



Disadvantaged Business Enterprise Program
Final January 18, 2018

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POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The Santa Barbara County Association of Governments (referred to as “SBCAG” herein) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. SBCAG has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, SBCAG has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of SBCAG to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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

The Finance Manager has been delegated as the DBE Liaison Officer. In that capacity, the Finance Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by SBCAG in its financial assistance agreements with the DOT and with the California Department of Transportation (Caltrans).

SBCAG has disseminated this policy statement to the Board of Directors and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT- assisted contracts via our website sbcag.org and where appropriate by publishing this statement in general circulation media, available minority-focused media and trade association publications, to inform of SBCAG’s commitment to DBE and opportunities for contracting.

Marjie Kirn, Executive Director

Date

SUBPART A - GENERAL REQUIRMENTS

Section 26.1 Objectives

The objectives are found in the policy statement on the first page of this program.

Section 26.3 Applicability

SBCAG is the recipient of federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.

SBCAG is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definitions

The terms used in this program have the meanings defined in 49 CFR §26.5. Sec. 26.5 as listed below.

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

1. Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - a. One concern controls or has the power to control the other; or
 - b. A third party or parties controls or has the power to control both; or
 - c. An identity of interest between or among parties exists such that affiliation may be found.
2. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 16 01, et seq.).

Compliance means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit or airport program.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA). Caltrans means the California Department of Transportation.

Disadvantaged business enterprise or DBE means a for-profit small business concern--

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

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area that now comprises the State of Hawaii. Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii, which is a not-for-profit organization, chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the four-digit Standard Industrial Classification (SIC) code designation that best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site (www.ntis.gov/naics)

Primary recipient means a recipient that receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to this part applies.

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

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA means the United States Small Business Administration.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in Sec. 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are reputedly presumed to be socially and economically disadvantaged:
 - a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - c. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - e. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - f. Women;
 - g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

Section 26.7 Non-discrimination Requirements

SBCAG will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, SBCAG will 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 the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

SBCAG will report DBE participation to DOT as follows:

For projects funded by the Federal Transit Administration: We will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

For projects funded by the Federal Highway Administration: We will report DBE participation on a quarterly basis, using DOT form 4630.

For projects funded by the Federal Highway Administration and administered through Caltrans: We will report DBE participation on a bi-annual basis as required on the Uniform Reporting of DBE Awards/Commitments and payments. As a sub recipient SBCAG will cooperate with any grant reporting requirements set forth by the grantees.

Bidders List: 26.11(c)

SBCAG will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

We will collect this information in the following ways:

1. SBCAG will request prime contracts provide information of subcontractor that includes the required information.
2. A contract clause stating that prime bidders shall carry out applicable requirements of 40 CFR Part 26 in the award and administration of DOT-assisted contracts.

Section 26.13 Federal Financial Assistance Agreement

SBCAG has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

This language will appear verbatim in financial assistance agreements with sub-recipients.

SBCAG 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 SBCAG of its failure to carry out its approved program, the Department may impose sanction 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.).

Contract Assurance: 26.13b

SBCAG ensures that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.”

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since SBCAG could potentially receive grants from the Federal Transit Administration (FTA) of \$250,000 or more in planning capital and/or operating assistance in federal fiscal year 2017 and currently receives more than \$250,000 FHWA funds, SBCAG will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

SBCAG will continue to implement this program until SBCAG has established a new goal setting methodology or until significant changes to the DBE Program are adopted. SBCAG will provide to Caltrans a proposed overall goal and goal setting methodology and other program updates as required by them.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this program.

Section 26.25 DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer:

Martha Gibbs
Finance Manager
Santa Barbara County Association of Governments (SBCAG)
260 N. San Antonio Rd., Suite B
Santa Barbara, CA 93110
(805)961-8900
mgibbs@sbcag.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that SBCAG complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to

the Executive Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO does not have staff of to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyzes SBCAG's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Executive Director/SBCAG Board on DBE matters and achievement.
9. Participates in pre-bid meetings.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in California.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains SBCAG's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of SBCAG to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. We have made the following efforts to identify and use such institutions:

SBCAG utilized the following Federal Reserve website to identify minority-owned financial institutions:
<https://www.federalreserve.gov/releases/mob/>

To date we have identified the following such institutions:

COUMMUNITY CMRC BANK
AMERICAS UNITED BANK
EVERTRUST BANK

EASTERN INTL
CATHAY BANK
ROYAL BUSINESS BANK

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Section 26.29 Prompt Payment Mechanisms

SBCAG will include the following clause or equivalent in each DOT-assisted prime contract:

SBCAG shall require prime contractors and subcontractors to be paid timely no later than 10 days of

receipt of each progress payment as set forth in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-day is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Section 26.31 Directory

A DBE directory list the firm's name, address, phone number, date of most recent certification and the type of work the firm has been certified to perform as a DBE. This information is available on various websites. Attachment 2 contains information regarding Disadvantage Business Enterprises to which SBCAG refers interested persons.

