



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

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## **I. Statement of Policy**

It is the policy of the Sonoma-Marín Area Rail Transit District ("SMART") to ensure nondiscrimination on the basis of race, color, sex, or national origin in the award and administration of federally funded contracts. It is the intention of SMART to create a level playing field on which a Disadvantaged Business Enterprise ("DBE") or Small Business ("SB") can compete fairly for federally funded agreements, contracts and subcontracts, including but not limited to construction, procurement and proposal contracts, professional and technical services agreements and purchase orders.

As a recipient of federal funds, SMART is committed to carrying out all requirements of 49 CFR Part 26, establishing and maintaining SMART's DBE Program (the "DBE Program" or "Program"). SMART will implement its DBE Program in good faith and shall not permit the use of race or gender conscious quotas or set-asides in its administration.

SMART has disseminated this policy statement to the SMART Board of Directors and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT- assisted contracts and is posted on our website: [www.SonomaMarinTrain.org](http://www.SonomaMarinTrain.org).

This DBE Program is intended to implement the federal requirements pertaining to the DBE Program, including, but not limited to, 49 CFR Part 26 as amended. In the event of any inconsistencies between the terms of SMART's DBE Program and the terms of 49 CFR Part 26 as amended, the latter shall prevail.

## **II. Objectives**

The objectives of this DBE Program are to:

1. Ensure nondiscrimination in the award and administration of federally funded contracts;
2. Create a level playing field on which DBEs and SBs can compete fairly for federally funded contracts;
3. Help remove barriers to DBE and SB participation in the bidding, award and administration of District contracts;
4. Assist in the development of DBE and SB firms that can compete successfully in the market place outside of the DBE Program;
5. Ensure that only firms that fully meet the eligibility standards of 49 CFR Part 26 are permitted to participate as DBEs;
6. Ensure that the DBE Program is narrowly tailored in accordance with applicable law.
7. Identify business enterprises that are qualified as DBEs or SBs and are qualified to provide SMART with materials, equipment, supplies and services; and to develop a good rapport with the owners and management of those enterprises;

## **III. Applicability**

Pursuant to 49 CFR Sections 26.3 and 26.21, 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.

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.

#### **IV. Responsibility for DBE Program Implementation and Administration**

##### **A. Board of Directors**

The Board of Directors is responsible for establishing DBE policy.

##### **B. 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.

##### **C. Liaison Officer**

The General Manager shall designate the Liaison Officer as referenced in 49 CFR Part 26.25. The Liaison Officer shall be responsible for overseeing the DBE Program, recommending DBE policy, developing and implementing a written DBE program and internal and external communication procedures. Pursuant to 49 CFR Part 26.25, the Liaison Officer shall have adequate staff to administer SMART's DBE Program and shall have direct and independent access to the General Manager.

The Liaison Officer shall be responsible for all aspects of the DBE Program as outlined in this document, and he or she will work closely with operating divisions and other departments and consultants of SMART, including the Office of the General Counsel, the Contracts/Procurement Coordinator and Engineering, and other departments which are responsible for making decisions relative to SMART's agreements, contracts and subcontracts, including but not limited to construction, procurement and proposal contracts, professional and technical services agreements and purchase orders.

The specific duties and responsibilities of the Liaison Officer or his/her designee(s) shall include but not be limited to the following:

1. Gathering and reporting statistical data and other information as required by FTA and the Board of Directors;
2. Working with appropriate departments to establish overall DBE goals;
3. Ensuring timely notification to the DBE community of bid and contract opportunities;
4. Identifying and implementing race-neutral methods of achieving DBE participation and evaluating the success of such methods, including race-neutral SB participation;
5. Analyzing and assessing the available resources and evidence for the establishment and achievement of an overall DBE participation goal;
6. Analyzing SMART's progress toward DBE goal attainment, and identifying ways to improve progress;
7. Monitoring overall DBE participation, adjusting overall goals and means of achievement, and reporting to SMART, the Board and FTA as needed;

8. Participating in the contract bid and award process including establishing contract-specific DBE goals where appropriate, reviewing contract specifications, attending pre-bid, pre-proposal and pre-construction meetings to explain the DBE Program, to respond to questions from contractors and proposers and evaluating bids for contractor responsiveness, responsibility and good faith efforts;
9. Advising the General Manager and Board of Directors on DBE matters;
10. Maintaining and updating the DBE Directory in accordance with 49 CFR Section 26.31;
11. Maintaining and updating the Bidders List in accordance with 49 CFR Section 26.11;
12. Providing outreach to DBEs and community organizations with advice on DBE Program issues and contract opportunities;
13. Determining all initial certification actions for DBE and small businesses elements, including certifications, annual updates, denials and removals;
14. Participating in the implementation of a statewide Unified Certification Program in accordance with 49 CFR Section 26.81;
15. Maintaining all necessary records and documentation of the DBE Program.

D. 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.

**V. Administrative Requirements**

A. DBE Financial Institutions

Pursuant to 49 CFR Section 26.27, the Liaison Officer will identify and explore the range of services offered by banks and other financial institutions that qualify as DBEs in the Counties of Marin and Sonoma and determine areas in which SMART may reasonably utilize their services. SMART will also encourage its prime contractors to use the services of DBE financial institutions.

B. CUCP DBE Directory

SMART is a member of the California Unified Certification Program (CUCP), which maintains the DBE directory pursuant to 49CFR 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 SBs.

C. Overconcentration

Pursuant to 49 CFR Section 26.33, if the Liaison Officer 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 Liaison Officer will develop appropriate measures to address the overconcentration. The Liaison Officer will seek approval from the FTA. Once approved, the measures will become part of this Program.

