



SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

DISADVANTAGED BUSINESS ENTERPRISE
(DBE) PROGRAM

Submitted To:

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

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:

1. To ensure nondiscrimination in the award and administration of DOT - assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. 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.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 at (707) 794-3320 or hmckillop@sonomamarintrain.org.

February 26, 2021



Farhad Mansourian
General Manager

SUBPART A – GENERAL REQUIREMENTS

Objectives (Section 26.1)

The objectives of this DBE Program are to:

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

Applicability (Section 26.3)

Pursuant to 49 CFR Section 26.3, SMART, as a recipient of federal financial assistance from the Federal Transit Administration ("FTA") of the United States Department of Transportation ("DOT"), is required to implement a DBE Program in accordance with 49 CFR Part 26. The DBE Program outlined herein applies to all SMART contracts that are funded, in whole or in part, by the DOT.

Subrecipients are responsible for adhering to SMART's DBE Program and to 49 CFR Part 26 in its entirety.

Definitions (Section 26.5)

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

Disadvantaged Business Enterprise or DBE

Means a for-profit small business concern -

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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.

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.

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-neutrality.

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 Section 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 a 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;

(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.

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 quarterly basis, using DOT Form 4630. These reports will reflect payments made to DBEs on DOT- assisted contracts.

Pursuant to 49 CFR Section 26.11(b), SMART will continue to report DBE participation and goal setting methods to the FTA as directed. In addition, SMART shall maintain prescribed statistical data. SMART will also transmit DBE Uniform/ semiannual reports to FTA on June 1st and December 1st of each year per Appendix B and 49 CFR Section 26.11(a).

Bidder's List (Section 26.11(c))

SMART will create a bidder's list, consisting of information about all DBEs and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of bidders list approach to calculating overall goals. The bidder's list will include the following:

- Firm's Name
- Firm's Address
- Firm's status as a DBE or non-DBE
- Firm's age
- Annual Gross Receipts of the Firm

Contract Assurance (Section 26.13b)

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 the recipient deems appropriate."

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Responsibility for DBE Program Implementation and Administration

Board of Directors

The Board of Directors is responsible for establishing the DBE policy.

General Manager

SMART's General Manager is responsible for adherence to this DBE Program and has overall responsibility for directing development and implementation of this Program.

Office of the General Counsel

The Office of the General Counsel is responsible for advising the Board of Directors, the General Manager, and the DBE Liaison Officer in the implementation of the DBE Program.

Liaison Officer (Section 26.25)

The General Manager has 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

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 other appropriate officials. The duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by 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 DBE goal attainment, and identifies ways to improve process;
- Participates in pre-bid meetings;
- Advises the General Manager and SMART Board of Directors 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 SMART's updated directory on certified DBEs

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 10/31/2020. 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:

"The contractor shall promptly pay any and all subcontractors by an instrument that guarantees availability of funds immediately upon deposit of said instrument. The contractor shall include, in its monthly invoice submission to SMART, amounts to pay for all subcontractors' acceptable invoices, no later than 30 days after receipt of such invoices. Unless otherwise approved in writing by SMART, the contractor shall, within ten (10) days after receipt of the payment made by SMART, pay to each of its immediate subcontractors for satisfactory performance of its contract, the amounts to which they are entitled, after deducting any prior payments and any amount due and payable to the contractor by those subcontractors. Any delay or postponement of such payment may take place only for good cause and with SMART's prior written approval. If the contractor determines the work of the subcontractors to be unsatisfactory, the contractor must immediately notify in writing SMART (with a separate notice to the Liaison Officer if the subcontractor is a DBE) and state the reasons. Failure by the contractor to comply with this requirement will be construed to be breach of contract and may be subject to sanctions as specified in the contract."

