

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

July 2019 update

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# Marin Transit Diversity Program for Contracts

## Table of Contents

I. POLICY (Section 26.23).....	1
A. Applicability (Sections 26.3 and 26.21).....	2
B. Objectives (Section 26.1) .....	2
C. Prohibited Discrimination (Section 26.7) .....	2
D. Responsibilities for Use of Information, Confidentiality, Cooperation, and Intimidation or Retaliation (Section 26.109).....	3
II. DEFINITIONS (Section 26.5).....	3
A. Disadvantaged Business Enterprise (DBE) .....	3
B. Small Business Concern .....	4
C. Socially and Economically Disadvantaged Individuals .....	4
D. Race-Neutral .....	5
E. Race-Conscious .....	5
F. Personal Net Worth.....	5
III. RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION .....	5
A. Duties of DBE Program Administrator (Section 26.25).....	5
B. Regional Outreach (Section 26.51) .....	5
C. California Unified Certification Program (Section 26.81) .....	6
IV. ADMINISTRATIVE REQUIREMENTS .....	6
A. DBE Financial Institutions (Section 26.27) .....	6
B. DBE Database (Section 26.31).....	7
C. Bidders List (Section 26.11).....	8
D. Over-Concentration (Section 26.33).....	8
E. Business Development Programs (Section 26.35) .....	8

F. Dissemination of Policy Statement (Section 26.23) .....	9
G. Monitoring Actual DBE Participation (Sections 26.37 and 26.55) .....	9
H. Reporting to U.S. DOT (Section 26.11) .....	9
I. No Quotas or Set-Asides (Section 26.43) .....	10
J. Responsibilities Regarding Transit Vehicle Purchases (Section §26.49) .....	10
V. ACHIEVING GOALS AND COUNTING DBE PARTICIPATION (Section 26.45) .....	10
A. Methodology for Setting Overall DBE Goals (Section 26.45) .....	11
B. Publishing and Adopting the Overall DBE Goals (Section 26.45(g)) .....	12
C. Achieving the Annual Overall Goal (Section 26.51) .....	13
D. Counting and Tracking DBE Participation (Section 26.55) .....	17
E. Failing to Meet Overall Goals (Section 26.47) .....	18
VI. REQUIRED CONTRACT PROVISIONS (Sections 26.13, 26.23, 26.27, 26.29, 26.31, 26.37, 26.55, Appendix E) .....	18
VII. CERTIFICATION STANDARDS (Subpart D and Appendix E) .....	20
VIII. MONITORING AND RECORDKEEPING (Sections 26.11 and 26.37) .....	20
A. Bidders List (Section 26.11) .....	20
B. Monitoring Payments to DBEs (Section 26.37) .....	20
C. Reporting to U.S. DOT (Section 26.11) .....	21
D. Contract Remedies (Section 26.37) .....	21
IX. SMALL BUSINESS ENTERPRISE ELEMENT (Section 26.39) .....	21
A. Definition of Small Business Enterprise .....	21
B. Race-Neutral SBE Measures .....	22
C. Acceptable Comparable Small Business Enterprise Certifications .....	22
D. Determining and Adopting the Overall SBE Goal .....	23
E. Achieving the Overall SBE Goal .....	24
X. PUBLIC PARTICIPATION AND OUTREACH EFFORTS (Sections 26.45 and 26.51) .....	25

Exhibit A .....	27
DBE Program Administrator’s Duties and Responsibilities (Section 26.25).....	27
Exhibit B .....	29
Marin Transit Organization Chart .....	29
Exhibit C .....	30
SBE GOAL DECLARATION FORM.....	30
PRIME CONSULTANT AND SUBCONTRACTOR/SUBCONSULTANT/SUPPLIER REPORT.....	31
GOOD FAITH EFFORTS DOCUMENTATION.....	33
SMALL BUSINESS ENTERPRISE AFFIDAVIT OF SIZE.....	34

# 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/Administrator 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 / Administrator (Director of Policy and Legislative Programs)  
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), Amy Van Doren, by email at [avandoren@marintransit.org](mailto:avandoren@marintransit.org), by telephone 415/226-0859, or by fax 415/226-0856.

Date: 07/2019



General Manager

## **A. Applicability (Sections 26.3 and 26.21)**

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 remove barriers to DBE participation in the bidding, award and administration of Marin Transit contracts;
2. To assist DBEs to develop and compete successfully outside of the Program;
3. To ensure that the Program is narrowly tailored in accordance with 49 CFR Part 26;
4. To ensure that only DBEs meeting the eligibility requirements are permitted to participate as DBEs;
5. 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;
6. 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.
7. To administer the Program in close coordination with various managers and staff within Marin Transit to facilitate successful implementation of this Program.

