



## SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM



Submitted To:

Federal Transit Administration  
San Francisco Federal Building  
90 7<sup>th</sup> Street, Suite 15-300  
San Francisco, CA 94103  
United States

Revised October 1, 2024

## STATEMENT OF POLICY (Section 26.1, 26.23)

The Sonoma-Marín Area Rail Transit (SMART) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. SMART has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, SMART has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of SMART to ensure that DBEs as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

- a. To ensure nondiscrimination in the award and administration of DOT - assisted contracts;
- b. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- c. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- d. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- e. To help remove barriers to the participation of DBEs in DOT assisted contracts;
- f. To promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by SMART
- g. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

Heather McKillop, Chief Financial Officer, has been delegated as the DBE Liaison Officer. In that capacity, Heather McKillop 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 SMART in its financial assistance agreements with the Department of Transportation.

SMART has disseminated this policy statement to the SMART Board of Directors and all 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 and is posted on our website: [www.sonomamarintrain/business.org](http://www.sonomamarintrain/business.org).

All correspondence can be sent to:

SMART DBE Liaison  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954

Answers to any questions may be obtained by contacting Heather McKillop, Chief Financial Officer/ DBE Liaison at (707) 794-3320 or [hmckillop@sonomamarintrain.org](mailto:hmckillop@sonomamarintrain.org).

September 26, 2024



Eddy Cumins  
General Manager

## **SUBPART A – GENERAL REQUIREMENTS**

### **Objectives (Section 26.1)**

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

### **Applicability (Section 26.3)**

SMART is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Public Law. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the TEA-21, Public Law. 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 21<sup>st</sup> Century Act (MAP-21), Pub. L. 112-141. 126 Stat. 405; Titles I, II, III, and VI of the Fixing America's Surface Transportation Act (FAST Act) Public Law 114-94; and Divisions A and C of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58), Public Law 117-58.

### **Definitions (Section 26.5)**

SMART will adopt the definitions contained in Section 26.5 for this program.

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

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

### **Record Keeping Requirements (Section 26.11)**

SMART will report DBE participation on a semi-annual basis, using DOT Form 4630. These reports will reflect payments made to DBEs on DOT- assisted contracts.

SMART will compile information regarding the universe of DBE and non-DBE contractors and subcontractors who seek to work on SMART federally assisted contracts. This information will assist SMART in setting overall DBE goals and provide data for evaluating the extent to which the objects of §26.1 are being achieved.

The bidders' lists will contain the following information about all DBE and non-DBEs who bid as a prime contractors and subcontractors of SMART's federally assisted contracts.

- Firm's Name
- Firm's Address including zip code
- Firm's status as a DBE or non-DBE
- Race and gender information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Firm's age
- Annual Gross Receipts of the Firm
  - Less than \$1 million

- \$1 million - \$3 million
- \$3 million - \$6 million
- \$6 million - \$10 million
- Over \$10 million

This information will be collected from all bidders for all federally assisted contracts at the time of bid submission or initial responses to negotiated procurements. See Attachment D.

### **Federal Assistance Agreement (Section 26.13)**

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

#### **Assurance (Section 26.13(a))**

“SMART 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 a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to SMART 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.)”

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

#### **Contract Assurance (Section 26.13(b))**

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

"The contractor, subrecipient 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 SMART deems appropriate, which may include, but is not limited to:

- Withholding monthly progress payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the contractor from future bidding as non-responsible.
- Termination of the contract

## **SUBPART B – ADMINISTRATIVE REQUIREMENTS**

### **DBE Program Updates (Section 26.21)**

SMART receives FTA planning, capital, and/or operating assistance. We will provide to DOT updates representing significant changes in the program.

### **Policy Statement (Section 26.23)**

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

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

We have designated the following individual as SMART's DBE Liaison Officer (DBELO).

Heather McKillop  
Chief Financial Officer  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954  
(707) 794-3320  
[hmckillop@sonomamarintrain.org](mailto:hmckillop@sonomamarintrain.org)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that SMART complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the General Manager concerning DBE program matters. 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 SMART's Procurement Manager. The duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by the DOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Works with all departments to set overall annual goals.
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- Identifies contracts and procurements so that DBE goals are included in solicitations (both race neutral methods and contract specific goals attainment) and identifies ways to improve processes.
- Analyzes SMART's progress toward goal attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the General Manager and SMART Board of Directors on DBE matters and achievement.
- Provides DBEs with information and assistance in preparing bids, obtaining bonding, and insurance.
- Plans and participates in DBE training seminars.
- Participates in the Unified Certification Program in California.
- Provides outreach to DBEs and community organizations to advise them of

opportunities.