Section 26.33 Overconcentration

SBCAG has not identified any types of work in DOT-assisted contracts that have an over-concentration of DBE participation. If in the future SBCAG identifies the need to address over-concentration, measures for addressing the over-concentration will be submitted to the District Local Assistance Engineer (DLAE) for approval.

Section 26.35 Business Development Programs

SBCAG does not have a business development or mentor-protégé program. If SBCAG identifies the need for such a program in the future, the rationale for adopting such a program and a comprehensive description of the program will be distributed for approval by Caltrans or DOT.

Section 26.37 Monitoring and Enforcement Mechanisms

SBCAG does not anticipate direct involvement in federal aid funded project construction. If this were to change, SBCAG will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. We will bring to the attention of the Department of Transportation (DOT) any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by requiring

reports from contractors using DBEs tallying actual payments to each DBE.

4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.39 Small Business Participation

As part of this SBCAG's annual outreach to DBE firms, we will encourage participation of small businesses to attend an annual workshops. The purpose is to educate the small business community of the upcoming opportunities to participate in SBCAG's contracts, how to find opportunities, review basic requirements, and resources to assist their participation in contract opportunities.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

SBCAG does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal established by SBCAG can be found in Attachment 4 to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f), SBCAG will submit its overall goal to the DOT on August 1 of each year. Before establishing the overall goal each year, the DBLEO shall review the participation of DBEs in all budgeted contracts utilizing U.S. DOT federal financial assistance. SBCAG will perform these reviews consistent with the prescribed methodology of its Federal-aid contracting program and attainments made towards achieving the goal to determine if adjustments to the overall DBE goal are warranted. This review will ascertain the availability of disadvantage and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and SBCAG's efforts to establish a level playing field for the participation of DBEs.

Following this review, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for review during normal business hours in our principal office for 30 days following the date of the notice. This notice will inform the public that SBCAG and the DOT will accept comments on the goals for 45 days from the date of the notice. We will publish this information on our website www.sbcag.org.

Our overall goal submission to the DOT will include a summary of the information and comments received during this public participation process and our responses.

The overall goal shall be expressed as a percentage of the total amount of DOT funds SBCAG anticipates expending within the overall goal period. SBCAG'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 SBCAG would expect, absent the effects of discrimination. SBCAG intends to meet those goals to the maximum extent feasible through the race neutral measures described herein.

SBCAG will begin using its overall goal once approval has been received by the DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

As a sub recipient SBCAG will cooperate with any grant reporting requirements set forth by the grantees.

Section 26.49 Transit Vehicle Manufacturers Goals

If DOT-assisted contract will include transit vehicle procurements. SBCAG will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26, Section 49.

SBCAG will direct the transit vehicle manufacturer to the subject requirements located on the web at: <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/transit-vehicle-manufacturers-tvms>

Bids and proposals will be accepted from Transit Vehicle Manufacturers that are on the Federal Transit Administration's (FTA) Eligible Transit Vehicle Manufacturer's List at the time of solicitation. This list can be found on the following website:

www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-tvms-list

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

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

Section 26.51(d-g) Contract Goals

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

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.) The contract work items will be compared with eligible DBE contractors willing to work on the project. A determination will also be made to decide which items are likely to be performed by a prime contractor and which ones are likely to be performed by the subcontractor(s). We will express our contract goals as a percentage of either the total amount of a DOT-assisted contract or the Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Guidance

concerting good faith efforts can be found in Attachment 6.

The Project Manager is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. The Project Manager will submit his/her determination to the DBELO for concurrence in writing.

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

Information to be submitted (26.53(b))

SBCAG treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

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

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Sample forms for demonstration of good faith efforts' can be found in Attachment 7.

Administrative reconsideration (26.53(d))

Within 10 days of being informed by SBCAG that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Marjie Kirn
Executive Director
Santa Barbara County Association of Governments (SBCAG)
260 N. San Antonio Rd., Suite B
Santa Barbara, CA 93110
(805)961-8900
mkirn@sbcag.org

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration

official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation, Caltrans or the FHWA.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

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

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Bid Specification:

The following is a sample of contract language that may be included in procurement documents:

DBE Requirements

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the SBCAG to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of ___ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in 49 CFR Part 26 (Attachment 8), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

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

SUBPART D - CERTIFICATION STANDARDS

Section 26.61 - 26.73 Certification Process

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

For information about the certification process or to apply for certification, firms should contact:

Caltrans
Office of Business & Economic Opportunity
Attn: Certification Unit
1823 14th Street
Sacramento, CA 95811

Or visit the following site: http://www.dot.ca.gov/hq/bep/business_forms.htm

Certification application forms and documentation requirements are available at the following website:

http://www.dot.ca.gov/hq/bep/business_forms.htm

SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

SBCAG utilizes the Unified Certification Program (UCP) administered by the State of California Department of Transportation (Caltrans). The UCP meets all of the requirement of this section. Caltrans maintains the UCP and updates the DBE firms daily. The UCP utilizes a database that is available on the Caltrans website for anyone to access to search for DBE firms. The website is located at:

http://www.dot.ca.gov/hq/bep/find_certified.htm

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

SBCAG will refer all requests for recertification of DBEs to California's Unified Certification Program.

"No Change" Affidavits and Notices of Change (26.83(j))

We require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with SBCAGs application for certification.

We also require all owners of all DBEs we have certified to submit, on the anniversary date of their

certification, a "no change" affidavit meeting the requirements of 26.83(j). The test of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have provided written notice to SBCAG under 26.83(j). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$16.6 million.

Section 26.85 Denials of Initial Requests for Certification

Application denial or decertification is subject to Caltrans Unified Certification Program requirements. For information, interested parties should contact the Analyst of the Day, Monday through Friday, 8:00 a.m. to 5:00 p.m., PST at (916)3241700 or email to: dbe.certification@dot.ca.gov.

Section 26.87 Removal of a DBE's Eligibility

For questions regarding removal or suspension of DBE certifications, firms should contact the Analyst of the Day, Monday through Friday, 8:00 a.m. to 5:00 p.m., PST at (916)3241700 or email to: dbe.certification@dot.ca.gov.

Section 26.89 Certification Appeals

Any firm or complainant may appeal California's Unified Certification Program's decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: (202) 366-4754
TTY: (202) 366-9696
Fax: (202) 366-5575

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

SUBPART F - COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, State, and Local law.

Notwithstanding any contrary provisions of State or Local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of SBCAG, Caltrans Office of Regional Planning (ORP), FHWA, FTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

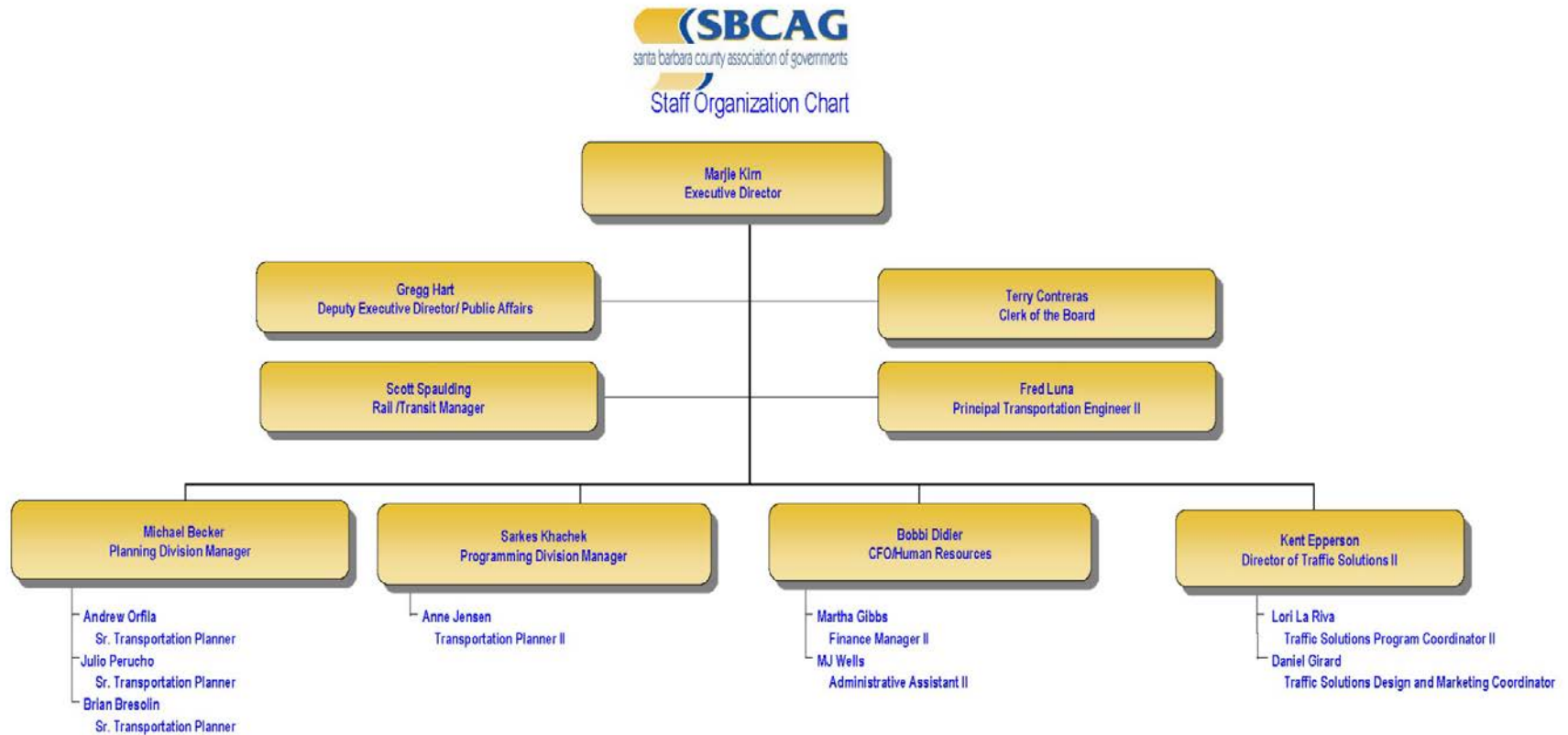
We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Final utilization of DBE participation will be reported to Caltrans ORP, FHWA, FTA or the DOT as required by existing, current and updated procedures.

