



DRAFT DBE PLAN
2008/2009 Fiscal Year

May 15, 2008

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DIVERSITY PROGRAM FOR CONTRACTS

I. POLICY (Section 26.23)

The San Francisco Bay Area Water Emergency Transportation Authority (“The Authority”) is committed to a Diversity Program for the participation of Disadvantaged Business Enterprises (“DBEs”) in the AUTHORITY 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 the AUTHORITY 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 the AUTHORITY to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to the AUTHORITY’s construction, procurement and professional services activities.

The Board of Directors is responsible for establishing the DBE policy of the AUTHORITY. The Executive Director of the AUTHORITY is responsible for ensuring adherence to this policy. The DBE Program Administrator, in coordination with all AUTHORITY Directors and Managers, is responsible for the development, implementation and monitoring of the Diversity Program for Contracts in accordance with the AUTHORITY’s nondiscrimination policy. It is the expectation of the Board of Directors and the Executive Director that all AUTHORITY personnel shall adhere to the spirit, as well as the provisions and procedures, of this Program.

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

DBE Program Office
San Francisco Bay Area Water Emergency Transportation
Authority
Pier 9, Suite 111, The Embarcadero
San Francisco, CA 94111

If you have any questions or would like further information regarding this Program, please contact the DBE Program Administrator, by telephone at 415.291.3377 or by fax at 415.291.3388.

Date: _____

Steven Castleberry
Executive Director

A. Applicability (Sections 26.3 and 26.21)

The AUTHORITY, 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 DBE Program in accordance with 49 CFR Part 26, which is incorporated herein by this reference. The Program outlined herein applies to all AUTHORITY 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 AUTHORITY 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 the AUTHORITY 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 which will acquaint prospective DBEs with the AUTHORITY’s contract procedures, activities and requirements and allow DBEs to provide the AUTHORITY with feedback on existing barriers to participation and effective procedures to eliminate those barriers.

C. Prohibited Discrimination (Section 26.7)

The AUTHORITY 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.

The AUTHORITY shall not directly or through contractual or other arrangements, 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.

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) (Section 26.5)

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 (Section 26.5)

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 \$17.42 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 (Section 26.5)

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 Pilau), 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 is socially and economically disadvantaged on a case-by-case basis. The AUTHORITY will follow the guidelines in 49 CFR Part 26, Appendix E.

An individual cannot be presumed or determined on a case-by-case basis to be economically disadvantaged if s/he has a personal net worth exceeding \$750,000 (excluding the individual's ownership interests in the small business concern and his or her primary residence).

D. Race-Neutral (Section 26.5)

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 (Section 26.5)

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

F. Personal Net Worth (Section 26.5)

The net value of the assets of an individual remaining after total liabilities is 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 AND DUTIES OF DBE PROGRAM ADMINISTRATOR (Section 26.25)

Pursuant to 49 CFR § 26.25 (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 Executive Director of the AUTHORITY. 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 the AUTHORITY, including legal, marine engineering, planning and development and others who are responsible for making decisions relative to the AUTHORITY's construction, procurement and professional service contracts. Responsibilities include:

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. 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 and gender-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. Identifying contracts and procurements so that DBE goals are included in solicitations (both race neutral methods and contract specific goals) and monitors results.
9. Participating with legal counsel and the Executive Director to determine contractor compliance with good faith efforts;
10. Monitoring overall DBE participation, adjusting overall goals and means of achievement, assessing areas of over-concentration of DBE participation, and reporting to the Executive Director, the AUTHORITY Board of Directors, FTA and Caltrans on behalf of FHWA, as needed;
11. Determining all certification actions including initial certifications, recertifications, denials and removals;*

12. Participating in the statewide Unified Certification Program in accordance with 49 CFR § 26.81;*
13. Participating in the Regional Transit Coordinating Council Business Outreach Committee;
14. Participating in other transit organizations on common issues pertaining to diversity programs for contracts; and
15. Maintaining all appropriate records and documentation of the Program.