- Maintains the Bidder's List Database

### **DBE Financial Institutions (Section 26.27)**

It is the policy of SMART 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-assisted contracts to make use of these institutions.

SMART researched and found that the Federal Reserve Bank keeps a list of available minority banking institutions, this list however, doesn't include women owned institutions. <https://www.fdic.gov/regulations/resources/minority/mdi.html> Currently there are no financial institutions in either Sonoma or Marin Counties on the list. However, there are several minority-owned financial institutions in the San Francisco Bay area as of 03/31/2023. They are:

- Gateway Bank, F.S.B – Oakland
- Metropolitan Bank – Oakland
- Bank of the Orient – San Francisco
- California Pacific Bank – San Francisco
- Mission National Bank – San Francisco

### **Prompt Payment Policy and Provisions (Section 26.29)**

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

#### Public Works Contracts - California Business and Professions Code – Section 7108.5

"The contractor shall promptly pay any and all subcontractor invoices by an instrument that guarantees availability of funds immediately upon deposit of said instrument. The prime contractor is required to pay subcontractors for satisfactory performance of their contracts no later than (7) seven days from receipt of payment by SMART.

If the contractor determines the work of the subcontractors to be unsatisfactory, the contractor must immediately notify in writing the SMART project manager, with a separate notice to the DBELO if the subcontractor is a DBE and state the reasons. Failure by the contractor to comply with this requirement will be construed to be a breach of the contract and may be subject to sanctions as specified in the contract.

The prime contractor must pay the retainage to the subcontractor within (30) thirty days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by SMART. Should SMART make incremental acceptance of a portion of a prime contract, the work of the subcontractor covered by that acceptance is deemed to be satisfactorily completed."

#### Non-Public Works Contracts

"The contractor shall promptly pay any and all subcontractor invoices by an instrument that guarantees availability of funds immediately upon deposit of said instrument. The prime contractor is required to pay subcontractors for satisfactory performance of their contracts no later than (30) thirty days from receipt of payment by SMART.

If the contractor determines the work of the subcontractors to be unsatisfactory, the contractor must immediately notify in writing the SMART project manager, with a

separate notice to the DBELO if the subcontractor is a DBE and state the reasons. Failure by the contractor to comply with this requirement will be construed to be a breach of the contract and may be subject to sanctions as specified in the contract.

SMART will not withhold retainage from the prime contractor and the prime contractor is prohibited from withholding retainage from the subcontractor.

Prime contractors shall provide proof of subcontractor payment to SMART for the previous payment period.

### **Directory (Section 26.31)**

SMART is a member of the California Uniform Certification Program (CUCP), which maintains the DBE directory pursuant to 49 CFR 26.31 that identifies all firms that are eligible to participate as DBEs in this Program. SMART uses the DBE directory as a resource in developing overall and contract-specific DBE participation goals and conducting outreach and other programs for DBEs and SBEs. The directory can be accessed through <https://californiaucp.dbesystem.com/>

### **Overconcentration (Section 26.33)**

SMART has not identified that overconcentration exists in the types of work that DBEs perform.

### **Business Development Programs (Section 26.35)**

SMART has not established a business development program.

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

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

- We will bring to the attention of the Department of Transportation (DOT) any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
- 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 event of non-compliance with the DBE regulation by a participant in our procurement activities.
- We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is performed by DBEs. This monitoring will include verification of contracting records and monitoring the work site to ensure the counting of each DBE's participating is consistent with its function on the contract.
- We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to [§ 26.53\(g\)](#).

### **Fostering Small Business Participation (Section 26.39)**

- SMART will include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.
- SMART will utilize some or all the following strategies:
  - In multi-year design build contracts or other large contracts requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
  - On prime contracts not having DBE contract goals requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
  - Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
  - Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.



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

### **Set Asides or Quotas (Section 26.43)**

SMART does not use quotas in any way in the administration of this DBE Program.

### **Overall Goals (Section 26.45)**

SMART's DBE goal is developed based on projected availability of ready, willing, and able DBEs to participate in SMART federally assisted activities. SMART's assessment of federally assisted activities included review of the Census Bureau County Business Pattern (CBP) database, the California Unified Certification Program (CUCP) database, past participation, the bidder's list database, any relevant disparity studies, and goals of similar transit agencies.

