

**SONOMA-MARIN AREA RAIL TRANSIT DISTRICT**  
**DBE PROGRAM POLICY STATEMENT**

The Sonoma-Marín Area Rail Transit District (SMART) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. SMART has received or plans to receive Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, SMART has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of SMART to ensure that DBEs, as 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; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Community Outreach and Education Manager of SMART has been delegated as the DBE Liaison Officer. In that capacity, the Community Outreach and Education 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 SMART in its financial assistance agreements with the DOT.

SMART has disseminated this policy statement to the SMART Board and all of the relevant components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform, or are anticipated to perform, work for us on DOT-assisted contracts via a Symposium for Contractors, Engineers, Architects, Vendors and others interested in SMART's capital projects, held in Petaluma, California on June 8, 2008, publication on the SMART website, the Marin Independent Journal and the Santa Rosa Press Democrat.



Lillian Hames  
General Manager  
Sonoma-Marín Area Rail Transit District

July 16, 2009

Date



## **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

*Questions or comments relating to the DBE Program should be directed to:*

Chris Coursey  
Community Outreach and Education Manager  
Sonoma-Marin Area Rail Transit  
750 Lindero Street, #200  
San Rafael, California 94901  
415.226.0880  
[ccoursey@sonomamarintrain.org](mailto:ccoursey@sonomamarintrain.org)

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## **1. GENERAL REQUIREMENTS**

### **a) *Objectives***

The objectives are found in the policy statement before the cover page of this program.

### **b) *Applicability***

SMART is or plans to be 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.

### **c) *Definitions***

SMART will adopt the definitions contained in Section 26.5 of 49 Code of Federal Regulations Part 26 (“49 CFR Part 26”) for this program.

### **d) *Non-discrimination Requirements***

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

### **e) *Record Keeping Requirements***

#### **1) Reporting to DOT**

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.

#### **2) Bidders List**

SMART will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its 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 by requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts, providing a notice in all solicitations, and otherwise widely disseminate,

request to firms quoting on subcontracts to report information directly to the recipient.

f) ***Federal Financial Assistance Agreement***

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

1) Assurance

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

SMART 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 SMART of its failure to carry out its approved program, the DOT 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.).

2) Contract Assurance

We will ensure 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.

**2. ADMINISTRATIVE REQUIREMENTS**

a) ***DBE Program Updates***

Since SMART has received or plans to receive a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, we 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.

b) ***Policy Statement***

The Policy Statement is elaborated on the page preceding this program.

c) ***DBE Liaison Officer (DBELO)***

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

Chris Coursey  
Community Outreach and Education Manager  
Sonoma-Marín Area Rail Transit  
750 Lindaro Street, #200  
San Rafael, California 94901  
415.226.0880  
ccoursey@sonomamarintrain.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that SMART complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the General Manager of SMART 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 has a staff of one to assist in the administration of the program. The duties and responsibilities include, but are not limited to, 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 SMART's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the General Manager and Board on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance, as practicable.

11. Plans and participates in DBE training seminars.
12. 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 SMART's updated directory on certified DBEs.

d) ***DBE Financial Institutions***

It is the policy of SMART 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 contracts to make use of these institutions.

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

e) ***Prompt Payment Mechanisms***

SMART will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from SMART. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of SMART. This clause applies to both DBE and non-DBE subcontracts. Any failure to comply with this section by prime contractor shall be considered a breach of this Agreement, subject to the provisions of [Section \_\_\_\_] of this Agreement, [relating to Termination Provisions]. In addition, the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

f) ***Directory***

California's Uniform Certification Program maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. Currently, this Directory is revised daily.

The Directory available online at [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm). Further information about California's Uniform Certification Program may be found at <http://www.dot.ca.gov/hq/bep/ucp.htm>.

g) ***Overconcentration***

SMART has not identified that overconcentration exists in the types of work that DBEs perform on SMART projects.

h) ***Business Development Programs***

SMART has not established a business development program.

i) ***Monitoring and Enforcement Mechanisms***

SMART 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 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 Section 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the basic 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 via a reporting mechanism.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

**3. GOALS, GOOD FAITH EFFORTS, AND COUNTING**

a) ***Set-asides or Quotas***

SMART does not use quotas in any way in the administration of this DBE Program.

b) ***Overall Goals***

A description of the methodology to calculate the overall goal and the goal calculations 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), SMART will submit its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, SMART will consult with the Chamber of Commerce and the Builders Exchange for Sonoma and Marin Counties, the Sonoma County Alliance, and the Caltrans Office of Civil

Rights to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and SMART efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals on the SMART website, the Marin Independent Journal and the Santa Rosa Press Democrat, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at SMART's principal office for 30 days following the date of the notice, and informing the public that SMART and DOT will accept comments on the goals for 45 days from the date of the notice. Normally, we will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from 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.

c) ***Transit Vehicle Manufacturers Goals***

SMART 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 this section. Alternatively, SMART may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the transit vehicle manufacturer complying with this element of the program.

d) ***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.

e) ***Contract Goals***

SMART may use contract goals to meet any portion of the overall goal SMART 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. SMART will 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.).

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

f) ***Good Faith Efforts Procedures***

1) Demonstration of good faith efforts

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. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26.

Chris Coursey 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.

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

2) Information to be submitted

SMART 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:

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

3) Administrative reconsideration

Within 10 business days of being informed by SMART 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: Nina West, 750 Lindaro Street, #200, San Rafael, California 94901, (415) 226-0880, [info@sonomamarintrain.org](mailto:info@sonomamarintrain.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 so. 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.

**4) Good Faith Efforts when a DBE is replaced on a contract**

SMART 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.

**5) Sample Bid Specification:**

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 SMART 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 Appendix A, 49 CFR Part 26 (Attachment 1), 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.

When a contract goal is established pursuant to SMART's DBE Program, bidders/offerors must complete the form found at Attachment 6 in its bid for construction, response to requests for proposals for architectural/engineering and/or other professional services, as applicable. A bid specification is required only when a contract goal is established.

g) *Counting DBE Participation*

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

**4. CERTIFICATION STANDARDS**

a) *Certification Process*

In the absence of CUCP certification, discussed below, SMART 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. We will make our certification decisions based on the facts as a whole.

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

Caltrans Civil Rights  
Attn: Certification Unit  
1823 14th Street,  
Sacramento, CA 95811  
(866) 810-6346 or (916) 324-1700  
[http://www.caltrans.ca.gov/hq/bep/business\\_forms.htm](http://www.caltrans.ca.gov/hq/bep/business_forms.htm)

The uniform certification application forms and documentation requirements are found in Attachment 7 to this program.

**5. CERTIFICATION PROCEDURES**

a) *Unified Certification Programs*

SMART adopts the California Unified Certification Program (CUCP) procedures administered by the Certifying Agencies of the CUCP. The CUCP will meet all of the requirements of this section. The following is a description of the CUCP (as provided on the CUCP website, located at <http://www.californiaucp.com/index.html>):

The California Unified Certification Program (CUCP) went into effect on January 1, 2002. It is a "One-Stop Shopping" certification

procedure that eliminates the need for Disadvantaged Business Enterprise (DBE) firms to obtain certifications from multiple agencies within the State.

The CUCP is charged with the responsibility of certifying firms and compiling and maintaining a single Statewide database of certified DBEs, pursuant to 49 CFR Part 26. The Database is intended to expand the use of DBE firms by maintaining complete and current information on those businesses and the products and services they can provide to all U.S. DOT grantees in California.

The CUCP has established two regional DBE certification clusters throughout the state, designated by geographical boundaries to effectively facilitate statewide DBE certification activities.

The CUCP certifying agencies are responsible for certifying DBE firms. It is not necessary to apply for DBE certification at more than one agency. If your firm meets the General Criteria for DBE certification as provided on the Application Package, please submit your completed application, along with the requested documentation, to one of the Certifying Agencies serving the county where your firm has its principal place of business.

b) *Procedures for Certification Decisions*

1) Re-certifications

We will review the eligibility of DBEs to make sure that they will meet the standards of Subpart E of Part 26. We will complete this review no later than five years from the most recent certification date of each firm.

For firms that we have certified or reviewed and found eligible under Part 26, we will again review their eligibility every five years. These reviews may include the following components: filling out a new application that complies with Part 26, performing on-site visits for firms in SMART's local area, and reviewing qualifications, equipment and work history of the firm.