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

1. Developing ways to assist DBEs to move into nontraditional areas of work;
2. Varying the use of contract-specific DBE goals;

3. Working with prime contractors to find and use DBEs in other industry areas;

D. Race & Gender Neutral Efforts to Attain DBE Goals

Pursuant to 49 CFR Section 26.51, SMART will achieve as much of its overall DBE goal as possible by using race neutral efforts to facilitate DBE participation. Race-neutral efforts may include, but are not limited to, the following:

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. Conducting internal training seminars to facilitate better understanding among project managers and engineers regarding the DBE Program objectives;
7. Maintain a website containing information on DBE certification, DBE Program, DBE procedures and a database of DBE firms;
8. Ensuring that SMART's SB Elements are open and available to all small businesses, including DBE's.

E. Small Business DBE Program Elements

In accordance with 49 CFR Section 26.39, SMART will establish Small Business DBE Program Elements ("SB Elements") as part of its DBE Program. DBEs are SBs and thus having an active and effective SB element to its DBE Program will assist SMART in achieving as large a portion of its overall goal as possible through race-neutral means. The SB Elements will include all reasonable steps to eliminate obstacles to small business participation on SMART's contracts. This includes, but is not limited to:

1. Race neutral SB goals on DOT funded contracts;
2. Contract set asides for SBs on DOT funded contracts;

As a component of the SB Elements SMART shall establish a means to certify small businesses and track information on the certified small businesses. SMART shall develop procedures to gather and report statistical data on the SB Elements of its DBE Program.

The Liaison Officer will ensure that the SB Elements integrate with and complement the District's other race-neutral DBE Program efforts. The Liaison Officer shall work in conjunction with all projects at the earliest stages of project development to ensure that the projects have, to the fullest extent feasible, been developed in a way that encourages DBE or SB participation.

F. DBE Outreach

One method of providing race-neutral efforts for DBE and SB participation will be through SMART's DBE Outreach Program (the "Outreach Program"). The Liaison Officer shall be responsible for identifying the most effective type(s) of outreach and implementing outreach. Outreach includes but is not limited to contract-specific outreach, general outreach and outreach to community based organizations (CBOs) and contractor or business groups.

G. Hearing Officer

In accordance with 49 CFR Sections 26.53(d)(2) and 26.87(e) and as described more fully in appendices E and F, all proceedings by SMART in connection with the removal of certification or reconsideration of a determination that a bidder has not met the DBE goal or used good faith efforts will be heard by an outside independent hearing officer selected in accordance with SMART's procedures.

The party or individual requesting the reconsideration or hearing shall equally bear the burden of payment of any fees or costs associated with the independent hearing officer with SMART.

H. Unified Certification Program

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.

I. Transit Vehicle Manufacturer Certification

Each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 CFR Section 26.49, including the establishment of an annual overall DBE participation goal that has been submitted to the FTA and either approved, or not disapproved, by that agency. SMART shall not include the amount of FTA assistance used in transit vehicle procurements in the base amount from which SMART's overall annual goal is established. Alternatively, SMART may establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying with the remaining sections of 49 CFR Section 26.49, subject to approval from the FTA.

**VI. Triennial DBE Goals**

Pursuant to 49 CFR Section 26.45, the Liaison Officer will establish a triennial overall DBE goal ("Triennial Goal") according to the procedures expressed in Appendix B, 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 Triennial 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 triennial goal. A report outlining the steps and calculations used to establish SMART's Triennial Goal ("Triennial Goal Report") 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 Triennial Goal.

The Liaison Officer will track and evaluate its goal on a quarterly basis. This tracking is for informational purposes only and to ensure that SMART is meeting the largest feasible portion of the Triennial Goal through race neutral means. In the event that SMART amends its Triennial Goal, it shall be submitted to the appropriate operating authority in a manner consistent with 49 CFR Section 26.45.

SMART's overall goal is reflective of the amount of ready, willing and able DBEs that are available to participate in contracting opportunities and is reflective of the amount of DBE participation SMART would expect absent the effects of discrimination. SMART intends to meet this goal, to the fullest

extent feasible, through the race-neutral measures. Where race-neutral measures are inadequate to meet the annual overall goal, SMART will establish contract-specific goals for particular projects with subcontracting opportunities. Contract-specific goals will be established in accordance with the findings of District's disparity study ("Disparity Study"), or any subsequent updates to the Disparity Study.

Overall project goals may be set for design-build, turnkey and/or multi-year projects consistent with the requirements of 49 CFR Part 26, as outlined in Section XIV.

## **VII. Contract-Specific DBE Goals**

In accordance with the procedures expressed in Appendix C, SMART will establish contract-specific DBE goals on construction contracts with subcontracting opportunities to the extent that SMART cannot achieve its annual overall DBE goal with race-neutral measures. Where a contract-specific DBE goal has been established, the bidder or proposer must meet the contract-specific goal or demonstrate that it made good faith efforts to do so. The bidder shall be entitled to a hearing if the bidder fails to show either that it met the goal or that it made good faith efforts to meet the goal. All proceedings by SMART in connection with good faith efforts will be held by an outside independent hearing officer selected in accordance with District procedures. 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.

A contract specific goal shall only be established where supported by the findings of SMART's Availability and Utilization Study or an update to that study.

## **VIII. DBE Eligibility**

### **A. Disadvantaged Business Enterprise**

A Disadvantaged Business Enterprise (DBE) is a for-profit, small business concern: 1) that is at least fifty-one percent (51 %) owned by one or more individuals who are socially and economically disadvantaged or, in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged 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.