#### Calculation of SMART's Base Figure (49 CFR 26.45)

Step one of the goal-setting process is to determine the base figure for the relative availability of DBEs based on evidence of ready, willing, and able DBEs in relationship to all comparable businesses able to compete for FTA-assisted contracts.

Base figures are calculated based on the specialty areas using the North American Industrial Classification System (NAICS) codes.

**Market Area:** SMART's local market area is determined by assessing where most contractors and subcontractors who have bid on SMART contracts are located. This information can be derived from the bidder's list database.

**Number of All Firms:** To determine the number of all firms (DBE and non-DBE) in SMART's market area, SMART will search the most recent CBP database for all firms specializing in the NAICS codes identified as relevant for the contract.

**Number of DBEs:** To determine the number of DBEs in SMART's market area, SMART searches the CUCP database for DBEs that are certified in the NAICS codes identified for that activity contract.

**Availability of DBE Firms:** Availability is derived by dividing the number of DBEs available in a particular NAICS code by the number of all firms in that NAICS code.

**Weighted Base Figure:** Is determined by multiplying the percentage of federal funds by NAICS code by the availability of DBEs.

#### Adjustments (49 CFR 26.45(D))

In reviewing whether the Step one calculation should be adjusted, SMART will consider the past participation of DBE's in Federally Assisted Contracts and disparity studies of other agencies.

#### Section 26.45(f)

SMART will submit its overall goal to DOT on August 1<sup>st</sup> every three years. If circumstances change, SMART will submit an adjustment to FTA which reflects the changed circumstances.

#### Projection of Percentage of Overall Goal(s) and/or Project Goal(s) to Be Achieved Through Race-Neutral and Race-Conscious Measures.

Once the overall goal(s) and/or project goal(s) are proposed, the DBELO will analyze and project the maximum feasible portion of that goal that can be achieved by using race-neutral methods.

Where the projected portion of the goal using race-neutral methods is less than the overall goal or project goal, the remaining portion may be achieved by using race-conscious methods for particular projects that have subcontracting opportunities. The DBELO will monitor and adjust the use of race-conscious methods in accordance with 49 C.F.R. § 26.51(f). When projecting the percentage of the overall goal or project goal to be achieved through using race-conscious methods, the DBELO will analyze the actual achievement of the overall goal or project goal through race-neutral methods in the current and recent past years. When using race-conscious methods, the DBELO will analyze the progress toward achieving the overall goal or project goal and increase or reduce the use of race-conscious methods accordingly.

#### Section 26.45(g)

Before finalizing the overall goal, SMART will consult with the primes, subcontractors, local chambers of commerce to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and SMART's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, SMART will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at SMART's Petaluma office or at [www.sonomamarintrain.org](http://www.sonomamarintrain.org) for 30 days following the notice. The notice will be published in the Marin Independent Journal, Press Democrat, and SMART's website.

The goal submission will include a summary of information and comments received during this public participation process and our responses.

SMART will begin using our overall goal on October 1, unless we have received other instructions from the DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

#### **Transit Vehicle Manufacturer Certification (Section 26.49)**

SMART will require each transit vehicle manufacturer, 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, SMART may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying with this element of the program. Within 30 days of making an award, SMART will submit to FTA the name of the successful bidder, the federal share of the contractual commitment, and the total dollar value of contract in the manner prescribed in the grant agreement.

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

- When a contract goal has been established by SMART, the contract can only be awarded to the bidder/offeror who makes a good faith effort to meet it. The DBELO must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:
  - Documents that it has obtained enough DBE participation to meet the goal: or
  - Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.
- Each solicitation for which a contract goal has been established will require the bidders/ offerors to submit the following information:

- The names and addresses of DBE firms that will participate in the contract
- A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract
- The dollar amount of the participation of each DBE firm participating
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements below
- If the contract goal is not met, evidence of good faith efforts

The bidder/offeror must submit the information required above either (1) under sealed bid procedures or with initial proposals, under contract negotiations or (2) no later than (5) five days after bid opening. In a negotiated procurement such as procurement for professional services, the bidder/ offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required above before the final selection for the contract is made by the recipient.