## **C. 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.

#### **D. 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.

## **II. 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:

### **A. 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.

## **B. Small Business Concern**

With respect to firms participating as DBEs in U.S. DOT assisted contracts, 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 (3) years does not exceed \$22.41 million (or as adjusted for inflation by the Secretary of U.S. DOT) pursuant to 49 CFR § 26.65(b).

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

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

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 “Black American” as that 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 (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, Kirbati, 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);
6. A Woman; or
7. A member of any additional group that is designated as socially and economically disadvantaged by the Small Business Administration.

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. 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.

#### **E. Race-Conscious**

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

#### **F. 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.

### **III. RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION**

#### **A. Duties of DBE Program Administrator (Section 26.25)**

Pursuant to 49 CFR § 26.25 ([www.fhwa.dot.gov/HEP/49cfr26.HTM](http://www.fhwa.dot.gov/HEP/49cfr26.HTM)), the Program shall be administered by the DBE Program Administrator ("Administrator"), who shall be appointed by and have direct, independent access to the General Manager of Marin Transit. The Administrator 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, including legal, procurement, insurance, marine engineering, planning and development and others who are responsible for making decisions relative to Marin Transit's construction, procurement and professional service contracts. The Administrator will assist relevant managers and staff participating in a review committee for the evaluation of submittals. The Administrator's specific duties and responsibilities are attached as Exhibit A and incorporated herein. The Administrator will develop and submit a revision of this 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. Marin Transit is not a DBE-certifying agency, and it cooperates with larger peer agencies that have DBE certification programs.

#### **B. Regional Outreach (Section 26.51)**

The General Manager designates the Administrator to represent Marin Transit as a member of appropriate regional outreach consortia. As active member of the regional Business Outreach

Committee, Marin Transit participates in such group programs, activities and efforts in the San Francisco Bay Area to:

- Create a level playing field on which DBEs can compete fairly;
- Enhance outreach and communication efforts with these firms;
- Provide appropriate assistance and information for participation in U.S. DOT-assisted contracts and other contracts; and
- Develop joint resources among recipients.

To this end, the Administrator will attend scheduled meetings of such groups and will contribute to the achievement of their projects and programs as approved by Marin Transit's General Manager.

### **C. California Unified Certification Program (Section 26.81)**

Marin Transit will utilize California Unified Certification Program ("CUCP") to develop overall and project level DBE goals and to identify available DBE businesses by skill area.

## **IV. ADMINISTRATIVE REQUIREMENTS**

### **A. 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.

In 2013, the Administrator researched a website for The Federal Reserve Board at [www.federalreserve.gov/releases/mob/](http://www.federalreserve.gov/releases/mob/) to identify minority-owned banks derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 through 034) and from other information on the Board's National Information Center database. The web address currently redirects to: <https://www.federalreserve.gov/supervisionreg/minority-depository-institutions.htm/>. As of July 2019, the most recent list of available minority-owned banking institutions on the Federal Reserve website is located via <https://www.fdic.gov/regulations/resources/minority/mdi.html>

The Administrator 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 December 2018:

- Bank of the Orient (Offices in San Francisco)
- California Pacific Bank (Offices in San Francisco)
- Mission Bank (Offices in San Francisco)

There are no minority-owned banks with offices located in Marin County. In considering a new operating bank account, staff place 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.

In 2014, Marin Transit staff reached out to three area banking institutions with offices in Marin to compare services and cost structures: Bank of America, Wells Fargo, and Bank of Marin. Each bank utilized similar technology and offered essentially the same types of services. Each provides adequate levels of security and approval tiers to satisfy audit requirements and provide responsible stewardship of public funds. The three banks were further compared regarding fees, customer service emphasis, and ease of depositing fare collections. Based on this analysis, staff recommended moving the District's day-to-day operating funds to a new bank account at Bank of Marin. The District's reserve and contingency funds continue to be held in the County of Marin's bank accounts, thereby following the existing investment procedures.

Together with Marin Transit's Director of Finance and Capital Programs, the DBE Administrator 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 in the San Francisco Bay Area.

## **B. DBE Database (Section 26.31)**

The DBE Database is a consolidated and automated directory that identifies firms that have been certified as DBEs by the CUCP. The DBE Database is jointly 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://ucp.dot.ca.gov/licenseForm.htm>, 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.

