



**WESTERN CONTRA COSTA TRANSIT AUTHORITY**

## **Disadvantaged Business Enterprise Program**

**Updated May 13, 2022**

**WESTERN CONTRA COSTA TRANSIT AUTHORITY**  
**DIVERSITY PROGRAM FOR CONTRACTS**

Western Contra Costa Transit Authority ('WestCAT') is committed to a Diversity Program for the participation of Disadvantaged Business Enterprise ('DBE's') and Small Business Enterprises ('SBE's') in WestCAT's contracting opportunities in accordance with 49 Code of Federal Regulations (CFR) Part 26 'Regulations', effective March 4<sup>th</sup> 1999 and amended January 28<sup>th</sup> 2011.

It is the policy of WestCAT to ensure nondiscrimination, on the basis, of race, color, sex, or national origin in the award and administration of the U.S. Department of Transportation ('U.S.DOT') assisted contracts. It is the intention of WestCAT to create a level playing field on which DBE's and SBE's can compete fairly and participate in the performance of contracts and subcontracts relating to WestCAT's construction, procurement and professional services activities.

WestCAT's policies, procedures and goals in this area are detailed in its adopted DBE program. The program is the result of WestCAT's commitment to the participation of small businesses owned and controlled by socially and economically disadvantaged individuals and other small businesses, meeting eligibility standards set forth in 49 CFR Part 26, in purchasing and contracting opportunities funded, in whole or in part by U.S. DOT assistance.. The objectives of the DBE program are:

- To ensure that the DBE program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE's and SBE's
- To help remove barriers to the participation of DBE's and SBE's in U.S. DOT assisted contracts;
- To assist DBE's and SBE's in doing business with other Bay Area transportation agencies' and
- To assist the development of firms that can compete successfully in the market places outside of the DBE program

The General Manager of WestCAT is responsible for ensuring adherence to this policy. The DBE Liaison Officer, in coordination with all WestCAT Managers and Purchasing staff, is responsible for the development, implementation and monitoring of the Diversity Program for Contracts in accordance with WestCAT's nondiscrimination policy. It is the expectation of the Board of Directors and the General Manager that all WestCAT personnel shall adhere to the spirit, as well as the provisions and procedures of the program.

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

Western Contra Costa Transit Authority  
601 Walter ave  
Pinole, CA 94564

If you have any further questions or would like further information regarding this program, please contact DBE Liaison Officer, Mike Furnary by telephone at (510) 724-3331, by fax at (510) 724-5551, or by email at [mike@westcat.org](mailto:mike@westcat.org)



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Charles Anderson – General Manager

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May 13, 2022  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

(Section Numbers Reference Corresponding Sections of 49 CFR Part 26)

### **Section 26.1 Objectives**

The policy statement on the first page of this program contains the objectives.

### **Section 26.3 Applicability**

The Western Contra Costa Transit Authority also referred to as “WCCTA”, receives 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; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.

### **Section 26.5 Definitions**

WCCTA will adopt the definitions contained in 49 CFR Part 26 Section 26.5 for this program. Additional information and most common terms are defined in Attachment 5.

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

WCCTA 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 based on race, color, sex or national origin.

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

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

#### **Uniform Reports: 26.11(a)**

Per 49 CFR 26.11 (a), WCCTA will transmit to FTA DBE Uniform/semiannual reports by June 1<sup>st</sup> and December 1<sup>st</sup>.

#### **Reporting to U.S. DOT: 26.11(b)**

WCCTA will continue to report DBE participation and overall goal-setting methods to FTA as directed. Statistical data will be maintained as advised, to provide reports to U.S. DOT administrations reflecting the DBE participation on federally assisted procurement activities.

**Bidder's List: 26.11(c)**

WCCTA will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its U.S. DOT-assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculate overall goals. The bidders list will include the firm name, address, DBE/non-DBE status, firm age and annual gross receipts of firms.

WCCTA will collect this information in the following ways:

A Bidder/Proposer List (Attachment 3) provided with all solicitation documents to bidders and proposers. In the case of firms bidding on contracts without subcontracting opportunities, data gathering will be conducted by requesting firms to complete a survey. These forms direct all respondents and their subcontractors to report bidder's list information on the forms and submit it with its bids or proposal documents. WCCTA will maintain the confidentiality of any proprietary information in accordance with applicable California law and the Regulations.

**Section 26.13 Federal Financial Assistance Agreement**

Western Contra Costa Transit Authority has signed the following assurances, applicable to all U.S. DOT-assisted contracts and their administration:

**Assurance: 26.13(a)**

Western Contra Costa Transit Authority shall not discriminate based on race, color, national origin or sex in the award and performance of any U.S. DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. WCCTA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts. WCCTA's DBE Program, as required by 49 CFR Part 26 and as approved by U.S. DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to WCCTA of its failure to carry out its approved program, the Department may impose sanctions 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.). [Note: This language will appear in financial assistance agreements with sub-recipients.]

**Contract Assurance: 26.13(b)**

Western Contra Costa Transit Authority will ensure that the following clause is placed in every U.S. DOT-assisted contract (and subcontract the prime contractor signs with a subcontractor):

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 that may result in the termination of this contract or such other remedy as WCCTA deems appropriate and may include, but is not limited to the following:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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

Since Western Contra Costa Transit Authority has received a grant of \$250,000 or more in FTA planning, capital, and or operating assistance in a federal fiscal year, WCCTA will continue to carry out this program until all funds from U.S. DOT financial assistance have been expended. WCCTA will provide to U.S. DOT updates representing significant changes in the program to U.S. DOT and implement the complete updated DBE Program upon the approval of the FTA.

### **Section 26.23 Policy Statement**

The Policy Statement is elaborated on the first page of this program.

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

Western Contra Costa Transit Authority has designated the following individual as our DBE Liaison Officer:

Mike Furnary  
601 Walter Avenue  
Pinole, CA 94564  
(510) 724-3331  
[mike@westcat.org](mailto:mike@westcat.org)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program in coordination with other appropriate officials and ensuring that Western Contra Costa Transit Authority complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the General Manager of WCCTA concerning DBE program matters. An organization chart displaying the DBELO's position in the organization, found

in Attachment 1 to this program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by U.S. DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (race-neutral methods and contract specific goals attainment; and identifies ways to improve progress.)
6. Analyzes WCCTA's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings
8. Advises the General Manager/Board of Directors on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and obtaining insurance.
10. Acts as liaison to the Uniform Certification Process in California.
11. Provides outreach to DBEs, SBEs and community organizations to advise them of opportunities.