### **B. Small Business Concern**

A small business concern is an existing small business, as defined by Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121), whose average annual gross receipts for the previous three years does not exceed \$22.41 million (or as adjusted for inflation by the Secretary of DOT) pursuant to 49 CFR Section 26.65(b).

### **C. Socially and Economically Disadvantaged Individuals**

There is an assumption that an individual is both socially and economically disadvantaged if he or she is a citizen or lawfully admitted permanent resident of the United States and is:

1. Black American (including persons having origins in any of the Black racial groups of Africa);
2. Hispanic American (including persons of Central or South American, Cuban, Dominican,

- Mexican, Puerto Rican, or other Spanish or Portuguese culture or origin, regardless of race);
- 3. Native American (including persons who are Aleuts, American Indians, Eskimos, or Native Hawaiians);
- 4. Asian-Pacific American (including persons whose origins are from Brunei, Burma (Myanmar), Cambodia (Kampuchea), China, the Commonwealth of the Northern Marianas Islands, the Federated States of Micronesia, Fiji, Guam, Hong Kong, Indonesia, Japan, Juvalu, Kiribati, Korea, Laos, Macao, Malaysia, Nauru, the Philippines, Samoa, Taiwan, Thailand, Tonga, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), or Vietnam);
- 5. Subcontinent Asian American (including persons whose origins are from Bangladesh, Bhutan, India, the Maldives Islands, Nepal, Pakistan, or Sri Lanka); A Woman; or
- 6. A member of any additional group that is designated as socially and economically disadvantaged by the Small Business Administration.

SMART will require each individual owner of a firm applying to participate as a DBE and whose ownership interest is relied upon for DBE certification to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged. SMART will also require each individual owner of a firm applying to participate as a DBE and whose ownership interest is relied upon for DBE certification to submit a sign, notarized statement of personal net worth with appropriate supporting documentation.

Additionally, any individual may demonstrate, by a preponderance of evidence on a case-by-case basis, that he or she is socially and economically disadvantaged. SMART will follow governmental requirements, including 49 CFR Section 26.67 and the guidelines in 49 CFR Part 26, Appendix E, for determining social and economic disadvantage.

#### D. Personal Net Worth

Personal Net Worth (PNW) means the value of the assets of an individual remaining after total liabilities are deducted. As defined more specifically and limited in 49 CFR Part 26, an individual's personal net worth does not include:

- 1. The individual's ownership interest in an applicant or participating DBE firm;
- 2. 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. An individual owner of a firm whose ownership and control are relied on for DBE certification cannot be determined to be economically disadvantaged if he or she has a personal net worth exceeding \$1.32 million.

#### E. Non-Residence Certification

SMART's market area consists of Marin, Sonoma and Solano counties (the "Market Area"). In order for a firm with a principal place of business located outside of the Market Area to be eligible to benefit from the race and gender conscious program, the firm must show that it has attempted to do business in the three-county area. All firms whose primary place of business is located in or is domiciled within the Market Area are presumptively assumed to meet the following requirements. The requirements may include but are not be limited to:

- 1. Currently or previously a party to a construction contract to do work in one of the three

counties.

2. Attendance at a SMART sponsored outreach meeting, including pre-bid meetings, town hall meetings and/or Board of Directors' meetings.
3. Any form of communication with SMART, including purchasing contract documents, requesting information from SMART and attending or registering to attend SMART sponsored outreach events.

## **IX. Procedures to Ascertain Eligibility and Utilization of DBEs**

In order to ensure that the DBE Program benefits firms actually owned and controlled by socially and economically disadvantaged individuals, SMART has established certification procedures for DBEs and joint ventures involving DBEs and will abide by the procedures contained in Appendix E.

### **A. DBE Certification**

The California Unified Certification Program (CUCP), is governed by the terms of the Memorandum of Agreement (MOA) for a Unified Certification Program, effective January 1, 2002. 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 SMART's web site at [www.sonomamarintrain.org](http://www.sonomamarintrain.org) or by contacting the Liaison Officer 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.

Certifying agencies of the CUCP will not process a new application for DBE certification from a firm having its principal place of business in another state unless the firm has already been certified in the other state.

When processing an application from a firm that has been certified by the SBA as a small business, SMART has two choices. It may either accept the SBA certification decision, subject to SMART's own on-site review, or it may use the firm's SBA application package in lieu of requiring completion of SMART's own application form (in which case the District will still have to complete an on-site review, but will make its own decision). Certification procedures, including those applicable to initial certification, removal (decertification), and certification appeals, are set forth in Appendix E.

### **B. Termination**

Termination of DBE firms shall only be for good cause, as determined by SMART in accordance with 49 CFR Section 26.53 (f). Any termination of a DBE must be essential to the contract and not merely discretionary, advantageous or for the convenience of the contractor. A contractor must immediately notify the Liaison Officer of a DBE's inability to perform, and must provide documentation to substantiate any claim of non-performance. In order to terminate a DBE firm, the contractor must receive prior, written approval from SMART.

In the event that SMART approves the termination of the DBE, the contractor will be required to make good faith efforts to substitute the terminated DBE subcontractor with another certified DBE. The contractor will be required to provide copies of new or amended subcontract agreements.

#### C. Remedies for Non-Compliance

Non-compliance consists of failure or refusal to implement, meet or satisfy the applicable governmental requirements related to DBE participation, including but not limited to 49 CFR Part 26 and related federal guidelines or the applicable requirements of SMART's DBE Program and/or District contracts related to DBE participation.

SMART may impose any remedies for non-compliance authorized by the federal, state and local regulations and District contract specifications, including withholding of progress payments, liquidated damages and termination of the contract in whole or in part.