### **C. Bidders List (Section 26.11)**

The Administrator has created and maintains a bidders list consisting of all firms bidding on prime contracts on U.S. DOT assisted projects and bidding or quoting on subcontracts. Marin Transit will require all prime contractors bidding or proposing on U.S. DOT-assisted contracts to submit the following information about the prime contractor and all subcontractors who provide a bid, proposal or quote to the prime contractor: the firm's name, address, 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 subcontracting opportunities to submit a form entitled, Prime Contractor and Subcontractor/Subconsultant/Supplier Report. In the case of firms bidding on contracts without subcontracting opportunities, data gathering will be conducted by requesting firms to complete a survey entitled, Bidder Information Survey. The Administrator will maintain the confidentiality of any proprietary information in accordance with applicable California law. This information will be requested of all bidders as further described in Section VIII.

### **D. Over-Concentration (Section 26.33)**

If the Administrator 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 Administrator will develop appropriate measures to address the over-concentration. The Administrator 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.

### **E. 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. As a part of the business development program or separately, 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.

Through the Bay Area Business Outreach Committee (BOC), Marin Transit's purchasing and project management staff will be available for and communicate with small business

representatives to become acquainted with owners and to identify qualified businesses that may furnish services and products. 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. In partnership with the BOC, Marin Transit will also utilize the services and publications of Norcal Procurement Technical Assistance Center (PTAC) and refer DBEs to the DBE Supportive Services Northern Region Program. Marin Transit includes a link to the DBE Supportive Services Program [www.norcalptac.org/DBE](http://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](http://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 X Public Participation and Outreach Efforts, below.

#### **F. Dissemination of Policy Statement (Section 26.23)**

The Administrator 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.

#### **G. Monitoring Actual DBE Participation (Sections 26.37 and 26.55)**

The Administrator shall monitor and track the actual DBE participation through contractor and subcontractor reports of payments. The Administrator 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. Monitoring may be conducted in conjunction with monitoring of contract performance for other purposes (close out revisions for a contract).

The Administrator shall ensure that DBE participation is counted in accordance with the Regulations. Credit toward overall or contract goals, if applicable, will only be given upon satisfactory evidence that payments were actually made to DBEs.

#### **H. Reporting to U.S. DOT (Section 26.11)**

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. The Administrator 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.

### **I. 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.

### **J. 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.

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.

## **V. ACHIEVING GOALS AND COUNTING DBE PARTICIPATION (Section 26.45)**

Marin Transit receives U.S. DOT financial assistance as a direct recipient of such funds from Federal Transit Administration (FTA) and as a subrecipient of such funds from both FTA and Federal Highway Administration through California Department of Transportation (Caltrans). 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's overall goal represents 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 Marin Transit would expect absent the effects of discrimination. Marin Transit intends to meet its goal to the maximum extent feasible through the race-neutral measures described in Section V.C. Where race-neutral measures are inadequate to meet the overall goal,

Marin Transit may use race-conscious measures for particular contracts with subcontracting opportunities.

## **A. Methodology for Setting Overall DBE Goals (Section 26.45)**

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 Administrator will conduct a thorough analysis of the projected number, types of work and dollar amounts of contracting opportunities that will be funded, in whole or in part, by U.S. DOT federal financial assistance 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. Marin Transit will follow one of the methodologies provided in the Regulations for establishing the base figure or develop an alternative methodology and provide the appropriate documentation in the Overall Goal Analysis Report described in Section V.B.
  - a. **Analyze Available Businesses in Marin Transit's Local Market Area.** The Administrator, in conjunction with the appropriate Marin Transit managers, will conduct a thorough analysis of the local market area in which Marin Transit will solicit participation from contractors, subcontractors, consultants, subconsultants, manufacturers, and suppliers for the federal fiscal year. This analysis will include a description of geographical boundaries of its local market area, the NAICS codes for the types of work to be contracted, and any other indicators that Marin Transit determines to be relevant in defining its local market area for the fiscal year. The Administrator will then determine the total available businesses according to its local market area. The Administrator 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 Administrator will conduct a similar analysis to determine the total DBEs that are available to participate as contractors, subcontractors, consultants, subconsultants, manufacturers, and suppliers 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, the NAICS codes for the types of work to be contracted, and any other factors as described in Section V.A.2.a. 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 Administrator 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 will include a weighting factor according to the contract expenditure patterns analyzed in Section V.A.1.
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. At minimum, the Administrator will analyze the results of DBE participation in Marin Transit's current and recent past contracts, any available and relevant disparity studies (to the extent that they are not accounted for in the base figure), and any available and relevant results of other and 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. Marin Transit will publish all its contracting opportunities on its web site and in available regional and minority newspapers and publications. Marin Transit will inform potential bidders of contracting opportunities through the regional DBE Business Outreach Committee and through active participation with industry contacts in organizations such as California Public Transit Association and CalACT. If there is a need to use race conscious or contract specific goals, the Administrator shall analyze the progress toward achieving the annual overall goal and increase or reduce the use of contract-specific goals in accordance with 49 CFR § 26.51(f).