"Should SMART make incremental inspections and, upon approval of the contractor's work at various stages of the contract, pay a portion of the retainage, the contractor shall promptly, within 30 days after SMART has made such payment, pay to the subcontractor who has satisfactorily completed all of its work and whose work is covered by SMART's inspection and approval, all retainage owed to the subcontractor. SMART's incremental inspections, approval or release of a portion of the retainage under this section shall not

constitute acceptance."

For the purposes of this section, a subcontractor's work is satisfactorily completed when the prime contractor certifies to SMART that all the tasks called for in the subcontract have been accomplished.

DBE Database (Section 26.31)

The DBE database is a consolidated and automated directory that identifies firms that have been certified as DBEs by the CUCP. The DBE database is jointly managed and updated by the CUCP certifying member agencies in coordination with the California Department of Transportation (Caltrans). SMART will use the DBE database as a primary resource in developing overall goals and contract specific goals and in conducting outreach and other activities to promote DBE participation in DOT-assisted contracts.

The DBE database includes the firm's name, address, telephone number, and types of work, utilizing the North American Industry Classification System (NAICS) codes for which the firm is certified as a DBE.

California Uniform Certification Program (CUCP) DBE Directory (Section 26.31)

SMART is a member of the CUCP, which maintains the DBE directory pursuant to 49 CFR 26.81 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://dot.ca.gov/programs/civil-rights/dbe>

Overconcentration (Section 26.33)

Pursuant to 49 CFR Section 26.33, if the DBELO determines that DBE participation is so overconcentrated in certain types of work or contracting opportunities that it unduly burdens the participation of non-DBEs in that type of work, the DBELO will develop appropriate measures to address the overconcentration. The DBELO will seek approval from the FTA. Once approved, the measures will become part of this Program.

Measures to address DBE overconcentration in a field may include, but are not limited to the following:

- Developing ways to assist DBEs to move into nontraditional areas of work;
- Varying the use of contract-specific DBE goals;
- Working with prime contractors to find and use DBEs in other industry areas;

DBE Outreach

SMART manages its public participation and outreach efforts to seek public input for setting overall DBE participation goals and to increase public awareness. In establishing overall DBE goals, SMART will provide for public participation in coordination with the San Francisco Bay Area's Business Outreach Committee (BOC). The BOC consists of regional transit and transportation agency DBE officers that develop and present educational, outreach, and peer exchange programs for DBEs and SBEs several times a year, in addition to a quarterly newsletter.

In conjunction with SMART's activities to meet its overall DBE goal, SMART works with the BOC to implement various public participation and outreach activities that broaden awareness of SMART's contracting opportunities. SMART will continue to work with the BOC to help organize training

programs for meeting DBE eligibility requirements, familiarize potential vendors with SMART's procurement procedures, processes, and requirements and otherwise develop effective programs to further the inclusion of DBEs in SMART's contracting activities.

Monitoring and Enforcement Mechanisms

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 DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps provided in 26.109.
- We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 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.
- We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

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)

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program.

Pursuant to Section 26.45, SMART will establish an overall DBE goal, subject to the approval of the Board of Directors, for the participation of DBEs in all projected contracts utilizing DOT financial assistance for a period covering three fiscal years. The goal will be expressed as a percentage of the total amount of DOT funds the District anticipates expending in three-year period covered by the goal. A report outlining the steps and calculations used to establish SMART's goal will be submitted to the appropriate operating administration for review no later than October 31 for each three fiscal year period to be covered by the goal.

SMART will publish a notice of the proposed overall goal, information 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 for 30 days following the notice, and informing the public that SMART will accept comments on the goals for 30 days from the date of the notice. The notice will be published in the Marin Independent Journal and Press Democrat.

Our overall goal submission to DOT 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.

Breakout of Estimated Race-Neutral & Race Conscious (Section 26.51(a-c))

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program. This section of the program will be updated when the goal calculation is updated.