#### D. Counting and Tracking DBE Participation

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

DBE participation will not be counted toward the prime contractor's achievements or the overall goal until the DBE has been paid. In accordance with 49 CFR Section 26.51(g), The Liaison Officer will track the participation of DBEs in contract-specific goal contracts separately from the participation of DBEs in contracts without contract goals. The Liaison Officer will not count towards the overall goal that portion of a DBEs participation that is achieved after the certification of the DBE has been removed during the performance of a contract. If the DBE's ineligibility is caused solely by its having exceeded the applicable size standard during the performance of the contract, SMART will continue to count its participation on that contract toward overall and contract goals.

Expenditures may only be counted if the DBE is performing a commercially useful function on the 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 actually 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 prices, determining quality and quantity, ordering the material, and installing and paying for the material itself to determine whether a DBE is performing a commercially useful function, the District will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, as well as other relevant factors.

A DBE does not perform a commercially useful function if its role in the contract is limited to that of an extra participant through which funds are passed in order to obtain the appearance of DBE participation. If the DBE does not perform or exercise responsibility for at least 51 % 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 normal industry practice for the type of work involved, the DBE is presumed not to be performing a commercially useful function

If materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, 60 percent of the cost will be counted. If the materials and supplies are purchased from a DBE broker or a manufacturer's representative, the entire amount of the fees or commissions charged for assistance in the procurement of the materials or supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site will be counted towards the DBE goal provided that the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

Trucking will be counted in accordance with the provisions of 49 CFR Section 26.55

## **X. Required Contract Provisions**

SMART will include the following provisions in federally funded contracts, where appropriate.

### **A. Nondiscrimination Assurance**

Each federally funded contract SMART signs with a contractor, and each subcontract the prime contractor signs with a subcontractor, will include the following statement:

"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 as specified in the contract."

### **B. Prompt Payment Policy and Provisions**

Each federally funded contract SMART signs with a contractor will include the following provisions:

"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.

## **XI. Contract Compliance and Reporting**

SMART will implement appropriate mechanisms to ensure compliance with the DBE Program by all program participants under federal, state and local law. This includes establishing contract monitoring and enforcement provisions consistent with 49 CFR Section 26.37(b).

### **A. Bidders List**

Pursuant to 49 CFR Section 26.11(c), SMART will create and maintain a bidders list consisting of all firms bidding on prime contracts and bidding or quoting subcontracts on federally funded projects. For every firm, the following information will be included: firm name, firm address and firm's status as a DBE or non-DBE. SMART may also request additional information from bidders such as the age of the firm, the annual gross receipts of the firm and the ethnicity and gender of the owners, although this information is not required to be provided by any bidders.

### **B. Reporting to the US Department of Transportation**

Pursuant to 49 CFR Section 26.11(b), SMART will continue to report DBE participation and Triennial Goal setting methods to the FTA as directed. In addition, SMART shall maintain prescribed statistical data.

### **C. Other Reporting Requirements**

SMART will track the amount awarded the DBE, the amount paid to the DBE as stated by the prime contractor, and the amount paid to the DBE as verified by the DBE. Pursuant to 49 CFR section 26.37 (b), SMART will certify in writing that any work committed to DBE firms is performed by the DBE firm to which the work has been committed.

The Liaison Officer will report the actual amount paid to DBEs to FTA. Contractors performing work on SMART's DOT assisted contracts are required to separately report the DBE participation of their contracts achieved through race-neutral and through race-conscious means.

## **XII. Miscellaneous**

### **A. Program Review**

The DBE Program will be reviewed by the Liaison Officer every five (5) 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.

### **B. 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.

### **XIII. Special Requirements for Design/Build Contracts Under Public Contract Code**

In addition to the terms, conditions and provisions described above in Sections I through XIII, the following terms, conditions and provisions are applicable to design- build contracts awarded by SMART under the authority of Public Contract Code Sections 20209.5 et seq.:

#### **A. Category of Work Goals**

On any Design-Build contract with subcontracting opportunities, SMART shall establish Category-of-Work goals of a type and level appropriate to meet either the contract goal or the race-conscious portion of the project overall goal. The Category-of-Work goals will address contracting activities in various areas of work throughout the life of the contract. As more fully described in Section XIV.E, below, a bidder must commit to meet each of the Category-of-Work DBE goal(s) or demonstrate that it could not meet said Category-of-Work DBE goal(s) despite its good faith efforts.

#### **B. DBE Participation Credit for Second Tier Subcontractors**

DBE participation by second-tier subcontractors will be counted toward the DBE goal subject to ensuring that record keeping and enforcement provisions for DBE participation are passed down to the second-tier subcontractor.

#### **C. Bonding Waiver for Subcontracts**

SMART, in its discretion and on a contract-by-contract basis, may require a prime contractor to eliminate bonding requirements for subcontracts under a certain size or which meet a specific criteria.

#### **D. DBE Cost-Loaded Schedule**

SMART, in its discretion and on a contract-by-contract basis, may require a prime Contractor to provide a DBE Cost-Loaded Schedule.