## **Section 26.27 DBE Financial Institutions**

It is the policy of WCCTA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT/FTA-assisted contracts to make use of these institutions. WCCTA staff reviews the Federal Reserve database at <http://www.federalreserve.gov/releases/mob/> on an annual basis.

WCCTA will include the following clauses in each DOT/FTA-assisted prime contract:

Per 49 CFR Part 26.27, prime contractors and their subcontractors are encouraged to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in their community and make reasonable efforts to use these institutions. A list of such firms is available at: <http://www.federalreserve.gov/releases/mob/>.

WCCTA shall explore the full extent of services offered by banks and other financial institutions that qualify as DBEs and determine areas in which the WCCTA may reasonably utilize their services. WCCTA shall also encourage its prime contractors to use the services of DBE financial institutions. Information of such institutions is available upon request from the DBELO.

## **Section 26.29      Prompt Payment Mechanisms**

### **Prompt Payment: 26.29(a)**

Western Contra Costa Transit Authority will include the following clause in each U.S. 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 working days from the receipt of each payment the prime contract receives from Western Contra Costa Transit Authority. The prime contractor agrees further to return retainage payments to each subcontractor within 30 working days after the subcontractors' work is satisfactorily complete. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of Western Contra Costa Transit Authority. This clause applies to both DBE and non-DBE subcontracts.

### **Retainage: 26.29(b)**

The prime contractor agrees to return retainage payments to each subcontractor within 30 working days after the subcontractors' work is satisfactorily complete. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of Western Contra Costa Transit Authority. This clause applies to both DBE and non-DBE subcontracts.

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

If WCCTA determines that the prime contractor has failed to comply with the prompt payment provisions set forth above, WCCTA may give written notice to the prime contractor and the prime contractor's surety that, if the default is not remedied within 30 days, the contract may be terminated. WCCTA may also impose penalties and sanctions for non-compliance with the prompt payment clause contained in Section 26.37, Monitoring and Enforcement Mechanisms.

## **Section 26.31      Directory**

Western Contra Costa Transit Authority utilizes the California Unified Certification Program (CUCP) to identify all firms eligible to participate as DBEs. The DBE Database is a consolidated and automated directory that identifies firms that have been certified by the CUCP. The directory lists the firm's name, address, phone number, date of the most recent certification, utilizing the North American Industry Classification System (NAICS) codes for which the firm is certified as a DBE.

Additionally, the DBE Database may include, whenever possible, the date the firm was established, the legal structure of the firm, the percentage owned by disadvantaged individuals, capacity, previous work experience and a contact person.

The DBE Database shall not in any way prequalify the identified DBE firms with respect to licensing, bondability, competence or financial responsibility.

The directory is jointly maintained and updated by the CUCP certifying member agencies statewide, and is hosted by the California Department of Transportation (Caltrans) The DBE Database is available at Caltrans' website at: <https://caltrans.dbesystem.com/> The DBE Database shall be distributed to contractors and made available to the public upon request. WCCTA will use the DBE Database as a primary resource in developing overall goals, contract-specific goals, conducting outreach and other activities to promote DBE participation in U.S. DOT contracts.

### **Section 26.33 Over-concentration**

Western Contra Costa Transit Authority has not identified that over-concentration exists in any type of work that DBEs perform. WCCTA will develop appropriate measures to address the over-concentration, if it determines that DBE participation is so over-concentrated in specific types of work or contracting opportunities assisted by the FTA, that it unduly burdens the participation of non-DBEs in that type of work. WCCTA will seek approval of such measures from FTA and, subsequently implement the measures into the DBE Program.

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

WCCTA is a member of the Business Outreach Committee (BOC). The BOC represents the nine Bay Area transportation agencies, assisting DBEs and other small companies with expansion of their businesses through training, technical assistance, and relationship building with agency staff and the contracting community.

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

Western Contra Costa Transit Authority will take the following monitoring and enforcement mechanisms in all U.S. DOT-assisted contracts containing overall, contract or project-specific goals, to ensure compliance with 49 CFR Part 26.

1. WCCTA will bring to the attention of the U.S. DOT any false, fraudulent or dishonest conduct in connection with the program, so that U.S. DOT can take the steps provided in § 26.109. (e.g. referral to the Department of Justice for criminal prosecution, referral to the U.S. DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties) provided in 26.109.
2. WCCTA will consider similar action under its own legal authorities, including responsibility determinations in future contracts. Pursuant to the terms of the contract, any of the following administrative remedies may be used in the event of



non-compliance with DBE regulation by a participant in WCCTA's procurement activities:

- a) Liquidated damages;
  - b) Suspension of payment to the contractor of any monies held by WCCTA as retained on contract;
  - c) The denial to the contractor of right to participate in future WCCTA contracts for a specified time;
  - d) Contract termination.
3. WCCTA will also provide a monitoring and enforcement mechanism to verify that the DBE's actually perform the work committed to DBEs at contract award. This will be accomplished by direct observation, interviews, and review of submitted documents. **Attachment 7**
  4. WCCTA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award
  5. WCCTA will monitor and track actual DBE participation through WCCTA and contractor reports of payments and other appropriate monitoring.
  6. WCCTA will maintain a running tally of payments actually made to DBE firms and may require prime contractors, DBE subcontractors and suppliers to provide appropriate documentation to verify such payments. Monitoring will include a written certification that staff reviewed contracting records and monitored work sites in California for this purpose. Monitoring may be conducted in conjunction with monitoring of contract performance for other purposes, i.e. closeout reviews for a contract. (DBE participation is credited toward overall, contract or project goals in accordance with the Regulations. Credit toward overall, contract or project goals is only given upon satisfactory evidence that payments were actually made to DBE firms.)