Contract Goals

SMART will use contract goals to meet any portion of the overall goal SMART does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

SMART will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

Good Faith Efforts

Demonstration of Good Faith Efforts (Section 26.53(a) & (c))

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

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

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

Information to be Submitted (Section 26.53(b))

SMART treats bidder/offer's compliance with good faith effort's requirements as a matter of responsiveness.

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

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- 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; and
- If the contract goal is not met, evidence of good faith efforts.

Administrative Reconsideration (Section 26.53(d))

A bidder or proposer will be ineligible for award if it does not meet the goal or demonstrate good faith efforts. Contract specifications will provide that contract award is conditioned on meeting these requirements.

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 DBELO. The request will be heard by a SMART Official who did not participate in the original determination.

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 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 DOT.

Good Faith Efforts when a DBE is Replaced on a Contract (Section 26.53(f))

SMART will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contractor goal. We will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and provide copies of new or amended subcontracts, or documentation of good faith efforts.

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

Counting DBE Participation (Section 26.55)

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

SUBPART D – CERTIFICATION STANDARDS

Certification Process (Section 26.61 – 26.73)

SMART will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. 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 DBE's in the Program.

Procedures for Certification Decisions (Section 26.83)

SMART is a member of the California Unified Certification Program. SMART is not a certifying agency. The certifying agencies in California can be found at: <https://dot.ca.gov/-/media/dot-media/programs/civil-rights/documents/dbe/cucp-roster-of-certifying-agencies-a11y.pdf> These agencies are responsible for Re-certifications, "No Change" Affidavits, Denials of Initial Requests for Certification, and Removal of a DBE's Eligibility.

Certification Appeals (Section 26.89)

Any firm or complainant may appeal the decision in a certification matter to DOT. Such appeals should be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: (202) 366-4754
TTY: (202) 366-9696

SUBPART F – COMPLIANCE AND ENFORCEMENT

Information, Confidentiality, and Enforcement (Section 26.109)

SMART 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, we will not release personal financial information submitted in response to the personal net worth requirement to a third party, other than DOT, without the written consent of the submitter.

Monitoring Payments to DBEs

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

SMART 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 amount stated in the schedule of DBE participation.

SMALL BUSINESS ENTERPRISE ELEMENT

SMART will establish a Small Business Enterprise element (SBE Program) as one of its race-neutral methods of achieving small business participation, including disadvantaged businesses, on contracts with subcontracting opportunities. This SBE element will apply to all DOT-assisted funded contracts. SMART will take all reasonable steps to eliminate obstacles for SBEs to participate as prime contractors in SMART's procurement activities. SMART will establish this program no later than nine (9) months after FTA's concurrence with this program.

Definition of Small Business Enterprise

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

1. A firm (including affiliates) must be an existing small business as defined by the Small Business Administration (SBA) regulations, 13 CFR Part 121, for the appropriate type(s) of work that a firm performs. The firm must hold one of the acceptable certifications listed below.
2. Even if a firm meets the above requirement, the firm's (including affiliates) average annual gross receipts over the previous three years cannot exceed a maximum cap of \$22.41 million (or adjusted for inflation by the Secretary of the DOT). SBA size standards vary by industry and for certain industries may be than the \$22.41 million cap.

Affiliates are defined in the SBA regulations 13 CFR Part 121.103.

Race -Neutral SBE Measures

SMART will continue its efforts to enhance small business participation through outreach and other community programs, training, and business development programs, restructuring contracting opportunities, simplifying bonding, surety and insurance requirements, or other race-neutral means. SMART will set its overall SBE goal on the same three-year cycle as the overall DBE goal. The overall SBE goal will be determined based on the number and type of contracts SMART expects to let in the reporting period as well as the availability of and prior utilization of SBEs in DOT-assisted contracts. Submittals that fail to document a bidders/ offerors solicitation of SBE participation, or efforts to do so, will not be considered.

