may request that BBB's representative issue a recommended decision on the matter in dispute. BBB's representative shall issue the recommended decision in writing and provide a copy to the Contractor.
- C. The recommended decision of BBB's representative will become final unless, within 15 days of receipt of such recommended decision, the Contractor submits a written request for review to the BBB Director of Transit Services. In connection with any such review, the Contractor and BBB's representative shall be afforded an

opportunity to be heard and to offer evidence on the issues presented. If the dispute remains unresolved after review by the Director of Transit Services, either party may seek resolution through referral to non-binding mediation. If such mediation is unsuccessful, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California. Any party seeking resolution through the Courts of the State of California must, as a condition precedent to the commencement of litigation, demonstrate that it has made a good faith effort to resolve the dispute through the use of non-binding mediation.

- D. Pending final resolution of a dispute under this Section, the Contractor shall proceed diligently with performance in accordance with the Contract and the recommended decision of BBB's representative.

6. Subcontracting

- A. The Contractor will not enter into any subcontract except with the prior review and written approval of BBB. The Contractor shall be fully responsible for all work performed by any sub-contractor.
- B. Any approval of a subcontract shall not be construed as making BBB a party to such subcontract, giving the sub-contractor privity of contract with BBB, or subjecting BBB to liability of any kind to any sub-contractor.
- C. All subcontracts will incorporate in full all appropriate conditions and terms as set forth in this Contract.

7. Compliance with Laws and Permits

In any of the following cases, BBB shall have the right to cancel the Contract without expense to BBB: (1) the Contractor is guilty of misrepresentation; (2) the Contract is obtained by fraud, collusion, conspiracy, or other unlawful means; or (3) the Contract conflicts with any statutory or constitutional provision of the State of California or the United States. This Section shall not be construed to limit BBB's right to terminate the Contract for convenience or default.

8. Cancellation of Contract

In any of the following cases, BBB shall have the right to cancel the Contract without expense to BBB: (1) the Contractor is guilty of misrepresentation; (2) the Contract is obtained by fraud, collusion, conspiracy, or other unlawful means; or (3) the Contract conflicts with any statutory or constitutional provision of the State of California or the United States. This Section shall not be construed to limit BBB's right to terminate the Contract for convenience or default.

9. Termination for Default

- A. Subject to the provisions of subsection C of this Section, BBB may terminate the whole or party of the Contract in any one of the following circumstances:
- (1) If the Contractor fails to provide the services in the manner required by the Contract;
 - (2) If the Contractor fails to perform any of the provisions of the Contract in accordance with its terms; or
 - (3) If the Contractor fails to make progress in the prosecution of the work under the Contract so as to endanger such performance.
- B. In the event that BBB terminates the Contract in whole or in part as provided in Subsection A of this Section, BBB may procure, upon such terms and in such manner as BBB may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to BBB for costs associated with the termination of the Contract, the procurement of replacement services by BBB, any excess costs of such similar supplies or services, and any increase in the total Contract cost as result of the reprocurement of services from the date of termination to the expiration date of the original Contract. The Contractor shall continue the performance of the Contract to the extent not terminated under the provisions of this Section. Any disputes arising under this Section that cannot be resolved by the Contractor and BBB are subject to resolution pursuant to Section 11.
- C. If BBB determines that an event of default under this Section has occurred, it shall immediately notify the Contractor in writing and provide the Contractor with thirty (30) days in which to provide a plan to cure such default including a timetable for accomplishing the cure. BBB must approve the plan and the timetable, which approval shall not be unreasonably withheld. If the Contractor fails to cure in accordance with its plan and timetable, BBB may declare the Contractor to be in default and terminate the Contract in whole or in part.
- D. Except as otherwise provided, settlement of claims by the Contractor under this termination Section shall be in accordance with the provisions set forth in 48 CFR Part 49, as amended from time to time.

10. False or Fraudulent Statement and Claims

By executing this Contract the Contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose penalties under the program Fraud Civil Remedies Act of 1986, as amended (31 U.S.C. 3801 *et seq.*), and implementing Department of Transportation regulations set forth at 49 CFR Part 31.

Breakout of Estimated

Race Neutral & Race Conscious Participation

Santa Monica's Big Blue Bus will meet the maximum feasible portion of its overall goal by using race neutral means of facilitating DBE participation. BBB uses the following race neutral means to increase DBE participation:

- Encourage participation of DBE's in pre-bid conferences
- Outreach to DBE trade associations to provide information on BBB contracting opportunities
- Solicit support of DBE trade associations to distribute bid announcements including bid specifications
- Encourage DBE's to discuss their capabilities with prime contractors at pre-bid conferences

As a transit agency operating in California and covered by the decision of the U.S. Court of Appeals for the Ninth Circuit in the case of *Western States Paving Co., Inc. v. Washington State DOT*, Santa Monica's Big Blue Bus will not adopt race conscious measures of DBE participation prior to the implementation of a disparity study.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if we use contract goals we will adjust the estimated breakout of race-neutral and race conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

BBB will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.