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

In accordance with the requirements of 49 CFR Part 26, Section 26.39, WCCTA established a Small Business Element in February of 2012 to ensure that DBEs and non-DBE small businesses have a maximum opportunity to participate on federal-aid projects. WCCTA will fully implement this SBE Program upon the approval of the FTA. Details of the SBE program are included as Attachment 6 and incorporated herein.

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

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

Western Contra Costa Transit Authority does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

WCCTA will establish an overall goal for the participation of DBEs in all budgeted contracts utilizing U.S. DOT/FTA financial assistance. A description of the methodology to calculate the overall goal and the goal calculations as well as a description of consultation and publication is included in this program.

The overall goal will be established in accordance with the 2-step process as specified in 49 CFR Section 26.45(c)-(d). The first step is to determine the number of ready, willing and able DBEs relative to the number of all businesses ready, willing and able to participate in the local market area, "base figure." WCCTA used nine (9) counties (Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Sonoma and Solano) in its market area. The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation WCCTA would expect in the absence of discrimination based on past participation of DBEs on projects.

In accordance with Section 26.45(f), WCCTA will submit its overall triennial goal to U.S.DOT on August 1 at 3-year intervals, based on a schedule established by the FTA as applicable, and posted on WCCTA's website: [www.westcat.org](http://www.westcat.org). Before establishing the overall goal, WCCTA will consult with the CUCP to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and WCCTA efforts to establish a level playing field for the participation of DBEs. Consultation will include, but not necessarily be limited to, minority, women's and general contractor groups, community organizations, and other officials or organizations. The consultative process is ongoing and may include data and information obtained during various WCCTA outreach events. WCCTA will maintain membership in the Business Outreach Committee (BOC) and participate in BOC public participation meetings, workshops, activities and efforts in the San Francisco Bay Area allowing a direct, interactive exchange among interested stakeholders interested in obtaining information relevant to the goal setting process.

Pursuant to 49 CFR 26.45 (g) (1) (ii), following consultation, WCCTA will publish a public notice of the proposed triennial goal on its official Web site during the goal setting process in anticipation for comments and prior to submission to FTA for review. This notice will inform the public that WCCTA and the FTA will accept comments on the goal for 30 days from the date of the notice. The notice will also inform the public that the proposed goal and the rationale for its calculation will be available for inspection during normal business hours at WCCTA's Administrative Office

for 45 days following the date of the notice. Included in the notice will be the addresses where comments may be sent or e-mailed and locations where the proposed goal may be reviewed.

WCCTA's overall goal submission to U.S. DOT includes 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 the public participation process and WCCTA's responses; and proof of publication of the goal in media outlets listed.

WCCTA will begin using its overall goal on October 1 of said year, unless WCCTA has received other instructions from U.S. DOT. If WCCTA establishes a goal on a project basis, WCCTA will begin using that goal by the time of the first solicitation for a U.S. DOT-assisted contract for the project.

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

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

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis in order to meet overall goals for future fiscal years; and
3. Maintain and make available upon request, the analysis and corrective action plan as required by the FTA.

### **Section 26.49 Transit Vehicle Manufacturers (TVM) Goals**

Transit Vehicle Manufacturers each shall establish and submit an annual DBE goal for FTA's approval. In setting the annual goal, the manufacturer should be guided by the provisions in Title 49 CFR Section 26.49. WCCTA requires each TVM to certify that it has complied with the requirements of this section 26.49, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements. Alternatively, WCCTA may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the Program. Work performed outside the United States and its territories and commonwealths shall be excluded. WCCTA will send to FTA Transit Vehicle Manufacturer information within 30 days of making an award.

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

WCCTA will use contract goals to meet any portion of the overall goal WCCTA does not project being able to meet using a combination of race-neutral/gender-neutral means as guided by the provisions in Title 49 CFR Section 26.51. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of WCCTA's overall goal that WCCTA does not project meeting through race-neutral/gender-neutral means.

WCCTA establishes contract goals only on U.S. DOT-assisted contracts that have subcontracting possibilities. WCCTA does not establish contract goals on every U.S. DOT-assisted contract, and the size of the contract goal is 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.)

WCCTA expresses the contract goal as a percentage of the total amount of U.S. DOT-assisted contract.

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

#### **Demonstration of good faith efforts: 26.53(a) & (c)**

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

The General Manager is responsible for determining whether a bidder/proposer who has not met the contract goal has documented sufficient good faith efforts to regard as responsive. Additionally, the General Manager will decide whether a contractor actively and aggressively made a "good faith" effort to seek DBEs to meet the goals as stated in that specific solicitation, prior to awarding further contracts to a contractor that has failed to meet DBE contract goals.

To demonstrate a good faith effort to meet the DBE contract goal, a bidder/proposer must submit the "List of DBE/SBE Prime or Subcontractors." For each DBE listed, the bidder must submit a properly completed "DBE/SBE Declaration Form" executed by the proposed DBE subcontractor/supplier. All prime contractors submitting bids must submit Form 4A, which shall list all firms submitting bids, sub bids or quotes for any portion of the work under the specific contract, by bid deadline.

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

#### **Information to be Submitted: 26.53(b)**

WCCTA treats bidder/proposers' compliance with good faith efforts' requirements as a matter of responsiveness and responsibility.

Each solicitation for which a contract goal has been established will require the bidders/proposers 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. Evidence of good faith efforts, if the contract goal is not met. (Attachment 4)

**Administrative Reconsideration: 26.53(d)**

Within 3 days of being informed by WCCTA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidder/proposer should make this request in writing to the following:

Charles Anderson, General Manager  
601 Walter Avenue  
Pinole, CA 94564  
(510) 724-3331

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

**Good Faith Efforts when a DBE is replaced on a Contract with Contract Goals: 26.53(f)**

In the event that a bidder wishes to modify its percentage of DBE participation within the "List of DBE/SBE Prime or Subcontractors" after its submission or after a contract is awarded, the bidder must request approval for the modification from the General Manager, in writing. If a bidder intends to terminate and/or substitute a DBE firm, it must also provide written notice to the DBE subcontractor, with a copy to the DBELO, of bidder's intent to terminate and/or substitute the firm. A prime contractor may not, without WCCTA's prior consent, terminate for convenience a DBE subcontractor approved under this contract and then perform the work of the contract with its own forces or those of an affiliate.

