

San Luis Obispo Regional Transit Authority
Disadvantaged Business Enterprise Program

Objectives/Policy Statement

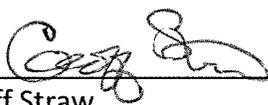
The San Luis Obispo Regional Transit Authority (RTA) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The RTA has received Federal financial assistance from the DOT and as a condition of receiving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

It is the policy of the RTA 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 the RTA'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 Executive Director has designated Deputy Director/CFO 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 the RTA in its financial assistance agreements with the DOT.

The RTA has disseminated this policy to the Board of the RTA 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



Geoff Straw
Executive Director

7-10-19
Date

SUBPART A – GENERAL REQUIREMENTS

Objectives

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

Applicability

The San Luis Obispo Regional Transit Authority (RTA) is the recipient of Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405; and Fixing America's Surface Transportation Act (FAST Act), Pub. L. No. 114-94, 129 Stat. 1312 .

Definitions

The RTA will adopt the definitions contained in 49 CFR Part 26.5.

Non-discrimination Requirements

The RTA 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, the RTA 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

The RTA 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.

The RTA 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 through the use of California's Uniform Certification

Program certification information and also a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts.

Assurances

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

Federal Financial Assistance Agreement Assurance:

The RTA 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 the RTA 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

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

DBE Liaison Officer

The RTA has designated the following individual as its DBE Liaison Officer

(DBELO):

Deputy Director/Chief Financial Officer
San Luis Obispo Regional Transit Authority
253 Elks Lane
San Luis Obispo, CA 93401

Phone: (805) 781-4397

FAX: (805) 781-1291

Email: tarnold@slorta.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the RTA complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director concerning DBE program matters. The DBELO devotes a portion of their 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 Executive Director and Board 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 the RTA 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 can be 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 RTA's DBE Program. To date, the DBELO has identified the following minority-owned financial institutions, which offer services in California: BORREGO SPRINGS Bank NA, EASTERN INTL Bank, COMMUNITY CMRC Bank, and OMNI Bank NA.

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

Prompt Payment Mechanism

Prompt Payment:

The RTA 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 the RTA. Any delay or postponement of the payment from the above referenced time frame may occur only for good cause following written approval of the RTA. This clause applies to both DBE and non-DBE subcontracts.

Directory

The RTA 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, the RTA is unaware of any types of work that have a burdensome over-concentration of DBE participation.

Business Development Programs

The RTA does not operate a business development or mentor-protégé program at the present time. If the RTA implements such a program in the future, the RTA 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

The RTA 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

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

The RTA 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, the RTA 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. The RTA 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). The RTA believes that including the participation of procurement staff in scheduled reviews will increase accountability of the RTA's procurement options and decisions and in doing so will ultimately improve contracting opportunities for Small Business Enterprises at the prime level.
- B. The RTA 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. The RTA 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).

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Set-asides or Quotas

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

Overall Goals

In accordance with Section 26.45(f) the RTA will submit its triennial overall DBE goal to the Federal Transit Administration on August 1 of the year specified by FTA. The DBE goal is calculated using the two-step process described in the “Tips for Goal Setting” guidance provided by USDOT. Please see the RTA Goal Setting Methodology for additional information.

The RTA 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, the RTA obtains information concerning the availability for disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs and the RTA’s efforts to establish a level playing field for the participation of DBEs.

The RTA 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 the RTA will accept comments on the goals for 45 days from the date of notice. This notice will be published in the Tribune or the New Times. 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.

If the awards and commitments shown on the RTA Uniform Report at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the RTA will:

- A. Analyze in detail the reasons for the difference between the overall goal and awards and commitments in that fiscal year;
- B. Establish specific steps and milestones to correct the problems identified in the analysis and to enable the RTA to fully meet the goal for the new fiscal year;

The RTA will retain the analysis and corrective actions for three years and make it available to FTA on request for their review.

Transit Vehicle Manufacturers Goals

The RTA 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, the RTA 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. The RTA will submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.

Overall Goals/Contract Goals

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

- Encourage participation of DBEs in pre-bid conferences;
- Outreach to DBE trade associations to provide information on the RTA 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.