## **B. Publishing and Adopting the Overall DBE Goals (Section 26.45(g))**

1. **Consultation with Various Groups, Organizations, and Officials.** Marin Transit will send notices requesting input on the goal-setting process, specifically on the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and efforts to establish a level playing field for the participation of DBEs. Organizations and groups contacted will include, but not be limited to, minority, women and general contractors' groups, community organizations and other officials. These will be organizations and groups 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 the District's efforts to establish a level playing field for DBE participation. Marin Transit will also utilize information and feedback obtained through mailings from regional agencies, such as the Metropolitan Transportation Commission.
2. **Overall Goal Analysis Report.** Unless otherwise directed, the Administrator will prepare an Overall Goal Analysis Report for DBE participation in FTA-assisted contracts upon completion of the analysis described in Section V.A. and after consultation with various groups, organizations and other officials. 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.

3. **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](http://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](http://www.marintransit.org), for a period of thirty (30) days prior to submitting the goal to FTA by August 1<sup>st</sup>. 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 DBE Administrator 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.

4. **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.

### **C. Achieving the Annual Overall Goal (Section 26.51)**

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

1. **Race-Neutral and Gender-Neutral Methods.** Marin Transit intends to use race-neutral and gender-neutral methods to the maximum extent feasible to achieve its annual overall goals. Marin Transit will consider as race-neutral and 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; and
- 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. Section (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 Section IX 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 are only established based on evidence from a local disparity study. The Federal Transit Administration developed guidance directed at Western States including California to respond to *Western States Paving Co. v. United States & Washington Department of Transportation*, 407 F. 3d 983 (9<sup>th</sup> Circuit 2005). Under the *Western States* decision, recipients in the Ninth Circuit cannot consider the use of a race- or gender- conscious goal unless a finding of statistically significant disparity has been made for the ethnic and gender groups included in the race- or gender- conscious goal. The Ninth Circuit determined that statistical findings demonstrating a "small disparity" are insufficient probative value to meet the strict scrutiny standard. The Court declared that an inference of discriminatory exclusion could arise where there is a statistically significant disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality and its prime contractors.

FTA published a notice in response to the decision in 2006. 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 all race-neutral program are not required to establish contract goals to meet any portion of their overall goal.

Recipients should take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified at 49 CFR 26.51(b) as possible to meet the overall goal and to demonstrate that they are administering the DBE program in good faith. The Department expects that recipients using all race-neutral programs will use methods such as unbundling of contracts, technical assistance, capital and bonding assistance, and business development programs. The good faith efforts requirements in 49 CFR 26.53 that apply when DBE contract goals are set have no required application to recipients implementing a race-neutral program. However, recipients must continue to collect the data required to be reported in the Uniform Report of DBE Awards or Commitments and Payments Form and to monitor compliance with the commercially useful function requirements.

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 Administrator. 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.
3. **Awarding Contracts with Contract-Specific Goals.** Marin Transit shall award contracts to the lowest responsible bidder as required by the California Public Contracts Code Sections 20914 and 20916, where applicable. This requirement is waived with contract specific goals contracts, as well as for contracts awarded pursuant to a Request for Proposal procedure where the lowest responsible bidder standard does not apply. In those cases, a 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.
- a. Evaluation of Bids or Proposals: After the bid opening, or submission deadline for proposals, the Administrator 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 Administrator shall evaluate the bidder with the next lowest bid price. Should the Administrator determine that additional information is needed to evaluate a bidder’s or proposer’s submission with regard to the DBE requirements, the Administrator 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 Administrator 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 Administrator 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 Administrator shall review the good faith efforts report submitted by the bidder. The Administrator 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 Administrator will notify the bidder in writing in the event that the Administrator 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 two (2) working 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 reconsideration official: Director of Finance and Grants, Marin Transit, 711 Grand Avenue, Suite 110, San Rafael, CA 94901, telephone number (415) 226-0855. The review committee shall provide the bidder with a written decision on reconsideration, explaining the basis for its determination. If the review committee finds that the bidder has not met the contract goal or demonstrated good faith efforts, the Administrator will deem said bidder not responsive and evaluate the bidder submitting the next lowest bid.

- f. Recommendation for Award: Following the determination of the lowest responsive and responsible bidder, the Administrator 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.

#### **D. Counting and Tracking DBE Participation (Section 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 Administrator will track the participation of DBEs in contract-specific goal contracts separately from the participation of DBEs that is considered race-neutral. Additionally, the Administrator 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.

#### **E. 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 Administrator will analyze in detail the reasons for the difference between the overall goal and awards and commitments. Specific steps and milestones to correct the problems identified and to meet overall goals for future fiscal years will be established. Marin Transit will retain the shortfall analysis and corrective actions for three years and make them available to FTA on request for their review.