#### **E. Phased Goals**

Where a Category-of-Work goal has been set that is applicable to an initial project phase (e.g., design and professional services), a bidder shall identify at bid all DBE firms, their participation level and type of work to meet the initial Category-of-Work goal(s) or shall demonstrate good faith efforts to meet such goal(s). In addition, where Category-of-Work goals have been set that are applicable to subsequent project phases (e.g., construction), a bidder at bid shall commit to meet each subsequent Category-of-Work goal identified in the Design-Build documents or shall demonstrate good faith efforts to meet such goal(s). Notwithstanding a bidder's commitment at bid to meet a specific level of DBE participation for Category-of-Work goals applicable to later project phases, a bidder shall not be required to identify at bid the DBE firms it will use for this work. Rather, the bidder's commitment will be monitored during performance of the contract in a number of ways, including but not limited to the following:

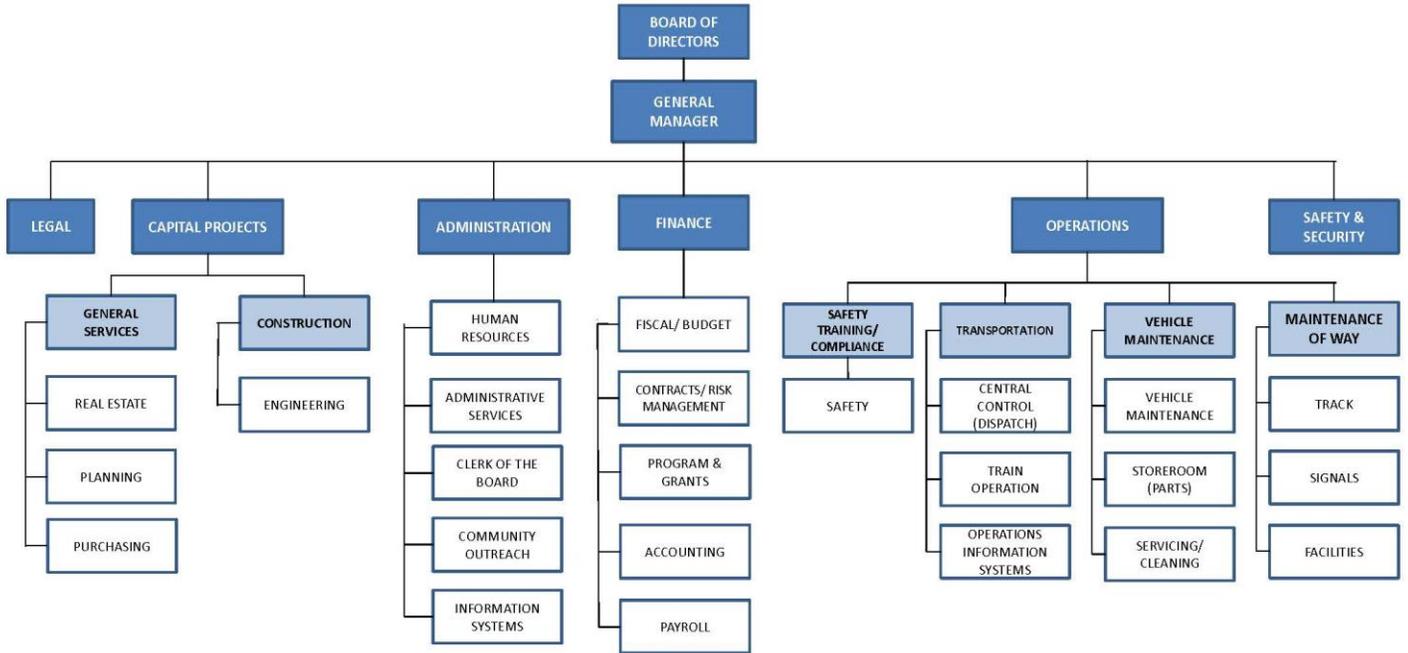
1. Prior to commencement of work by the DBE, the contractor shall submit a monthly DBE Participation Form identifying the DBE firm, its participation level and type of work to be

performed, along with a copy of the subcontract with the DBE. No credit shall be given the contractor for participation by any DBE that has not been approved by the District.

2. The contractor shall file monthly DBE Utilization Reports.
3. If required, the contractor shall periodically submit a DBE cost-loaded schedule.
4. SMART shall undertake regular evaluation of the contractor's progress regarding DBE participation and may request corrective action plans as appropriate.
5. In accordance with current regulations, all DBEs that are to participate on the project must be certified prior to bid. Moreover, subcontracts with DBEs are governed by the requirements of Public Contract Code Section 20209.10 (c).

# Attachment 1 Organization Chart

## SONOMA-MARIN AREA RAIL TRANSIT DISTRICT Organization Chart



May 2016

## **Attachment 2**

### **DBE Directory**

See the CUCP directory, found at: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

SMART encourages prime contract bidders to search this directory when seeking subcontractors that are certified as a DBE. SMART will provide a hard copy of such directory upon request.

### **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:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to California Civil Code §3300, et seq.;
3. 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:

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

**Attachment 4**  
**Section 26.45 - Overall Goal Calculation**

**SUMMARY**

Sonoma-Marín 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) 2018-2020 of 4.40%.

The goal has been established based on an anticipated total of \$29,338,079 of FTA dollars to be executed into a single grant in the coming three years. The individual fund sources and amounts are listed in Table 1. Of the total anticipated FTA funds, 91.4% or \$26,817,279 are expected to be awarded into contracts for work associated with SMART's Small Starts Project (San Rafael to Larkspur Extension).

**Table 1**

<b>Anticipated FTA Funds</b>	<b>Amount</b>
Section 5309	\$20,033,000
CMAQ Transfer to 5307	\$ 6,100,000
CMAQ Transfer to 5307	\$ 3,205,079
<b>TOTAL ANTICIPATED FTA FUNDS</b>	<b>\$29,338,079</b>

In the event of increased FTA funding for other projects or activities, SMART will evaluate the changes to determine whether the current goal needs to be adjusted. It is also worth noting that most of the funding that SMART will receive from the FTA in the three years covered by this FFY 2018-20 DBE Goal has been obligated through pre-award authority into a contract awarded in June 2017 under SMART's pre-existing FFY 2015-17 DBE goal.

The DBE goal developed for SMART's FTA-assisted activities identify the relative availability of DBEs, based on evidence of ready, willing, and able DBEs in relationship to comparable businesses that are likely to compete for SMART's FTA-assisted contracts. The goal reflects SMART's determination of the level of DBE participation that would be expected, absent the effects of discrimination.

**DATA CONSULTED**

SMART examined all evidence in its jurisdiction to determine which sources might be considered for its DBE goal-setting methodology.

➤ **Census Bureau's County Business Patterns (CBP) Database**

SMART used the CBP database to obtain the number of all firms, including non-DBE and DBE, that are ready, willing, and able to bid on SMART's FTA-assisted contract(s). This data is used in Step One of the goal-setting process.

➤ **California Unified Certification Program (CUCP) Database**

SMART used the CUCP database to determine the number of certified DBEs that are ready, willing, and able to bid on SMART's FTA-assisted contract(s). This data is used in Step One of the goal-setting process.

➤ **Past DBE Participation in FTA-Assisted Contracts**

The United States Department of Transportation (USDOT) suggests that an agency may adjust its DBE goal by averaging its base figure with the past median DBE participation. However, SMART did not use this as an adjustment factor for its goal period because of insufficient relevant data. SMART is a new rail transit agency with limited FTA contract participation to date.

➤ **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 reviewed the Bay Area Rapid Transit's (BART) disparity study, conducted by Miller<sup>3</sup> Consulting dated January 12, 2017. The study did find evidence of barriers for minorities and women owned businesses in obtaining significant contracts with BART. Because SMART shares some of the same business census area as BART, we assume that there is some disparity in the business climate from which SMART's draws its bidders.

➤ **Bidders List**

SMART does maintain a list of all bidders on SMART contracts (DBE and non-DBE), as required by 49 CFR Part 26.11. However, data collected on FTA-funded projects thus far is limited and wouldn't serve as sufficient quantifiable evidence of DBE's demonstrated interest and capacity.

➤ **DBE Goals of Other Agencies**

SMART reviewed the goal methodologies and DBE goals of several neighboring FTA-recipients. These goals were factored into Step Two of the goal-setting process.

➤ **Other Evidence**

SMART did not receive anecdotal evidence about discrimination in various public and private sectors or data on firm formation that would affect adjustments. However, an adjustment was warranted due to the highly specialized nature of SMART's FTA-assisted contract(s), which significantly limits the number of qualified firms able to bid on the contract. This adjustment is reflected in Step Two of the goal-setting process. We also note the difficulty of setting or adjusting the goal when the largest FTA-funded contract anticipated by SMART in the coming years has already been awarded after a six-month procurement process under the pre-existing SMART DBE goal.

## **FTA ASSISTED CONTRACTS**

A total of \$26,817,279 of FTA dollars are anticipated for the FTA-assisted contract(s) during the goal period. Table 2 represents SMART's defined FTA-assisted contracting program used for preparing its overall annual DBE goal-setting analysis for FFY 2018-20. Project costs include only contract-related costs, SMART staff, right-of-way and utility costs have been removed.

**Table 2**

<b>Contract Description</b>	<b>Estimated Contract Cost</b>	<b>Estimated Federal Transit Administration Dollar Share</b>
Larkspur Extension Project Civil Design-Build	\$36,300,000	\$23,844,791
Larkspur Extension Project Engineering	\$7,465,610	\$2,972,488
<b>SUBTOTAL FTA FUNDS CONTRACTED</b>		<b>\$26,817,279</b>
Larkspur Extension Project FTA Participating Costs Non-Contract	N/A	\$2,520,800
<b>TOTAL ANTICIPATED FTA FUNDS</b>		<b>\$29,338,079</b>

A design-build construction contract for the Larkspur Extension was awarded to Stacy and Witbeck/ Herzog, Joint Venture (SWH) on June 21, 2017. SWH is not a DBE, but has committed to a 3.99% DBE participation, which was SMART’s approved DBE goal at the time of procurement. In good-faith effort, SWH notified 127 disadvantaged business entities of subcontracting opportunities. Construction is expected to begin Fall 2017 and continue through most of the FFY 2018-20 DBE goal period. SMART followed the mandated State Public Contracting Code process for transit agencies conducting design-build procurements, including the required bidder pre-qualification process. SMART did consider unbundling this contract into smaller contracts, due to the highly specialized and complicated nature of constructing a brand-new rail, signal, and communications system that must seamlessly connect to the existing systems.

**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 two NAICS codes relevant for FTA-assisted contract(s). Table 3 provides a summary of those categories of work, with an estimated cost breakdown for each.

**Table 3**

<b>Category of Work / Description</b>	<b>NAICS</b>	<b>Estimated Federal Dollar Share</b>	<b>Percentage of Federal Funding by NAICS</b>
Other heavy and civil engineering construction	237,990	\$23,844,791	88.92%
Engineering services	541,330	\$2,972,488	11.08%
<b>Total</b>		<b>\$26,817,279</b>	<b>100.00%</b>

**Market Area:** SMART’s local market area was determined by assessing where the substantial majority of contractors and subcontractors who have bid on SMART contracts are located, and where the majority of SMART’s federal contracting dollars are spent. 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 California Department of Transportation District 4 which includes the following counties: Sonoma, Napa, Solano, Marin, Contra Costa, Alameda, San Francisco, Santa Clara, and San Mateo. This is an expansion from our last goal setting process which had a more limited area.

**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 nine-county market area, SMART searched the CUCP database for DBEs that are certified in the NAICS codes identified for the contract. The numbers of DBE’s identified are summarized in Column D of Table 4 below.

**Relative Availability of DBE Firms:** Relative 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. This number is then multiplied by the federal share factor for the weighted base figure.