A modification includes any change to items of work, material, services, subcontract value or DBE firms that differ from those identified on the approved "List of DBE/SBE Prime or Subcontractors." The prime contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE, when a DBE subcontractor is terminated and/or fails to complete its work for any reason. These good faith efforts must be directed at finding other DBEs to perform at least the same amount of work under the contract as the former DBE to the extent needed to meet the contract goal.

A Contractor must have good cause to remove/terminate/substitute/replace a DBE contractor and such removal/termination/substitution/replacement requires WCCTA's consent/approval. To initiate the termination, substitution, removal or replacement process with a DBE contractor, the Contractor (any tier) must do the following:

- (a) The contractor must give notice in writing to the DBE contractor and WCCTA before transmitting to WCCTA its request to terminate and/or substitute a DBE contractor. The notice must include its request to terminate and/or substitute, replace and/or remove the DBE, the reason for the request and all documentation to support its claim. The Contractor must submit a copy of the notice and support documentation to WCCTA at the time the original letter is sent to the DBE contractor;
- (b) The Contractor must give must give the DBE contractor five (5) business days to respond to the notice and provide the WCCTA with reasons, if any, why it objects to the proposed termination of its DBE contract and why the WCCTA should not consent to the Contractor's action;
- (c) WCCTA will then open a formal investigation inclusive of reviewing of all documentation, conducting interviews and making site visits, if necessary. The Contractor carries the burden of proof to demonstrate good cause for the termination and/or substitution;
- (d) If WCCTA determines the Contractor has good cause to terminate the DBE firm, WCCTA will provide written consent of the DBE removal and the requirements to substitute work to another DBE firm. If WCCTA finds that good cause does not exist to terminate the DBE firm, WCCTA will provide a written denial of the request to terminate/replace the DBE contractor and immediately request a corrective action plan from the Contractor.
- (e) One or more of the following circumstances should exist for purpose of good cause, to remove, terminate or replace a DBE: (1) Failure or refusal to execute a written contract. (2) Failure or refusal to perform the work of its subcontract in a way consistent with normal industry practice and the contractor has not acted in bad faith. (3) Failure to meet the contractor's reasonable bonding or insurance requirements. (4) Insolvency, bankruptcy or credit unworthiness. (5) Ineligibility

to work on public works project because of suspension or debarment proceedings. (6) A determination that the DBE is not a responsible contractor. (7) Voluntary withdrawal from the project by written notification that is verified. (8) Other documented good cause that compels the replacement of the DBE.

- (f) If the contractor is approved to replace/remove/terminate the DBE, the contractor must make good faith efforts to replace the DBE with another certified DBE and shall not self-perform the work/services.

The prime contractor must provide WCCTA with any/all documents and information as may be requested with respect to the modification. If WCCTA determines that the prime contractor failed to make good faith efforts, WCCTA may consider such failure a breach of contract, entitling WCCTA to remedies provided herein, in addition to any other available remedy.

### **Section 26.55 Counting DBE Participation**

WCCTA counts DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

Only the work actually performed by a DBE will be counted towards the DBE goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted.

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

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

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

A DBE subcontractor may not be terminated (or an approved substitute DBE firm) without prior written consent from WCCTA. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

## **SUBPART D & E – CERTIFICATION**

### **Section 26.61–26.73      Certification Process**

WCCTA is a participant of the CUCP that uses certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in U.S. DOT-assisted contracts. The CUCP MOA provides U.S. DOT recipients the option to be either a certifying member or a non-certifying member. WCCTA is a non-certifying member.

The CUCP makes all DBE certification decisions on behalf of U.S. DOT recipients in the state. WCCTA relies upon the CUCP for the certification of DBE firms and ensures that only firms certified as eligible DBEs participate in the Program. WCCTA uses and counts for DBE credit DBE firms certified by the UCP. To be certified as a DBE, a firm must meet all certification eligibility standards.

The following link provides information on required documentation and the certification process <https://dot.ca.gov/programs/civil-rights/dbe-certification-information>

### **Section 26.81      Unified Certification Programs**

The CUCP statewide DBE Directory is hosted by the California Department of Transportation (Caltrans) and is available through a query form or you may download the entire directory in spreadsheet format or query the DBE directory using this link:

<https://ucp.dot.ca.gov/index2.jsp>

The CUCP meets all requirements of this section. Interested parties are encouraged to use the link below to obtain current contact information on certifying agencies:

<https://dot.ca.gov/-/media/dot-media/programs/civil-rights/documents/dbe/cucp-roster-of-certifying-agencies-a11y.pdf>

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

Western Contra Costa Transit Authority depends on the CUCP DBE certification program and does not make certification decisions or recertify. WCCTA follows the certification standards of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. A copy of the CUCP certification procedures and/or CUCP program is available at <https://dot.ca.gov/programs/civil-rights/dbe-certification-information>

You may appeal a decision if you feel all the facts have not been duly considered. To do so, please respond in writing within 90 days from the date of your denial letter to:



U.S. Departmental Office of Civil Rights External Civil Rights Program Division,  
Room W78-101  
1200 New Jersey Avenue, SE Washington, D.C. 20590

You must include in your letter of appeal a statement that specifies why the certification decision is erroneous, identifies the significant facts that were not considered by the certifying agency or identifies the regulatory provision that was improperly implied.