- SMART's DBELO will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

For each DBE listed as a regular dealer or distributor SMART must make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in [§ 26.55\(e\)\(2\)\(iv\)\(A\), \(B\), and \(C\)](#) and [\(e\)\(3\)](#) under the contract at issue. The preliminary determination shall be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, SMART is required to make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

- If the DBELO determines that the apparent successful bidder/ offeror has failed to meet the requirements SMART will provide the bidder/ offeror an opportunity for administrative reconsideration. Within 10 days of being informed by SMART that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/Offeror should make this request in writing to the following:

General Manager  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954  
[ecumins@sonomamarintrain.org](mailto:ecumins@sonomamarintrain.org)  
(707) 794-3057

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 with the SMART reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will receive a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

- In a design-build contracting situation, in which SMART solicits proposals to design and build a project with minimal-project details at time of letting, SMART may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amount) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, SMART will be providing ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. SMART's DBELO and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, *e.g.*, replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.
- SMART will require that a prime contractor not terminate a DBE or any portion of its work or an approved substitute DBE firm without SMART's DBELO's written consent unless SMART causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include, but are not limited to, when 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.
  - SMART will include the following in each prime contract:
    - The contractor must utilize the specific DBE listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent

- Unless written consent is provided, the prime contractor is not entitled to any payment for work or materials unless it is performed or supplied by the listed DBE
    - SMART may provide written consent only if SMART agrees that the prime contractor has good cause to terminate the listed DBE or any portion of its work.
    - Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of the work that it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award. Good cause includes the following circumstances:
      - The listed DBE subcontractor fails or refuses to execute a written contract.
      - The listed DBE subcontractor fails or refuses to perform the work in a way consistent with normal industry standards.
      - The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements
      - The listed DBE becomes bankrupt, insolvent, or exhibits credit unworthiness
      - The listed DBE subcontractor is ineligible to work on public works projects because of suspension or debarment
      - SMART has determined that the list DBE subcontractor is not a responsible contractor
      - The listed DBE contractor voluntarily withdraws from the project and provides a written notice of withdrawal the SMART's DBELO.
      - A DBE owner dies or becomes disabled with the result that the listed DBE contractor is complete its work under the contract
      - Any other documented good cause determined by the DBELO
  - Before transmitting to SMART's DBELO the request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give written notice in writing to the DBE subcontractor, with a copy to SMART's DBELO sent concurrently , of the prime contractor intent to request to terminate and the reason for the proposed request.
  - The prime contractor's written notice must give the DBE (5) five days to respond, advising SMART and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract/ or portion and why SMART should not approve the prime contractor's request.
  - In addition to post-award terminations, these provisions all to pre-award deletions or changes to DBE or their listed work put forward by offerors in negotiated procurements.
- When a DBE subcontractor or any portion of its work is terminated by the prime contractor or the firm fails to complete its work on the contract for any reason, including when work committed to a DBE is not countable or reduced due to overestimations made prior to

award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal.

- SMART will include the following contract clause, "Failure by the contractor to carry out the requirements of 49 CFR 26.53 is a material breach of the contract and may result in the termination of the contract.
- For purposes of determining whether a DBE bidder/offeror for a prime contract has met a contract goal, SMART will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE supplies.
- SMART will require that the contractor makes available upon request, a copy of all DBE subcontractors.

#### Counting DBE Participation (Section 26.55)

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

- SMART will count only the value of the work actually performed by the DBE toward DBE goals. See the following:
  - The entire amount of that portion of a construction contract that is performed by the DBE's own forces including the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
  - The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals.
  - When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- When a DBE performs as a participant in a joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals will be counted
- Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
  - A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
  - A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
  - If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of

the work of a contract than would be expected on the basis of within normal industry practice for the type of work involved, SMART will presume that it is not performing a commercially useful function.

- When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption.
- The DBELO's decision on commercially useful function matters are subject to review by the concerned operating administration but are not administratively appealable to DOT.
- SMART will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
  - The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
  - The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  - The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
  - The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
  - The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate DOT operating administration
  - The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
  - A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE
- SMART will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
  - If the materials or supplies are obtained from a DBE manufacturer, 100% of the cost of the materials or supplies will be counted
  - A manufacturer is a firm that operates or maintains owns (or leases) and operates a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the

specifications. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.