ATTACHMENTS

- Attachment 1 Organizational Chart
- Attachment 2 DBE Directory
- Attachment 3 Monitoring and Enforcement Mechanisms
- Attachment 4 Overall Goal Calculation
- Attachment 5 Breakout of Estimated Race-Neutral & Race-Conscious Participation
- Attachment 6 Guidance Concerning Good Faith Efforts
- Attachment 7 Form 1 & 2 for Demonstration of Good Faith Efforts
- Attachment 8 Regulations: 49 CRR part 26

Attachment 1 - Organizational Chart



Attachment 2 - DBE Directory

For assistance locating the most current DBE Directory visit the following website maintained by the Unified Certification Program DBE Directory on the Caltrans Office of Business Economic Opportunity (OBE) website at www.dot.ca.gov/hq/bep

For assistance locating certified Small Business Enterprises, interested parties should visit to the State of California General Services Directory available at: <http://www.dgs.ca.gov/pd/Programs/OSDS.aspx>.

Attachment 3 -Monitoring and Enforcement Mechanisms

SBCAG has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Suspension or debarment proceedings pursuant to 49 CFR part 26
3. Enforcement action pursuant to 49 CFR part 31
4. Prosecution pursuant to 18 USC 1001.

Attachment 4 -Section 26.45: Overall Goal Calculation

Amount of Goal

SBCAG's overall goal for the federal fiscal year is: 4.8 % for FTA assisted contracting activity utilizing Federal Financial assistance, exclusive of FTA funds to be used for the purchase of transit vehicles. This overall goal is broken down into 1.1% race-conscious and 3.7% race-neutral components. This number was determined by using the methodology and goals calculated by Caltrans, Office of Regional Planning (ORP) to which we are sub-recipients. SBCAG has not received direct funding from the DOT and has very limited contract opportunities in which to award contracts to DBE's. If SBCAG were to become a direct recipient of Federal Financial assistance or contracting opportunities were to present themselves, SBCAG would use the goal setting methodology outlined below. Caltrans ORP details on goal setting can be found by following this link: <http://www.dot.ca.gov/drmt/docs/feddbe/trigoals.pdf>

Methodology used to Calculate Overall Goal

Step 1: 26.45(c)

Projecting Federally-Assisted Contract Expenditures for Goal Period.

In conjunction with the preparation and adoption of SBCAG's budget, the DBE Liaison Officer, in consultation with the appropriate divisions and departments responsible for contracting activities, 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 federal financial assistance for the goal period.

Step 2: 26.45(d)

Establishing a Base Figure

Once SBCAG defines its contracting opportunities for the goal period, SBCAG will establish a base figure following one of the methodologies, as an initial step in the goal setting process in accordance with 49 CFR Part 26.45.