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

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

Western Contra Costa Transit Authority will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

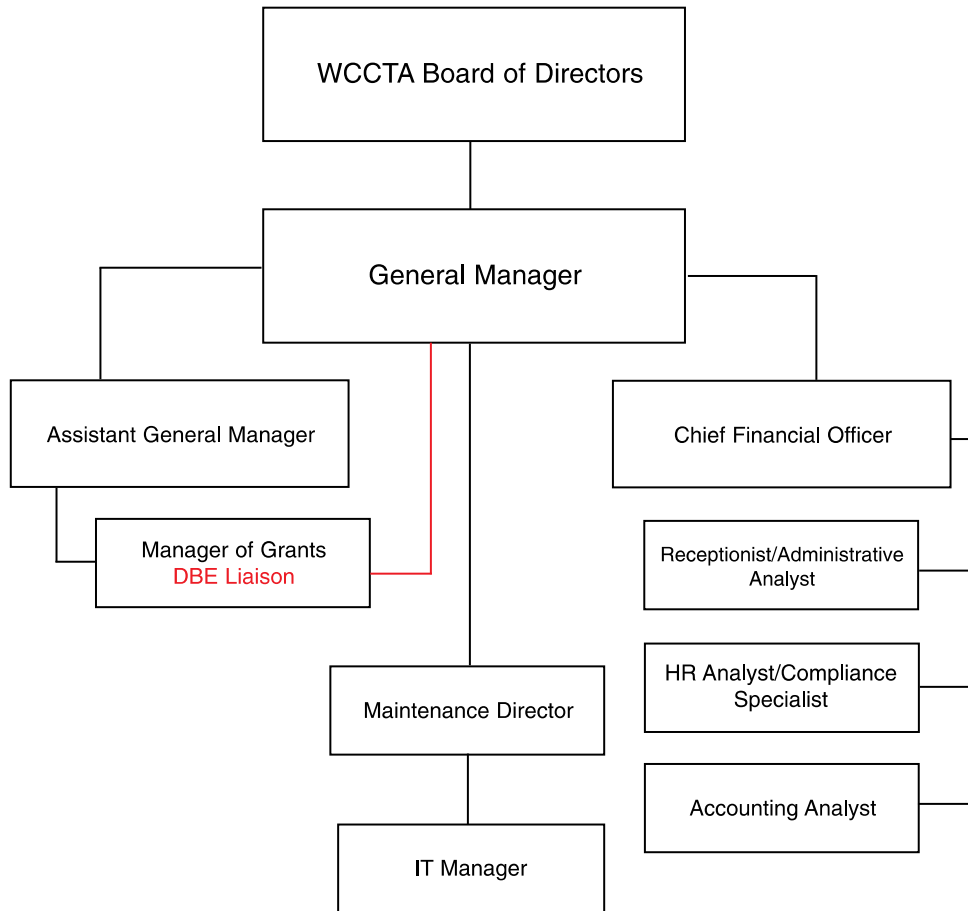
Notwithstanding any contrary provisions of state or local law, WCCTA will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than U.S. DOT) without the written consent of the submitter.

WCCTA will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request of any authorized representative of WCCTA or U.S. DOT. This reporting requirement also extends to any certified DBE subcontractor.

WCCTA 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.

**Attachment 1**

**WCCTA Administration Organizational Chart**



## **Triennial Disadvantaged Business Enterprise (DBE) Goal**

### **SUMMARY**

In accordance with Title 49 of the Code of Federal Regulations, Part 26 (49 CFR Part 26), Western Contra Costa Transit Authority (WCCTA) implements a Disadvantaged Business Enterprise (DBE) Program to ensure nondiscrimination in the award of federally funded contracts. As part of this program, WCCTA has established a triennial goal for DBE participation in all new contracts planned to be funded with Federal Transit Administration (FTA) funds. A DBE firm is defined as a for-profit "small business concern" that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. DBE firms are certified as such through Unified Certification Programs established in each state.

WCCTA has calculated a triennial DBE goal, which is available for review on the agency web site at <https://www.westcat.org/Home/BusDBESBE> and may also be reviewed in person at their administrative office located at 601 Walter Avenue, Pinole, CA 94561.

### **DEVELOPMENT OF ANTICIPATED DBE GOAL**

As an eligible recipient of federal funding, WCCTA is required to comply with 49 CFR Part 26, which states that grantees must establish and implement a DBE program and set triennial DBE participation goals. The methodology to calculate the DBE participation goal is a two-step process described in 49 CFR Part 26.

Step-One of the methodology establishes a base figure for the anticipated contracts to be awarded in the period. The base figure is derived from the relative availability of DBEs that are ready, willing and able to participate on these anticipated contracts. Step-Two relies on WCCTA's knowledge of its contracting markets and previous history of DBE participation to determine if an adjustment to the base figure is needed

### **GOAL METHODOLOGY**

The methodology to calculate an agency's DBE goal is a two-step process described in 49 CFR Part 26. Step-One of the methodology establishes a base figure for new federally funded contracts anticipated to be awarded in the upcoming three Federal Fiscal Years. The base figure is derived from the relative availability of DBEs that are ready, willing, and able to participate on these anticipated contracts.

Step-Two relies on the agency's knowledge of its contracting markets and previous history of DBE participation to determine if an adjustment to the base figure is needed. The calculation using the two-step methodology results in the Anticipated triennial DBE Goal.

## **Step-One Process: Development of Base Figure**

The initial step in developing an Anticipated triennial DBE Goal is to determine the market area for consultants who have demonstrated an interest, or are anticipated to participate in WCCTA contracts. WCCTA's market area consists of the nine Bay Area counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma. The nine-county Bay Area is the most appropriate market area for WCCTA to use in its goal-setting methodology. Seventy percent of past and current WCCTA vendors are from the Bay Area.

WCCTA's service area comprises just over 20 square miles of West Contra Costa County, including the cities of Pinole and Hercules and the unincorporated areas of Montalvin Manor, Bayview, Tara Hills, Rodeo, Crockett, and Port Costa. The area is bound to the north by the Carquinez Strait, the city limits of Pinole and Hercules to the east, the Richmond city border to the south, and by San Pablo Bay to the west. In addition, WCCTA operates regional service between Martinez and the Hercules Transit Center, Transbay service between the Hercules Transit Center and the San Francisco Transbay Terminal, and regional service between the Hercules Transit Center and Contra Costa College. Currently, population in the WCCTA service area is approximately 67,000 inhabitants.

The next stage of the methodology is to determine the work groups for anticipated contracts, and each work group is weighted according to its percentage of the total amount of the contract planned for award.

This activity is matched with its respective North American Industry Classification System (NAICS) codes, which are used to identify firms in the California Unified Certification Program (CUCP) DBE and U.S. Census Bureau's County Business Patterns databases.