- If the materials or supplies are purchased from a DBE regular dealer, 60% of the cost of the materials or supplies toward DBE goals (including transportation costs) will be counted.
- A regular dealer is a firm that owns, (or leases) and operates, a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business.
- Items kept and regularly sold by the DBE are of the “general character” when they share the same material characteristics and application as the items specified by the contract.
- SMART is required to determine that a DBE regular dealer over a reasonable period of time, keeps sufficient quantities and regularly sells the items in question. SMART must also ensure that a regular dealer of bulk items owns/leases and operates distribution equipment for the products it sells.
  - To be a regular dealer, the firm must be an established business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A DBE supplier performs a CUF as a regular dealer and received credit for 60% of the cost of materials or supplies including transportation cost when all, or at least 51% of the items under a purchase order or subcontract are provided from the DBE’s inventory, and when necessary, and minor quantities delivered from and by other sources are of the general character as those provided by the DBE’s inventory.
  - A DBE may be a regular dealer in such bulk items as petroleum products, steel, concrete or concrete products, gravel, stone, or asphalt without owning and operating a place of business if the firm both owns and operates distribution equipment used to deliver the products. Any supplementing of regular dealer’s own distribution equipment must be by a long-term lease and not on an ad hoc or contract by contract basis.
  - A DBE supplier of items that are not typically stocked due to their unique characteristics will be considered in the same manner as a regular dealer of bulk items. If the DBE supplier of these items does not own or lease distribution equipment, it is not a regular dealer.
  - Packagers, brokers, manufacturers’ representatives, or other persons who arrange, facilitate, or expedite transactions are not regular dealers
- If the materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, 40% of the cost of materials or supplies (including transportation costs) will be counted. A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer’s facility), making it liable for any loss or damage not covered by the carrier’s insurance. A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in



question to the DBE distributor. If these conditions are met, DBE distributors will receive 40% for drop-shipped items. Terms that transfer liability to the distributor at the delivery destination (*e.g.*, FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement

- With respect to materials or supplies purchased from a DBE that is neither a manufacturer, a regular dealer, nor a distributor, the entire amount of fees or commissions charged that are deemed reasonable for the delivery of materials or supplies will be counted
- SMART will determine the amount of credit awarded to a firm for the provisions of materials and supplies on a contract-by-contract basis.
- If a firm is not currently certified as a DBE at the time of the execution of the contract, the firm's participation will not be counted towards the goal
- If a DBE ceases to be certified during performance of the contract, the participation will not be counted towards the overall goal.
- The DBE subcontractor must be paid before the DBE participation can be counted towards the overall goal.

## SUBPART D – CERTIFICATION STANDARDS

### **Certification Process**

SMART is not a certifying agency. SMART is a member of the California Unified Certification Program. For information about the certification process or to apply for certification, firms should contact: <https://dot.ca.gov/programs/civil-rights/dbe>.

## SUBPART E – CERTIFICATION PROCEDURES

### Unified Certification Program (Section 26.81)

SMART is a member of the Unified Certification Program (UCP) administered by Caltrans. The UPC will meet all the requirements of this section.

A Memorandum of Agreement (the "MOA") for a Statewide Unified Certification Program has been developed by California transportation agencies that are recipients of federal funds in accordance with 49 CFR Part 26. The MOA was accepted by the Secretary of the U.S. Department of Transportation and is effective as of January 1, 2002. There are two certifying clusters in California: Northern and Southern. SMART is among the certifying agencies within the Northern California cluster.

The California Unified Certification Program (CUCP) is governed by the terms of the Memorandum of Agreement (MOA) for a Unified Certification Program. The CUCP provides "one-stop shopping" to applicants for certification in California. An applicant need only apply once, and the certification will be honored by all recipients in the State.

SMART adopts the CUCP Procedures. Prospective DBE firms may obtain the requisite DBE application forms from the following website: <https://dot.ca.gov/programs/civil-rights/dbe> or by contacting the DBELO directly.

DBE firms certified pursuant to the Unified Certification Program (UCP) will be counted towards a bidder's DBE participation goal unless successfully challenged under this DBE Program. Pursuant to 49 CFR Section 26.81(c), all certifications by the CUCP shall be pre-certifications, i.e., certifications that have been made final before the due date for bids on a contract on which a firm seeks to participate as a DBE. Only firms that are certified as eligible DBE's may participate as DBEs in the Program.

## SUBPART F – COMPLIANCE AND ENFORCEMENT

### Information, Confidentiality, and Cooperation (Section 26.109)

#### ***Availability of records.***

In responding to requests for information concerning any aspect of the DBE program, SMART will comply with provisions of the Federal Freedom of Information and Privacy Acts ([5 U.S.C. 552](#) and [552a](#)) and the California Public Records Act (Chapter 1, commencing with section 7920.000, of Division 10 of Title 1 of the California Government Code). The DOT may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