Acceptable Comparable SBE Certifications

SMART will accept the SBE certifications performed by other agencies, provided that the size standards described above are met. If a firm is certified in one or more of the following programs and meets SMART's size standards the firm will automatically be deemed a small business for SMART's purposes. The term "SBE" will be used collectively for qualified SBEs, WBEs, MBEs, and other approved certifications. As indicated below, SMART may require an affidavit of size for each SBE prime contractor or subcontractor. Certifications from self-certification programs are not acceptable. Firms must be certified at the time of submittal.

- Disadvantaged Business Enterprise (DBE) Certification
- State Minority Business Enterprise (SMBE) State Women Business Enterprise (SWBE) certification by the State of California
- Small Business (SB) certifications by the California Department of General Services (DGS)
- Microbusiness (MB) certification by the California Department of General Services for all industries
- SMB 8(a) by the Small Business Administration provided that their certification complies with above
- SBE/MBE/WBE certification from other state, county, or local government certifying agency

Determining and Adopting the Overall SBE Goal

SMART will set its overall SBE goal on the same three-year cycle as the overall DBE goal. The overall goal will be determined based on an analysis of the number and type of DOT-assisted contracting opportunities SMART expects to release in the three year reporting period, SMART's history of attracting SBEs, as well as the availability of SBEs in the types of work involved in upcoming opportunities. As part of the analysis, staff will consult the U.S. General Services Administrations "System for Award Management" (SAM) Registry for information on the availability of SBEs for various types of work at: <https://www.sam.gov/SAM/>

The overall SBE goal will be expressed as a percentage of the total amount of DOT-assisted funds SMART anticipates that will be expended in the three forthcoming fiscal years. SMART has no history of track SBE participation and will set its first overall SBE goal at the same level as SMART's overall DBE goal for the remainder of the current reporting period. SMART will determine the overall SBE goal in conjunction with the establishment of the overall DBE goal.

Achieving the Overall SBE Goal

SMART will seek to achieve the overall SBE goal for each year in the three-year reporting period. Although SMART will not set contract specific goals, it will strongly encourage bidders/ offerors to obtain SBE participation in their bid or proposal. The bidder/ offeror is required to include a Goal Declaration Form in their submittal notifying SMART of the bidder's/ offeror's SBE goal attainment for that contract. A copy of this form is in Attachment 7.

SMART will not consider submittals that fail to document the bidder's/ offeror's solicitation of SBE participation or good faith efforts to do so.

Work that a SBE subcontracts to a non-SBE firm does not count toward the overall SBE goal. Expenditures may only be counted if the SBE is performing a commercially useful function. Only the work performed by the SBE will be counted towards the overall SBE goal.

MISCELLANEOUS

Program Review

The DBE Program will be reviewed by the DBELO every three (3) fiscal years, or more frequently as necessary at the sole discretion of the Board, to ensure that elements of the DBE Program are tailored to address any discrimination that may exist in the industries relevant to SMART's contracting activities and to ensure that the DBE Program does not disproportionately impact any particular group.

If the organization makes any significant changes such as a change in DBELO, reporting structure of the DBELO or receives significantly more or less DOT assistance, SMART will submit and update or amend the program.