Both databases are searched for the number of firms in the relevant NAICS code in the WCCTA market area. The ratio of DBE firms to non-DBE firms is then calculated by dividing the number of certified DBE firms ready, willing and able to work in the WCCTA's market area, according to the CUCP database, by the total number of firms found in the same market area according to the U.S. Census database. This is performed for each county and each type of activity.

Finally, the Step-One Base Figure results from multiplying the DBE ratios for each work group by the corresponding weights for each work group, and summing the results for each activity.

## **Step-Two Process: Adjustment to the Base Figure**

The purpose of the analysis in Step-Two is to make a determination based on relevant evidence available to WCCTA if any adjustments to the Step-One Base Figure are justified. WCCTA's DBE participation history can assist in determining whether an adjustment to the Step-One Base Figure is warranted.

## **PUBLIC PARTICIPATION / OUTREACH IN SETTING DBE GOAL**

WCCTA has sought and encouraged public participation input from minority, women's and general contractor groups, through its participation as a member of the BOC (Business Outreach Committee). This consortium of Bay Area Transit and Transportation Agencies assists Disadvantaged Business Enterprises (DBEs) and other small companies with expansion of their businesses through training, technical assistance, and relationship-building with agency staff and the contracting community of the San Francisco Bay Area. WCCTA attends monthly BOC meetings and contributes to the achievement of BOC projects. WCCTA participates in the BOC's Public Participation Meetings that provide members of the public with the opportunity to learn about upcoming transportation projects and provide input on the goal-setting process for federally assisted contracts. These meetings are attended by regional transit agencies where vendors and government contracting personnel from these transit agencies meet to discuss upcoming projects and exchange information on how to connect with these agencies for contracting opportunities. WCCTA continues to seek on-going public participation from community organizations through public meetings and public planning documents comment periods on up-coming projects.

WCCTA's public participation and outreach activities are designed to broaden awareness of WCCTA's Disadvantaged Business Enterprise Program beyond federal dollars. Furthermore, the measures described in 49 C.F.R. Part 26.51, focusing on race-neutral means will be actively pursued, and WCCTA will encourage its contractors to also make similar outreach efforts to include DBE participation in subcontracting opportunities.

In addition to consultation with the BOC and CUCP, WCCTA will continue to organize and offer informational programs for establishing DBE goals, meeting DBE eligibility requirements, familiarizing potential contractors with WCCTA procurement procedures and requirements, and to otherwise develop, effective programs to further the inclusion of DBEs in all WCCTA contracting activities. These efforts include but are not limited to face-to-face, interactive meetings with local minority/small business organizations

## **NOTICE OF PROPOSED DBE GOAL**

Federal regulations require that notice of WCCTA's proposed overall DBE goal be posted on the Agency's official website and may also be posted in other sources (i.e., general circulation media, local minority- focused media, and trade association publications). Such notice must inform the public that the proposed DBE goal and its rationale are available for inspection during normal business hours for a period of thirty (30) days following the date of the notice. WCCTA and the FTA will accept comments on the proposed goal for forty-five (45) days from the date of notice. Interested parties are encouraged to submit comments to: WCCTA, Attn: DBE Liaison Officer, 601 Walter Ave., Pinole, CA 94564 or: Civil Rights Officer-Region IX, U.S. Department of Transportation, Federal Transit Administration, TRO-9, 90 Seventh Street, Suite 15-300, San Francisco, CA 94103-6701.

# Attachment 3

## Attachment 3

### BIDDERS/PROPOSERS (AND SUBCONTRACTORS) INFORMATION

In response to US DOT requirements (CFR 49 Part 26.11), all firms bidding on prime contracts and bidding or quoting subcontractors on DOT assisted projects are required to submit the following information to Western Contra Costa Transit Authority. The form shall be copied by the prime bidder and distributed to all bidders. Submit completed forms to by 4:00pm on \_\_\_\_\_, 2015.

NAME OF PROJECT/PROPOSAL		FEDERAL AID PROJECT NUMBER	
PROPOSER BUSINESS NAME AND ADDRESS		BUSINESS LICENSE NUMBER	
NAME OF PERSON SUBMITTING BID		DATE	
SIGNATURE OF PROPOSER		CONTACT EMAIL	
CONTACT PERSON		CONTACT PHONE NUMBER	

Important: 1) Identify all DBE firms being claimed for credit. 2) List names of all DBE subcontractors and their respective items of work. 3) Attach a copy of the proof of DBE certification for each DBE subcontractor listed on this form. 4) Attach "Intent to Perform" Letter signed by the subcontractor.

LIST OF DBE/SBE PRIME OR SUBCONTRACTORS: Name, Address and Contact Person (if not the same as above)	Phone Number	Email Address	Age of Firm	Work, Service or Materials Supplied	NAICS Code (if known)*	Annual Gross Receipts of Firm	Disadvantaged Business Enterprise Participation		Small Business Enterprise Participation		Award Amount	Percentage of Contract Participation
							Certified DBE (Y/N)	DBE Certification Number	Certified SBE (Y/N)	SBE Certification Number		
B. Subcontractor/Suppliers												
<b>TOTAL</b>												

\* NAICS Code: North American Industry Classification System Code. Codes can be found at <http://www.census.gov/eos/www/naics>  
 Types of DBE: (1) Black American (2) Latino/Hispanic (3) Native American (4) Asian-Pacific (5) Asian-Subcontinent (6) Women (7) Other (designated by the Small Business Administration)  
 1. DBEs must be certified by Caltrans or an agency participating in the California Unified Certification Program. Visit the Caltrans website for a list of participating agencies at: <http://dot.ca.gov/hq/beh/ucp.htm>  
 2. Important: Attach the proof of certification for each DBE or SBE firm used toward meeting the DBE or SBE goal if different from "Bidders/Proposers Information Request Form."  
 3. This information will be compared for consistency with the "Bidders/Proposers Information Request Form."  
 4. Use additional sheets as necessary.