### **VI. REQUIRED CONTRACT PROVISIONS (Sections 26.13, 26.23, 26.27, 26.29, 26.31, 26.37, 26.55, Appendix E)**

Each financial assistance agreement Marin Transit signs with FTA or Caltrans on behalf of FHWA 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 Administrator. The Administrator 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.
- A statement that encourages prime contractors to use financial institutions owned and controlled by socially and economically disadvantaged individuals in the community.
- A clause that requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment Marin Transit makes to the prime contractor. 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.
- U.S. DOT requires recipients to use one of the following methods to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor. Marin Transit will use Method #3 below to comply with the Prompt Payment requirement.
  1. Decline to hold retainage from prime contractors and prohibit prime contractors and subcontractors from holding retainage from subcontractors.
  2. Decline to hold retainage from prime contractors and include a contract clause obligating the prime contractor and subcontractors to make prompt and full payment of any retainage kept by the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.
  3. 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.
- 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.

## **VII. CERTIFICATION STANDARDS (Subpart D and Appendix E)**

Marin Transit utilizes the California Unified Certification Program (CUCP), which follows U.S. DOT directives and guidance concerning certification matters. The CUCP makes all DBE certification decisions on behalf of U.S. DOT recipients in the state. 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.

## **VIII. MONITORING AND RECORDKEEPING (Sections 26.11 and 26.37)**

### **A. Bidders List (Section 26.11)**

Marin Transit will require all prime contractors bidding on U.S. DOT-assisted contracts to return at the time of bid opening, the following information about the prime contractor and all subcontractors who provided a bid. Options apply as to the time this information is required so long as it is prior to the award of the contract. Information shall include:

- Firm name
- Firm address
- Firm's status as a DBE or non-DBE
- Age of the firm
- Type of work

Marin Transit will use this information to maintain and update its Bidders List.

### **B. Monitoring Payments to DBEs (Section 26.37)**

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.

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. 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.

### **C. Reporting to U.S. DOT (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. 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.

### **D. Contract Remedies (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.

## **IX. SMALL BUSINESS ENTERPRISE ELEMENT (Section 26.39)**

Marin Transit will establish a Small Business Enterprise element (SBE Program) as one of its race-neutral methods of achieving small business participation, including disadvantaged businesses, on 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. Marin Transit will establish this SBE program no later than eight months after FTA concurrence with this Diversity Program for Contracts. 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 C below.
2. Even if a firm meets the above requirement, the firm's (including affiliates') average annual gross receipts over the previous three years cannot exceed a maximum cap of \$22.41 million (or 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 \$22.41 million cap.

For example, the SBA size standard for a general construction contractor is \$33.5 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 \$22.41 million. This is despite the fact that it meets the SBA size standard.

Affiliates are defined in SBA regulations 13 CFR Part 121.103. For information on SBA size standards, visit: <https://www.sba.gov/federal-contracting/contracting-guide/size-standards>

## **B. 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. Marin Transit will establish an overall SBE goal on a triennial basis for participation by Small Business Enterprises in all federally funded contracts Marin Transit expects to award during the triennial goal period. Marin Transit will set its overall SBE goal on the same three-year cycle as the overall DBE goal. The overall SBE goal will be determined based on the number and type of contracts Marin Transit expects to let in the reporting period, as well as the availability of and prior Marin Transit utilization of Small Businesses in federally funded contracts. The award of contracts included in Marin Transit's SBE Program will be evaluated based in part on the level of SBE utilization and Marin Transit's ability to meet its overall SBE goal. Submittals that fail to document a bidders' solicitation of SBE participation, or efforts to do so, will not be considered.

## **C. Acceptable Comparable Small Business Enterprise Certifications**

Marin Transit 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 California Unified Certification Program, 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.

#### **D. Determining and Adopting the Overall SBE Goal**

Marin Transit will set its overall SBE goal on the same three-year cycle as the overall DBE goal. The overall SBE goal will be determined based on an analysis of the number and type of federally funded contracting opportunities Marin Transit expects to release in the next three year reporting period, Marin Transit's history of attracting SBEs, as well as the availability of SBEs in the types of work involved in upcoming opportunities. 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/>

The overall SBE goal will be expressed as a percentage of the total amount of U.S. DOT funds Marin Transit anticipates that it will expend in the three forthcoming fiscal years. Marin Transit has no history of tracking SBE participation and will set its first overall SBE goal at the same level as Marin Transit's overall DBE goal for the remainder of the current reporting period. Marin Transit will determine the overall SBE goal in conjunction with the establishment of the overall DBE goal. Following the review of the Board report, Marin Transit's Board of Directors shall adopt an overall SBE goal that will be published in solicitations for federally funded contracts that are not excluded from Marin Transit's SBE Program and on Marin Transit's website.

Marin Transit will publish its draft triennial DBE and SBE goal and methodology for 30 days on its Purchasing page at [www.marintransit.org/purchasing.html](http://www.marintransit.org/purchasing.html) and as News Item on [www.marintransit.org](http://www.marintransit.org). After Board approval, Marin Transit continues to post the current triennial goal methodology on its Purchasing page.

Marin Transit may choose to exclude certain eligible contracts from Marin Transit's SBE Program after consideration of the following factors:

- The full range of activities in the proposed contract;
- The availability of SBEs as prime contractors or subcontractors in the types of work involved in the performance of the proposed contract;
- 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 inclusion in Marin Transit's SBE program;
- The effect that SBE participation may have on timing for the completion of the contract;
- Any other relevant criteria.

## **E. Achieving the Overall SBE Goal**

Marin Transit will seek to achieve the overall SBE goal for each year in the three-year reporting period. Although Marin Transit will not set contract specific goals, it will strongly encourage submitters to obtain SBE participation, including DBEs, in their bid or proposal. The bidder or proposer is required to include a Goal Declaration Form in their submittal notifying Marin Transit of the bidder's or proposer's SBE goal attainment for that contract. A copy of this form is provided under Exhibit C of this Program. The Administrator shall review the Goal Declaration Form and confirm each SBE firm's certification status. Marin Transit shall require that any SBEs listed by bidders for participation in the contract be certified SBEs at the time of bid opening. Acceptable comparable Small Business Enterprise certifications are listed in Section C of this

section. Certain certifications require businesses to complete an SBE Affidavit Form in a form designated by Marin Transit and to submit it at the time of bid opening.

Marin Transit will not consider submittals that fail to document the bidder's solicitation of SBE participation or good faith efforts to do so. The Administrator shall determine whether the bidder/proposer has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to attain SBE participation and in accordance with 49 CFR Part 26, Appendix A. All bidders/proposers must submit Good Faith Efforts documentation. Marin Transit will consider SBE utilization and Marin Transit's ability to meet its overall SBE goal in evaluating submittals of federally funded contracts included in Marin Transit's SBE Program.

Work that an SBE subcontracts to a non-SBE firm does not count toward the overall SBE goal. Expenditures may only be counted if the SBE is performing a commercially useful function. Only the work actually performed by an SBE will be counted toward Marin Transit's overall SBE goal. The cost of supplies and materials obtained by the SBE or equipment leased (except from the prime contractor or its affiliate) may also be counted. The Administrator will not count that portion of a SBE's participation after the certification of the SBE has been removed during the performance of a contract.

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 applicable to that fiscal year, Marin Transit will:

- Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
- Establish specific steps and milestones to correct the problems identified in the analysis; and
- Develop a corrective action plan.

## **X. PUBLIC PARTICIPATION AND OUTREACH EFFORTS (Sections 26.45 and 26.51)**

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

- 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.
  
- Every three years or more often if the District adjusts the overall goal, Marin Transit will publish a notice announcing its proposed overall goal on its website, [www.marintransit.org](http://www.marintransit.org). This notice will inform the public that Marin Transit’s Overall DBE Goal Methodology is available on the agency’s website, [www.marintransit.org](http://www.marintransit.org), for a period of thirty (30) days. This notice will state that Marin Transit and the U.S. DOT will accept comments on the proposed goal for thirty (30) days from the date of the notice.
  
- In conjunction with Marin Transit’s activities to meet its overall DBE goal, Marin Transit works with the BOC to implement various public participation and outreach activities that broaden awareness of Marin Transit’s Diversity Program for Contracts. The District actively pursues measures described in 49 CFR §26.51 focusing on race-neutral means and encourages its contractors to make similar outreach efforts to include DBE participation in subcontracting opportunities. In conjunction with regional outreach consortia and CUCP, Marin Transit will continue to participate and help organize training programs for meeting DBE eligibility requirements, familiarize potential contractors with Marin Transit procurement procedures and requirements, and otherwise develop effective programs to further the inclusion of DBEs in Marin Transit’s contracting activities.

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.).

## **Exhibit A**

### **DBE Program Administrator's Duties and Responsibilities (Section 26.25)**

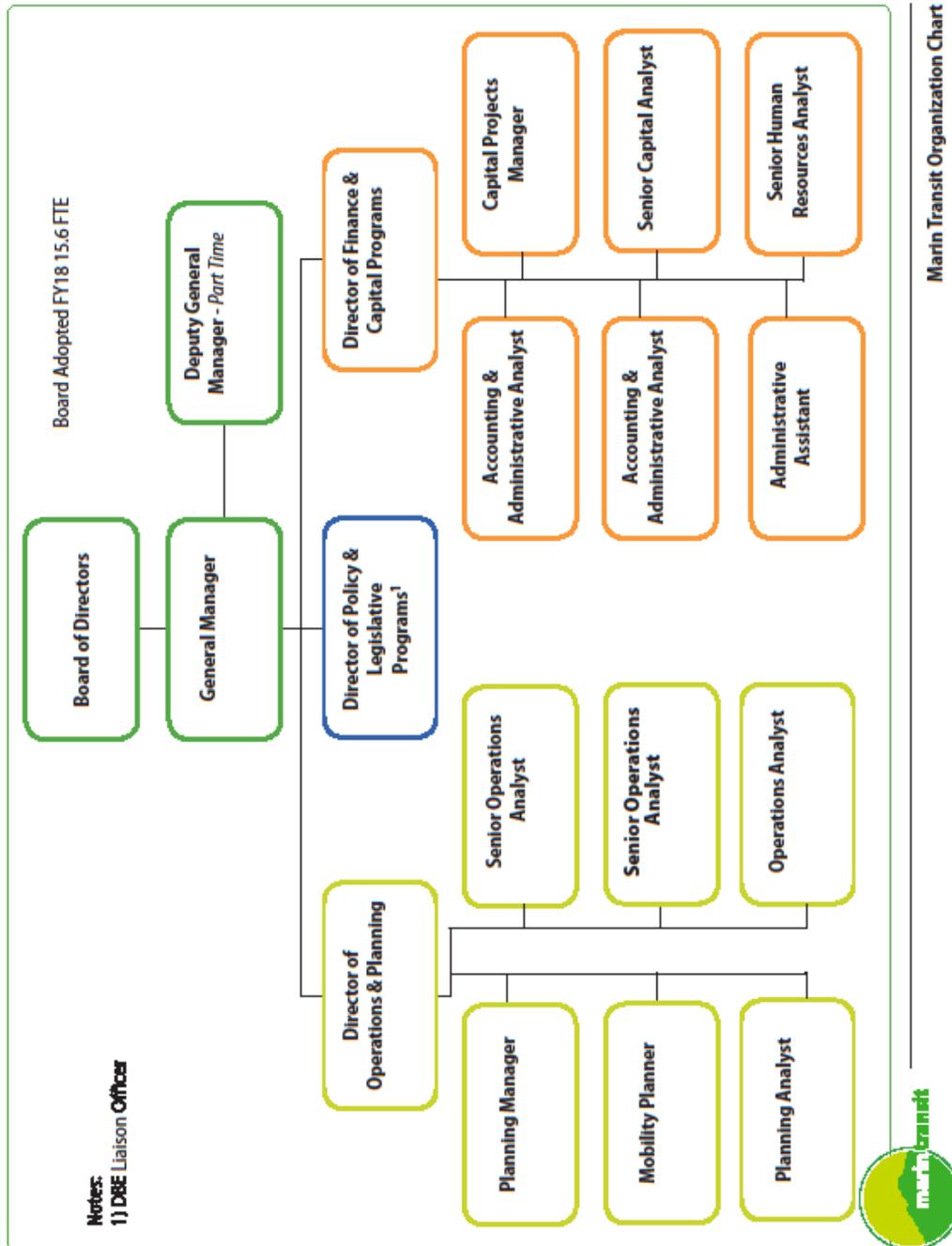
1. Analyzing and assessing the available resources and evidence for the establishment, achievement, and further improvement of annual overall DBE goals for U.S. DOT-assisted contracts each fiscal year;
2. Developing, monitoring, and evaluating the Diversity Program for Contracts, and preparing supplemental 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. Monitoring specific contract performance, actual DBE participation, contract payments, and purchase requisitions;
8. 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 FHWA, as needed;
9. If Marin Transit becomes a certifying member of the CUCP, determining all certification actions including initial certifications, recertifications, denials, and removals;
10. Participating in the statewide Unified Certification Program in accordance with 49 CFR § 26.81, and CUCP MOA;
11. Assisting Marin Transit's Managers and Staff in the review committee for the evaluation of submittals;

12. Participating in regional outreach activities;
13. Participating in other transit organizations on common issues pertaining to diversity programs for contracts; and
14. Maintaining all appropriate records and documentation of the Program.

# Exhibit B

## Marin Transit Organization Chart

See Attached Chart on the last page of the Program. Note that Marin Transit’s DBE Administrator and Liaison Officer is the Director of Policy and Legislative Programs.



## Exhibit C

### SBE GOAL DECLARATION FORM

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Prime Contractor

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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.

