AGENDA

PENINSULA CORRIDOR JOINT POWERS BOARD

Bacciocco Auditorium, 2nd Floor
1250 San Carlos Avenue, San Carlos CA 94070

July 7, 2016 – Thursday 10:00 a.m.

1. Pledge of Allegiance
2. Call to Order/Roll Call
3. Public Comment
   Public comment by each individual speaker shall be limited to two minutes
4. Consent Calendar
   Members of the public or Board may request that an item under the Consent Calendar be considered separately
   a) Approval of Minutes of June 2, 2016
   b) Acceptance of Statement of Revenues and Expenses for May 2016
   c) Rejection of All Bids Received for the Provision of California Air Resources Board Ultra Low-Sulfur Diesel Fuel and Fuelling Services
   d) Award of Contract to Carl Warren & Company for Public Liability Claims Administration Services for an Estimated Aggregate Cost of $251,000 for a Five-Year Term
5. Chairperson’s Report
6. Report of the Citizens Advisory Committee
7. Report of the Executive Director
   a) Caltrain Modernization Update
8. Award of Contract to Balfour Beatty Infrastructure, Inc. for Design-Build Services for Electrification of the Railroad Between San Jose and San Francisco for a Not-to-Exceed Amount of $696,610,558
9. Award of Contract to Stadler US, Inc for Procurement of Electric Multiple Unit Vehicles for a Not-to-Exceed Amount of $550,899,459
10. Approval of an Agreement with the California High-Speed Rail Authority to Secure State Funding for the Peninsula Corridor Electrification Project

Note: All items appearing on the agenda are subject to action by the Board. Staff recommendations are subject to change by the Board.
11. Authorize Execution and Submission of an Allocation Request for $39.4 Million in Regional Measure 1 and Regional Measure 2 Funds with the Metropolitan Transportation Commission for the Peninsula Corridor Electrification Project

RESOLUTION

12. Ratification of Payment of an Advanced Deposit to Rail Transportation Services Corporation in the Amount of $162,000 to Secure the Ability to Lease Eight F 40 Locomotives

RESOLUTION


INFORMATIONAL

14. Adopt the Revised Disadvantaged Business Enterprise Program

RESOLUTION

15. Authorize an Increase in Expenditure Authority by $2 Million to Reimburse Pacific Gas and Electric for Design and Oversight Services in Support of the Peninsula Corridor Electrification Project

RESOLUTION

16. Authorize Consensual Termination of Agreements Relating to Leveraged Lease Transactions

RESOLUTION

17. 25th Avenue Grade Separation Update

INFORMATIONAL

18. Communications-Based Overlay Signal System/ Positive Train Control Project Update

INFORMATIONAL

19. Legislative Update

INFORMATIONAL

20. Correspondence

21. Board Member Requests

22. Date/Time of Next Regular Meeting: Thursday, August 4, 2016, 10 a.m. at San Mateo County Transit District Administrative Building, Bacciocco Auditorium, 2nd Floor, 1250 San Carlos Avenue, San Carlos, CA 94070

23. General Counsel Report
c) Closed Session: Conference with Real Property Negotiators
   Joan L. Cassman, General Counsel, Elizabeth Scanlon, Manager, Caltrain Planning, pursuant to Government Code Section 54956.8:
   Under negotiation: Price and terms of contract.

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<thead>
<tr>
<th>Property Location</th>
<th>Owner</th>
<th>APN</th>
<th>JPB Parcel #</th>
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<tbody>
<tr>
<td>150 Charter Street, Redwood City, CA 94063</td>
<td>Ideal Charter Properties, LLC</td>
<td>054-112-160</td>
<td>JPB-SM2-0134-1A</td>
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<td>JPB-SM2-0134-2A</td>
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<td>2485 El Camino Real, Redwood City, CA 94063</td>
<td>Dayton Hudson Corp/Target Corp</td>
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<td>2545 El Camino Real, Redwood City, CA 94061</td>
<td>Regency Centers</td>
<td>054-112-190</td>
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<td>JPB-SM2-0136-2A</td>
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<td>201 and 205 Dumbarton Avenue, Redwood City, CA 94063</td>
<td>Caballero Family Trust</td>
<td>054-201-490</td>
<td>JPB-SM2-0308-1A</td>
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<td>200 Dumbarton Avenue, Redwood City, CA 94063</td>
<td>Redwood Apartments</td>
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<td>Westside Avenue, Redwood City, CA 94063</td>
<td>Del Rio Trust</td>
<td>054-201-550</td>
<td>JPB-SM2-0311-1A</td>
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d) Closed Session: Conference with Real Property Negotiators
   Joan L. Cassman, General Counsel, Brian W. Fitzpatrick, Manager, Real Estate and Property Development, and Gary Cardona, Senior Real Estate Officer, pursuant to Government Code Section 54956.8:
   Under negotiation: Price and terms of contract.

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<tr>
<th>Property Location</th>
<th>Owner</th>
<th>APN</th>
<th>JPB Parcel #</th>
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<tr>
<td>101 E. 25th Avenue, San Mateo, CA 94403</td>
<td>Bay Meadows Real Estate, LLC</td>
<td>039-081-020</td>
<td>JPB-SM-0033</td>
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<tr>
<td>2825 S. El Camino Real, San Mateo, CA 94403</td>
<td>Nathaniel Schmelzer Trust</td>
<td>039-351-110</td>
<td>JPB-SM-0043</td>
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<tr>
<td>2833 S. El Camino Real, San Mateo, CA 94403</td>
<td>UM-RO Enterprises, Inc.</td>
<td>039-351-120</td>
<td>JPB-SM-0044</td>
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<td>2837 S. El Camino Real, San Mateo, CA 94403</td>
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<td>(SBE 7775-41-1)</td>
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<td>JPB-SM-0046</td>
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24. Adjourn
INFORMATION FOR THE PUBLIC

All items appearing on the agenda are subject to action by the Board. Staff recommendations are subject to change by the Board.

If you have questions on the agenda, please contact the JPB Secretary at 650.508.6242. Agendas are available on the Caltrain website at www.caltrain.com. Communications to the Board of Directors can be e-mailed to board@caltrain.com.

Location, Date and Time of Regular Meetings
Regular meetings are held at the San Mateo County Transit District Administrative Building located at 1250 San Carlos Avenue, San Carlos, one block west of the San Carlos Caltrain Station on El Camino Real, accessible by SamTrans bus Routes ECR, FLX, 260, 295 and 398. Additional transit information can be obtained by calling 1.800.660.4287 or 511.

The JPB meets regularly on the first Thursday of the month at 10 a.m. The JPB Citizens Advisory Committee meets regularly on the third Wednesday of the month at 5:40 p.m. at the same location. Date, time and place may change as necessary.

Public Comment
If you wish to address the Board, please fill out a speaker’s card located on the agenda table and hand it to the JPB Secretary. If you have anything that you wish distributed to the Board and included for the official record, please hand it to the JPB Secretary, who will distribute the information to the Board members and staff.

Members of the public may address the Board on non-agendized items under the Public Comment item on the agenda. Public testimony by each individual speaker shall be limited to two minutes and items raised that require a response will be deferred for staff reply.

Accessibility for Individuals with Disabilities
Upon request, the JPB will provide for written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. Please send a written request, including your name, mailing address, phone number and brief description of the requested materials and a preferred alternative format or auxiliary aid or service at least two days before the meeting. Requests should be mailed to the JPB Secretary at Peninsula Corridor Joint Powers Board, 1250 San Carlos Avenue, San Carlos, CA 94070-1306; or emailed to board@caltrain.com; or by phone at 650.508.6242, or TDD 650.508.6448.

Availability of Public Records
All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at 1250 San Carlos Avenue, San Carlos, CA 94070-1306, at the same time that the public records are distributed or made available to the legislative body.
Chair Perry Woodward called the meeting to order at 10:02 a.m. and led the Pledge of Allegiance.

PUBLIC COMMENT

Andy Chow, Redwood City, said there will be a big decision in Santa Clara County regarding a transportation expenditure, which will affect Caltrain. He has concerns about Santa Clara Valley Transportation Authority’s (VTA) proposal and possible impacts. Caltrain is committing $2 billion to electrify, and VTA is proposing $1 billion for grade separations and improvements to Caltrain. There is no commitment from anyone that Caltrain will run at a transit frequency, such as every 15 minutes like Bay Area Rapid Transit (BART). If more than $3 billion will be spent to upgrade Caltrain, voters should have the expectation that Caltrain will run every 15 minutes. He asked why there is a plan to build a duplicative rail line, which will be BART, between Santa Clara and San Jose. This portion will consume $7 to $13 million per year in operating cost because of duplicate operation.

Director Adrienne Tissier arrived at 10:06 a.m.

Mike Brady said the JPB is trying to get $600 million from Proposition 1A for electrification, but needs $1.2 billion. The JPB never submitted a first funding plan to the Legislature, unlike the Central Valley, which could get the money if they satisfy the other requirements. The JPB is in the process of paralyzing the peninsula because 20 trains per hour will cross 47 intersections between San Francisco and San Jose. Crossing arms will come down every three minutes and traffic will be worse. For years the JPB and California High-Speed Rail Authority (CHSRA) have told the residents of the peninsula that they have all the necessary agreements to build high-speed rail. Union Pacific (UP) has said the JPB and CHSRA do not have their permission to use high-speed rail. He asked what the JPB is doing about it. He said UP will insist on giant concrete walls along the corridor if they ever give permission to use high-speed rail. The walls will wreck the plans to observe the right of way.

Roland Lebrun, San Jose, said there was only one engine failure in May. There is no way to be proactive about this $2 billion project. The Board needs multiple subcommittees and one technical advisory committee that are open to the public to alert Board members of issues before items come before the Board for action. He said
presentations are required to be available to the public 72 hours before the Board meeting per the Brown Act.

Jeff Carter, Millbrae, said crossing gates going down every three minutes is no different than cars stopping for stop lights every 90 seconds. This is not a valid argument to complain about gate down times.

CONSENT CALENDAR
a) Approval of Minutes of April 7, 2016
b) Approval of Minutes of May 5, 2016
c) Acceptance of Statement of Revenues and Expenses for March 2016
d) Acceptance of Statement of Revenues and Expenses for April 2016
e) Authorize Execution of Contracts of More Than $100,000 for Information Technology License Renewals, Maintenance Services and Professional Services for Fiscal Year (FY) 2017 for an Aggregate Not-to-Exceed Amount of $500,000
f) Authorize Execution of Contracts for Technology Related Products and Services to Vendors Under Cooperative Purchasing Programs for FY2017 for an Aggregate Not-to-Exceed Amount of $1 Million

Public Comment
Roland Lebrun, San Jose, said the Statement of Revenues and Expenses for March 2016 shows the JPB did not use its reserves year to date mostly due to direct savings on fuel. This is true because the JPB is on target for over budgeting fuel by $10 million. The Statement of Revenues and Expenses for April 2016 shows the reserves depleted by $15 million between March and April. He asked for explanation.

Motion/Second: Tissier/Cisneros
Ayes: Cisneros, Cohen, Gee, Guilbault, Peralez, Ramos, Tissier, Yeager, Woodward

CHAIRPERSON’S REPORT
Chair Woodward said Citizens Advisory Committee (CAC) applications are due June 3.

REPORT OF THE CAC
Jonathan Berk, CAC Member, said:
• The CAC is happy with the progress of the Customer Experience Taskforce.
• When Caltrain reports late trains, they regard anything within five minutes on time. At most, trains that are one minute late should be reported late.
• Budgeted operating revenues went up by the same amount as expenses and it was not clear in the explanation why that is.

REPORT OF THE EXECUTIVE DIRECTOR
Proclamation Declaring June 16, 2016 as National Dump the Pump Day
Jeremy Lipps, Social Media Officer, said June 16 is the 11th Annual Dump the Pump event, which is a nationwide campaign to promote public transit use and get people out of their cars. The JPB will use this opportunity to show their appreciation for the riders and thank them for using transit.

Motion/Second: Tissier/Cisneros
Ayes: Cisneros, Cohen, Gee, Guilbault, Peralez, Ramos, Tissier, Yeager, Woodward
Caltrain Modernization (CalMod) Update
Jim Hartnett, Executive Director, said:

- Staff is working towards a recommendation for the July JPB meeting for a Limited Notice to Proceed (LNTP) for both the design build and vehicle contracts. The LNTP time period is planned to go through March 2017. The recommendation would be subject to the CHSRA approving the $600 million agreement and the Seven-Party Supplemental Memorandum of Understanding (MOU) for $113 million. CHSRA is currently scheduled to vote on those agreements in August.
- The Federal Transit Administration Core Capacity full funding grant agreement is planned for December 2016.
- The seven parties of the MOU have committed to provide additional funding sources to the project. In that agreement, there is approximately $210 million identified and committed to from the various parties. The CSHRA will approve the MOU at their August meeting.
- There is a bilateral agreement being discussed with CHSRA that will cover the full CHSRA commitment for the $713 million, $600 million from the Proposition 1A funds and an additional $113 million. Staff anticipates bringing an agreement for JPB approval in July with the LNTP award of contracts, which is conditioned on the CHSRA action in August.
- The Local Policy Makers Group (LPMG) met on May 26.
  - Nine members wanted one or two onboard restrooms per train set, and one member wanted no restrooms onboard.
  - An environmental scoping presentation was made by CHSRA staff. Several LPMG members asked for the scoping period to be extended by 30 days.
  - There was also a discussion about CHSRA’s planned community working groups and the need for multi-stakeholder outreach processes.
  - There was a discussion about allowing the LPMG to appoint its own chair and vice chair and vote on recommendations to the JPB and CHSRA boards. This will be discussed more in June.
  - The presentations and audio recordings from the LPMG meetings are available on the Caltrain website.

Report of the Executive Director
Mr. Hartnett said:

- Caltrain and Operation Lifesaver will be conducting an education and enforcement event on International Grade Crossing Awareness Day, June 10.
- JPB participated in the Out of Darkness overnight walk, an event sponsored by American Foundation for Suicide Prevention.
- Special service
  - Sharks playoff service carried 2,200 additional riders
  - Giants home games in May carried 80,000 additional riders
  - Bay to Breakers service carried 8,000 riders
  - Beyoncé concert carried 2,000 riders
  - International soccer tournaments
  - San Jose Earthquakes games
  - Gay pride parade
Joint Powers Board Meeting
Minutes of June 2, 2016

- Opera at the Ballpark
- A Sunday service will run on Independence Day with extra supplemental evening service to accommodate fireworks attendees

- Ongoing capital projects include
  - Quint Street Bridge replacement project construction is expected to be completed by the end of June
  - San Mateo bridges replacement is expected to be completed by the end of July
  - San Francisco highway bridges contract is expected to be completed in winter 2016
  - Los Gatos Creek Bridge project will go out for bids this summer and fall, but due to environmental regulations, work within the creek’s waterways is restricted from mid-June to mid-October

Public Comment
Roland Lebrun, San Jose, said he wrote a letter highlighting multiple issues with the MOU, with the project itself and the funding, specifically the $600 million and the $113 million. The moment CHSRA submits a funding plan for the $600 million they will be back in court.

CUSTOMER EXPERIENCE SURVEY RESULTS
Patrick Thompson, Market Research Specialist, presented:

- Objectives
  - Guide the Customer Experience Taskforce in choosing the priorities for future investments
  - Narrow the questions to be used in the upcoming Annual Customer Satisfaction Survey

- Methodology
  - Online survey
    - February 28 to March 20
    - Opt-in, not statistically valid
    - Various outreach methods
  - Response
    - 2,956
    - 92 percent completed the entire survey

- Service ratings (five-point scale: five = very important, one = not at all important)
  - More frequent service: 4.2
  - Trains with shorter commute times: 4.18
  - More shoulder peak service: 3.89
  - More frequent weekend or mid-day service: 3.33
  - Expanded service after 10:30 p.m.: 2.94
  - Expanded service between San Jose and Gilroy: 1.92

- Service Rankings
  - Top three priorities identified
    - More frequent service
    - Trains with shorter commute times
    - More shoulder peak service

- Communications ratings
  - Improved real-time updates onboard or at stations: 4.34
Schedule and real-time information on a smartphone application: 4.33
Better directional signage at stations: 2.99

- Customer comfort/enjoyment ratings
  - Allowing food and drinks onboard: 3.3
  - Quiet car: 3.24
  - Increased bike storage and bike share facilities: 2.97
  - Pay as you go Wi-Fi: 2.68
  - Access to concessions at stations: 2.6

- Payment ratings
  - Improved ticket machines with Clipper integration: 3.82
  - A smartphone application with mobile ticketing: 3.65
  - Ability to pay for parking using mobile application: 3.27

- Rankings
  - Top priorities identified
    - Improved real-time updates
    - Schedule and real-time information available on a smartphone application
    - Improved ticket machines with Clipper integration
    - A smartphone application with mobile ticketing

- Value of service relative to the cost to customer
  - Ranked 5: 14 percent
  - Ranked 4: 28 percent
  - Ranked 3: 33 percent
  - Ranked 2: 12 percent
  - Ranked 1: 6 percent
  - Mean: 3.35

- Use of Transportation Network Company (TNC)
  - Yes: 43 percent
  - No: 55 percent
  - Not sure: 2 percent

- Electric train amenity ratings
  - Seating: 4.43
  - Standing/leaning room: 3.34
  - Onboard bathroom: 3.01
  - Bike storage: 3.01
  - Maximum seating (bathrooms at stations only): 2.81
  - Luggage storage: 2.36

- Electric train amenity rankings
  - Top priorities identified
    - Seating
    - Standing/leaning room
    - Bike storage
    - Onboard bathroom

- What customers like about diesel cars and want to keep on electric trains
  - 52 percent of respondents answered this question
  - 49 percent of comments related to seating
    - 15 percent single seats on second level, 9 percent seating with tables, 8 percent comfortable seats
  - 32 percent of comments were about onboard amenities
12 percent about having onboard bathrooms
  o 27 percent of comments were about train design/features
  o 12 percent about having two levels
• What customers dislike about diesel cars and want to change on electric trains
  o 57 percent of respondents answered this question
  o 20 percent of comments related to seating
  o 18 percent of comments related to capacity
    ▪ 7 percent not enough seats or cars, 6 percent too crowded, 5 percent not enough standing room
  o 17 percent of comments were about amenities
    ▪ 7 percent no Wi-Fi, 5 percent lack of outlets, 4 percent air conditioning

Director Malia Cohen asked if riders wanted onboard bathrooms. Mr. Thompson said customers were asked to rate various amenities on the train. Bathrooms were middle of the road.

Mr. Thompson continued:
• Rider characteristics
  o 50 percent riding for four years or more, 34 percent for one to three years
  o 59 percent ride at least four days a week
  o 32 percent Go Pass users, 31 percent Caltrain Monthly Pass users
  o 82 percent traveling to or from work
• Demographics
  o 53 percent male
  o 71 percent between 25 and 54
  o 53 annual incomes of $100,000 or more
  o 61 percent white, 20 percent Asian
• Additional comments
  o 1,182 respondents provided comments
  o 46 percent related to service
    ▪ 20 percent more frequent trains or expanded service
  o 11 percent were positive comments
  o 9 percent were communications related
    ▪ 8 percent were about announcements/messages/updates
• Next steps
  o Used Customer Experience Survey data to develop additional questions for the Customer Satisfaction Survey (June 2016)
  o Develop customer experience focus group

Public Comment
Jeff Carter, Millbrae, said demographics and household income statistics annoy him. The problem is some people say Caltrain is priced too low. A lot of people make less than $100,000 and might not ride Caltrain because it costs too much. He asked how Go Pass ridership is calculated. Employers have to buy Go Passes for every employee whether the employees use them or not. He said the 2015 Customer Satisfaction Survey has onboard restrooms rated highest of all amenities. Staff is using scare tactics saying restrooms take up a lot of seats, which scares people into thinking they take up too much space. He does not think it is true. The Board needs to look at more restrooms.
Roland Lebrun, San Jose, said this is the best survey he has seen from Caltrain. Free Wi-Fi service was not offered as a rating option on the survey because of the unlikeliness of it being an option for Caltrain to offer. Free Wi-Fi is available on Altamont Corridor Express, Capitol Corridor, and VTA. This needs to be resolved when the JPB procures new Electric Multiple Units (EMU). The survey says the most important amenity for the new EMUs is seating. The EMUs being selected need to be able to carry 948 seated passengers for an eight-car train set. If not, the 2012 Blended System Analysis needs to be revisited before the JPB can commit to the blended system.

Doug DeLong, Mountain View, said he is encouraged by the service rankings that the top priorities identified by respondents were more frequent service and trains with shorter commute times. The only way to achieve that with the existing infrastructure is if each train stops at fewer stations. If there were six trains per hour where three trains each stopped at more than one-third of the stations and covered all stations between them and ran twice per hour, this would have more capacity than the existing schedule. Each station that is currently only getting service once per hour would get it twice per hour, and high traffic stations would still get four to six trains per hour. This provides 20 percent more capacity. This might mean the Baby Bullet brand name would have to be blown up, but that is not ranked highly among respondents.

Adina Levin, Friends of Caltrain, asked if additional shoulder peak service would be a possibility to relieve overcrowding in the short term. More frequent service might be a challenge due to the electrification construction. She would like to see the number of people who use TNCs cut by station to see if public transportation improvements can be made to help people use public transit.

**AUTHORIZE FINALIZATION OF CONTRACT NEGOTIATIONS FOR THE PROCUREMENT OF ELECTRIC MULTIPLE UNITS WITH ONE RESTROOM FOR EACH BI-LEVEL TRAINSET FOR THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT**

Michelle Bouchard, Chief Operational Officer, Rail, said the question is whether to have one restroom per train set or no restrooms onboard. Staff has looked at the issue and presented the fundamental tradeoffs at the last Board meeting. Staff is recommending moving forward with a single restroom on each new train. The cost of the feature is $2.8 million and is contained in the price received by the car manufacturers. The basis of the recommendation comes from feedback received from outreach and surveys, 15 recent meetings at which staff solicited feedback, and from various other sources. The majority voted for a single restroom onboard the train. Customers would find onboard bathrooms useful in the event of a service disruption. Staff has considered disabled access as a result of this recommendation. The regulation says the train is not required to have a restroom onboard, but if there is one it must be accessible. The car containing the restroom will be well marked from the outside. Staff is working with the accessibility community on configuration issues.

**Public Comment**

Roland Lebrun, San Jose, asked what the point is of having the LPMG if staff is posing a resolution before the group has the opportunity to discuss the issue. The LPMG voted for two bathrooms. The consultants decided they would be procuring a Swiss train. He looked at that train and discarded it because it could not support Caltrain’s seated
capacity requirements. These trains have fewer than 600 seats.

Jeff Carter, Millbrae, said it is shortsighted to have inadequate restroom capacity. He appreciates there will be at least one restroom, but the JPB should look at the option of having one for every two cars. The Board and staff don’t ride the train and don’t have to deal with intoxicated people, delays, accidents, or people relieving themselves on the train or at the stations. Bathrooms take up seats, but seats can be increased by adding cars. Each additional car will add 130 seats to each train. Caltrain needs more than six-car trains and more than six trains per hour. Staff did not make comparisons with Metrolink, Chicago Metra, or New York City Long Island Railroad, which all have bathrooms.

Michael Matthews, San Francisco, said he supports having one bathroom onboard. Getting off at a station to use a bathroom could add an hour to an already long trip. During service incidents customers can be stuck on the train between stations for more than an hour. Bathrooms would take up 1 to 2 percent of seated capacity, but with trains are 20 percent over capacity, this does not seem like a significant sacrifice. The cost to build and maintain external bathrooms is unclear, and it is unclear if cities would support it. It is the humane thing to do to have a bathroom onboard.

Howard Myerson, Mountain View, said he supports multiple bathrooms onboard.

Doug DeLong, Mountain View, said he supports having at least one restroom onboard. He asked if the engineer has to walk the length of the train to go to the bathroom and all customers have to wait, or if the engineer will have a restroom in the vehicle. He said he finds it curious that the estimated number of seats a restroom will cost keeps getting inflated. There should be at least two restrooms on each train.

Adina Levin, Friends of Caltrain, urged the Board to adopt the staff recommendation.

Director Tissier said this is a reasonable amenity that should be provided to the public and is a compromise by going with one bathroom versus none or two.

Director Joël Ramos asked how this information was gathered to get to the recommendation. He said he is concerned that customers are thinking about their current experience rather than the future experience where there will be better infrastructure, faster travel times, more frequent service, and more reliability with new engines. He is hoping this would lead to a place where there is less of a need for restrooms. Many people may be thinking about what it would be like today if there were no restrooms onboard. He asked if staff made that clear before soliciting feedback and if a survey talked about the actual tradeoffs that would be made.

Casey Fromson, Manager, Government Affairs, said staff made it clear that this would be in the context of an electrified system that will look and feel differently. Staff’s original proposal was to have no bathrooms onboard because of the exact reasons Director Ramos mentioned. The overwhelming response was customers understood things would be different but for a variety of reasons there was still a great interest in having onboard bathrooms. There still will be diesel trains on the line, which have bathrooms, and the EMUs will have fewer bathrooms, so this is the compromise pairing
the information from the public with the technical information just received from the car builder.

Director Ramos said most of the ridership does not participate in these conversations. He asked if there was an effort to solicit the opinion from people who were left behind at stations because of capacity or to get a broader reach of people who have stopped riding Caltrain because they have been left behind in the past. Ms. Fromson said in addition to the meetings that were mentioned, there have been communications with the riders. Over the last three years there have been three surveys related to electrification including key parts about bathrooms and have yielded over 10,000 responses. To get responses, staff went to stations and spoke to customers directly, used social media, and have reached out to partners like Friends of Caltrain.

Director Ramos asked if the surveys and cross tabs could be provided to the Board members. Ms. Fromson said that information is available on the website and she will send a copy to the Board members.

Director Ramos said in the future when the Board goes to the public to solicit funding, he wants to make sure the system reflects the interests of the entire population and the JPB is building a system in a way that matches the economy and the direction Caltrain is headed, which is one that is requiring more capacity. He said he is reluctant to vote for this option because it is maintaining the status quo and not recognizing the need to increase capacity to meet the demand the system is going to require in the future while offering a different kind of ridership experience with restrooms at stations and having a faster travel time with more frequent and more reliable service. The trains are over capacity. Parents riding with children or elderly people who may not have the control they need are not the majority of the daily riders, and the Board needs to think about meeting the demand of the daily riders.

Director Tissier said people have been encouraged to ride trains and buses, but by 2030 the senior population will double, and these are people who will still want to take public transportation and will want to be comfortable doing it. She said she wished BART had bathrooms. As much as standing and seating is wanted, she thinks there will be a change in the population that will be riding public transportation. For the sake of the public, comfort needs to be considered as well as speed. Having done a lot of work in the senior community, she thinks that population has to be taken into consideration.

Director Ramos said it is important to have restrooms at every station and that they be maintained. With increased frequency in the future, customers would not have to wait an hour to catch the next train if they get off to use a station restroom. This is not for at least five years. In future Caltrain would be at place to have amenities at each station to accommodate this concern.

Director Peralez said the LPMG did not make a suggestion for two onboard restrooms, the opinions were mixed. Some members suggested one restroom, some said two, and one said none. He said it is a reality, especially where there is a large amount of riders such as after sporting events, that there are more than enough instances where individuals will need to use a restroom while onboard. Having one restroom per train satisfies the need and it is worth losing those seats for that one bathroom. He is not in
favor of two onboard bathrooms or one on every car, but he is in favor of one on each train. He is an advocate to have facilities at stations.

Director Jeff Gee said one restroom per train is reasonable and humane. Redwood City doesn’t have restrooms at the stations. Having one per train is not unreasonable. The only way to address capacity is more and longer trains. The $2.8 million is far less than station improvements up and down the right of way because there are about 30 other stations that would need restrooms. Until that happens, one onboard restroom is reasonable.

Director Ramos said the logic he used is recognizing that this is a problem today even with onboard restrooms. Public urination will be a problem whether restrooms are onboard or not. He would like to assume the Board could respond to the humane need by getting restrooms at stations and still meet the capacity needs.

Chair Woodward said after years of discussing and vetting this issue, one onboard bathroom is a reasonable compromise.

Motion/Second: Tissier/Gee
Ayes: Cohen, Gee, Guilbault, Peralez, Tissier, Yeager, Woodward
Noes: Cisneros, Ramos

KEY CALTRAIN PERFORMANCE STATISTICS APRIL 2016
Ms. Bouchard said:
- Average weekday ridership (AWR) was 61,548, a 5.4 percent increase.
- Year-to-date AWR ridership was 59,519, a 3.5 percent increase.
- On-time performance (OTP) was 88.9 percent, a 0.2 percent decrease.
- The schedule was changed on April 4 to promote more reliability. April was rough due to the combination of heat restrictions, trespasser incidents, and mechanical failures. May was a great month for mechanical performance. The contract operator and JPB staff have been working hard to keep the locomotives in a state of good repair. The capital budget contains money for mid-life rebuilds and other important component work needed to keep the locomotives running. Looking at OTP without the incidents that affect normal operation, OTP is looking at close to 96 percent for regularly scheduled trains as a result of the schedule change.

Public Comment
Roland Lebrun, San Jose, said padding was just added to the timetable and trains still do not arrive on time. He would like to know what the problem is and what the JPB is going to do about it.

AUTHORIZE ADOPTION OF THE FY2017 OPERATING BUDGET IN THE AMOUNT OF $146,392,029
Eli Kay, Chief Financial Officer, said staff presented a balanced preliminary budget in May. No changes have been made. The proposed budget is $146.4 million, an increase of $7.2 million or 5.2 percent over last year. The budget is balanced primarily due to an anticipated increase in farebox revenue and some use of reserves as well as prior savings. This budget highlights the need to secure a dedicated source of revenue
to support operations. Staff is working closely with member agencies and other funding partners to explore a number of options for the creation of additional revenue. Staff is confident that this budget is reflecting expected record ridership and provides for necessary operational improvements.

Chair Woodward said this budget has VTA contributing $8.9 million. He said the VTA budgeted $8.3 million for its member contribution and asked where the other $600,000 is coming from. Mr. Kay said he will have to get back to the Board on this issue.

Public Comment
Roland Lebrun, San Jose, said the cost of the Caltrain managing agency is atrocious at 16 percent. His recommendation to replace the managing agency has not changed. Moving forward, Caltrain needs to provide faster more frequent service. If the San Mateo County Transit District (District) is not willing to provide it, the Board should reach out to the private sector, which could have hybrid trains delivered and ready by 2018.

Jeff Carter, Millbrae, said he is pleased to see there is budget for additional railcars to address the capacity issue. He asked if there is any indication that Caltrain can run additional service during shoulder peak periods. He asked for the status on the fare study and if there will be any public input or review of it.

Mr. Hartnett said staff will have to circle back with the Board on the issue of VTA’s contribution, but the Board could adopt the budget now with the VTA’s contribution at $8.3 million reflected in VTA’s proposed budget and staff could come back to the Board with an adjustment, if necessary.

Director Ramos asked if expanded shoulder peak service can be done. Ms. Bouchard said staff needs to be careful about changing or increasing service in any way that would reduce construction work windows for electrification. Staff recognizes there are acute capacity crunches in some areas. It was important to get the data from the annual counts and staff is working on assimilating that information and coming up with ideas to alleviate capacity concerns. This may not result in additional frequency in terms of additional trains, which are not allowed for in this budget, but there are other things such as stopping patterns and types of trains to could help with these issues in the immediate term.

Motion to adopt the budget with VTA’s contribution at $8.3 million.
Motion/Second: Ramos/Cohen
Ayes: Cisneros, Cohen, Gee, Guilbault, Peraldez, Ramos, Tissier, Yeager, Woodward

**AUTHORIZE ADOPTION OF THE FY2017 CAPITAL BUDGET IN THE AMOUNT OF $250,948,910**

Mr. Kay said in May staff presented a preliminary budget in the amount of $253.8 million with the CalMod Program making up the largest share at about 83 percent of the budget. The budget included a total contribution request of $19.5 million from the three members, or $6.5 million each. The members had committed to $5 million each, making the budget $4.5 million short. Adjustments were made and the budget was reduced, but additional funding was identified in the process from prior year savings. The total net change is a $3 million reduction. Specific projects affected were deferral
of some grade crossing improvements, station paintings, and other non-critical information technology projects. The budget is still on target to meet Caltrain’s 10-year Capital Improvement Plan focused on maintaining the assets in a state of good repair, enhancing the reliability of the system, and delivering the CalMod Program.

Public Comment
Roland Lebrun, San Jose, said the JPB bought 16 Bombardier cars from Metrolink two years ago. Five have been deployed, but 11 of the cars have been parked in San Jose or San Francisco for the last two years. He said the Board approved the funding and asked why the cars are just sitting there and are not deployed to help with the capacity crunches. The budget shows that the cost of electrification between San Jose and San Francisco is between five and 10 times the cost of electrification on the East Coast. The cost of the new EMU railcars is $8.5 million each. This is between $5 million and $6 million more than any other option.

Motion/Second: Cohen/Guilbault
Ayes: Cisneros, Cohen, Gee, Guilbault, Peralez, Ramos, Tissier, Yeager, Woodward

AUTHORIZE ADOPTION OF THE OVERALL DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL OF 14 PERCENT FOR FEDERAL TRANSIT ADMINISTRATION-ASSISTED CONTRACTS FOR FEDERAL FY2017-2019
John Barker, Manager, Civil Rights Programs, said the overall goal proposed for the next three Federal fiscal years is 14 percent.

Public Comment
Roland Lebrun, San Jose, said the Capital Projects Quarterly Status Report shows that out of $12.5 million worth of awarded contracts, $400,000 worth of DBE contracts were awarded. Last time the target was 12 percent, but DBE attainment was actually 3.1 percent. This has to do with governance and the way this agency is run.

Director Cohen said the Board should be pushing the envelope and being aggressive regionally and across the country when it comes to the fulfillment of DBE contracts.

Motion/Second: Tissier/Yeager
Ayes: Cisneros, Cohen, Gee, Guilbault, Peralez, Ramos, Tissier, Yeager, Woodward

AUTHORIZE ENROLLMENT IN THE CLEANPOWERSF, PENINSULA CLEAN ENERGY, AND SILICON VALLEY CLEAN ENERGY COMMUNITY CHOICE ENERGY PROGRAMS
Michelle Senatore, Sustainability Planner, said staff recommendation has not changed since this was presented last month. Staff recommends the default, budget neutral option, which achieves higher renewable energy content and lower greenhouse gas emissions.

Motion/Second: Cisneros/Ramos
Ayes: Cisneros, Cohen, Gee, Guilbault, Peralez, Ramos, Tissier, Yeager, Woodward
AUTHORIZE EXECUTION OF A REAL ESTATE COOPERATIVE AGREEMENT WITH THE DISTRICT TO PROVIDE RIGHT OF WAY SERVICES AND EMINENT DOMAIN PROCEEDINGS IN CONNECTION WITH FUTURE CAPITAL PROJECTS

Brian Fitzpatrick, Manager, Real Estate and Property Development, said this agreement is necessary because the JPB does not have the power to condemn; it comes through its member agencies, in this case the District. The District just participated in providing these services for the successful completion of the San Bruno Grade Separation Project. This will allow the District to take this action with future projects.

Public Comment
Roland Lebrun, San Jose, said the real estate consultant contracts for the electrification project, which was budgeted at $650,000, is actually $3.6 million. He would like to know how much of the $3.6 million was spent with DBEs.

Director Cohen asked for an answer to that question. Mr. Hartnett said staff will get back to the Board with an answer.

Motion/Second: Cisneros/Cohen
Ayes: Cisneros, Cohen, Gee, Guilbault, Peralez, Ramos, Tissier, Yeager, Woodward

UPDATE ON COMMUNICATIONS-BASED OVERLAY SIGNAL SYSTEM/POSITIVE TRAIN CONTROL PROJECT

Gigi Harrington, Deputy CEO/Chief Administrative Officer, said this was requested at the last meeting. A peer review is underway now and staff would like to provide the recommendations of the peer review at a later date. Chair Woodward said this item will be postponed until a later meeting.

Public Comment
Roland Lebrun, San Jose, said the Board just spent $50 million for 50 miles of fiber between San Jose and San Francisco. Staff said they were redoing it because the JPB will start seeing revenue from the fiber. He would like a status on the revenue generation from the fiber when this comes back to the Board.

CAPITAL PROJECTS QUARTERLY STATUS REPORT – 3RD QUARTER FY2016

Ladi Millard, Director Budgets, said the report is included in the Reading File.

Public Comment
Roland Lebrun, San Jose, said there is no sign of the expenditure on EMUs, but consultants have been working on it for three years. The Board just approved $68 million in the capital budget, but staff will not be buying railcars in FY2017. The electrification itself is of more concern because the Board just approved $114 million for electrification, but he does not know where the money will come from or what staff will be doing with it. The report states this will be the last electrification update to be included in the quarterly status report, and people should refer to the CalMod Quarterly Report for details. Mr. Lebrun said this is totally unacceptable.
LEGISLATIVE UPDATE

Federal
Casey Fromson said the House Transportation, Housing and Urban Development bill identified $100 million for the electrification project. The Senate has already approved their bill. The House needs to take it to the floor for a vote.

State
Mike Robson, Edelstein Gilbert Robson and Smith LLC, said the JPB is sponsoring two bills. Assembly Bill (AB) 2030 deals with raising the monetary threshold for contracting for supplies and equipment so formal bids don’t have to be prepared for low-amount supply and equipment contracts. AB 1889 deals with repealing an obsolete reference to the Peninsula Rail District, which is an unnecessary law.

Matt Robinson, Shaw/Yoder/Antwih, Inc., said Cap and Trade is at the forefront of the discussion regarding transportation funding because it is the only new source of revenue from the State. The recent auction brought in $500 million lower than expected, which may have an impact on the transportation budget requests. Formula programs are continuously appropriated and there is no anticipated negative impact.

CORRESPONDENCE
No discussion.

BOARD MEMBER REQUESTS
None

DATE/TIME/PLACE OF NEXT REGULAR MEETING
The next meeting will be Thursday, July 7, 2016, 10 a.m. at San Mateo County Transit District Administrative Building, Bacciocco Auditorium, 2nd Floor, 1250 San Carlos Avenue, San Carlos, CA 94070.

GENERAL COUNSEL REPORT
Public Comment
Roland Lebrun, San Jose, said parcel 264-15-066 is on the west side of the creek and is an affordable housing parcel. It is something nice that was done for people who could not afford to live within walking distance of Diridon. It is on the opposite side of the creek where the trail is. There is plenty of room for the tail track behind Orchard Supply Hardware.