- Made efforts to assist interested DBEs in obtaining bonding, lines of credit, insurance or any necessary equipment, supplies, materials, etc. **(List any specific offers made by your company.)**

--

- Solicited the following DBEs **(add additional sheets as necessary)**

Date Contacted	Name of DBE Firm	Contact Person	Phone #	Work Category

- Followed up with initial contacts **(add additional sheets as necessary)**

Date Contacted	Name of DBE Firm	Phone #	Bidding/ Proposing? (Yes or No)	Additional Comments

- Contacted the following other agencies, organizations in recruitment of DBEs

Date	Organization	Phone #

As shown by the documentation provided to WCCTA, we feel that we have made good faith effort to attain the contract DBE goal.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**DBE/SBE DECLARATION FORM**  
(Circle one)

\_\_\_\_\_  
Prime Contractor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Contract/RFP Name

**Select one:**

\_\_\_\_ Bidder/Proposer is a certified DBE/SBE in accordance with WCCTA standards. A copy of our certification is enclosed.

\_\_\_\_ Bidder/Proposer commits to subcontract at least \_\_\_\_\_% of its Net Bid Price with one or more certified DBE/SBE(s) for a Commercially Useful Function in the performance of the contract. Note: Please list DBEs/SBEs in the Prime Contractor and Subcontractor/Subconsultant/Supplier Report.

The bidder/proposer hereby submits documentation of a **verifiable Good Faith Efforts**.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Documents to Be Included with Bids or Proposals with DBE/SBE Goal**

1. Bidder's/Proposer's (and Subcontractor) Information
2. DBE/SBE Goal Declaration
3. Copies of DBE/SBE Certifications
4. DBE/SBE Affidavits (as required; see list of acceptable certifications)
5. Good Faith Efforts Documentation

## **Attachment 5**

Click the following link for more information on:

### **REGULATIONS: 49 CFR PART 26**

[https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

If the link above does not work, type or cut and paste the URL into your address bar and access via the World Wide Web.

## **DEFINITIONS**

*Affiliation* has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

*Alaska Native* means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

## **DEFINITIONS CONTINUED**

*Alaska Native Corporation (ANC)* means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

*Assets* mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

*Business, business concern or business enterprise* means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

*Compliance* means that a recipient has correctly implemented the requirements of this part.

*Contingent Liability* means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

*Contract* means 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 for them. For purposes of this part, a lease is considered a contract.

*Contractor* means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

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

*Department or DOT* means 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 or DBE* means a for-profit small business concern.

## **DEFINITIONS CONTINUED**

(1) 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; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

*DOT-assisted contract* means any 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.

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

*Home state* means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

*Immediate family member* means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community of Indians. Including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group or community resides. See definition of “tribally-owned concern” in this section.

*Joint venture* means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their 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.

*Liabilities* mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

*Native Hawaiian* means any individual whose ancestors were natives, prior to 1778, of the area, which now comprises the State of Hawaii.

## **DEFINITIONS CONTINUED**

*Native Hawaiian Organization* means any community service organization serving Native Hawaiians in the State of Hawaii, which is a not-for-profit organization, chartered by the State of Hawaii; is controlled by Native Hawaiians and whose business activities will principally benefit such Native Hawaiians.

*Noncompliance* means that a recipient has not correctly implemented the requirements of this part.

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

*Primary industry classification* means the most current North American Industry Classification System (NAICS) designation, which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual— United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

*Primary recipient* means a recipient, which receives DOT financial assistance and passes some or all of it on to another recipient.

*Principal place of business* means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

*Program* means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

*Race-conscious* measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

*Race-neutral* measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutral.

## **DEFINITIONS CONTINUED**

*Recipient* is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA or FTA, or who has applied for such assistance.

*Secretary* means the Secretary of Transportation or his/her designee.

*Set-aside* means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

*Small Business Administration or SBA* means the United States Small Business Administration.

*SBA certified firm* refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

*Small business concern* means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to 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* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.

## DEFINITIONS CONTINUED

(iii) “Native Americans,” which includes persons who are enrolled members of a Federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

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

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

*Spouse* means a married person, including a person in a domestic partnership or a civil union recognized under State law.

*Transit vehicle manufacturer* means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

*Tribally owned concern* means any concern at least 51 percent owned by an Indian tribe as defined in this section.

*You* refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., ‘You must do XYZ’ means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003; 76 FR 5096, Jan. 28, 2011; 79 FR 59592, Oct. 2, 2014]

## Attachment 6

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

In accordance with the requirements of 49 CFR Part 26 §26.39, WCCTA established and implemented a Small Business Enterprise (SBE) element as one of its race-neutral methods of achieving small business participation, including DBE participation, on particular contracts with subcontracting opportunities. The SBE element applies to all WCCTA contracts, regardless of funding source, where WCCTA employs race-neutral /gender-neutral methods. WCCTA will take all reasonable steps to eliminate obstacles to SBE prime contractor or subcontractor participation in WCCTA procurement activities.

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

1. To participate as an eligible small business in programs administered by WCCTA, a firm must meet both of the following requirements:
  - a. A firm (including affiliates) must be an existing small business as defined by Small Business Administration (SBA) regulations, 13 CFR Part 121, under the North American Industry Classification System (NAICS). The firm must hold one of the acceptable certifications listed in Section B below.
  - b. Even if a firm meets the above requirement, the firm, including affiliates', average annual gross receipts cannot exceed a maximum of \$23.98 million (or as adjusted for inflation by the Secretary of U.S. DOT) over the previous three years. SBA size standards vary by industry, and industries may be higher than the \$23.98 million cap. For example, the SBA size standard for a general construction contractor is \$36.5 million. If a general construction contractor's average annual gross receipts over the previous three-years is \$25 million, while it is below \$36.5 million and meets the SBA size standard, it would be ineligible to participate as a small business for WCCTA purposes as it exceeds \$23.98 million.

***Please verify the appropriate maximum gross receipts for your type of business. Current SBA size standards found at the link provided:***  
[http://www.sba.gov/sites/default/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf)



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

**Western Contra Costa Transit Authority is non-certifying agency and therefore relies upon and accepts the small business certifications processed by other certifying agencies under the rules set forth in Title 13 §121.401 through 121.413. This applies to all Federal procurement programs for which status as a small business is required or advantageous, including this program provided the size standards are met as described above in Section 26.39, A1a and A1b.**

Firms meeting WCCTA's size standards and certified in one or more of the following programs, automatically qualify as a small business for WCCTA purposes. "SBE" is a term used collectively for qualified SBE/WBE/MBE and other approved certifications. As indicated below, WCCTA may require an affidavit of size for each SBE prime contractor or subcontractor. Self-certification programs are not acceptable. WCCTA may request and review financial data provided by SBE firms on a case-by-case basis to confirm eligibility.

*Certification is required of firms at the time of bid submittal.*

- 1. Disadvantaged Business Enterprise (DBE) certification pursuant to U.S. Department of Transportation regulations, 49 CFR Part 26. This includes DBE certifications performed by the CUCP or by the UCP of any other state.**
- 2. State Minority Business Enterprise (SMBE) and State Women Business Enterprise (SWBE) certification by the State of California** or by any other state provided their certification comply with Section A1a and A1b above. In addition to copies of SMBE/SWBE certifications, bidders certified out-of-state must submit an affidavit of size for each SMBE/SWBE prime contractor or SMBE/SWBE subcontractor at the time of bid submittal.
- 3. Small Business (SB) certification by the California Department of General Services (DGS)** provided that their certification comply with Section A1a and A1b above. In addition to copies of SB certifications, bidders must submit an affidavit of size for each SB prime contractor or subcontractor at the time of bid submittal.
- 4. Microbusiness (MB) certification by the California Department of General Services** for ALL industries. **SBA 8(a) by the Small Business Administration** provided that their certification comply with Section A1a and A1b above. In addition to copies certifications, bidders must submit an affidavit of size for each SBA 8(a) prime contractor or SBA 8(a) subcontractor at the time of bid submittal.

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

**C. Race-Neutral SBE Measures**

Western Contra Costa Transit Authority may take any of the following race-neutral SBE measures:

1. WCCTA is a small transit agency and therefore contracts tend to be of size that small businesses, including DBEs can reasonably perform. Therefore, in order to foster SBE participation, WCCTA will structure contracting requirements to facilitate competition by small business concerns taking all reasonable steps to eliminate obstacles to their participation including unnecessary and unjustified bundling of contract requirements that may impede small business participation in procurements as prime contracts or subcontractors.
2. WCCTA might establish contract-specific SBE goals on particular prime contracts with subcontracting opportunities as a means of increasing small business (including DBE) participation. The General Manager/Assistant General Manager and DBE Liaison Officer will evaluate the availability of subcontracting opportunities on a contract-by-contract basis. Where a contract-specific SBE goal is established, the bidder or proposer must meet the contract specific goal or demonstrate sufficient good faith efforts. A bidder shall be ineligible for contract award if it does not meet the goal or demonstrate sufficient good faith efforts.

**SMALL BUSINESS ENTERPRISE AFFIDAVIT OF SIZE**

**If your business was certified by any of the following, please complete and submit this form with a copy of your certification. This form may be used for Prime Contractors, Subcontractors, Subconsultants and Suppliers. See Attachment 6, section A1a and A1b for further information.**

- SMBE/SWBE Certification by state other than California, provided that your firm’s average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$23.98 million.
- SB Certification by the California DGS, provided that your firm’s average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$23.98 million.
- SBA 8(a) Certification by the Small Business Administration provided that your firm’s average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$23.98 million.
- SBE/MBE/WBE Certification by any California county or local government-certifying agency or out-of-state government-certifying agency, provided that your firm’s average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$23.98 million.

I HEREBY DECLARE AND AFFIRM that I am the \_\_\_\_\_  
(Title)  
and duly authorized representative of \_\_\_\_\_  
(Name of Firm)  
whose address is \_\_\_\_\_  
and whose phone is \_\_\_\_\_

I HEREBY DECLARE AND AFFIRM that the firm is a Small Business Enterprise (SBE) in accordance with Western Contra Costa Transit Authority (WCCTA) standards as defined in its DBE Program. The firm is certified as of the date that WCCTA receives the bid/proposal for \_\_\_\_\_ and  
(Contract Number and Name)

**I will provide the certification (or affidavits) to document this fact with this enclosure.**

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING STATEMENTS ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

\_\_\_\_\_  
(Date) (Affiant) (Title)



- Made efforts to assist interested SBEs in obtaining bonding, lines of credit, insurance or any necessary equipment, supplies, materials, etc. (List any specific offers made by your company.)

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- Solicited the following SBEs (add additional sheets as necessary)

Date Contacted	Name of SBE Firm	Contact Person	Phone #	Work Category

- Followed up with initial contacts (add additional sheets as necessary)

Date Contacted	Name of SBE Firm	Phone #	Bidding/ Proposing? (Yes or No)	Additional Comments

- Contacted the following other agencies, organizations in recruitment of SBEs

Date	Organization	Phone #

As shown by the documentation provided to WCCTA, we feel that we have made good faith effort to attain the contract SBE goal.

Signature \_\_\_\_\_

## ATTACHMENT 7

### Monitoring and Enforcement Tracking Form (Sample)

A	B	C	D	E	F	G
WCCTA DBE PARTICIPATION MONITORING FORM	PRIME CONTRACTOR	DBE FIRM/SUBCONTRACTOR	DBE SERVICE PROVIDED	DATES DBE SERVICE OBSERVED	PAYMENTS TO DBE FIRM	OBSERVER/SIGNATURE
1						
2						
3						
4						
5	Sample Project: ABC123 Able Construction	Premium Fencing	Construction site security fencing	11/1/18; 11/15/18. Met with Supervisor Johnathan Smith to discuss progress and address any issues with contract fulfillment. No issues reported.	Date: 12/12/18. \$1,000. Check #12345 (photo copies on file)	Mike Furnary, WestCAT DBELO
6						
7	Sample Project: ABC123 Able Construction	City Electric	Fire suppression system install	12/3/18; 12/30/18; 2/13/18. Met with foreman Alex Jones to discuss progress and address any issues with contract fulfillment. No issues reported.	12/30/18: \$3,215. Check #54321; 1/30/19 \$2,750. Check # 67890. (photo copies on file)	Mike Furnary, WestCAT DBELO
8						
9						
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