Note: Asterisk (*) indicates new or revised responsibility in 49 CFR Part 26

IV. ADMINISTRATIVE REQUIREMENTS

A. DBE Financial Institutions (Section 26.27)

It is the policy of the AUTHORITY 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 Administrator has researched the website for The Federal Reserve Board at 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 Administrator will continue to use this source to continue to solicit minority-owned banks to participate in the Authority's DBE Program.

To date, the Administrator has identified the following minority-owned financial institutions that offer services in the San Francisco Bay Area (as of September 30, 2007):

Bank of the Orient (San Francisco, Oakland)
Metropolitan Bank (San Francisco, Oakland)
Circle Bank (Petaluma, San Rafael, Novato)

Information on the availability of these institutions can be obtained from the Administrator.

Together with the AUTHORITY's Deputy Director of, Finance and Administration and Business Services Manager, the Administrator shall explore the full extent of

services offered by banks and other financial institutions that qualify as DBEs in the San Francisco Bay Area and determine areas in which the AUTHORITY may reasonably utilize their services. The AUTHORITY shall also encourage its prime contractors to use the services of DBE financial institutions.

B. DBE Database (Section 26.31)

The AUTHORITY will refer interested persons to the DBE directory available from the Caltrans Disadvantaged Business Enterprise Program website at www.dot.ca.gov/hq/bep.

C. Bidders List (Section 26.11)

The AUTHORITY 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.

This information must be received by the AUTHORITY before a recommendation is made 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 IX.

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, the AUTHORITY is unaware of any types of work that have a burdensome over-concentration of DBE participation.

E. Business Development Programs (Section 26.35)

The AUTHORITY does not have a business development or mentor-protégé program. The AUTHORITY participates extensively in maritime and transit industry associations (Passenger Vessel Association, Interferry, America Public Transit Association, California Transit Association Construction Management Association of America (CMAA), Associated General Contractors (AGC), Northern California Chapter, Conference of Minority Transportation Officials (COMTO), Women's Transportation Seminar (WTS), San Francisco Bay Area Vendor Fairs), and advertises contractor opportunities with the AUTHORITY through those venues. Through those associations, the AUTHORITY purchasing and project management staff will be available for and communicate with representatives of small businesses to become acquainted with the owners and to identify qualified businesses that may furnish services and products. AUTHORITY staff will provide information on how to do business with the AUTHORITY, technical assistance on specified contracts, and other topics of interest to small business concerns.

F. Dissemination of Policy Statement (Section 26.23)

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

1. Through interoffice mail to Managers, and buying staff; and
2. Through the AUTHORITY's website and upon request by the interested public, including the business community.

Additionally, to ensure that potential bidders are aware of the DBE policy, the AUTHORITY makes reference to this policy in its contract specifications and advertisements of 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.

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

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

The AUTHORITY 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.

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

The AUTHORITY does not, and will not, use quotas nor set-asides in any way in the administration of this Program.

V. DETERMINING, ACHIEVING GOALS AND COUNTING ANNUAL OVERALL DBE PARTICIPATION (Section 26.45)

The AUTHORITY's overall goal for the federal fiscal year FY 2008/2009 is 22% of the federal financial assistance in DOT-assisted contracts. This overall goal is broken into 100% race-neutral and 0% race-conscious components.

A. Methodology For Setting Annual Overall DBE Goals (Section 26.45)

1. Projected U.S. DOT-Assisted Contract Expenditures for Fiscal Year. The AUTHORITY anticipates federal funding for four projects in FY 2008/2009.

Berkeley Vessel Construction Management	\$760,000
South San Francisco Terminal Construction Services, including:	
Demolition and Dredging	\$1,916,600
Access and Viewing Terrace and Pier	\$6,765,300
Gangway and Float	\$9,483,500

The NAIC codes that are relevant for these activities are described in Table 1. The construction management is specialized work that is not detailed in NAICS codes. However, the most relevant categories are engineering and architectural services (NAICS codes 54131 and 54133).

2. Establishing a Base Figure. To determine the base figure of relative DBE availability, the AUTHORITY identified its local market area as San Francisco, Alameda, Contra Costa, and San Mateo Counties. These counties represent the locations of all of the AUTHORITY's proposed new ferry terminals. The 2005 US Census Business Patterns Database was used to estimate the total number of businesses available for each of the NAIC codes that are doing business in these geographic areas. The California Unified Certification Program (CUCP) database was used to determine the number of ready, willing, and able to bid DBE firms in this same geographic area (Area Codes 415, 510, 650, and 925 were used to identify DBE firms geographically). The information is shown in the tables below.

TABLE 1. DETERMINING DBE GOALS FY 2008/2009

Location	CM Services			Terminal Construction		
	54131	54133	237110	237990	238910	238210
Alameda County DBE firms (510)	11	38	2	1	5	18
San Francisco County DBE Firms (415)	11	48	2	6	9	14
San Mateo County Total DBE Firms (650)	0	2	3	1	1	2
Contra Costa County DBE firms (925)	0	25	1	3	6	2
Total DBE Firms	22	113	8	11	21	36

Alameda County Total Firms (510)	198	410	37	16	74	334
San Francisco County Total Firms (415)	381	261	12	13	13	171
San Mateo County Total Firms (650)	75	160	16	2	37	183
Contra Costa County Total Firms (925)	89	336	27	16	70	205
Total Firms	743	1167	92	47	194	893

TABLE 2. DBE FORMULA CALCULATION FY 2008/2009

Formula Explanation:

Number DBE Firms / Total Firms (Total Amount Spent) = DBE Available

NAICS Code	Description	Total DBE Firms	Total All Firms	\$ Spent on Category	DBE Available	
<i>Construction Management</i>						
54131, 54133	Architects, Engineering (combined)	135	1910	\$760,000.00	\$53,717.28	
<i>Terminal Construction</i>						
237110	Water, sewer, pipeline construction	8	92	\$92,000.00	\$8,000.00	
237990	Other heavy and Civil Engineering Construction, including dredging, marine construction, wharf	11	47	\$17,311,400.00	\$4,051,604.26	
238910	Site Preparation, including demolition, land clearing	21	194	\$600,000.00	\$64,948.45	
283210	Lighting, including electrical contracts	36	893	\$162,000.00	\$6,530.80	
				\$18,925,400.00	\$4,184,800.78	22.11%

The DBE base goal is calculated as the weighted percentage of available DBE firms x the dollar volume expected to be spent for each NAIC category.

$$\begin{aligned} \text{Goal} &= (135/1910 \times \$760,000) + (8/92 \times \$92,000) + (11/47 \times \$17,311,400) + \\ &(21/194 \times \$600,000) \\ &+ (36/893 \times \$162,000) = 22.11\% \end{aligned}$$

3. Adjusting the Base Figure. The AUTHORITY does not have a contracting history and therefore can not use historical utilization data to adjust the estimated goal. All of the anticipated contracts require specialized and unique maritime services that may not be available locally and may not have the same percentage of available DBE firms willing and able to propose. Since the AUTHORITY does not have any demonstrable evidence indicating that the availability of DBEs for U.S. DOT-assisted contracts for those services may be higher or lower than the base figure indicates, the local proportion of DBE firms will be assumed to apply to all contracts. The Administrator will analyze the results of the AUTHORITY's DBE participation for the current year for future adjustments, if necessary.

4. Projection of Percentage of Overall Goals to Be Achieved Through Race-Neutral and Race-Conscious Measures. The AUTHORITY proposes to meet 100% of its goals using race-neutral methods. The AUTHORITY will publish all of its contracting opportunities on its web site and in regional and minority newspapers and publications. In addition, the AUTHORITY will inform potential bidders of contracting opportunities through active participation with industry contacts in organizations such as American Public Transit Association, California Public Transit Association, Passenger

Vessel Association, Interferry, Construction Management Association of America (CMAA), Regional Transit Coordinating Council Business Outreach Committee, Associated General Contractors (AGC), Women's Transportation Seminar, San Francisco Chapter, Northern California Chapter, Conference of Minority Transportation Officials (COMTO), and San Francisco Bay Area Vendor Fairs. The Administrator shall analyze the progress toward achieving the annual overall goal and increase or reduce the use of contract-specific goals accordingly.

B. Publishing and Adopting the Annual Overall Goals (Section 26.45(g))

1. DBE Report. This DBE Report will be submitted to the AUTHORITY Board of Directors who will consider authorization for publicizing the proposed goal for public comment and adoption of the goal thereafter.

2. Publication of the Proposed Annual Overall DBE Goal. Pursuant to 49 CFR § 26.45(g), AUTHORITY will publish the proposed overall annual goal in general circulation and DBE-oriented media. The notice will include a statement that the methodology and proposed goal are available for inspection by the public for thirty (30) days from the date of publication. The notice will also include a statement that the AUTHORITY will accept public comments to the proposed goal and methodology for a period of forty-five (45) days from the date of publication, and it will provide instructions for the submission of comments.

Upon receipt of any public comments, the Administrator will prepare a summary report analyzing the public comments and recommending any modifications to the annual overall DBE goal or methodology and will furnish it to the CEO for review. If no comments are received that would substantially change the goals analysis, the results of the public comment period will be presented as an informational matter to the Board of Directors with no further action required.

3. Adoption of the Annual Overall DBE Goal. Following review of the DBE Report, the Board of Directors shall adopt an annual overall DBE goal for DBE participation which shall include a projection of portions of that goal that can be achieved through race-neutral and race-conscious measures.

C. Achieving the Annual Overall Goals (Section 26.51)

The AUTHORITY shall achieve the annual 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. The AUTHORITY intends to use race-neutral and gender-neutral methods to the maximum extent feasible to achieve its annual overall goals. 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 shall be considered race-neutral and gender-neutral DBE participation. In addition, the AUTHORITY will use the following measures as appropriate:

- a. Configuring 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 the AUTHORITY;
- b. Identifying 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. Assisting in overcoming limitations in bonding and financing;
- d. Providing technical assistance in orienting small businesses to public contract procedures, use of the Internet, and facilitating introductions to the AUTHORITY's and other U.S. DOT recipients' contracting activities;
- e. Providing outreach and communication programs on contract procedures and contract opportunities to ensure the inclusion of DBEs;
- f. Ensuring the distribution of the DBE Database to the widest feasible universe of potential prime contractors; and
- g. Providing business development assistance.

2. Contract-Specific Goals. The Board of Directors shall establish contract-specific DBE participation goals on particular prime contracts with subcontracting opportunities to the extent that the AUTHORITY cannot achieve its annual overall goals with race-neutral and gender-neutral measures. Where a contract-specific DBE goal has been established, the bidder or proposer must meet the contract-specific goal or demonstrate that it made sufficient good faith efforts to do so. A bidder shall be ineligible for contract award if it does not meet the goal or demonstrate sufficient good faith efforts.

The goal shall be established by the Board of Directors based upon a recommendation from the Executive Director substantiated by information furnished by the Administrator and Review Committee. 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. The AUTHORITY is not required to establish a contract-specific goal for every prime contract with subcontracting opportunities. For each contract involving subcontracting opportunities, the factors outlined below will be considered to determine whether a contract-specific goal should be established for the particular contract and, if so, what the percentage goal shall be:

- a. The projected portion of the annual overall goals that will be met by establishing contract-specific goals;
- b. The progress toward achieving the annual overall goals;
- 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 due to the fact that 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. The AUTHORITY shall award contracts to the lowest responsible bidder as required by the California Public Contracts Code Sections 20914 and 20916, where applicable. For such contracts, as well as for contracts awarded pursuant to a Request for Proposal procedure where the lowest responsible bidder standard does not apply, a bidder that fails to demonstrate that it achieved the contract-specific 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 of 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. The AUTHORITY 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. The AUTHORITY shall accept current certifications by the District, U.S. DOT and its agencies, the Small Business Administration, or other U.S. DOT federal financial assistance recipients.

c. Determination of Amount of DBE Participation. The Administrator shall review the total dollar value of the work 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, which is incorporated herein.

e. Bidder's Right to Administrative Reconsideration. 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 Administrator will notify the bidder in writing. 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 a recommendation for award of contract is presented to the Board of Directors or the CEO, depending on the size of the contract.

Within two (2) working days of being informed by the AUTHORITY that it is not responsive/responsible because it 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: Manager of Community Relations, San Francisco Bay Area Water Transit Authority 120 Broadway, San Francisco, CA 94111, and telephone number (415) 291-3377. The Review Committee shall provide the bidder with a written decision on reconsideration, explaining the basis for its determination. In the event that 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 CEO and for presentation to the Board of Directors, if applicable, at the time the contract award is considered. If the Board or the CEO 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 CEO on the award of contract, if such a decision is made, shall be final and binding on all parties, subject to compliance with the AUTHORITY'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. 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.

If the contract requires the submittal of a monthly truck document, the contractor will be required to submit documentation to the contract manager showing the Owner's name, California Highway Patrol CA Number, and the DBE certification number of the owner of the truck for each truck used during the month for which DBE participation will be claimed.

The contractor must request in writing to the AUTHORITY for approval the substitution of a DBE firm. The letter must include the names and addresses of the firms, the dollar amounts, and the reasons for the substitution. If the AUTHORITY approves the substitution, the AUTHORITY will notify both the contractor and the DBE firm being substituted the substitution and a procedure for written objection from the DBE subcontractor. If the contractor is to meeting the contract goal with this substitution, the contractor must provide the required good faith effort to the AUTHORITY for consideration.

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 the AUTHORITY signs with FTA or Caltrans on behalf of FHWA will include a nondiscrimination assurance from the AUTHORITY. U.S. DOT-assisted contracts that the AUTHORITY lets will include, as appropriate, the model contract provisions that are set forth in the current edition of the AUTHORITY's Standard Disadvantaged Business Enterprise Language/Forms Manual, available from the Administrator. The Administrator shall have discretion to modify the

provisions for particular contracts as needed, in consultation with the Attorney. These required contract provisions consist of:

- ◆ The AUTHORITY'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 29 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as 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 the AUTHORITY 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.
- ◆ The website address for the DBE directory identifying all firms eligible to participate as DBEs in the AUTHORITY'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 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

The AUTHORITY ensures that only DBE firms currently certified on the Caltrans' directory will participate as DBEs in our program.

VIII. MONITORING AND RECORDKEEPING (Sections 26.11 and 26.37)

A. Bidders List (Section 26.11)

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

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

The AUTHORITY will use this information to maintain and update its Bidders List.

B. Monitoring Payments to DBEs (Section 26.37)

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 the AUTHORITY or U.S. DOT. This reporting requirement is also extended to any certified DBE subcontractor.

The AUTHORITY 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.

The AUTHORITY 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)

The AUTHORITY will continue to report DBE participation and annual 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 agencies reflecting the DBE participation on the AUTHORITY's federally-assisted procurement activities. These reports will provide DBE participation information on the AUTHORITY's race-neutral and gender-neutral contracts; race-conscious contracts; and the combined DBE participation on all federally-assisted procurement activities.

D. Contract Remedies (Section 26.37)

The AUTHORITY will monitor compliance of its contractors on federally-assisted contracts with the requirements of the Regulations and the DBE Program. The AUTHORITY 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. PUBLIC PARTICIPATION AND OUTREACH EFFORTS (Sections 26.45 and 26.51)

The AUTHORITY's activities, managing public participation and outreach efforts, are directed at assisting the AUTHORITY to solicit public input to set annual overall DBE participation goals and meet AUTHORITY annual overall DBE goals.

In establishing annual overall DBE goals, the AUTHORITY will provide for public participation. This will include:

Prior to finalizing the Annual Overall Goals Analysis Report, the AUTHORITY will consult with U.S. DOT agencies, other U.S. DOT grantees, minority, women's and general contractor groups, community organizations, or other officials or organizations which 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 AUTHORITY's efforts to establish a level playing field for the participation of DBEs.

The AUTHORITY will publish an annual notice announcing its proposed annual overall goals, informing the public that the AUTHORITY's Annual Overall Goals Analysis Report is available for inspection during normal business hours at the DBE Program Office for a period of thirty (30) days, and that the AUTHORITY and the U.S. DOT will accept comments on the proposed goals for forty-five (45) days from the date of the notice. The notice will be distributed in general circulation media, local minority-focused media, and trade association publications.

The recipient 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

Organization Chart

May 15, 2008