Joan Cassman, Legal Counsel, said the Board will meet in closed session to discuss several items, the Atherton lawsuit, a California Environmental Quality Act challenge to the electrification project, a matter of anticipated litigation, as well as two items regarding real estate property interests required for the Los Gatos Bridge Replacement project.

Recessed to closed session at 11:52 a.m.

Directors Cohen and Ken Yeager left at 12:10 p.m.

Closed Session: Conference with Legal Counsel – Anticipated Litigation Pursuant to Government Code Section 54956.9(d)(4): One potential case


Closed Session: Conference with Real Property Negotiators Joan L. Cassman, General Counsel, Brian W. Fitzpatrick, Manager, Real Estate and Property Development, and Gary Cardona, Senior Real Estate Officer, pursuant to Government Code Section 54956.8: Property Location: 809 Auzerais Avenue, San Jose, CA; APN 264-15-066; Common Area Lot E, as shown on the final map of Tract No. 9805, filed for record on November 17, 2006, in Book 809 of Maps at pages 1 through 4, inclusive, in the official records of the county of Santa Clara, State of California. Parties: KB Homes South Bay, Inc. Under negotiation: Price and terms of contract.

Reconvened to open session at 12:30 p.m.

Ms. Cassman said no action was taken on any closed session item.

Adjourned at 12:30 p.m.
AGENDA ITEM # 4 (b)  
JULY 7, 2016

PENINSULA CORRIDOR JOINT POWERS BOARD  
STAFF REPORT

TO: Joint Powers Board

THROUGH: Jim Hartnett  
Executive Director

FROM: Eli Kay  
Chief Financial Officer

SUBJECT: STATEMENT OF REVENUES AND EXPENDITURES FOR THE PERIOD ENDING  
MAY 31, 2016 AND SUPPLEMENTAL INFORMATION

ACTION
Staff proposes the Board of Directors accept and enter into the record the Statement of  
Revenue and Expenditure for the month of May 2016 and supplemental information.

SIGNIFICANCE
Revenues: Year-to-date, as of May 31, 2016, Total Operating Revenue (line 7) is  
$2,520,593 or 2.9 percent better than budget. Within total operating revenue, Farebox  
Revenue (line 1) is $2,367,053 or 3.0 percent better than budget. Compared to the prior  
year, Total Operating Revenue (line 7) is $5,358,148 or 6.4 percent higher.

Expense: Grand Total Expenses (line 50) show a favorable variance of $13,110,042 or  
10.3 percent. The Rail Operator Service (line 23) is $193,876 or 0.3 percent higher than  
budget, and Total Operating Expense (line 36) is $11,850,219 or 11.0 percent better than  
budget. Total Administrative Expense (line 46) is $1,259,801 or 6.8 percent better than  
budget.

Compared to prior year, Grand Total Expenses (line 50) are $8,802,560 or 8.3 percent  
higher.

Use of Reserves: Year-to-date, as of May 31, 2016, the JPB did not use its reserves,  
mostly due to direct savings from fuel and contract operating services, which is also fuel  
related.

BUDGET IMPACT
There are no budget revisions for the month of May 2016.

Prepared By: Maria Pascual, Accountant  
Sheila Tioyao, Manager, General Ledger  

650.508.6214   650.508.7752
<table>
<thead>
<tr>
<th>MONTH</th>
<th>YEAR TO DATE</th>
<th>% OF YEAR ELAPSED</th>
<th>% REV</th>
<th>% REV</th>
<th>% REV</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>CURRENT ACTUAL</td>
<td>PRIOR ACTUAL</td>
<td>REvised BUDGET(A)</td>
<td>APPROVED BUDGET</td>
<td>REVISED BUDGET</td>
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<tr>
<td></td>
<td>Actual</td>
<td>Actual</td>
<td>Budget</td>
<td>Budget</td>
<td>Budget</td>
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<tr>
<td>REVENUE</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OPERATIONS:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Farebox Revenue:</td>
<td>8,018,673</td>
<td>76,080,929</td>
<td>80,701,698</td>
<td>78,334,645</td>
<td>103.0%</td>
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<tr>
<td>Parking Revenue:</td>
<td>532,242</td>
<td>4,033,920</td>
<td>4,610,501</td>
<td>4,066,883</td>
<td>113.4%</td>
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<tr>
<td>Shuttles</td>
<td>166,465</td>
<td>1,633,722</td>
<td>1,916,344</td>
<td>2,366,308</td>
<td>82.0%</td>
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<td>Rental Income:</td>
<td>143,144</td>
<td>1,612,001</td>
<td>1,588,598</td>
<td>1,633,129</td>
<td>97.3%</td>
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<tr>
<td>Other Income:</td>
<td>88,395</td>
<td>751,096</td>
<td>662,676</td>
<td>588,258</td>
<td>112.7%</td>
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<tr>
<td>TOTAL OPERATING REVENUE</td>
<td>8,942,919</td>
<td>84,121,668</td>
<td>89,479,816</td>
<td>86,959,223</td>
<td>102.9%</td>
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<tr>
<td>OPERATING EXPENSE:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rail Operator Service:</td>
<td>6,971,292</td>
<td>62,383,249</td>
<td>70,004,733</td>
<td>69,810,857</td>
<td>100.3%</td>
</tr>
<tr>
<td>Rail Operator Service-Other:</td>
<td>3,320</td>
<td>2,657</td>
<td>813,126</td>
<td>1,645,401</td>
<td>49.4%</td>
</tr>
<tr>
<td>Security Services:</td>
<td>513,673</td>
<td>4,422,199</td>
<td>4,448,966</td>
<td>4,624,505</td>
<td>96.2%</td>
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<tr>
<td>Rail Operator Extra work:</td>
<td>-</td>
<td>1,974</td>
<td>40,580</td>
<td>114,583</td>
<td>35.4%</td>
</tr>
<tr>
<td>Contract Operating &amp; Maintenance:</td>
<td>7,488,286</td>
<td>66,810,080</td>
<td>75,307,424</td>
<td>76,195,346</td>
<td>98.8%</td>
</tr>
<tr>
<td>Shuttles Services:</td>
<td>424,416</td>
<td>4,139,497</td>
<td>4,424,436</td>
<td>5,012,333</td>
<td>88.3%</td>
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<tr>
<td>Fuel and Lubricants:</td>
<td>698,271</td>
<td>11,150,705</td>
<td>7,449,855</td>
<td>16,082,122</td>
<td>46.3%</td>
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<tr>
<td>Timetables and Tickets:</td>
<td>8,138</td>
<td>112,044</td>
<td>94,875</td>
<td>194,975</td>
<td>48.7%</td>
</tr>
<tr>
<td>Insurance:</td>
<td>322,755</td>
<td>3,297,553</td>
<td>4,046,755</td>
<td>5,275,284</td>
<td>83.5%</td>
</tr>
<tr>
<td>Facilities and Equipment Maint:</td>
<td>138,259</td>
<td>1,532,588</td>
<td>1,474,982</td>
<td>1,826,639</td>
<td>80.7%</td>
</tr>
<tr>
<td>Utilities:</td>
<td>136,854</td>
<td>1,661,039</td>
<td>1,862,622</td>
<td>2,086,246</td>
<td>89.3%</td>
</tr>
<tr>
<td>Maint &amp; Services-Bldg &amp; Other:</td>
<td>112,783</td>
<td>994,491</td>
<td>1,109,287</td>
<td>1,307,511</td>
<td>84.8%</td>
</tr>
<tr>
<td>TOTAL OPERATING EXPENSE</td>
<td>9,329,765</td>
<td>89,698,196</td>
<td>96,130,236</td>
<td>107,980,455</td>
<td>89.0%</td>
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<tr>
<td>EXPENSE</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ADMINISTRATIVE EXPENSE:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wages and Benefits:</td>
<td>515,795</td>
<td>5,956,233</td>
<td>6,662,973</td>
<td>6,726,576</td>
<td>99.1%</td>
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<tr>
<td>Managing Agency Admin OH Cost:</td>
<td>280,109</td>
<td>4,467,767</td>
<td>4,777,663</td>
<td>5,027,201</td>
<td>95.0%</td>
</tr>
<tr>
<td>Board of Directors:</td>
<td>2,041</td>
<td>11,952</td>
<td>12,494</td>
<td>12,967</td>
<td>96.4%</td>
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<td>Professional Services:</td>
<td>518,073</td>
<td>2,876,141</td>
<td>3,671,350</td>
<td>4,383,182</td>
<td>83.8%</td>
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<tr>
<td>Communications and Marketing:</td>
<td>4,744</td>
<td>69,720</td>
<td>104,242</td>
<td>146,076</td>
<td>71.4%</td>
</tr>
<tr>
<td>Other Expenses and Services:</td>
<td>231,800</td>
<td>1,547,690</td>
<td>1,975,195</td>
<td>2,167,177</td>
<td>91.1%</td>
</tr>
<tr>
<td>TOTAL ADMINISTRATIVE EXPENSE</td>
<td>1,552,641</td>
<td>14,929,502</td>
<td>17,203,918</td>
<td>18,463,719</td>
<td>93.2%</td>
</tr>
<tr>
<td>GRAND TOTAL EXPENSE:</td>
<td>10,989,254</td>
<td>105,786,900</td>
<td>114,599,460</td>
<td>127,619,502</td>
<td>98.0%</td>
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<tr>
<td>NET SURPLUS / (DEFICIT)</td>
<td>(390,382)</td>
<td>4,535,219</td>
<td>10,414</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

*% OF YEAR ELAPSED* provides a general measure for evaluating overall progress against the annual budget. When comparing it to the amounts shown in the "% REV BUDGET" column, please note that individual line items reflect variations due to seasonal activities during the year.

A/Staff has reallocated year to Date Budget due to timing of expenditures.
## PENINSULA CORRIDOR JOINT POWERS BOARD

### INVESTMENT PORTFOLIO

**AS OF MAY 31, 2016**

<table>
<thead>
<tr>
<th>TYPE OF SECURITY</th>
<th>MATURITY DATE</th>
<th>INTEREST RATE</th>
<th>PURCHASE PRICE</th>
<th>MARKET PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Agency Investment Fund (Restricted)</td>
<td>* Liquid Cash</td>
<td>0.552%</td>
<td>$ 2,000,000</td>
<td>$ 2,000,442</td>
</tr>
<tr>
<td>Local Agency Investment Fund (Unrestricted)</td>
<td>* Liquid Cash</td>
<td>0.552%</td>
<td>69,625</td>
<td>69,641</td>
</tr>
<tr>
<td>County Pool (Unrestricted)</td>
<td>** Liquid Cash</td>
<td>0.855%</td>
<td>5,644,337</td>
<td>5,644,337</td>
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<tr>
<td>Other (Unrestricted)</td>
<td>Liquid Cash</td>
<td>0.000%</td>
<td>12,847,086</td>
<td>12,847,086</td>
</tr>
<tr>
<td>Other (Restricted)</td>
<td>*** Liquid Cash</td>
<td>0.200%</td>
<td>18,237,335</td>
<td>18,237,335</td>
</tr>
</tbody>
</table>

### Additional Information

- **Accrued Earnings for May 2016**: $ 7,579.20
- **Cumulative Earnings FY2016**: $ 105,692.66

(1) Earnings do not include prior period adjustments

* The market value of Local Agency Investment Fund (LAIF) was derived from the fair value factor of 1.00022106 as reported by LAIF for quarter ending March 31, 2016.

** As of May 2016, the total cost of the Total County Pool was $4,727,615,431.97 and the fair market value per San Mateo County Treasurer’s Office was $4,737,241,173.95

*** Prepaid Grant funds for Homeland Security and P taboo projects, and funds reserved for debt repayment.

The Portfolio and this Investment Report comply with the Investment Policy and the provisions of SB 564 (1995).

The Joint Powers Board has the ability to meet its expenditure requirements for the next six months.
PENINSULA CORRIDOR JOINT POWERS BOARD
STAFF REPORT

TO: Joint Powers Board
THROUGH: Jim Hartnett
Executive Director
FROM: Eli Kay
Chief Financial Officer
Michelle Bouchard
Chief Operating Officer, Rail
SUBJECT: REJECTION OF ALL BIDS FOR THE PROVISION OF CALIFORNIA AIR RESOURCES BOARD ULTRA LOW SULFUR DIESEL FUEL AND FUELING SERVICES

ACTION
Staff Coordinating Council recommends the Board reject all bids received for the provision of California Air Resources Board (CARB) ultra low sulfur diesel (ULSD) fuel and fueling services.

SIGNIFICANCE
Approval of the above action will allow rejection of all bids received and will permit the re-issuance of a new solicitation.

BUDGET IMPACT
Rejection of bids will have no budget impact.

BACKGROUND
The Peninsula Corridor Joint Powers Board (JPB) and the San Mateo County Transit District (District) issued an Invitation for Bids (IFB), which was posted on the Public Purchase website, to obtain bids for the provision of CARB ULSD fuel and fueling services. Staff also advertised the IFB in a local newspaper of general circulation.

Six firms submitted bids to the JPB for California Air Resources Board, No. 2, Red-Dye, ULSD Fuel and fueling services:

- AAA, Inc., Garden Grove, CA $27,397,369
- Mansfield Oil Company, Gainesville, GA $27,523,714
- Pinnacle Petroleum, Huntington, CA (woman-owned business) $27,557,294
- Truman Arnold Co., Dallas, TX $28,176,219
- Golden Gate Petroleum, Martinez, CA $28,932,989
- Southern Counties Oil, Orange, CA $29,446,366

The solicitation documents required all bidders to fill in a specific rate from a designated Oil Price Information Service (OPIS) newsletter and to use that rate in calculating their grand total estimated bid price for a five-year period. However, in the time since the
last iteration of this solicitation, the definitions used by OPIS in its newsletters have changed. The solicitation documents did not reflect the updated definitions, creating some confusion among the bidders as to which rate was intended by the JPB. During the period for requests for clarifications, none of the bidders asked the JPB to provide a clarification on the required OPIS rate. Furthermore, when the JPB evaluated the submitted bids, it was determined that all bidders used different OPIS rates, such that the JPB could not evaluate the bids using identical criteria. In order to ensure that the JPB obtains the most competitive pricing, and all bidders compete on a level basis, staff recommends rejecting all bids and re-issuing the solicitation with clarifications made to ensure that potential bidders do not make the same mistakes in calculating the contract costs. In the revised solicitation documents, staff will supply the required OPIS rate in order to prevent the bid submittal errors made in response to the current solicitation.

Pinnacle Petroleum is the current contractor for the JPB and the District, and has agreed to extend the term of their contract for six months from July 1, 2016 to December 31, 2016. This will allow staff to re-solicit and successfully award a new contract in a timely manner.

Contract Officer:  Brian Geiger  650.508.7973
Project Manager:  David Bennett, Associate Manager, Rail Equipment  408.793.5441
TO: Joint Powers Board

THROUGH: Jim Hartnett
Executive Director

FROM: Eli Kay Gigi Harrington
Chief Financial Officer Deputy CEO/Chief Administrative Officer

SUBJECT: AWARD OF CONTRACT TO PROVIDE PUBLIC LIABILITY CLAIMS ADMINISTRATION SERVICES

ACTION
Staff Coordinating Council recommends the Board:

1. Award a contract for public liability claims administration services to Carl Warren & Company (Carl Warren) for an estimated cost of $172,500 for a five-year term and additional reimbursement for allocated costs estimated at $10,500. The total estimated aggregate contract amount, inclusive of all costs, for the five-year term is $183,000. Outside defense counsel fees will be remitted at hourly rates of $195 to $220, as needed, for an estimated cost of $68,000 for the term of the contract.

2. Authorize the Executive Director, or designee, to execute a contract with Carl Warren in full conformity with the terms and conditions of the solicitation documents and negotiated agreement.

SIGNIFICANCE
Award of this contract will allow the Peninsula Corridor Joint Powers Board (JPB) to continue partnering with an experienced Third Party Administrator (TPA) to support the JPB’s public liability claims administration program for claims that fall within established self-insured retentions and insurance deductibles.

BUDGET IMPACT
Funding for these services will be available under current and projected operating budgets. In addition, for subrogation services rendered, Carl Warren will receive:

- 20 percent on amounts collected up to $50,000
- 15 percent on collections greater than $50,000
BACKGROUND
A joint Request for Proposals (RFP) to provide public liability claims administration services was issued detailing the scope of services for the JPB and the San Mateo County Transit District (District). The solicitation was advertised in a newspaper of general circulation and on the JPB’s website. Solicitation notices also were sent to interested firms, small business enterprises (SBEs) and disadvantaged business enterprises (DBEs). Staff received proposals from two firms, neither of which is a SBE/DBE.

An evaluation committee (Committee), composed of staff with expertise in various disciplines, reviewed and ranked proposals according to the following weighted criteria set forth in the RFP:

- Approach to Scope of Services 10 points
- Qualifications and Experience of Firm 25 points
- Qualifications and Experience of Management Team and Key Personnel 35 points
- Cost Proposal 30 points

The Committee concluded that conducting proposer interviews was not likely to change the final result and omitted the interview phase. The two firms are listed below in order of their consensus ranking:

- Carl Warren & Company, Walnut Creek, CA
- George Hills Company, Rancho Cordova, CA

The Committee determined that Carl Warren, the highest consensus ranked proposer, is qualified to be selected for contract award. Carl Warren has more than 32 years of transit public liability claims administration experience and is currently providing public liability claims administration services for the District and 11 other transit clients, including Santa Clara Valley Transportation Authority and Golden Gate Bridge, Highway and Transportation District, and has been the JPB's TPA for the last five years. This background demonstrates that the firm possesses the depth of experience and requisite qualifications to successfully perform the scope of services defined in the solicitation documents. In addition, the firm intends to engage one SBE/DBE firm as a subcontractor to provide ancillary investigation and administrative support services.

Based on full and open competition for this procurement, staff determined the costs proposed by Carl Warren are fair and reasonable. Carl Warren’s per claim fees of $650 for the first and second contract years, $700 for the third and fourth contract years and $750 for the fifth contract year compared favorably to the per claim fees of $695 for the first year and $782 for the final contract year proposed by George Hills Company. The previous contract awarded to Carl Warren was at per claim fee of $580 for the final year of the contract.

Contact Officer: Adwoa Oni 650.508.6411
Project Manager: Marshall Rush, Claims Administrator 650.508.7742
RESOLUTION NO. 2016 –

BOARD OF DIRECTORS, PENINSULA CORRIDOR JOINT POWERS BOARD
STATE OF CALIFORNIA

* * *

AWARDING A CONTRACT TO CARL WARREN & COMPANY
TO PROVIDE PUBLIC LIABILITY CLAIMS ADMINISTRATION SERVICES
FOR AN ESTIMATED AGGREGATE COST OF $251,000

WHEREAS, the Peninsula Corridor Joint Powers Board (JPB) and the San Mateo County Transit District jointly solicited competitive proposals to provide public liability claims administration services; and

WHEREAS, in response to the joint solicitation, two firms submitted proposals, neither of which was a Small Business Enterprise/Disadvantaged Business Enterprise; and

WHEREAS, an evaluation committee (Committee) composed of JPB staff has reviewed the proposals and ranked proposals according to the evaluation criteria set forth in the Request for Proposals; and

WHEREAS, the Committee concluded that no advantage would accrue to the JPB from conducting proposer interviews, and determined that Carl Warren & Company (Carl Warren) of Walnut Creek, California received the highest consensus ranking; and

WHEREAS, the Committee determined that Carl Warren possesses the depth of experience and requisite qualifications to provide the requested services, and will perform them at fair and reasonable prices; and

WHEREAS, staff and legal counsel have reviewed Carl Warren’s proposal and determined that it complies with the requirements of the solicitation documents; and
WHEREAS, the Executive Director recommends, and the Staff Coordinating Council concurs, that a contract for the provision of public liability claims administration services be awarded to Carl Warren for a five-year term at the estimated aggregate cost of $251,000, inclusive of per claim fees, allocated costs, and outside defense counsel fees; and

WHEREAS, subrogation services rendered by Carl Warren will be reimbursed by the JPB based on the percentage of the subrogation amounts collected as indicated below:

- 20 percent on amounts collected up to $50,000
- 15 percent on collections greater than $50,000.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors (Board) of the Peninsula Corridor Joint Powers Board hereby awards to Carl Warren & Company of Walnut Creek, California a contract to provide public liability claims administration services for a five-year term at an estimated cost of $251,000, including allocated costs of an estimated $10,500; outside defense counsel fees of an estimated $68,000; per claim fees of $650 for the first and second contract years, $700 for the third and fourth contract years and $750 for the fifth contract year, and with fees for subrogation services rendered to be reimbursed as follows: 20 percent for collections up to $50,000, and 15 percent for collections greater than $50,000.
BE IT FURTHER RESOLVED that the Board authorizes the Executive Director, or designee, to execute a contract on behalf of the JPB with Carl Warren in full conformity with all the terms and conditions of the solicitation documents and negotiated agreement, and in a form approved by legal counsel.

Regularly passed and adopted this 7th day of July, 2016 by the following vote:

AYES:

NOES:

ABSENT:

______________________________
Chair, Peninsula Corridor Joint Powers Board

ATTEST:

______________________________
JPB Secretary
AGENDA ITEM # 8  
JULY 7, 2016

PENINSULA CORRIDOR JOINT POWERS BOARD  
STAFF REPORT

TO: Joint Powers Board

THROUGH: Jim Hartnett  
Executive Director

FROM: Eli Kay  
Chief Financial Officer
Michael Burns  
Chief Officer
Caltrain Planning/CalMod Program

SUBJECT: AUTHORIZE AWARD OF CONTRACT FOR DESIGN-BUILD SERVICES FOR THE PENINSULA CORRIDOR ELECTRIFICATION PROGRAM

ACTION
Staff Coordinating Council recommends the Board:

1. Award, subject to satisfaction of the condition described in No. 2 below, the design-build contract for electrification of the rail corridor between San Jose and San Francisco for the Peninsula Corridor Electrification Program (PCEP) (Electrification Contract) to Balfour Beatty Infrastructure, Inc. (Balfour), for a not-to-exceed amount of $696,610,558, based on an overall substantial completion date of 1,330 days from issuance of a Limited Notice to Proceed (LNTP).

2. Make the authorization to award the Electrification Contract and the authorization to execute is contingent on the California High-Speed Rail Authority (CHSRA) approving the CHSRA/Peninsula Corridor Joint Powers Board (JPB) funding agreement, currently planned for consideration at the CHSRA’s August 9, 2016 Board meeting.

3. Authorize the Executive Director, or his designee, to execute the Electrification Contract with Balfour in full conformity with the terms and conditions of the solicitation documents and negotiated agreement approved by legal counsel upon the Executive Director’s determination that the funding and other prerequisites are in place to commence the contract.

4. Authorize the Executive Director, or his designee, to issue a LNTP to Balfour for a not-to-exceed amount of $108,482,000 for limited scope-of-work activities within the Electrification Contract. LNTP activities will include utility and geotechnical investigations, design development, and advancing certain critical procurements and contracts in support of construction.
5. Authorize the Executive Director, or his designee, to issue a Full Notice to Proceed (FNTP) to Balfour. This authority is contingent upon an approved funding plan from CHSRA and execution of a Full Funding Grant Agreement (FFGA) with the Federal Transit Administration (FTA), thereby providing all funding needed for the PCEP. The FNTP will authorize all remaining scope-of-work activities, including, but not limited to, final design, construction, testing, and integration with a new electrified vehicle and existing diesel fleet of vehicles. This work will include new substations and overhead catenary wiring systems to electrify over 100 miles of the rail corridor at 25 kV AC, and necessary modifications to existing rail signals systems to accommodate electrification. All work will be completed in full compliance and consistent with the State and Federal environmental clearances and associated mitigation measures; FTA requirements; applicable CHSRA, Pacific Gas and Electric, local and State jurisdictional standards; the executed Project Labor Agreement (PLA); established objectives for minority, women-owned, small and disadvantaged business enterprises (MWSBE and DBE); JPB/tenant rail operations; and safety procedures required to maintain service throughout construction.

6. Establish and authorize the Executive Director, or his designee, to utilize a contingency for issuance of change orders of up to a total of 5 percent of the total Board-authorized Electrification Contract award. The status of Electrification Contract change orders will be reported to the Board on a quarterly basis.

7. Increase the Fiscal Year (FY) 2017 Caltrain Capital Budget by $108,675,991 for the PCEP Program, from $207,197,081 to $315,873,072, which would facilitate and support the execution of the FNTP when conditions set forth above have been satisfied, as well as the purchase of the Electric Multiple Unit (EMU) rail vehicles under another PCEP contract before the Board for approval at this meeting.

SIGNIFICANCE
Approval of the above actions will (1) provide budget capacity and qualified resources to design and implement electrification of the Caltrain right of way from San Jose to San Francisco, and (2) provide budget capacity for the purchase of EMU’s for Caltrain to operate on the electrified right of way. The electrification and EMU projects, together, comprise the PCEP. The JPB will use its best efforts to deliver the PCEP, which is comprised of the corridor electrification and EMU projects, on an expedited basis, and with a targeted completion date of no later than 2021.

BUDGET IMPACT
Funding of $1.98 billion for the PCEP has been secured through a 2012 Nine-Party Memorandum of Understanding (MOU), as well as a Seven-Party MOU Supplement. Funding needed to support PCEP in FY2017 is partially included in the adopted FY2017 Caltrain Capital Budget, in the amount of $207,197,081. To provide sufficient budget authority to implement PCEP, after the execution of a FNTP conditioned upon the
receipt of a FFGA from FTA, the FY2017 Caltrain Capital Budget must be increased by $108,675,991 to $315,873,072.

BACKGROUND
The $1.98 billion PCEP is part of the JPB’s Early Investment Program in the Peninsula Rail Corridor consisting of: (1) installation of an advanced signal system (Communications-based Overlay Signal System (CBOSS)/Positive Train Control (PTC)), (2) electrification of Caltrain service by 2020, and (3) procurement of EMU rail vehicles. The Early Investment Program also will be designed to allow for operation of the Blended System with CHSRA in the future.

The design-build Services in the Electrification Contract Request for Proposals (RFP) scope of work includes systems required to complete electrification of the existing operating rail corridor from south of Tamien station in San Jose to the terminus in San Francisco at 4th and King streets. Specific geographic limits are identified in the baseline technical drawings. Electrification systems required to be designed and installed for the existing operating rail corridor involve 25 kV AC 60 Hz traction power substations, 25 kV AC 60 Hz switching and paralleling stations, utility service, utility relocations, an overhead contact system (OCS), supervisory control and data acquisition (SCADA), communications, a central control interface, rail signaling conversion to be compatible with 25 kV AC 60 Hz electrification track circuits, California Public Utilities Commission and Federal Railroad Administration approved rail crossings, operations and maintenance facility modifications, and the integration and coordination of these systems with all other elements of the Caltrain Modernization (CalMod) Program, including EMU vehicles and CBOSS PTC.

Work under the Electrification Contract will include, but not be limited to, furnishing all management, administration, coordination, professional services, labor, equipment, materials, safety and security certification, and other services necessary to perform the permitting, design, construction, installation, testing, commissioning, systems integration and start-up of the Electrification Contract scope of work. The work will require close coordination with the JPB’s CalMod owner team, and the JPB’s Operations and Maintenance and safety staffs.

During the procurement process leading up to the proposed contract, the JPB prequalified design-build entities through a Request for Qualifications (RFQ) process in accordance with California statutory requirements. Thereafter, prequalified design-build entities were invited to submit proposals in response to a two-step RFP, which process was compliant with the California and FTA requirements for selection of the design-build electrification contractor.

Pre-Qualification Process
The JPB issued an RFQ on May 15, 2014 for design-build teams to submit qualifications. Staff advertised the requirements on the JPB’s procurement website, in a newspaper of general circulation, and in Railway Age magazine and Transit Talent. Notifications also were sent to interested vendors that were registered in the JPB’s procurement database and Disadvantaged Business Enterprises (DBEs) in the engineering, construction, and
transportation consulting industries. The JPB received seven Qualification Statements on July 1, 2014. The Qualification Statements were evaluated and scored by the JPB Evaluation Committee (EC) in accordance with the prequalification requirements set forth in California Public Contract Code Section 20209.5 et seq., applicable to design-build contracts awarded by transit operators. Staff completed reference checks and a financial review of each proposer prior to the EC evaluating the Qualification Statements. The EC reached consensus scoring on September 28, 2014.

The EC prequalified the following six design-build teams and invited them to proceed to participate in the RFP process:

- Balfour Beatty Infrastructure
- Caltrain Modernization Partners (Elecnor/Cobra JV)
- Mass Electric/Siemens JV
- Peninsula Electrification Partners PTG/Isolux Corsan JV
- Shimmick/Alstom JV
- Skanska-Comstock-Aldridge JV

Industry Review
On December 5, 2014, the JPB issued a draft RFP for industry review by our third-party reviewers and the six pre-qualified design-build teams. The purpose of the industry review was to consider industry suggestions to improve the RFP, address any industry concerns, and ensure a fair, competitive process. Industry review was completed January 30, 2015. All comments received were considered in drafting the final RFP.

RFP Step One: Proposal Solicitation, Evaluation, and Shortlisting
On February 27, 2015, the JPB issued the final RFP to the prequalified design-build teams, soliciting proposals no later than August 31, 2015. The JPB received proposals from the four design-build teams listed below:

- Balfour Beatty Infrastructure
- Mass Electric/Siemens JV
- Peninsula Electrification Partners PTG/Isolux Corsan JV
- Shimmick/Alstom JV

The EC evaluated and quantitatively scored the four Technical Proposals during the RFP Step One short-listing process in accordance with the factors listed below. The maximum unweighted available point total for the Technical Proposals was 230.

Technical Proposal Evaluation Factors and Unweighted Scoring:
- Technical Expertise, Labor Resources, Safety Record, Life Cycle & Proposed Design 95 Points
- Approach to Work 105 Points
- Maintenance Option 30 Points

Total Maximum Available Unweighted Points for Technical Proposal 230 Points
All four Step One proposals were determined to be in the competitive range. The four firms were interviewed prior to short-listing. Upon completion of the interviews, and prior to final scoring of the Technical Proposals, Staff reviewed the firms’ proposals for any changes to financial and insurance information provided in the Qualification Statements submitted in response to the RFQ. The EC came to a consensus score for each of the Technical Proposals on September 28, 2015.

In accordance with the RFP, shortlisting was limited to three firms. Staff proceeded with opening the Price Proposals submitted by the three shortlisted firms, and scored the Price Proposals in accordance with the following formula set forth in the RFP:

\[
EC \text{ Price Proposal Score} = 70 \times \left( \frac{L}{P} \right)
\]

Where:
- \( P \) = Short-listed Price Proposal amount
- \( L \) = Lowest, short-listed Price Proposal amount

Staff then combined the scores for the Price Proposals with the scores from Technical Proposals, resulting in the short-list of the following three highest-ranked proposals:

- Balfour Beatty Infrastructure
- Mass Electric/Siemens JV
- Shimmick/Alstom JV

On October 7, 2015, each of the three shortlisted design-build teams was invited to proceed to the Step Two Best and Final Offer (BAFO) phase of the solicitation process. Peninsula Electrification Partners PTG/Isolux Corsan JV was informed that it was not shortlisted and would not proceed to the Step Two BAFO phase of the solicitation process.

**RFP Step Two: BAFO Solicitation, Evaluation and Final Ranking**

On December 12, 2015, the JPB solicited BAFO proposals from the three design-build teams listed above. All three submitted their BAFO proposals to the JPB on February 26, 2016.

The EC evaluated and scored the BAFO Technical Proposals in accordance with the Technical Proposal evaluation factors listed in the RFP. Staff completed reference checks and financial review prior to the EC finalizing consensus scoring on March 17, 2016. Staff then proceeded with opening the BAFO Price Proposals and scoring them in accordance with the RFP. The firms are listed below in order of their final consensus ranking based on their BAFO Technical and Price Proposals:

1. Balfour Beatty Infrastructure
2. Mass Electric/Siemens JV
3. Shimmick/Alstom JV
Staff determined that Balfour, the highest-ranked firm, has the required qualifications and expertise to successfully perform the design-build work, and considering all evaluation factors set forth in the RFP, provided the best-value to the JPB for design-build services for the Electrification Contract. The proposal from Balfour was approximately 17.48 percent higher than the engineer’s estimate. Staff has determined that the difference between the engineer’s estimate and Balfour’s proposal is fair and reasonable.

<table>
<thead>
<tr>
<th>Company</th>
<th>Total BAFO Price</th>
<th>Total BAFO Proposal Amount</th>
<th>Total BAFO Proposal Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineer’s Estimate</td>
<td>$599,304,916</td>
<td>N/A</td>
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</tr>
<tr>
<td>1. Balfour Beatty Infrastructure, Inc., SSF, CA</td>
<td>$704,070,706</td>
<td>186.5</td>
<td></td>
</tr>
<tr>
<td>2. Mass Electric/Siemens JV.</td>
<td>$1,001,776,130</td>
<td>159</td>
<td></td>
</tr>
<tr>
<td>3. Shimmick/Alstom JV</td>
<td>$793,197,862</td>
<td>133.5</td>
<td></td>
</tr>
</tbody>
</table>

Negotiations
The JPB has completed negotiations with Balfour on contractual terms and conditions, as well as price. In accordance with the best value process and in compliance with FTA requirements, staff concludes that Balfour’s negotiated costs are fair and reasonable.

Balfour’s proposal also included prices for maintenance services under Option A for the OCS/Traction Power Systems installed under the Electrification Contract, and Option B for the electrification of Michael Yard. The prices for these options were evaluated in conjunction with the proposal evaluation process, and considered in determining that Balfour’s proposal presented the best value to the JPB. These options will not be awarded at this time, but may be awarded by the JPB within the time frames established in the Electrification Contract.

Disadvantaged Business Enterprise Evaluation
The JPB’s DBE Officer reviewed Balfour’s proposal and determined that it was responsive to the JPB’s DBE requirements. The DBE goal established for this project is 5.2 percent. By undertaking a comprehensive outreach effort, Balfour believes it is able to achieve 6.1 percent DBE utilization.

Project Labor Agreement
Balfour has agreed to execute and sign the PLA with the Building Trades Councils of San Francisco, San Mateo, and Santa Clara/San Benito counties, and a MOU with the International Brotherhood of Electrical Workers Local 1245, which will provide for a sufficient skilled workforce, no work stoppages, and labor peace and stability on the project.

Prepared By:  Alicia Fraumeni, Senior Contract Officer  650.508.6442  
              Michael Burns, Chief Officer, Caltrain Planning/CalMod  650.295.6842  
              Dave Couch, Project Delivery Director, CalMod  650.508.7790
RESOLUTION NO. 2016 –
BOARD OF DIRECTORS, PENINSULA CORRIDOR JOINT POWERS BOARD
STATE OF CALIFORNIA
* * *

AUTHORIZING AWARD OF A CONTRACT FOR DESIGN-BUILD SERVICES TO
BALFOUR BEATTY INFRASTRUCTURE, INC. FOR THE ELECTRIFICATION OF THE
RAILROAD CORRIDOR BETWEEN SAN JOSE AND SAN FRANCISCO
FOR A NOT-TO-EXCEED AMOUNT OF $696,610,558

WHEREAS, it is the Peninsula Corridor Joint Powers Board’s (JPB) goal, as part of
the Peninsula Corridor Electrification Program (PCEP), to electrify the Caltrain railroad
corridor by 2020; and

WHEREAS, on September 5, 2013, pursuant to Resolution No. 2013-40, the Board of
Directors of the JPB authorized staff to proceed with the development of contract
documents for the electrification of the corridor on a design-build basis (Electrification
Contract), pursuant to Public Contract Code sections 20209.5-20209.14 (the “Design-
Build Statutes”); and

WHEREAS, on May 15, 2014, the JPB issued a Request for Qualifications (RFQ) to
prequalify design-build entities for the Electrification Contract in accordance with the
Design-Build Statutes; and

WHEREAS, the RFQ process resulted in the following six design-build teams being
prequalified and invited to proceed to the Request for Proposals (RFP) process for the
Electrification Contract:

- Balfour Beatty Infrastructure
- Caltrain Modernization Partners (Elecnor/Cobra JV)
- Mass Electric/Siemens JV
- Peninsula Electrification Partners PTG/Isolux Corsan JV
- Shimmick/Alstom JV
- Skanska-Comstock-Aldridge JV; and
WHEREAS, on December 5, 2014, the JPB issued a draft RFP to third-party reviewers and the six pre-qualified design-build teams for the purpose of considering any industry suggestions to improve the RFP, address any industry concerns, and ensure a fair and competitive process; and

WHEREAS, on February 27, 2015, the JPB issued the RFP to the prequalified design-build teams, and on August 31, 2015, the JPB received proposals from the 4 design-build teams listed below:

- Balfour Beatty Infrastructure
- Mass Electric/Siemens JV
- Peninsula Electrification Partners PTG/Isolux Corsan JV
- Shimmick/Alstom JV; and

WHEREAS, an Evaluation Committee (EC) composed of qualified JPB staff evaluated and quantitatively scored the four Technical Proposals in accordance with the evaluation factors; and

WHEREAS, the EC concluded that all four Step One proposals were within the competitive range; and

WHEREAS, on October 7, 2015, after interviews with each of the four design-build teams, the EC came to a consensus scoring, shortlisted the following three design-build teams, and invited them proceed to the Step Two Best and Final Offer (BAFO) process:

- Balfour Beatty Infrastructure
- Mass Electric/Siemens JV
- Shimmick/Alstom JV; and

WHEREAS, on December 12, 2015, the JPB solicited BAFO proposals from the three shortlisted design-build teams listed above, each of which submitted its BAFO proposal to the JPB on February 26, 2016; and
WHEREAS, the EC evaluated and scored the BAFO proposals in accordance with the Technical Proposal and Price Proposal evaluation factors listed in the RFP, and finalized consensus scoring on March 17, 2016, as follows:

- Balfour Beatty Infrastructure
- Mass Electric/Siemens JV
- Shimmick/Alstom JV; and

WHEREAS, Staff has determined that Balfour Beatty Infrastructure, Inc. (Balfour), the highest-ranked firm, has the required qualifications and expertise to successfully perform the design-build work, and provides the best value to the JPB for the Electrification Contract; and

WHEREAS, the JPB has completed negotiations with Balfour on contractual terms and conditions, as well as price, and in compliance with Federal Transit Administration requirements, Staff concludes that Balfour’s negotiated costs are fair and reasonable; and

WHEREAS, the JPB’s Disadvantaged Business Enterprise (DBE) Officer reviewed Balfour’s proposal and determined that it was responsive to the JPB’s DBE requirements; and

WHEREAS, Balfour has agreed to execute and sign the Project Labor Agreement (PLA) with the Building Trades Councils of San Francisco, San Mateo, and Santa Clara/San Benito counties, and a Memorandum of Understanding with the International Brotherhood of Electrical Workers Local 1245, which will provide for a sufficient skilled workforce, no work stoppages, and labor peace and stability on the project; and

WHEREAS, Staff Coordinating Council (SCC) recommends the Board authorize award the Electrification Contract to Balfour Beatty Infrastructure, Inc. for a not-to-exceed amount of $696,610,558, and for a contract term of 1,330 days from issuance of a Limited Notice to Proceed (LNTP), contingent on award of funds from the California
High-speed Rail Authority (CHSRA) and execution of a Core Capacity Full Funding Grant Agreement (FFGA) with the Federal Transit Administration; and

WHEREAS, SCC also recommends that the JPB establish, and authorize the Executive Director, or his designee, exercise, a contingency for issuance of change orders of up to a total of 5 percent of the total amount of the Board-authorized Electrification Contract award, with updates on the status of such change orders to be reported to the Board on a quarterly basis.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Peninsula Corridor Joint Powers Board hereby awards the design-build contract for electrification of the rail corridor between San Jose and San Francisco (Electrification Contract) for the Peninsula Corridor Electrification Program (PCEP) to Balfour Beatty Infrastructure, Inc. for a not-to-exceed amount of $696,610,558, and for a contract term of 1,330 days from issuance of a Limited Notice to Proceed, with the express understanding that the award of the contract is conditioned upon the CHSRA adopting the CHSRA/JPB funding agreement, currently planned for consideration at the CHSRA August 9, 2016 Board meeting; and

BE IT FURTHER RESOLVED that the Executive Director, or his designee, is authorized to execute the contract with Balfour in full conformity with the terms and conditions of the solicitation documents and negotiated agreement approved by legal counsel, upon the Executive Director's determination that the funding and other prerequisites are in place to commence the contract; and

BE IT FURTHER RESOLVED the Executive Director, or his designee, is authorized to issue a LNTP with Balfour for a not-to-exceed amount of $108,482,000 for a limited scope-of-work within the Electrification Contract, including utility and geotechnical
investigations, design development, and advancing certain critical procurements and contracts in support of construction; and

**BE IT FURTHER RESOLVED** that the Executive Director, or his designee, is authorized to issue a full Notice to Proceed (NTP) once all funding from CHSRA and the Core Capacity FFGA have been finalized, authorizing all remaining scope-of-work activities to commence, including final design, construction, testing, and integration with a new electrified vehicle and existing diesel fleet of vehicles; and

**BE IT FURTHER RESOLVED** that the Board establishes and authorizes the Executive Director, or his designee, to exercise a contingency for issuance of change orders of up to a total of 5 percent of the total Board-authorized Electrification Contract award and directs the Executive Director, or his designee, to provide the Board a quarterly update on the status of contract change orders issued under this authority.

Regularly passed and adopted this 7th day of July, 2016 by the following vote:

AYES:

NOES:

ABSENT:

____________________________
Chair, Peninsula Corridor Joint Powers Board

____________________________
JPB Secretary
AGENDA ITEM # 9
JULY 7, 2016

PENINSULA CORRIDOR JOINT POWERS BOARD
STAFF REPORT

TO: Joint Powers Board

THROUGH: Jim Hartnett
Executive Director

FROM: Eli Kay Michael Burns
Chief Financial Officer Chief Officer
Caltrain Planning/CalMod Program

SUBJECT: AUTHORIZE AWARD OF CONTRACT FOR PROCUREMENT OF ELECTRIC MULTIPLE UNIT VEHICLES FOR PENINSULA CORRIDOR ELECTRIFICATION PROGRAM

ACTION
Staff Coordinating Council recommends the Board:

1. Award, subject to satisfaction of the condition described in No. 2 below, the Electric Multiple Unit (EMU) vehicle contract for procurement of EMU vehicles for the Peninsula Corridor Electrification Program (PCEP) for a not-to-exceed amount of $550,899,459 to Stadler US, Inc. (Stadler).

2. Condition the authorization to award the EMU vehicle contract, and the authorization to execute is contingent, on the California High-Speed Rail Authority (CHSRA) approving the CHSRA/Peninsula Corridor Joint Powers Board (JPB) funding agreement, currently planned for consideration at the CHRSA’s August 9, 2016 Board meeting.

3. Authorize the Executive Director, or his designee, to execute the EMU vehicle Contract with Stadler in full conformity with the terms and conditions of the solicitation documents and negotiated agreement approved by legal counsel upon the Executive Director’s determination that the funding and other prerequisites are in place to commence the contract.

4. Authorize the Executive Director, or his designee, to issue a Limited Notice to Proceed (LNTP) for a not-to-exceed amount of $41 million for limited scope-of-work activities within the EMU vehicle contract. LNTP activities will include initial work necessary to advance the contract within the scope of budgetary availability.

5. Authorize the Executive Director, or his designee, to issue a Full Notice to Proceed (FNTP). This authority is conditioned upon an approved funding plan from CHSRA and execution of a Full Funding Grant Agreement (FFGA) with the
Federal Transit Administration (FTA), thereby providing all funding needed for the PCEP. The FNTP will authorize all remaining scope-of-work activities including the procurement of the base order of 96 vehicles, in accordance with the terms of the contract. All work will be completed in full compliance with FTA requirements.

6. Establish and authorize the Executive Director, or his designee, to utilize a contingency for issuance of change orders of up to a total of 5 percent of the total Board-authorized EMU vehicle contract award. The status of EMU vehicle contract change orders will be reported to the Board on a quarterly basis.

**SIGNIFICANCE**
Approval of the above actions will provide a well-qualified EMU car builder to design, manufacture and deliver the EMU trains for the PCEP. This project and the electrification of the Caltrain right of way comprise the PCEP. The JPB will use its best efforts to deliver the corridor electrification and EMU projects on an expedited basis, and with a targeted completion date of no later than 2021.

**BUDGET IMPACT**
Funding of $1.98 billion for the PCEP has been secured through a 2012 Nine-Party Memorandum of Understanding (MOU), as well as a Seven-Party MOU Supplement. Funding needed to support the PCEP in Fiscal Year (FY) 2017 is partially included in the adopted FY2017 Caltrain Capital Budget in the amount of $207,197,081. To provide sufficient budget authority to implement PCEP after the execution of a FNTP conditioned upon the receipt of a FFGA from FTA, the FY2017 Caltrain Capital Budget must be increased by $108,675,991 to $315,873,072. The increase in budget authority is included in the previous staff report and proposed resolution authorizing contract award for design-build services for the electrification of the Caltrain right of way between San Jose and San Francisco.

**BACKGROUND**
The $1.98 billion PCEP is part of the Early Investment Program in the Peninsula Rail Corridor consisting of (1) installation of an advanced signal system (Communications-based Overlay Signal System (CBOSS)/Positive Train Control (PTC)), (2) electrified Caltrain service by 2020 and (3) procurement of EMU rail vehicles. The Early Investment Program also will be designed to allow for operation of the Blended System with CHSRA in the future.

The JPB is procuring a fleet of new electrically-driven rolling stock, scheduled for revenue service in late 2020 concurrent with completion of corridor electrification under a separate design-build contract. The JPB is procuring 96 EMUs (16 six-car trainsets) under the base scope of work with Options to procure up to 102 EMUs. The JPB intends to expand each trainset from six to eight cars, and increase the number of EMUs from 75 percent to 100 percent of the fleet, after commencement of revenue service. The base scope of work also includes a cab mockup, spare parts, special tools, test equipment, manuals, training, related parts and services in accordance with the Technical Specifications.
The JPB solicited Base Bid proposals for EMU rail vehicles with high and low doors for the 16 six-car trainsets, and for a single car equipped with a bathroom within each six-car or future eight-car trainset. Additionally, the JPB solicited proposals for Option cars with high and low doors, and for up to 16 additional cars equipped with bathrooms.

The JPB also requested Option proposals for Maintenance Services for the new fleet of EMUs, JPB’s existing diesel-powered rail vehicles and JPB’s operations and maintenance facilities including the Centralized Equipment Maintenance and Operations Facility. Evaluation of the proposed Maintenance Services option was included as part of the RFP’s evaluation process.

**Request for Information (RFI)**

The JPB began the solicitation process with a two-step process for the EMU vehicle procurement. Step 1 consisted of the JPB issuing a Request for Information (RFI) for qualified carbuilders to submit Letters of Interest (LOI). The JPB issued the RFI on May 22, 2014. Staff advertised the requirements on the JPB’s procurement website, in a newspaper of general circulation and in Railway Age Magazine, and Transit Talent. Notifications also were sent to interested vendors that were registered in the procurement database and Disadvantaged Business Enterprises (DBEs) in the carbuilder industries. The RFI was designed to enable the JPB to gather new information to consider with already-available data to assist in JPB’s outreach efforts with stakeholders and to develop realistic performance requirements and specifications for inclusion in the JPB’s Request for Proposal (RFP) documents scheduled to be issued in 2015.

The JPB received six LOIs from qualified carbuilders on June 16, 2014 in response to the RFI. The LOI submittals were reviewed by JPB staff. The JPB issued letters to the carbuilders to invite them to attend meetings to discuss their LOI submittals with JPB staff. Participation in the RFI phase of the procurement process was voluntary. Only three carbuilders listed below voluntarily participated in the meetings with the JPB.

- CSR Qingdao Sifang CO., Ltd. (CSR)
- Bombardier Transportation
- Stadler US, Inc.

**Industry Review**

On May 30, 2015, the JPB issued the draft RFP for industry review and to obtain input from our third-party reviewers and the carbuilders. The purpose of the industry review was to gather all comments so the JPB could review and consider them while completing the final RFP, and to enhance competition. The following five carbuilders participated in the industry review process:

- Alstom Transportation
- Bombardier Transit Corporation
- Hyundai Rotem USA Corp.
- Siemens Industry, Inc.
- Stadler US, Inc.
Industry review was completed June 30, 2015. All comments received were considered and used in drafting the final RFP.

**RFP Step One: Proposal Solicitation, Evaluation, and Shortlisting**

On August 21, 2015, the Staff issued the final RFP to all carbuilders who participated in the industry review process and advertised the RFP on the JPB’s procurement website. Notifications also were sent to all firms in the carbuilder industry that were registered in the procurement database and to DBEs. The proposal submittal deadlines were staged to require the vehicle proposals to be submitted on February 17, 2016 and the maintenance proposals to be submitted on March 10, 2016. The JPB received a total of one proposal, from Stadler US, Inc., in response to the RFP. JPB staff surveyed firms that did not submit proposals and, especially given the above record of the JPB’s efforts to maximize competition, the JPB has confirmed that the specifications were not unduly restrictive and that competition was adequate for this project.

Staff reviewed the proposal for responsiveness and financial qualifications. The technical team reviewed the technical proposal and provided guidance as to whether the submittal was responsive to the RFP requirements. The technical evaluation factors were as follows:

**Step 1 Technical Proposal Evaluation Factors:**

- Vehicle Description 25 Points
- Seats, Bikes, Standees 25 Points
- Qualifications, References, Capability, and Experience 15 Points
- Financial Qualifications & Financial Capacity Qualified/Not Qualified
- Management Approach 10 Points
- System Support Plan 10 Points
- Maintenance Services 15 Points

**Total Maximum Available Points for Technical Proposal** 100 Points

Stadler’s vehicle and maintenance proposals were determined to be responsive to the RFP and met the shortlist threshold. As part of the evaluation process, Stadler’s proposal was analyzed under the RFP’s requirements for evaluation of a single proposal, in accordance with federal procurement guidelines. The Evaluation Committee (EC) came to a consensus scoring on March 18, 2016.

**Negotiations**

On March 18, 2016, Stadler was notified by the JPB that it was shortlisted. As the JPB received a single proposal, the evaluation team proceeded directly to contract negotiations with Stadler. On April 1, 2018, the JPB and Stadler began negotiations.

The JPB has completed negotiations with Stadler on contractual terms and conditions, as well as price for the vehicles. After cost analysis in compliance with Federal Transit Administration requirements, Staff concluded that Stadler’s negotiated costs are fair and reasonable for Base Bid and Option vehicles.

Stadler’s proposal includes the optional provision of maintenance services. This option would provide the JPB with specified maintenance services for a period of five or more
years. The JPB has a 12-month period from Notice to Proceed to exercise the maintenance services option. Staff will continue to review and discuss with Stadler its proposal for these services, consider other alternatives, and bring back to the JPB Board a recommendation relative to these services.

Staff determined that Stadler is qualified to be selected for contract award as it possesses the requisite depth of experience and has the required qualifications and expertise to successfully provide the EMU vehicles for the PCEP.

**Buy America Audit and Certification**
Staff conducted a pre-award Buy America Audit and Certification for the EMU procurement on May 25 and 26, 2016. Staff determined that Stadler met the requirements to enable the JPB to certify compliance in the manner set forth in 49 CFR 663.25.

**Disadvantaged Business Enterprise Evaluation**
The JPB’s DBE Officer reviewed Stadler’s vehicle proposal and determined that it was responsive to the JPB’s DBE requirements. The RFP required the carbuilders to provide the required Transit Vehicle Manufacturer’s (TVM) Certification from the FTA in their vehicle proposals. The JPB has reviewed and confirmed that Stadler possesses the FTA-approved TVM certification with an overall DBE goal of 3.90 percent.

Prepared By: Alicia Fraumeni, Senior Contract Officer 650.508.6442
Michael Burns, Chief Officer, Caltrain Planning/CalMod 650.295.6842
Dave Couch, Project Delivery Director, CalMod 650.508.7790
RESOLUTION NO. 2016 –

BOARD OF DIRECTORS, PENINSULA CORRIDOR JOINT POWERS BOARD
STATE OF CALIFORNIA

* * *

AUTHORIZING AWARD OF CONTRACT FOR PROCUREMENT OF ELECTRIC MULTIPLE UNIT VEHICLES TO STADLER US, INC. FOR A NOT-TO-EXCEED AMOUNT OF $550,899,459

WHEREAS, in support of the Peninsula Corridor Electrification Program (PCEP), the Peninsula Corridor Joint Powers Board (JPB) requires a fleet of new electrically-driven rolling stock (referred to as Electric Multiple Units, or EMUs), scheduled to be placed into revenue service in late 2020, concurrent with scheduled completion of the electrification of Caltrain railroad corridor from San Jose to San Francisco; and

WHEREAS, the JPB conducted a comprehensive procurement process, including the preliminary steps of: (1) issuance of a Request for Information; (2) meetings with leading vehicle manufacturers in the rail industry; and (3) issuance of a draft Request for Proposals for industry review, all designed to ensure that the JPB's requirements were not restrictive and to maximize participation and competition in the procurement process; and

WHEREAS, in response to the JPB's outreach efforts, the JPB received six Letters of Intent from qualified carbuilders, five of whom then participated in the industry review process; and

WHEREAS, on August 21, 2015, the JPB issued a Request for Proposals (RFP) for the procurement and optional maintenance of the new EMUs, which RFP was widely advertised and accompanied by extensive outreach to the industry and to Disadvantaged Business Enterprises in the JPB's database, and by the March 10, 2016 deadline set forth in the RFP the JPB received one proposal, from Stadler, US, Inc. (Stadler); and
WHEREAS, staff and a team of technical advisors reviewed the single proposal for responsiveness and financial qualifications, in accordance with the RFP’s evaluation criteria; and

WHEREAS, the Evaluation Committee scored Stadler’s proposal and determined it met the RFP’s requirements for the final shortlist; and

WHEREAS, the Evaluation Committee also determined that Stadler is qualified to be selected for contract award as it possesses the requisite depth of experience and has the required qualifications and expertise to successfully provide the EMUs; and

WHEREAS, because Stadler’s was the only proposal, there was no need for a second and final round of scoring, and the JPB proceeded to negotiate terms with Stadler; and

WHEREAS, the JPB has completed negotiations with Stadler on contractual terms and conditions, and has conducted the Federally-required cost analysis of Stadler’s final negotiated price, leading to the conclusion that Stadler’s negotiated costs are fair and reasonable for both the base order of EMUs as well as optional EMUs that were part of the scope of the RFP; and

WHEREAS, the RFP also included an option for maintenance services, the exercise of which option Staff will seek future Board approval at the appropriate time if deemed in the JPB’s best interest; and

WHEREAS, staff conducted a pre-award Buy America Audit and Certification for the EMU procurement on May 25 and 26, 2016, and determined that Stadler’s proposal meets all requirements to enable the JPB to certify compliance in the manner set forth in 49 CFR 663.25; and

WHEREAS, the JPB’s Disadvantaged Business Enterprise (DBE) Officer reviewed Stadler’s proposal and determined that Stadler possesses the necessary Transit Vehicle
Manufacturer's (TVM) certification approved by the Federal Transit Administration (FTA), with an overall DBE goal of 3.90 percent; and

WHEREAS, Staff Coordinating Council (SCC) recommends that the JPB authorize the Executive Director, or his designee, to execute a contract with Stadler in full conformity with the terms and conditions of the RFP and negotiated agreement approved by legal counsel, upon the Executive Director’s determination that the funding and other prerequisites are in place to commence the contract, in the not-to-exceed amount of $550,899,459 for the base order of 96 EMUs, all subject to the conditions set forth below; and

WHEREAS, SCC also recommends that JPB establish, and authorize the Executive Director, or his designee, to exercise, a contingency for issuance of change orders of up to a total of 5 percent of the total Board-authorized EMU vehicle contract award, with updates on the status of such change orders to be reported to the Board on a quarterly basis.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Peninsula Corridor Joint Powers Board hereby awards the contract for procurement of EMU vehicles for the PCEP for a not-to-exceed amount of $550,899,459 to Stadler US, Inc., with the express understanding that the award of the contract is conditioned upon the California High-Speed Rail Authority (CHSRA) adopting the CHSRA/JPB funding agreement, currently planned for consideration at the CHSRA August 9, 2016 Board meeting; and

BE IT FURTHER RESOLVED, that the Executive Director, or his designee, is authorized to execute the contract with Stadler in full conformity with the terms and conditions of the solicitation documents and negotiated agreement approved by legal counsel.
upon the Executive Director's determination that the funding and other prerequisites are in place to commence the contract; and

**BE IT FURTHER RESOLVED,** that upon execution of the contract with Stadler, the Executive Director, or his designee, is authorized to issue Stadler a Limited Notice to Proceed in a not-to-exceed amount of $41 million for the initial work necessary to advance the contract within the scope of budgetary availability; and

**BE IT FURTHER RESOLVED,** that the Executive Director, or his designee, is authorized to issue Stadler a final Notice to Proceed (NTP) for all remaining scope-of-work activities necessary for the procurement of the base order of 96 vehicles, in accordance with the terms of the contract and conditioned upon an approved funding plan from CHSRA and execution of a Full Funding Grant Agreement from the FTA, which would complete the funding needed for the PCEP; and

**BE IT FURTHER RESOLVED** the Board establishes and authorizes the Executive Director, or his designee, to exercise a contingency for issuance of change orders of up to a total of 5 percent of the total Board-authorized EMU vehicle contract award, with updates on the status of such change orders to be reported to the Board on a quarterly basis.

Regularly passed and adopted this 7th day of July, 2016 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

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Chair, Peninsula Corridor Joint Powers Board

______________________________
JPB Secretary
AGENDA ITEM # 10
JULY 7, 2016

PENINSULA CORRIDOR JOINT POWERS BOARD
STAFF REPORT

TO: Joint Powers Board

THROUGH: Jim Hartnett
Executive Director

FROM: Michael Burns
Chief Officer, Caltrain Planning/CalMod Program

SUBJECT: APPROVAL OF AGREEMENT WITH THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY TO SECURE STATE FUNDING FOR THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT

ACTION
Staff Coordinating Council recommends the Board:

1. Approve the agreement between the Peninsula Corridor Joint Powers Board (JPB) and the California High-Speed Rail Authority (CHSRA) for funding of the Peninsula Corridor Electrification Project (PCEP).

2. Authorize the Executive Director to execute, on behalf of the JPB, the above-referenced agreement implementing the funding commitments from CHSRA in support of the PCEP, in a form acceptable to legal counsel.

3. Authorize the Executive Director, or his designee, to take such other actions and enter into such other understandings as may be necessary to give effect to this Board action and to implement and administer the subject agreement.

SIGNIFICANCE
The JPB and the CHSRA have executed a series of agreements over the past 12 years. Agreements entered into in 2004 and 2009 laid the foundation for anticipated future shared use of the JPB’s Peninsula Rail Corridor to accommodate commuter and high-speed passenger rail services. These two agreements were entered into at a time when CHSRA envisioned a four-track, grade-separated high-speed rail service operating within the JPB-owned rail corridor. Subsequently, the JPB and its local and regional partners, as well as the CHSRA, adopted policies and entered into a Nine-Party Memorandum of Understanding (MOU) that established a new approach, known as the Blended System, for shared use of the Peninsula Rail Corridor. Additionally, in July 2012, the California Legislature passed and the governor signed Senate Bill (SB) 1029, which included an appropriation of $600 million of Proposition 1A funds to be made available for electrification of the Peninsula Rail Corridor and related projects conditioned upon, among other things, requiring future development of the corridor for high-speed rail service to be based on the Blended System.
As a result, a new agreement between the JPB and CHSRA became necessary to reflect and to be grounded in the Blended System, defined to consist primarily of a two-track system, located substantially within the existing JPB-owned rail corridor, to be shared by JPB and CHSRA trains, as well as with other passenger and freight service operators. Accordingly, on May 1, 2013, a new agreement between the JPB and CHSRA was entered into, supplanting and replacing the 2004 and 2009 agreements, and establishing a new partnership between the parties. Key provisions of the 2013 Agreement include the following elements:

- Establishment of a collaborative process for CHSRA securing Proposition 1A funds for design and construction of the PCEP;
- Enunciation of principles and delineation of a process regarding CHSRA future design and construction of the Blended System;
- Recognition that the Blended System must be designed and constructed in a manner that gives consideration to local community interests and concerns; and
- Recognition of the JPB’s ownership of the Peninsula Rail Corridor.

The 2013 Agreement contemplated that it will be necessary to formalize additional agreements relative to implementation of the goals and objectives of the parties. Based upon commitments set forth in the 2013 Agreement and in SB 1029, the parties have negotiated a new agreement to implement funding commitments of the State of California toward the PCEP. Recognizing that the JPB now is poised to award contracts for final design and construction of PCEP and acquisition of associated new rolling stock, it is timely and of vital importance for the critical element of the PCEP funding package involving access to State of California funds to be memorialized contractually.

**BUDGET IMPACT**

The PCEP has a project budget of $1.98 billion, including $600 million from CHSRA secured through the 2012 Nine-Party MOU, and another $113 million from the 2016 Seven-Party MOU Supplement. Approval of the agreement would secure the release of these funds for PCEP, and allow the JPB to access the CHSRA funds already included in the approved Fiscal Year 2017 Caltrain Capital Budget.

**BACKGROUND**

The fundamental purpose of this Agreement is to delineate an action plan pursuant to which CHSRA will secure approval of, and effect release of funds from, the State of California in support of the PCEP. Specifically, the Agreement consists of the following core elements:

- Establishment of a collaborative action plan to seek and obtain $600 million of Proposition 1A funds appropriated and directed by the California Legislature for the PCEP;
• Commitment of an additional sum of $113 million from funds available to CHSRA in support of the PCEP;

• Enumeration of Core Principles essential to both construction of the PCEP and future operation of Blended System service in the Peninsula Rail Corridor; and

• Provision for PCEP cash-flow funding from the State pending actual availability of Proposition 1A funds.

Prepared By:  
David Miller, Legal Counsel  415.995.5007  
Shayna van Hoften, Legal Counsel  415.995.5880
RESOLUTION NO. 2016 –

BOARD OF DIRECTORS, PENINSULA CORRIDOR JOINT POWERS BOARD
STATE OF CALIFORNIA

* * *

APPROVING AN AGREEMENT WITH THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY TO
SECURE STATE FUNDING FOR THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT

WHEREAS, the Peninsula Corridor Joint Powers Boards (JPB) owns the Caltrain right of way between the city of San Jose and the city and county of San Francisco (Peninsula Rail Corridor) and is charged with overseeing and managing the corridor to ensure that the Peninsula commuter rail service survives and thrives, and that the service operates in harmony with the communities in which it operates; and

WHEREAS, in January 2004, the JPB and the California High-Speed Rail Authority (CHSRA) entered into a Memorandum of Understanding (the 2004 MOU) to establish a framework for future cooperation between the two agencies relative to the proposed development of a high-speed train system for California that would share the Peninsula Rail Corridor with Caltrain; and

WHEREAS, pursuant to Resolution 2009-48, the JPB and CHSRA entered into a new Memorandum of Understanding (the 2009 MOU) to establish a cooperative organizational framework known as the Peninsula Rail Program (PRP) through which the CHSRA and JPB would engage as partners in the planning, design and construction of improvements on the Peninsula Rail Corridor to facilitate fully compatible commuter rapid rail and intercity high-speed rail; and
WHEREAS, the 2009 MOU was amended in November 2009, in part to establish a 50-50 financial cost-sharing arrangement between the parties to cover costs incurred in connection with the PRP’s work, and to further define roles and responsibilities for the same; and

WHEREAS, in July 2012, the California Legislature passed and the governor signed Senate Bill 1029, which included an appropriation of $600 million of Proposition 1A funds to be made available for electrification of the Peninsula Rail Corridor and related projects conditioned upon, among other things, requiring future development of the corridor for high-speed rail service to be based on the Blended System; and

WHEREAS, as a result, by Resolution 2012-18, the Board of Directors approved a Seven-Party Memorandum of Understanding outlining the Early Investment Strategy for a blended system of Caltrain and high-speed rail on the Peninsula Rail Corridor; and

WHEREAS, pursuant to Resolution 2013-13, the JPB and CHSRA entered into another agreement to supplant and replace the 2004 and 2009 MOUs, and to establish a collaborative process for CHSRA to secure Proposition 1A funds for design and construction of the Peninsula Corridor Electrification Project (PCEP); enunciate the principles and delineate a process regarding CHSRA future design and construction of the Blended System; recognize that the Blended System must be designed and constructed in a manner that gives consideration to local community interests and concerns; and recognize the JPB’s ownership of the Peninsula Rail Corridor; and

WHEREAS, representatives of the JPB and CHSRA have negotiated an agreement to delineate an action plan pursuant to which CHSRA will secure approval of, and effect release of funds from, the State of California in support of the PCEP, and more specifically, to: establish a collaborative action plan to seek and obtain $600 million of Proposition 1A funds appropriated and directed by the California Legislature for the
PCEP; commit an additional sum of $113 million from funds available to CHSRA in support of the PCEP; enumerate core principles essential to both construction of the PCEP and future operation of Blended System service in the Peninsula Rail Corridor; and provide for PCEP cash-flow funding from the State pending actual availability of Proposition 1A funds; and

WHEREAS, the Executive Director recommends, and Staff Coordinating Council concurs, that the Board approve the agreement described above; authorize the Executive Director to execute such agreement in a form acceptable to legal counsel, and authorize the Executive Director, or designee, to take such other actions and enter into such other understandings as may be necessary to give effect to this Resolution and to implement and administer the subject agreement with CHSRA.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Peninsula Corridor Joint Powers Board approves the agreement described above, authorizes the Executive Director to execute such agreement in a form acceptable to legal counsel, and authorizes the Executive Director, or designee, to take such other actions and enter into such other understandings as may be necessary to give effect to this Resolution and to implement and administer the subject agreement with CHSRA.

Regularly passed and adopted this 7th day of July, 2016 by the following vote:

AYES:

NOES:

ABSENT:

______________________________
Chair, Peninsula Corridor Joint Powers Board

ATTEST:

______________________________
JPB Secretary
AGENDA ITEM # 11
JULY 7, 2016

PENINSULA CORRIDOR JOINT POWERS BOARD
STAFF REPORT

TO: Joint Powers Board

THROUGH: Jim Hartnett
Executive Director

FROM: April Chan
Chief Officer, Planning, Grants and the Transportation Authority

SUBJECT: AUTHORIZE THE EXECUTION AND SUBMISSION OF AN ALLOCATION REQUEST FOR $39.4 MILLION IN REGIONAL MEASURE 1 AND REGIONAL MEASURE 2 FUNDS WITH THE METROPOLITAN TRANSPORTATION COMMISSION FOR THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT

ACTION
Staff Coordinating Council recommends the Board authorize the Executive Director, or his designee, to execute and submit an allocation request with the Metropolitan Transportation Commission (MTC) to receive $39.4 million in Regional Measure 1 (RM1) and Regional Measure 2 (RM2) funds for the Peninsula Corridor Electrification Project (PCEP).

SIGNIFICANCE
In June 2016, the MTC approved the allocation of $39.4 million in RM1 and RM2 funds to help fund construction of PCEP infrastructure as well as to purchase new electric multiple units (EMUs). The nine-party Memorandum of Understanding (MOU), which establishes the regional funding plan for the PCEP, includes $11 million in RM1 funding. The MOU supplement, approved by the JPB Board in May 2016, includes an additional $8.4 million in RM1 and $20 million in RM2 funds. While the MTC has approved the allocation of the funds, their action is contingent on the Peninsula Corridor Joint Powers Board (JPB) adopting the attached resolution to authorize the Executive Director or his designee to submit and execute an allocation request for the funds and to certify the JPB will abide by all regulations governing the use of RM1 and RM2 funds. Once the resolution and allocation request have been received by MTC, the funds will be made available to the project.

BUDGET IMPACT
There is no budget impact associated with this action. There is sufficient budget authority in the approved Fiscal Year 2017 Capital Budget for PCEP to receive these funds.

BACKGROUND
Approved by Bay Area voters in 1988, RM1 established a uniform $1 base toll on the Bay Area’s seven State-owned toll bridges. Voters in 2004 approved RM2, raising the toll on
the State-owned toll bridges by $1. Revenues from both measures, which are administered by the MTC, have been used to fund a variety of transit and roadway projects throughout the nine-county Bay Area region.

Prepared by: Peter Skinner, Manager, Grants and Fund Programming 650.622.7818
RESOLUTION NO. 2016 –

BOARD OF DIRECTORS, PENINSULA CORRIDOR JOINT POWERS BOARD
STATE OF CALIFORNIA

* * *

AUTHORIZING THE EXECUTION AND SUBMISSION OF AN ALLOCATION REQUEST FOR
$39.4 MILLION IN REGIONAL MEASURE 1 AND REGIONAL MEASURE 2 FUNDS
WITH THE METROPOLITAN TRANSPORTATION COMMISSION
FOR THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT

WHEREAS, the Metropolitan Transportation Commission (MTC) adopted
Resolution No. 4137, Revised, which establishes the program of projects for Regional
Measure 1 (RM1) 90 percent Rail Reserve funds; and

WHEREAS, Senate Bill 916 (Chapter 715, Statutes 2004), commonly referred as
Regional Measure 2 (RM2), identified projects eligible to receive funding under the
Regional Traffic Relief Plan; and

WHEREAS, the MTC is responsible for funding projects eligible for RM2 funds,
pursuant to Streets and Highways Code Section 30914(c) and (d); and

WHEREAS, MTC has established a process whereby eligible transportation project
sponsors may submit allocation requests for RM2 funding; and

WHEREAS, allocations to MTC must be submitted consistent with procedures and
conditions as outlined in RM2 Policy and Procedures; and

WHEREAS, the Peninsula Corridor Joint Powers Board (JPB) is an eligible sponsor of
transportation project(s) in RM2 Regional Traffic Relief Plan funds; and

WHEREAS, the Peninsula Corridor Electrification Project (PCEP) is eligible for
consideration in the Regional Traffic Relief Plan of RM2, as identified in California Streets
and Highways Code Section 30914(c) or (d); and
WHEREAS, the RM1 and RM2 90 percent Rail Reserve bridge toll funds allocation request, in the Initial Project Report (IPR) to be provided to the MTC as though set forth at length, lists the project, purpose, schedule, budget, expenditure and cash flow plan for which JPB is requesting that MTC allocate RM1 and RM2 90 percent Rail Reserve funds.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Peninsula Corridor Joint Powers Board, hereby:

1. Authorizes the Executive Director or his designee to execute and submit an allocation request with MTC for RM1 and RM2 funds in the amount of $39.4 million for the project, purposes and amounts included in the project application to be submitted to MTC; and

2. Provides the Executive Director or his designee delegated authority to make non-substantive changes or minor amendments to the IPR as he deems appropriate.

3. Authorizes the Executive Director, or his designee, to take such actions as may be necessary to give effect to this resolution, including filing of reports applications, executing any agreements, certifications and assurances, related amendments, or other documentation that may be required to receive the funds.

BE IT FURTHER RESOLVED that the Board of Directors of the Peninsula Corridor Joint Powers Board, hereby certifies:

1. The JPB and its agents shall comply with the provisions of the MTC’s RM2 Policy Guidance (MTC Resolution No. 3636); and

2. The project is consistent with the Regional Transportation Plan; and
3. The year of funding for any design, right of way and/or construction phases has taken into consideration the time necessary to obtain environmental clearance and permitting approval for the project; and

4. The RM1 and RM2 phase or segment is fully funded, and results in an operable and useable segment; and

5. The IPR to be submitted to the MTC; and

6. The cash flow plan to be submitted to the MTC; and

7. The JPB has reviewed the project needs and has adequate staffing resources to deliver and complete the project within the schedule set forth in the IPR to be submitted to the MTC; and

8. The JPB is an eligible sponsor of projects in the RM2 Regional Traffic Relief Plan, Capital Program, in accordance with California Streets and Highways Code 30914(c); and

9. The JPB is authorized to submit an application for RM2 funds for PCEP in accordance with California Streets and Highways Code 30914(c); and

10. The projects and purposes for which RM1 and RM2 funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (4 California Code of Regulations Section 15000 et seq.) and if relevant the National Environmental Policy Act, 42 USC Section 4-1 et seq. and the applicable regulations thereunder; and

11. There is no legal impediment to JPB making allocation requests for RM1 and RM2 funds; and
12. There is no pending or threatened litigation, other than a pending CEQA challenge of which MTC has been notified, which might in any way adversely affect the proposed project, or the ability of JPB to deliver such project; and

13. The JPB will comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution 3866; and

14. The JPB will indemnify and holds harmless MTC, its commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of the JPB, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM1 and RM2 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM1 and RM2 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages; and

15. That any revenues or profits from any non-governmental use of property (or project) that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the MTC is entitled to a proportionate share equal to MTC's percentage participation in the projects(s); and

16. That assets purchased with RM1 and RM2 funds including facilities and equipment shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their
intended public transportation purposes for its useful life, that the MTC shall be entitled to a present-day value refund or credit (at MTC’s option) based on MTC’s share of the fair market value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that RM1 and RM2 funds were originally used; and

17. The JPB will post on both ends of the construction site(s) at least two signs visible to the public stating that the project is funded with RM1 and RM2 Toll Revenues; and

18. A copy of this resolution shall be transmitted to MTC in conjunction with the filing of the application referenced herein.

Regularly passed and adopted this 7th day of July, 2016 by the following vote:

AYES:

NOES:

ABSENT:

______________________________
Chair, Peninsula Corridor Joint Powers Board

ATTEST:

______________________________
JPB Secretary
AGENDA ITEM # 12
JULY 7, 2016

PENINSULA CORRIDOR JOINT POWERS BOARD
STAFF REPORT

TO: Joint Powers Board

THROUGH: Jim Hartnett
Executive Director

FROM: Michelle Bouchard
Chief Operating Officer, Rail
Eli Kay
Chief Financial Officer

SUBJECT: RATIFICATION OF THE PAYMENT OF AN ADVANCED DEPOSIT TO SECURE THE ABILITY TO LEASE EIGHT LOCOMOTIVES

ACTION

The Staff Coordinating Council recommends the Board ratify the payment of an advanced deposit to, and the Executive Director’s execution of a Certificate of Deposit memorializing said deposit with, Rail Transportation Services Corporation (RTSC) in the amount of $162,000 for the purpose of securing a first right of refusal to lease eight F 40 locomotives (Locomotives).

SIGNIFICANCE

Securing these Locomotives will help ensure that Caltrain service remains reliable throughout construction of the Peninsula Corridor Electrification Project (PCEP) and testing of the Communications-Based Overlay Signal System/Positive Train Control Project (CBOSS/PTC). The lease of these Locomotives will also facilitate acceleration of the locomotive state of good repair (SOGR) program by allowing more locomotives to be worked on concurrently. Following a satisfactory inspection, staff will return to the Board with a recommendation to authorize the execution of a five-year lease of the Locomotives.

BUDGET IMPACT

Because the advanced deposit is refundable, there is no budget impact associated with this item. A budget impact will occur in the event that the Locomotives are determined to be satisfactory for Caltrain service and the Peninsula Corridor Joint Powers Board (JPB) enters into a lease with RTSC. The terms of the lease, pending a successful inspection process, would provide for a five-year term at $225 per day, per Locomotive for a total amount of $3.285 million. In anticipation of a successful inspection, staff is working toward developing a funding plan for Fiscal Year (FY) 2017 that utilizes SOGR funding and monies saved from other mechanical projects already included in the approved FY2017 budget.

BACKGROUND

For several months, JPB staff and the agency’s vehicle consultant, LTK, have been exploring opportunities to lease locomotives to provide enhanced service reliability.
Through these efforts, staff learned that the lease of the Locomotives to the Massachusetts Bay Transportation Authority (MBTA) is coming to an end. MBTA was using the Locomotives to operate its service pending the delivery of new locomotives.

Because such lease opportunities are rare and because interest from other agencies for this type of vehicle is likely to be high, JPB advanced a deposit of $162,000 to RTSC for the purposes of securing the availability of the Locomotives, which deposit was memorialized through the execution of a Certificate of Deposit. JPB's right of first refusal of these Locomotives is subject to a satisfactory thorough mechanical evaluation. The Certificate of Deposit allows for the deposit to be refunded if the JPB determines the Locomotives are not satisfactory for Caltrain service or a lease is not entered into within 60 days of execution of the Certificate of Deposit. It is anticipated that the inspection will take place during the week of July 4th at RTSC's facility in Dansville, New York.

Prepared By:  Michelle Bouchard, Chief Operating Officer, Rail  650.508.6420
              Eli Kay, Chief Financial Officer  650.508.6466
RESOLUTION NO. 2016 –

BOARD OF DIRECTORS, PENINSULA CORRIDOR JOINT POWERS BOARD
STATE OF CALIFORNIA

***

RATIFYING THE PAYMENT OF AN ADVANCED DEPOSIT TO SECURE
THE ABILITY TO LEASE EIGHT LOCOMOTIVES

WHEREAS, for several months, Peninsula Corridor Joint Powers Board (JPB) staff and the agency’s vehicle consultant, LTK, have been exploring opportunities to lease locomotives to provide enhanced Caltrain service reliability; and

WHEREAS, as a result of these efforts, staff learned that a lease of eight F 40 locomotives (Locomotives) to the Massachusetts Bay Transportation Authority is coming to an end; and

WHEREAS, because such lease opportunities are rare and because interest from other agencies for this type of vehicle is likely to be high, JPB advanced a deposit of $162,000 to Rail Transportation Services Corporation (RTSC) for the purpose of securing the availability of the Locomotives through a right of first refusal to lease these vehicles, which deposit was memorialized through the execution of a Certificate of Deposit; and

WHEREAS, JPB’s right of first refusal of these Locomotives is subject to a satisfactory thorough mechanical evaluation, and the Certificate of Deposit allows for the advanced deposit to be refunded if the JPB determines the Locomotives are not satisfactory for Caltrain service or a lease is not entered into within 60 days of execution of the Certificate of Deposit; and

WHEREAS, securing these Locomotives will help ensure that Caltrain service remains reliable throughout construction of the Peninsula Corridor Electrification Project and completion of the Communications-Based Overlay Signal System/Positive Train
Control Project, and will also facilitate acceleration of the locomotive state of good repair program by allowing more locomotives to be worked on concurrently; and

WHEREAS, following a satisfactory inspection of the Locomotives, staff will return to the Board with a recommendation to authorize the execution of a five-year lease of the Locomotives; and

WHEREAS, the Executive Director recommends, and Staff Coordinating Council concurs, that the Board ratify the payment of an advanced deposit to, and execution of a Certificate of Deposit memorializing said deposit with, RTSC in the amount of $162,000 for the purpose of securing a first right of first refusal to lease the Locomotives.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Peninsula Corridor Joint Powers Board ratifies the payment of an advanced deposit to, and execution of a Certificate of Deposit with, Rail Transportation Services Corporation in the amount of $162,000 for the purpose of securing a first right of refusal to lease eight F 40 locomotives, with the understanding that staff will return to the Board with a recommendation to authorize the execution of a five-year lease of the Locomotives, if the Locomotives pass the JPB’s inspection.

Regularly passed and adopted this 7th day of July, 2016 by the following vote:

AYES:

NOES:

ABSENT:

Chair, Peninsula Corridor Joint Powers Board

ATTEST:

JPB Secretary
AGENDA ITEM # 13
JULY 7, 2016

PENINSULA CORRIDOR JOINT POWERS BOARD
STAFF REPORT

TO: Joint Powers Board

THROUGH: Jim Hartnett
Executive Director

FROM: Michelle Bouchard
Chief Operating Officer, Rail

SUBJECT: KEY CALTRAIN PERFORMANCE STATISTICS MAY 2016

In May 2016, Caltrain’s average weekday ridership (AWR) was 62,391, which is an increase of 2.2 percent from the May 2015 AWR of 61,054. The total number of passengers who rode Caltrain in May 2016 was 1,671,093, which is 4.3 percent more than May 2015 ridership of 1,601,890. Fare box revenue increased 8.3 percent over May 2015.

On-time performance (OTP) for May 2016 was 93.6 percent, which is higher than the 89.6 percent OTP for May 2015. When trains arriving within 10 minutes of the scheduled arrival time are included, OTP rises to 97 percent. Overall in May 2016, there were 354 mechanical minutes of delay compared with 1,184 mechanical minutes of delay in May 2015. There were two days that operated with 100 percent of the trains on time and 16 additional days with 95 percent or better OTP.

Looking at customer service statistics, there were 7.7 complaints per 100,000 passengers in May 2016. This is lower than both the 8.2 complaints in May 2015 and the 10.4 complaints from the previous month in April 2016.

Shuttle ridership for May 2016 is up 15.9 percent from May 2015. For the station shuttles, the Millbrae-Broadway shuttle averaged 204 daily riders. The Belmont-Hillsdale shuttle averaged 58 daily riders. The weekend Tamien-San Jose shuttle averaged 59 riders per day. The Marguerite shuttle has a 21.1 percent impact on shuttle ridership. When the Marguerite shuttle is removed, remaining shuttle ridership decreased 5.2 percent over May 2015.
Caltrain Promotions – May 2016

Bay to Breakers – On May 15, Caltrain provided extra train service to the most unique foot race in San Francisco. The annual Bay to Breakers Race attracted participants and spectators from all over the Bay Area. Caltrain carried over 9,500 extra riders to get to the race early Sunday morning. With most riders coming from Santa Clara and Stanford University, the majority of our communication and outreach efforts were focused on the two campuses. Print ads ran in the Stanford Daily and The Santa Clara Newspaper as well as geo-targeted sponsored social medial posts. Communications also included display ads located in Student Activities Center and fliers posted at information boards located throughout the campus. Internal news release, blogs, paid social media and visual message signs were utilized at all Caltrain stations the week leading up to the race.

Beyoncé: Formation Tour – On May 16, Beyoncé Knowles took the stage at Levi’s Stadium as part of Formation World Tour. Caltrain ran extra service to assure concert goers could relax and take Caltrain to the concert and get home safely. Caltrain carried an additional 987 riders after the concert. The concert was promoted through internal communications channels, news releases, blog posts and social. Additional staff was at the Mountain View station to assist people with parking, directing people and assisting with questions.

Bike to Work Day – On Thursday, May 12 marked the 22nd annual Bike to Work Day in the Bay Area. With the addition of more bike capacity in April on all Bombardier equipment, the day was welcomed by thousands of cyclists who use the bus and train to commute to work. Energizer tables were staffed at large number of Caltrain stations and other locations throughout the Peninsula. The day was promoted through participating agency’s internal communications channels, news releases, blog posts and social.

Partnerships - Caltrain Market Research and Development staff work with a number of event organizers to co-promote events that generate train ridership and also provide added value for current Caltrain customers. In May, Caltrain partnered with Maker Faire. The event was promoted in the Track the Fun brochure, Caltrain Connection, through social media, news releases, and ad cards.

On-going

San Jose Sharks Playoffs at SAP Center - For the month of May, the Sharks advanced against Nashville in the second round and against St. Louis in the third round of the playoffs. There were a total of 6 home games. Caltrain carried an additional 2,212 customers for the month of May. We continue to inform fans about service plans via news release and social media.

Caltrain May 2016 Social Media Analytics - Caltrain had a number of events that drove content and impressions and followers in May. Those events included Bay to Breakers,
Bike to Work Day and a pedestrian fatality. Caltrain’s total number of followers across all social properties grew by 2,000 to more than 78,000 followers. Follower interactions also continue to be up, although down slightly from the previous month at more than 56,000 follower interactions, Caltrain continues to be up when comparing interactions with previous months.

Thanks to a paid campaign for Bay to Breakers, Caltrain’s Facebook posts saw a significant increase in clicks to content. The campaigns drove 11,114 clicks to Facebook content compared to just over 3,000 the previous month.

During major service related incidents, Caltrain typically sees a significant spike in followers and interactions. The demand for information during incidents such as fatalities, major mechanical breakdowns or vehicle collisions necessitates a full-time social media position be on-call to support response to these events.
Social Media Impression Spikes
May, 2016

Your Tweets earned \textbf{2.0M impressions} over this \textbf{31 day} period

Prepared by: James Namba, Acting Manager, Marketing
Jayme Ackemann, Director, Marketing and Communications
Catherine David, Senior Planner

650.508.7924
650.508.7934
650.508.6471
Table A

May 2016

<table>
<thead>
<tr>
<th></th>
<th>FY2015</th>
<th>FY2016</th>
<th>% Change</th>
</tr>
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<tbody>
<tr>
<td>Total Ridership</td>
<td>1,601,890</td>
<td>1,671,093</td>
<td>4.3%</td>
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<tr>
<td>Average Weekday Ridership</td>
<td>61,054</td>
<td>62,391</td>
<td>2.2%</td>
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<tr>
<td>Total Farebox Revenue</td>
<td>$7,407,516</td>
<td>$8,018,673</td>
<td>8.3%</td>
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<tr>
<td>On-time Performance</td>
<td>89.6%</td>
<td>93.6%</td>
<td>4.5%</td>
</tr>
<tr>
<td>Average Caltrain Shuttle Ridership</td>
<td>8,408</td>
<td>9,748</td>
<td>15.9%</td>
</tr>
</tbody>
</table>

Year to Date

<table>
<thead>
<tr>
<th></th>
<th>FY2015</th>
<th>FY2016</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Ridership</td>
<td>16,835,489</td>
<td>17,498,919</td>
<td>3.9%</td>
</tr>
<tr>
<td>Average Weekday Ridership</td>
<td>57,836</td>
<td>59,780</td>
<td>3.4%</td>
</tr>
<tr>
<td>Total Farebox Revenue</td>
<td>$76,080,929</td>
<td>$80,701,698</td>
<td>6.1%</td>
</tr>
<tr>
<td>On-time Performance</td>
<td>90.7%</td>
<td>89.4%</td>
<td>-1.4%</td>
</tr>
<tr>
<td>Average Caltrain Shuttle Ridership</td>
<td>8,515</td>
<td>9,207</td>
<td>8.1%</td>
</tr>
</tbody>
</table>

Graph A

Caltrain Average Weekday Ridership

[Graph showing the comparison of Caltrain Average Weekday Ridership from May 2015 to May 2016 with a trend line indicating the 13-Month Rolling Average.]
AGENDA ITEM # 14
JULY 7, 2016

PENINSULA CORRIDOR JOINT POWERS BOARD
STAFF REPORT

TO: Joint Powers Board

THROUGH: Jim Hartnett
Executive Director

FROM: Gigi Harrington
Deputy CEO/Chief Administrative Officer

SUBJECT: DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REVISIONS

ACTION
Staff Coordinating Council recommends the Board:

1. Adopt the revised Disadvantaged Business Enterprise (DBE) Program, which includes changes to policies and procedures consistent with recent guidance from the U.S. Department of Transportation (DOT) and recommendations from the recent Federal Transit Administration (FTA) Triennial Audit.

2. Authorize the Executive Director to submit the revised program to the FTA by the designated deadline of July 26, 2016.

SIGNIFICANCE
DOT regulations, 49 Code of Federal Regulations Part 26.21, require FTA grantees to establish a DBE Program and require grantees to send significant program changes to the FTA for approval.

BUDGET IMPACT
The proposed DBE Program revisions should have no impact on the budget.

BACKGROUND
The Peninsula Corridor Joint Powers Board (JPB) DBE Program was last revised in 2012 with approval of the Board per Resolution No. 2012-08. The JPB’s recent FTA Triennial Review resulted in recommendations to revise the DBE Program to reflect the most current policies and procedures in use, and to incorporate the most recent changes in DOT guidance. The JPB must submit revisions to the DBE Program to the FTA before July 26, 2016. Proposed revisions include the following:

- A new Policy Statement by current Executive Director, Jim Hartnett.
- Revise delegation of duties and responsibilities for DBE Program implementation consistent with agency reorganization.
• Revise the Certification Standards of Size for DBE firms to comply with new DOT requirements.
  o The cap on statutory gross receipts (i.e., the average annual gross receipts over the previous three fiscal years) applicable to small businesses eligible to participate in the program is increased from $22.41 million to $23.98 million.

• Adopt FTA guidance that that DBE contract-specific goal attainment and good faith efforts are a matter of contract bidder or proposer “responsibility” instead of bid or proposal “responsiveness.”
  o Current JPB practice is to allow three days after bid submittals for bidders to compile good faith efforts submittals. The current program identifies this as a matter of “responsiveness,” this is correctly identified as a matter of “responsibility.”

• Add a section for Summary of Suspension of Certification to comply with new DOT requirements.
  o A DBE’s certification will be suspended without a hearing for 30 days if the recipient has evidence that the disadvantaged owner(s) has died or is incarcerated. The JPB has 30 days to determine whether to reinstate certification or initiate removal proceedings.

• Include revisions to policies and procedures in the small business enterprise (SBE) element of the DBE program.
  o Update the SBE element to reflect multiple online DBE and SBE databases and options available to buyers for sourcing.
  o Update the SBE element to reflect that the JPB has now updated and modified its purchasing platform and that DBE staff will facilitate SBE identification and partnering during Pre-Bid and Pre-Proposal meetings.

• Changes in processes for monitoring DBE participation and communicating with DBEs.
  o Previous data collection and payment verification regarding DBEs on ongoing contracts has been through manual forms. Staff has procured online database software (B2Gnow) to manage and report on new contracts and interact directly with DBEs to ensure that they are being utilized and paid.

Prepared By: John Barker, Manager, Civil Rights Programs 650.508.7940
           Elke Campbell, DBE Officer 650.508.7939
Section 26.1, 26.23  Objectives/Policy Statement

The Peninsula Corridor Joint Powers Board (JPB) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26 ("Regulation"). The JPB has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the JPB has signed an assurance that it will comply with the Regulation.

It is the policy of the JPB to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also JPB 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 the 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 promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients; and
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE program.

I, the Executive Director of the JPB, am responsible for adherence to this policy and the Manager, Civil Rights Programs has been delegated as the DBE Liaison Officer. The Manager, Civil Rights Programs and the DBE Officer, in cooperation with the Chief Executives of the JPB, are responsible for the development, implementation, and monitoring of the Disadvantaged Business Enterprise Program in furtherance of the JPB’s nondiscrimination policy. It is the expectation of the Board of Directors and the Executive Director that all agency personnel shall adhere to the provisions and the spirit of this program.

The JPB has disseminated this policy statement to the Board of Directors and all of the components of our organization. We have distributed this statement via our agency website to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.

This policy is available to all agency personnel and to members of the community that perform or are interested in performing work on JPB contracts upon request and via the JPB’s website. The complete DBE Program and overall goal analysis are available for review at:

DBE Officer, Office of Small and Disadvantaged Businesses
Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
PO Box 3006
San Carlos, CA 94070

If you have any questions or would like further information regarding this program, please call the Office of Small and Disadvantaged Businesses at (650) 508-7939.
SUBPART A – GENERAL REQUIREMENTS

Section 26.1  Objectives

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

Section 26.3  Applicability


In the event of any conflicts or inconsistencies between the Regulation and this DBE Program with respect to DOT-assisted contracts, the Regulation shall govern.

Section 26.5  Definitions

The JPB will adopt the definitions contained in 49 CFR Part 26.5 for this program. A copy of 49 CFR Part 26 is attached hereto as Attachment 1 of this program.

Section 26.7  Non-discrimination Requirements

The JPB 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, the JPB 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)

The JPB will report DBE participation to the FTA on a semi-annual basis via Transit Award Management System (TrAMS). These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

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

The JPB will collect this information through notification in all solicitations and a contract clause requiring prime bidders to report information regarding all firms that quote to them on subcontracts.

Application Package and Other Certification and Compliance Related Records: 26.11(d)

The JPB will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the JPB will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with applicable record retention requirements of the JPB’s financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements of the JPB’s financial assistance agreement, whichever is longer.
State Certified Firms: 26.11(e)

As the administrator for the California Unified Certification Program (CUCP), the California Department of Transportation (Caltrans) will report to the Department of Transportation’s Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

1) Women;
2) Socially and economically disadvantaged individuals (other than women); and
3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

Section 26.13 Assurances

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

Federal Financial Assistance Agreement Assurance: 26.13(a)

The JPB 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 JPB 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 JPB’s DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the JPB 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.).

This language will appear in financial assistance agreements with sub-recipient(s) that the JPB might have.

Contract Assurance: 26.13b

The JPB will require 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 JPB deems appropriate, which may include, but is not limited to:

1) Withholding monthly progress payments;
2) Assessing sanctions;
3) Liquidated damages; and/or
4) Disqualifying the contractor from future bidding as non-responsible.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the JPB has received a grant of $250,000 or more in FTA planning, capital, and/or operating assistance in a federal fiscal year, the JPB will continue to carry out this program until all funds from DOT financial assistance have been expended. The JPB will provide to DOT updates representing significant changes in the program.
Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The JPB has designated the following individual as the DBE Liaison Officer:

Manager, Civil Rights Programs
San Mateo County Transit JPB
1250 San Carlos Avenue
San Carlos, CA 94070
Phone:  (650) 508-7940

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the JPB 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 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has staff that performs the day-to-day administration of the program.

DBE Officer Responsibilities

The DBE Officer is the primary person responsible for implementing the day-to-day aspects of the DBE Program and will work closely with operating divisions and other departments and consultants of the JPB, including legal, procurement, engineering, insurance and others who are responsible for making decisions relative to the JPB’s construction, procurement and professional service contracts. The DBE Officer will also consult with the DBE representatives from the JPB member agencies on a regular basis concerning all aspects of the JPB DBE Program.

The DBE Officer’s specific duties and responsibilities are attached as Attachment 3 and are incorporated herein.

Section 26.27 DBE Financial Institutions

It is the policy of the JPB to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the San Francisco Bay Area and to determine areas in which the JPB may reasonably utilize their services. The JPB will encourage its prime contractors on DOT-assisted contracts to use the services of DBE financial institutions.

The JPB has searched the Federal Reserve Bank (FRB) Minority Owned Depository Institutions and their Branches listing at www.federalreserve.gov/releases/mob/current/min_bnk_lst.pdf and has such institutions listed in Attachment 4. This listing will be periodically shared with the Chief Financial Officer to encourage use of these institutions.

The JPB will re-evaluate the availability of DBE Financial institutions on an annual basis. Information on the availability of such institutions can be obtained from the DBE Officer.

Section 26.29 Prompt Payment Mechanisms

The JPB will include a clause that is substantially similar to the following in each DOT-assisted prime contract:
Prompt Payment: 26.29(a)

The prime contractor shall pay each subcontractor under this prime contract for satisfactory performance of the subcontractor’s contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the JPB.

Retainage: 26.29 (b)

The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. A subcontractor’s work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the JPB. When the JPB has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by the acceptance is deemed to be satisfactorily completed.

Monitoring and Enforcement: 26.29(d)

Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the JPB; otherwise, the prime contractor will be subject to a charge of two percent (2%) per month on the untimely or improperly withheld payment. This clause applies to both DBE and non-DBE subcontracts.

The JPB reserves the right to implement administrative remedies which may include, but are not limited to, withholding of progress payments and contract retentions, imposition of liquidated damages, and termination of the contract in whole or in part, if it is determined that the contractor has failed to comply with the requirements of DBE Program.

Section 26.31 Directory

The JPB participates in the California Unified Certification Program (CUCP) reciprocal DBE certification program pursuant to 49 CFR Part 26, managed by the California Department of Transportation (Caltrans) in Sacramento, California. As a certifying member of the CUCP, the JPB manages its own DBE certification applications and meets monthly with the certifying members in the Northern California Cluster of the CUCP to contribute to and maintain the CUCP database of certified DBE firms.

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. A link to the CUCP’s online DBE Directory may be found in Attachment 5 to this program document.

The Directory is available by contacting the DBE Officer at 1250 San Carlos Avenue, San Carlos, Ca 94070 or accessing the California Unified Certification Program (CUCP) website at http://www.dot.ca.gov/hq/bep/ucp.htm.

Section 26.33 Overconcentration

The JPB has not identified that overconcentration exists in the types of work that DBEs perform.

Pursuant to this part, if the DBE Officer determines that DBE participation is so over-concentrated in certain types of work or contracting opportunities that it unduly burdens the participation of non-DBEs in that type of work, the DBE Officer will develop appropriate measures to address the over-concentration. The DBE Officer will seek approval of such measures from the FTA and, at that time, the measures will become a part of this Program.

Currently, the JPB is unaware of any types of work that have a burdensome overconcentration of DBE participation.

Section 26.35 Business Development Programs

The JPB has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms
The JPB will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The JPB 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 26.109.

2. The JPB will consider similar action under its own legal authorities, including responsibility determinations in future contracts. Attachment 6 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in JPB procurement activities.

3. The JPB will 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 regular monitoring of work sites and reviewing of contracting records. The DBE Officer will provide written verification that work committed to DBEs at contract award is actually performed by the DBEs.

4. The JPB will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. The JPB will utilize the web-based system B2GNow Compliance Monitoring System (Diversity Management and Compliance System) to accomplish this task. B2GNow is designed to capture payments made by the JPB to the contractor and actual payments made by the contractor to the subcontractor(s). This system provides the JPB a means of comparing attainments to commitments for reporting purpose.

The JPB will monitor payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in any DBE commitment and that payments are being made in a timely manner.

5. The JPB will require prime contractors to provide copies of any agreements or executed contracts, upon request, to verify that required clauses are included in all contracts with subcontractors.

6. The JPB 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 the JPB or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Section 26.39  Fostering Small Business Participation

The JPB will actively implement the following small business enterprise program elements to encourage participation among small business enterprises in JPB contracting activities:

1. When feasible and practicable, obtain at least one of three price quotations from an SBE for informal competitive procurements (i.e., other than Invitation for Bids (IFBs) and Request for Proposals (RFPs)).

2. The DBELO and DBE Officer will identify and disseminate online DBE/SBE databases that will assist buyers in sourcing and obtaining competitive quotes.

3. Identify SBEs during pre-bid or pre-proposal conferences and posting pre-bid and pre-proposal sign-in sheets to facilitate easier interactions between prime contractors and subcontractors, including DBEs and SBEs.

4. Apply a 5 percent SBE bid or point preference in the evaluation of bids or proposals that utilize small business enterprises.
   a. For non-construction contracts (i.e., those NOT awarded based on lowest responsive and responsible bid), the 5 percent preference will be granted in the form of points, up to 5 points as part of the evaluation process. The point preference will be calculated on a relative basis, depending on the level of small business participation proposed by each proposer.
   b. For construction and other contracts awarded based on the lowest responsive and responsible bid, the 5 percent preference will be granted in the form of a bid preference. The bid preference will be computed at 5 percent of the lowest bid up to a maximum cap
of $50,000 and will be used, for evaluation purposes only, to adjust the bids of those bidders who either meet or exceed a small business participation goal established by the JPB.

Because the JPB’s SBE program is race-neutral, the JPB will seek to implement one or more appropriate SBE elements on all JPB contracting activity, regardless of funding source. However, when a race-conscious measure (such as imposing a contract-specific DBE goal) is sought on a particular contract, the JPB will not simultaneously implement the SBE program requirement on the affected contract in order to avoid confusion and misinterpretation of the JPB’s DBE goal by the business community.

The JPB will accept all DBEs certified by all Unified Certification Programs recognized by U.S. DOT as eligible to participate in the JPB’s SBE program. In addition, the JPB will accept the certification of small businesses performed by other agencies (including the U.S. Small Business Administration 8(a) BD program and California Department of General Services, among others) as long as the size standards and definition of “small business concern” are met pursuant to 49 CFR Part 26.5.

The JPB will verify the eligibility of a small business certified by another agency by either (1) obtaining sufficient information from the certifying agency to evidence that the small business meets the standard pursuant to 49 CFR Part 26.5; or (2) obtaining a declaration, and supporting documentation, from a small business attesting under penalty of perjury that it is eligible to participate in the JPB’s SBE program. Supporting documentation may include the cover page of a firm’s most recent federal income tax return showing gross receipts.

If a firm seeking to participate in the JPB’s SBE program has not been certified as a small business by another agency, the JPB will verify the eligibility of this firm by requiring it to submit a declaration under penalty of perjury that it meets the standards of 49 CFR Part 26.5, support its declaration with copies of the firm’s federal tax returns for the previous three years, and provide any additional information that the JPB may require.

The DBE Officer will actively implement and monitor the SBE program elements to determine their effectiveness and will make recommendations when necessary to the DBELO, DBE Review Committee, and Executive Director to modify the program elements in order to increase their effectiveness in engaging small business enterprises, including DBEs.

**SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

**Section 26.43 Set-asides or Quotas**

The JPB will not use quotas in any way in the administration of this DBE program.

**Section 26.45 Overall Goals**

A description of the current methodology used to calculate the overall goal and the current goal calculations can be found in Attachment 7 to this program. This section of the program will be updated every three years.

In accordance with Section 26.45(f) the JPB will submit its overall goal to DOT in three year intervals on August 1. In establishing overall DBE goals, the JPB will provide for public participation. This will include:

A. Prior to finalizing the Overall Goal Analysis Report, the JPB will consult with DOT agencies, other DOT grantees, minority, women and general contractor groups, community organizations, or other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the JPB’s efforts to establish a level playing field for the participation of DBEs.

B. In conjunction with the JPB’s activities to meet its overall DBE goals, the JPB will implement various public participation and outreach activities designed to broaden awareness of the JPB’s Disadvantaged Business Enterprise Program. The measure described in 49 CFR Part 26.51,
focusing on race-neutral means will be actively pursued, and the JPB will also encourage its contractors to make similar outreach efforts to include DBE participation in subcontracting opportunities. In conjunction with the Business Outreach Committee (BOC) and the CUCP, the JPB will continue to organize and offer informational programs for meeting DBE eligibility requirements, familiarize potential contractors with JPB procurement procedures and requirements, and to otherwise develop effective programs to further the inclusion of DBEs in the JPB’s contracting activities.

The JPB will publish a notice announcing its proposed overall goals and rational prior to submitting it to FTA on August 1. The notice will be posted on the JPB’s website. The notice will inform the public that the JPB’s Overall Goal Analysis Report is available for inspection during normal business hours at the Office of Small and Disadvantaged Businesses for a 30-day period.

The JPB’s overall goal submission to DOT will include a summary of information and comments received during this public participation process and its responses.

The JPB will begin using its overall goal on October 1 of each year, unless the JPB receives other instructions from DOT. If the JPB establishes a goal on a project basis, the JPB will begin using the project goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.49 Transit Vehicle Manufacturers Goals

The JPB 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. The JPB will not include FTA assistance used in transit vehicle procurements in the base amount from which its overall goal was calculated.

Only those transit vehicle manufacturers listed on FTA’s certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation will be eligible to bid.

The JPB will submit to FTA, within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.

The JPB may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

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

The JPB will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. 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);

5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

6. Providing 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;

7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

8. Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

When applicable, the JPB will pursue the above stated means.

Each time the JPB submits its overall goal for review to the FTA, the JPB will also submit a projection of the portion of the goal that the JPB expects to meet through race-neutral means and the basis for that projection. This projection is subject to approval by FTA, in conjunction with its review of the JPB’s overall goal.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 8 to this program document. This section of the program will be updated triennially when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

The JPB will establish contract goals to meet any portion of its overall goal that the JPB does not project being able to meet using race-neutral means.

The JPB may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The JPB is not required to set a contract goal on every DOT-assisted contract nor is the JPB required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

26.53 Good Faith Efforts Procedures

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

When a DBE contract goal has been established, the JPB will award the contract only to a bidder/offor that makes good faith efforts to meet it. The JPB will determine that a bidder/offor has made good faith efforts if the bidder/offor does either of the following things:

1. Documents that it has obtained enough DBE participation to meet the goal; or

2. Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

The DBE Officer is responsible for determining whether a bidder who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible. Guidance on good faith efforts can be found in Attachment 9 of this Program document.

The JPB will ensure that all information is complete, accurate and adequately documents the good faith efforts committing to the performance of the contract by the bidder/offor.

Information to be submitted 26.53(b)
In solicitations for DOT-assisted contracts for which a contract goal has been established, the JPB will ensure the following:

- Award of the contract will be conditioned on meeting the requirements of this section;
- All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:
  - The names and addresses of DBE firms that will participate in the contract;
  - A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
  - The dollar amount of the participation of each DBE firm participating;
  - Written documentation of the bidder/offeror’s commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor’s commitment.
- If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and

- At the JPB’s discretion, the bidder/offeror must present the information required no later than three (3) days after bid opening as a matter of responsibility.
- Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required before the final selection for the contract is made by the recipient.

Administrative Reconsideration 26.53 (d)

Within (2) working days of being informed by the JPB that it is not responsible because it has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidders/proposers should make this request in writing to the Manager, Civil Rights Programs at 1250 San Carlos Avenue, San Carlos, CA 94070, who will forward the request to the DBE Review Committee. The DBE Review Committee will not have played any role in the original determination that the bidder/proposer did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/proposer 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/proposer will have the opportunity to meet in-person with the DBE Review Committee to discuss the issue of whether it met the goal or made adequate good faith efforts to do.

The JPB will send the bidder/proposer a written decision on reconsideration, explaining the basis for finding that the bidder/proposer 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.

Good Faith Efforts when terminating, releasing, or substituting a DBE subcontractor on a contract 26.53 (f)

A prime contractor cannot terminate a DBE subcontractor listed in its Utilization Plan (or an approved substitute DBE firm) without prior written consent from the JPB. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.


The JPB will include in each prime contract the following provision:
“The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent. Without prior consent, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.”

The JPB will provide written consent only if the prime contractor has good cause to terminate the DBE firm.

Good cause includes the following circumstances:

- The listed DBE subcontractor fails or refuses to execute a written contract;
- The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- You have determined that the listed DBE subcontractor is not a responsible contractor;
- The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- The listed DBE is ineligible to receive DBE credit for the type of work required;
- A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Prior to requesting to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the JPB, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise the JPB and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the JPB should not approve the prime contractor's action.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offers in negotiated procurements.

When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the procurement.

If a contractor fails or refuses to comply, the JPB 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 JPB may issue a
termination for default proceeding. The good faith efforts should be documented by the contractor. If the JPB requests documentation, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days, if necessary, at the request of the contractor, and the JPB shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

The JPB will ensure that the following clause is placed in every DOT-assisted contract:

Failure by the contractor to carry out these requirements is a material breach of the contract and may result in the termination of the contract or such other remedies, as set forth in 49 CFR Part 26.13(b), if the prime contractor fails to comply with the requirements of this section.

The requirements of this section apply to DBE bidders/offerors for prime contracts also. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, the JPB will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

The JPB will require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with provisions set for in this section.

Section 26.55 Counting DBE Participation Toward Goals

Pursuant to 49 CFR Part 26.55, DBE participation includes that portion of the contract work actually performed by a certified DBE with its own forces. A DBE may participate as a prime contractor, subcontractor, joint venture partner, consultant, sub-consultant, vendor or supplier of materials or services required by the contract.

The Bidder shall determine the amount of DBE participation for each DBE performing work on the contract in terms of both the total value of the work in dollars and the percentage of the total contract bid amount. The Bidder shall also determine the total amount of DBE participation for the entire contract. The Bidder shall count DBE participation according to the following guidelines and in accordance with 49 CFR Part 26.55:

1. DBE Prime Contractor
   • Count the entire dollar amount of the work performed or services provided by the DBE’s own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as DBE participation by the DBE Prime Contractor.

2. DBE Subcontractor
   • Count the entire amount of the work performed or services provided by the DBE’s own forces, including the cost of materials and supplies obtained for the work, except for materials and supplies purchased or leased from the Prime Contractor, and reasonable fees and commissions charged for the services. Do not count any work subcontracted by a DBE to another firm as DBE participation by said DBE. If the work has been subcontracted to another DBE, it will be counted as DBE participation for that other DBE.

3. DBE Joint Venture Partner
   • Count the portion of the work that is performed solely by the DBE’s forces or, if the work is not clearly delineated between the DBE and the joint venture partner, count the portion of the work equal to the DBE’s percentage of ownership interest in the joint venture.

4. DBE Manufacturer
   • Count 100% of the costs of materials and supplies obtained from a DBE manufacturer that operates or maintains a factory that produces the materials and supplies on the premises. This applies whether the DBE is a prime contractor or subcontractor.

5. DBE Regular Dealer
• Count 60% of the costs of materials and supplies obtained from a DBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly brought, kept in stock and sold or leased to the public in the usual course of business, except regular dealers of bulk items such as petroleum, cement and gravel who own and operate distribution equipment in lieu of maintaining a place of business. This applies whether a DBE is a prime contractor or subcontractor.

6. Other DBEs

• Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from a DBE that is not a manufacturer or regular dealer. Do not count the cost of the materials and supplies.

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

Commercially Useful Function

A DBE's participation can only be counted if the DBE performs a commercially useful function on the contract as defined in 49 CFR Part 26.55(c)

• A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

• A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

• If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

• When a DBE is presumed not to be performing a commercially useful function as provided in this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

The JPB will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

• The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

• The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

• The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

• The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
• The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If the JPB chooses this approach, it must obtain written consent from FTA.

• The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

• For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

**SUBPART D – CERTIFICATION STANDARDS**

Section 26.61 – 26.73 Certification Process

The JPB 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. The JPB will make its certification decisions based on the facts as a whole.

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

DBE Officer
Office of Small and Disadvantaged Business Enterprises
1250 San Carlos Avenue
San Carlos, CA 94070
(650) 508-7939

Our certification application forms and documentation requirements are found in Attachment 10 to this program.

**SUBPART E – CERTIFICATION PROCEDURES**

Section 26.81 Unified Certification Programs

The JPB is a member of the California Unified Certification Program (CUCP) administered by the California Department of Transportation (Caltrans). The CUCP is a reciprocal statewide DBE certification program. It is the intent of the JPB to cooperate and participate fully in the facilitation and implementation of a statewide unified DBE certification program. The CUPC will meet all of the requirements of this section. The following is a description of the UCP:

The UCP shall consist of all U.S. DOT RECIPIENTS in the State of California as defined in Section 2.01 of the Memorandum of Agreement (MOA). Each RECIPIENT shall choose to become either a Certifying Member (CM) agency or a Non-Certifying Member (NCM) agency. As long as the JPB elects to be a certifying member agency of the CUCP, Sections VIII B through VIII G of the MOA, will apply. If the JPB elects to be a non-certifying member agency for any period of time pursuant to the CUCP, the JPB will defer the following procedures pertaining to certification activities to the certifying member agencies of the CUCP.

The MOA can be found in Attachment 11 of this program document.
Section 26.83  Procedures for Certification Decisions

The JPB will ensure that only firms certified as eligible DBEs participate as DBEs in the DBE program. The JPB will review the eligibility of DBEs consistent with 49 CFR Part 26.83.

The JPB shall utilize the U. S. DOT-approved Uniform Certification Application form, which will be included in the “DBE Certification Application Package”, as amended from time to time. The JPB will safeguard from disclosure and unauthorized persons all information gathered as part of the certification process that may be regarded as proprietary or other confidential business information, consistent with the Regulations and applicable federal, state and local laws.

The JPB shall conduct a “site visit” to the principal place of business to interview the principal officers and review their resumes’ and/or work histories and visit job sites, if there are such sites on which the firm is working at the time of the eligibility investigation within the JPB’s local area prior to official DBE certification approval and submission to the certification database.

The DBE Officer will make a recommendation to the CUCP for its decision on each application for DBE certification within ninety (90) days of receiving all the information required of the applicant firm. The DBE Officer may extend this time period once, for no more than an additional sixty (60) days, upon written notice to the firm explaining the reasons for the extension. Failure to reach a decision by the applicable deadline under this section is deemed a constructive denial if no decision is made by the deadline, on the basis of which the firm may appeal to DOT under 49 CFR Part 26.89.

Once a firm has been certified as a DBE, it shall remain certified until and unless the JPB has removed its certification, in whole or in part, through the procedures of section 26.87. The JPB may not require DBEs to reapply for certification or undergo a certification program. However, the JPB may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances, a complaint, or other information concerning the firm’s eligibility. If information comes to the JPB’s attention that leads us to question the firm’s eligibility, the JPB may conduct an on-site review on an unannounced basis, at the firm’s offices and job sites.

“No Change” Affidavits and Notices of Change: 26.83(j)
If the DBE fails to provide information in a timely manner, it will be deemed to have failed to cooperate and certification may be removed or denied as set forth in 49 CFR Part 26.109(c).

The JPB requires 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 application for certification.

The JPB also requires all owners of DBEs the JPB has certified to submit, on the anniversary date of their certification, an affidavit sworn to by the firm’s owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. 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 form, except for any changes about which you have provided written notice to the [Recipient] under 26.83(i). [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 $23.98 million.

The JPB requires DBEs to submit with this affidavit documentation of the firm’s size and gross receipts.

The JPB will notify all currently certified DBE firms of these obligations in writing 30 days prior to the DBEs certification anniversary date. This notification will inform DBEs that to submit the “Annual Update Declaration, their owners must declare under penalty of perjury laws of the United States 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.
Section 26.85 Interstate Certification

The JPB will not process an application for certification from a firm having its principal place of business outside the State of California if the firm is not certified in its “home state”. Pursuant to 49 CFR 26.85, a DBE firm that holds a current, valid certification from its home state may request certification to the CUCP and its Certifying Members. The JPB will adhere to 49 CFR Part 26.85 and follow the procedures adopted by the CUCP regarding interstate certification.

Section 26.86 Denials of Initial Requests for Certification

If the JPB denies a firm’s application or if a firm is decertified, the firm may not reapply until 12 months have passed. The time period for reapplication begins to run on the date the explanation for denial of certification is received by the applicant firm. The applicant’s appeal of the JPB’s decision to the U.S. Department of Transportation pursuant to 49 CFR Part 26.89 does not extend this period.

Section 26.87 Removal of a DBE’s Eligibility

In the event the JPB proposes to remove a DBE’s certification, the JPB will follow procedures consistent with 26.87. Attachment 12 to this program sets forth these procedures in detail.

Section 26.88 Summary of Suspension of Certification

The JPB shall immediately suspend a DBE’s certification without adhering to the requirements in 49 CFR Part 26.81(d) when an individual owner whose ownership and control of the firm are necessary to the firm’s certification dies or is incarcerated.

The JPB may immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when (i) there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or (ii) when the DBE fails to notify the certifying agency or UCP in writing of any material change in circumstances as required by §26.83(i) or fails to timely file an affidavit of no change under §26.83G.

In determining the adequacy of the evidence to issue a suspension under this paragraph, the JPB shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. The concerned operating administration may direct the JPB to take action if it determines that information available to it is sufficient to warrant immediate suspension.

When a firm is suspended pursuant to this paragraph the JPB shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under 49 CFR Part 26.87 to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the JPB information demonstrating that the firm is eligible notwithstanding its changed circumstances.
Within 30 days of receiving this information, the JPB must either lift the suspension and reinstate the firm's certification or commence a decertification action under 49 CFR Part 26.87. If the JPB commences a decertification proceeding, the suspension remains in effect during the proceeding.

The decision to immediately suspend a DBE under this paragraph is not appealable to the US Department of Transportation. The failure of the certifying agency to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by this paragraph, is appealable to the U.S. Department of Transportation under 49 CFR Part 26.8, as a constructive decertification.

Section 26.89 Certification Appeals

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

US Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division
1200 New Jersey Ave., SE, W-76-101
Washington, DC 20590
Phone: (202) 366-4754
TTY: (202) 366-9696
Fax: (202) 366-5575

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

Reconsideration/Informal Hearing: The JPB's DBE Review Committee shall provide an opportunity to a firm to hold an informal hearing so that the firm may respond to the reasons for a proposed removal of eligibility in person and provide any information or arguments concerning why it should remain certified. The firm also may provide written arguments and information in lieu of a hearing. In either case, the DBE Officer's determination must demonstrate, by a preponderance of the evidence, that the firm does not meet the certification standards. The DBE Review Committee will maintain a transcript and complete record of the hearing.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

Availability of records - In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

The JPB will safeguard from disclosure to third parties information that may reasonably be construed as confidential business information and will not disclose such information without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, the JPB will transmit this information to DOT in any certification appeal proceeding under §26.89 of this part or to any other State to which the individual's firm has applied for certification under §26.85 of this part.

Confidentiality of information on complainants - Notwithstanding the provisions of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

Cooperation - All participants in the Department's DBE program (including, but not limited to, the JPB, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE...
firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

**Intimidation and retaliation** – As a participant in the Department’s DBE program (including, but not limited to, the JPB, contractors, and DBE firms), you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.
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Attached to this DBE Program document is a copy of the *Code of Federal Regulation 49 CFR Part 26*. 
ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of June 22, 2016

Title 49 → Subtitle A → Part 26

Title 49: Transportation

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

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SOURCE: 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

Subpart A—General

§26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

(a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;

(b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;

(c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;

(d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;

(e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;

(f) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.

(g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and

(h) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.


§26.3 To whom does this part apply?

(a) If you are a recipient of any of the following types of funds, this part applies to you:


§26.5 What do the terms used in this part mean?

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:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) 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 Metlakta 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. 1601, et seq.).

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

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

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

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. For purposes of this part, a lease is considered to be a contract.

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

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.
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).

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 or 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.

Home state means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State 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.

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which 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 most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: http://www.census.gov/eos/www/naics/.

Primary recipient means a recipient which 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. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.
Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which 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.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

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 §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 has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "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;

(iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

(iv) "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), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture,
mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered transit vehicle manufacturers.

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).

(3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (e.g., collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

(d) You must maintain records documenting a firm’s compliance with the requirements of this part. At a minimum, you must keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records must be retained in accordance with applicable record retention requirements for the recipient’s financial assistance agreement. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the recipient’s financial assistance agreement, whichever is longer.

(e) The State department of transportation in each UCP established pursuant to §26.81 of this part must report to the Department of Transportation’s Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

(1) Women;
(2) Socially and economically disadvantaged individuals (other than women); and
(3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.


§26.13 What assurances must recipients and contractors make?

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance: The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient’s DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR 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.).

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: 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, which may include, but is not limited to:

(1) Withholding monthly progress payments;
(2) Assessing sanctions;
(3) Liquidated damages; and/or
(4) Disqualifying the contractor from future bidding as non-responsible.


§26.15 How can recipients apply for exemptions or waivers?

(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may
differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;

(ii) Conditions in your jurisdiction are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:

(i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in §26.49;

(ii) Your level of DBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of your modified program; and

(iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

§26.21 Who must have a DBE program?

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA primary recipients receiving funds authorized by a statute to which this part applies;

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds $250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts the cumulative total value of which exceeds $250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.
§26.23 What is the requirement for a policy statement?

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

§26.25 What is the requirement for a liaison officer?

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

§26.27 What efforts must recipients make concerning DBE financial institutions?

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

§26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

1. You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

2. You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

3. You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

1. A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

2. A contract clause providing that 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.
(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

§26.31 What information must you include in your DBE directory?

(a) In the directory required under §26.81(g) of this Part, you must list all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE.

(b) You must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. You must make any changes to your current directory entries necessary to meet the requirement of this paragraph (a) by August 26, 2011.

[76 FR 5096, Jan. 28, 2011]

§26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with §26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

§26.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a “mentor-protégé” program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.
§26.37 What are a recipient's responsibilities for monitoring the performance of other program participants? 

(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

(c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.


§26.39 Fostering small business participation.

(a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., $1 million).

(2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

(c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.

[76 FR 5097, Jan. 28, 2011]

Subpart C—Goals, Good Faith Efforts, and Counting

§26.41 What is the role of the statutory 10 percent goal in this program?

(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.

(c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.
§26.43 Can recipients use set-asides or quotas as part of this program?

(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.

(b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

§26.45 How do recipients set overall goals?

(a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.

(2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) $250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in §26.1.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the “relative availability of DBEs”). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) Step 1. You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

(1) Use DBE Directories and Census Bureau Data. Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

(2) Use a bidders list. Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. When using this approach, you must establish a mechanism (documented in your goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on your DOT-assisted contracts.

(3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study.

(4) Use the goal of another DOT recipient. If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) Alternative methods. Except as otherwise provided in this paragraph, you may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market. The exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this section, is not an acceptable alternative means of determining the availability of DBEs.

(d) Step 2. Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at your overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;
(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming three fiscal years.

(2) If you are an FTA or FAA recipient, as a percentage of all FT or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the three forthcoming fiscal years.

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

(i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.

(ii) A project goal covers the entire length of the project to which it applies.

(iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

(iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(f)(1)(i) If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency's Web site.

(ii) You may adjust your three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. You must submit such an adjustment to the concerned operating administration for review and approval.

(iii) The operating administration may direct you to undertake a review of your goal if necessary to ensure that the goal continues to fit your circumstances appropriately.

(iv) While you are required to submit an overall goal to FHWA, FTA, or FAA only every three years, the overall goal and the provisions of Sec. 26.47(c) apply to each year during that three-year period.

(v) You may make, for informational purposes, projections of your expected DBE achievements during each of the three years covered by your overall goal. However, it is the overall goal itself, and not these informational projections, to which the provisions of section 26.47(c) of this part apply.

(2) If you are a recipient and set your overall goal on a project or grant basis as provided in paragraph (e)(3) of this section, you must submit the goal for review at a time determined by the FHWA, FTA or FAA Administrator, as applicable.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust
your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-
negative and race-conscious measures, respectively (see 26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the
operating administration's review suggests that your overall goal has not been correctly calculated or that your method for
calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or
require that you do so. The adjusted overall goal is binding on you. In evaluating the adequacy or soundness of the
methodology used to derive the overall goal, the operating administration will be guided by goal setting principles and best
practices identified by the Department in guidance issued pursuant to §26.9.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you
may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism.
Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available
to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

(6) Timely submission and operating administration approval of your overall goal is a condition of eligibility for DOT
financial assistance.

(7) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If
you establish and implement goals in a way different from that provided in this part, you are not in compliance with this
part. If you fail to comply with this requirement, you are not eligible to receive DOT financial assistance.

(g)(1) In establishing an overall goal, you must provide for consultation and publication. This includes:

(i) Consultation with minority, women's and general contractor groups, community organizations, and other officials or
organizations which could be expected to have information concerning the availability of disadvantaged and non-
disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level
playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a
face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on
obtaining information relevant to the goal setting process, and it must occur before you are required to submit your
methodology to the operating administration for review pursuant to paragraph (f) of this section. You must document in
your goal submission the consultation process you engaged in. Notwithstanding paragraph (f)(4) of this section, you may
not implement your proposed goal until you have complied with this requirement.

(ii) A published notice announcing your proposed overall goal before submission to the operating administration on
August 1st. The notice must be posted on your official Internet Web site and may be posted in any other sources (e.g.,
minority-focused media, trade association publications). If the proposed goal changes following review by the operating
administration, the revised goal must be posted on your official Internet Web site.

(2) At your discretion, you may inform the public that the proposed overall goal and its rationale are available for
inspection during normal business hours at your principal office and for a 30-day comment period. Notice of the comment
period must include addresses to which comments may be sent. The public comment period will not extend the August 1st
deadline set in paragraph (f) of this section.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-
specific goals.

§26.47  Can recipients be penalized for failing to meet overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your
DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith,
you are in noncompliance with this part.

(c) If the awards and commitments shown on your Uniform Report of Awards or Commitments and Payments at the
end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be
regarded by the Department as implementing your DBE program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that
fiscal year;
(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3)(i) If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review.

(4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in §26.103 or §26.105 of this part and other applicable regulations, for failing to implement your DBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;

(ii) FHWA, FTA, or FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement the corrective actions to which you have committed or conditions that FHWA, FTA, or FAA has imposed following review of your analysis and corrective actions.

(d) If, as recipient, your Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current trends make it unlikely that you will achieve DBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.


§26.49     How are overall goals established for transit vehicle manufacturers?

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(1) Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.

(2) A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout 49 CFR part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.

(3) FTA recipient's failure to comply with the requirements set forth in paragraph (a) of this section may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).

(4) FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal.

(1) In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying §26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will bid on during the fiscal year in question, less the portion(s) attributable to the manufacturing process performed entirely by the transit vehicle manufacturer's own forces.
(i) You must consider and include in your base figure all domestic contracting opportunities made available to non-DBE firms; and

(ii) You must exclude from this base figure funds attributable to work performed outside the United States and its territories, possessions, and commonwealths.

(iii) In establishing an overall goal, the transit vehicle manufacturer must provide for public participation. This includes consultation with interested parties consistent with §26.45(g).

(2) The requirements of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) Transit vehicle manufacturers awarded must comply with the reporting requirements of §26.11 of this part including the requirement to submit the Uniform Report of Awards or Commitments and Payments, in order to remain eligible to bid on FTA assisted transit vehicle procurements.

(d) Transit vehicle manufacturers must implement all other applicable requirements of this part, except those relating to UCPs and DBE certification procedures.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

(f) As a recipient you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

[79 FR 59594, Oct. 2, 2014]

§26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

(b) Race-neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.

2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

3. Providing technical assistance and other services;

4. 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);

5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

6. Providing 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;

7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

8. Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.
(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

1. You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

2. You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

3. Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

4. Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:

1. If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order meet your overall goal.

Example to paragraph (f)(1): Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year 1, you could begin setting race-conscious DBE contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

2. If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example to paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

3. If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example to paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral means alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

4. If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example to paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through
race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (i.e., from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two consecutive years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in §26.11.


§26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

   (i) The names and addresses of DBE firms that will participate in the contract;

   (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;

   (iii) The dollar amount of the participation of each DBE firm participating;

   (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and

   (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.

   (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and

(3)(i) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—

   (A) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or

   (B) No later than 7 days after bid opening as a matter of responsibility. The 7 days shall be reduced to 5 days beginning January 1, 2017.

(ii) Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.

(d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.
(1) As part of this reconsideration, the bidder/offeror must 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.

(2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.

(3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

(4) You must 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.

(5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.

(e) In a “design-build” or “turnkey” contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor’s activities to ensure that they are conducted consistent with the requirements of this part.

(f)(1)(i) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(ii) You must include in each prime contract a provision stating:

(A) That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph (f); and

(B) That, unless your consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

(3) For purposes of this paragraph, good cause includes the following circumstances:

(i) The listed DBE subcontractor fails or refuses to execute a written contract;

(ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

(iii) The listed DBE subcontractor fails or refuses to meet the prime contractor’s reasonable, nondiscriminatory bond requirements.

(iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;

(vi) You have determined that the listed DBE subcontractor is not a responsible contractor;

(vi) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

(vii) The listed DBE is ineligible to receive DBE credit for the type of work required;

(viii) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

(ix) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

(4) Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.
(5) The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise you and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why you should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), you may provide a response period shorter than five days.

(6) In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

(g) When a DBE subcontractor is terminated as provided in paragraph (f) of this section, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement. The good faith efforts shall be documented by the contractor. If the recipient requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

(h) You must include in each prime contract the contract clause required by §26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section you deem appropriate if the prime contractor fails to comply with the requirements of this section.

(i) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to perform with the requirements of this section.

[j] You must require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.


§26.55 How is DBE participation counted toward goals?

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

1 Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a) (2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

2 Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

3 When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

1 A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate DOT operating administration.

Example to paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be awarded for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

(6) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example to paragraph (d)(6): DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

(7) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.
(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(4) You must determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expediter) on a contract-by-contract basis.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in §26.87 (i).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.


Subpart D—Certification Standards

§26.61 How are burdens of proof allocated in the certification process?

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups identified in §26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in §26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (see §26.67).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)

(e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

§26.63 What rules govern group membership determinations?

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see §26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate §26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of §26.89.


§26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of $23.98 million.

(c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.


§26.67 What rules determine social and economic disadvantage?

(a) Presumption of disadvantage. (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed $1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, you must use the DOT personal net worth form provided in appendix G to this part without change or revision. Where necessary to accurately determine an individual's personal net worth, you may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;
(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or State law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under §26.89 of this part or to any other State to which the individual's firm has applied for certification under §26.85 of this part.

(b) Rebuttal of presumption of disadvantage. (1) An individual's presumption of economic disadvantage may be rebutted in two ways.

(i) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds $1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

Example to paragraph (b)(1)(i): An individual with very high assets and significant liabilities may, in accounting terms, have a PNW of less than $1.32 million. However, the person's assets collectively (e.g., high income level, a very expensive house, a yacht, extensive real or personal property holdings) may lead a reasonable person to conclude that he or she is not economically disadvantaged. The recipient may rebut the individual's presumption of economic disadvantage under these circumstances, as provided in this section, even though the individual's PNW is less than $1.32 million.

(ii)(A) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, as a certifying agency, you may consider factors that include, but are not limited to, the following:

(1) Whether the average adjusted gross income of the owner over the most recent three year period exceeds $350,000;
(2) Whether the income was unusual and not likely to occur in the future;
(3) Whether the earnings were offset by losses;
(4) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;
(5) Other evidence that income is not indicative of lack of economic disadvantage; and
(6) Whether the total fair market value of the owner's assets exceed $6 million.

(B) You must have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of §26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebuting the presumption is a determination that the individual's personal net worth exceeds $1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage, so long as his or her PNW remains above that amount.
(c) Transfers within two years. (1) Except as set forth in paragraph (c)(2) of this section, recipients must attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of recipient's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients must not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(d) Individual determinations of social and economic disadvantage. Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds $1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of appendix E of this part.

[79 FR 59596, Oct. 2, 2014]

§26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices.

(b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c)(1) The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Proof of contribution of capital should be submitted at the time of the application. When the contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan.

(2) Insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value for the firm.

(3) The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. Any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial.

(4) Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

Examples to paragraph (c):

(i) An individual pays $100 to acquire a majority interest in a firm worth $1 million. The individual's contribution to capital would not be viewed as substantial.

(ii) A 51% disadvantaged owner and a non-disadvantaged 49% owner contribute $100 and $10,000, respectively, to acquire a firm grossing $1 million. This may be indicative of a pro forma arrangement that does not meet the requirements of (c)(1).

(iii) The disadvantaged owner of a DBE applicant firm spends $250 to file articles of incorporation and obtains a $100,000 loan, but makes only nominal or sporadic payments to repay the loan. This type of contribution is not of a continuing nature.
(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

(1) The owner's expertise must be—

(i) In a specialized field;

(ii) Of outstanding quality;

(iii) In areas critical to the firm's operations;

(iv) Indispensable to the firm's potential success;

(v) Specific to the type of work the firm performs; and

(vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual—

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

(h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—

(i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(ii) Involved in the same or a similar line of business; or

(iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—

(i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:
(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because—

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.


§26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in §26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.
(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged or immediate family members may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k)(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the nondisadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm demonstrates to you, by clear and convincing evidence, that:
§26.73 What are other rules affecting certification?

(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in
paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b)(1) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

(2) You must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of this Part, the firm is eligible for certification.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

Example 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of §26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a DBE firm to be prequalified as a condition for certification.

(h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of §26.65. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in §26.71.

(i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).
(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendents of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (see Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (e.g., information that would appear in your DBE Directory).

(3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.


Subpart E—Certification Procedures

§26.81 What are the requirements for Unified Certification Programs?

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) The UCP shall provide “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.
(3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The “home state” UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm’s application.

e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient’s certification decisions.

g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by §26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made and shall revise the print version of the Directory at least once a year.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.


§26.83 What procedures do recipients follow in making certification decisions?

(a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

(b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.

(c)(1) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(i) Perform an on-site visit to the firm’s principal place of business. You must interview the principal officers and review their résumés and/or work histories. You may interview key personnel of the firm if necessary. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(ii) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing

(iii) Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;

(iv) Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;

(v) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any.

(vi) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(vii) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service.

(viii) Require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in §26.85 of this part.

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(2) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the written approval of the concerned operating administration, for supplementing the form by requesting specified additional information not inconsistent with this part.

(3) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(4) You must review all information on the form prior to making a decision about the eligibility of the firm. You may request clarification of information contained in the application at any time in the application process.

(d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.

(e) [Reserved]

(f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

(g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

(h)(1) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of §26.87 of this part, except as provided in §26.87(b)(1) of this part.

(2) You may not require DBEs to reapply for certification or undergo a recertification process. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under §26.88), a complaint, or other information concerning the firm's eligibility. If information comes to your attention that leads you to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under §26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.

(l) As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.
Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the application at any time. As a recipient or UCP, you may not apply the waiting period provided under §26.86(c) of this part before allowing the applicant to resubmit its application. However, you may place the reapplication at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. You may also apply the waiting period provided under §26.86(c) of this part to a firm that has established a pattern of frequently withdrawing applications before you make a decision.

§26.85 Interstate certification.

(a) This section applies with respect to any firm that is currently certified in its home state.

(b) When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures.

(1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.

(2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.

(c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.

(1) You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A or any other state related to your firm's certification. This includes affidavits of no change (see §26.83(j)) and any notices of changes (see §26.83(i)) that you have submitted to State A, as well as any correspondence you have had with State A's UCP or any other recipient concerning your application or status as a DBE firm.

(2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified DBE in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.

(3) If you have filed a certification appeal with DOT (see §26.89), you must inform State B of the fact and provide your letter of appeal and DOT's response to State B.

(4) You must submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

(i) This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by §26.85(c)(1), is an identical copy of the information submitted to State A.

(ii) If the on-site report from State A supporting your certification in State A is more than three years old, as of the date of your application to State B, State B may require that your affidavit also affirm that the facts in the on-site report remain true and correct.

(d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:

(1) Within seven days contact State A and request a copy of the site visit review report for the firm (see §26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by "State A" or any other State of not complying with such requests in a timely manner is noncompliance with this Part.

(2) Determine whether there is good cause to believe that State A's certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:

(i) Evidence that State A's certification was obtained by fraud;

(ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;

(iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;
(iv) The State law of State B requires a result different from that of the State law of State A.

(v) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.

(3) If, as State B, unless you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.

(4) If, as State B, you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.

(i) This notice must state with particularity the specific reasons why State B believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity to respond to State B with respect to these reasons.

(ii) The firm may elect to respond in writing, to request an in-person meeting with State B's decision maker to discuss State B's objections to the firm's eligibility, or both. If the firm requests a meeting, as State B you must schedule the meeting to take place within 30 days of receiving the firm's request.

(iii) The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized issues raised by State B's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.

(iv) The decision maker for State B must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.

(v) State B must issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.

(vi) The firm's application for certification is stayed pending the outcome of this process.

(vii) A decision under this paragraph (d)(4) may be appealed to the Departmental Office of Civil Rights under s§26.89 of this part.

(e) As State B, if you have not received from State A a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.

(f)(1) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. You must enter the following information:

(i) The name of the firm;

(ii) The name(s) of the firm's owner(s);

(iii) The type and date of the action;

(iv) The reason for the action.

(2) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.

(3) For any such firm that is on the list, you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

(g) You must implement the requirements of this section beginning January 1, 2012.

[76 FR 5100, Jan. 28, 2011]

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§26.86 What rules govern recipients' denials of initial requests for certification?

(a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.

(b) [Reserved]

(c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm. An applicant's appeal of your decision to the Department pursuant to §26.89 does not extend this period.

(d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under §26.89.


§26.87 What procedures does a recipient use to remove a DBE's eligibility?

(a) Ineligibility complaints. (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are 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).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must 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.

(b) Recipient-initiated proceedings. If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose 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.

(c) DOT directive to initiate proceeding. (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm’s certification.

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

(3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) Hearing. When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must 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.

(1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) You must 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, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only 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, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

(e) **Separation of functions.** You must 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.

1. Your method of implementing this requirement must be made part of your DBE program.

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

3. Before a UCP is operational in its state, a small airport or small transit authority (i.e., an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) **Grounds for decision.** You may base a decision to remove a firm’s eligibility only on one or more of the following grounds:

1. 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;

2. Information or evidence not available to you at the time the firm was certified;

3. Information relevant to eligibility that has been concealed or misrepresented by the firm;

4. A change in the certification standards or requirements of the Department since you certified the firm;

5. Your decision to certify the firm was clearly erroneous;

6. The firm has failed to cooperate with you (see §26.109(c));

7. The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see §26.73(a)(2)); or

8. The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (g) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph (d) of this section.

(g) **Notice of decision.** Following your decision, you 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 your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an eligibility complaint or the concerned operating administration that had directed you to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

(h) [Reserved]

(i) **Status of firm during proceeding.** (1) A firm remains an eligible DBE during the pendancy of your proceeding to remove its eligibility.

2. The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) **Effects of removal of eligibility.** When you remove a firm’s eligibility, you must take the following action:

1. When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

2. If a prime contractor has executed a subcontract with the firm before you have 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 you have 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 you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

3. **Exception:** If the DBE’s ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.
(k) **Availability of appeal.** When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under §26.89.


**§26.88 Summary suspension of certification.**

(a) A recipient shall immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

(b)(1) A recipient may immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by §26.83(i) of this part or fails to timely file an affidavit of no change under §26.83(j).

(2) In determining the adequacy of the evidence to issue a suspension under paragraph (b)(1) of this section, the recipient shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(c) The concerned operating administration may direct the recipient to take action pursuant to paragraph (a) or (b) this section if it determines that information available to it is sufficient to warrant immediate suspension.

(d) When a firm is suspended pursuant to paragraph (a) or (b) of this section, the recipient shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.

(e) Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under §26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

(f) While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

(g) Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the recipient information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under §26.87 of this part. If the recipient commences a decertification proceeding, the suspension remains in effect during the proceeding.

(h) The decision to immediately suspend a DBE under paragraph (a) or (b) of this section is not appealable to the US Department of Transportation. The failure of a recipient to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. Department of Transportation under §26.89 of this part; as a constructive decertification.

[79 FR 59599, Oct. 2, 2014]

**§26.89 What is the process for certification appeals to the Department of Transportation?**

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms, you may make an administrative appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in §26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(3) Send appeals to the following address: U.S. Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.
(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal or in the interest of justice.

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

(e) The Department makes its decision based solely on the entire administrative record as supplemented by the appeal. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

(f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

(1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

(2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

(a) If you are the recipient from whose action an appeal under §26.89 is taken, the decision is binding. It is not binding on other recipients.

(b) If you are a recipient to which a DOT determination under §26.89 is applicable, you must take the following action:

(1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in §26.87(i) take effect.

(2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in §26.87.

(3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

(4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.

(5) If the Department affirms your determination, no further action is necessary.

(c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under §26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

Subpart F—Compliance and Enforcement

§26.101 What compliance procedures apply to recipients?

(a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

(b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

§26.103 What enforcement actions apply in FHWA and FTA programs?

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

(a) Noncompliance complaints. Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in §26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

(b) Compliance reviews. The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(c) Reasonable cause notice. If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.
(d) **Conciliation.** (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.

(3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.

(4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) **Enforcement actions.** (1) Enforcement actions are taken as provided in this subpart.

(2) Applicable findings in enforcement proceedings are binding on all DOT offices.

§26.105 What enforcement actions apply in FAA programs?

(a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

(b) The provisions of §26.103(b) and this section apply to enforcement actions in FAA programs.

(c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

§26.107 What enforcement actions apply to firms participating in the DBE program?

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

(d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

(e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.


§26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) **Availability of records.** (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

(2) Notwithstanding any provision of Federal or state law, you must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted
the information. This includes applications for DBE certification and supporting information. However, you must transmit
this information to DOT in any certification appeal proceeding under §26.89 of this part or to any other state to which the
individual's firm has applied for certification under §26.85 of this part.

(b) Confidentiality of information on complainants. Notwithstanding the provisions of paragraph (a) of this section, the
identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation,
proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant
must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to
waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the
procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

(c) Cooperation. All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and
applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals)
are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews,
investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the
party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification
or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the
complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for
future contracts and/or suspension and debarment).

(d) Intimidation and retaliation. If you are a recipient, contractor, or any other participant in the program, you must not
intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or
privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in
any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in
noncompliance with this part.


Appendix A to Part 26—Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction,
equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient
good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet
the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn’t
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.

II. 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, you have the responsibility 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, based on the regulations and the guidance in this
Appendix.

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. Determinations should not be made using
quantitative formulas.

III. The Department 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.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts 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.

A. (1) Conducting market research to identify small business contractors and suppliers and soliciting through all
reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the
contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or
written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs
listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE
directory) and which are located in the area or surrounding areas of the project.
(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. 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 (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

C. 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 with their offer for the subcontract.

D. (1) Negotiating in good faith with interested DBEs. 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.

(2) 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.

E. (1) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. 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.

V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. 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 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. As provided in §26.53(b)(2)(vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

[79 FR 59600, Oct. 2, 2014]
Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS/COMMITMENTS AND PAYMENTS

Recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid for with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) to which this report will be submitted.

1. Indicate the DOT (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.

2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If you are an FTA recipient, indicate the Grant/Project numbers covered by this report. If more than ten attach a separate sheet.

3. Specify the Federal fiscal year (i.e., October 1-September 30) in which the covered reporting period falls.

4. State the date of submission of this report.

5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. For FHWA and FTA recipients, if this report is due June 1, data should cover October 1-March 31. If this report is due December 1, data should cover April 1-September 30. If the report is due to the FAA, data should cover the entire year.

6. Provide the name and address of the recipient.

7. State your overall DBE goal(s) established for the Federal fiscal year of the report being submitted to and approved by the relevant OA. Your overall goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral projections (both of which include gender-conscious/neutral projections). The Race Conscious projection should be based on measures that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a race conscious measure. The Race Neutral projection should include measures that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.

Section A: Awards and Commitments Made During This Period

The amounts in items 8(A)-10(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts and should be rounded to the nearest dollar.

Line 8: Prime contracts awarded this period: The items on this line should correspond to the contracts directly between the recipient and a supply or service contractor, with no intermediaries between the two.

8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds and awarded during this reporting period. This value should include the entire Federal share of the contracts without removing any amounts associated with resulting subcontracts.

8(B). Provide the total number of all prime contracts assisted with DOT funds and awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded in prime contracts to certified DBE firms during this reporting period. This amount should not include the amounts sub contracted to other firms.

8(D). From the total number of prime contracts awarded in item 8(B), specify the number of prime contracts awarded to certified DBE firms during this reporting period.

8(E&F). This field is closed for data entry. Except for the very rare case of DBE-set asides permitted under 49 CFR part 26, all prime contracts awarded to DBES are regarded as race-neutral.

8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral in item 7 and the explanation in item 8 of project types to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.
Line 9: Subcontracts awarded/committed this period: Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I),
except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts,
which may only be awarded, subcontracts may be either awarded or committed.

9(A). If filling out the form for general reporting, provide the total dollar amount of subcontracts assisted with DOT
funds awarded or committed during this period. This value should be a subset of the total dollars awarded in prime
contracts in 8(A), and therefore should never be greater than the amount awarded in prime contracts. If filling out the form
for project reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during
this period. This value should be a subset of the total dollars awarded or previously in prime contracts in 8(A). The sum of
all subcontract amounts in consecutive periods should never exceed the sum of all prime contract amounts awarded in
those periods.

9(B). Provide the total number of all subcontracts assisted with DOT funds that were awarded or committed during
this reporting period.

9(C). From the total dollar amount of subcontracts awarded/committed this period in item 9(A), provide the total dollar
amount awarded in subcontracts to DBEs.

9(D). From the total number of subcontracts awarded or committed in item 9(B), specify the number of subcontracts
awarded or committed to DBEs.

9(E). From the total dollar amount of subcontracts awarded or committed to DBEs this period, provide the amount in
dollars to DBEs using Race Conscious measures.

9(F). From the total number of subcontracts awarded or committed to DBEs this period, provide the number of sub
contracts awarded or committed to DBEs using Race Conscious measures.

9(G). From the total dollar amount of subcontracts awarded/committed to DBEs this period, provide the amount in
dollars to DBEs using Race Neutral measures.

9(H). From the total number of subcontracts awarded/committed to DBEs this period, provide the number of sub
contracts awarded to DBEs using Race Neutral measures.

9(I). Of all subcontracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar
amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round percentage to the nearest tenth.

Line 10: Total contracts awarded or committed this period. These fields should be used to show the total dollar value
and number of contracts awarded to DBEs and to calculate the overall percentage of dollars awarded to DBEs.

10(A)-10(B). These fields are unavailable for data entry.

10(C-H). Combine the total values listed on the prime contracts line (Line 8) with the corresponding values on the
subcontracts line (Line 9).

10(I). Of all contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the total dollars
awarded to DBEs in item 10(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the
nearest tenth.

Section B: Breakdown by Ethnicity & Gender of Contracts Awarded to DBEs This Period

11-17. Further breakdown the contracting activity with DBE involvement. The Total Dollar Amount to DBEs in 17(C)
should equal the Total Dollar Amount to DBEs in 10(C). Likewise the total number of contracts to DBEs in 17(F) should
equal the Total Number of Contracts to DBEs in 10(D).

Line 16: The “Non-Minority” category is reserved for any firms whose owners are not members of the presumptively
disadvantaged groups already listed, but who are either “women” OR eligible for the DBE program on an individual basis.
All DBE firms must be certified by the Unified Certification Program to be counted in this report.

Section C: Payments on Ongoing Contracts

Line 18(A-E). Submit information on contracts that are currently in progress. All dollar amounts are to reflect only the
Federal share of such contracts, and should be rounded to the nearest dollar.

18(A). Provide the total dollar amount paid to all firms performing work on contracts.

18(B). Provide the total number of contracts where work was performed during the reporting period.

18(C). From the total number of contracts provided in 18(A) provide the total number of contracts that are currently
being performed by DBE firms for which payments have been made.
18(D). From the total dollar amount paid to all firms in 18(A), provide the total dollar value paid to DBE firms currently performing work during this period.

18(E). Provide the total number of DBE firms that received payment during this reporting period. For example, while 3 contracts may be active during this period, one DBE firm may be providing supplies or services on all three contracts. This field should only list the number of DBE firms performing work.

18(F). Of all payments made during this period, calculate the percentage going to DBEs. Divide the total dollar value to DBEs in item 18(D) by the total dollars of all payments in 18(B). Round percentage to the nearest tenth.

Section D: Actual Payments on Contracts Completed This Reporting Period

This section should provide information only on contracts that are closed during this period. All dollar amounts are to reflect the entire Federal share of such contracts, and should be rounded to the nearest dollar.

19(A). Provide the total number of contracts completed during this reporting period that used Race Conscious measures. Race Conscious contracts are those with contract goals or another race conscious measure.

19(B). Provide the total dollar value of prime contracts completed this reporting period that had race conscious measures.

19(C). From the total dollar value of prime contracts completed this period in 19(B), provide the total dollar amount of dollars awarded or committed to DBE firms in order to meet the contract goals. This applies only to Race Conscious contracts.

19(D). Provide the actual total DBE participation in dollars on the race conscious contracts completed this reporting period.

19(E). Of all the contracts completed this reporting period using Race Conscious measures, calculate the percentage of DBE participation. Divide the total dollar amount to DBEs in item 19(D) by the total dollar value provided in 19(B) to derive this percentage. Round to the nearest tenth.

20(A)-20(E). Items 21(A)-21(E) are derived in the same manner as items 19(A)-19(E), except these figures should be based on contracts completed using Race Neutral measures.

20(C). This field is closed.

21(A)-21(D). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.

21(C). This field is closed.

21(E). Calculate the overall percentage of dollars to DBEs on completed contracts. Divide the Total DBE participation dollar value in 21(D) by the Total Dollar Value of Contracts Completed in 21(B) to derive this percentage. Round to the nearest tenth.

23. Name of the Authorized Representative preparing this form.

24. Signature of the Authorized Representative.

25. Phone number of the Authorized Representative.

**Submit your completed report to your Regional or Division Office.**
Appendix C to Part 26—DBE Business Development Program Guidelines

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the recipient.

(A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.

(B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.

(C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.

(D) The business plan should contain at least the following:

(1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.

(2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.

(3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;

(4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and

(5) Such other information as the recipient may require.

(E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified...
plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

1. The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;
2. The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;
3. The types of contract opportunities being sought, based on the firm's primary line of business; and
4. Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.

(J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.

(K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:

1. Profitability;
2. Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
3. Net worth, financial ratios, working capital, capitalization, access to credit and capital;
4. Ability to obtain bonding;
5. A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and
6. Good management capacity and capability.

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

(M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in...
the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

Appendix D to Part 26—Mentor-Protégé Program Guidelines

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B) (1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor’s services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified before it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/subcontractor mentor-protégé agreement.

Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

SOCIAL DISADVANTAGE

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) Education. Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) Employment. Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) Business history. The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government
contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

ECONOMIC DISADVANTAGE

(A) General. Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) Submission of narrative and financial information. (1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) Factors to be considered. In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) Transfers within two years. (1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

Appendix F to Part 26—Uniform Certification Application Form

**UNIFORM CERTIFICATION APPLICATION**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

**AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)**

**9 C.F.R. Parts 23 and 26**

**Requirements for Applicants**

1. **Should I apply?**
   - You may be eligible to participate in the DBE/ACDBE program.
   - The program is available for companies who have demonstrated success in minority business enterprises.
   - The program is for companies that have successfully completed performance contracts.
   - The program is for companies that have successfully completed performance contracts in the transportation industry.
   - The program is for companies that have successfully completed performance contracts in the transportation industry.

2. **How do I apply?**
   - Your application must meet the criteria specified in Part 26 for DBE status.
   - Your application must meet the criteria specified in Part 26 for ACDBE status.
   - Your application must meet the criteria specified in Part 26 for ACDBE status.

3. **Where can I find more information?**
   - [http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=01810d630db09603c688e3179a2e1...](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=01810d630db09603c688e3179a2e1...)

**INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) UNIFORM CERTIFICATION APPLICATION**

1. **Section A: Certification Information**
   - **Basic Contact Information**
     - Form the contact name and contact information for the person responsible for the application.
   - **Diversity Certification**
     - Provide the diversity certification for the company.
   - **Other Information**
     - Include any other relevant information.

2. **Section B: General Information**
   - **Business Profile**
     - Include a description of the business's primary activities.
   - **Company Information**
     - Provide additional information about the company.
   - **Company Certification**
     - Include a copy of the diversity certification for the company.

3. **Section C: Financial Information**
   - **Financial Overview**
     - Provide a financial overview of the company.
   - **Financial History**
     - Include a financial history of the company.
   - **Financial Projections**
     - Provide financial projections for the company.

4. **Section D: Legal Information**
   - **Legal Status**
     - Include the legal status of the company.
   - **Legal History**
     - Include any legal history of the company.
   - **Legal Projections**
     - Provide legal projections for the company.

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Section 1: CERTIFICATION INFORMATION
(a) Contact person and Title: ____________________________
(b) Legal name of firm: ________________________________
(c) Phone #: ____________________ (d) Other Phone #: __________ (e) Fax #: __________
(f) E-mail: _________________________________________
(g) Street address of firm: ____________________________
(h) City: ______________ State: ______________ Zip: __________
(i) Name of entity: _________________________________
(j) State of incorporation: ___________________________
(k) Form of entity: _________________________________
(l) Date of incorporation: __________
(m) Date of first operation: __________

Section 2: GENERAL INFORMATION
(a) U.S. DOT Unlinked DMS / ACDBE Certification Application
(b) Business Profile: (1) Give a concise description of the firm's primary activities and the products or services it provides. If your company offers more than one product/service, list the primary products or services first. Please see additional pages if necessary. This description may be used in our database and the ACDBE online directory if you are certified as a DMS or ACDBE.

(c) Applicable NAICS Codes for this line of work include: ____________________________
(d) This firm was established on __________
(e) We have owned this firm since __________
(f) Method of operation (check all that apply)
   - Single owner business
   - Partnering business
   - Limited liability company
   - Joint venture (firms sharing all N & P's)
   - Any other

U.S. DOT Unlinked DMS / ACDBE Certification Application • Page 2 of 3
Section A: MAJORITY OWNER INFORMATION

A. Identify the majority owner of the firm holding 51% or more ownership interest.
   (1) Full Name: 
   (2) Title: 
   (3) Home Phone: 

(4) Home Address (Street and Number)

(5) Gender: Male [ ] Female [ ]

(6) Ethnic group membership (check all that apply): [ ] Black [ ] Hispanic [ ] Native American [ ] Subcontinent Asian
[ ] Other

(7) U.S. Citizenship: [ ] U.S. Citizen [ ] Lawfully Admitted Permanent Resident

B. Additional Owner Information
   (1) Describe familial relationship to other owners and employees:

   (2) Does this owner perform a management or supervisory function for any other business? [ ] Yes [ ] No
   (3) Does this owner own or work for any other firm(s) that has a relationship with this firm? [ ] Yes [ ] No
   (4) Identify the type of the business, and the nature of the relationship, and the owner’s function at the firm:

   (5) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity
      more than 10 hours per week? [ ] Yes [ ] No
   (6) Describe how you acquired your business:
      [ ] Inherited the business
      [ ] Acquired an interest from:
      [ ] Husband or wife
      [ ] Friend or relative
      [ ] Other

   (7) Affidavit documentation substantiating your investment:

   U.S. DOT Federal Business Opportunity Notice Page 4 of 14

Section B: OWNER INFORMATION, Cont’d.

A. Identify all individuals, firms, or holding companies that hold LESS THAN 51% ownership interest in the
   firm. Attach separate sheets for each additional owner.
   (1) Full Name: 
   (2) Title: 
   (3) Home Phone: 

(4) Home Address (Street and Number)

(5) Gender: Male [ ] Female [ ]

(6) Ethnic group membership (check all that apply): [ ] Black [ ] Hispanic [ ] Native American [ ] Subcontinent Asian
[ ] Other

(7) U.S. Citizenship: [ ] U.S. Citizen [ ] Lawfully Admitted Permanent Resident

B. Additional Owner Information
   (1) Describe familial relationship to other owners and employees:

   (2) Does this owner perform a management or supervisory function for any other business? [ ] Yes [ ] No
   (3) Does this owner own or work for any other firm(s) that has a relationship with this firm? [ ] Yes [ ] No
   (4) Identify the type of the business, and the nature of the relationship, and the owner’s function at the firm:

   (5) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity
      more than 10 hours per week? [ ] Yes [ ] No
   (6) Describe how you acquired your business:
      [ ] Inherited the business
      [ ] Acquired an interest from:
      [ ] Husband or wife
      [ ] Friend or relative
      [ ] Other

   (7) Affidavit documentation substantiating your investment:

   U.S. DOT Federal Business Opportunity Notice Page 4 of 14
Appendix G to Part 26—Personal Net Worth Statement

![Personal Net Worth Statement](image)

View or download PDF
### Section 6. Other Personal Property and Assets (List attachments as necessary)

<table>
<thead>
<tr>
<th>Description</th>
<th>Attachment Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description</td>
<td>Attachment Number</td>
<td>Description</td>
</tr>
</tbody>
</table>

**Assets**

- **Cash and Cash Equivalents**: On page 3, enter the total amount of cash and cash equivalents held in bank accounts, including checking, savings, money market accounts, and other short-term deposits of foreign banks or domestic banks, as defined in the table below. If an individual has a variable rate of exchange, enter the amount of foreign currency held, including the date of conversion or purchase.

- **Receivables Account**: On page 3, enter the total value of all accounts receivable, including trade accounts, customer balances, and other receivables, less any allowances for doubtful accounts. If an individual has a variable rate of exchange, enter the amount of foreign currency held, including the date of conversion or purchase.

- **Note Receivable**: On page 3, enter the total face amount of all notes and other similar obligations of personal estate. If an individual has a variable rate of exchange, enter the amount of foreign currency held, including the date of conversion or purchase.

- **Liabilities**
  - **Accounts Payable**: On page 3, enter the total amount of liabilities payable within one year, including trade accounts, accrued expenses, and other similar obligations. If an individual has a variable rate of exchange, enter the amount of foreign currency held, including the date of conversion or purchase.

- **Loan Payable**: On page 3, enter the total amount of all loans payable, including term loans, lines of credit, and other similar obligations. If an individual has a variable rate of exchange, enter the amount of foreign currency held, including the date of conversion or purchase.

- **Guaranteed Credit**: On page 3, enter the total amount of guaranteed credit, including credit lines, credit cards, and other similar obligations. If an individual has a variable rate of exchange, enter the amount of foreign currency held, including the date of conversion or purchase.

- **Other Liabilities**: On page 3, enter any other liabilities that are not covered by the above categories. If an individual has a variable rate of exchange, enter the amount of foreign currency held, including the date of conversion or purchase.

**Net Worth Statement for 901/1300 Program Eligibility**: Page 3 of 5

- **Reconciliation and Certification**: Certify that the information provided is true and correct. Sign the statement and date it. The statement must be signed by all individuals with a legal interest in the property.

- **Certification**: Sign the certification statement and date it. The statement must be signed by all individuals with a legal interest in the property.

- **Authorization for Audit**: Authorization for the audit of the net worth statement to be performed by an independent auditor. The auditor must be qualified to perform the audit and must provide a report of the results.

- **Letter of Confirmation**: Letter of confirmation from an independent auditor confirming the accuracy of the net worth statement.

- **Appendix A**: Information on the calculation of the net worth statement, including definitions and notes.

- **Appendix B**: Information on the calculation of the net worth statement, including definitions and notes.

- **Appendix C**: Information on the calculation of the net worth statement, including definitions and notes.

**Additional Information**: Additional information providing further details on the net worth statement, including definitions and notes.
Mortgages on Real Estate: Enter the total balance on all mortgages payable on real estate on page 1.

Liens on Life Insurance: Enter the total value of all liens on the insurance policies on page 1, and complete section A on page 1. Contingent liabilities do not come into play only if the life insurance policy is owned by the insured and not paid in full by the insured’s estate upon death.

Capitalized Liabilities: Enter the total amount of all items that are currently due, but are recorded on page 1, and complete section B on page 1. Contingent liabilities are obligations that are incurred as a result of the occurrence of a future event. If you include this line, you must include documentation, such as a note, to support the inclusion.

Transfer of Assets: Enter the date and the place of the transfer of assets. This information should be obtained from the transfer agreement, and the form must be signed by the transferee.

Note: The above information is a summary of the requirements for the Declaration of Eligibility. For more detailed information, please refer to the corresponding regulations.
ATTACHMENT 3

DBE Officer Duties/Responsibilities

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 the JPB’s progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO and board of directors on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in California.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the JPB’s updated directory on certified DBEs.
ATTACHMENT 4

Minority Owned Banks

As of 1/28/16, the JPB has identified the following such institutions:

1. Asian Pacific National Bank
2. BBCN Bank
3. California Pacific Bank
4. Commonwealth Business Bank
5. East West Bank
6. Gateway Bank FSB
7. Metropolitan Bank
8. Mission Nation Bank
9. Pan Pacific Bank
10. Preferred Bank
11. State Bank of India (California)
12. Bank of Guam San Francisco Branch
ATTACHMENT 5

DBE Directory

A link to the CUCP online DBE Directory can be found at http://www.dot.ca.gov/hq/bep/find_certified.htm.
ATTACHMENT 6

Monitoring and Enforcement Mechanisms

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

1. Withholding of progress payments and contract retentions
2. Imposition of liquidated damages
3. Termination of the contract, in whole or in part

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 2 CFR 180 and 1200
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.
ATTACHMENT 7

Overall DBE Goal Calculation

Amount of Goal

The JPB’s overall goal for the following time period FY2017-2019 is the following: 14% of the Federal financial assistance the JPB will expend in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

The JPB examined all evidence in its jurisdiction to determine which sources would be relevant to its DBE goal-setting methodology:

California Unified Certification Program (CUCP) Database

In accordance with DOT regulations, the participating agencies of the California Unified Certification Program, which includes the California Department of Transportation (“Caltrans”) as the repository agency for CUCP data, have assembled a complete central directory of DBE firms in California. The data from the CUCP database was used in Step One of the goal-setting process. As of March 28, 2016 there is a total of 4,765 DBEs certified by the California Unified Certification Program, of which 1,190 DBEs reside in the nine San Francisco Bay Area counties along with San Joaquin and Sacramento counties, areas that are relevant to the geographical contracting marketplace for the JPB.

Census Bureau’s County Business Pattern (CBP) Database

The JPB used the most recent 2013 U.S. Census Bureau’s County Business Pattern (CBP) database to obtain the number of all firms (DBEs and non-DBEs) ready, willing and able to bid for the FTA-assisted contracts. Business data was considered for the counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, Sonoma, San Joaquin, and Sacramento. This data was used in Step One of the goal-setting process.

Actual DBE Participation in Race/Gender-Conscious JPB Contracts

There is only one contract issued by the JPB on a race/gender-conscious basis over the past three years and because the sample size was so small, actual DBE experience in a race-conscious environment was not considered in this goal analysis.

Actual DBE Participation in Race/Gender-Neutral JPB Contracts

Actual DBE participation in race/gender-neutral JPB contracts during recent years was used to make Step 2 adjustments and was also used to determine the projected percentage of race/gender-conscious needed to attain the FFY2017-2019 goal.

Disparity Study

The JPB completed a minority- and women-owned business availability and utilization study in December 2008. The findings from this study conclude that there are statistically significant findings of disparity among disadvantaged groups, indicating that there remain effects of discrimination in the transportation contracting marketplace. These findings support the use of race-conscious remedies, when necessary, to ensure DBE inclusion on federally assisted contracts.
The JPB’s study concluded that the local contracting marketplace for the JPB included not only the nine San Francisco Bay Area counties, but also the counties of San Joaquin and Sacramento. The JPB considered all eleven counties as its geographical market area.

The study also provided and analyzed U.S. Census Bureau data on the availability of minority- and women-owned firms that provides a more accurate basis for the JPB’s determination of women and minority business availability than the currently used DBE directories. In short, the study determined that the number of disadvantaged firms that actually obtain DBE certification is a small subset of the overall minority and women-owned business population. This is further affirmed by the Caltrans 2012 study which concluded that only 21 percent of minority and women owned firms identified from their customized census report are DBE certified. Accordingly, the JPB also considered and placed more weight on the U.S. Census Bureau’s Survey of Business Owners minority- and women-owned business availability figures to determine DBE availability. It is important to consider the broader U.S. Census figures in lieu of the number of DBE firms merely certified because the U.S. Census figures provide a more comprehensive view.

Moreover, in 2008, the JPB’s disparity study consultant, CRA International (CRAI), gathered and derived multiple levels of business availability figures and requested special tabulations of economic census information from the U.S. Census Bureau. CRAI did this in order to address firm capacity issues and to narrowly profile those firms that are likely to compete for JPB contracts. Firms employing at least one employee (i.e. reported payroll taxes) and grossing more than $50,000 in annual revenues were chosen to closely profile firms that have participated in JPB contracts and subcontracts in the past. Based on U.S. Census Bureau data for these firm characteristics and adjusting minority women data to eliminate double counting, the DBE availability figure for the construction trades amounts to 18.55 percent, and the availability figure professional services is 27.96 percent. These availability figures along with other findings from the JPB’s study were used in Step Two of the goal-setting process.

**Bidder’s List**

The JPB maintains a bidder’s list as required under 49 CFR § 26.11 of all bidders (DBEs and non-DBEs). CRAI analyzed the JPB’s bidder’s list data in its disparity study. For many of the construction and professional services trades, the level of bid activity by DBE firms correlate with the availability figures from the U.S. Census for firms that employ at least one employee and gross more than $50,000 in annual revenues. That is, the level of actual bidding on JPB prime and sub contracts among disadvantaged firms were in line with the U.S. Census availability figures from the study. The bidder’s list supports the findings of the Disparity Study which are used in Step 2.

**Goal of Another DOT Recipient**

The JPB’s heavy rail contracting opportunities are fairly unique and adoption of another recipient’s goal would not be adequately or narrowly tailored for the JPB’s contracting marketplace. However, the JPB recognizes the goals and proposed goals of neighboring agencies such as SFMTA (FFY2014-2016 19%, FFY2017-2019 15%), and VTA (FFY2014-2016 13%) and considers these when determining if the overall goal is reasonable.

**Sources from Organizations and Institutions**

The JPB commissioned a disparity study and obtained additional information about past discrimination in public contracting; discrimination in private contracting; discrimination in credit, bonding and insurance; data on employment, and self-employment; and data on firm formation that was considered in the goal-setting process. In particular, the JPB recognizes the findings from its disparity study as well as those from the California Department of Transportation, that
the number of disadvantaged firms that are actually certified in the DBE program is low. The JPB continues to encourage eligible firms to seek DBE certification and it remains committed as a certifying member of the California UCP. As a certifying member, the JPB performs DBE certification evaluations on behalf of the California UCP. Attempts to increase the level of DBE participation, however, has been challenging due to the lack of interest and incentive among disadvantaged firms because of perceived paperwork burden. The JPB believes that these factors support the use of a Step 2 adjustment that is beyond merely certified DBEs to determine availability figures and calculate its goal, which is further explained below.

As part of this process, the JPB consulted with DBEs, and organizations to discuss the JPB’s goal-setting process. The JPB identified specific areas including track construction, rebar construction, and piling with little or no DBE participation. The JPB did not receive any comments that would indicate untapped DBE availability in those areas or that indicated that DBEs were interested in those areas of work but were facing barriers. This consultation supported Step 2 adjustments for track construction, reinforcing steel construction and piling.

GOAL METHODOLOGY

Step 1. Determining a Base Figure

The JPB determined a base figure for the relative availability of DBEs in the specific areas of expertise involved in the JPB’s FTA-assisted contracting opportunities in FFY2017-2019 by comparing data from the CUCP DBE database; and the U.S. Census Bureau’s 2010 County Business Pattern. The specific areas of expertise were classified by 2012 NAICS codes. The JPB then weighted each area of expertise according to the amount of FTA assistance that is projected to be spent in that area.

The total number of DBEs for a specific area of expertise was determined by using the corresponding 2012 NAICS code from the CUCP DBE database. DBEs from outside of the local market area were omitted in order to ensure a consistent comparison by counties. County Business Pattern data for the counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, Sonoma, San Joaquin, and Sacramento was used to determine the total number of businesses.

Because the JPB does not anticipate expending an equal amount of FTA dollars in each area of expertise, the overall availability for each NAICS code was weighted according to the percentage of FTA dollars the JPB anticipates expending in each NAICS code area.

The base figure of DBEs available to participate in the JPB’s FTA-assisted contracting opportunities for FFY2017-2019 is seven (7) percent based solely on certified DBE firms. See Table 2 for Step 1 calculations.

Step 2. Adjusting the Base Figure

As part of the JPB’s 2008 Disparity Study, consultant CRAI separately calculated availability figures based on information from the U.S. Census Bureau’s Survey of Business Owners to represent eligible women and minority owned firms that potentially may participate in the DBE program regardless if those firms are currently DBE certified. The JPB intends to recognize these higher availability rates because only a small fraction of disadvantaged minority and/or women-owned businesses are actually certified as DBEs. Based on CRAI’s findings, the JPB adjusted the DBE availability to 18.55% for Construction and 27.96% for Professional services, except as indicated below.

The JPB adjusted the base figure to account for actual experiences on past contracts that utilized trades similar to those required in the new contracts. For railroad track construction
(NAICS 237990), rebar construction (NAICS 238120), and piling (NAICS 238910) the JPB adjusted the base figures for these trades to zero because the JPB could find no records of DBEs bidding or participating in these work areas over the last ten years. Furthermore, although there are DBE firms certified in these NAICS codes, the JPB felt it was prudent to adjust these base figures to zero because the NAICS classification is broad and does not adequately account for actual firms that perform specialized work such as railroad track construction or pile driving. Moreover, these trades require heavy equipment and substantial capital investment, aspects of financing that are beyond the economic profiles of a DBE. In essence, a business performing these services is unlikely to be small and excluding these trades from DBE subcontracting consideration appears reasonable and supported by experience.

The JPB proposes the figure of 14% because the percentage is reasonable, is relatively consistent with its prior 12% goal, and is relatively consistent with goals of neighboring agencies. See Table 3 for Step 2 calculations.

The JPB proposes an overall DBE goal of 14% for FFY2017-2019 for FTA-assisted contracts.

**RACE NEUTRAL VS. RACE CONSCIOUS MEANS TO ACHIEVE THE DBE OVERALL GOAL**

Federal DBE regulations require that the maximum feasible portion of the overall DBE goal be met by using race-neutral methods. The JPB intends to meet the maximum feasible portion of the overall goal through race-neutral means, including outreach, and a small business preference. During the past ten years, the JPB has reported the following race/gender-neutral DBE awards and commitments in its semi-annual reports to the FTA:

<table>
<thead>
<tr>
<th>Federal Fiscal Year</th>
<th>Overall DBE Goal</th>
<th>Race/Gender-Neutral DBE Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>9.2%</td>
<td>8.5%</td>
</tr>
<tr>
<td>2007</td>
<td>7.4%</td>
<td>6.8%</td>
</tr>
<tr>
<td>2008</td>
<td>11.9%</td>
<td>6.3%</td>
</tr>
<tr>
<td>2009</td>
<td>10.0%</td>
<td>13.5%</td>
</tr>
<tr>
<td>2010</td>
<td>13.0%</td>
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<td>9.1%</td>
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<tr>
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<td>10.5%</td>
<td>10.9%</td>
</tr>
<tr>
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<td>10.5%</td>
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<td>7.6%</td>
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<td>2015</td>
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<td>9.0%</td>
</tr>
<tr>
<td><strong>10 year average</strong></td>
<td><strong>10.7%</strong></td>
<td><strong>9.7%</strong></td>
</tr>
</tbody>
</table>

Notably, the JPB utilized one contract-specific goal in FFY2015 to remedy a significant shortfall in FFY2014; all other participation has been race/gender-neutral. Because the JPB has averaged 10% race/gender-neutral DBE participation (rounded up from 9.7%), the JPB projects that 10% of the 14% overall goal for FFY2017-2019 can be met with race/gender-neutral methods. Although the JPB projects using race/gender-conscious methods to attain 4% of the goal, the JPB will only utilize race/gender-conscious methods when the DBE Office projects that DBE participation for the year is falling short of the overall goal.
1. Consultation for Goal-Setting

In collaboration with other U.S. DOT recipients, the JPB held two public sessions on April 12, 2016 to solicit public comment about its goal setting process. The first session was targeted to a smaller, focused group of trade associations while the second session was broader and included the general public. The purpose of these public informational meetings was to inform the public about our agencies’ upcoming contracting opportunities and invite public input about the DBE program. The public also was asked to comment on the goal-setting process, specifically on the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to compete for U.S. DOT-assisted contracts. Invitations to the meeting were posted on the CaliforniaUCP.org website and sent to over 800 DBEs, trade associations, and other organizations to invite their participation. Mailings were targeted to organizations that are knowledgeable about the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on contracting opportunities for DBEs. Staff from the JPB attended the meeting and provided a presentation about its contracts and DBE participation.

The first session, the consultation session with various trade associations, was attended by representatives from the San Francisco Bay Area Small Business Council and VSCE. Input was solicited from the attendees during a roundtable discussion. Topics for discussion included:

- What has been your experience with the DBE certification program (or other certifications programs)?
- Are any of your constituents DBEs?
- Does the program meet the needs of your constituents?
- Do you have any race-neutral contracting practices to suggest?
- What areas would you like to see the BOC focus on?

Questions/comments from the participants during the discussion are as follows:

- How do you calculate contract goals? Do you use the same method as you do for setting the overall goal?
- How can you be sure that the database you are using to collect DBE info is correct?
- Is there any way to have a base minimum goal?
- What’s the geographic pool and why are some goals so low?
- High Speed Rail (HSR) has a program with DBE, SBE, and DVBE goals; is it possible for you all to consider the same?
- What are the consequences of prime contractors not meeting the goals?
- Agencies need to unbundle projects and make sure prime contractors send decision makers to outreach events.
- Agencies should set aside projects for DBE’s and make DBE utilization transparent.

In response to these comments, the JPB will continue its dialogue with trade groups and make the DBE Program as transparent as possible. To address the concern about of primes not meeting DBE goal, the various agencies noted that there are legal remedies in place to address a prime contractor DBE shortfall. On the subject of publicizing DBE utilization, the JPB along with the other transportation agencies that attended the meeting have outreached and provided the information to the group that requested the information. In the area of unbundling, the JPB will continue to look for ways to unbundle trades from contracts, such as separating fencing and landscaping work from other civil construction work so that small contractors can bid directly for the separated work. Regarding the comments on setting a high race-conscious goal and
establishing separate goals, the JPB will continue to follow prescribed Federal methodology to establish its goals.

The second session was attended by trade group representatives, DBE firms, non-DBE firms, and the general public. JPB staff made a presentation about the expectation and process of goal setting and spoke of the challenges of obtaining DBE participation in certain trades that have had historically low DBE participation, such as track construction, rebar, and pile driving, among others.

Attendees from the second session made very few comments about the agencies’ DBE goal setting process and most comments centered on inquiries about how to do business with our agencies and whether there are contracting opportunities in specific areas of work.

The agencies responded by explaining our individual processes of doing business. For the JPB, attendees were advised and encouraged to register on the JPB website as a vendor so that they will receive email notices of contract opportunities when such contracts are formally advertised; download bid specifications free-of-charge from our website; and obtain lists of plan holders and contact information for potential teaming and subcontracting opportunities.

Other public comments included the following:

- How long does it take to become certified?
- Can the certification process be expedited if there is an upcoming contract?
- We are currently certified as a DBE. The NAICS code assigned to my firm is a broker, but we are a wholesaler. Decision-makers should consider changing the regulations to match current practices in 2016 - no one has a warehouse and it increases costs for smaller business.
- We are a business of seven minority women who just incorporated seven months ago, so we don’t have three years’ worth of tax returns or financial documents - can we apply for DBE certification?
- How does it work as a broker? I am a printing broker, can I apply for DBE certification?
- When we submit a capability statement, do you also want a business card attached?
- We are a woman-owned small business, but do not qualify as a DBE - do these other certifications (i.e. SBE) apply?

In response to these comments, the JPB will continue to promote nondiscrimination in its non-federalized contracts and include DBE provisions in these contracts to the extent that such provisions are race-neutral. In addition, the small business program elements of the JPB’s DBE program have been extended to all contracts regardless of funding source. Regarding the public’s comments about various certification programs, the JPB has made efforts to establish a regional small business verification program and will first accept another agency’s certification program (as long as a business meets the USDOT’s definition of “small business concern”) before subjecting a small business to another certification program. Additionally, the JPB will continue to participate on the Business Outreach Committee (BOC) to host DBE Certification workshops and promote the importance of DBE Certification.

As with past public meetings, the JPB understands the desire among those in the DBE community to set agency goals as high as possible. While the JPB would like to establish a higher overall DBE goal than is proposed, the JPB nevertheless followed the prescribed Federal methodology to establish its proposed goal and believes the Step Two adjusted goal of 14 percent is reasonable. The JPB also intends to utilize race-conscious means when necessary to achieve its goals to address past community concerns about the ineffectiveness of the DBE program on a race-neutral basis. The use of contract goals is supported by the findings of our 2008 disparity study.
Prior to formal adoption of the proposed goal, the JPB will consider all public comment that it receives, including those that may result from its publication of the proposed goal, as explained below.

Publication of Proposed Goal

The JPB elected to publish the proposed goal on the JPB’s website on May 10, 2016, at http://www.caltrain.com/riderinfo/newsletterandnotices/Disadvantaged_Business_Enterprises__DBE__Goal_Notification.html. A copy of that posting is provided below:

The JPB accepted comments for a thirty day period, ending on June 10, 2016. No comments were received.

RECOMMENDATION

The DBE Office proposes an overall Disadvantaged Business Enterprise goal of 14% for FTA-assisted contracting opportunities in FFY2017-2019. The DBE Office recommends that the Executive Director formally adopt the proposed overall DBE goal and authorize the DBE Office to transmit the goal and goal setting methodology to the FTA before August 1, 2016.
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<tr>
<th>NAICS</th>
<th>NAICS Description</th>
<th>% of FTA Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>488210</td>
<td>Rail car, facility, and right-of-way maintenance</td>
<td>24.5422%</td>
</tr>
<tr>
<td>541330</td>
<td>Engineering Services</td>
<td>12.7258%</td>
</tr>
<tr>
<td>541611</td>
<td>Administrative Management and General Management Consulting Services</td>
<td>12.0188%</td>
</tr>
<tr>
<td>238210</td>
<td>Electrical Contractors and Other Wiring Installation Contractors</td>
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</tr>
<tr>
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</tr>
<tr>
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<td>Track Construction</td>
<td>6.4142%</td>
</tr>
<tr>
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<td>Other Heavy and Civil Engineering Construction (Railroad Track)</td>
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</tr>
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<td>Highway, Street, and Bridge Construction</td>
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</tr>
<tr>
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<td>Site Preparation Contractors</td>
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</tr>
<tr>
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<td>Piling Contractors</td>
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</tr>
<tr>
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<td>Water and Sewer Line and Related Structures Construction</td>
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<td>Rebar Contractors</td>
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Table 2. FFY2017-2019 Step 1 Availability (DBE Directory and Census Data)

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<thead>
<tr>
<th>NAICS</th>
<th>% of FTA Funds</th>
<th>% of Firms that are DBEs</th>
<th>Estimated DBE Participation</th>
</tr>
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<td><strong>Total DBE Availability</strong></td>
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Table 3. FFY2017-2019 Step 2 Availability (Disparity Study and Participation adjustments)

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<th>NAICS</th>
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<th>% of Firms that are DBEs</th>
<th>Estimated DBE Participation (% of FTA Funds)</th>
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Total DBE Availability: 14.0686%
Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious Participation

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

- Implement the small business program elements, including small business bid preferences on formal solicitations;
- Provide technical assistance in orienting small businesses to public contract procedures and facilitating introductions to the JPB’s and other DOT recipients’ contracting activities;
- Provide outreach and communications programs on contract procedures and contract opportunities to ensure the inclusion of DBEs;
- Assist with identifying subcontracting opportunities on large contracts and identify available DBE subcontractors. Encourage prime contractors to partner with DBEs who have identified themselves as ready, willing, and able to subcontract.

For FFY 2017-2019, we estimate that in meeting our overall goal of 14%, we will obtain 10% from race-neutral participation and 4% through race-conscious measures.

Notably, the JPB utilized one contract-specific goal in FFY2015 to remedy a significant shortfall in FFY2014; all other participation has been race/gender-neutral. Because the JPB has averaged 10% race/gender-neutral DBE participation (rounded up from 9.7%), the JPB projects that 10% of the 14% overall goal for FFY2017-2019 can be met with race/gender-neutral methods. Although the JPB projects using race/gender-conscious methods to attain 4% of the goal, the JPB will only utilize race/gender-conscious methods when the DBE Office projects that DBE participation for the year is falling short of the overall goal.

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 9

GUIDANCE ON GOOD FAITH EFFORTS

The following is a list of types of actions that are considered as part of the bidder's good faith efforts 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) Conducing market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should 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 (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

(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 with their offer for the subcontract.

(4) Negotiating in good faith with interested DBEs. 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.

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 contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

(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.
CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

CERTIFICATION APPLICATION

To access the statewide CUCP DBE database, please log onto:

WWW.DOT.CA.GOV/HQ/BEP/FIND_CERTIFIED.HTM
Dear Business Owner:

Thank you for your interest in participating in the California Unified Certification Program (CUCP) for Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE). As mandated by the United States Department of Transportation (U.S. DOT), 49 Code of Federal Regulations (CFR), Part 23 and 26, all U.S. DOT recipients of federal financial assistance must participate in a statewide UCP by March 2002. The UCP is a “One-Stop Shopping” certification procedure that eliminates the need for DBE/ACDBE firms to obtain certifications from multiple agencies within the State.

The CUCP is charged with the responsibility of certifying firms and compiling and maintaining the Database of certified DBE/ACDBEs for U.S. DOT grantees in California, pursuant to 49 CFR Part 23 and 26. The Database is intended to expand the use of DBE/ACDBE firms by maintaining complete and current information on those businesses and the products and services they can provide to all grantees of California.

Please complete the attached application and supplemental questionnaire if you wish to be considered for DBE/ACDBE certification and your business meets the following general guidelines:

a) The firm must be at least 51% owned by one or more socially and economically disadvantaged individuals.

b) The firm must be an independent business, and one or more of the socially and economically disadvantaged owners must control its management and daily operations.

c) Only existing for-profit “Small Business Concerns,” as defined by the Small Business Act and Small Business Administration (SBA) regulations may be certified.

DBE Applicants are first subject to the applicable small business size standards of the SBA. Second, the average annual gross receipts for the firm (including its affiliates) over the previous three fiscal years must not exceed U.S. DOT’s cap of $23.98 million.

ACDBE Applicants are considered a small business if its gross receipts (including its affiliates), averaged over the firm’s previous three fiscal years, do not exceed $56.42 million, with the following exceptions:

(1) Banks and financial institutions: $1 billion in assets;

(2) Car rental companies: $75.23 million average annual gross receipts over the firm’s three previous fiscal years.

(3) Pay telephones: 1,500 employees;

(4) Automobile dealers: 350 employees

d) The Personal Net Worth (PNW) of each socially and economically disadvantaged owner must not exceed $1.32 million, excluding the individual’s ownership interest in the applicant firm and the equity in his/her primary residence.
Socially and economically disadvantaged individual means any individual who is a citizen of the United States (or lawfully admitted permanent resident) and who is a member of the following groups: Black American, Hispanic American, Native American, Asian-Pacific American, Subcontinent Asian American, or Women, or Any individual found to be socially and economically disadvantaged on a case-by-case basis by a certifying agency pursuant to the standards of the U.S. DOT 49 CFR Part 26, Appendix E

In order to avoid unnecessary delays, please complete all portions of the application and supplemental questionnaire, placing "N/A" next to items that are not applicable. Include all copies of documents requested on the application, and have the Affidavit of Certification notarized. Additional documentation may be requested if it is considered necessary to make a certification determination. Incomplete applications/supplemental questionnaires or applications/supplemental questionnaires without all the required documents will not be evaluated until such documents are submitted. We recommend keeping a copy of all submitted documents for your records.

REMEMBER: It is no longer necessary to apply at more than one agency. If your firm meets the criteria for certification, it will be entered into the Database of DBE/ACDBEs for all U.S. DOT grantees in California. Only firms currently certified as eligible DBE/ACDBEs may participate in the DBE programs of U.S. DOT grantees of California.

The CUCP has Certifying agencies throughout the State to effectively facilitate statewide DBE/ACDBE certification activities. Please forward your completed certification packet to one of the agencies serving the county where your firm has its principal place of business (see enclosed Roster of Certifying Agencies).

For Out-of-State Firms: The CUCP cannot process a new application for DBE certification from a firm having its principal place of business in another state unless the firm has already been certified in that state. If your firm is located outside of California and is certified as a DBE in your home state, please forward the following pursuant to 49 CFR Part 26.85, CUCP Out of State Declaration form, a copy of the approval letter, a complete copy of the application form, all supporting documents and any other information you have submitted (to-date) to your home state or any other state related to your firm’s certification to the California Department of Transportation. ACDBE applicants submit the same information to the appropriate ACDBE Certifying Agency (see enclosed Roster of Certifying Agencies).

Notwithstanding any provision of Federal or state information disclosure law, the CUCP shall not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm. However, if a USDOT recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information from the CUCP, the information will be made available to the other recipient.

CALIFORNIA UNIFIED CERTIFICATION PROGRAM
Supplemental Document Checklist

In order to complete your application for DBE certification, you must also attach copies of all of the following documents:

- Documentation of Group Membership. Please comply with one of the following: (1) For each owner seeking social disadvantaged status on the basis of Ethnic membership, please provide a document (e.g., birth certificate, U.S. Passport, Green Card, parents’ birth certificate, etc.) evidencing Ethnic heritage or similar document evidencing Ethnic community affiliation. (2) For each owner seeking social disadvantaged status on the basis of Gender, please provide a document evidencing gender (e.g., birth certificate, driver’s license, etc.). (3) For each owner seeking an individual showing of social disadvantage, please provide documents you deem appropriate for consideration.
- Documentation of U.S. citizenship or lawful permanent residence, e.g., U.S. birth certificate, Green Card, etc.

Supplemental Questionnaire

1. Is the firm’s principal place of business in California? Yes____ No____
   If no, instead of this application please forward the following, pursuant to 49 CFR Part 26.85: CUCP Out of State Declaration form, a copy of the approval letter, a complete copy of the application form, all supporting documents and any other information you have submitted (to-date) to your home state or any other state related to your firm’s certification. The CUCP cannot process a new application for DBE/ACDBE certification from a firm having its principal place of business in another state unless the firm has already been certified in that state.

2. Is the firm authorized to do business in the State of California? Yes____ No____

3. List all office locations in California:

4. Has the firm ever done business with any U.S. DOT Grantees of California? Yes____ No____
   If yes, please indicate the agency name(s) and latest year(s):

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5. Is there an upcoming project in which the firm is interested and therefore, would need to be certified prior to a specific date in order to be counted toward DBE participation? Yes____ No____
   If yes, please provide the following information:
   
   Agency letting contract:

   Contract Number and Name: ____________________________
   Bid Opening date or Request for Proposal due date: ______________________

6. Indicate areas where you prefer to do your work.

- Alameda
- Alpine
- Amador
- Butte
- Calaveras
- Colusa
- Contra Costa
- Del Norte
- El Dorado
- Fresno
- Glenn
- Humboldt
- Imperial
- Inyo
- Kern
- Kings
- Lake
- Lassen
- Los Angeles
- Madera

- Marin
- Mariposa
- Mendocino
- Merced
- Modoc
- Mono
- Monterey
- Napa
- Nevada
- Orange
- Placer
- Plumas
- Riverside
- Sacramento
- San Benito
- San Bernardino
- San Diego
- San Francisco
- San Joaquin
- San Luis Obispo
- San Mateo
- Santa Barbara
- Santa Clara
- Santa Cruz
- Shasta
- Sierra
- Siskiyou
- Sonoma
- Solano
- Stanislaus
- Sutter
- Tehama
- Trinity
- Tulare
- Tuolumne
- Ventura
- Yolo
- Yuba

(Rev 11/2/2014)
MEMORANDUM OF AGREEMENT
With United States Department of Transportation
California RECIPIENTS

for a

Unified Certification Program
Pursuant to 49 CFR Parts 23 & 26

Submitted to Secretary, U.S. Department of Transportation
May 1, 2001

Approved by Secretary, U.S. Department of Transportation
March 13, 2002

Effective: January 1, 2002
Amended: March 24, 2003
November 16, 2004
March 21, 2006
January 2016 (Draft)
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EXHIBITS

EXHIBIT “A” - LIST OF U.S. DOT RECIPIENTS IN CALIFORNIA

EXHIBIT “B” - 49 CFR PART 26

EXHIBIT “C” – 49 CFR PART 23

EXHIBIT “D” – EXECUTIVE COMMITTEE GUIDELINES

EXHIBIT “E” - SAMPLE LETTER/DECLARATION

EXHIBIT “F” - CERTIFICATION APPLICATION PACKAGE

EXHIBIT “G” - STRUCTURE AND PROCESS

EXHIBIT “H” - INTAKE PROCEDURES

EXHIBIT “I” - SITE VISIT QUESTIONNAIRE

EXHIBIT “J” - APPEALS PROCESS

EXHIBIT “K” - TRAINING PROGRAM

EXHIBIT “L” - OTHER UCP COMMITTEE REPORTS:

- Database
- External Affairs
- Quality Assurance

EXHIBIT “M” – LIST OF CUCP CERTIFYING AGENCIES
MEMORANDUM OF AGREEMENT
WITH U.S. DOT RECIPIENTS IN CALIFORNIA
FOR THE ESTABLISHMENT OF A
UNIFIED CERTIFICATION PROGRAM

This Memorandum of Agreement (“Agreement”) was made, entered into and
effective as of January 1, 2002, by and between all United States Department of
Transportation (U.S. DOT) RECIPIENTS in the State of California which are listed on
Exhibit “A” attached, or as determined by U.S. DOT and its operating administrators
(herein called “RECIPIENTS”), as amended from time to time.

RECITALS

WHEREAS, RECIPIENTS have established Disadvantaged Business Enterprise
(DBE) Programs and/or Airport Concession DBE (ACDBE) Programs in accordance with
regulations of the U.S. DOT, 49 CFR Part 26 or Part 23 as applicable, (copy attached as
Exhibits “B” and “C”, respectively); and

WHEREAS, RECIPIENTS receive Federal financial assistance from U.S. DOT and,
as a condition of receiving this assistance, RECIPIENTS have signed an assurance that
they will comply with 49 CFR Part 26; and

WHEREAS, RECIPIENTS recognize that under 49 CFR Part 26 Subpart E –
Certification Procedures Section 26.81, all RECIPIENTS in California must participate in
a statewide Unified Certification Program (UCP); and

WHEREAS, RECIPIENTS desire to establish a California UCP that will follow all
certification procedures and standards of 49 CFR Part 26 or Part 23, as applicable; and

WHEREAS, RECIPIENTS desire that the UCP shall cooperate fully with the
requirements of U.S. DOT and its operating administrations; and

WHEREAS, RECIPIENTS desire that the UCP shall implement U.S. DOT
directives and guidance concerning certification matters; and

WHEREAS, RECIPIENTS desire that the RECIPIENTS, as members of the UCP,
shall make all DBE and ACDBE certification decisions on behalf of all U.S. DOT
RECIPIENTS in the State of California with respect to participation in the U.S. DOT DBE Program; and

WHEREAS, RECIPIENTS desire that the UCP shall provide “one-stop shopping” to all firms applying for DBE or ACDBE certification located in the State of California, such that an applicant is required to apply only once for a DBE or ACDBE certification that will be honored by all U.S. DOT RECIPIENTS in California; and

WHEREAS, RECIPIENTS desire that the UCP develop and maintain an electronic certification database (and/or printed DBE Directory) of all firms certified by the UCP, which will be available to the public on the internet and in print and continuously updated with additions, deletions, and other changes; and

WHEREAS, RECIPIENTS desire and agree that the UCP shall have sufficient resources and expertise to carry out the requirements of 49 CFR Part 26 Subpart E – Certification Procedures Section 26.81; and

WHEREAS, RECIPIENTS desire that the UCP is fully operational no later than eighteen (18) months from the date of approval of this Agreement by the Secretary of U.S. DOT.

NOW, THEREFORE, in consideration of the foregoing, all U.S. DOT RECIPIENTS in the State of California agree to the following terms and conditions; amended from time to time in accordance with the Federal certification requirements for UCPs.

ARTICLE 1 - VISION

It is recognized that the RECIPIENTS share the common goals of creating a level playing field on which DBE and ACDBE firms can compete fairly for U.S. DOT-assisted contracts awarded by the respective agencies, while enhancing the administration of the DBE Programs through the exchange of information and coordination of activities. In order to achieve these common goals, RECIPIENTS will establish the California UCP in a timely manner, in accordance with U.S. DOT requirements and as set forth in the “Implementation Plan and Schedule” attached hereto as Exhibit “C”.

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ARTICLE 2 - DEFINITIONS

2.01 RECIPIENT: Any entity, public or private, to which U.S. DOT financial assistance is extended from programs of the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA) and/or Federal Transit Administration (FTA), whether directly as the primary RECIPIENT or indirectly as a sub-RECIPIENT through a primary RECIPIENT, or which entity has applied for such assistance.

2.02 Sub-RECIPIENT: Any entity, public or private, to which U.S. DOT financial assistance is extended through a primary RECIPIENT.

2.03 (a) Disadvantaged Business Enterprise (“DBE”): A for-profit small business concern, at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, at least 51 percent of the stock of which is owned by one or more such individuals; and the management and daily business operations of such businesses are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(b) Airport Concession Disadvantaged Business Enterprise (“ACDBE”): A concession that is a for-profit small business concern, 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 or more such individuals; and the management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2.04 Socially and Economically Disadvantaged Individuals: Any individual who is a citizen or lawfully admitted permanent resident of the United States and who is:

(a) Any individual who a RECIPIENT finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
(i) “Black Americans” which includes persons having origins in any of the Black racial groups of Africa;
(ii) “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;
(iii) “Native Americans” which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
(iv) “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;
(v) “Subcontinent Asian Americans” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
(vi) Women;
(vii) Any additional groups whose members are designated as both socially and economically disadvantaged by the Small Business Administration (SBA) at such time as the SBA designation becomes effective.

2.05 Small Business Concern: With respect to firms seeking to participate as DBEs in U.S. DOT-assisted contracts, a small business concern is as defined in Section 3 of the Small Business Act and in the Small Business Administration (SBA) regulations 13 CFR Part 121; which business does not exceed the cap on average annual gross receipts specified in U.S. DOT regulation 49 CFR Section 26.65(b).

2.06 Personal Net Worth (PNW): Means the net value of an individual’s assets remaining after total liabilities are deducted. As used herein, the PNW of each individual owner of a DBE applicant firm must not exceed $1,320,000, or as adjusted for
inflation by U.S. DOT, excluding the individual’s ownership interest in the applicant firm and the individual’s primary residence. For an ACDBE applicant firm, each individual owner must not exceed a PNW of $1,320,000, or as adjusted for inflation by U.S. DOT. An individual’s PNW does not include the following: 1) the individual’s ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; and 2) the individual’s primary residence. For an ACDBE firm that was certified on or prior to June 20, 2012, an owner may continue to exclude from his or her PNW other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm to a maximum of $3 million, if this exclusion was used in any certification decision prior to June 20, 2012. See 49 CFR Parts 23.3, 26.5, and 26.67.

2.07 **UCP Members:** California U.S. DOT RECIPIENTS and Sub-RECIPIENTS as defined in Section 2.01.

2.08 **CM Agencies:** Those California UCP members that elect to perform DBE and or ACDBE Certifications.

2.09 **NCM Agencies:** Those California UCP members that elect not to perform DBE or ACDBE Certifications.

2.10 **The Executive Committee:** The Committee that will function as the final decision-making body with respect to the day-to-day operations of the UCP.

2.11 **Standing Committees:** Committees established to oversee the development and implementation of on-going UCP programs and processes. Any UCP member may chair or serve on a Standing Committee. Standing Committees will include the following:
(a) **Oversight Committee**: The roles and responsibilities of the Oversight Committee are to ensure a common understanding among all stakeholders of the objectives of the DBE/ACDBE Programs. Governance is the structure and process established to ensure a common understanding and provide oversight of implementation and decisions of the California UCP (CUCP) regarding the DBE/ACDBE Programs. This committee reports directly to the CUCP Executive Committee. The committee is responsible for:

(i) Structure & Process  
(ii) Implementation

(b) **Systems & Reporting Committee**: The roles and responsibilities of the Systems and Reporting Committee are to oversee and monitor the statewide certification database, identify technical issues, make recommendations for improvements, and ensure pertinent DBE/ACDBE information from applicants is thoroughly and securely captured. This committee reports directly to the CUCP Executive Committee. The committee is responsible for:

(i) Database  
(ii) Intake

(c) **Documentation Committee**: The roles and responsibilities of the Documents Committee are to ensure the AGREEMENT is amended as necessary and to ensure the CUCP is consistently using the most current application and forms related to the DBE/ACDBE Program. This committee reports directly to the CUCP Executive Committee. The committee is responsible for:

(i) AGREEMENT  
(ii) Application/Forms

(d) **Operations Committee**: The roles and responsibilities of the Operations Committee are to ensure consistent application of processes and procedures used among the CUCP certifying agencies. This committee reports directly to the CUCP Executive Committee. The committee is responsible for:

(i) Clusters  
(ii) On-Site  
(iii) Appeals  
(iv) Concessions  
(v) File Transfer
(e) **Support Committee:** The roles and responsibilities of the Support Committee are to ensure that the DBE/ACDBE Programs are meeting the specified requirements of the U.S. DOT, to recommend ways to increase stakeholder confidence in the programs, to identify ways to provide DBE/ACDBE certification information to potential applicants, to coordinate mandatory annual training for CUCP certifying agencies, as well as training for new certification staff at the various agencies. This committee reports directly to the CUCP Executive Committee. The committee is responsible for:

(i) Quality Assurance
(ii) Training
(iii) External Affairs

The Executive Committee Guidelines are attached hereto as Exhibit “D.”

2.12 **Certifying Clusters:** Two clusters of California U.S. DOT RECIPIENTS which work together to coordinate certification processes, review and provide oversight of certifying member (CM) agencies’ certification decisions, assist with training activities, and oversee other activities of the UCP. The two clusters are as follows:

1) Part 23 cluster comprised of RECIPIENTS that certify for ACDBE Programs; and
2) Part 26 cluster comprised of RECIPIENTS that certify for DBE Programs.

**ARTICLE 3: ORGANIZATION OF THE UCP**

3.01 **Members of the UCP:**

(a) The UCP shall consist of all U.S. DOT RECIPIENTS in the State of California as defined in Section 2.01. Each RECIPIENT shall choose to become either a CM agency or a NCM agency by using the Sample Letter of Agreement/Declaration of Status attached hereto as Exhibit “E.”

(b) If the number of UCP agencies that elects to be or to remain “certifying” is or becomes too few for the UCP to function efficiently and effectively, the Executive Committee will formulate a solution.
(c) As the final remedial solution to 3.01(b) above, the California Department of Transportation (Caltrans) agrees to assume the duties and responsibilities of statewide DBE certification for the CUCP.

(d) A UCP member that elects to become a NCM agency or change its status from a CM agency to a NCM agency, will transfer all files to the appropriate Cluster within 90 days from the date of signing the UCP Agreement/Declaration of Status Letter. The Cluster will determine the new “home agency” of said NCM agency’s certification files for continued processing.

3.02 CM Agency Responsibilities: All RECIPIENTS that elect to become CM agencies agree to maintain and continue with the processes involved in a DBE or ACDBE Certification Program by collecting and maintaining certification application files, conducting site visits, making certification decisions, and handling appeals and complaints. CM agencies shall utilize the Uniform Certification Application form issued by U.S. DOT. A copy of the DBE certification application package, which includes the Uniform Certification Application form, is attached hereto as Exhibit “F.”

3.03 State of California Department of Transportation: RECIPIENTS hereby acknowledge that Caltrans, as the major RECIPIENT of FHWA funds in the State of California, has the largest DBE/ACDBE Certification Program in the State; and maintains an electronic certification database of certified DBEs and ACDBEs which is currently available electronically and in printed form to other U.S. DOT RECIPIENTS, contractors and other interested members of the public.

3.04 Caltrans “Certification Database Manager”: Caltrans agrees to serve as the CUCP “Certification Database Manager” for all DBE and ACDBE certifications made by CM agencies, including maintaining the electronic certification database.
3.05 **Certification Decisions - Submission to CUCP DBE Certification Database:** Upon receipt by a CM agency of a certification application package, an initial entry will be made to the certification database; and when a CM agency makes a final DBE or ACDBE certification decision, a full profile of information on the DBE or ACDBE shall be entered into the electronic certification database. The information shall include:

- Name, street address, P.O. box, phone, fax and e-mail of certified DBE or ACDBE;
- Name, sex, and race/ethnicity of owner(s) of DBE firm;
- Type of work performed by DBE using the North American Industry Classification System (NAICS) adopted by the SBA;
- Licenses (type and number);
- Name of certifying RECIPIENT;
- Site visit date;
- Certification date; and
- Any other appropriate information as agreed upon by CM agencies.

CM agencies shall also provide information on firms denied DBE or ACDBE status or removed from DBE or ACDBE status in the certification database and the U.S. DOT DBE and ACDBE ineligibility database.

3.06 **Maintaining Electronic CUCP DBE Certification Database:** As the Certification Database Manager, Caltrans staff shall assume the following responsibilities:

(a) Maintain the electronic certification database and keep it current with weekly updates;
(b) assure its availability to all CUCP members and other interested parties; and
(c) provide printed copies of the certification database upon request and at a charge to be established by Caltrans’ Publications Unit based on the cost of printing.
3.07 **RECIPIENTS’ Currently Certified DBEs/ACDBEs:** RECIPIENTS shall submit for initial inclusion in the certification database only DBEs/ACDBEs that are currently certified according to 49 CFR Parts 23 and 26. When other currently certified firms’ files are updated to be consistent with Parts 23 and 26, they shall be included in the certification database at that time.

(a) If it is found that a DBE/ACDBE firm is certified by more than one CM agency or NCM agency, they will agree to transfer the file and responsibility to one CM agency. That CM agency will be from the Cluster where the principal place of business of the DBE/ACDBE is located. That CM agency will then become the DBE’s/ACDBE’s “home agency.”

(b) For currently certified out-of-state firms, the responsible CM agency may request proof of current DBE/ACDBE certification by a U.S. DOT RECIPIENT in the firm’s home state or may request that the firm become certified by a U.S. DOT RECIPIENT or the UCP in the firm’s home state. New out-of-state applicants will be required to be certified in their home state as set out in 5.05 below.

(c) If an out-of-state firm is certified by more than one CM Agency, the CM Agency best able to provide certification services to the DBE/ACDBE will act as the responsible Home Agency for the DBE/ACDBE.

3.08 **Executive Committee Membership and Duties:** It is hereby agreed that:

(a) The Executive Committee shall ensure that the CUCP follows all certification procedures and standards of 49 CFR Parts 23 and 26; shall ensure that the CUCP cooperates fully with oversight, review and monitoring activities of U.S. DOT and its operating administrations; shall review and resolve certification eligibility disputes between and among CM agencies; and shall ensure that the CUCP implements U.S. DOT directives and guidance concerning certification matters.
(b) The Executive Committee shall be comprised of all CM agencies and two NCM agencies (one from each Cluster), with each individual agency exercising one vote at Executive Committee meetings in order to transact CUCP business. In the event that an agency is unable to attend a scheduled CUCP Executive Committee meeting, that agency may elect to cast a vote by written or voice proxy.

(c) The Executive Committee shall meet as necessary to provide oversight and ensure compliance with 49 CFR Section 26.81. The Executive Committee shall at all times seek the participation, or call special meetings, of the entire CUCP membership to ensure compliance with 49 CFR Section 26.81.

(d) The Executive Committee shall establish standing and special committees as necessary.

(e) The Executive Committee shall ensure that the CUCP has sufficient resources and expertise to carry out the requirements of 49 CFR 26.81.

(f) The Executive Committee shall resolve disputes between or among CM agencies that cannot be resolved at the Cluster level.

(g) In the proceedings of the Executive Committee meetings, each member shall be entitled to one vote. A quorum of the committee shall be a majority of all Executive Committee members, and no action of the Executive Committee shall be passed but upon the affirmative vote of at least a majority of a quorum. Voting shall be by voice unless the Executive Committee Chair or an Executive Committee member requests that a roll call vote be taken.

3.09 Standing Committee Guidelines: Standing committees shall be established and shall operate in an ad hoc manner and shall report directly to the Executive Committee.

3.10 Two Certifying “Clusters”: The CUCP will be made up of the following two functional certifying “Clusters:”

- Part 23 Cluster – for ACDBE Certification
- Part 26 Cluster – for DBE Certification
The scope and responsibilities of the Clusters are included in the “Structure and Process” report attached hereto as Exhibit “G.”

Due to the size of California, the Clusters are seen as a vital component of the overall CUCP. The value and purpose of Cluster CM agencies is far reaching in that Clusters will provide oversight and a forum for discussions between and among CM agencies.

Both Clusters will follow the same certification process. The CM agency will complete the file review, paperwork, site visit and determine eligibility or ineligibility of a firm. The Cluster will review a synopsis of the certification activities submitted by the CM agency for oversight purposes. The CM agency will submit information on the firm for inclusion in the certification database or in the list of firms denied or removed. The CM agency also will enter information into the U.S. DOT DBE and ACDBE ineligibility database as appropriate. Details of CM agency and Cluster responsibilities are included in Exhibit “G.”

ARTICLE 4 – RIGHTS AND OBLIGATIONS OF RECIPIENTS

4.01 Types of RECIPIENTS: The parties hereto understand that this CUCP shall consist of two types of members - CM agencies (certifying) and NCM agencies (non-Certifying) - and that each shall have the rights and obligations set forth hereinafter.

4.02 CM Agencies:

(a) Upon written notice to the CUCP Executive Committee, any RECIPIENT may choose to become a CM agency.

(b) CM agencies shall collect, evaluate and process DBE and/or ACDBE certification applications, conduct site visits and make certification decisions, in accordance with 49 CFR Part 26 or Part 23, as applicable.
(c) CM agencies shall promptly enter information into the certification database, including the initial DBE/ACDBE application information, and the final DBE/ACDBE certification decisions with the full DBE/ACDBE profile information specified in paragraph 3.05.

(d) CM agencies shall keep the certification database current with all updated information (annual affidavits of no change, removals, change of address, etc.).

(e) CM agencies shall process, maintain and retain their complete certification files for currently certified firms. CM agencies may purge certification files for firms not currently certified in accordance with requirements of 49 CFR Part 26 or the CM agency’s document retention policy, whichever is longer.

(f) CM agencies will notify firms of certification, decertification, denial and removal decisions.

(g) In the event of an appeal to U.S. DOT, the CM agency whose action is being appealed shall be the contact agency for U.S. DOT, Office of Civil Rights, to obtain records for reviewing the appeal. CM agencies also shall make basic file information available to other U.S. DOT RECIPIENTS and other state UCPs in response to questions or complaints. Any DBE/ACDBE files furnished to U.S. DOT, Office of Civil Rights, or to other CM agencies shall be packaged in a way that facilitates review by the RECIPIENT, including pagination and indexing.

(h) When requested by another CM agency in the same Cluster, a CM agency will assist to the extent possible in conducting a Site Visit to a DBE/ACDBE applicant.

(i) A CM agency will process a specific DBE/ACDBE certification application when requested by a NCM agency.

(j) Some CM agencies may contract DBE/ACDBE certification activities with outside consulting firms, in which case such consultants shall be obligated to receive proper and adequate training as required by the CUCP. The contracting CM agency remains responsible for administration of its contracts and actions of its consultants.
(k) In processing DBE and ACDBE certification files, CM agencies agree to utilize the “Intake Procedures” which are attached hereto as Exhibit “H.”

(l) External or internal ineligibility complaints regarding certification decisions of CM agencies are to be filed with the certification office of that CM agency and processed in accordance with 49 CFR, Part 26, Section 26.87.

4.03 **NCM Agencies:**

(a) Upon written notice to the CUCP Executive Committee, any RECIPIENT may choose to be a NCM agency.

(b) NCM agencies will refer applicants to CM agencies in the Cluster where the firm’s principal place of business is located. The NCM agencies will in no way act to influence the CM agency’s certification decision. Since the certification issue may be contract related, the CM agency will cooperate to the fullest extent possible in expediting such certification.

(c) If a CUCP approved NCM agency has agreed to assist the CUCP by conducting site visits, CM agencies may request that NCM agency to assist with a site visit.

4.04 **Review of Eligibility:** CM agencies shall be responsible for processing an Annual No Change Declaration and supporting documentation to verify continuing eligibility of their own certified DBEs and/or ACDBEs, and for specific DBE or ACDBE file reviews at any time upon request by another CM agency.

4.05 **Ineligibility Complaints:** Any CUCP member has the right to initiate an ineligibility complaint of any DBE- or ACDBE-certified firm included in the certification database. The complaint must be in writing and specify the alleged reasons why the firm is ineligible.
To ensure firms previously denied and decertified as ineligible do not become included in the certification database until at least twelve (12) months from denial or decertification, all CUCP members will periodically review the firms listed in the certification database. Where firms are identified that were previously denied or decertified by a CM agency, and that CM agency has cause to believe the firm continues to be ineligible for certification, that CM agency will forward an ineligibility complaint to the current CM agency. Upon receipt of the ineligibility complaint, the current CM agency will review any new evidence, request additional information from the firm and/or conduct a site visit review, if deemed necessary, and make its determination. The CM agency will report to the Cluster on its findings. Information on this action will be input into the certification database by the CM agency after the firm has been afforded due process under 26.87 and 26.89.

The certification database will designate firms that have been denied certification, removed and decertified as ineligible; and the certification database system will reject new applications from the same company. A previously rejected applicant firm will be referred to the CM agency that issued the denial, removal or decertification.

4.06 Disputes: The CUCP Executive Committee will resolve certification eligibility disputes that cannot be resolved between or among CM agencies.

ARTICLE 5 – RIGHTS AND OBLIGATIONS OF THE UCP

5.01 CUCP and RECIPIENTS’ Responsibilities: The CUCP and individual CM agencies shall be responsible for maintaining processes and programs that conform to the overall certification standards set out in 49 CFR Part 26 and Part 23, as applicable.
5.02 Certification Decisions: The CM agencies shall make all DBE and/or ACDBE certification decisions, as applicable, and report to the Clusters its determinations. The CM agencies will approve DBE and /or ACDBE status for and on behalf of all U.S. DOT RECIPIENTS in California; and all U.S. DOT RECIPIENTS in California will utilize DBEs and ACDBEs on U.S. DOT-assisted contracts certified by the CM agencies and included in the certification database to meet their goals.

5.03 “One-Stop Shopping”: The CUCP shall provide “one-stop shopping” to applicants for DBE and ACDBE certifications in California, such that an applicant is required to apply only once for a DBE/ACDBE certification that will be honored by all U.S. DOT RECIPIENTS in the State.

5.04 Pre-Certification Requirement: In response to 49 CFR, Section 26.81(c), the “Pre-Certification” requirement, final DBE/ACDBE certification approvals must be made before the due date for bids or offers on contracts in which the firm seeks to participate as a DBE/ACDBE. CM agencies agree to make timely final decisions on DBE/ACDBE applications as outlined in 49 CFR, 26.83(k) or within 90 days of receipt of all information. The CM agency may extend this time period once, for no more than an additional 60 days, upon written notice to the applicant, stating the specific reasons for the extension.

5.05 Processing Out-of-State Applications: CM agencies will not process a new application for DBE/ACDBE certification from a firm having its principal place of business in another state, unless the firm has already been certified in that state. When a CM agency does process an out-of-state application, a full certification application file with all supporting documentation shall be compiled by the CM agency before the firm will be included in the certification database. Such file will also include a copy of the Site Visit Questionnaire obtained from the applicant’s home state or from the state’s UCP if it is in place. CM agencies shall follow 49 CFR 26.85 (a), (c), (d), (e), (f), and (g) when processing an out-of-state applicant.
5.06 **Reciprocity with Other UCPs/SBA:**

(a) The CUCP Executive Committee may enter into written reciprocity agreements at any time with other UCPs subject to approval of U.S. DOT.

(b) Such reciprocity agreements must outline the specific responsibilities of each participating UCP.

(c) The CUCP and its CM and NCM agencies may accept a DBE/ACDBE certification decision made by any other state UCP or U.S. DOT RECIPIENTS on a case-by-case basis. However, before an out-of-state firm is included in the certification database, a California CM agency must have a full certification file for that firm.

(d) This UCP and its CM agencies shall share information concerning a California DBE/ACDBE applicant firm with other state UCPs and U.S. DOT RECIPIENTS.

(e) The CUCP and its CM and NCM agencies may accept and recognize certifications made by the SBA under its 8(a) Business Development (BD) Program. CM agencies will process applications submitted by SBA-certified firms. However, before that firm is included in the certification database, a CM agency must have a complete certification file, including a Site Visit Questionnaire.

5.07 **CUCP Information Program:** All CUCP members shall provide information on the CUCP to the public and to DBE/ACDBE applicant firms, and will provide a list of CM agencies that are available to process certification applications.

5.08 **Meetings for Continued UCP Monitoring:** The CM agencies agree that statewide meetings may be held from time to time for continued monitoring and fine-tuning of the CUCP, the Executive and Standing Committees and the on-going certification processes.
ARTICLE 6 – DBE CERTIFICATION PROCEDURES

6.01 **Certification Application:** All CM agencies shall utilize the U. S. DOT-approved Uniform Certification Application form, which will be included in the “DBE/ACDBE Certification Application Package” which is an attachment to this Agreement, as amended from time to time.

6.02 **Certification Process:** All CM agencies shall follow DBE/ACDBE certification processes and adhere to standards set forth in 49 CFR 26, Subparts D and E, Certification Procedures, as well as all other guidelines set forth in various attachments to this Agreement. The Support Committee shall provide guidance as needed to assure compliance with the certification processing.

6.03 **DBE Certification Site Visits:** All CM agencies shall conduct a “site visit” to the principal place of business of an applicant firm prior to official DBE certification approval and submission to the certification database. CM agencies will utilize the “Site Visit Questionnaire” form approved by the CUCP and attached hereto as Exhibit “I.” CM agencies shall conduct site visits for one another when requested. CM agencies may request a NCM agency to conduct a site visit when that NCM agency has agreed to assist the CUCP with site visits. The Support Committee will provide guidance as needed and to assure compliance with Uniform Site Visit Procedures. When requested, Caltrans will assist in conducting site visits, to the extent possible, anywhere in the State for other CM agencies.

ARTICLE 7 – APPEALS

7.01 **Appeals:**

(a) 49 CFR Sections 26.85, 26.87 and 26.89 provide for due process to be afforded to firms whose DBE or ACDBE eligibility is to be denied or removed. The CM agencies shall adhere to the regulations when giving effect to a denial of initial certification, or proposing to find the firm ineligible and removing the firm
from the certification program based either on an ineligibility complaint or on RECIPIENT- or DOT-initiated proceedings (26.87). The CM agency shall notify the firm in writing, setting forth the reasons for the denial or proposed decertification or removal, and the CM agency shall report its actions to the Cluster for oversight purposes. The CM agency shall also advise the firm of its right to rebut.

(b) Certification appeals shall be handled by the Office of Appeals within the responsible CM agency whose decision is being appealed, in accordance with 26.87 and 26.89. A firm that is currently participating in the DBE/ACDBE Programs may appeal a Notice proposing to find the firm ineligible with the Office of Appeals of the CM agency. After issuing its administratively final decision, the Office of Appeals of the CM agency shall report its decision to the Cluster at its next meeting. The process for appeals is fully described in Exhibit “J” attached.

7.02 **DBE/ACDBE Denials:** Denials of initial requests for DBE or ACDBE certification, as outlined in Section 26.85, may be appealed only with the U.S. DOT.

7.03 **Ineligible Firms:** Following an administratively final decision by the CM agency to decertify, as outlined in Section 26.87, a firm may appeal to the U.S. DOT.

7.04 **Notices:** Any notice, report or other communication required or permitted hereunder shall be in writing and shall be delivered by hand, by facsimile, email, or deposited in the United States mail (postage prepaid), to the other CM agencies involved, with copies to the Appeals Office of the CM agency.
ARTICLE 8 - TRAINING

8.01 Support Committee: A “standing” Support Committee shall be organized by the CUCP to develop training materials, arrange for instructors, and prepare a proposed training course and schedule for all DBE certification processes and procedures, all as described in the “Training Program Report” attached hereto as Exhibit “K.”

8.02 Course Training: A course of training on DBE certification processes and procedures shall be sponsored by the CUCP for all CM agencies and NCM agencies that agree to assist with site visits and conducted as determined by the Support Committee and described in Exhibit “K” attached. Since some CM agencies may contract out certification activities with private consultant firms, the contracting CM agencies agree to ensure that their consultants receive proper and adequate training as required by the CUCP Training Program.

ARTICLE 9 – CUCP DBE CERTIFICATION DATABASE

9.01 Organization of the CUCP DBE Certification Database: The certification database shall be maintained and continually updated by CM agencies and Caltrans, the Certification Database Manager, using industry standard state-of-the-art software. All CM agencies agree to maintain compatible or mutually accessible software and systems in order to best use the electronic certification database, and to provide certification information and updates for the certification database in a timely manner.

9.02 Computer Access and Security: CM agencies will be given a unique code by the Certification Database Manager for their exclusive use to access information in the certification database. The code given to CM agencies will also allow them to access, input and change information about firms they have certified. All CM agencies agree
to use their codes responsibly and to keep their codes confidential in order to safeguard the safety and integrity of the certification database.

ARTICLE 10 – FEES/COSTS

10.01 **UCP Membership Fee:** An annual membership fee may be assessed for the purpose of operating and maintaining the CUCP. CM agency and NCM agency RECIPIENTS and sub-RECIPIENTS will be assessed a minimum fee of $1,000, or a maximum of $2,000 per year. The costs of operating and maintaining the CUCP will be re-evaluated by the CUCP Executive Committee, and may be adjusted with the approval of the CUCP members.

10.02 **CUCP DBE Certification Database Costs to Users:** As set forth in Article 3.06, the Certification Database Manager shall provide printed copies of the certification database when requested, at a nominal cost to requesting parties. Such cost will be determined by the Publications Unit at Caltrans.

10.03 **DBE/ACDBE Applicant Firms:** There shall be no costs to DBE or ACDBE firms for certification application processing.

10.04 **Contingency Funding:** In the event adequate resources for the CUCP have not been provided for by this Agreement or by approved annual budgets, the Executive Committee shall call a special meeting of the entire CUCP membership at any time to discuss contingency funding for the CUCP.

ARTICLE 11 – GENERAL PROVISIONS

11.01 **Attachments to the Agreement:** All exhibits attached to this Agreement are incorporated herein by reference and made a part hereof. The additional documents attached as Exhibit “L” - “Other CUCP Committee Reports”- were prepared by the Database, External Affairs, and Quality Assurance Committees,
and have been reviewed and approved by the entire CUCP, amended from time to time.

11.02 **Interpretation of Agreement:** Article and section headings and Table of Contents are for convenience only and shall not affect construction of this Agreement.

11.03 **Amendments to the Agreement:** This Agreement may be amended, modified, supplemented or waived by an instrument in writing agreed to by the CUCP Executive Committee. Should any provisions of 49 CFR, Part 26/23, and 13 CFR, Part 121, be changed or modified, corresponding provisions of this Agreement shall be modified accordingly. This Agreement shall be reviewed on an on-going basis and amended as agreed upon by the CUCP Executive Committee with advisement to the CUCP members. The CUCP membership may only be amended with the majority approval of a quorum of the CUCP members.

11.04 **Compliance with Law:** CUCP members agree that the operation of this Agreement and performance of all obligations hereunder shall at all times comply with 49 CFR Parts 23 and 26 and with applicable Federal and State laws, as amended.

11.05 **Signed Agreement:** This Agreement was signed by the CM agencies and by the Chair of the Executive Committee of the CUCP. Participation by a RECIPIENT in this CUCP will become effective immediately upon execution and submission by the RECIPIENT of a “Letter of Agreement and Declaration of Status” to the CUCP. Upon such submission, each RECIPIENT shall be a CM agency or NCM agency. All CUCP members shall accept the terms of this Agreement. The CUCP became effective on January 1, 2002 with the approval of this Agreement by the Secretary of the U.S. Department of Transportation.

11.06 **Severability:** Should any part, term, portion or provision of this Agreement be finally decided to be in conflict with any law of the United States or of the State of...
California, or otherwise be unenforceable or ineffectual, the remaining provisions shall be deemed valid and severable, and not affected thereby.

11.07 **Successors:** This Agreement shall be binding upon and inure to the benefit of any successors or assigns of the CUCP and its members.

RESOLUTIONS OF CUCP EXECUTIVE COMMITTEE
ATTACHMENT 12

Procedures for Removal of DBE’s Eligibility

Ineligibility Complaints:
• Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are 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).
• You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.
• If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must 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 your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose 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 your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm’s certification.
• The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.
• You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

Hearing: When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must 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, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.
• You must 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, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only 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, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.
RESOLUTION NO. 2016 –

BOARD OF DIRECTORS, PENINSULA CORRIDOR JOINT POWERS BOARD 
STATE OF CALIFORNIA 

** **

ADOPTING THE REVISED DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

WHEREAS, the Peninsula Corridor Joint Powers Board (JPB) recently underwent its Federal Transit Administration (FTA) Triennial Review, which resulted in recommendations to revise the Disadvantaged Business Enterprise (DBE) Program to reflect the most current policies and procedures in use and to incorporate the most recent changes in U.S. Department of Transportation (DOT) guidance, by July 26, 2016; and

WHEREAS, DOT regulations, 49 Code of Federal Regulations Part 26.21, require FTA grantees to send significant changes to their DBE Programs to the FTA for approval; and

WHEREAS, the JPB’s DBE Program was last revised and adopted by the Board of Directors (Board) in 2012 per Resolution No. 2012-08; and

WHEREAS, staff has revised the DBE Program to respond to the FTA Triennial Review comments and accord with updates in the law, including providing a new policy statement, clarifying duties and responsibilities of DBE staff, revising DBE Certification Standards, clarifying how contract-specific goal attainment and good faith efforts are evaluated, revising small business enterprise policies and procedures, and revising monitoring of DBE firms; and

WHEREAS, Staff Coordinating Council recommends the Board adopt the revised DBE Program, attached hereto.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Peninsula Corridor Joint Powers Board adopts the attached revised Disadvantaged Business
Enterprise Program and authorizes the Executive Director to execute the DBE Program policy statement set forth in the DBE Program.

BE IT FURTHER RESOLVED that the Board of Directors directs the Executive Director to submit the revised DBE Program to the U.S. Department of Transportation, Federal Transit Administration by July 26, 2016.

Regularly passed and adopted this 7th day of July, 2016 by the following vote:

AYES:

NOES:

ABSENT:

Chair, Peninsula Corridor Joint Powers Board

ATTEST:

______________________________
JPB Secretary
AGENDA ITEM # 15  
JULY 7, 2016

PENINSULA CORRIDOR JOINT POWERS BOARD  
STAFF REPORT

TO: Joint Powers Board

THROUGH: Jim Hartnett  
Executive Director

FROM: Michael Burns  
Chief Officer, Caltrain Planning/Modernization Program

SUBJECT: INCREASE EXECUTIVE DIRECTOR'S EXPENDITURE AUTHORITY BY $2 MILLION FOR REIMBURSEMENT OF PACIFIC GAS AND ELECTRIC COSTS FOR DESIGN AND OVERSIGHT SERVICES IN SUPPORT OF THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT

ACTION

Staff Coordinating Council recommends the Board:

1. Increase the Executive Director’s expenditure authority by $2 million to reimburse Pacific Gas and Electric (PG&E) for costs of design and oversight services required for the electricity delivery infrastructure needed to support the Peninsula Corridor Electrification Project (PCEP).

2. Authorize the Executive Director, or his designee, to execute all necessary agreements with PG&E and to take such other actions as may be necessary to give effect to this Board action.

SIGNIFICANCE

Implementation of the PCEP will require connection and support infrastructure from PG&E. Design of this infrastructure will require PG&E to complete initial scoping and facilities studies, as well as detailed design documents at 30 percent, 60 percent and Issued for Construction. This requested Board authorization is for the purpose of reimbursing PG&E for completion of preliminary scoping (25 percent design) and preparation of the PCEP electricity delivery infrastructure procurement documents. PG&E also will provide oversight of the design and construction of the interconnection between PG&E’s substations and Caltrain facilities. These design efforts are separate from the scope of work included in the electrification design-build contract being proposed for award at today’s Board meeting.

At this time, staff estimates that the PG&E preliminary scoping, procurement document preparation and oversight services described herein will be accomplished for an amount not-to-exceed $2 million. Once these services are complete, staff will return to the Board for additional expenditure authority for PG&E services related to the final design and construction phase of the PCEP electricity delivery infrastructure.
BUDGET IMPACT
The proposed cost of the PCEP electricity delivery infrastructure design and oversight services by PG&E described above is included in the PCEP overall project cost estimate in the approved Fiscal Year 2016 Capital Budget. The cost of PG&E's design and oversight services is not included in the budget for the electrification design-build Contract.

BACKGROUND
The PCEP is a key component of the Caltrain Modernization Program. The project will require connection and support infrastructure from PG&E at the following Traction Power Substation locations for testing and revenue service:

1. Traction Power Substation No.1 – South San Francisco, South San Francisco Caltrain Station to PG&E East Grand Substation
2. Traction Power Substation No.2 – San Jose, Property adjacent to Caltrain right of way south of Santa Clara station to PG&E FMC Substation

Initial technical studies were performed by PG&E to determine preliminary needs of PCEP connection and infrastructure. Pursuant to Resolution No. 2015-51, the Board authorized the Executive Director to enter into an agreement with PG&E (Master Agreement) and compensate PG&E for scoping and preliminary design services in an amount not-to-exceed $900,000. After PG&E completes the preliminary design services, it will be necessary for PG&E to provide the detailed design services described herein, which must be completed prior to the construction of electricity delivery infrastructure needed for the PCEP.

Prepared By:  Zhenlin Guan, Project Manager  650.508.7976
RESOLUTION NO. 2016 –

BOARD OF DIRECTORS, PENINSULA CORRIDOR JOINT POWERS BOARD
STATE OF CALIFORNIA

***

INCREASING THE EXECUTIVE DIRECTOR’S EXPENDITURE AUTHORITY BY $2 MILLION FOR THE PURPOSE OF REIMBURSING PACIFIC GAS AND ELECTRIC FOR DESIGN AND OVERSIGHT SERVICES IN SUPPORT OF THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT

WHEREAS, on January 8, 2015, pursuant to Resolution No. 2015-03, the Peninsula Corridor Joint Powers Board (JPB) certified a Final Environmental Impact Report (FEIR) for the Peninsula Corridor Electrification Project (PCEP) and approved the PCEP; and

WHEREAS, implementation of the PCEP will require electricity connection and support infrastructure from Pacific Gas and Electric (PG&E); and

WHEREAS, pursuant to Resolution No. 2015-51, the JPB previously executed a Master Agreement with PG&E, pursuant to which PG&E is providing scoping and preliminary design services in support of the PCEP, in an amount not-to-exceed $900,000; and

WHEREAS, this requested Board authorization is for the purpose of reimbursing PG&E for completion of preliminary scoping (25 percent design) and preparation of the PCEP electricity delivery infrastructure procurement documents; and

WHEREAS, PG&E also will provide oversight of the design and construction of the interconnection between PG&E’s substations and Caltrain facilities; and

WHEREAS, staff estimates that the next phase of PG&E design and oversight services described above will be accomplished for an amount not-to-exceed $2 million; and
WHEREAS, supplemental agreements to the Master Agreement will memorialize the terms and conditions for this next phase of design and oversight services to be provided by PG&E; and

WHEREAS, additional expenditure authority and any additional supplemental agreements associated with the final design and subsequent phase of the PCEP electricity delivery infrastructure construction will be brought back to the Board for approval; and

WHEREAS, the Executive Director recommends, and Staff Coordinating Council concurs, that the Board (1) increase the Executive Director’s expenditure authority by $2 million for reimbursement of PG&E’s preliminary scoping, procurement document preparation and oversight services required for electricity delivery infrastructure for the PCEP, and (2) authorize the Executive Director to execute all necessary agreements with PG&E related to the performance of such services.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Peninsula Corridor Joint Powers Board increases the Executive Director’s expenditure authority by $2 million for reimbursement of PG&E’s preliminary scoping, procurement document preparation and oversight services for electricity delivery infrastructure for the PCEP.
BE IT FURTHER RESOLVED that the Board authorizes the Executive Director, or his
designee, to execute all necessary agreements with PG&E and to take such other
actions as may be necessary to give effect to this Resolution.

Regularly passed and adopted this 7th day of July, 2016 by the following vote:

AYES:

NOES:

ABSENT:

Chair, Peninsula Corridor Joint Powers Board

ATTEST:

______________________________
JPB Secretary
TO: Joint Powers Board

THROUGH: Jim Hartnett
Executive Director

FROM: Eli Kay
Chief Financial Officer

SUBJECT: AUTHORIZING STAFF TO ENTER INTO CONSENSUAL TERMINATION AGREEMENTS RELATING TO LEVERAGED LEASE TRANSACTIONS

ACTION
Staff Coordinating Council recommends the Board authorize the Executive Director, Chief Financial Officer, or their designee to enter into termination agreements with the equity investors and other parties that participated in the Peninsula Corridor Joint Powers Board's (JPB) leveraged lease transactions (each a “Lease Transaction”) executed in 2000, 2001 and 2002 with respect to 93 of its Nippon Sharyo coach and cab cars and 23 of its GM locomotives (collectively, the “Rail Equipment”), provided that the JPB is responsible to pay for no more than $100,000 in transaction costs associated with its own financial advisor, legal counsel and fees not covered by the Equity Investor.

SIGNIFICANCE
The early termination of the Lease Transactions would benefit the JPB in three principal ways:

- **It would remove all liens on the subject Rail Equipment** – This would provide the JPB with the flexibility to keep the Rail Equipment in operation, remove them from service and/or transfer them to another transit agency without limitations imposed by the existing Lease Transaction documents. The JPB’s potential actions, however, would remain subject to the original Federal Transit Administration (FTA) grant agreements.

- **It would simplify the JPB’s financial statements and eliminate a contingent liability** – Each year, the JPB prepares an extensive footnote that describes the status of the Lease Transactions and its theoretical financial exposure if an early, non-consensual termination occurred under the Lease Transaction documents.

- **It would eliminate a potential default under the Lease Documents** – The Lease Transactions involve financial institution participants that are required to maintain ratings above certain thresholds contained in the Lease Transaction documents.
These parties include American International Group (AIG) and Assured Guaranty Municipal Corporation (AGM), as successor to Financial Security Assurance (FSA). If the ratings of AIG, AGM or other financial institution participant fall below the applicable rating thresholds, the JPB, at its own expense, is required to replace such institutions with ones that meet the rating requirements. The ratings of both AIG and AGM are below certain of the required minimums under the Lease Transaction documents. While neither equity investor has called an event of default, it has retained the right to do so. If the equity investors were to declare an event of default, the JPB would have an aggregate termination exposure under Lease Documents of approximately $62.9 million.

**BUDGET IMPACT**

The estimated cost for terminating the Lease Transactions is limited to JPB’s financial advisor legal counsel fees, which are estimated at approximately $50,000 per terminated Lease Transaction. In the event a proposed termination does not close, JPB may be responsible for additional transaction costs, which, when combined with the JPB’s financial advisor and legal counsel fees, will not exceed $100,000 in the aggregate.

**BACKGROUND**

In 2001, 2002 and 2003, with the encouragement and consent of the FTA, the JPB entered into Lease Transactions (also known as “sale in lease out” transactions or “SILOs”) with two equity investors (the “Equity Investors”).1 Under these Lease Transactions, tax ownership of the Rail Equipment was transferred to single-purpose statutory trusts (each, a “Lessor”) formed on behalf of each Equity Investor. In each Lease Transaction, the original purchase price ($316.9 million in aggregate) was funded in part with debt and in part with equity. The JPB leased back the Rail Equipment under a sublease agreement (the “Lease Agreement”), which provided the JPB with an option to purchase the Rail Equipment at the end of the each sublease lease term (2026). The Lease Transactions were structured to enable the Equity Investors to take certain tax deductions that the JPB could not enjoy as a public agency. In turn, the Lease Transactions generated net upfront cash payments of approximately $9.4 million2. Almost every transit system in the United States had entered into similar leveraged lease transactions with respect to their railcars and other items of equipment.

At this time, JPB is prioritizing pursuing termination of the Lease Transactions entered into 2000 and 2001 with Wells Fargo Bank.

The JPB’s payment obligations under each Lease Transaction were provided for, or economically “defeased,” at the outset through certain deposits funded with Lease Transaction proceeds. In two of the Lease Transactions, the deposits were with entities formed by AIG. In the third Lease Transaction, the deposits were with entities formed by FSA. Scheduled payments, which are guaranteed by AIG and FSA, as the case may be, are made in amounts and at times that satisfy the JPB’s payment schedules under the

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1 The equity investors are Wells Fargo Bank and Bank of America.
2 The 2001 and 2002 transactions restructured a prior lease transaction which generated an additional cash payment to the JPB of approximately $4 million.
Lease Transactions.

In addition to these deposits, FSA provided surety bonds to guarantee full payment to the Equity Investors in the event that the Lease Transactions were terminated, prior to the scheduled maturities, in whole or in part for any reason.

In June 2009, Assured Guaranty Corporation acquired FSA and assumed its obligations under the Lease Transactions through its bond insurance company, AGM.

The Lease Transaction documents assume that the Rail Equipment would remain in, or be available for, revenue service throughout the term of the respective Lease Transaction. To that end, the JPB agreed to certain operating, maintenance and insurance covenants with respect to the Rail Equipment that were consistent with the JPB’s practices and Federal grant agreements that funded the Rail Equipment. In addition, the JPB cannot sell, lease or transfer the Rail Equipment to other agencies during the term of the Lease Transactions.

The Lease Transaction documents also assumed that the financial participants would retain a high degree of creditworthiness. The JPB is required to replace AIG and AGM if its ratings fall below the thresholds shown in the table below.

<table>
<thead>
<tr>
<th>Transaction</th>
<th>Debt Payment Guarantor</th>
<th>Equity Payment Guarantor</th>
<th>Surety Provider</th>
<th>Standby Letter of Credit Provider</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>AIG Baa1/BBB+</td>
<td>AIG A1/A+</td>
<td>AGM Aa3/AA-</td>
<td>AIG Aa3/AA-</td>
</tr>
<tr>
<td>2002</td>
<td>AGM Baa1/BBB+</td>
<td>AGM AA/1AA+</td>
<td>AGM Aa3/AA-</td>
<td>N/A</td>
</tr>
</tbody>
</table>

At the time of the Lease Transactions, AIG’s and FSA’s ratings were “Aaa/AAA” from Moody’s and S&P; AIG’s current ratings are “Baa1/A-” and AGM’s ratings are “A2/AA” respectively.

The Lease Transaction documents include schedules that identify the cost of an early termination due to an event of default or the loss of an item of Rail Equipment. These costs are in the nature of liquidated damages. In addition, the equity investors could agree to a consensual termination under different terms than provided for under the Lease Transaction documents.

**Subsequent Developments.** From the time the JPB entered into its Lease Transactions, several developments have occurred in the market that affected SILOs and other leveraged lease transactions in general.

First, the US Treasury waged an aggressive campaign to disallow the tax benefits associated with SILOs and their predecessor structure (“lease in and lease out”
transactions or “LILOs”). This effort culminated in settlement agreements to which most equity investors agreed. The effect of these settlement agreements is to specifically disallow the anticipated tax benefits to be derived from such lease transactions. These settlement agreements, in effect, produced investment losses to equity investors – which become realized upon termination of their lease transactions. This “tax” risk was borne solely by the equity investors and not the transit agencies.

Second, the financial counterparties (originally rated “Aaa/AAA”) involved in many SILO and LILO transactions – notably AIG, Ambac and FSA – experienced significant rating downgrades due to their sub-prime loan exposure. Such downgrades caused technical defaults in the affected SILO and LILO transactions and, in many instances, resulted in the need for transit agencies to restructure or terminate such transactions. As examples, Washington Metro, Metropolitan Atlanta Rapid Transit Authority, Dallas Area Rapid Transit District and Santa Clara Valley Transportation Authority each terminated SILO transactions with equity investors. The ratings of AIG and AGM have stabilized over the years and equity investors generally have backed away from threatened terminations due to rating downgrades – especially in circumstances, such as the Lease Transactions, where all lease payments have been made.

Third, interest rates have plummeted since 2002. This decline in interest rates has caused providers of equity payment and similar agreements to pay a premium to terminate such agreements prior to maturity rather than continue to pay at a high interest rate. Some equity investors have seen such premium as an opportunity to offset the unrealized losses that they are currently carrying with respect to SILO transactions.

JPB staff, through its financial advisor, has periodically approached AIG and AGM to discuss their interest in terminating their respective equity payment agreements at a premium price – with the goal of using that premium to induce the equity investors to a consensual termination of its respective Lease Transactions. Until recently, neither AIG nor AGM had been willing to terminate their equity payment agreements for a premium. AIG has expressed a willingness to do so in the current environment at a premium that could lead to a consensual termination of one or more Lease Transactions.

**Timing of a Potential Consensual Early Termination; Parameters.** An equity investor that agrees to a consensual termination generally will assume the legal costs of all parties to the lease transaction (except for the transit agency). Before incurring such costs, the equity investor will want the assurance that the transit agency’s board has pre-approved the consensual termination. As a result, JPB staff would like to obtain prior approval to terminate any or all of its Lease Transactions, subject to parameters below, so as to capture any consensual termination opportunities as they might arise. JPB staff suggests the following parameters:

- The termination does not involve any out of pocket costs to the JPB – except for its counsel and advisor fees.
- The JPB’s legal counsel must approve any documentation evidencing such termination.
• JPB staff will report to the JPB Board on any terminations as soon as practicable after they occur.

**Documentation.** Other transit agencies that have terminated transactions have entered into a “Termination Agreement” containing the following provisions:

• The election to terminate is made through by accelerating the end of lease term purchase option;

• All liens are released amongst the parties to the transaction;

• The obligations of all parties under the transaction documents would be considered discharged;

• Certain indemnity provisions in the operative documents would survive;

• The equity investor or other party would pay transaction expenses; and

• Each party agrees to provide further assurances of cooperation.

JPB staff anticipates that it would need to enter into a similar document. It would not execute such Termination Agreement without the prior approval of outside legal counsel.

Prepared by: Eli Kay, Chief Financial Officer 650.508.6466
RESOLUTION NO. 2016 –

BOARD OF DIRECTORS, PENINSULA CORRIDOR JOINT POWERS BOARD
STATE OF CALIFORNIA

***

AUTHORIZING THE CONSENSUAL TERMINATION OF AGREEMENTS RELATING TO
LEVERAGED LEASE TRANSACTIONS

WHEREAS, in 2001, 2002 and 2003, with the encouragement and consent of the
Federal Transit Administration, the Peninsula Corridor Joint Powers Board (JPB) entered
into leveraged lease transactions (each a "Lease Transaction," which are also known as
"sale in lease out" transactions or "SILOs") with two equity investors (the "Equity Investors")
and other parties; and

WHEREAS, from the time the JPB entered into the Lease Transactions, a number
of developments occurred in the market that affected SILOs and other leveraged
leased transactions in general; and

WHEREAS, the US Treasury entered into settlement or other agreements with
equity investors that resulted in the disallowance of the tax benefits associated with
SILOs and their predecessor structure, the financial counterparties involved in many
SILO transactions experienced significant rating downgrades causing technical defaults
in the affected SILO transactions, and interest rates have declined incentivizing
providers of equity payment agreements to pay a premium to terminate such
agreements prior to maturity rather than continue to pay at a high interest rate; and

WHEREAS, the early termination of the Lease Transactions would remove all liens
from the to 93 Nippon Sharyo coach and cab cars and 23 of its GM locomotives that
are the subject of the Lease Transactions (collectively, the "Rail Equipment") providing
the JPB flexibility in the deployment of the Rail Equipment; and

WHEREAS, the early termination of the Lease Transactions would also simplify the
JPB’s financial statements and remove a contingent liability; and
WHEREAS, the early termination of the Lease Transactions would also eliminate the potential default under the Lease Transaction documents since certain financial institution participants are required to maintain ratings above certain thresholds and the ratings of some such participants are currently below the required thresholds; and

WHEREAS, the JPB will be responsible for not more than $100,000 in transaction costs, primarily for its own financial advisor, legal counsel and for fees not otherwise covered by the Equity Investor; and

WHEREAS, the Executive Director and the Staff Coordinating Council recommend that the JPB authorize the early consensual termination of the agreements relating to the Lease Transactions.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the JPB hereby authorizes the early consensual termination the agreements relating to the Lease Transactions; and

BE IT FURTHER RESOLVED that the Executive Director, Chief Financial Officer, or their designee is authorized to enter into terminations and take all other required actions required to implement this Resolution.

Regularly passed and adopted this 7th day of July, 2016 by the following vote:

AYES:

NOES:

ABSENT:

____________________________
Chair, Peninsula Corridor Joint Powers Board

____________________________
JPB Secretary
AGENDA ITEM # 17  
JULY 7, 2016

PENINSULA CORRIDOR JOINT POWERS BOARD  
STAFF REPORT

TO:  Joint Powers Board

THROUGH:  Jim Harnett  
Executive Director

FROM:  Michelle Bouchard  
Chief Operating Officer, Rail

SUBJECT:  25TH AVENUE GRADE SEPARATION PROJECT UPDATE

ACTION
This report is for information only. No Board action is required.

SIGNIFICANCE
The 25th Avenue Grade Separation Project will include a grade separation at 25th Avenue, in San Mateo, along with elevated rail between Hillsdale Boulevard and the Highway 92 overpass. The project will replace the existing Hillsdale Caltrain Station with a new elevated, center-board station, just north of its current location. In addition, the project will provide station access and parking, and construct east-west road connections at 28th and 31st avenues. The grade separation will be constructed immediately to the west of the existing main line tracks, and will partially elevate the rail within a mechanically stabilized earth wall, and will partially lower 25th, 28th and 31st avenues.

BUDGET IMPACT
There is no impact to the Budget.

BACKGROUND
In January 2016, per Resolution No. 2016-04, the Peninsula Corridor Joint Powers Board authorized an amendment to increase the Fiscal Year 2016 Caltrain Capital Budget in the amount of $11 million ($5 million from the San Mateo County Transportation Authority and $6 million from the city of San Mateo) to complete the final design and right of way certification for the 25th Avenue Grade Separation Project.

Prepared By:  Rafael Bolon, Project Manager  650.339.0099
TO:       Joint Powers Board

THROUGH:  Jim Hartnett
           Executive Director

FROM:     Gigi Harrington
           Deputy CEO/Chief Administrative Officer

SUBJECT:  COMMUNICATIONS-BASED OVERLAY SIGNAL SYSTEM POSITIVE TRAIN CONTROL PROJECT

ACTION
This report is for information only. No Board action is required.

A presentation will be made to update the Board on the Communications-based Overlay Signal System Positive Train Control project.

Prepared by:  Josh Averill, Assistant District Secretary  650.508.6223
TO: Joint Powers Board

THROUGH: Jim Hartnett
Executive Director

FROM: Seamus Murphy
Chief Communications Officer

SUBJECT: STATE AND FEDERAL LEGISLATIVE UPDATE

ACTION
This report is for information only. No Board action is required.

SIGNIFICANCE
Staff will provide regular updates to the Board in accordance with the approved Legislative Program.

STATE ISSUES
As of 6/20/16:

On June 15, 2016, the Legislature passed a $122.5 billion general fund budget, meeting its June 15 constitutional deadline. The budget includes new investments in childcare, education, and sets aside $2 billion for the State’s rainy-day reserve fund. Noticeably absent from the budget is the appropriation of unallocated Cap and Trade revenues, funding for roads, and a fix for the State Transit Assistance distribution methodology, leaving Legislators to work out details in budget trailer bills by the end of session in August.

FEDERAL ISSUES
As of 6/20/16:

There hasn’t been any significant movement on the Fiscal Year 2017 Transportation, Housing and Urban Development, and Related Agencies (THUD) Appropriations Act since the last update. We are still waiting for the House to schedule a floor vote on the THUD bill. The Senate approved the THUD bill on May 24, 2016.

The current House THUD bill contains $100 million for the Caltrain Peninsula Corridor Electrification Project. The Senate-approved THUD bill includes $332 million for the overall Federal Transit Administration (FTA) Core Capacity Program and did not call out specific projects for funding. The Senate bill leaves that to the discretion of FTA.
In June, the Peninsula Corridor Joint Powers Board applied for funding through the Federal Railroad Authority Railroad Safety Infrastructure Improvement Program. If awarded, funding would be used to implement safety measures at grade crossings along the corridor. The application was supported by the members of the federal delegation and local jurisdictions.

Prepared by:  Casey Fromson, Manager, Government Affairs  650.508.6493
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<th>Bill ID/Topic</th>
<th>Location</th>
<th>Summary</th>
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<tr>
<td>AB 156 McCarty D</td>
<td>A. ASSEMBLY 5/19/2016-Read third time. Passed. Ordered to the Assembly. (Ayes 24. Noes 15. Page 3899.).</td>
<td>Current law requires the Attorney General to maintain records, including fingerprints, licenses to carry concealed firearms, and information from firearms dealers pertaining to firearms, for purposes of assisting in the investigation of crimes and specified civil actions. In regard to certain of those records, current law authorizes specified peace officers to disseminate the name of the subject of the record, the number of firearms listed in the record, the description of any firearm, and other information reported to the Department of Justice, as specified, if the subject of the record has been arraigned, is being prosecuted, or is serving a sentence for domestic violence or is the subject of specified protective orders. This bill would require the Attorney General to also maintain information about ammunition transactions and ammunition vendor licenses for those purposes. <strong>Last Amended on 5/17/2016</strong></td>
<td>Oppose</td>
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<td>AB 318 Chau D</td>
<td>S. 2 YEAR 7/17/2015-Failed Deadline pursuant to Rule 61(a)(10). (Last location was JUD. on 6/11/2015)</td>
<td>Would, until December 31, 2020, provide that if that lost property is found on a vehicle of public conveyance or on public transit property, that it instead be turned in to the public transit agency, and would provide 90 days for the owner to return and claim the property, as specified. The bill, until December 31, 2020, also would require the public transit agency to cause notice of the property to be published under specified circumstances. <strong>Last Amended on 6/11/2015</strong></td>
<td>Support</td>
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<td>AB 326 Frazier D</td>
<td>S. APPR. 6/9/2016-Read second time and amended. Re-referred to Com. on APPR.</td>
<td>Current law provides that there is no liability for liquidated damages if a contractor, subcontractor, or surety deposits the full amount of the assessment or notice, including penalties, with the Department of Industrial Relations to hold in escrow pending administrative or judicial review. This bill would require the department to release the funds deposited in escrow plus interest earned to those persons and entities within 30 days following either the conclusion of all administrative and judicial review or upon the department receiving written notice from the Labor Commissioner or his or her designee of a settlement or other final disposition of an assessment issued, as specified, or from the authorized representative of the awarding body of a settlement or other final disposition of a notice issued, as specified. <strong>Last Amended on 6/9/2016</strong></td>
<td>Oppose</td>
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<tr>
<td>AB 516 Mullin D</td>
<td>S. THIRD READING 2/10/2016-Read second time. Ordered to third reading.</td>
<td>Would require the DMV to develop an operational system, no later than January 1, 2018, that allows a dealer or lessor-retailer to electronically report the sale of a vehicle and provide a temporary license plate, as specified. The bill would, commencing January 1, 2017, authorize the department to assess specified administrative fees on processing agencies to support the administration of this system. This bill contains other related provisions and other existing laws. <strong>Last Amended on 7/16/2015</strong></td>
<td>Support</td>
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<td><strong>AB 828</strong> Low D</td>
<td>S. E. U., &amp; C. 6/8/2016-Set for hearing. 6/21/2016 9am - Room 3191 SENATE ENERGY, UTILITIES AND COMMUNICATIONS, HUESO, Chair</td>
<td>Would require the Public Utilities Commission to conduct an investigation to consider whether existing statutes and regulations relating to transportation services serve the public interest, encourage innovation, and create a fair and competitive transportation market between companies that provide regulated transportation services. The bill would require the commission to complete the investigation and report its conclusions and recommendations to the Legislature on or before January 1, 2017. This bill contains other related provisions and other existing laws. Last Amended on 7/14/2015</td>
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<td><strong>AB 857</strong> Cooper D</td>
<td>A. ASSEMBLY 5/19/2016-Read third time. Passed. Ordered to the Assembly. (Ayes 24. Noes 14. Page 3903.).</td>
<td>Would, commencing July 1, 2018, and subject to exceptions, require a person who manufactures or assembles a firearm to first apply to the Department of Justice for a unique serial number or other identifying mark, as provided. The bill would, by January 1, 2019, and subject to exceptions, require any person who, as of July 1, 2018, owns a firearm that does not bear a serial number to likewise apply to the department for a unique serial number or other mark of identification. Last Amended on 5/11/2016</td>
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<td><strong>AB 869</strong> Cooper D</td>
<td>S. 2 YEAR 9/11/2015-Failed Deadline pursuant to Rule 61(a)(14). (Last location was INACTIVE FILE on 7/2/2015)</td>
<td>Current law authorizes a public transportation agency to adopt and enforce an ordinance to impose and enforce civil administrative penalties for fare evasion or other passenger misconduct, other than by minors, on or in a transit facility or vehicle in lieu of the criminal penalties otherwise applicable, with specified administrative procedures for the imposition and enforcement of the administrative penalties, including an initial review and opportunity for a subsequent administrative hearing. This bill would provide that a person who fails to pay the administrative penalty when due or successfully complete the administrative process to dismiss the notice of fare evasion or passenger conduct violation may be subject to those criminal penalties. Last Amended on 6/18/2015</td>
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<td><strong>AB 1360</strong> Ting D</td>
<td>S. E. U., &amp; C. 7/17/2015-Failed Deadline pursuant to Rule 61(a)(10). (Last location was E. U., &amp; C. on 7/2/2015) 6/21/2016 9am - Room 3191 SENATE ENERGY, UTILITIES AND COMMUNICATIONS, HUESO, Chair</td>
<td>Would exempt from specified provisions relating to the Passenger Charter-Party Carriers’ Act a service operated by a transportation network company or a charter-party carrier of passengers that prearranges a ride among multiple passengers who share the ride in whole or in part, provided that the vehicle seats no more than 7 passengers, not including the driver, is operated by a participating driver, as defined, is not used to provide public transit services or carry passengers over a fixed route, is not used to provide pupil transportation services or public paratransit services, and the fare for each passenger is less than the fare that would be charged to a passenger traveling alone. Last Amended on 7/2/2015</td>
<td>Support</td>
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<td>AB 1591</td>
<td>A. TRANS. 2/1/2016-Referred to Coms. on TRANS. and REV. &amp; TAX.</td>
<td>Would create the Road Maintenance and Rehabilitation Program to address deferred maintenance on the state highway system and the local street and road system.</td>
<td>Watch Closely</td>
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<td><strong>Frazier D</strong></td>
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<td>The bill would require the California Transportation Commission to adopt performance criteria to ensure efficient use of the funds available for the program. This bill contains other related provisions and other existing laws.</td>
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<td><strong>Transportation funding.</strong></td>
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<td>AB 1595</td>
<td>A. DEAD 5/27/2016-Failed Deadline pursuant to Joint Rule 61(b)(8). (Last location was APPR. SUSPENSE FILE on 5/11/2016)</td>
<td>Would require a private or public employer that provides mass transportation services, as specified, in the state to train its employees, who are likely to interact or come into contact with victims of human trafficking, in recognizing the signs of human trafficking and how to report those signs to the appropriate law enforcement agency.</td>
<td>Pending</td>
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<td><strong>Campos D</strong></td>
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<td>The bill would require the Department of justice to develop guidelines for the training, including, but not limited to, guidance on how to report human trafficking.</td>
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<td><strong>Employment: human trafficking training: mass transportation employers.</strong></td>
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<td>The bill would require that, by January 1, 2018, the training be incorporated into the initial training process for all new employees and that all existing employees receive the training. Last Amended on 3/29/2016</td>
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<td>AB 1640</td>
<td>S. P.E. &amp; R. 6/9/2016-In committee; Set, first hearing. Hearing canceled at the request of author.</td>
<td>PEPRA exempts from its provisions certain public employees whose collective bargaining rights are subject to specified provisions of federal law until a specified federal district court decision on a certification by the United States Secretary of Labor, or until January 1, 2016, whichever is sooner. This bill would extend indefinitely that exemption for those public employees, whose collective bargaining rights are subject to specified provisions of federal law and who became a member of a state or local public retirement system prior to December 30, 2014.</td>
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<td><strong>Stone, Mark D</strong></td>
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<td><strong>Retirement: public employees.</strong></td>
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<td>AB 1641</td>
<td>A. TRANS. 4/4/2016-In committee; Set, second hearing. Hearing canceled at the request of author.</td>
<td>Under current law, a person may not stop, park, or leave a vehicle standing alongside a curb space authorized for the loading or unloading of passengers of a bus engaged as a common carrier in local transportation when indicated by a sign or red paint on the curb, except that existing law allows local authorities to permit school buses to stop alongside these curb spaces upon agreement between a transit system operating buses as common carriers in local transportation and a public school district or private school. This bill would also allow local authorities to permit shuttle service vehicles, as defined, to stop for the loading or unloading of passengers.</td>
<td>Watch Closely</td>
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<td><strong>Allen, Travis R</strong></td>
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<td><strong>Shuttle services: loading and unloading of passengers.</strong></td>
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### Bill ID/Topic

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<td><strong>AB 1665</strong></td>
<td>S. GOV. &amp; F.</td>
<td>Current law authorizes the County of Alameda and the County of Contra Costa to impose a transactions and use tax for the support of countywide transportation programs at a rate of no more than 0.5% that, in combination with other specified taxes, exceeds the combined rate of all these taxes that may be imposed, if certain requirements are met. This bill would remove this taxing authority from the County of Alameda and the County of Contra Costa and grant this taxing authority to the Contra Costa Transportation Authority. This bill contains other related provisions. <strong>Last Amended on 5/9/2016</strong></td>
<td>Watch Closely</td>
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<tr>
<td><strong>Bonilla D</strong></td>
<td>6/14/2016-Action From T. &amp; H.: Do pass to G. &amp; F..</td>
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<td><strong>AB 1669</strong></td>
<td>S. L. &amp; I.R.</td>
<td>Current law requires a local government agency letting a public transit service contract out to bid to give a bidding preference for contractors and subcontractors who agree to retain for a specified period certain employees who were employed to perform essentially the same services by the previous contractor or subcontractor. Such a contractor or subcontractor is required to offer employment to those employees, except for reasonable and substantiated cause. This bill would expand the application of these provisions to exclusive contracts for the collection and transportation of solid waste. The bill would require the information provided to a bona fide bidder to be made available in writing at least 30 days before bids for the service contract are due. <strong>Last Amended on 6/9/2016</strong></td>
<td>Watch Closely</td>
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<td><strong>Hernández, Roger D</strong></td>
<td>6/9/2016-from committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on L. &amp; I.R. 6/22/2016 9:30 a.m. - Rose Ann Vuich Hearing Room (2040) SENATE LABOR AND INDUSTRIAL RELATIONS, MENDOZA, Chair</td>
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<td><strong>AB 1889</strong></td>
<td>S. T. &amp; H.</td>
<td>Current law, operative under certain conditions, re-designates the Peninsula Corridor Study Joint Powers Board as the Peninsula Rail Transit District, comprised of 9 members appointed from various governing bodies situated in the City and County of San Francisco and the Counties of San Mateo and Santa Clara, with specified powers. This bill would repeal obsolete provisions relating to the Peninsula Rail Transit District. <strong>Last Amended on 3/17/2016</strong></td>
<td>Sponsor</td>
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<td><strong>Mullin D</strong></td>
<td>6/13/2016-In committee: Set, first hearing. Hearing canceled at the request of author.</td>
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<td><strong>AB 2030</strong> Mullin D</td>
<td>S. T. &amp; H. 6/1/2016-From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on T. &amp; H. 6/21/2016 1:30 p.m. - John L. Burton Hearing Room (4203) SENATE TRANSPORTATION AND HOUSING, BEALL, Chair</td>
<td>Current law requires contracts of the San Francisco Bay Area Rapid Transit District for the purchase of supplies, equipment, and materials to be let to the lowest responsible bidder or to the bidder who submits a proposal that provides best value, as defined, if the amount of the contract exceeds $100,000 and requires the district to obtain a minimum of 3 quotations for those contracts between $2,500 and $100,000. This bill would impose those bidding requirements with respect to district contracts for the purchase of supplies, equipment, and materials if the amount of the contract exceeds $150,000 and would require a minimum of 3 quotations for those contracts between $5,000 and $150,000. <strong>Last Amended on 6/1/2016</strong></td>
<td>Support</td>
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<td><strong>AB 2090</strong> Alejo D</td>
<td>S. T. &amp; H. 6/9/2016-Referred to Coms. on T. &amp; H. and E.Q. 6/21/2016 1:30 p.m. - John L. Burton Hearing Room (4203) SENATE TRANSPORTATION AND HOUSING, BEALL, Chair</td>
<td>Current law continuously appropriates specified portions of the annual proceeds in the Greenhouse Gas Reduction Fund to various programs, including 5% for the Low Carbon Transit Operations Program, which provides operating and capital assistance for transit agencies to reduce greenhouse gas emissions and improve mobility, with a priority on serving disadvantaged communities. This bill would additionally authorize moneys appropriated to the program to be expended to support the operation of existing bus or rail service if the governing board of the requesting transit agency declares a fiscal emergency and other criteria are met, thereby expanding the scope of an existing continuous appropriation. <strong>Last Amended on 5/27/2016</strong></td>
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<td><strong>AB 2126</strong> Mullin D</td>
<td>S. T. &amp; H. 5/19/2016-Referred to Com. on T. &amp; H. 6/21/2016 1:30 p.m. - John L. Burton Hearing Room (4203) SENATE TRANSPORTATION AND HOUSING, BEALL, Chair</td>
<td>Current law authorizes the Department of Transportation to use the Construction Manager/General Contractor method on no more than 6 projects, and requires 4 out of the 6 projects to use department employees or consultants under contract with the department to perform all project design and engineering services, as specified. This bill would authorize the department to use this method on 12 projects and would require 8 out of the 12 projects to use department employees or consultants under contract with the department to perform all project design and engineering services</td>
<td>Sponsor</td>
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<td>AB 2222 Holden D</td>
<td>S. T. &amp; H. 6/9/2016-Referred to Coms. on T. &amp; H. and E.Q.</td>
<td>Would establish the Transit Pass Program to be administered by the Department of Transportation with moneys from the Greenhouse Gas Reduction Fund, upon appropriation, to support transit pass programs that provide free or reduced-fare transit passes to specified pupils and students.</td>
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<tr>
<td>Greenhouse Gas Reduction Fund: Transit Pass Program.</td>
<td>6/21/2016 1:30 p.m. - John L. Burton Hearing Room (4203) SENATE TRANSPORTATION AND HOUSING, BEALL, Chair</td>
<td>The bill would require the department, in coordination with the state board, to develop guidelines that describe the criteria that eligible transit providers are required to use to make available free or reduced-fare transit passes to eligible participants and the methodologies that eligible participants would use to demonstrate that the proposed expenditures will reduce greenhouse gas emissions.</td>
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<td>AB 2382 Lopez D</td>
<td>A. DEAD 4/22/2016-Failed Deadline pursuant to Joint Rule 61(b)(5). (Last location was A. TRANS. on 4/12/2016)</td>
<td>Current law creates the High-Speed Rail Authority with specified powers and duties relative to development and implementation of a high-speed rail system. The authority is comprised of 9 members, with 5 members appointed by the Governor and 4 members appointed by the Legislature. This bill would require at least one member appointed by the Governor beginning with an available vacancy on and after January 1, 2017, to be a person who is from a disadvantaged community, as defined.</td>
<td>Last Amended on 5/31/2016</td>
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<td>High-Speed Rail Authority: membership.</td>
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<td>ABX1 7 Nazarian D</td>
<td>A. PRINT 7/17/2015-From printer.</td>
<td>Current law requires all moneys, except for fines and penalties, collected by the State Air Resources Board from the auction or sale of allowances as part of a market-based compliance mechanism relative to reduction of greenhouse gas emissions to be deposited in the Greenhouse Gas Reduction Fund. This bill would instead continuously appropriate 20% of those annual proceeds to the Transit and Intercity Rail Capital Program, and 10% of those annual proceeds to the Low Carbon Transit Operations Program, thereby making an appropriation. This bill contains other current laws.</td>
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<td>Public transit: funding.</td>
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<td>ABX1 8 Chiu D</td>
<td>A. PRINT 7/17/2015-From printer.</td>
<td>Would, effective July 1, 2016, increase the additional sales and use tax rate on diesel fuel to 5.25%. By increasing the revenues deposited in a continuously appropriated fund, the bill would thereby make an appropriation. This bill contains other related provisions.</td>
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<td>Diesel sales and use tax.</td>
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<td>ABX1 24 Levine D</td>
<td>A. PRINT 9/12/2015-From printer.</td>
<td>Would, effective January 1, 2017, re-designate the Metropolitan Transportation Commission as the Bay Area Transportation Commission. The bill would require commissioners to be elected by districts comprised of approximately 750,000 residents. The bill would require each district to elect one commissioner, except that a district with a toll bridge, as defined, within the boundaries of the district would elect 2 commissioners. The bill would require commissioner elections to occur in 2016, with new commissioners to take office on January 1, 2017.</td>
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<td>ABX1 25 Allen, Travis R</td>
<td>A. PRINT 1/12/2016-From printer.</td>
<td>Under current law, a person may not stop, park, or leave a vehicle standing alongside a curb space authorized for the loading or unloading of passengers of a bus engaged as a common carrier in local transportation when indicated by a sign or red paint on the curb, except that current law allows local authorities to permit school buses to stop alongside these curb spaces upon agreement between a transit system operating buses as common carriers in local transportation and a public school district or private school. This bill would also allow local authorities to permit shuttle service vehicles, as defined, to stop for the loading or unloading of passengers alongside these curb spaces upon agreement between a transit system operating buses.</td>
<td>Watch Closely</td>
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<td>ACA 4 Frazier D</td>
<td>A. APPR. SUSPENSE FILE 8/27/2015-In committee: Hearing postponed by committee.</td>
<td>Would provide that the imposition, extension, or increase of a sales and use tax imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or a transactions and use tax imposed in accordance with the Transactions and Use Tax Law by a county, city, city and county, or special district for the purpose of providing funding for local transportation projects, as defined, requires the approval of 55% of its voters voting on the proposition. The measure would also make conforming and technical, nonsubstantive changes. Last Amended on 8/17/2015</td>
<td>Support</td>
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<td>SB 32 Pavley D</td>
<td>A. NAT. RES. 6/10/2016-From committee with author’s amendments. Read second time and amended. Re-referred to Com. on NAT. RES.</td>
<td>Would require the State Air Resources Board to approve a statewide greenhouse gas emissions limit that is equivalent to 40% below the 1990 level to be achieved by 2030. This bill contains other related provisions. Last Amended on 6/10/2016</td>
<td>Support</td>
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<tr>
<td>SB 122 Jackson D</td>
<td>A. 2 YEAR 8/28/2015-Failed Deadline pursuant to Rule 61(a)(11). (Last location was APPR. SUSPENSE FILE on 7/15/2015)</td>
<td>CEQA establishes a procedure for the preparation and certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency’s action on the grounds of noncompliance with CEQA. This bill would require the lead agency, at the request of a project applicant and consent of the lead agency, to prepare a record of proceedings concurrently with the preparation of a negative declaration, mitigated negative declaration, EIR, or other environmental document for projects. This bill contains other related provisions. Last Amended on 6/1/2015</td>
<td>Support</td>
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<td>SB 207 Wieckowski D</td>
<td>A. 2 YEAR 7/17/2015-Failed Deadline pursuant to Rule 61(a)(10). (Last location was NAT. RES. on 5/14/2015)</td>
<td>Current law requires a state agency expending moneys from the Greenhouse Gas Reduction Fund to create a record, prior to the expenditure, that includes, among other things, a description of the expenditure proposed to be made and a description of how the proposed expenditure will contribute to achieving and maintaining greenhouse gas emissions reductions, as specified. This bill would require that record to be posted on the Internet Web sites of the state agency and the State Air Resources Board prior to the state agency expending those moneys. Last Amended on 3/24/2015</td>
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<td><strong>SB 321 Beall D</strong>&lt;br&gt;Motor vehicle fuel taxes: rates: adjustments.</td>
<td>S. INACTIVE FILE 9/11/2015-Ordered to inactive file on request of Senator Beall.</td>
<td>Would, for the 2016-17 fiscal year and each fiscal year thereafter, require the State Board of Equalization on March 1 of the fiscal year immediately preceding the applicable fiscal year, as specified, to adjust the rate in a manner as to generate an amount of revenue equal to the amount of revenue loss attributable to the exemption, based on estimates made by the board that reflect the combined average of the actual fuel price over the previous 4 fiscal years and the estimated fuel price for the current fiscal year, and continuing to take into account adjustments required by existing law to maintain revenue neutrality for each year. This bill contains other existing laws. Last Amended on 8/18/2015</td>
<td>Watch Closely</td>
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<td><strong>SB 400 Lara D</strong>&lt;br&gt;California Global Warming Solutions Act of 2006: Greenhouse Gas Reduction Fund.</td>
<td>A. 2 YEAR 8/28/2015-Failed Deadline pursuant to Rule 61(a)(11). (Last location was APPR. on 8/27/2015)</td>
<td>Would require the High-Speed Rail Authority to allocate not less than 25% of the moneys continuously appropriated to the authority from the Greenhouse Gas Reduction Fund to projects that either reduce or offset greenhouse gas emissions directly associated with the construction of the high-speed rail project and provide a co-benefit of improving air quality. The bill would require priority to be given within this expenditure category to measures and projects that are located in communities in areas designated as extreme nonattainment. The bill would expand the purposes of a continuous appropriation, thereby making an appropriation. Last Amended on 6/1/2015</td>
<td>Watch Closely</td>
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<td><strong>SB 878 Leyva D</strong>&lt;br&gt;Work hours: scheduling.</td>
<td>S. DEAD 5/27/2016-Failed Deadline pursuant to Joint Rule 61(b)(8). (Last location was APPR. SUSPENSE FILE on 4/25/2016)</td>
<td>Would require an employer, which includes a grocery store establishment, restaurant, or retail store establishment, to provide its employees with a work schedule at least 7 calendar days prior to the first shift on that work schedule, except as specified. The bill would require an employer, except as specified, to pay its employees modification pay for each previously scheduled shift that the employer cancels or moves to another date or time, for any previously unscheduled shift that the employer requires an employee to work, or for each on-call shift for which an employee is required to be available but is not called in to work that shift. Last Amended on 3/15/2016</td>
<td>Watch Closely</td>
</tr>
<tr>
<td><strong>SB 882 Hertzberg D</strong>&lt;br&gt;Crimes: public transportation: minors.</td>
<td>A. PUB. S. 6/13/2016-Referred to Com. on PUB. S. 6/28/2016 9 a.m. - State Capitol, Room 126 ASSEMBLY PUBLIC SAFETY, JONES-SAWYER, Chair</td>
<td>Current law makes it an infraction or a misdemeanor to evade the payment of a fare on a public transit system, to misuse a transfer, pass, ticket, or token with the intent to evade the payment of a fare, or to use a discount ticket without authorization or fail to present, upon request from a transit system representative, acceptable proof of eligibility to use a discount ticket. This bill would prohibit a minor from being charged with an infraction or a misdemeanor for those acts. Last Amended on 5/31/2016</td>
<td>Watch Closely</td>
</tr>
</tbody>
</table>
Peninsula Corridor Joint Powers Board  
State Legislative Matrix as of 6/15/2016

<table>
<thead>
<tr>
<th>Bill ID/Topic</th>
<th>Location</th>
<th>Summary</th>
<th>Position</th>
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| **SB 1197**  
Cannella R  
Intercity rail corridors: extensions. | S. DEAD  
4/22/2016-Failed  
Deadline pursuant to Joint Rule 61(b)(5). (Last location was S. T. & H. on 3/3/2016) | Current law defines the boundaries of 3 intercity rail corridors, and requires the preparation of an annual business plan for the corridor by each participating joint powers board. This bill, at any time after an interagency transfer agreement between the department and a joint powers board has been entered into, would authorize the amendment of the agreement to provide for the extension of the affected rail corridor to provide intercity rail service beyond the defined boundaries of the corridor.  
The bill would require a proposed extension to first be recommended and justified in the business plan adopted by the joint powers board, and then would require the approval of the Secretary of Transportation. |  |
| **SBX1 2**  
Huff R  
Greenhouse Gas Reduction Fund. | S. T. & I.D.  
Reconsideration granted. | Would provide that those annual proceeds shall be appropriated by the Legislature for transportation infrastructure, including public streets and highways, but excluding high-speed rail. This bill contains other existing laws. | Oppose |
| **SBX1 7**  
Allen D  
Diesel sales and use tax. | S. APPR.  
9/3/2015-Read second time and amended.  
Referred to Com. on APPR. | Would restrict expenditures of revenues from the July 1, 2016, increase in the sales and use tax on diesel fuel to transit capital purposes and certain transit services.  
The bill would require an existing required audit of transit operator finances to verify that these new revenues have been expended in conformance with these specific restrictions and all other generally applicable requirements. This bill contains other related provisions and other existing laws.  
**Last Amended on 9/3/2015** | Support |
| **SBX1 8**  
Hill D  
Public transit: funding. | S. APPR.  
9/2/2015-From committee: Do pass and re-refer to Com. on APPR. (Ayes 8. Noes 0. Page 57.)  
[September 1].  
Re-referred to Com. on APPR. | Current law requires all moneys, except for fines and penalties, collected by the State Air Resources Board from the auction or sale of allowances as part of a market-based compliance mechanism relative to reduction of greenhouse gas emissions to be deposited in the Greenhouse Gas Reduction Fund. This bill would instead continuously appropriate 20% of those annual proceeds to the Transit and Intercity Rail Capital Program, and 10% of those annual proceeds to the Low Carbon Transit Operations Program, thereby making an appropriation. This bill contains other current laws. | Support |