SBCAG will determine a base figure of relative availability of DBEs by:

1. Calculating the number of DBEs within respective areas of need, as contained within similar local area agencies DBE directories, and dividing it by the number of all comparable representative business firms.
2. Utilizing the Census Bureau's County Business Pattern database to identify available DBEs within North American Industry Classification System codes.
3. Comparing the number of firms performing similar work within the same geographic area.
4. Weighting the resultant figure based on the amount of federal funds SBCAG is projected to award and/or expend on various industries.

Step 3: 26.45(e)

Adjusting the Base Figure

As a mandatory second step, SBCAG will adjust the base figure based on other local evidence which SBCAG determines relevant to its market, which may include, but is not limited to:

1. Demonstrated DBE capacity to perform work on SBCAG's contracting opportunities;
2. Real market conditions;
3. Disparity studies conducted within the jurisdiction; and
4. Other relevant factors, including:
 - a. The number, types and dollar value of contracting opportunities projected to be financed with federal funds, and to be awarded during the fiscal year.
 - b. The number of willing, ready and capable DBEs available to compete for such contracts.
 - c. Other recipients' results of goal attainment in similar contracting opportunities and markets, and the reasons for the level of attainment.
 - d. The methods used by SBCAG to increase DBE participation in U.S. DOT- assisted contracts.
 - e. The demographics and business activity of the geographical area in which SBCAG will solicit bids or proposals.

Public Participation

Prior to finalizing the overall DBE goal, SBCAG will conduct an internal review along with comparing information with like entities on the overall DBE goal and information concerning the availability of DBEs and non-DBEs and the effects of discrimination on opportunities for DBE to compete on SBCAG projects.

SBCAG will publish a notice of the proposed overall goal on the SBCAG website, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at SBCAG's principal office for 30 days following the date of the notice, and informing the public that SBCAG will accept comments on the goals for 45 days from the date of the notice.

SBCAG will submit the overall program goal to Caltrans ORP and the DOT as required by these agencies. The overall goal submission will include the goal (including the breakout of estimated race-neutral and race-conscious participations, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during this public participation process and our responses; and proof of publication of the goal on the SBCAG Website.

SBCAG will begin using our overall goal on October 1 of the specified year, unless we have received other instructions. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project. Our goal will remain effective for the duration of the three-year period established and approved by Caltrans ORP or the DOT.

Attachment 5 -Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious Participation

SBCAG has adopted 4.8% as the overall DBE goal, which then was broken down into 3.7% race-neutral and 1.1% race-conscious. SBCAG utilized the goal information used by Caltrans, Office of Regional Planning (ORP) establishing our breakout of this DBE goal to which we are a sub-recipient for Federal Financial assistance. Caltrans ORP detailed calculation of Race-Neutral & Race Conscious Participation can be found by following this link:

<http://www.dot.ca.gov/drrmt/docs/feddbbe/trigoals.pdf>

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

1. Contracts awards to the lowest bidder, encouragement of prime contractors to subcontract portion of the work that they might otherwise perform themselves.
2. Providing technical assistance and other support services to facilitate consideration of DBE's and other small businesses.
3. Seeking out DBE certified firms for RFP mailings.

SBCAG will adjust the breakout of the overall goal into race-neutral and race-conscious participation as needed to reflect actual DBE participation and will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

1. DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures.
2. DBE participation through a subcontract on a prime contract that does not carry a DBE goal.
3. DBE participation on a prime contract exceeding a contract goal.
4. DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

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

Form 1: Disadvantaged Business Enterprise (DBE) Utilization

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

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____ (Signature) _____ Title

Form 2: Letter of Intent

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

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

Affirmation

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

By _____
(Signature) (Title)

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

(Submit this page for each DBE subcontractor.)

Attachment 7- Guidance Concerning Good Faith Efforts

When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways.

1. The bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose.
2. Even if it does not meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part, which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

SBCAG also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

The following is a list of types of actions that you should consider as part of the bidder's good faith effort is to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

1. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

4. Negotiating in good faith with interested DBEs.
 - a. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - b. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
5. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractors standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
7. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

Attachment 8 -Regulations: 49 CFR Part 26

An electronic version of 49 CFR Part 26 regulation can be found on the U.S. Government Publishing Office (GPO) website at the following location:

<https://www.ecfr.gov/cgi-bin/text-idx?SID=7d57da4319c5a595f3174a4a0cf9944b&node=pt49.1.26&rgn=div5>