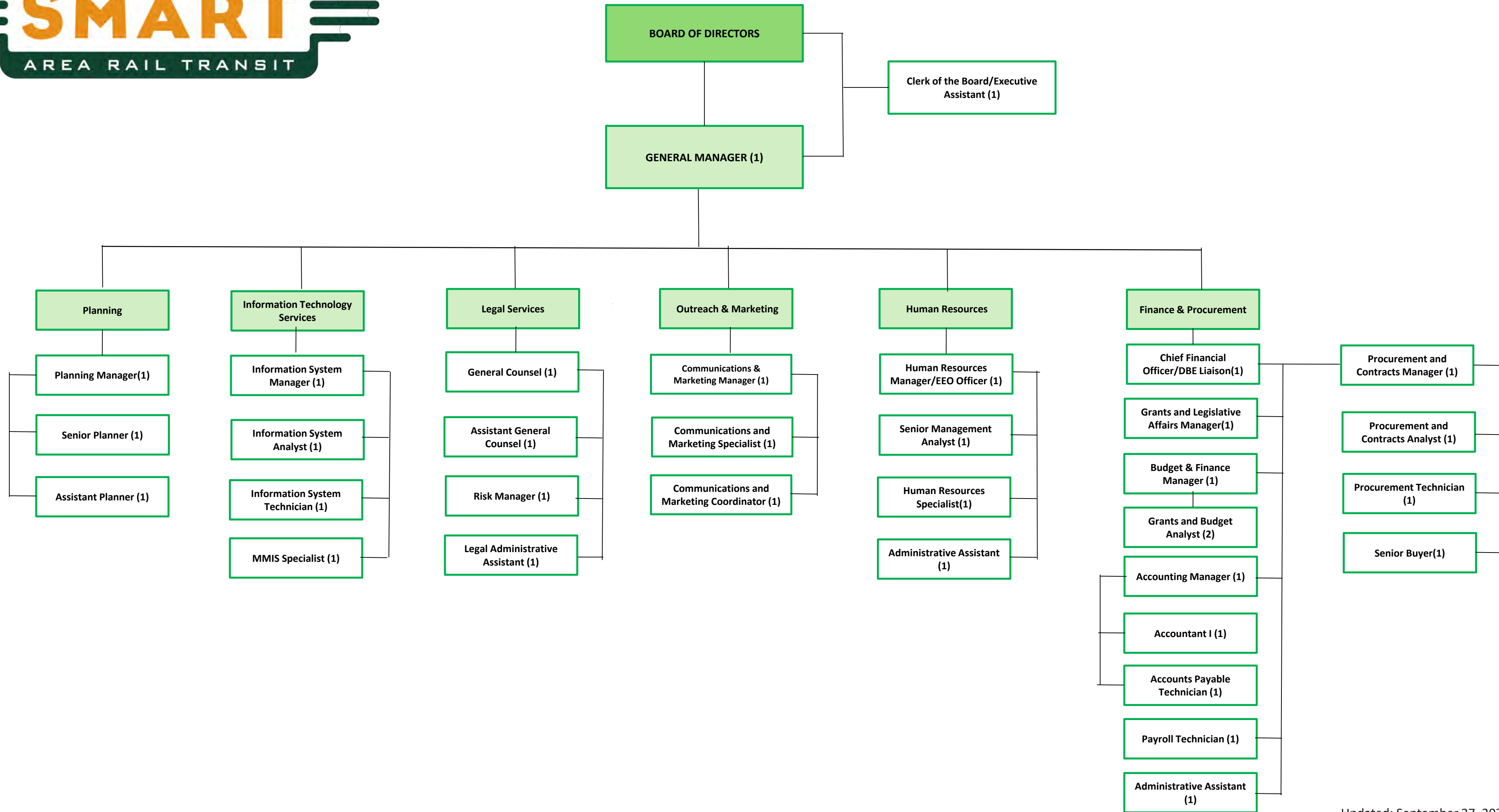
Notwithstanding any provision of Federal or state law, SMART will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, SMART will transmit this information to DOT in any certification appeal proceeding under [§ 26.89 of this part](#) or to any other state to which the individual's firm has applied for certification under [§ 26.85 of this part](#).

- **Confidentiality of information on complainants.** Notwithstanding the provisions of [paragraph \(a\)](#) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of [14 CFR part 16](#) with respect to confidentiality of information in complaints.
- **Cooperation.** All participants in the DOT's DBE program (including, but not limited to, SMART, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).
- **Intimidation and retaliation.** SMART, a contractor, or any other participant in the program, must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If this prohibition is violated, the individual or entity you are in noncompliance with this part.

**Attachment A**  
**Organization Chart**



# ADMINISTRATION/FINANCE ORGANIZATION CHART



**Attachment B**  
**DBE Directory**

See the CUCP directory, found at: <https://dot.ca.gov/programs/civil-rights/dbe>

SMART encourages prime contract bidders to search this directory when seeking subcontractors that are certified as DBE.