The RTA will use contract goals to meet any portion of the overall goal the RTA 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.

The RTA 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.)

The RTA 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*, the RTA will not adopt race-conscious measures of DBE participation prior to the implementation of a disparity study.

In order to ensure that the RTA's DBE Program will be narrowly tailored to overcome the effects of discrimination, the RTA 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, the RTA 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

The RTA 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 the RTA 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:

Geoff Straw, Executive Director
253 Elks Lane
San Luis Obispo, CA 93401
(805) 781-4465

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. The RTA 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

The RTA requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without the RTA'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 the RTA 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 the RTA prior

to consideration of the request to terminate. The DBE will then have five days to respond and advise the RTA of why it objects to the proposed termination.

In those instances where "good cause" exists to terminate a DBE's contract, the RTA 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. The RTA 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 the RTA'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, the RTA'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 San Luis Obispo Regional Transit Authority 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

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

SUBPARTS D & E – CERTIFICATION

Certification Process

The RTA 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
1823 14 Street
Sacramento, CA 95811
(916) 324-1700
Toll-Free (866) 810-6346
smallbusinessadvocate@dot.ca.gov

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

Unified Certification Programs

The RTA is a member of the Unified Certification Program (UCP) administered by California Department of Transportation (Caltrans). The UCP 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).

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

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 the San Luis Obispo Regional Transit Authority (RTA). At such time as a contract award is made by the RTA, 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." The RTA 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 the San Luis Obispo Regional Transit Authority (RTA). At such time the RTA publishes its Board 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." The RTA 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 the RTA 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

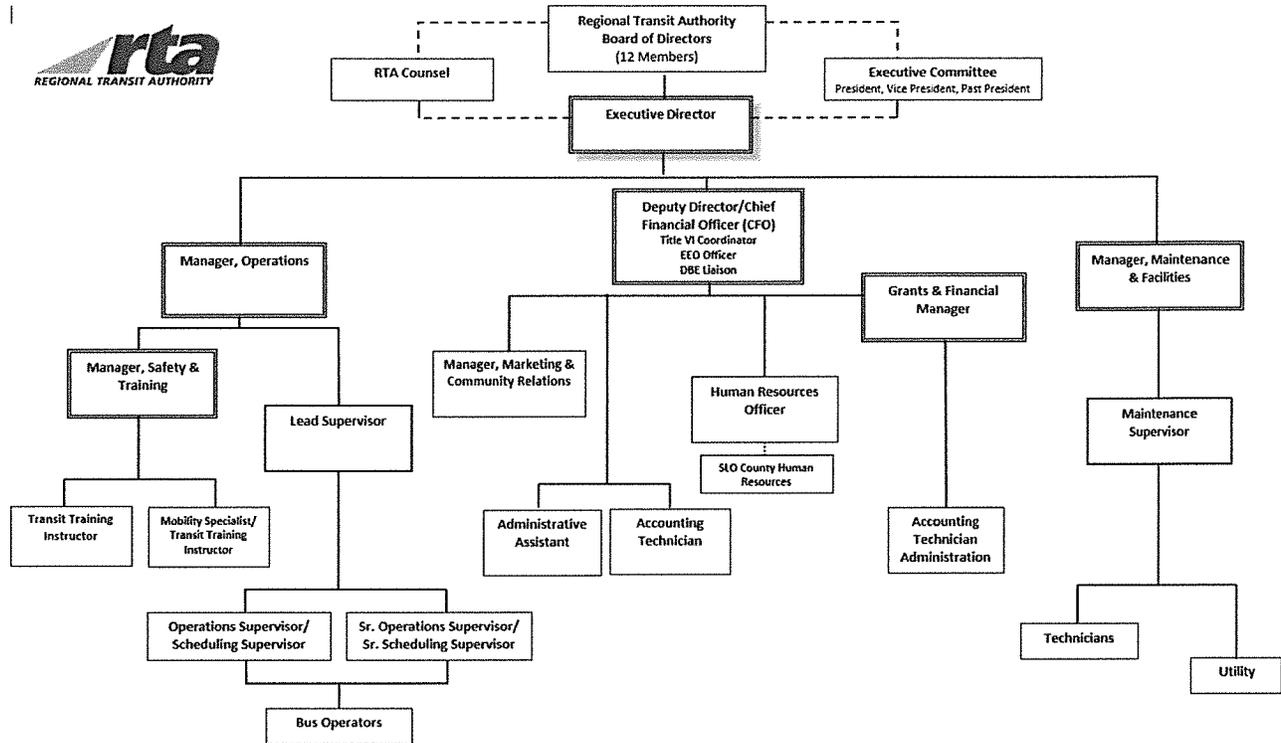
Attachment B DBE Directory

Attachment C Monitoring and Enforcement Mechanisms

Attachment D Breakout of Estimated

ATTACHMENT A

DBE ORGANIZATION CHART



The RTA 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.

ATTACHMENT B

DBE Directory

Please reference the California Department of Transportation DBE Database:

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

ATTACHMENT C

Monitoring and Enforcement Mechanisms

The RTA 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 the RTA in the event of non-compliance with the DBE regulations by a contractor in its procurement activities:

1. DBE
 - A. The RTA has established a DBE Program pursuant to 49 CFR Part 26. The requirements and procedures of the RTA's DBE Program are hereby incorporated by reference into this Contract. Failure by any Party to carry out the RTA'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 the RTA'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 the RTA 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 the RTA of an invoice for each payment described in this Section and upon notification to the Contractor by the RTA that Contractor has performed the professional services necessary for payment, the RTA will pay Contractor the amount due. Neither payment of amounts due by the RTA 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 the RTA 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 the RTA 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 the RTA's sole estimation, good cause exists for such a delay or postponement. All such determinations on the RTA'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 the RTA, 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, the RTA. 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 the RTA 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 the RTA the necessary reports, plans, specifications and the supporting data required to complete the Scope of Work set forth in this Contract.

4. Indemnification

The Contractor agrees to indemnify, defend, indemnify and hold harmless the RTA against any claims, losses, costs, liability or damages in any way related to a claim that the RTA 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 the RTA's right to continue using the materials, equipment, devices or processes by suspension of any injunction or by procuring a license or licenses for the RTA; 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 the RTA 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 the RTA's representative. If the dispute remains unresolved 15 days after it first arises, the Contractor may request that the RTA's representative issue a recommended decision on the matter in dispute. The RTA's representative shall issue the recommended decision in writing and provide a copy to the Contractor.
- C. The recommended decision of the RTA'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 RTA Executive Director. In connection with any such review, the Contractor and the RTA'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 the RTA's representative.

6. Subcontracting

- A. The Contractor will not enter into any subcontract except with the prior review and written approval of the RTA. 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 the RTA a party to such subcontract, giving the sub-contractor privity of contract with the RTA, or subjecting the RTA 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, the RTA shall have the right to cancel the Contract without expense to the RTA: (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 the RTA's right to terminate the Contract for convenience or default.

8. Cancellation of Contract

In any of the following cases, the RTA shall have the right to cancel the Contract without expense to the RTA: (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 the RTA'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, the RTA may terminate

the whole or party of the Contract in any one of the following circumstances:

- If the Contractor fails to provide the services in the manner required by the Contract;
- If the Contractor fails to perform any of the provisions of the Contract in accordance with its terms; or
- 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 the RTA terminates the Contract in whole or in part as provided in Subsection A of this Section, the RTA may procure, upon such terms and in such manner as the RTA may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to the RTA for costs associated with the termination of the Contract, the procurement of replacement services by the RTA, any excess costs of such similar supplies or services, and any increase in the total Contract cost as result of the procurement 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 the RTA are subject to resolution pursuant to Section 11.
- C. If the RTA 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. The RTA 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, the RTA 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 48CFR 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.

ATTACHMENT D

Breakout of Estimated

Race Neutral & Race Conscious Participation

The San Luis Obispo Regional Transit Authority (RTA) will meet the maximum feasible portion of its overall goal by using race neutral means of facilitating DBE participation. The RTA 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 the RTA 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*, the RTA 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.

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