**Base Figure:** A base figure of 36.64% was determined based on the analysis of relative DBE availability as applied to the weight of FTA-assisted contract expenditures dollars, as shown in Table 4.

**Table 4**

A. Description	B. NAICS	C. CBP	D. DBE	E. Base Figure	F. % Federal Share	G. Weighted Base Figure
Other heavy and civil engineering construction	237,990	64	26	40.63%	88.92%	36.12%
Engineering services	541,330	2,252	105	4.66%	11.08%	0.52%
	<b>Total</b>	<b>2,316</b>	<b>131</b>	<b>45.29%</b>	<b>100.00%</b>	<b>36.64%</b>

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

In adjusting SMART’s Step One Base Figure of 36.64%, SMART examined the estimated availability of successful prequalifying heavy railroad contractors and engineers in the NAICS 237990 and 541330 categories, the DBE goals of neighboring transit agencies, and the specialty nature of the remaining contracts funded by the FTA in SMART’s work plan for the coming three years.

**Availability of Rail Specialty Companies:** SMART examined all available NAICS codes and determined the Other Heavy and Civil Engineering Construction and Engineering Services categories to be the most closely related to SMART’s future FTA-assisted contract(s). However, these categories do not divide the categories further into specialties, namely railroad and signal construction and engineering. Furthermore, DBEs in these categories may not have the specialty knowledge and experience to successfully prequalify for rail and signal construction under the California State Department of Industrial Relations design/build prequalification process. Therefore, SMART’s weighted base figure of

36.64% is likely to overstate the qualified firms with rail-specific knowledge. In late 2015 SMART executed an FTA-assisted contract with Rail Pros, Inc., for engineering and engineering support services associated with the Larkspur Extension project. That contract was executed under SMART’s FFY 2015-17 DBE Goal period of 3.99%, with contract DBE goal of 3.99%. The original contract award total was \$1,426,793 and the FTA share was 80%. Subsequent amendments have brought the current contract amount to \$2,195,426. SMART has reported to the FTA on this contract’s DBE performance directly and via the City of Petaluma’s pass-through grant to SMART (CA-03-0817). SMART’s contractor has met the contract goals for this contract. The professional service nature of the rail engineering support contract, while specialized, does not capture the extra specialization required for the remaining FTA-assisted contract to be awarded associated with the Larkspur Extension Project.

In addition, based on our experience to date with responses to non-FTA assisted rail design-build construction contract solicitations over the past five years, we have found that only a small number of firms have submitted the State-required prequalification information to SMART (on average 5 firms have prequalified for SMART projects to-date). We thus have projected that only 15% of the DBEs listed in the CUCP database are qualified and experienced in heavy rail civil and signal engineering. SMART has adjusted the weighted base figure accordingly. See Table 5 below for a summary of adjustments.

**Table 5**

A. Description	B. NAICS	C. CBP	D. DBE	E. Estimated Rail Specialty DBE	F. Updated Base Figure	G. % Federal Share	H. Updated Weighted Base Figure
Other heavy and civil engineering construction	237,990	64	26	4	6.09%	88.92%	5.42%
Engineering services	541330	2,252	105	16	0.70%	11.08%	0.08%
<b>Total</b>	<b>2,316</b>	<b>131</b>	<b>131</b>	<b>20</b>	<b>6.79%</b>	<b>100.00%</b>	<b>5.50%</b>

**DBE Goals of Other Agencies:** Because SMART is a relatively new agency, with limited historical data to draw upon, it has examined the DBE goals of neighboring transit agencies and used them as a factor to adjust its base figure. Using the USDOT’s formula recommendation for adjustment based on past participation, SMART averaged its base figure with the median DBE goal of its neighboring transit agencies. SMART focused on transit agencies who operate in Marin and Sonoma counties, with DBE goal data available. These agencies include San Francisco Bay Area Ferry, Golden Gate Bridge, Highway, and Transportation District, Marin Transit, Sonoma County Transit, and Santa Rosa City Bus. The current median goal for these agencies is 3.30%.

SMART adjusted its updated base figure of 5.50% by comparing it to the 3.30% median of local transit agencies, resulting in an adjustment in SMART’s DBE goal to 4.40%.

$$(Updated\ Base\ Figure\ 5.50\% + Local\ Agency\ Median\ 3.30\%) \div 2 = 4.40\% \text{ New DBE Goal}$$

This new goal is higher than SMART’s current goal of 3.99%, primarily due to the inclusion of a larger market area that is more inclusive and due to our past bidding experience.

## **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. In an effort to expand race-neutral outreach, SMART has recently joined the Business Outreach Committee (BOC), a consortium of Bay Area transit and transportation agencies formed in order 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 course of 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**

Since its first DBE goal was created and submitted to the FTA, SMART has taken a number of steps to implement more public participation in its goal setting and DBA participation in general. First and foremost, in its first major FTA procurement begun in 2016, SMART was successful in holding a general public meeting for comments and participation on participation in bidding on the design-build project. That meeting, on March 31, 2016, included advertising and invitations to over 2,000 website registrants, two major newspapers and the local Builders Exchange. At that time SMART's DBE goals were discussed and no issues were raised that led SMART to adjust its existing goals. SMART's FFY 2015-17 DBE goal of 3.99% has been committed to by the current contractor for the FTA-assisted contract awarded in June 2017.

As mentioned earlier, SMART also has recently joined the Business Outreach Committee, which is a consortium of 20 government agencies who host outreach and business events throughout the year, as well as a Newsletter identifying contracting opportunities to all interested contractors. This has allowed us the ability to reach out to other local agencies to learn best practices and procedures to encourage public participation in our processes and procedures.