**Attachment C**  
**Monitoring and Enforcement Mechanisms**

SMART has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

- Breach of contract action, pursuant to the terms of the contract;
- Breach of contract action, pursuant to California Civil Code §3300, et seq.;
- Any other enforcement mechanism in law or equity allowable in California.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

- Suspension or debarment proceedings pursuant to 49 CFR Part 26
- Enforcement action pursuant to 49 CFR part 31
- Prosecution pursuant to 18 USC 1001.



**Attachment D**  
**Bidder's List Forms**

# PRIME CONTRACTOR / SUBCONTRACTOR / SUBCONSULTANT / SUPPLIER REPORT

Bidder Name: \_\_\_\_\_

Solicitation #: **XX-XX-XX-XXX**

Solicitation Title: **Enter Title of Solicitation**

**INSTRUCTIONS:** Please provide information on ALL firms (subcontractors/subconsultants/suppliers) that provided Bidder or Proposer a bid, quote, or proposal to perform work, provide labor, render services or provide supplies in connection with this contract **WHETHER BID WAS ACCEPTED OR NOT**. Provide this information for all sub-bidders regardless of tier for both DBEs/SBEs and non-DBEs/SBEs alike. Include all bid acceptance(s) AND rejection(s). If no subcontractors/subconsultants/suppliers will be used, mark "N/A" and sign the form.

**NAICS Code:** Provide the North American Industry Classification System (NAICS) code(s) applicable to each scope of work the firm is sought out to perform on the contract. NAICS search <https://www.census.gov/naics/>.

**Ethnicity:** Indicate whether the majority owner is (AS) Asian-Pacific; (B) Black; (H) Hispanic; (N) Native; (SA) Subcontinent Asian; (NM) Non- Minority, or (O) Other

**Gender:** Indicate gender for the majority owner, either (M) Male or (F) Female.

**Signature Required:** Signature is required on the last page of this form to be deemed responsive.

## PRIME INFORMATION

PRIME INFORMATION						
Prime Contractor / Service Provider / Consultant / Supplier	Annual Gross Receipts	Is the firm a certified DBE or SBE within California*	Portion of Work or Type of Materials/Supplies	NAICS Code(s) for Each Work Item	Dollar Amount of (Work / Materials / Supplies)	DBE and SBE Amount***
1 Name: _____	<input type="checkbox"/> < \$1 Million	<input type="checkbox"/> DBE				DBE Amount:
Address: _____	<input type="checkbox"/> \$1 Million - \$3 Million	<input type="checkbox"/> SBE				
Zip Code: _____	<input type="checkbox"/> \$3 Million - \$6 Million	<input type="checkbox"/> Not Certified				
Age of Firm: _____	<input type="checkbox"/> \$6 Million - \$10 Million					
Contact Person: _____	<input type="checkbox"/> > \$10 Million					
E-mail: _____						SBE Amount:
Phone: _____						
Ethnicity: _____						
Gender: _____						
Contractors License #: _____						
DIR Registration #: _____						

## SUBCONTRACTORS / SUBCONSULTANTS / SUPPLIERS

	Subcontractor / Subconsultant / Supplier	Annual Gross Receipts	Is the firm a certified DBE or SBE within California*	Portion of Work or Type of Materials/Supplies	NAICS Code(s) for Each Work Item	Dollar Amount of (Work / Materials / Supplies)	Was the Bid/Quote Accepted by the Prime?	DBE and SBE Amount***
2	Name:	<input type="checkbox"/> < \$1 Million <input type="checkbox"/> \$1 Million - \$3 Million <input type="checkbox"/> \$3 Million - \$6 Million <input type="checkbox"/> \$6 Million - \$10 Million <input type="checkbox"/> > \$10 Million	<input type="checkbox"/> DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Certified				<input type="checkbox"/> Yes <input type="checkbox"/> No	DBE Amount:
	Address:							
	Zip Code: _____							
	Age of Firm:							
	Contact Person:							
	E-mail:							
	Phone:							
	Ethnicity:							
	Gender:							
	Contractors License #:							
DIR Registration #:								
								SBE Amount:
3	Name:	<input type="checkbox"/> < \$1 Million <input type="checkbox"/> \$1 Million - \$3 Million <input type="checkbox"/> \$3 Million - \$6 Million <input type="checkbox"/> \$6 Million - \$10 Million <input type="checkbox"/> > \$10 Million	<input type="checkbox"/> DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Certified				<input type="checkbox"/> Yes <input type="checkbox"/> No	DBE Amount:
	Address:							
	Zip Code: _____							
	Age of Firm:							
	Contact Person:							
	E-mail:							
	Phone:							
	Ethnicity:							
	Gender:							
	Contractors License #:							
DIR Registration #:								
								SBE Amount:

Subcontractor / Subconsultant / Supplier		Annual Gross Receipts	Is the firm a certified DBE or SBE within California*	Portion of Work or Type of Materials/Supplies	NAICS Code(s) for Each Work Item	Dollar Amount of (Work / Materials / Supplies)	Was the Bid/Quote Accepted?	DBE and SBE Amount***
4	Name:	<input type="checkbox"/> < \$1 Million <input type="checkbox"/> \$1 Million - \$3 Million <input type="checkbox"/> \$3 Million - \$6 Million <input type="checkbox"/> \$6 Million - \$10 Million <input type="checkbox"/> > \$10 Million	<input type="checkbox"/> DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Certified				<input type="checkbox"/> Yes <input type="checkbox"/> No	DBE Amount:
	Address:							SBE Amount:
	Zip Code: _____							
	Age of Firm:							
	Contact Person:							
	E-mail:							
	Phone:							
	Ethnicity:							
	Gender:							
	Contractors License #:							
DIR Registration #:								
5	Name:	<input type="checkbox"/> < \$1 Million <input type="checkbox"/> \$1 Million - \$3 Million <input type="checkbox"/> \$3 Million - \$6 Million <input type="checkbox"/> \$6 Million - \$10 Million <input type="checkbox"/> > \$10 Million	<input type="checkbox"/> DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Certified				<input type="checkbox"/> Yes <input type="checkbox"/> No	DBE Amount:
	Address:							SBE Amount:
	Zip Code: _____							
	Age of Firm:							
	Contact Person:							
	E-mail:							
	Phone:							
	Ethnicity:							
	Gender:							
	Contractors License #:							
DIR Registration #:								

**Attach additional sheets as necessary.**

**Bidder's DBE and SBE Declaration**

DBE Amount:	\$	=	_____	% Bidder's DBE Achievement
Total Bid/Proposal Amount:	\$			

SBE Amount:	\$	=	_____	% Bidder's SBE Achievement
Total Bid/Proposal Amount:				

\* If Yes, please also provide certification number in box.

\*\* Do not indicate more than one "Yes" for alternative subcontractors for the same work. **Do not indicate "TBD" for "Bid Quote Accepted."**

\*\*\* DBE & SBE participation includes that portion of the work actually performed by a certified DBE or SBE with its own forces. **The DBE Regular Dealer/Distributor Affirmation Form must be submitted to confirm counting determinations for DBE supplier/distributor credit. Count 60%, of the cost of materials and supplies or 40% for DBE distributor.**

**The undersigned agrees that if it is the successful bidder and is awarded the contract with the Sonoma-Marín Area Rail Transit District (SMART), it will enter into a formal agreement with the subcontractor(s), subconsultant(s) and/or supplier(s) whose bid/quote was accepted for the work indicated above. I certify that the information included on this form is accurate and true.**

\_\_\_\_\_  
Signature of Owner or Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

END DOCUMENT

# DBE REGULAR DEALER/DISTRIBUTOR AFFIRMATION FORM



Bidder Name: \_\_\_\_\_

Contract Name/Number: \_\_\_\_\_

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE or SBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval.

***This form must be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying.***

DBE Name:	Total Subcontract/Purchase Order Amount:
Authorized DBE Representative (Name and Title):	NAICS Code(s) Related to the Items to be Sold/Leased:

- Will **all** items sold or leased be provided from the on-hand inventory at your establishment?  YES  NO  
**(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below. If "NO" Continue.)**
  - Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?  YES  NO **(If "YES", Go to Question 2. If "NO" Continue.)**
  - Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?  YES  NO\*  
**If "YES", you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below.)**

\* If 1.,1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. **(Go to Question 3. To determine if the items delivered from and by other sources are eligible for Distributor credit.)**
- Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?  YES  NO<sup>1</sup>  
**(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. STOP here. Read and sign the affirmation below.)**

<sup>1</sup> If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. **(Go to Question 3.)**
- Will the written terms of your purchase order or bill of lading from a third-party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility)?  YES<sup>2</sup>  NO<sup>3</sup>
  - Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased?  YES<sup>2</sup>  NO<sup>3</sup>

<sup>2</sup>If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy therequirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

<sup>3</sup>If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative: