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April 4, 2022

Honorable Board of Directors
Marin County Transit District
3501 Civic Center Drive
San Rafael, CA 94903

SUBJECT: Marin Transit Diversity Program for Contracts

Dear Board Members:

RECOMMENDATION: Approve Marin Transit's Updated Disadvantaged Business Enterprise (DBE) Program.

SUMMARY:

As a direct recipient of federal funds, Marin Transit is required to comply with regulations that ensure that minority and women owned businesses have an equal opportunity to contract for federally funded projects. Written DBE programs are required of Federal Transit Administration (FTA) recipients of planning, capital, and/or operating assistance that will have contracting opportunities (excluding transit vehicle purchases) exceeding \$250,000 with those funds in a Federal fiscal year.

Your board adopted the District's DBE Program in March 2013, and it was updated in July 2019 as part of the goal setting process. The DBE program plan is not an annual submission, and grantees do not submit regular updates of their DBE programs. However, significant changes to the programs must be submitted for approval. This update retains the core program while re-formatting the document to improve the readability and update program to reflect staffing changes. The updated program reflects the designation of the Director of Finance and Capital Programs as the DBE Liaison Officer.

Staff recommends that your Board adopt this updated program governing all DBE activities at the District.

BACKGROUND:

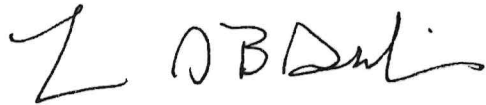
The Federal Transit Administration (FTA) requires DBE programs for contracts related to federal funding for planning activities, capital projects, and operating assistance. Transit vehicle purchases have separate DBE compliance procedures and are not subject to transit agency DBE goals. Your Board adopted a Diversity Program for Contracts on June 24, 2013.

Marin Transit's Diversity Program establishes procedures to establish the District's three year DBE goal, obtain information and input regarding available businesses, monitor and enforce compliance of contractors, and develop corrective action plans if the DBE goal is not met.

Marin Transit currently has a DBE goal of 3.3% for fiscal years ending 2020-2022. A new goal will be established for fiscal years ending 2023-2025. In June, staff expects to publish the proposed DBE goal methodology for public review and comment and bring the item to your board for review. After a 30 day review period, staff will submit the DBE goal for fiscal years 2023-2025 to the Federal Transit Administration for review and approval.

FISCAL IMPACT: There is no fiscal impact associated with approving this DBE policy.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L Gradia".

Lauren Gradia
Director of Finance and Capital Programs

Attachment: 1. DBE Race-Neutral Implementation Agreement for Transit Subrecipients



**Marin County Transit District (Marin Transit)
Diversity Program for Contracts**

April 2022 update

711 Grand Avenue, Suite 110
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Marin Transit Diversity Program for Contracts

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MARIN TRANSIT DIVERSITY PROGRAM FOR CONTRACTS

I. POLICY (Section 26.23)

Marin County Transit District ("Marin Transit") is committed to a Diversity Program for the participation of Disadvantaged Business Enterprises ("DBEs") and Small Business Enterprises ("SBEs") in Marin Transit's contracting opportunities in accordance with 49 Code of Federal Regulations (CFR) Part 26, effective March 4, 1999, as may be amended ("Regulations"). It is the policy of Marin Transit to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of the U.S. Department of Transportation ("U.S. DOT") assisted contracts. It is the intention of Marin Transit to create a level playing field on which DBEs and SBEs can compete fairly for contracts and subcontracts relating to Marin Transit's construction, procurement and professional services activities.

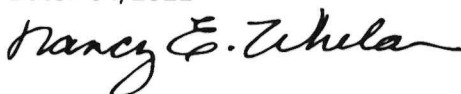
The Board of Directors is responsible for establishing the DBE policy of Marin Transit. The General Manager of Marin Transit is responsible for ensuring adherence to this policy. The Disadvantaged Business Enterprise Liaison Officer, in coordination with Marin Transit Managers, is responsible for the development, implementation, and monitoring of the Diversity Program for Contracts in accordance with Marin Transit's nondiscrimination policy. The DBE Liaison Officer/DBELO will submit a revision of this DBE Program to FTA whenever there are substantive changes to content or agency staffing, organization, or leadership. It is the expectation of the Board of Directors and the General Manager that all Marin Transit personnel shall adhere to the provisions and procedures as well as the spirit of this Program.

This policy will be circulated to all Marin Transit personnel and to members of the community that perform or are interested in performing work on Marin Transit contracts. The complete Diversity Program for Contracts and the annual overall DBE goal analyses are available for review from the:

DBE Liaison Officer / DBELO
Marin County Transit District
711 Grand Avenue, Suite 110
San Rafael, CA 94901

If you have any questions or would like further information regarding this Program, please contact the Disadvantaged Business Enterprise Liaison Officer (DBELO), Keith Green, by email at kgreen@marintransit.org, by telephone 415/226-0870.

Date: 04/2022



General Manager

II. General Requirements (Numbers Reference Sections of 49 CFR 26 Requirements)

A. Applicability (Section 26.3)

Marin Transit, a recipient of federal financial assistance from the Federal Transit Administration (“FTA”) and the Federal Highway Administration (“FHWA”) of the U.S. DOT, is required to implement a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 CFR Part 26, which is incorporated herein by this reference. The Program outlined herein applies to all Marin Transit contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance. In the event of any conflicts or inconsistencies between the Regulations and this DBE Program with respect to U.S. DOT-assisted contracts, the Regulations shall prevail.

B. Objectives (Section 26.1)

The objectives of this Program are the following:

1. To ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
2. To remove barriers to DBE participation in the bidding, award and administration of Marin Transit contracts;
3. To assist DBEs to develop and compete successfully outside of the Program;
4. To ensure that the Program is narrowly tailored in accordance with 49 CFR Part 26;
5. To ensure that only DBEs meeting the eligibility requirements are permitted to participate as DBEs;
6. To identify business enterprises that are eligible as DBEs to provide Marin Transit with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;
7. To develop communication programs and procedures that will acquaint prospective DBEs with Marin Transit’s contract procedures, activities, and requirements and allow DBEs to provide Marin Transit with feedback on existing barriers to participation and effective procedures to eliminate those barriers.
8. To administer the Program in close coordination with various managers and staff within Marin Transit to facilitate successful implementation of this Program.
9. Continuously research and make available to DBEs any resources and/or tools that may increase the possibility of participation, such as bonding or insurance assistance

programs, technological tools, education resources, and contractor match-making opportunities

C. Definitions (Section 26.5)

Any terms used in this Program that are defined in 49 CFR § 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:

1) “Commercially Useful Function”

A DBE (or SBE) 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.

2) “Disadvantaged Business Enterprise (DBE)”

A 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 both socially and economically disadvantaged, or, in the case of a corporation, in which 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.

3) “Good Faith Effort”

This means the steps set forth by this Policy that are to be undertaken by a bidder to document that it has or has not obtained enough participation to meet the specific contract goal(s) required by the District for use of DBE or SBE firms.

4) “Race-Neutral”

A procedure or program that is used to assist all small businesses. For the purposes of this Program, race-neutral includes ethnic and gender neutrality.

5) “Race-Conscious”

A measure or program that is specifically focused on assisting only DBEs, including women-owned DBEs.

6) “Personal Net Worth”

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 community property with the individual’s spouse.

7) “Small Business Element”

Actions within the DBE program applied to encourage the utilization and participation of small business enterprises.

8) “Small Business Enterprise”

With respect to firms participating as DBEs in U.S. DOT assisted contracts, a small business enterprise (SBE) 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 (3) years does not exceed the amount pursuant to 49 CFR § 26.65(b) (\$26.29 million as of Dec. 14, 2020).

9) “Socially and Economically Disadvantaged Individuals”

Any individual who is a citizen or lawfully admitted resident of the United States of the following groups, members of which are rebuttably presumed to be socially and economically-disadvantaged:

- 1) African American (including persons having origins in any of the Black racial groups of Africa). This term has the same meaning as the term is used in 49 CFR Part 26;
- 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 (includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians);
- 4) Asian-Pacific American (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;
- 5) Subcontinent Asian American (including persons whose origins are from Bangladesh, Bhutan, India, the Maldives Islands, Nepal, Pakistan, or Sri Lanka);
- 6) A Woman; or
- 7) A member of any additional group that is designated as socially- and economically-disadvantaged by the Small Business Administration, at such time as the SBA designation becomes effective.

Additionally, any individual can demonstrate, by a preponderance of evidence, that he or she is socially and economically-disadvantaged on a case-by-case basis. Marin Transit will follow the guidelines in 49 CFR Part 26, Appendix E for this determination. An individual cannot be

presumed or determined on a case-by-case basis to be economically-disadvantaged if he or she has a personal net worth exceeding \$1.32 Million (excluding the individual's ownership interests in the small business concern and his or her primary residence).

D. Prohibited Discrimination (Section 26.7)

Marin Transit shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by 49 CFR Part 26 on the basis of race, color, sex or national origin.

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

E. Record Keeping Requirements (Section 26.11)

Marin Transit will continue to report DBE participation and overall goal setting methods to FTA and Caltrans on behalf of FHWA as directed. Statistical data will be maintained as prescribed on a semi-annual basis to provide reports to U.S. DOT administrations reflecting the DBE participation in Marin Transit's federally assisted procurement activities on the following schedule:

1. DBE participation from October 1 through March 31 (submitted June 1)
2. DBE participation from April 1 through September 30 (submitted December 1)

The DBELO will regularly collect, review and track prime and subcontractor contract commitments, awards and payment including:

1. Prime and subcontractor awards and commitments (submitted by the successful contractor at time of bid)
2. DBE awards and commitments (submitted by the successful contractor at time of bid)
3. Payments to prime contractors, progress payments and final payment at the close of contract
4. Payments to DBE contractors, subcontractors and suppliers

These reports will provide DBE participation information on Marin Transit's race-neutral contracts, race-conscious contracts, if any, and combined DBE participation on all federally assisted procurement activities.

Marin Transit may perform interim audits of contract payments to DBEs to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the report of proposed DBE participation. The DBELO will continue to provide the reports regarding

DBE participation and annual overall goals required by the Regulations to FTA and Caltrans on behalf of FHWA, as required.

F. Bidders List (Section 26.11c)

Marin Transit will maintain a Bidders List and collect information regarding all DBE and non-DBE firms that bid and quote on U.S. DOT-assisted contracts. The Bidders List may be used to help calculate Marin Transit's overall DBE goal. Marin Transit's Bonfire procurement systems will also maintain a vendor database, which facilitates outreach, tracks all potential bidders, tracks plan-holders and tracks all primes awarded a contract.

The bidders list will include the following information about the prime contractor and all subcontractors who provided a bid: the firm name, firm address, firm's status as a DBE or non-DBE, number of years in business, annual gross receipts, scope of work to be performed on the contract, and dollar amount of that work. Marin Transit must receive this information before making a recommendation to the Board of Directors for award of contract. If the information is not received within the time specified, the bidder/proposer will be deemed non-responsive.

Data gathering will be conducted by requiring firms bidding on contracts with or without subcontracting opportunities to submit a form entitled, Prime Contractor and Subcontractor/Subconsultant/ Supplier Report, provided in Exhibit B-2. In the case of firms bidding on contracts without subcontracting opportunities, data gathering may also be conducted by requesting firms to submit additional information. The DBELO will maintain the confidentiality of any proprietary information in accordance with applicable California law.

G. Federal Financial Assistance Agreement Assurances (Section 26.13a)

Marin Transit has signed the FTA Master Agreement that includes the following assurances, applicable to all DOT-assisted contracts and their administration:

As a recipient of federal funds, Marin Transit shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the

Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and / or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

H. Contract Assurance and Required Contract Provisions (Section 26.13b)

Each financial assistance agreement Marin Transit signs with FTA or Caltrans on behalf of FTA will include a nondiscrimination assurance from Marin Transit. The District's U.S. DOT-assisted procurements will include, as appropriate, the model contract provisions set forth in the current edition of Marin Transit's Federal Solicitation and Contract Templates, available from the DBELO. The DBELO shall have discretion to modify the provisions for particular contracts as needed, in consultation with Legal Counsel. These required contract provisions consist of:

- Marin Transit's DBE Program policy.
- A nondiscrimination assurance from the contractor and each subcontract the prime contractor signs with a subcontractor. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract that may result in the termination of this contract or such other remedy as recipient deems appropriate, which may include, but is not limited to, withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the contractor from future bidding as non-responsible. This may include, but is not limited to, withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the contractor from future bidding as non-responsible.
- A statement that encourages prime contractors to use financial institutions owned and controlled by socially and economically-disadvantaged individuals in the community, per 49 CFR Part 26.27.
- Per 49 CFR 26.29, a clause that requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than seven days for construction and ten days for consultants/professional service contracts from the date the prime receives its payment from Marin Transit. This clause also requires the prompt return of retainage payments from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed

- The website address for the California Unified Certification Program DBE directory identifying all firms eligible to participate as DBEs in Marin Transit’s program.
- The DBE participation goal (where applicable).
- A section that provides the DBE certification standards.
- A section that provides how DBE participation is counted toward the goal.
- A section on reporting requirements, including a provision ensuring that DBE participation is credited toward overall or contract goals only when payments are actually made to DBE firms.
- A section on administrative remedies to ensure compliance with the DBE program.

III. Administrative Requirement

A. DBE Program Updates (Section 26.21)

Because Marin Transit receives FTA planning, capital and/or operating assistance and awards prime contracts (excluding transit vehicle purchases), the cumulative total value of which can exceed \$250,000 in a federal fiscal year, Marin Transit will continue to carry out this DBE Program until all funds from DOT financial assistance have been expended. Marin Transit will provide to U.S. DOT updates representing significant changes in the program and implement the completed updated DBE program upon the approval of FTA.

B. Dissemination of Policy Statement (Section 26.23)

The DBELO shall issue a signed and dated Policy Statement for Marin Transit and to the business community, including DBEs and non-DBEs that perform work on U.S. DOT-assisted contracts for Marin Transit. The Policy Statement shall be disseminated as follows:

1. Through email to Managers and buying staff; and
2. Through Marin Transit’s website and upon request from the interested public, including the business community.

To ensure that potential bidders are aware of the DBE policy, Marin Transit makes reference to this policy in its contract specifications and advertisements for all U.S. DOT-assisted contracts.

C. Duties of DBE Liaison Officer (Section 26.25)

Pursuant to 49 CFR § 26.25 (www.fhwa.dot.gov/HEP/49cfr26.HTM), the Program shall be administered by the DBE Liaison Officer (“DBELO”), who shall be appointed by and have direct, independent access to the General Manager of Marin Transit. The DBELO will be the primary person responsible for implementing all aspects of this Program and will work closely with other departments and consultants of Marin Transit to ensure the DBE program’s success. The DBELO’s specific duties and responsibilities are attached as Exhibit A including an Organization Chart, and incorporated herein.

D. DBE Financial Institutions (Section 26.27)

It is the policy of Marin Transit 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 U.S. DOT-assisted contracts to make use of these institutions.

The DBELO will explore the extent of services offered by any banks and other financial institutions that qualify as DBEs in Marin County, and determine areas in which Marin Transit may reasonably utilize their services. Marin Transit shall also encourage its prime contractors to use the services of DBE financial institutions and places a clause in each federally assisted prime contract, per 49 CFR 26.27 as referenced in section II-H.

The Federal Reserve Board compiles data on financial institutions that participate in the Treasury’s Minority Bank Deposit Program. The Federal Reserve maintains a list of these financial institutions that includes the identification of minority and gender status along with location, viewable at: <https://www.fdic.gov/regulations/resources/minority/mdi.html>

Marin Transit will review the listing periodically to determine whether any such financial institutions are available within the Marin Transit community. As of 2020, there are no minority-owned banks with offices located in Marin County. In considering a new operating bank account, staff places a priority on the importance of proximity to ensure that contractors do not have to travel out of Marin County to deposit large amounts of cash fares.

The DBELO updated the list of minority-owned financial institutions offering services in the San Francisco Bay Area based on The Federal Reserve Bank website data from May 2020:

- Bank of the Orient (Offices in San Francisco)
- California Pacific Bank and Gateway Bank, F.S.B (Offices in San Francisco)
- Mission Bank (Offices in San Francisco)

E. Prompt Payment Mechanisms (Section 26.29)

Marin Transit will ensure prompt payment of subcontractors on each federally-assisted prime contract. Marin Transit includes a clause in all federally-assisted contracts that requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the date the prime receives its payment from Marin Transit.

This clause also requires the prompt return of retainage payments. Marin Transit will hold retainage from the prime contractors and provide for prompt and regular incremental acceptances of portions of the contract, pay retainage to prime contractors based on the acceptances, and include a contract clause obligating the prime contractor and subcontractors to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after payment to the prime contractor.

As referenced in Section 26.37 below, if Marin Transit determines that the prime contractor has failed to comply with the prompt payment provisions, Marin Transit will give written notice to the prime contractor that if the default is not remedied within 30 days from notice, the contract may be terminated in whole or in part.

F. 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 California Unified Certification Program (CUCP). The DBE Database is jointly maintained and updated by the CUCP certifying member agencies in coordination with the California Department of Transportation (Caltrans), and the CUCP DBE Database Manager. The DBE Database is available at Caltrans' website, <https://dot.ca.gov/programs/civil-rights/dbe-search>, and shall be distributed to contractors and made available to the public upon request. Marin Transit 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 U.S. DOT supported 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. Additionally, the DBE Database may include, whenever possible, the date the firm was established, the legal structure of the firm, the percentage owned by disadvantaged individuals, capacity, previous work experience and a contact person. The DBE Database shall not in any way prequalify the identified DBE firms with respect to licensing, bondability, competence, or financial responsibility.

G. Over-Concentration (Section 26.33)

If the DBELO determines that DBE participation is so over-concentrated in certain types of work or contracting opportunities assisted by FTA or FHWA that it unduly burdens the participation of non-DBEs in that type of work, the DBELO will develop appropriate measures to address the over-concentration. The DBELO will seek approval of such measures from FTA or Caltrans on behalf of FHWA and, at that time, the measures will become a part of this Program. Currently, Marin Transit is unaware of any types of work that have a burdensome over-concentration of DBE participation.

H. Business Development Programs (Section 26.35)

Marin Transit may establish or participate in a DBE business development program to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE Program. Marin Transit may establish or participate in a mentor-protégé program in which another DBE or non-DBE firm is the principal source of business development assistance. If Marin Transit determines such a program is beneficial, a proposed program will be developed and submitted to the U.S. DOT operating administrations for approval, after which it will become a part of this DBE Program. Guidelines outlined in Appendices C and D of 49 CFR Part 26 will be utilized in setting up the formal agreements and programs.

Marin Transit is a member of the Business Outreach Committee (BOC) that represents the nine county Bay Area transportation agencies. Through the BOC, Marin Transit's purchasing and project management staff are available for and communicate with small business representatives to encourage participation. Marin Transit staff will provide information on how to do business with Marin Transit, technical assistance on specified contracts, and other topics of interest to small business concerns. Marin Transit also utilizes the services and publications of Norcal Procurement Technical Assistance Center (PTAC) and refers DBEs to the DBE Supportive Services Northern Region Program. Marin Transit includes a link to the DBE Supportive Services Program www.norcalptac.org/DBE on its website. Marin Transit will refer current and newly certified DBEs needing assistance to sign up for Norcal PTAC services at www.norcalptac.org/dbe.

Marin Transit participates extensively in CalACT, and California Transit Association, and will advertise contractor opportunities with Marin Transit through those venues for large procurements. See also section IV-C, Public Participation and Outreach Efforts, below.

I. Monitoring and Enforcement Mechanisms (Section 26.37)

Marin Transit will monitor compliance of its contractors on federally assisted contracts with the requirements of the DBE Regulations and the DBE Program. Marin Transit may impose such

contract remedies as are available under federal, state, and local law and regulations for non-compliance. Such remedies may include, but are not limited to, withholding of progress payments and contract retentions, imposition of liquidated damages, and termination of the contract in whole or in part.

Marin Transit will maintain a running tally of payments actually made to DBE firms and may require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments. Marin Transit will monitor actual DBE participation and will include a written certification that Marin Transit has reviewed contracting records and monitored work sites in California for this purpose. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs.

Marin Transit may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the report of proposed DBE participation. Monitoring may be conducted in conjunction with monitoring of contract performance for other purposes (close out revisions for a contract).

The contractor shall maintain records of all DBE participation in the performance of the contract, including subcontracts entered into with certified DBEs and all materials purchased from certified DBEs. It is the contractor's responsibility to maintain records and documents for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of Marin Transit or U.S. DOT. This reporting requirement is also extended to any certified DBE subcontractor.

J. Small Business Participation (Section 26.39)

In accordance with the requirements of 49 CFR Part 26, Section 26.39, Marin Transit has established a Small Business Element to ensure that DBEs and non-DBE small businesses have the maximum ability to participation on federally-sponsored projects. Details of the SBE program are included in Exhibit C and incorporated herein. Marin Transit's SBE program does not replace or act as a substitute for critical elements of the Marin Transit DBE program, including use of DBE contract goals (if appropriate), good faith efforts evaluations or monitoring DBE participation.

IV. Goals, Good Faith Efforts and Counting DBE Participation

A. No Quotas or Set-Asides (Section 26.43)

Marin Transit does not, and will not, use quotas or set-asides in the administration of this Program.

B. Goal-Setting (Section 26.45)

The Board of Directors shall establish an overall goal for the participation of DBEs in all budgeted contracts utilizing U.S. DOT/FTA financial assistance. The overall goal shall be expressed as a percentage of the total amount of U.S. DOT funds Marin Transit anticipates expending in the three forthcoming federal fiscal years.

Marin Transit intends to meet its goal to the maximum extent feasible through the race-neutral measures described in section IV-F, below. Where race-neutral measures are inadequate to meet the overall goal, Marin Transit may use race-conscious measures for particular contracts with subcontracting opportunities.

The overall goal will be established in accordance with the 2-step process as specified in 49 CFR Section 26.45 (c)-(d):

- **Step One:** Determine the base figure of number of ready, willing and able DBEs relative to the number of all businesses who are ready, willing and able to participate in the local market area; and
- **Step Two:** Adjust the base-figure percentage from Step One so that it reflects as accurately as possible the DBE participation that Marin Transit would expect based on past participation of DBEs on projects.

The following represents the tasks necessary to complete Step One:

1. **Projecting U.S. DOT-Assisted Contract Expenditures for Fiscal Years.** In consultation with the appropriate Marin Transit managers and staff responsible for contracting activities, the DBELO will conduct a thorough analysis of the projected number, types of work and dollar amounts of federally-assisted contracting opportunities for the three-year reporting period.
2. **Establishing a Base Figure.** Marin Transit will develop a base figure for the relative availability of DBEs by determining the number of ready, willing, and able DBEs relative to the number of all businesses ready, willing, and able to participate in its U.S. DOT-assisted contracts.
 - a. **Analyze All Available Businesses in Marin Transit's Local Market Area.** The DBELO will determine the total available businesses in its market area by conducting a thorough analysis of the area in which Marin Transit will solicit participation from contractors, subcontractors, consultants, subconsultants, manufacturers, and suppliers for the federal fiscal year, including a description of geographical boundaries of its local market area and the NAICS codes for the

types of work to be contracted. The DBELO will consider a variety of sources including, but not limited to, the U.S. Census Bureau's County Business Patterns Database, Marin Transit's Bidders List, and relevant disparity studies.

- b. **Analyze Available DBEs in Marin Transit's Local Market Area.** The DBELO will conduct a similar analysis to determine the total DBEs that are available to participate in the projected contracts for the fiscal year. This analysis will include a description of the available DBEs relative to the geographical boundaries of its local market area and the NAICS codes for the types of work to be contracted. Marin Transit will consider a variety of sources including, but not limited to, the CUCP DBE Database, its Bidders List, and any relevant disparity studies.
- c. **Calculate the Base Figure.** The DBELO will compare the available DBEs in its local market area for the fiscal year to the available businesses in its local market area for the fiscal year. The calculation may include a weighting factor according to the contract expenditure patterns analyzed.

The following represents the task necessary to complete Step Two:

3. **Adjusting the Base Figure.** Marin Transit will adjust the base figure based on demonstrable evidence indicating that the availability of DBEs for U.S. DOT-assisted contracts for the fiscal year may be higher or lower than the base figure indicates, including analyzing DBE participation in Marin Transit's current or past contracts. Additional information may include any available and relevant disparity studies or any relevant results of similar U.S. DOT recipients' efforts to contract with DBEs.
4. **Projection of Percentage of Overall Goal to Be Achieved Through Race-Neutral and Race Conscious Measures.** Marin Transit proposes to meet 100% of its goals using race-neutral methods. If there is a need to use race conscious or contract specific goals, the DBELO shall analyze the progress toward achieving the annual overall goal and increase or reduce the use of contract-specific goals as described in section IV-F, below.

C. Public Participation and Outreach Efforts (Sections 26.45 (g))

Marin Transit manages its public participation and outreach efforts to seek public input for setting overall DBE participation goals and to increase public awareness of Marin Transit's Diversity Program for Contracts to assist in meeting those goals. Additional efforts are described in section III-H, Business Development Programs, above.

- **Goal Methodology Outreach:** Prior to finalizing its triennial DBE Goal Methodology, Marin Transit will consult with U.S. DOT, other U.S. DOT grantees, minority, women's

and general contractor groups, community organizations, or other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Marin Transit's efforts to establish a level playing field for the participation of DBEs. Marin Transit will also utilize information and feedback obtained through mailings from regional agencies, such as the Metropolitan Transportation Commission.

- **Overall Goal Analysis Report.** Unless otherwise directed, the DBELO will prepare an Overall Goal Analysis Report for DBE participation in FTA-assisted contracts upon completion of the two-step analysis and after consultation described above. Each report shall document the analysis and methodology in arriving at the proposed goal and shall include a projection of the portion of the goal to be achieved through race-neutral and race-conscious measures.
- **Publication of the Proposed Overall DBE Goal.** Pursuant to 49 CFR § 26.45(g), Marin Transit will publish the proposed overall DBE goal on its website, www.marintransit.org. Every three years or more often if the District adjusts the overall goal, Marin Transit will publish a notice announcing its proposed overall goal. This notice will inform the public that Marin Transit's Overall DBE Goal Methodology is available for comment on the agency's website, www.marintransit.org, for a period of thirty (30) days prior to submitting the goal to FTA by August 1st. This notice will state that Marin Transit and FTA will accept comments on the proposed goal for thirty (30) days from the date of the notice with instructions on how to submit comments.

Upon receipt of any public comments, Marin Transit's DBELO will prepare a summary report analyzing the public comments and recommending any modifications to the overall DBE goal or methodology and will provide it to the General Manager for review and submission to the Board of Directors for adoption.

- **Approval of the Overall DBE Goal.** Following review of the DBE Report, Marin Transit's Board of Directors shall approve an overall DBE goal for DBE participation that shall include a projection of portions of that goal that can be achieved through race-neutral and race-conscious measures. It will also consider authorizing the submission of an Overall Goal Analysis Report by the submission date established by the Federal Transit Administration. The goal will then be published on the agency's website: www.marintransit.org/purchasing.

D. Failing to Meet Overall Goals (Section 26.47)

If the awards and commitments shown on Marin Transit's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the DBELO will analyze in detail the reasons for the difference between the overall goal and awards and commitments and prepare a Shortfall Analysis in accordance with 49 CFR Section 26.27(c). The analysis shall include specific steps and milestones to correct the problems identified and to meet overall goals for future fiscal years. Marin Transit will retain the shortfall analysis and corrective actions for three years and make them available to FTA on request for their review.

E. Responsibilities Regarding Transit Vehicle Purchases (Section §26.49)

To be authorized to bid or propose on FTA-assisted transit vehicle procurements, each transit vehicle manufacturer must certify that it has complied with applicable FTA DBE requirements. Whenever Marin Transit solicits new bids to purchase transit vehicles or to remanufacture vehicles, the District will rely on FTA's certified list of Transit Vehicle Manufacturers. As an alternative, Marin Transit will seek bids from qualified manufacturers that have submitted a DBE goal methodology that FTA has approved or has not disapproved. If Marin Transit intends to purchase transit vehicles that are not FTA certified, Marin Transit will include that purchase in calculating or updating its overall DBE goal or set a project-specific DBE goal as appropriate.

As required in Section 26.49 (a) (4), within 30 days of making a vehicle purchase award, Marin Transit will submit the name of the successful bidder and the total dollar value of the contract as prescribed in the grant agreement.

F. Achieving the Annual Overall Goal (Section 26.51)

Marin Transit shall achieve the overall goals for DBE participation through a combination of race-neutral/gender-neutral measures and contract goals for particular contracts with subcontracting opportunities.

1. **Race-Neutral/Gender-Neutral Methods.** Marin Transit intends to use race-neutral/gender-neutral methods to the maximum extent feasible to achieve its annual overall goals. Marin Transit will consider as race-neutral/gender-neutral any DBE participation that is obtained on contracts that have no specific DBE goal, or where prime contractors use a strictly competitive bidding process that did not consider the DBE's status as a DBE in awarding a subcontract. In addition, Marin Transit will use the following measures as appropriate:

- a. Configure large contracts into smaller contracts, when feasible, when to do so would make contracts more accessible to small businesses and would not impose significant additional cost, delay, or risk to Marin Transit;
 - b. Identify components of the work that represent subcontracting opportunities and identifying the availability of DBE subcontractors. Contractors will be encouraged to consider small businesses for components of the work for which there is a known supply of ready, willing, and able small businesses, including DBEs, in preparing their bids;
 - c. Assist in overcoming limitations in bonding and financing;
 - d. Provide technical assistance in orienting small businesses to public contract procedures, use of the Internet, and facilitating introductions to Marin Transit's and other U.S. DOT recipients' contracting activities;
 - e. Provide outreach and communication programs on contract procedures and contract opportunities to ensure the inclusion of DBEs that includes facilitating small business events that may be coordinated with other U.S. DOT grantees, federal agencies, or local organizations. These events will include procedures explaining how to do business with Marin Transit and explore best business practices that may be used to market small businesses at Marin Transit;
 - f. Ensure the distribution of the DBE Database to the widest feasible universe of potential prime contractors;
 - g. Provide business development assistance;
 - h. Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses; and
 - i. Pursuant to Section 49 CFR 26.39, Establish a race-neutral small business enterprise (SBE) element as part of its DBE program to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation in procurements as prime contractors or subcontractors. Details of the SBE element are included in Exhibit C below and incorporated herein.
2. **Contract-Specific Goals.** The Board of Directors shall recommend a race-neutral contract-specific DBE participation goal on particular prime contracts with subcontracting opportunities to the extent that Marin Transit cannot achieve its annual overall goal with race-neutral methods. Contract-specific goals are suggested goals and will not be required.

Race-conscious goals shall only be established based on evidence from a local disparity study as referenced in a 2005 Ninth circuit legal opinion that affects federal recipients in

California. In 2006, the FTA published a notice that stated that in a race-neutral program, (e.g., the annual overall DBE goal has been approved with no portion of it projected to be attained by using race- and gender-conscious means) the federal recipient does not set contract goals on any of its U.S. DOT-assisted contracts for which DBE subcontracting possibilities exist. Recipients having an exclusively race-neutral program are not required to establish contract goals to meet any portion of their overall goal.

While achievement of the goal will not be required, the Board of Directors shall establish a contract-specific goal based upon a recommendation from the General Manager as substantiated by information furnished by the DBE DBELO. The contract-specific goal shall apply to the percentage participation of DBEs in the total contract work and be set forth in the Special Provisions of the contract specifications. Marin Transit is not required to establish a contract-specific goal for every prime contract with subcontracting opportunities. For each contract involving subcontracting opportunities, Marin Transit will consider the factors outlined below to determine whether to establish a suggested contract-specific goal for the particular contract and, if so, what the percentage goal shall be:

- a. The projected portion of Marin Transit's overall goal that will be met by establishing contract-specific goals;
- b. The progress toward achieving Marin Transit's overall goal;
- c. The full range of activities in the proposed contract;
- d. The availability of DBEs as prime contractors or subcontractors in the types of work involved in the performance of the proposed contract;
- e. The unique conditions of the project that might affect the ability of the prime contractor to coordinate, utilize or incorporate subcontractors or suppliers into the project. (Projects consisting of only one or two subtrades may not be appropriate for a contract-specific goal as establishing a goal could result in restrictive bidding.);
- f. The effect that the contract-specific goal might have on the time of completion; and
- g. Any other relevant criteria.

G. Good Faith Efforts Procedures (Section 26.53(a)(b)(c))

The obligation of the bidder/proposer is to make good faith efforts, which the bidder/proposer can demonstrate by either meeting the DBE goal or by documenting good faith efforts. In those instances where a contract-specific DBE goal is included in the procurement/solicitation, Marin

Transit will award the contract only to a bidder that has either: 1) met the contract goal with verified, countable DBE participation; or 2) the bidder has documented that it has made adequate good faith efforts to meet the DBE contract goal. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to its bid submission.

To demonstrate a good faith effort, the bidder/proposer must submit Good Faith Effort Documentation Form, provided in Exhibit B-3. Bidder that fails to demonstrate that it achieved the DBE participation goal and fails to demonstrate that it made sufficient good faith efforts to do so shall not be deemed "responsive" and, therefore, shall be ineligible for award of the contract.

The types of actions that Marin Transit would consider evidence of Good Faith Efforts include the following:

- 1) Pre-Bid Meeting Attendance.
- 2) The bidder's own solicitations to obtain DBE involvement in general circulation media, trade association publications, minority-focused media or other reasonable and available means within a sufficient time to allow DBEs to respond to the solicitation.
- 3) Written notification from the bidder encouraging participation in the proposed contract.
- 4) Efforts made to identify specific portions of the work that might be performed by DBEs.
- 5) Efforts to assist interested DBEs in obtaining bonding, lines of credit, insurance or any necessary equipment, supplies, materials, etc.

Good Faith Effort Evaluation Process:

- a. **Evaluation of Bids or Proposals:** After the bid opening, or submission deadline for proposals, the DBELO shall evaluate all bids/proposals to determine whether the bidders/proposers submitted all the information required by 49 CFR § 26.53(b). The responsible bidder with the lowest apparent bid price, or the most highly ranked proposer, who also meets the contract-specific DBE goal or demonstrates sufficient good faith efforts shall be recommended for the contract award. In the event that the bidder with the lowest monetary bid price fails to meet the contract-specific goal or fails to demonstrate sufficient good faith efforts, or is otherwise unresponsive or not responsible, the DBELO shall evaluate the bidder with the next lowest bid price. Should the DBELO determine that additional information is needed to evaluate a bidder's or proposer's submission with regard to the DBE requirements, the DBELO shall request said bidder or proposer to submit the required information or may contact the listed DBEs directly.

- b. **Evaluation of DBE Certification Status:** Marin Transit shall require that any DBEs listed by bidders for participation in the contract be certified DBEs as of the time of bid opening. The DBELO shall review the Bidder's DBE Report to confirm each DBE firm's certification status. Marin Transit shall accept current certifications by any recipients of U.S. DOT funds acceptable to Marin Transit in accordance with 49 CFR Part 26.
- c. **Determination of Amount of DBE Participation:** The DBELO shall review the total dollar value of the work to be performed by DBEs and the total contract bid price reported on the Prime Contractor and Subcontractor /Subconsultant/ Supplier Report for accuracy and shall compare it to the contract-specific goal established for the contract.
- d. **Determination of Good Faith Efforts:** If the amount of DBE participation does not meet the contract-specific goal, the DBELO shall review the good faith efforts form submitted by the bidder, provided in Exhibit B-3. Failure to submit the Good Faith Efforts form will render the proposal "nonresponsive." The DBELO shall determine whether the bidder has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the contract-specific goal in accordance with 49 CFR Part 26, Appendix A.
- e. **Bidder's Right to Administrative Reconsideration:** The DBELO will notify the bidder in writing in the event that the DBELO determines that the apparent low bidder has not met the contract-specific goal and has not demonstrated good faith efforts. The notification shall include the reasons for the determination and that the bidder has the right to submit further written documentation or appear before the review committee for reconsideration prior to the time that staff present a recommendation for award of contract to the Board of Directors or the General Manager, depending on the size of the contract.

Within five (5) business days of being informed by Marin Transit that it is not responsive/responsible because it has not met the contract-specific goal or has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidder should make this request in writing to the following official: Keith Green, DBELO, 711 Grand Avenue, Suite 110, San Rafael, CA 94901, telephone number (415) 226-0855. The Bidder's request will then be forwarded to a reconsideration official who has not played any role in the

original determination that the Bidder did not document sufficient good faith efforts.

The Bidder 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 will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue. The reconsideration official shall provide Marin Transit with a written decision on reconsideration, explaining the basis for its determination. If the administrative reconsideration finds that the bidder has not met the contract goal or demonstrated good faith efforts, the DBELO will deem said bidder not responsive and evaluate the bidder submitting the next lowest bid. The DBELO will send the bidder a written decision on its reconsideration, explaining the decision. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

- f. **Recommendation for Award:** Following the determination of the lowest responsive and responsible bidder, the DBELO shall prepare a report on the lowest responsive and responsible bidder's compliance with the DBE requirements for review by the General Manager and for presentation to the Board of Directors, if applicable, at the time the contract award is considered. If the Board or the General Manager disagrees with the recommendation, it shall reject all bids or refer the matter back to staff for further evaluation and recommendation. The decision of the Board of Directors or the General Manager on the award of contract, if such a decision is made, shall be final and binding on all parties subject to compliance with Marin Transit's bid protest procedures.

H. Counting DBE Participation (Sections 26.55)

Only the work actually performed by a DBE will be counted towards the DBE goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

Expenditures may only be counted if the DBE is performing a commercially useful function. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own work force.

If materials or supplies are obtained from a DBE manufacturer, 100 percent (100%) of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, 60 percent (60%) of the cost will be counted. DBE achievement will not be counted toward the overall goal until the DBE has been paid. If contract-specific goals are set, the DBELO will track the participation of DBEs in contract-specific goal contracts separately from the participation of DBEs that are considered race-neutral. Additionally, the DBELO will not count that portion of a DBE's participation that is achieved after the certification of the DBE has been removed during the performance of a contract.

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

V. *CERTIFICATION STANDARDS (Subpart D and Appendix E)*

A. California Unified Certification Program (Section 26.81)

Marin Transit uses California Unified Certification Program ("CUCP") to develop overall and project level DBE goals and to identify available DBE businesses by skill area. The CUCP makes all DBE certification decisions on behalf of U.S. DOT recipients in the state. Marin Transit is a non-certifying agency. Marin Transit relies upon the CUCP for the certification of DBE firms and ensures that only firms certified as eligible DBEs participate in the Program. Should Marin Transit decide to change its non-certifying status and elect to become a certifying agency, Marin Transit will apply the standards of Subpart D and Appendix E of the Regulations.

B. Procedures for Certification Decisions (Section 26.83)

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

VI. COMPLIANCE AND ENFORCEMENT (SUBPART F)

Marin Transit will enforce contract compliance with the DBE requirements, in accordance with 49 CFR Section

A. Responsibilities for Use of Information, Confidentiality, Cooperation, and Intimidation or Retaliation (Section 26.109)

Aside from any provisions of Federal or state law, Marin Transit will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. Should Marin Transit take on the role of a DBE-certifying agency, it will not release applications for DBE certification and supporting information. Marin Transit will transmit this information to FTA in any certification appeal proceeding or to any other state to which the firm has applied for certification.

Marin Transit will keep the identity of complainants confidential, at their request. Marin Transit will advise the complainant for the purpose of waiving the privilege if confidentiality will hinder the investigation, proceeding, or hearing or result in a denial of appropriate administrative due process to other parties. Marin Transit will advise complainants that failure to waive the privilege may result in closure of the investigation or dismissal of the proceeding or hearing.

Marin Transit will cooperate fully and promptly with USDOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Marin Transit will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR §26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the federal DBE regulations.

VII. Exhibit A

DBE Liaison Officer's DBELO Duties and Responsibilities (Section 26.25)

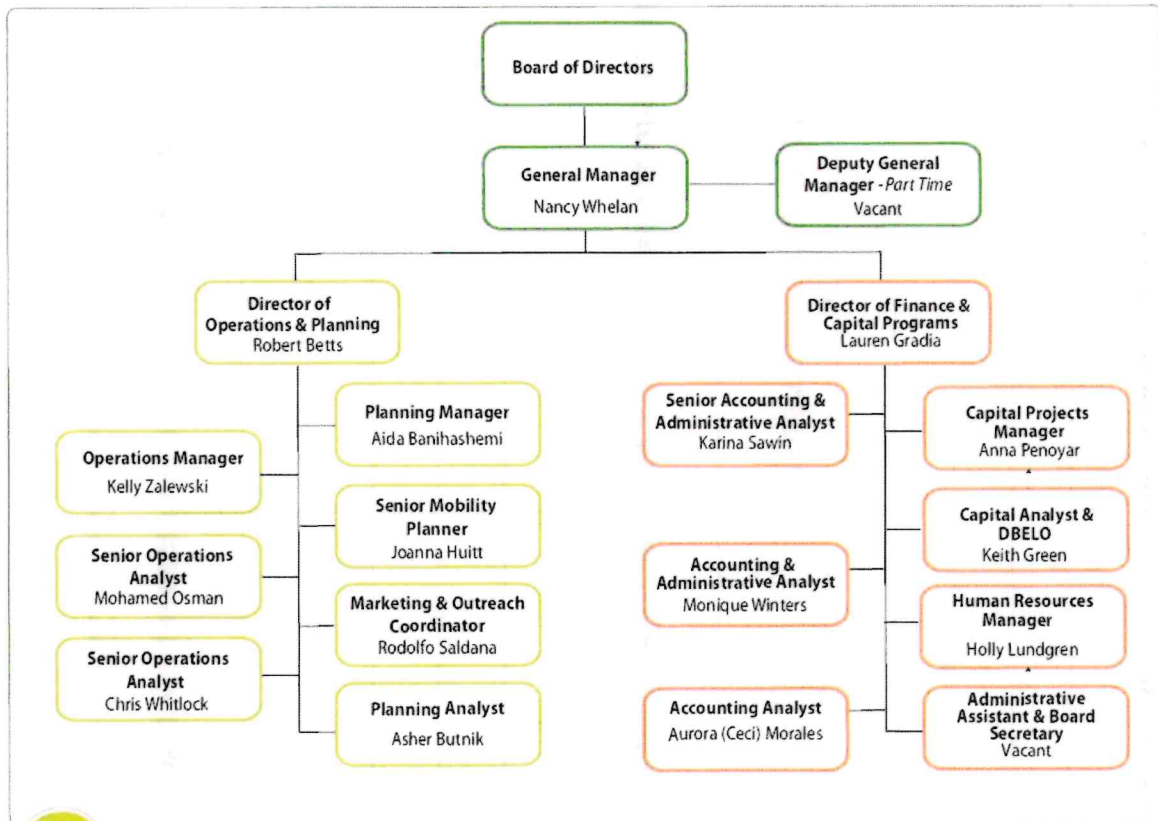
1. Analyzing and assessing the available resources and evidence for the establishment, achievement, and further improvement of annual overall DBE goals for U.S. DOT-assisted contracts each fiscal year;
2. Developing, monitoring, and evaluating the Diversity Program for Contracts, and preparing supplemental written procedures and guidelines to implement the Program;
3. If Marin Transit becomes a certifying member of the CUCP, maintaining and updating the DBE Database in accordance with 49 CFR § 26.31;
4. Maintaining and updating the Bidders List in accordance with 49 CFR § 26.11;
5. Conducting race-neutral and gender-neutral measures to facilitate the participation of small business concerns, including DBEs, through outreach and other community programs, training and business development programs, restructuring contracting opportunities, informing and assisting with preparing bids, simplifying bonding, surety and insurance requirements or other race-neutral means;
6. Participating in the contract bid and award process, including recommending specific contract goals where appropriate, reviewing contract specifications, attending pre-bid conferences and evaluating bids for contractor responsiveness, responsibility, and good faith efforts;
7. Analyzes Marin Transit's progress toward attainment and identifies ways to improve progress;
8. Monitoring specific contract performance, actual DBE participation, contract payments, and purchase requisitions;
9. Monitoring overall DBE participation, adjusting overall goals and means of achievement, assessing areas of over-concentration of DBE participation, and reporting to the General Manager, Marin Transit Board of Directors, FTA, and Caltrans on behalf of FTA and FHWA, as needed;
10. If Marin Transit becomes a certifying member of the CUCP, determining all certification actions including initial certifications, recertifications, denials, and removals;

11. Participating in the statewide Unified Certification Program in accordance with 49 CFR § 26.81, and CUCP MOA;
12. Assisting Marin Transit's Managers and Staff in the review committee for the evaluation of submittals;
13. Participating in regional outreach activities (may be supported by direct designee);
14. Participating in other transit organizations on common issues pertaining to diversity programs for contracts (may be supported by direct designee);
15. Maintaining all appropriate records and documentation of the Program; and,
16. Develop and submitting a revision of the DBE Program to FTA whenever there are substantive changes to content or agency staffing, organization, or leadership that pertain to the implementation of this Program.

VIII. Exhibit B

1. Marin Transit Organization Chart

Note that Marin Transit's DBELO is the Capital Analyst.



Marin Transit Organization Chart

2. PRIME CONSULTANT AND SUBCONTRACTOR/SUBCONSULTANT/SUPPLIER REPORT

To be completed by Prime Contractor and submitted as part of bid/proposal.

NAME OF PROJECT/PROPOSAL		PROJECT/PROPOSAL NUMBER								
PROPOSER BUSINESS NAME AND ADDRESS										
NAME OF PERSON SUBMITTING BID		DATE								
SIGNATURE OF PROPOSER		CONTACT EMAIL								
CONTACT PERSON NAME		CONTACT PHONE NUMBER								
<p>IMPORTANT: 1) Identify all DBE and/or SBE firms being claimed for credit. 2) List names of all DBE and/or SBE subcontractors and their respective items of work. 3) Attach a copy of the proof of DBE and/or SBE certification for each DBE/SBE subcontractor listed on this form. 4) Attach "Intent to Perform" letter signed by the subcontractor.</p>										
LIST BUSINESS FIRM(s) List Name, Address, and Contact Person (if not the same as above)	Phone Number	Email Address	Age of Firm	Item of Work, Service or Materials Supplied	NAICS Code (if known)*	Annual Gross Receipts of Firm	DBE/SBE Participation			
							Certified DBE (Y/N)	Certified SBE (Y/N)	Type of DBE**	Award Amount
A. PRIME CONTRACTOR										
B. Subcontractor/Vendor/Joint Venture										
TOTAL									\$0	0.00%

* NAICS Code, North American Industry Classification System Code. Codes can be found at <http://www.espnass.gov/naics>
 ** Type of DBE: (1) Black Americans (2) Hispanic Americans (3) Native Americans (4) Asian-Pacific Americans (5) Subcontinent Asian Americans (6) Women (7) Other (designated by the Small Business Administration)
 - DBEs must be certified by Caltrans or an agency participating in the California Unified Certification Program. Visit the Caltrans website at <http://dot.ca.gov/hotlines.htm> for a list of participating agencies.
 - SBEs must be certified by the California Department of General Services (<http://www.eprocure.dgs.ca.gov/default.htm>)
 - Important: Attach the proof of certification for each DBE/SBE firm used toward meeting the DBE/SBE goal.
 - This information will be used to create and maintain a federally-required Bidders List, regardless of DBE/SBE participation.
 - Use additional sheets as necessary.

3. GOOD FAITH EFFORTS DOCUMENTATION

I, _____, _____ of
 (name) (title)

_____, certify that our company made the following
 (Bidder/Proposer)

Good Faith Efforts to meet the DBE goal on Marin Transit RFP No. _____

Attach Additional Sheets as Necessary. Include any Additional Efforts

- A company representative attended the pre-bid meeting: YES _____ NO _____
- A newspaper/online advertising log: (Attach copies of advertisements):

Newspaper/Other Publication	Type of Publication (Minority/General/Trade)	Dates of Advertisement

- Selected portions of the work to be performed by DBEs

Work Categories	Subcontractor/ Supplier	Prime Estimated Budget for this Item	Additional Comments

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

- Solicited the following DBEs (add additional lines if necessary)

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

- Followed up with initial contacts

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

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

Date	Organization	Phone #

As shown by the documentation provided to Marin Transit, we feel that we have made good faith efforts to attain the contract DBE goal

Signature: _____ Date: _____

4. SMALL BUSINESS ENTERPRISE AFFIDAVIT OF SIZE

If your business was certified by any of the following, please complete and submit this form with a copy of your certification. For use by Prime Contractors, Subcontractors, Subconsultants, and Suppliers. See Exhibit C, section A1a and b for further information.

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

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

I HEREBY DECLARE AND AFFIRM that the firm is a Small Business Enterprise (SBE) in accordance with the Marin County Transit District (Marin Transit) standards as defined in its Diversity Program for Contracts. The firm is certified as of the date that Marin Transit receives the bid/proposal for:

_____ (RFP/RFQ Name) and I will provide the certification to document this fact with this enclosure.

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

(Date) (Affiant) (Title)

IX. Exhibit C:

SMALL BUSINESS ENTERPRISE ELEMENT (Section 26.39)

Marin Transit has established a Small Business Enterprise element (SBE Program) as one of its race-neutral methods of achieving small business participation, including disadvantaged businesses, on particular contracts with subcontracting opportunities. This SBE element will apply to all federally funded Marin Transit contracts where race-neutral and gender-neutral methods are employed. Marin Transit will take all reasonable steps to eliminate obstacles for SBEs to participate as prime contractors or subcontractors in Marin Transit's procurement activities. The agency's business development program will utilize the networking opportunities, resources and educational programs for DBEs that Marin Transit cosponsors with peer transportation agencies in the Bay Area.

A. Definition of Small Business Enterprise

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

1. A firm (including affiliates) must be an existing small business as defined by 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 in Section B 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 the DBE maximum cap of \$23.98 million (or as adjusted for inflation by the Secretary of U.S. DOT). SBA size standards vary by industry, and for certain industries may be higher than the \$23.98 million cap. Affiliates are defined in SBA regulations 13 CFR Part 121.103. Information on SBA size standards is located at: <https://www.sba.gov/document/support--table-size-standards>

For example, the SBA size standard for a general construction contractor is \$39.5 million. If a general construction contractor's average annual gross receipts over the previous three years is \$25 million, it would be ineligible to participate as a small business for Marin Transit purposes as it exceeds \$23.98 million. This is despite the fact that it meets the SBA size standard.

B. Acceptable Comparable Small Business Enterprise Certifications

Marin Transit is a non-certifying agency and will accept the small business enterprise certifications performed by other agencies, provided that the size standards described in Section A1a and A1b above are met.

If a firm is certified in one or more of the following programs and meets Marin Transit size standards, the firm is automatically deemed a small business for Marin Transit purposes. The term "SBE" will be used collectively for qualified SBEs, WBEs, MBEs, and other approved certifications. As indicated below, Marin Transit 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 as of the time of bid submittal.

1. **Disadvantaged Business Enterprise (DBE) certification** pursuant to U.S. Department of Transportation regulations, 49 CFR Part 26. This includes DBE certifications performed by the CUCP, by the Unified Certification Program of any other state, and by other DBE-certifying transportation agencies.
2. **State Minority Business Enterprise (SMBE) State Women Business Enterprise (SWBE) certification by the State of California** or by any other state provided that their certification complies with Section A 1 and 2 above. In addition to copies of SMBE/SWBE certifications, bidders certified out-of-state must submit an affidavit of size for each SMBE/SWBE prime contractor or SMBE/SWBE subcontractor at the time of bid submittal.
3. **Small Business (SB) certification by the California Department of General Services (DGS)** provided that their certification complies with Section A 1 and 2 above. In addition to copies of SB certifications, bidders must submit an affidavit of size for each SB prime contractor or subcontractor at the time of bid submittal.
4. **Microbusiness (MB) certification by the California Department of General Services for ALL industries.**
5. **SBA 8(a) by the Small Business Administration** provided that their certification **complies** with Section A 1 and 2 above. In addition to copies of SBA 8(a) certifications, bidders must submit an affidavit of size for each SBA 8(a) prime contractor or SBA 8(a) subcontractor at the time of bid submittal.
6. **SBE/MBE/WBE certification from other state, county, or local government-certifying agency** provided that their certification complies with Section A 1 and 2 above. In

addition to copies of certifications, bidders must submit an affidavit of size for each certified prime contractor or subcontractor at the time of bid submittal.

C. Race-Neutral SBE Measures

Marin Transit 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. The District may also strive to unbundle or split large contracts to ensure that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform and/or establish contract-specific SBE goals where appropriate.

D. Determining and Adopting a Contract-Specific SBE Goal

For federally funded contracts, Marin Transit may establish contract-specific goals on particular prime contracts with subcontracting opportunities as a means of increasing small business (including DBE) participation. The General Manager and DBELO will evaluate the availability of subcontracting opportunities on a contract-by-contract basis.

The factors outlined below will be considered to determine whether a contract-specific goal should be established for a particular contract:

1. The full range of activities in the proposed contract;
2. The availability of SBEs as prime contractors or subcontractors in the types of work involved in the performance of the proposed contract. As part of this analysis, staff will consult the U.S. General Services Administration "System for Award Management" (SAM) Registry for information on the availability of SBEs for various types of work at <https://www.sam.gov/SAM/> or the California General Services department supplier search at <https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>;
3. The unique conditions of the project that might affect the ability of the prime contractor to coordinate, utilize, or incorporate subcontractors or suppliers into the project. (Projects consisting of only one or two sub-trades may not be appropriate for a contract-specific goal due to the fact that establishing a goal could result in restrictive bidding.);
4. The effect that the contract-specific goal might have on the time of completion;
5. Any other relevant criteria.

Where a contract-specific SBE goal is established, the bidder or proposer must meet the contract-specific goal or demonstrate good faith efforts. Submittals that fail to document a bidders' solicitation of SBE participation, or good faith efforts to do so, will not be considered "responsive."

Exhibit C-1 SBE GOAL DECLARATION FORM

SBE GOAL DECLARATION FORM

Prime Contractor

Contract/RFP Name

Select one:

____ The bidder/proposer is a certified SBE in accordance with Marin Transit standards. A copy of our certification is enclosed.

____ The bidder/proposer commits to subcontract at least _____% of its Net Bid Price with one or more certified SBEs for a Commercially Useful Function in the performance of the contract.

Note: Please list SBEs in the Prime Contractor and Subcontractor/ Subconsultant/Supplier Report.

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

Signature

Date

Documents to Be Included with Bids or Proposals with SBE Goal

1. SBE Goal Declaration
2. Prime contractor and subcontractor/ subconsultant/supplier report
3. Copies of SBE Certifications
4. SBE Affidavits (as required; see list of acceptable certifications)
5. Good Faith Efforts Documentation