SMART published a notice regarding its overall DBE goal on the Contracts and Procurement page on SMART's public website [www.SonomaMarinTrain.org](http://www.SonomaMarinTrain.org) on July 12. A hard copy was made available at SMART's Petaluma Administrative office as well. Notification of the proposed FFY 18-20 DBE goal and request for public comment was also distributed to local trade and news publications in early July.

Finally, SMART put its updated policy, including this goal methodology on the public meeting agenda for the July 19, 2017, SMART Board of Directors meeting. Also, as discussed earlier, SMART awarded a contract at the June 21, 2017, Board of Directors meeting that will utilize a significant portion of the FTA funds to be awarded to SMART in the coming three years. That contract award was under the existing FFY 2015-17 DBE goal period and the successful bidder for the contract notified 127 DBE firms of subcontracting opportunities. Attachment A (to be added prior to finalizing document) includes documentation of the proposed goal website posting, the local advertisements requesting public comment, evidence of SMART's enrollment in the Business Outreach Committee and the recently awarded design-build contractor's good faith effort solicitation of DBE firm subcontractor participation. Before submitting the final FFY 2018-20 DBE goal to the FTA, SMART will evaluate whether any modifications are needed based on comments and input received during the month of July.

**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, as required by Section 26.51(a).

SMART uses the following race-neutral means to increase DBE participation:

- (1) 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);
- (2) Providing technical assistance and other services;
- (3) 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);
- (4) 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
- (5) 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 4.40%, we will obtain 4.40% from race-neutral participation. Given the fact that SMART does not have sufficient 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 implemented to overcome the effects of discrimination in the future, 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** [Forms 1 and 2 should be provided as part of the solicitation

documents.] **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-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By \_\_\_\_\_ Title \_\_\_\_\_

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

(Submit this page for each DBE subcontractor.)

**Attachment 7**  
**Certification Application**  
**Forms**

The certification application forms for the CUCP are found at:

[http://www.caltrans.ca.gov/hq/bep/downloads/pdf/UCP\\_Application\\_Package\\_Rev\\_06\\_2009.pdf](http://www.caltrans.ca.gov/hq/bep/downloads/pdf/UCP_Application_Package_Rev_06_2009.pdf)

This application package includes an affidavit of personal net worth.

## **Attachment 8**

### **Procedures for Removal of DBE's Eligibility**

SMART will follow the procedures set forth in Section 26.87 for the removal of a DBE's eligibility, as set forth below. At this time, SMART is not a certifying agency under the CUCP.

#### Ineligibility Complaints

Any person may file a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. SMART is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in §26.109(b).

SMART will review its records concerning the firm, any material provided by the firm and the complainant, and other available information. SMART may request additional information from the firm or conduct any other investigation that SMART deems necessary.

If SMART determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, SMART will provide written notice to the firm that SMART proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If SMART determines that such reasonable cause does not exist, SMART will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

#### Recipient-Initiated Proceedings

If, based on notification by the firm of a change in its circumstances or other information that comes to SMART's attention, SMART determines that there is reasonable cause to believe that a currently certified firm is ineligible, SMART will provide written notice to the firm that SMART proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

#### DOT Directive to Initiate Proceeding

If the concerned operating administration determines that information in SMART's certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm SMART certified does not meet the eligibility criteria of this part, the concerned operating administration may direct SMART to initiate a proceeding to remove the firm's certification.

The concerned operating administration must provide SMART and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information. In such an event, SMART will immediately commence and prosecute a proceeding to remove eligibility as provided below.

#### Hearing

When SMART notifies a firm that there is reasonable cause to remove its eligibility, as provided in paragraph herein, SMART will give the firm an opportunity for an informal hearing, at which

the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified. In such a proceeding, SMART bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

SMART will maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under §26.89, SMART will provide a transcript of the hearing to DOT and, on request, to the firm. SMART will retain the original record of the hearing. SMART may charge the firm for the cost of copying the record.

The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, SMART bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as SMART would during a hearing.

#### Separation of Functions

SMART will ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. The decision maker must be an individual who is knowledgeable about the certification requirements of the DBE Program and this part.

#### Grounds for Decision

SMART will not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. SMART may base such a decision only on one or more of the following:

- Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;
- Information or evidence not available to SMART at the time the firm was certified;
- Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;
- A change in the certification standards or requirements of the DOT since SMART certified the firm; or
- A documented finding that SMART's determination to certify the firm was factually erroneous.

#### Notice of Decision

Following SMART's decision, SMART must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of the decision and of the availability of an appeal to the Department of Transportation under §26.89. SMART must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed SMART to initiate the proceeding.

#### Status of Firm During Proceeding

A firm remains an eligible DBE during the pendency of SMART's proceeding to remove its eligibility. The firm does not become ineligible until the issuance of the notice provided for in this section.

#### Effects of Removal of Eligibility

When SMART removes a firm's eligibility, SMART must take the following action:

When a prime contractor has made a commitment to using the ineligible firm, or SMART has made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before SMART issues the decertification notice provided for herein, the ineligible firm does not count toward the contract goal or overall goal. SMART must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to SMART that it has made a good faith effort to do so.

If a prime contractor has executed a subcontract with the firm before SMART has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where SMART has let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after SMART issued the notice of its ineligibility shall not count toward SMART's overall goal, but may count toward the contract goal.

*Exception:* If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, SMART may continue to count its participation on that contract toward overall and contract goals.

#### Availability of appeal

When SMART makes an administratively final removal of a firm's eligibility, the firm may appeal the removal to the DOT under §26.89.

**Attachment 9**

**Regulations: 49 CFR Part 26**

Please refer to: [http://www.ecfr.gov/cgi-bin/text-dx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-dx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)