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Signature

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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

## **PRIME CONSULTANT AND SUBCONTRACTOR/SUBCONSULTANT/SUPPLIER REPORT**

RFQ # and Name: \_\_\_\_\_  
Offeror's Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Owner or Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_  
Is your firm a Small Business Enterprise (SBE): Yes \_\_\_\_ No \_\_\_\_  
If your firm is a DBE or SBE please list certification type: \_\_\_\_\_

Offerors MUST provide the following information on ALL subcontractors, subconsultants, and suppliers that provided Offeror a bid, quote, or proposal for work, services or supplies associated with this RFQ pursuant to the Authority's sub-proposal reporting requirements. This information shall be provided for all sub-proposers regardless of tier for DBEs, SBEs, non-DBEs and non-SBEs alike. Include all sub-proposal acceptance(s) AND rejection(s).  
Signature is required on page two of this form.

Subcontractor/Subconsultant/Supplier  
Firm Name/Address/Contact Info  
Contractor's License No. (if applicable)  
DBE (Yes\*/No)  
SBE (Yes\*/No)  
Portion of Work or Type of Materials/Supplies  
Dollar Amount of Work/ Materials/Supplies  
Proposal Accepted (Yes\*\*/No)  
DBE/SBE  
Amount\*\*\*

1 Name:  
Address:  
Contact Person:  
Phone & Fax:

2 Name:  
Address:  
Contact Person:  
Phone & Fax:

Subcontractor/Subconsultant/Supplier  
Firm Name/Address/Contact Info  
Contractor's License No. (if applicable)

DBE (Yes\*/No)  
SBE (Yes\*/No)  
Portion of Work or Type of Materials/Supplies Dollar Amount of  
Work/ Materials/Supplies  
Proposal Accepted  
(Yes\*\*/No)  
DBE/SBE  
Amount\*\*\*

4 Name:  
Address:  
Contact Person:  
Phone & Fax:

5 Name:  
Address:  
Contact Person:  
Phone & Fax:

**Attach additional sheets as necessary.**

\* If Yes: For DBE please also provide the Unified Certification Program certification number in box. For SBE, please provide the type of SBE certification (for example, SMBE/SWBE, SB, SBA, SBE/MBE/WBE). Proposers need to be aware that state and local governments may have other types of certifications with different requirements.

\*\* Do not indicate more than one "Yes" for alternative subcontractors/subconsultants for the same work.

\*\*\* DBE/SBE participation includes that portion of the work actually performed by a certified DBE/SBE with its own forces. For example, for DBE supplier, count 60% of the costs of materials and supplies.

**The undersigned will enter into a formal agreement with the subcontractor(s), subconsultant(s) and/or supplier(s) whose sub-proposal was accepted conditioned upon execution of a contract with Marin County Transit District. I certify under penalty of perjury that the information included on this form is accurate and true.**

Name:

Title:

Date:

## GOOD FAITH EFFORTS DOCUMENTATION

RFQ # and Name: \_\_\_\_\_

Offeror's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Owner or Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Is your firm a Disadvantaged Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

Is your firm a Small Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

Provide a narrative description of how the proposer selected its subcontractors/ subconsultants/suppliers, including the following elements: (Please attach additional sheets as necessary.)

1. Soliciting small businesses, including DBEs, to participate through all reasonable and available means. *Example:* Attendance at pre-bid meeting, advertisements, written notices, and agencies, organizations or groups contacted to assist in contacting, recruiting and using small business concerns.
2. Selecting portions of the work that are economically feasible for small businesses, including DBEs.  
*Example:* List items of work that the Offeror made available to small business concerns, including, where appropriate, any breaking down of the scope of Services (including those items normally performed by the Offeror with its own forces) into economically feasible units to facilitate DBE/SBE participation.
3. Providing adequate information about the scope of Services in a timely manner to DBEs/SBEs.  
*Example:* List dates of written notices soliciting bids from DBEs/SBEs and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs/SBEs were interested.
4. Negotiating in good faith with DBEs/SBEs.
5. Not rejecting DBEs/SBEs as unqualified without sound business reasons.  
*Example:* Explain reasons for rejecting bids from DBEs/SBEs and accepting proposals from selected firms.
6. Making efforts to assist DBEs/SBEs in obtaining required insurance.
7. Making efforts to assist DBEs/SBEs in obtaining necessary equipment, supplies or materials.
8. Describe any other steps that the Offeror used to select its subcontractors/ subconsultants/suppliers.

**The undersigned certifies that the above narrative description is true and accurate, and may be relied upon by Marin Transit in evaluating the Offeror's compliance with the RFQ requirements.**

Name:

Date:

Title:

## 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 \$22.41 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 \$22.41 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 \$22.41 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 \$22.41 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)