2) "No Change" Affidavits and Notices of Change

To the extent not required by the CUCP, 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 CUCP's application for certification. We also require all owners of all DBEs we have certified to submit, on each 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 SMART 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.

We require DBEs to submit with this affidavit documentation of the firm's size and gross receipts, if they are not previously certified through the CUCP.

We will notify all currently SMART-certified DBE firms of these obligations by United States mail at least 30 days prior to the firm's DBE certification anniversary date. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

c) ***Denials of Initial Requests for Certification***

If we deny a firm's application or decertify it, it may not reapply until 12 months have passed from our action.

d) ***Removal of a DBE's Eligibility***

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87. Attachment 8 to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, we have determined that the General Manager will serve as the decision-maker in de-certification proceedings. We have established an administrative "firewall" to ensure that the DBE Liaison Officer will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

e) ***Certification Appeals***

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation  
Office of Civil Rights Certification Appeals Branch  
400 7<sup>th</sup> Street, SW  
Room 2104  
Washington, D.C. 20590

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).

## **6. COMPLIANCE AND ENFORCEMENT**

### ***a) 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.

#### **1) 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 SMART 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 states in the schedule of DBE participation.

**Attachment 1**  
**Organizational Chart**

Board of Directors

Charles McGlashan – Chairman, SMART Board of Directors, Marin County Board of Supervisors

Judy Arnold - Marin County Board of Supervisors

Al Boro - Mayor of the City of San Rafael

Peter Breen - San Anselmo City Council

Madeline Kellner - Novato City Council

Valerie Brown - Sonoma County Board of Supervisors

Debora Fudge - Vice Chair, SMART Board of Directors, Windsor City Council

Carol Russell - Cloverdale City Council

Mike Kerns - Sonoma County Board of Supervisors

Jake Mackenzie - Rohnert Park City Council

Barbara Pahre - GGBHTD Board

Jim Eddie - GGBHTD Board

General Manager

Lillian Hames

DBE Liaison Officer/Community Outreach and Education Manager

Chris Coursey

## **Attachment 2**

### **DBE Directory**

See the CUCP directory, found at <http://www.dot.ca.gov/ucp/GetLicenseForm.do>

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

### **Attachment 3**

#### **Monitoring and Enforcement Mechanisms**

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

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to California Civil Code §3300, et seq.;
3. Any other enforcement mechanism in law or equity allowable in California.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

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

## **Attachment 4**

### **Overall Goal Calculation**

#### **Amount of Goal**

SMART's overall DBE goal for FY 2010 is to expend 13.5% of the federal financial assistance in DOT-assisted contracts on DBE participation, exclusive of FTA funds to be used for the purchase of transit vehicles.

#### **Methodology used to Calculate Overall Goal**

##### **Step 1: Base Figure for Relative Availability of DBEs:**

Section 26.45(c)(3) states that determining a base figure for the relative availability of DBEs may be accomplished by using data from a disparity study. In addition, guidance offered by the General Counsel of the United States Department of Transportation indicated that individual recipients may rely upon statewide disparity studies conducted in cooperation with transit recipients rather than conducting their own study, in order to reduce the costs that would be involved if each recipient conducted its own separate study. *See* United States Department of Transportation Official Questions and Answers (Q&A's) DBE Program Regulation (49 CFR 26), *available at* <http://www.osdbu.dot.gov/DBEProgram/dbeqna.cfm>.

Given the thoroughness and well-reasoned methodology of the Availability and Disparity Study, issued by the California Department of Transportation on June 29, 2007 (the "Study"), and its specific applicability to transit-related DBEs in California, SMART finds it reasonable and prudent to adopt 13.5% as the Base Relative Availability Figure for Step 1. *See* Section II, Page 10 of the Study, *available at* [http://www.dot.ca.gov/hq/bep/study/disparity\\_study.htm](http://www.dot.ca.gov/hq/bep/study/disparity_study.htm). While SMART acknowledges that this Study was performed with respect to Federal Highway Administration projects, SMART considers such projects substantially similar to projects SMART may have with the Department of Transportation.

This base figure of 13.5% from the Study is an aggregate, dollar-weighted availability statistic, adjusted for net worth limits and anecdotal information. The dollar weighting took into account the type of work, contract role, location and size of work involved in federally funded projects that would go to minority- and women-owned firms, if such firms received the same amount of work as similarly-situated majority-owned firms available for such work.

To test this figure for SMART's local area, SMART reviewed U.S. Census Bureau data for 2006 County Business Patterns (NAICS) and compared it against the CUCP data for DBEs. This figure is considered informative, but not reliable, as will be discussed below.

The market area for the purposes of this study is the area in which a substantial majority of the contractors and subcontractors with which SMART expects to do business are located. SMART considers its market area for these purposes to include the eight county regions of Alameda County, Contra Costa County, Lake County, Marin County, Napa County, San Francisco County, Solano County and Sonoma County. Please note that while Lake County is considered to be part of SMART's service area, the Lake

County results of the SMART study relating to Lake County were excluded due to aberrant results, further explained below.

Thus, examining the seven county region of Alameda County, Contra Costa County, Marin County, Napa County, San Francisco County, Solano County and Sonoma County resulted in a 5.80%, 23.31% and 9.87% DBE availability for construction, engineering and architectural services, respectively. The weighted average of these numbers is 7.33%. This means that, of all construction, engineering and architectural service firms counted in the 2006 County Business Patterns survey, only 7.33% are registered with the CUCP. Please refer to the attached spreadsheet for more information.

This number is much lower than the Caltrans 13.5% resulting from the Study, but even though this data is the most refined raw data available to SMART at this time, this figure provides inaccurate results for the following reasons:

- (1) The calculation compares recent data with 2006 data. The year 2006 is the most recent data available for 2006 County Business Patterns, but CUCP data is updated daily. Thus, the comparisons are not concurrent in time, and business that enter or exit the market may be captured in one report but not the other. This is best illustrated by the Lake County results, which indicated that there are more certified DBE engineering firms in Lake County (13) than number of total engineering firms in Lake County (7), with the result that 185% of engineering firms in Lake County are DBE firms -- impossibility.
- (2) The results fail to take into account anecdotal information, which is significant. As shown in the Study's telephonic interviews, most non-certified minority- or women-owned firms had not sought certification and were unfamiliar with certification requirements, even though the CUCP went into effect on January 1, 2002. Further, some interviewees did not know the DBE certification process existed. *See* Section II, Page 2 of the Study.
- (3) The raw data provided by the U.S. Census Bureau and the CUCP does not weight the firms for expected contract dollars spent.

Though the Study pertains to a much wider region than the SMART market area, SMART finds that the difference in DBE results would be negligible. First, the General Counsel of the United States Department of Transportation indicated that individual recipients may rely upon statewide disparity studies conducted in cooperation with transit recipients (such as Caltrans). Second, the Study specifically found that "[b]ecause most firms that reported qualifications and interest in local government also indicated qualifications and interest in Caltrans work, there are no material differences in results for these segments of the market." *See* Section II, Page 5 of the Study.

In sum, SMART finds that the 13.5% base DBE relative availability figure is likely the most accurate data available and adopts this figure as its baseline.

## **Step 2: Adjustments to the Base DBE Relative Availability Figure**

After establishing the base DBE relative availability level in Step 1, SMART reviewed and assessed other known relevant evidence to determine what additional

adjustments, if any, were needed to more narrowly tailor the base goal to SMART's market area and contract program. Because SMART has no prior experience with federally funded projects, insufficient information exists for SMART to refine its goal based upon past participation at this time.

In the future, SMART may adjust its overall goal upward or downward to account for differences in DBE participation or market differences.

<b>SONOMA-MARIN AREA RAIL TRANSIT AVAILABILITY STUDY</b>								
<b>CENSUS &amp; UDBE PROGRAM DATA</b>	<b>Alameda</b>	<b>Contra Costa</b>	<b>Marin</b>	<b>Napa</b>	<b>San Francisco</b>	<b>Solano</b>	<b>Sonoma</b>	<b>Total</b>
<b>Construction</b>								
Total Construction Establishments (1)	2,962	2,435	1,081	4,026	1,631	808	2,094	15,037
Construction DBEs (2)	167	137	128	93	158	105	84	872
Percent DBE of Total	5.64%	5.63%	11.84%	2.31%	9.69%	13.00%	4.01%	5.80%
<b>Engineering</b>								
Total Engineering Establishments (1)	420	332	75	31	263	50	133	1304
Engineering DBEs (2)	52	47	43	36	59	33	34	304
Percent DBE of Total	12.38%	14.16%	57.33%	116.13%	22.43%	66.00%	25.56%	23.31%
<b>Architectural Services</b>								
Total Architectural Establishments (1)	198	88	80	17	390	17	71	861
Architectural DBEs (2)	16	13	11	12	16	7	10	85
Percent DBE of Total	8.08%	14.77%	13.75%	70.59%	4.10%	41.18%	14.08%	9.87%
<b>Weighted average of all DBEs available</b>								<b>7.33%</b>
(1) Source: U.S. Census Bureau, 2006 County Business Patterns (NAICS). This represents the most recent data available.								
(2) Source: California Unified Certification Program search results of May 21, 2009.								
Note: Lake County was additionally studied, but because of its aberrant results, the results have been excluded. Utilizing Lake County statistics would have provided for a 7.48% weighted average of all DBEs available.								

## **Public Participation**

We published our goal information in these publications:

- SMART website (as of July 17, 2009),
- Marin Independent Journal (July 16, 2009), and
- Santa Rosa Press Democrat (July 17, 2009)

We received comments from these individuals or organizations:

[TO COME]

Summaries of these comments are as follows:

[TO COME]

Our responses to these comments are:

[TO COME]

## **Attachment 5**

### **Breakout of Estimated Race-Neutral & Race Conscious Participation**

SMART will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation, as required by Section 26.51(a).

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

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
- (2) Providing technical assistance and other services;
- (3) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (4) Providing access to services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency; and
- (5) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

We estimate that, in meeting our overall goal of 13.5%, we will obtain 6.75% from race-neutral participation and 6.75% through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation:

Statistics provided the Study, as well as an Availability and Utilization Study issued by the San Francisco Bay Area Rapid Transit District on April 2009 (the "BART Study"), suggests that race-neutral-only programs fail to provide the results necessary to address the significant disparity found between the percent of available contractors and subcontractors from DBE firms and the percent of contract dollars awarded to such groups. Thus, SMART adopts the results and recommendations of the Study as its benchmark for its first year of setting its goals.

In order to ensure that our DBE Program will be narrowly tailored to overcome the effects of discrimination, if we use contract goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes,

but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

We will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

**Attachment 6**

**Forms 1 & 2 for Demonstration of Good Faith Efforts**

[Forms 1 and 2 should be provided as part of the solicitation documents.]

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

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

\_\_\_\_\_ The bidder/offeror is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract.

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

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

**FORM 2: LETTER OF INTENT**

Name of bidder/offeror's firm: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

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

**Affirmation**

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

By \_\_\_\_\_

Title \_\_\_\_\_

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

(Submit this page for each DBE subcontractor.)

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

The certification application forms for the CUCP are found at:

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

This application package includes an affidavit of personal net worth.

## **Attachment 8**

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

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

#### Ineligibility complaints

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

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

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

#### Recipient-initiated proceedings

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

#### DOT directive to initiate proceeding

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

The concerned operating administration must provide SMART and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

In such an event, SMART will immediately commence and prosecute a proceeding to remove eligibility as provided below.

### Hearing

When SMART notifies a firm that there is reasonable cause to remove its eligibility, as provided in paragraph herein, SMART will give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

In such a proceeding, SMART bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

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

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

### Separation of functions

SMART will ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

The decisionmaker must be an individual who is knowledgeable about the certification requirements of the DBE Program and this part.

### Grounds for decision

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

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

- A documented finding that SMART's determination to certify the firm was factually erroneous.

#### Notice of decision

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

#### Status of firm during proceeding

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

#### Effects of removal of eligibility

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

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

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

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

#### Availability of appeal

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

**Attachment 9**  
**Regulations: 49 CFR Part 26**

Please refer to: <http://www.fhwa.dot.gov/HEP/49cfr26.htm>