Severability

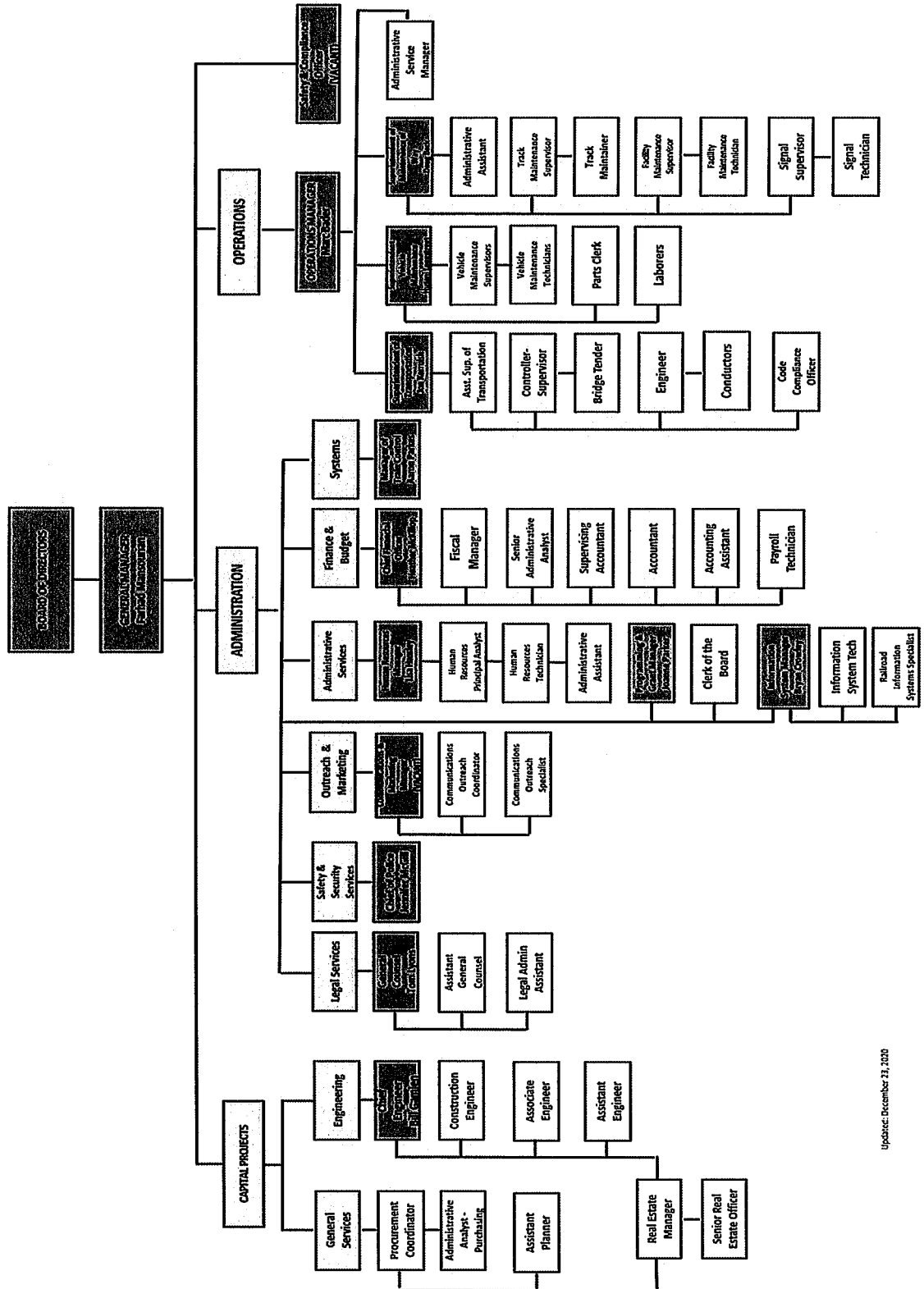
Should any part, term, provision or element of this DBE Program be decided by the courts to be illegal or in conflict with any law of the United States or of the State of California or otherwise rendered unenforceable or ineffective, the validity of the remaining parts, terms, provisions, or elements shall not be affected.

Failing to Meet Overall Goals

If SMART fails to meet the overall goal applicable to that fiscal year, the DBE Liaison will analyze in detail the reasons for the difference between the overall goal and awards and commitments made. Specific steps and milestones to correct the problems identified and to meet overall goals for future fiscal years will be established. SMART will retain the shortfall analysis and corrective actions for three years and make them available to FTA upon request.

Attachment 1 Organizational Chart

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT - ORGANIZATION CHART



Attachment 2
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 a DBE.

Attachment 3
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 4
Section 26.45 - Overall Goal Calculation

SUMMARY

Sonoma-Marin Area Rail Transit District (SMART) has completed its goal setting and methodology study for its three-year Disadvantaged Business Enterprise (DBE) overall goal for contracting opportunities funded by the Federal Transit Administration (FTA), in accordance with 49 CFR Part 26. SMART has determined a race-neutral triennial goal for Federal Fiscal Years (FFY) 2021- 2023 of **.03%**.

The goal has been established based on a total of \$9,155,876 of federal 5307 for preventative maintenance projected to be available in the coming three years. If SMART receives more or less federal funds, we will reevaluate to determine whether the established goal continues to be realistic or if an adjustment is necessary

The DBE goal was 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, and proposed goals of similar transit agencies.

Federally Assisted Contracts

A total of \$9,155,876 of federal dollars are anticipated for the goal period. Table 1 represents SMART's forecast of federal dollars during the goal period.

Table 1

Anticipated Federal Funds	FFY 2020/2021	FFY 2021/2022	FFY 2022/2023	Total
FTA Section 5307	\$2,991,725	\$3,051,560	\$3,112,591	\$9,155,876
Total	\$2,991,725	\$3,051,560	\$3,112,591	\$9,155,876

There are no construction projects with federal funds anticipated at this time for inclusion in the goal calculation. If federal funds are received for a project during the goal period, SMART will revise our goal calculation.

All the federal funds forecasted to be received are for preventative maintenance. The annual amount SMART receives is forecasted at \$3 million. Most of these funds are used for internal salaries associated with preventative maintenance. Table 2 depicts the percentage of qualified preventative maintenance expenditures that are expected to be federal funds.

Table 2

Description	Estimated Total Cost (FFY 2021-2023)	Estimated Federal Share (FFY 2021-2023)	Percentage of Federal Funds (FFY 2021-2023)
Preventative Maintenance	\$37,720,128	\$9,155,876	24%

STEP ONE: 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 were calculated based on the specialty areas using the North American Industrial Classification System (NAICS) codes. SMART identified twelve NAICS codes relevant for federally assisted activities. Table 3 provides a summary of those categories of work, with an estimated cost breakdown for each.

Table 3: NAICS Codes and Percentage of Federal Funds

Category of Work/ Description	NAICS	Estimated Federal Dollar Share (FFY 2021-2023)	Percentage of Federal Funding by NAICS
Salaries (In-House Staff)	n/a	\$5,841,791	63.8%
Rail Specific Parts & Repairs	488210	\$2,869,932	31.0%
Communications (Radio Equipment Repairs)	811213	\$22,508	.2%
Hardware/ Home Centers	444110/444130	\$150,052	1.6%
Cleaning Supplies	423850	\$37,513	.4%
Vehicle Tires	441320	\$3,001	0%
General Auto Repair	811111	\$52,518	.6%
Security System Service	561621	\$37,513	.4%
Janitorial	561720	\$78,027	.9%
Electric	238210	\$18,756	.2%
Plumbing/ Heating	238220	\$16,506	.2%
Landscaping	561730	\$27,760	.3%
Total		\$9,155,876	100%

Market Area: SMART's local market area was determined by assessing where most contractors and subcontractors who have bid on SMART contracts are located. In addition, SMART reviewed the market areas of neighboring transit agencies. For the purpose of this goal-setting analysis, SMART's local market area is defined as the following counties: Contra Costa, Marin, Napa, Solano, and Sonoma.

Number of All Firms: To determine the number of all firms (DBE and non-DBE) in SMART's market area, SMART searched the most recent CBP database for all firms specializing in the NAICS codes identified as relevant for the contract. The numbers of all firms are summarized in Column C of Table 4 below.

Number of DBEs: To determine the number of DBEs in SMART's five-county market area, SMART searched the CUCP database for DBEs that are certified in the NAICS codes identified for that activity contract. The numbers of DBE's identified are summarized in Column D of Table 4 below.

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. This is summarized in Column E of Table 4 below

Weighted Base Figure: Is determined by multiplying the percentage of federal funds by NAICS code

by the availability of DBEs. This calculation is done in Table 5. The weighted base figure is .03%

Table 4: Calculation of Base Figure

Description (A)	NAICS (B)	CBP (C)	DBE (D)	Availability of DBEs (E)
Salaries (In-House Staff)	n/a	n/a	n/a	0
Rail Specific Parts & Repairs	488210	16	0	0
Communications (Radio Equipment Repairs)	811213	21	0	0
Hardware/ Home Centers	444110/444130	234	1	.43%
Cleaning Supplies	423850	57	2	3.51%
Vehicle Tires	441320	323	0	0
General Auto Repairs	811111	1,271	1	.08%
Security System Services	561621	94	1	1.06%
Janitorial	561720	937	4	.43%
Electric	238210	1,334	7	.52%
Plumbing/ Heating	238220	1,553	3	.19%
Landscaping	561730	1,883	4	.21%
Total		7,723	23	.30%

Table 5: Calculation of Weighted Base Figure

Description	NAICS	Weight	Availability	Weighted Base Figure
Salaries (In-House Staff)	n/a	.6380	0	0%
Rail Specific Parts & Repairs	488210	.3134	0	0%
Communications (Radio Equipment Repairs)	811213	.0025	0	0%
Hardware/ Home Centers	444110/444130	.0164	.0043	.007%
Cleaning Supplies	423850	.0041	.0351	.014%
Vehicle Tires	441320	.0003	0	0%
General Auto Repairs	811111	.0057	.0008	0%
Security System Services	561621	.0041	.0106	.004%
Janitorial	561720	.0085	.0043	.004%
Electric	238210	.0020	.0052	.001%
Plumbing/ Heating	238220	.0018	.0019	0%
Landscaping	561730	.0030	.0021	.001%
Total		1.00	.0030	.03%

STEP TWO: ADJUSTMENTS (49 CFR 26.45(D))

In reviewing whether the Step One calculation should be adjusted, SMART looked at the following: Past Participation of DBE's in Federally Assisted Contracts, Disparity Studies, and goals of other Transit Agencies.

Past DBE Participation in Federally Assisted Contracts

SMART reviewed our past experience and we met our DBE goal for the previous goal setting period (FFY 2018 – 2020). The goal was 4% and SMART achieved 4.86%. The goal however was based on

very different activities than we have now. It was based on engineering services and heavy civil construction projects. Our current funds will be expended on preventative maintenance, so past participation will most likely not be a good indicator of future performance.

Data from Disparity Studies

The United States Department of Transportation (USDOT) suggests that federal aid recipients examine evidence from disparity studies conducted within their jurisdiction. Due SMART's size, it is not feasible to conduct an independent disparity study. SMART did review the Bay Area Rapid Transit's (BART) disparity study, conducted by Miller³ Consulting dated January 12, 2017. The study did find evidence of barriers for minorities and women owned businesses in obtaining significant contracts with BART. However, BART's service area is different than SMART's and SMART has already deployed some of the recommendations in the report for race neutral goals. We don't feel that it would be appropriate to use this study as an adjustment factor for this goal period.

DBE Goals of Other Agencies

Because SMART is a relatively new agency, with limited historical data to draw upon, it has reviewed the DBE goals of neighboring transit agencies. SMART focused on transit agencies who operate in Marin and Sonoma counties, with DBE goal data available. These agencies include: Marin Transit, Sonoma County Transit, and Santa Rosa City Bus. The DBE goals varied greatly from 13.5% to .96%. We looked at similar activities by NAICS code and the closest was the agency with the DBE goal of .96%.

RACE-CONSCIOUS AND RACE NEUTRAL METHODS

Regulations require that the maximum feasible portion of the overall DBE goal be achieved through race-neutral measures. In addition, SMART does not currently have sufficient evidence of discrimination or its effects in our bidding process and will therefore continue to meet its overall goal using race-neutral means of facilitating DBE participation.

To expand race-neutral outreach, SMART joined the Business Outreach Committee (BOC), a consortium of Bay Area transit and transportation agencies formed to maximize outreach efforts.

In addition to participating in the educational and outreach activities through the BOC, SMART will continue race-neutral activities in its contracting opportunities, including:

1. Arranging solicitations, times for presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small businesses participation;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Providing technical assistance and other similar services;
4. Providing information and communication programs on contracting and business procedures as well as specific contract opportunities;
5. Ensuring distribution of SMART's DBE data base through print and electronic means to the widest feasible range of potential prime contractors;
6. Maintain a website containing information on DBE certification, DBE Program, DBE procedures and a database of DBE firms.

SMART will carefully monitor participation during the goal period. At the conclusion of the goal period,

SMART will reevaluate the effectiveness of the race-neutral methods and determine if it is necessary to institute a race-conscious portion and contract specific goals.

PUBLIC PARTICIPATION

SMART participates in the Business Outreach Committee (BOC). The BOC is a consortium of Bay Area Transportation Agencies with a common goal to assist small, disadvantaged, and local firms in doing business with Bay Area Transit and Transportation Agencies. We will be utilizing the BOC to assist with outreach.

In addition, we will be sending the notification of DBE goal setting to all SMART registered vendors and DBEs. SMART will be publishing a notice regarding its overall DBE goal on the Contracts and Procurement page on SMART's public website www.sonomamarintrain.org/business on Thursday, January 28, 2021. A hard copy is available at SMART's Petaluma Administrative office at 5401 Old Redwood Highway, Suite 200, Petaluma, CA 94954.

Notification of the proposed FFY 2021-2023 DBE goal and request for public comment will also be distributed to the following local trade and news publications.

- Marin Independent Journal
- Press Democrat

Before submitting the final FFY 2021-2023 DBE goal to the FTA, SMART will evaluate whether any modifications are needed based on comments and input received during the public comment period.

Attachment 5
Breakout of Estimated
Race-Neutral & Race Conscious Participation

SMART will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. SMART the following race-neutral means to increase DBE participation:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
- Providing technical assistance and other services;
- Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- Providing access to services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency; and
- Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

We estimate that, in meeting our overall goal of .03%, we will obtain the entire goal from race-neutral participation. Given the fact that SMART does not have enough data to narrowly tailor a program with race-conscious participation, SMART opts to use only race-neutral participation at this time.

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

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

Attachment 6
Forms 1 & 2 for Demonstration of Good Faith Efforts

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By: _____

Title _____

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$_____.

Affirmation

The above names DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as state above.

By: _____

(Signature)

(Title)

If the bidder/ offeror does not receive award of the prime contract, all representations in this Letter of Intent and Affirmation shall be null and void.

Attachment 7

SBE Goal Declaration Form

Prime Contractor: _____

Contract: _____

Selection One:

_____ The bidder/ offeror is a certified SBE in accordance with the SMART's standards. A copy of the certification is enclosed.

_____ The bidder/ offeror commits to subcontract at least _____% of its Net Bid with one or more certified SBE for commercially useful function in the performance of the contract.

_____ The bidder/ offeror hereby submits documentation of a verifiable Good Faith Effort:

By: _____

(Signature)

(Title)

(Date)

Documents to be included with the bid/ proposal with SBE Goal

- SBE Goal Declaration
- Copies of SBE certification(s)
- SBE affidavits (as required, see list of acceptable certifications)
- Good Faith Efforts

Attachment 8
Regulations: 49 CFR Part 26

Please refer to: <https://www.ecfr.gov/cgi-bin/text-idx?SID=53cd5c89e0e9bdcfc93bae3ae3efb10c&mc=true&node=pt49.1.26&rgn=div5>