



**Metro™**

**Disadvantaged Business Enterprise Program**

**for the**

**Inglewood Transit Connector Project**

**The Inglewood Transit Connector Joint Powers  
Authority**

October 2022

Department of Transportation  
Federal Transit Administration

# Disadvantaged Business Enterprise Program

## Section 26.1, 26.23 Objectives/Policy Statement

The City of Inglewood and the Los Angeles Metropolitan Transportation Authority (LA Metro) have entered into a Joint Powers Agreement (JPA), a single purpose governmental entity tasked with owning, managing, and overseeing the design, construction, financing, operation, and maintenance of the Inglewood Transit Connector (ITC) Project. The (ITC Joint Powers Authority (Owner), and its Administrator, the City of Inglewood, which is leading procurement efforts for a Design-Build-Finance-Operate-and-Maintenance Contractor, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulation (CFR) Part 26. As a recipient of Federal financial assistance from the DOT and as a condition of receiving this assistance, Owner has signed an assurance that it will comply with 49 CFR Part 26.

It is Owner's policy to provide equal opportunity for Disadvantage Business Enterprises (DBE) firms, as defined in 49 CFR Part 26, which will enable the receipt and participation in DOT-assisted contracts. It is also the Owner's policy:

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

The Procurement Director (Director) has been designated as the DBE Liaison Officer (DBELO). In that capacity, the Director is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is afforded the same priority as compliance with all other legal obligations incurred by the Owner in its financial assistance agreements with the DOT.

In addition, the Owner will distribute this statement to DBE and non-DBE communities and business organizations. Distribution will be accomplished through posting on the ITC Joint Powers Authority website and included in DOT-assisted contracts.

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Louis Atwell  
Chief Executive Officer

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Date

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## **SUBPART A – GENERAL REQUIREMENTS**

### **A. Section 26.1 Objectives**

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

### **B. Section 26.3 Applicability**

Owner is a recipient of federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.

### **C. Section 26.5 Definitions**

Terms used in this DBE Program shall have the meaning set forth in 49 Code of Federal Regulation (CFR) Part 26 of this program (reference Regulations 49 CFR Part 26, Section 26.5, available at: <https://www.ecfr.gov/current/title-49/subtitle-A/part-26>).

### **D. Section 26.7 Non-discrimination Requirements**

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

### **E. Section 26.11 Record Keeping Requirements**

#### **Uniform Report of DBE Awards or Commitments and Payments: 26.11(a)**

Owner will report DBE participation to DOT as follows:

Owner will report DBE participation on a semi-annual basis (June 1 and December 1) each year, using the Uniform Report of DBE Awards/Commitments and Payments, Form 4630 (<https://www.ecfr.gov/current/title-49/subtitle-A/part-26/appendix-Appendix%20B%20to%20Part%2026>). These reports will capture DBE participation for DOT-assisted contracts awarded, active, and closed during that period as well as actual DBE attainments based on payments made to DBEs on DOT-assisted contracts closed within the respective reporting period. The June 1 report includes information from October 1 through March 31. The December 1 report includes information from April 1 through September 30.

Bidders List: 26.11(c)

Owner will obtain information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The bidders list will include the name, address, DBE or non-DBE status, age, and annual gross receipts of firms. Owner collects this information on the form provided with the solicitations to bidders and offerors. The form directs all respondents and their subcontractors to report bidders list information on the form and submit it with its bid or proposal documents.

**F. Section 26.13 Federal Financial Assistance Agreement**

Owner has signed the following assurances, applicable to all DOT-assisted contracts and financial agreements with subrecipients:

Contract Assurance: 26.13(b)

Owner will ensure that the following clause is placed in every DOT-assisted contract and subcontracts:

The contractor, subrecipient, 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 of 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**

### **A. Section 26.21 DBE Program Updates**

Owner as a federal recipient, is required to implement a DBE Program if it has received a grant of \$250,000 or more (excluding transit vehicle purchases) in FTA planning, capital, and or operating assistance in a Federal Fiscal Year. Owner will continue to carry out this program until all funds from DOT financial assistance have been expended. Owner will provide updates to DOT representing significant changes in the program.

### **B. Section 26.23 Policy Statement**

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

### **C. Section 26.25 DBE Liaison Officer**

Owner has designated the following individual as Owner's DBE Liaison Officer (DBELO):

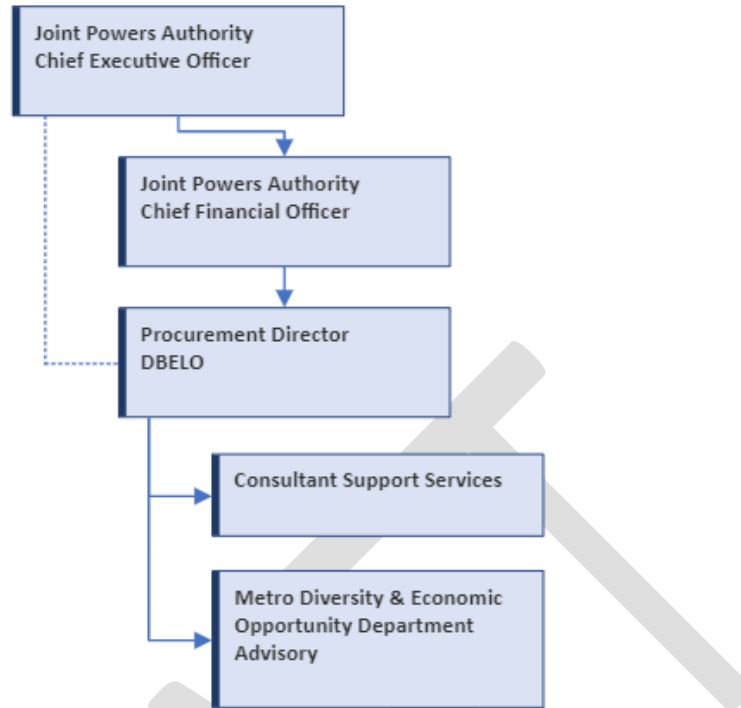
Bianca Plascencia  
Procurement Director, Inglewood Transit Connector Project  
One Manchester Boulevard  
Inglewood, CA 90301

Telephone: (310) 412-5266  
E-mail: [bplascencia@cityofinglewood.org](mailto:bplascencia@cityofinglewood.org)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that Owner complies with all provisions of 49 CFR Part 26. The DBELO reports to the Chief Financial Officer (CFO).

The DBELO is responsible for developing, implementing, monitoring and enforcing the DBE program requirements, in coordination with other appropriate officials. The DBELO has consultant resources available to assist in the administration of the DBE program in the areas of contract compliance, outreach, compliance monitoring and reporting.

An organization chart displaying the DBELO's position in the organization is found below:



**Other Support Personnel**

Personnel from the Los Angeles County Metropolitan Transportation Authority’s (Metro) Diversity & Economic Opportunity Department (DEOD) provide advisory support services to the DBELO.

**D. Section 26.27 DBE Financial Institutions**

It is the policy of Owner to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors (contractors) on DOT-assisted contracts to make use of these institutions.

At this time, Owner has not identified applicable DBE-owned financial institutions. Owner will post on its website a list of minority financial institutions which will be updated on a biannual basis. Additionally, Owner encourages contractors to use the services of minority and women owned financial institutions. A listing of minority-owned banks can be obtained from the Federal Reserve Bank website:

<https://www.federalreserve.gov/supervisionreg/minority-depository-institutions.htm>, or the Federal Deposit Insurance Corporation (FDIC), Minority Depository Institutions Program website: <https://www.fdic.gov/regulations/resources/minority/mdi.html>.

For convenience, Owner has provided the contact information of the minority-owned financial institutions in Attachment 2.



## **E. Section 26.29 Prompt Payment Mechanisms**

The Owner has adopted a prompt payment provision on all U.S. DOT-assisted contracts to facilitate timely payment to all subcontractors in accordance with regulatory mandates. Further, Owner declines to hold retainage from contractors. Pursuant to 49 CFR Part 26.29, the Owner will include the following clause in each U.S. DOT-assisted contract:

“Contractor/Consultant agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than seven (7) days for construction contracts and fifteen (15) days for consultant contracts from the receipt of each payment Contractor/Consultant receives from the Owner. Contractor/Consultant agrees further to return retainage payments to each subcontractor within seven (7) days for construction contracts and fifteen (15) days for consultant contracts after receiving payment for work satisfactorily completed and accepted, including incremental acceptances of portions of the Agreement work by the Owner. Any delay or postponement of payment from the above referenced time frame may take place only for good cause and with the Owner’s prior written approval. Any violation of these provisions shall subject the violating Contractor/Consultant or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code for construction contracts, and Section 3321 of the California Civil Code for consultant contracts. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.”

Contractor/Consultant shall incorporate this clause verbatim, set forth above, in all subcontract, broker, dealer, vendor, supplier, purchase order or other source agreements issued to both DBE and non-DBE firms.

Failure to comply with this provision without prior approval from the Owner will constitute noncompliance, which may result in the application of appropriate administrative sanctions, including, but not limited to, a penalty of two percent (2%) of the invoice amount due per month, for every month that full payment is not made.

The Owner declines to hold retainage from contractors and requires a contract clause obligating contractors to make prompt and full payment of any retainage kept by contractor to the subcontractor within 7 days after the subcontractor's work is satisfactorily completed.

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 Owner. When Owner 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.

Upon completion of subcontractor’s work, the prime must inspect the work. When Owner and prime contractor at any tier, have made an incremental acceptance of a portion of a subcontractor’s work, the work of the subcontractor covered by that acceptance is deemed to be satisfactorily completed.

This Section 26.29 applies to both DBE and non-DBE subcontractors.

## **F. Section 26.31 Directory**

Owner is a non-certifying member of the California Unified Certification Program (CUCP), which maintains the DBE directory pursuant to 49 CFR Part 26, Section 26.81 that identifies all firms that are eligible to participate as DBEs in this Program. Owner uses the DBE directory as a resource in developing overall and contract-specific DBE participation goals and conducting outreach and other programs for DBEs.

A complete listing of eligible DBE firms is reported and captured on the CUCP website. The CUCP DBE directory can be found at <https://californiaucp.dbesystem.com/> or at <https://dot.ca.gov/programs/civil-rights/dbe-search>. The CUCP directory lists the firm's name, address, phone number, fax number, on-site visit date, North American Industry Classification System (NAICS) code, ethnicity and gender of ownership, and the type of work the firm has been certified to perform as a DBE. A listing in the DBE directory does not in any way pre-qualify the identified DBE firms with respect to licensing, bond ability, competence or financial responsibility.

## **G. Section 26.33 Overconcentration**

If Owner determines that DBE firms are overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, Owner will devise appropriate measures to address this overconcentration.

## **H. Section 26.35 Business Development Program**

Owner will investigate opportunities to create Business Development policies and procedures, which will be intertwined with the Program requirements.

## **I. Section 26.39 Small Business Element**

The U.S. DOT final rule issued on January 28, 2011 added §26.39 to 49 CFR Part 26. This section required recipients (local agencies) of U.S. DOT financial assistance to include an element in their contracting requirements to facilitate competition by small businesses.

While the Owner utilizes race and gender-neutral strategies to promote and advance Small Business participation as a part of the Owner's DBE Program implementation efforts, this element of the program serves to unify in a singular location these important efforts within the Owner's DBE Program.

The Small Business element was developed 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 in direct response to regulatory requirements, 49 CFR Part 26.39 "Fostering Small Business Participation" (Federal Register/ Vol. 76, No. 19/ Friday, January 28, 2011/ Rules and Regulations).

For purposes of capturing Small Business utilization, the Owner adheres to the U.S. DOT's Small Business definition for what constitutes a Small Business. This Small Business element will include, but is not limited to the following assertive strategies:

1. 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.
2. Enhanced and targeted outreach measures, as follows:
  - a. Partnering with local Agencies within the Owner's market area to reach SBEs.
  - b. Creating face-to-face (including virtual) opportunities for SBEs to engage with Owner staff to familiarize themselves with the Owner's bid/procurement process.
  - c. Share upcoming contracting opportunities on the Owner's website or create a project-specific page to share upcoming project information and associated opportunities to promote SB success by providing them early notice and timely project updates.
  - d. Maintaining a section of the Owner's website allowing the visitor to quickly identify support and resources.
  - e. The Owner will actively implement the Small Business element to foster small business participation as a requirement of good faith implementation of the Owner's DBE program.

#### **J. Section 26.37 Monitoring and Enforcement Mechanisms**

Owner certifies that it will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. Owner will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR Part 26, Section 26.109.
2. Owner will consider similar action under its legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulations, provisions, and contract remedies available to Owner in the events of non-compliance with the DBE regulations by a participant in Owner's procurement activities.
3. Owner will also provide a monitoring and enforcement mechanism to verify 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 will be accomplished by conducting the following:

##### Kick-off Meeting:

The agenda for a contract work initiation meeting pursuant to Vol. 3, Section 2.4 shall include a presentation and discussion concerning DBE requirements and other related matters.

Owner shall be responsible for informing the Contractors of all DBE requirements as specified in this DBE Compliance Manual and elsewhere in the Contract Documents.

Executed Subcontract Agreements:

The Contractor shall submit to Owner copies of all DBE and non-DBE subcontract agreements, service agreements, supplier agreements, and/or purchase orders for all firms listed prior to award, within 14 business days after issuance of a first notice to proceed.

For firms added after contract award, Contractor shall submit subcontract agreements within 14 business days after execution of subcontract agreement, The Contractor is required to incorporate all federal contract assurances, contract flow-downs, including the prompt payment/release of retention and dispute resolution provisions in all executed subcontract agreements.

Further, the Developer shall report its failure to execute, agreements for any of the listed DBEs within 14 Business Days after signing the contract with Owner.

Failure to comply will result in administrative sanctions.

Compliance:

Owner monitors contracts on which DBE participation is claimed, including race-conscious DBE participation in response to a contract goal and race-neutral DBE participation towards a DOT funding recipient's overall goal.

Written Certification (Commercially Useful Function Review):

Owner monitors contracts to ensure that work committed to DBEs is actually performed by DBEs to which the work was committed. This includes a written certification that Owner has reviewed contracting records and monitored worksites. Owner will document, date, and sign a written confirmation of its monitoring efforts. This written certification, whether in hard copy or electronic format, shall be made available to FTA upon request.

4. Owner will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award using Owner's contractor reporting system. Reporting in the contractor system shall be prepared by the Contractor and each subcontractor (at every tier level) for which DBE participation is to be credited toward the DBE contract commitment. Reported information shall include name, address, phone, DBE status, contact person, date contract agreement signed, scope of work, anticipated first date of performance and anticipated last date of performance.

All contractors shall utilize Owner's contractor reporting system to report payments on a monthly basis through contract completion and final payment by Owner. Failure to comply may result in sanctions, liquidated damages or other remedies as specified in the contract.

Reporting payments electronically in the contractor reporting system includes the following information:

- a) Name of each DBE Subcontractor;
- b) General work assignment of each DBE Subcontractor;

- c) The specific portion of work executed by each DBE Subcontractor during the reporting period;
- d) The dollars committed to each DBE Subcontractor;
- e) The dollars paid to each DBE Subcontractor during the reporting period;
- f) The dollars paid to date for each DBE Subcontractor;
- g) The dollars paid to the DBE as a result of a change order or other cost modification;
- h) The dollars paid to date as a percentage of the total commitment to each DBE;
- i) Date of last progress payment;
- j) Invoice amount and Invoice Date;
- k) Invoice number corresponding to last payment to Subcontractor;
- l) Contractor Signature, under penalty of perjury, confirming that it has complied with all requirements of 49 CFR Part 26 and prompt payment requirements of the California Public Contract Code.

#### 5. Supplemental Reports

Contractors shall submit the following supplemental reports each month (unless otherwise instructed by Owner). Contractors may develop their own reporting format (subject to Owner's approval) to meet the following supplemental reporting requirements:

- a) Monthly DBE Report: At a minimum, the monthly DBE report shall include a monthly listing of DBE and non-DBE subcontractors with current and anticipated participation. This report shall include a current DBE attainment and commitment tallies from each subcontractor (at any tier), listing of all its subcontractors, change order activity, and outreach efforts.
- b) Forecast Chart: Time-based cumulative curve showing planned vs. actual attainment.
- c) Owner may require additional reports to ensure adequate reporting of DBE participation for design, construction, finance, operation and maintenance components of a contract.

Owner reserves the right to request supplemental reports on all contracts with DBE participation.

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

### **A. Section 26.43 Quotas**

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

### **B. Section 26.45 Project Overall Goal**

Owner sets goals and in accordance with 49 CFR Part 26, Section 26.45.

Owner will strive to meet its overall goal through race conscious and race neutral measures.

The process used by Owner to establish overall DBE goals is as follows:

The overall project DBE goal represents the amount of FTA-assisted funds Owner anticipates expending over three Federal Fiscal years. The two-step goal setting process required by the 49 CFR Part 26, Section 26.45 will be used to determine Owner's base figure. The two steps for setting an overall goal are:

1. Establish a base figure for the relative availability of DBEs
2. Determine the base figure adjustment, if necessary

The base figure is intended to be a measurement of the current ready, willing, and able DBEs as a percentage of all ready, willing and able businesses to perform Owner's anticipated FTA-assisted contracts in Owner's market area.

In order to determine the base figure adjustment, Owner will examine relevant and reliable data in the Owner's market area to determine if an adjustment to the base figure is warranted. The consideration of an adjustment is intended to account for any impact the relevant factors may have on DBEs' contracting opportunities with Owner.

A detailed methodology for development of the Overall Goal can be found on the ITC JPA website at <https://www.cityofinglewood.org/1678/Joint-Powers-Authority---ITC-Project> and is included in this document in Attachment 5.

#### **Public Participation:**

Owner will conduct a consultation with small and minority business-owned organizations for review of the proposed project overall DBE goal, comment and to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Owner's efforts to establish a level playing field for the participation of DBEs.

Owner will publish a notice of the proposed project overall DBE goal on the Owner's website announcing Owner's proposed project overall goal before submission to FTA. Owner will inform the public that the proposed goal and its rationale are available for inspection during normal business hours at its principal office for 30 days following the date of the notice and informing the public that Owner and FTA will accept comments on the goals for 30 days from the date of the notice. The notice shall include an address to which comments may be sent



and a business location where the proposed goal may be reviewed. The public notice shall be published in generally-circulated newspapers, available minority-focused media, trade publications, through electronic notifications, and will be posted on the Owner's website.

Owner will complete the consultation process prior to submitting the methodology report to FTA.

Owner will submit its project overall DBE goal for the ITC Project to the FTA for approval. Once the DBE goal is approved, it will be posted on the website for the duration of the goal period.

### **C. Section 26.49 Transit Vehicle Manufacturers Goals**

All Transit Vehicle Manufacturers (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, shall certify that it is on the FTA's certified TVMs list and has complied with the requirements of 49 CFR Section 26.49, including the establishment of an annual overall DBE participation goal that has been submitted to the FTA and either approved, or not disapproved. Each TVM shall complete and submit in its bid or proposal to Owner a TVM DBE Certification form acknowledging it has complied with this section and has an approved project overall DBE goal on file with FTA. Owner shall not include the amount of FTA assistance used in transit vehicle procurements in the base amount from which Owner's project overall goal is established. Owner will submit to FTA, within 30 days of making an award, the name of the successful TVM and the total dollar value of the contract attributable to manufacture and delivery of vehicles.

### **D. Section 26.51(d-g) Contract Goals**

#### Federal Transit Administration (FTA) Funds:

Recipients in the United States Court of Appeals for the Ninth Circuit cannot consider the use of a race and gender-conscious contract goal unless a finding of significant statistical disparity has been made for the ethnic and gender groups to be included in the application.

The Owner did not find it feasible to conduct an independent availability/disparity study; however, the Owner identified the Los Angeles County Metropolitan Transportation Authority (Metro) Disparity Study, due to similarities in market area, inclusivity of scopes utilized in the Owner's Overall Goal Methodology and the timeliness of the contracts reviewed.

Metro's Disparity Study analysis results indicated that most racial/ethnic and gender groups showed disparities on contracts where race- and gender-conscious measures were not in place. As a result, the Disparity Study recommended the use of contract DBE goals.

As Metro's Disparity Study satisfies the legal standards established by the Ninth Circuit Court of Appeals in *Western States Paving Co., Inc. v. Washington State Department of Transportation*, and guidance from the U.S. DOT/FTA concerning the implementation of race-conscious application, the Owner has elected to utilize this study as a basis for implementing race-conscious measures to meet their Overall DBE goal. The Owner will utilize contract goals, for all groups, to meet any portion of the overall goal the Owner does not project being able to meet using race-neutral means. DBE contract goals are a condition of award.

Contract goals are established so that, over the period to which the overall goal applies, contract goals will cumulatively result in meeting any portion of the Owner's overall goal that is not projected to be met through the use of race-neutral means.

The Owner will establish contract goals only on those FTA-assisted contracts that have subcontracting possibilities. The Owner need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

The Owner will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

## **E. Section 26.53 Good Faith Efforts Procedures**

### Demonstration of Good Faith Efforts: 26.53(a), (b) and (c)

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, Owner will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient Good Faith Efforts (GFE) with submission of bid.

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 49 CFR part 26.53(b)(2) before the final selection for the contract is made.

### Evaluation of Good Faith Efforts: 26.53(a) and (c)

Owner treats bidder/offerors' compliance with GFE requirements as a matter of responsiveness. Owner shall determine whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

To determine whether a bidder/offeror who failed to meet the DBE contract goal may be further considered for contract award, Owner must determine whether the efforts taken to obtain DBE participation satisfies the GFE requirement. Owner's GFE requirements are as follows:

1. If the Bidders/Proposer has not met the stated DBE goal, documentation of its GFE shall be submitted with its bid/proposal in the proper form and content prescribed in the solicitation document;
2. Bidders/Proposers who do not meet the DBE goal must, at a minimum, should undertake efforts prescribed in the solicitation document, to satisfy the requirement that the Bidder/Proposer made good faith efforts to comply with the DBE goal; and
3. Owner will make a fair and reasonable judgment whether a bidder/proposer that did not meet the established DBE goal made adequate good faith efforts to do so as specified in Appendix A to Part 26 – Guidance Concerning Good Faith Efforts, included below in Attachment 6.



In applying Owner's judgment, the Owner will consider any meaningful evidence the bidder/proposer provides to the Owner under 49 CFR §26.53(b)(2)(vi)."

Information to Be Submitted: 26.53(b)

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

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform. 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;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from each listed DBE firm that it is participating in the contract, noting the kind and amount of work as provided in the contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts must include copies of each subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract.

Administrative Reconsideration: 26.53(d)

Within two (2) working days of being informed by Owner that it is not responsive because it has not documented sufficient GFE, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following Reconsideration Official:

Lauren Jaquith, Reconsideration Official  
Padilla & Associates, acting on behalf of the Inglewood Transit Connector Joint  
Powers Authority  
211 E. City Place Drive  
Santa Ana, CA 92705  
E-mail: lpadilla@padillainc.com

The Reconsideration Official will not have played any role in the original determination that the bidder/offeror did not document sufficient GFE.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate GFE to do so. The bidder/offeror will have the opportunity to meet in person with Owner's Reconsideration Official to discuss the issue of whether it met the goal or made adequate GFE to do. Owner will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate GFE to do so.

The reconsideration decision is final and not administratively appealable to any other representative of the Owner, the DOT or any other authority.

### Substitution/Termination of a DBE 26.53(f)

Owner requires that a contractor (at any tier) not substitute/terminate a DBE subcontractor without its prior written consent. Owner will require a contractor to make GFE to replace a DBE that is substituted/terminated or has otherwise failed to complete its work on a contract with another certified DBE. This includes, but is not limited to, instances in which a 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 contractor is required to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

Owner will provide such written consent only if it agrees, for reasons stated in the concurrence document, that the contractor has good cause to terminate the DBE firm. For purposes of this section, good cause includes the following circumstances:

1. The listed DBE, after having had a reasonable opportunity, fails or refuses to execute a written contract;
2. 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 contractor;
3. The listed DBE subcontractor fails or refuses to meet the contractor's reasonable, non-discriminatory bond requirements;
4. The listed DBE becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension or debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
6. Owner has determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides Owner written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. In addition to the above, Owner may consider other documented good cause that it determines to be compelling reasons to terminate the DBE subcontractor. Good cause does not exist if the contractor seeks to terminate a DBE it relied upon to obtain the contract so that it can self-perform the work for which the DBE contractor was engaged or so that the contractor can substitute another DBE or non-DBE contractor after contract award; or
11. The contractor demonstrates to Owner, pursuant to Public Contract Code, Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.

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 Owner prior written consent to terminate or substitute a DBE firm. Unless Owner's prior written consent is provided, the contractor shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBE.

Before submitting its request to terminate and/or substitute a DBE subcontractor to Owner, the contractor must give notice in writing to the DBE subcontractor, with a copy to Owner, of its intent to request to terminate and/or substitute, and the reason for the request.

The contractor must give the DBE five days to respond to its notice advising Owner and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why Owner should not approve the contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), Owner may provide a response period shorter than five days.

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 bidders/offerors in negotiated procurements.

#### Contracts with No Contract Goal:

The post-award good faith efforts requirements of 26.53(f) apply only to contracts in which there is a contract goal.

#### Failure to Secure Prior Approval:

Enforcement: Failure by the contractor to comply with the "request to add, terminate or substitute requirements," shall constitute a material breach of contract and may result in termination of contract or result in administrative sanctions for noncompliance as set forth in the contract compliance manual.

#### Sample Bid Specification

When a contract goal is established pursuant to Owner's DBE program, the sample bid specification can be used to notify bidders/offerors of the requirements to make GFE. The forms found at Attachment 4 can be used to collect information necessary to determine whether the bidder/offeror has satisfied these requirements. The sample specification is intended for use in both non-construction and construction contracts for which a contract goal has been established. Thus, it can be included in invitations for bid for construction, in requests for proposals for architectural/engineering and other professional services, and in other covered solicitation documents. A bid specification is required only when a contract goal is established.

The sample specification is as follows:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of 16% has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each

DBE firm participating; (4) written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

## **F. Section 26.55 Counting DBE Participation**

### Counting DBE Participation:

Owner and Developers shall follow counting guidelines as provided in 49 CFR Part 26, Section 26.55 for DBE participation to count toward the achievement of the DBE commitment percentage and the value of actual dollar paid for work actually performed by DBE firms. There will be no credit for work performed by a non-DBE Contractor. DBE participation listed in the bid or proposal must comply with the provisions of this section.

### Counting guidelines are provided as follows:

- (A) When a DBE participates in a contract, Owner will count only the value of the work actually performed by the DBE toward DBE goals.
- (1) Owner will count the entire amount of that portion of a construction contract that is performed by the DBE's own forces. Including 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 purchases or leases on behalf of an upper tier Contractor or its affiliates).
  - (2) Owner will 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 Owner determines 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, Owner will 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) Owner will use the following factors in determining whether a DBE trucking company is performing a commercially useful function and the value of work to count towards the DBE goal:
- (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.
    - (a) 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.
    - (b) 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.
    - (c) 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.
    - (d) For purposes of this section, 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.
- (D) Owner will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- (1) 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.
    - (a) 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) If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies should be counted toward DBE goals.
    - (a) 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.

- (b) 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.
  - (c) 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 section if the person both owns and operates distribution equipment for the products. Any supplementation 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.
  - (d) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.
    - (1) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, Owner will 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 Owner determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Owner will not count any portion of the cost of the materials and supplies themselves toward DBE goals.
    - (2) For the purpose of determining DBE credit for Regular Dealer, brokers, packagers, manufacturers' representatives or other persons who arrange or expedite transactions, prior to award of a contract, Owner may require listed DBE firms to complete a Supplier/Broker Questionnaire to determine the value of work to count towards the DBE goal.
- (E) Owner shall determine the value for expenditures with DBEs for materials or supplies to count towards DBE goal (e.g., whether a firm is acting as a regular dealer or a transaction expeditor) on a contract-by-contract basis

Commercially Useful Function (26.55(c)(1):

DBE contractors and DBE subcontractors, at any tier, must perform a Commercially Useful Function (CUF). 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, Owner 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, 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. If a DBE does not perform or exercise responsibility for at least 30 percent (30%) 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, Owner must presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence in writing to rebut this presumption within 15 days. Owner may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

Owner has the final authority to determine, in its sole discretion, whether a DBE has performed a CUF on the contract. Owner decisions on commercially useful function are not administratively appealable.

#### Use of Joint Checks:

A Contractor must seek prior written approval from Owner for the use of joint checks with DBE firms. By a joint check, Owner means a check issued by a contractor to a DBE subcontractor and to a material supplier or another third party for items or services to be incorporated into a project.

The primary concern with allowing joint checks is that this practice may make it difficult to determine whether the DBE is performing a commercially useful function. DBE firms performing under a joint check agreement must comply with the commercially useful function requirements. Owner intends to put into place a series of safeguards listed below to prevent the use of joint checks in ways that would result in the denial of DBE credit for items obtained from supplier or that would compromise the independence of a DBE firm.

Owner will monitor the use of joint checks closely to ensure that the funds used to pay the supplier, in fact, come from the DBE's own funds and verify that all other requirements of 26.55(c)(1) are satisfied. Owner will authorize the use of joint checks based upon guidance provided by DOT.

Owner will use the following criteria to approve joint check requests at all sub-tier levels:

1. The use of joint checks is not automatic or guaranteed and requires prior written approval by Owner on a case-by-case basis.
2. Use of joint checks must be available to all subcontractors as a supportive services initiative provided by the contractor, and not exclusively between the contractor and one DBE subcontractor.
3. The request to use joint checks must be initiated by DBE company and submitted to contractor for the project.

4. The use of joint checks must be for a legitimate purpose, such as assuring that timely payment will be made for materials and supplies.
5. There can be no requirement by the contractor that the DBE is to use a specific supplier or the contractor's negotiated unit price.
6. The contractor is limited to acting solely as a guarantor and cannot be the direct source of funds used. The DBE must retain final decision-making responsibility concerning the procurement of materials and supplies, even when joint checks are involved. The relationship between the DBE and its suppliers should be established independently of and without interference by the contractor.
7. The joint check must be issued by the contractor and delivered or mailed to the DBE for presentment and payment to the DBE's suppliers. The contractor should not make payment directly to the supplier.
8. There cannot be a disproportionate ratio of the DBE's normal capacity to the size of the contract and quantity of material to be provided under the contract.
9. The DBE must be responsible for both furnishing and installing (where applicable) portions of the work. That is, the use of the joint check is to accomplish the procurement of materials needed for a particular purpose, at a particular time.
10. The DBE must be more than an extra participant in releasing the check to the material supplier.
11. Copies of the available cancelled checks or payment statements for payments made to the DBE and its suppliers must be submitted to Owner by the contractor on a monthly basis.
12. The Joint Check Agreement shall contain all information concerning the parties' obligations and consequences or remedies if the agreement is not fulfilled or a breach occurs. The Joint Check Arrangement shall not exceed the total value of supplies procured. Once the supplies are paid in full, the Joint Check Agreement/process shall terminate.
13. Even with joint checks, DBE remains responsible for all other elements of the work to be performed pursuant to 49 CFR Part 26.55(c)(1)
14. All parties/participants in the Joint Check Agreement (including the suppliers concerned) must provide full and prompt disclosure of the expected use of joint checks, and must cooperate with any audit, review, investigation or payment validation/verification request made by Owner to verify compliance with the joint check agreement process.
15. Failure to seek prior Owner written approval or to cooperate with the joint check conditions/requirements may result in loss of DBE participation credit for any supplies procured utilizing the joint check process and may be deemed in non-compliance and subject to administrative sanctions.
16. Owner's decision on approval of the use of joint checks is final and not administratively appealable to the DOT or any other authority.

## **I. Section 26.87 Removal of DBE Eligibility**

### Loss of DBE Eligibility:

When a DBE firm has been removed from eligibility as a verified DBE firm, the following actions will be taken:



1. When a Contractor has made a commitment to use a DBE firm that is not currently certified, thereby making the Contractor ineligible to receive DBE credit for work performed, the ineligible DBE firm's work does not count toward the DBE commitment. The Contractor shall meet the DBE commitment with a DBE firm that is eligible to receive DBE credit or must demonstrate it has made good faith efforts to do so.
2. When a Contractor has executed a subcontract with a DBE prior to official notification of the DBE firm's loss of eligibility, the Contractor may continue to use the firm on the contract and shall continue to receive DBE credit toward the DBE commitment for the subcontractor's work.
3. When Owner has executed a contract with a DBE firm that is certified at the time of contract execution but that is later ruled ineligible, the portion of the ineligible firm's performance on the contract before the notice of ineligibility is issued shall count toward the contract commitment.

Summary Suspension of DBE Certification:

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 the Project'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.

## **SUBPART D and E – CERTIFICATION STANDARDS AND PROCEDURES**

### **A. Certification Process**

Certification is the process by which all businesses seeking to participate in the Owner's DBE Program are determined to be legitimate DBEs as defined by 49 CFR Part 26.61-26.91, Subpart D and Appendix E, as amended and as defined by Small Business Administration at 13 CFR Part 121.

#### 1. California Unified Certification Program (§26.81)

49 CFR §26.81 requires all public agencies that receive DOT financial assistance to participate in a statewide Unified Certification Program (UCP). A UCP is a "one-stop shopping" certification program that standardizes DBE eligibility criteria and the application process and eliminates the need for a DBE to certify with multiple agencies within the State. Owner is a non-certifying member of a UCP administered by the California Unified Certification Program (CUCP). Owner will use and count for DBE credit only those DBE firms certified by the CUCP.

CUCP agencies are classified as certifying and non-certifying members. CUCP certifying members perform DBE certifications which apply to all U.S. DOT funded contracts. Certification activities include processing applications, reviewing financial and company ownership information, performing site visit and employee interviews, making certification decisions, investigating certification complaints and appeals, and maintaining a single Statewide directory of certified DBEs. A business certified as a DBE by any CUCP certifying member is automatically accepted by all U.S. DOT recipients in California.

Effective August 1, 2013, the CUCP, including Caltrans, is no longer issuing DBE Certificates as evidence of certification. Instead, a copy of a printout from the DBE Database should be sufficient proof of a firm's certification. Contractors and awarding agencies should not impose on DBE firms the burden of providing a DBE certificate in their bid packages - it is not required.

Owner will adhere to all aspects of the U.S. DOT DBE Program, except that it does not perform DBE certification activities. Owner accepts DBE certifications from all CUCP certifying members.

For certification application forms, please reference:

[HTTPS://DOT.CA.GOV/PROGRAMS/CIVIL-RIGHTS/DBE-CERTIFICATION-  
INFORMATION](https://dot.ca.gov/programs/civil-rights/dbe-certification-information)

#### 2. Scope of Work Covered by Certification (§26.71(n))

Firms must be DBE certified in the scope of work (represented by NAICS code(s)) directly applicable to their performance on a contract. If a firm wishes to participate on a contract under a scope of work for which the firm is not currently certified (i.e., if the firm wishes to add one or more NAICS codes to its certification), the firm must contact its certifying agency and submit all required documentation to demonstrate DBE ownership and control of the specific

type(s) of work the firm wishes to add to its DBE certification. The firm shall then submit proof of DBE certification in the applicable scope(s) of work to Owner, in order to receive DBE credit for performing that scope of work. For a firm's DBE participation to be counted towards a bidder's/proposer's initial DBE commitment, the firm must be DBE certified in the applicable scope of work prior to the bid/proposal due date.

### 3. Annual Affidavit of Continuing Eligibility

Each certified DBE is required to submit a written affidavit to its certifying agency once annually, on the anniversary date of the firm's initial certification, to certify that the firm continues to meet DBE eligibility criteria as defined in 49 CFR Part 26. The affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet DBE eligibility, including size, gross receipts, DBE status, ownership, or control requirements. The affidavit must also affirm that there have been no material changes to the information provided in the original certification application.

If the DBE fails to submit an affidavit, or any required supporting documentation in a timely manner, it will be deemed to have failed to cooperate with 49 CFR Part 26 and will no longer be considered a certified DBE. It is the DBE's sole responsibility to maintain its certification status with the certifying agency and the Owner.

### 4. Notification of Change in Circumstances

If a DBE's circumstances affecting the firm's DBE eligibility change at any time after the firm has been identified as a DBE participant on a contract with the Owner, the DBE must provide written notification of such change(s) to its certifying agency, the Owner and the contractor, if applicable. Such changes include, but are not limited to, business size, gross receipts, disadvantaged status, ownership, and/or control requirements. The written notification shall be provided by the DBE within thirty (30) days of occurrence of the change(s). If the DBE fails to make timely notification of such changes, it will be deemed to have failed to cooperate with 49 CFR Part 26.

### 5. Lapse in Certification Status

If a DBE subcontractor ceases to be certified at any time during the life of the contract, any participation by that DBE after the firm ceases to be certified will not count as DBE participation.

### 6. Procedures for Removal of DBE Eligibility (§26.87)

Pursuant to 49 CFR §26.87, any person may file a written complaint alleging that a currently certified DBE is ineligible to be certified as such and specifying the alleged reasons why the firm is ineligible. Because the Owner is a non-certifying member of the CUCP, it will implement the following procedures upon receipt of a written complaint challenging a firm's DBE certification status. The Owner will also protect the confidentiality of complainants' identities as required by 49 CFR §26.09(b).

- Obtain the name of the CUCP certifying member agency that issued the DBE's certification;

- Provide the complainant(s) with contact information for the CUCP certifying member agency;
- Provide the complainant(s) with a copy of 49 CFR §26.87, which outlines the DBE eligibility removal process; and
- Provide a written notification to the DBE in question, stating that the firm's DBE eligibility has been challenged and that the complainant has been referred to the DBE's certifying agency, and include a copy of 49 CFR §26.87. If the DBE in question is a current participant in the Owner's DBE Program, remind the DBE of its obligation to notify the Owner of any change in the DBE's certification status within 30 days of the change.

#### 7. Certification Denials and Appeals (§26.89)

Firms that have applied for and were denied DBE certification under one or more NAICS codes, and/or firms whose certification has been removed by a CUCP certifying member agency, may file an administrative appeal with DOT within 90 days from the date of denial, in accordance with 49 CFR §26.89. Certification decisions are not appealable.

To file a DBE certification appeal, firms should send a letter to the U.S. DOT Office of Civil Rights. The appeal should, at a minimum, include information and arguments concerning why the recipient's decision should be reversed, a copy of the denial letter, and any additional information the denied firm believes to be pertinent to the appeal. Firms must provide the name(s) and address(es) of any DOT recipient the firm is currently certified with or who has rejected its application for certification or removed the firm's eligibility within one year prior to the date of the appeal. This includes applications currently pending certification action.

All appeals should be submitted to:

U.S. Department of Transportation  
Office of Civil Rights  
External Policy & Programs Division  
400 7th Street SW – Room 5414  
Washington, DC 20590  
Phone: (202) 366-4754  
TTY: (202) 366-9696  
Fax: (202) 366-5575

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **A. Section 26.109 Information, Confidentiality, Cooperation**

Owner will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, State and local law.

The California Legislature created the Public Records Act, finding and declaring that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Government Code, §6250) The Act states public records are open to inspection at all times during the office hours of the State or local agency and every person has a right to inspect any public record, except as provided at Government Code §6253. A broad range of exceptions is provided in consideration of an individual's right to privacy or where otherwise excluded from disclosure by law.

Nothing shall be construed to require disclosure of records that are specifically identified as not to be disclosed in the Public Records Act, including, "Records Whose Disclosure Is Exempted or Prohibited," (Government Code §2654(k)). This provision identifies as exempt from disclosure under California law, "records, the disclosure of which is exempted or prohibited pursuant to federal or State law, including, but not limited to, provisions of the Evidence Code relating to privilege. Federal Regulations, including 49 CFR Part 26, Section 26.67(a)(2)(IV), state that a public entity must not release an individual's personal net worth (PNW) Statement, nor any documentation supporting it to any third party without the written consent of the submitter. Therefore, PNW Statements are protected under the DBE Program.

Notwithstanding any contrary provisions of State or local law, Owner shall not release personal financial information submitted in response to the PNW Statement requirement to a third party (other than DOT) without the written consent of the submitter.

#### **Monitoring Payments to DBEs**

Owner will require 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 Owner or DOT. This reporting requirement also extends to any certified DBE subcontractor.

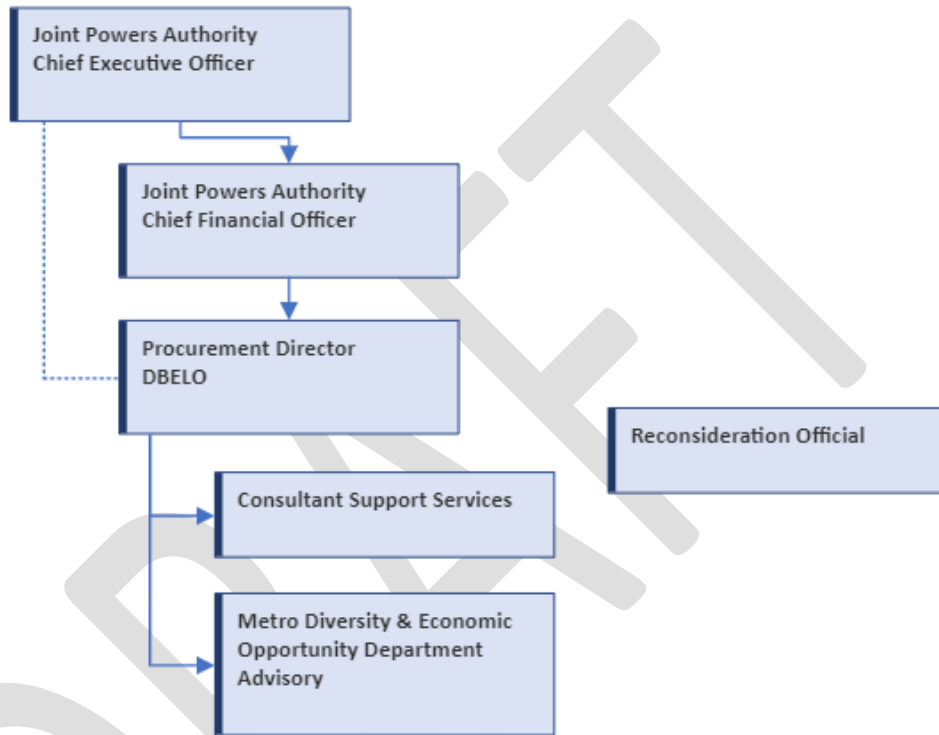
## **ATTACHMENTS**

Attachment 1	Organizational Charts
Attachment 2	Minority-Owned Financial Institutions
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	DBE Commitment Forms
Attachment 5	Goal Setting Methodology
Attachment 6	Appendix A to Part 26 - Guidance Concerning Good Faith Efforts

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# ATTACHMENT 1

## Organizational Charts



## ATTACHMENT 2

### Minority-Owned Financial Institutions

**AMERICAN CONTINENTAL BANK**

17700 Castleton Street, Suite 100  
City of Industry, CA 91748  
(626) 363-8988

**ASIAN PACIFIC NATIONAL BANK**

333 W. Valley Boulevard  
San Gabriel, CA 91776  
(626) 457-4888

**BANK OF THE ORIENT**

233 Sansome Street  
San Francisco, CA 94104  
(415) 338-0831

**BROADWAY FEDERAL BANK**

5055 Wilshire Blvd., Suite 500  
Los Angeles, CA 90036  
(323) 935-2288

**CALIFORNIA INTERNATIONAL BANK**

8632 E. Valley Blvd., Suite A  
Rosemead, CA 91770  
(626) 872-0562

**CATHAY BANK**

777 N. Broadway  
Los Angeles, CA 90012  
(213) 625-4791

**COMMONWEALTH BUSINESS BANK**

3435 Wilshire Blvd., Suite 700  
Los Angeles, CA 90010  
(323) 988-3000

**CTBC BANK**

801 S. Figueroa St., Suite 2300  
Los Angeles, CA 90017  
(310) 791-2828

**EASTERN INTERNATIONAL BANK**

688 New High Street  
Los Angeles, CA 90012  
(213) 687-7228

**FIRST CHOICE BANK**

17785 Center Court, Suite 750  
Cerritos, CA 90703  
(562) 345-9092

**FIRST GENERAL BANK**

19036 Colima Road  
Rowland Heights, CA 91748  
(626) 820-1234

**AMERICAN PLUS BANK**

630 W. Duarte Road  
Arcadia, CA 91007  
(626) 566-2711

**BANK OF HOPE**

3200 Wilshire Blvd., Suite 1400  
Los Angeles, CA 90010  
(213) 639-1700

**BANK OF WHITTIER, N.A.**

15141 East Whittier Boulevard  
Whittier, CA 90603-2198  
(562) 945-7553

**CALIFORNIA BUSINESS BANK**

3200 EL Camino Real, Suite 220  
Irvine, CA 92602  
(562) 945-7553

**CALIFORNIA PACIFIC BANK**

100 Montgomery Street, Suite 2250  
San Francisco, CA 94104  
(415) 399-8000

**COMMERCIAL BANK OF CALIFORNIA**

19752 MacArthur Boulevard  
Irvine, CA 92612  
(714) 431-7000

**COMMUNITY COMMERCE BANK**

2323 S. Atlantic Boulevard  
Monterey Park, CA 91754  
(323) 268-6100

**EAST WEST BANK**

135 N. Los Robles Ave., 7<sup>th</sup> Floor  
Pasadena, CA 91101  
(626) 768-6000

**EVERTRUST BANK**

2 North Lake Ave., Suite 110  
Pasadena, CA 91101  
(626) 993-3800

**FIRST COMMERCIAL BANK**

200 E. Main Street  
Alhambra, CA 91801  
(626) 300-6000

**GATEWAY BANK FSB**

360 8<sup>th</sup> Street  
Oakland, CA 94607  
(510) 268-8108



**HANMI BANK**

3660 Wilshire Blvd., PH-A  
Los Angeles, CA 90010  
(213) 382-2200

**COIPOLITAN BANK**

250 East 18<sup>th</sup> Street  
Oakland, CA 94606  
(510) 834-1933

**NEW OMNI BANK, N.A.**

1235 South Garfield Avenue  
Alhambra, CA 91801  
(626) 284-5555

**PACIFIC ALLIANCE BANK**

8400 E. Valley Boulevard  
Rosemead, CA 91770  
(626) 773-8888

**PERFERRED BANK**

601 S. Figueroa St., 29<sup>th</sup> Floor  
Los Angeles, CA 90017  
(213) 891-1188

**UNITED PACIFIC BANK**

1630 S. Azusa Avenue  
City of Industry, CA 91748  
(626) 965-6230

**US COI BANK**

9866 Garden Grove Blvd.  
Garden Grove, CA 92844  
(714) 620-8888

**MEGA BANK**

245 West Valley Blvd.  
San Gabriel, CA 91776-3737  
(626) 282-3000

**MISSION NATIONAL BANK**

3060 16th Street  
San Francisco, CA 94103  
(415) 826-3627

**OPEN BANK**

1000 Wilshire Blvd., Suite 500  
Los Angeles, CA 90017  
(213) 892-9999

**PACIFIC CITY BANK**

3701 Wilshire Boulevard #900  
Los Angeles, CA 90010-2871  
(213) 210-2000

**ROYAL BUSINESS BANK**

1055 Wilshire Blvd., Suite 1200  
Los Angeles, CA 90017  
(213) 627-9888

**UNIVERSAL BANK**

3455 Nogales St., 2<sup>nd</sup> Floor  
West Covina, CA 91792  
(626) 854-2818

Source: <https://www.federalreserve.gov/supervisionreg/minority-depository-institutions.htm>

## **ATTACHMENT 3**

### **Monitoring and Enforcement Mechanisms**

The following sections contain the standards, policies, practices and procedures Owner uses to assess whether a contractor is in compliance with regulatory and contract requirements applicable to DOT-assisted projects:

#### **(1) REGULATORY PROVISIONS**

Including but not limited to:

- A. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises Department of Transportation Financial Assistance Programs; particularly, Subpart F, Compliance and Enforcement
- B. 49 CFR Part 29 – Government-wide Debarment and Suspension (Non-Procurement) and Government-wide Requirements for Drug-Free Workplace.
- C. 49 CFR Part 31 – Program Fraud Civil Remedies
- D. 13 CFR Part 121 – Small Business Size Standards

#### **(2) CONTRACT REQUIREMENTS AND REMEDIES**

Contract requirements and remedies are provided in this DBE program and by administrative policies, practices and procedures requirements in each contract. All contractors, as a condition of participation in any DOT-assisted contract, shall agree to the terms of this DBE program, and shall incorporate the DBE program and the DBE administrative policies, practices and procedures requirements into their contracts and subcontracts at all tiers.

##### **B. AUDITING AND INSPECTION**

Owner reserves the right to audit the records and inspect the facilities of its Contractors and any Subcontractors of any tier for the purpose of verifying the DBE participation and / or adherence to the DBE Program requirements. Contractors and Subcontractors shall permit access to their records at the request of Owner. Notice is hereby given that state, local and federal authorities may initiate or cooperate with Owner in auditing and inspecting such records

##### **C. PROCUREMENT PROVISIONS**

Owner's procurement department requires selected policies, practices and procedures to be defined in contract provisions to provide Owner with monitoring and enforcement alternatives.

#### **(3) FINDINGS OF NON-COMPLIANCE AND ADMINISTRATIVE SANCTIONS**

Contractor/Consultants found not to be compliant with any part of the DBE program requirements shall be notified of Owner's finding of Non-Compliance, in writing through a Cure Notice. The Cure Notice shall cite the DBE program requirement under which the contractor is non-compliant, state the date of the findings and the grounds on which the finding was made, specify the required course of action for remedy, and state the enforcement mechanisms that shall be taken if the areas of non-compliance are not fully remedied.

Contractor/Consultant will be given ten (10) working days from the date of the Cure Notice to remedy or to: (1) File a written appeal accompanied with supporting documentation; and/or (2) Request a hearing with the Owner to reconsider the Owner's DBE determination.

Failure to respond within the ten (10) working day period will constitute a waiver of Contractor/Consultant's right to appeal. If Contractor/Consultant files an appeal, the Owner, must issue a written determination and/or set a hearing date within ten (10) working days of receipt of the written appeal, as applicable. A final Determination will be issued within ten (10) working days after the hearing, as applicable.

If after review of Contractor/Consultant's appeal, the Owner decides to uphold the decision to impose DBE administrative remedies on Contractor/Consultant, the written determination must state the specific remedy(ies) to be imposed.

Failure to comply with the Cure Notice and/or to remedy the identified DBE non-compliance matter(s) is a material breach of the Agreement and the Owner may choose to impose remedies including, but not limited to:

A. MANDATORY DBE TRAINING

Attendance at a DBE Training for the owners, partners, officers, and/or staff members of each firm responsible for the management of DBE businesses and for the preparation of DBE-related records and reports. Contractors shall be responsible for all travel, meals, lodging and similar expenses. The Owner will conduct the program.

B. ASSESSMENT FOR NON-COMPLIANCE

Contract payments may be reduced or withheld, or Owner may impose monetary payment by the Contractor to Owner, on the terms and conditions specified in the contract with the Contractor.

C. SUSPENSION OF PAYMENT

Owner may suspend payment to the contractor of any monies held by it, as retained in the contract.

D. TERMINATION OF THE CONTRACT FOR DEFAULT

Owner may terminate the contract for default.

E. SUSPENSION AND DEBARMENT (49 CFR Part 29)

Information concerning the existence of a cause for suspension or debarment shall be reported, investigated and referred, when appropriate, to the proper official for consideration. After consideration, the official will issue the appropriate notice of proposed action.

### **(3) ENFORCEMENT MECHANISMS**

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

- A. Suspension or debarment proceedings pursuant to 49 CFR Part 26
- B. Enforcement action pursuant to 49 CFR part 31
- C. Prosecution pursuant to 18 USC 1001.

### **(4) RESOLUTION OF DISPUTES BETWEEN CONTRACTOR AND SUBCONTRACTORS**

Disputes with DBE Contractors, which cannot be settled by discussions between the parties involved, shall be settled as described herein. Developer shall notify Owner of such dispute within 10 days of failure to resolve through the Written Cure Notice Process described above.

These provisions shall not apply to disputes between the Contractor and Owner. These provisions do not alter in any way or waive compliance with any provisions in the Contract Documents.

The Contractor and Subcontractors shall include a dispute resolution provision in their contract. Both parties shall agree to proceed through informal meetings, mediation, or arbitration, or any combination thereof. Dispute submittals shall include terms and timeframes and the service or assistance to be employed.

- A. Informal Meetings

Owner will coordinate informal meeting requests to assist in the resolution of disputes between contractor and subcontractor. The assigned Owner representative will conduct informal meetings with parties in dispute. All parties must agree to the procedure.

B. Mediation

The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third-party organizations. Submission to informal mediation is voluntary by the parties, non-binding, and offers advisory opinions. Owner shall have no obligation to attend or participate in the mediation.

C. Arbitration

Should the parties fail to resolve any DBE related dispute arising out of or related to the contract via informal meetings or mediation, the parties are contractually obligated to submit the claims for arbitration within 120 days after either party requesting arbitration of the dispute. The decision of the arbitrator shall be binding upon all parties to the arbitration. However, the arbitrator's findings and decision do not in any way relieve Developer of its obligation to meet the DBE commitments. All arbitration is to be conducted in a manner consistent with Section 1020 et seq. of the Public Contract Code and Section 1296 of the Code of Civil Procedure. Owner shall have no obligation to attend or participate in the mediation.

Should the parties proceed to arbitration, moneys due or claimed to be due, if any, shall be placed in a trust account. Such funds shall be released to the appropriate party within five working business days of a determination being issued by the arbitrator.

Available mediation and arbitration services include:

The American Arbitration Association (213) 362-1900  
Dispute Resolution Center (734) 794-2125  
Judicial Arbitration and Mediation Services (800) 352-5267

The Contractor shall incorporate this Section into each DBE subcontract related to work arising under the subcontract and shall not incorporate by reference.

Only when resolution of DBE disputes attempted through informal meetings has failed may Developer formally request substitution of a DBE Contractor, as approved by Owner.

**ATTACHMENT 4**

**DBE Commitment Forms**

Documents are forthcoming.

DRAFT

**ATTACHMENT 5**

**Goal Setting Methodology**



**Metro™**

**The Inglewood Transit  
Connector Joint Powers  
Authority's**

Federal Transit Administration (FTA) - Overall DBE  
Goal Setting Methodology

**for**

**FFY 2022/24  
Goal Period**

*Submitted in fulfillment of:*

***Section 1101 of the Transportation Equity Act for the 21<sup>st</sup> Century  
49 Code of Federal Regulations Part 26***

This analysis is prepared exclusively for the Owner; it is non-transferable and is not to be duplicated.

<p style="text-align:center"><b>THE JOINT POWERS AUTHORITY</b></p> <hr/> <p style="text-align:center"><b>DISADVANTAGED BUSINESS ENTERPRISE PROPOSED OVERALL GOAL AND METHODOLOGY FOR Federal Fiscal Year Period 2022/24 (October 1, 2021 to September 30, 2024)</b></p>
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**I. INTRODUCTION**

The City of Inglewood and the Los Angeles Metropolitan Transportation Authority have entered into a Joint Powers Agreement (JPA), a single purpose governmental entity tasked with owning, managing, and overseeing the design, construction, financing, operation, and maintenance of the Inglewood Transit Connector (ITC) Project.

The ITC JPA (Owner), and its Administrator, the City of Inglewood (COI), which is leading procurement efforts for a Design-Build-Finance-Operate-and-Maintenance Contractor, have established a Disadvantaged Business Enterprise (DBE) Overall Goal for DBE participation as a condition of receiving federal assistance, pursuant to Moving Ahead for Progress in the 21<sup>st</sup> Century; 49 CFR Part 26 “Participation by Disadvantaged Business Enterprises in U.S. Department of Transportation Programs” and the Federal Transit Administration (FTA) Master Funding Agreement.

**II. BACKGROUND**

Effective March 3, 2010, the United States Department of Transportation (“DOT”) issued a final rule affecting the implementation and management of its DBE program. The final rule requires submission of a goal-setting methodology on a three-year cycle. Pursuant to this final rule, the Owner is still required to conduct an annual review to account for changes that may warrant an adjustment to the overall goal or make an adjustment based on changed circumstances (i.e. significant change in the legal standards governing the DBE program, new contracting opportunities presented by the availability of new or different grant opportunities, etc.) to ensure the goal and program as a whole are narrowly tailored throughout the goal period. Under the three-year schedule, the Owner’s proposed DBE goal and methodology submission includes FTA-funded contracting activities for Federal Fiscal Years (FFY) 2022/24.

*The Owner herein presents its Proposed Overall DBE Goal Methodology for FFY 2022/24 goal period, which resulted in a 16% Overall DBE Goal.*

### **III. FTA-ASSISTED CONTRACTING PROGRAM FOR FFY 2022/24**

**Table 1** represents the Owner's U.S. DOT-assisted (FTA) defined contracting program, which includes primary scope areas and corresponding values anticipated to be procured as a part of the ITC Project. The project has viable subcontracting possibilities and corresponding availability of DBEs, a required criterion for Overall Goal consideration, and is anticipated to be awarded within the respective goal period (the infrastructure portion of ITC Project is the only portion of the project anticipated to be procured within the goal period). The Owner considered these scope areas in preparing its Proposed Overall DBE Goal-Setting Methodology.

**Table 1**

Infrastructure Project Cost - B1: Project Cost Classification for Infrastructure Work	
Project Management and Coordination	\$23,025,738
Field Offices and Sheds	\$11,457,402
Temporary Scaffolding and Platforms	\$7,886,313
Selective Site Demolition	\$2,784,344
Structure Demolition	\$1,832,467
Selective Demolition	\$1,956,852
Underground Storage Tank Removal	\$12,354
Structural Cast-In-Place Concrete Forming	\$36,920,254
Plain Steel Reinforcement Bars	\$28,708,333
Galvanized Reinforcement Steel Bars	\$6,624,228
Stressed Tendon Reinforcing	\$1,036,852
Cast-In-Place Concrete	\$9,547,494
Heavyweight Structural Concrete	\$16,926,792
Concrete Finishing	\$792,430
Tooled Concrete Finishing	\$5,264,924
Precast Structural Pre-tensioned Concrete	\$1,172,778
Concrete Unit Masonry	\$1,683,253
Stone Masonry	\$912,000
Structural Steel For Buildings	\$25,332,520
Metal Grating Stairs	\$49,929
Industrial Railings	\$955,215
Bar Gratings	\$7,195,052
Ornamental Railings	\$149,214
Sheet Waterproofing	\$72,202
Roof and Deck Insulation	\$932,605
Metal Wall Panels	\$4,596,909



Soffit	\$2,488,653
Thermoplastic-Polyolefin Roofing	\$2,279,047
Flexible Flashing	\$188,242
Manufactured Gravel Stops and Fasciae	\$728,388
Elastomeric Joint Sealants	\$262,343
Metal Doors and Frames	\$347,943
Overhead Coiling Doors	\$87,087
All-Glass Entrances and Storefronts	\$827,840
Aluminum-Framed Storefronts	\$283,580
Curtain Wall and Glazed Assemblies	\$16,794,034
Maintenance of Finishes	\$559,542
Non-Structural Metal Framing	\$123,636
Gypsum Board	\$210,679
Thin-Set Ceramic Tiling	\$92,909
Mortar-Bed Quarry Tiling	\$1,975,463
Acoustical Tile Ceilings	\$275,086
Acoustical Metal Pan Ceilings	\$959,041
Resilient Tile Flooring	\$125,485
Acoustic Blanket Insulation	\$75,930
Exterior Painting	\$108,536
Interior Painting	\$382,855
Common Work Results for Specialties	\$202,530
Chalkboards	\$50,664
Signage	\$656,027
Post and Panel/Pylon Signage	\$986,227
Traffic Signage	\$30,681
Toilet, Bath, and Laundry Accessories	\$120,911
Common Work Results for Equipment	\$59,726
Parking Ticket Dispensers	\$73,650
Loading Dock Equipment	\$25,640
Commercial Laundry and Dry Cleaning Equipment	\$50,409
Residential Appliances	\$9,656
Facility Solid Waste Handling Equipment	\$66,013
Hardwood Casework	\$138,411
Waste Receptacles	\$86,145
Interior Public Space Furnishings	\$9,617
Trash and Litter Receptacles	\$18,224
Facility Protection	\$206,247

Electric Traction Passenger Elevators	\$14,885,491
Escalators	\$11,545,380
Vehicle Lifts	\$482,044
Fire-Suppression Sprinkler Systems	\$1,656,726
Common Work Results for Plumbing	\$236,794
General-Duty Valves for Plumbing Piping	\$7,917
Facility Water Distribution Piping	\$642,324
Domestic Water Piping Specialties	\$96,265
Sanitary Waste and Vent Piping	\$1,266,663
Sanitary Waste Piping Specialties	\$59,637
Facility Storm Drains	\$544,310
Sump Pumps	\$89,372
General Service Packages Air Compressors and Receivers	\$159,667
Commercial Gas Domestic Water Heaters	\$100,468
Commercial Water Closets, Urinals, And Bidets	\$498,773
Eyewash Equipment	\$44,382
Drinking Fountains and Water Coolers	\$31,590
Pneumatic Control System For HVAC	\$1,087,573
Air Curtains	\$128,871
Gas-Fired Radiant Heaters	\$135,524
Packages Outdoor HVAC Equipment	\$3,858,248
Air-Source Unitary Heat Pumps	\$188,071
Selective Demolition For Electrical	\$165,965
Medium-Voltage Cables	\$548,781
Low-Voltage Electrical Power Conductors And Cables	\$165,577
Grounding And Bonding For Electrical Systems	\$638,242
Raceway And Boxes For Electrical Systems	\$1,205,400
Pad-Mounted, Liquid-Filled, Medium-Voltage Transformers	\$767,833
Medium-Voltage Switchgear	\$664,233
Low-Voltage Distribution Transformers	\$172,549
Switchboards	\$301,201
Panelboards	\$419,480
Motor-Control Centers	\$94,444
Wiring Devices	\$418,531

Engine Generators	\$658,110
Automatic Transfer Switches	\$55,625
Interior Lighting Fixtures, Lamps, And Ballasts	\$1,286,821
LED Exterior Lighting	\$1,163,556
Operation and Maintenance of Communications Systems	\$49,467
Communications Cabinets, Racks, Frames And Enclosures	\$21,438
Communications Horizontal Cabling Applications	\$1,199,496
Data Communications Network Equipment	\$271,286
Sound Masking Systems	\$151,358
Integrated Credential Readers And Field Entry Management	\$276,420
Video Surveillance Systems Infrastructure	\$495,635
Fire Sensors And Detectors	\$614,184
Selective Tree And Shrub Removal	\$217,132
Grading	\$13,579,224
Excavation	\$229,653
Dewatering	\$158,228
Fill - Backfill	\$2,129,689
Drilled Caissons	\$52,206,066
Schedules for Exterior Improvements	\$1,766,700
Base Courses	\$1,143,773
Asphaltic Base Courses	\$1,679,715
Asphalt Paving	\$4,319,351
Precast Concrete Unit Paving	\$1,876,584
Curbs And Gutters	\$785,696
Pavement Markings	\$135,045
Chain Link Fences And Gates	\$156,396
Segmental Retaining Walls	\$375,228
Site Seating And Tables	\$111,168
Underground Sprinklers	\$653,228
Soil Preparation	\$792,978
Seeding	\$57,408
Ground Covers	\$516,872
Trees	\$144,354
Planting Accessories	\$833,389

Public Water Utility Distribution Piping	\$2,057,524
Electrical Underground Ducts And Manholes	\$3,653,494
Roadway Signaling and Control Equipment	\$2,159,335
Oil and Grease Separation and Removal Equipment	\$215,749
Engineering	\$29,316,664
Professional Liability Insurance	\$1,605,301
Surveys, Testing & Inspections	\$3,664,583
General Liability Insurance	\$3,734,893
Mobilization/Demobilization	\$7,329,166
Builder's Risk Insurance	\$1,757,597
Performance & Payment Bonds	\$2,411,865
Permitting	\$2,196,996
General Contractor OH&P	\$20,923,768
Operating System Project Cost - Attachment A2/C-1/C-2	
OS Capital - Guideway Equipment	\$26,419,366
OS Capital - Station Equipment	\$7,500,327
OS Capital - Fare Collection Equipment	\$0
OS Capital - Maintenance and Storage Facility Equipment	\$15,996,772
OS Capital - Power Distribution System Equipment	\$21,217,682
OS Capital - Automatic Train Control Equipment	\$21,507,265
OS Capital - Communications Equipment	\$7,147,059
OS Capital - Other OS Equipment or Facilities	\$4,939,738
OS Capital - OS Verification and Acceptance	\$9,229,416
OS Capital - OS Supplier's Project Management and Administration	\$65,124,020
Infrastructure Operations & Maintenance Attachments D-1/D-2	
Infrastructure O&M_Stations - Janitorial	\$9,328,560
Infrastructure O&M_Stations - Pest Control	\$880,050
Infrastructure O&M_Stations - Electrical	\$21,916,200
Infrastructure O&M_Stations - Utility - Water/Wastewater	\$267,660

Infrastructure O&M_Stations - General Building Maintenance	\$5,280,330
Infrastructure O&M_Stations - Escalators	\$15,897,780
Infrastructure O&M_Stations - Elevators	\$10,901,340
Infrastructure O&M_MSF - Janitorial	\$4,708,140
Infrastructure O&M_MSF - Pest Control	\$757,050
Infrastructure O&M_MSF - Electrical	\$18,144,180
Infrastructure O&M_MSF - Water/Watershed	\$1,133,730
Infrastructure O&M_MSF - General Building Maintenance	\$4,542,210
Infrastructure O&M_MSF - Elevators	\$1,362,660
Infrastructure O&M_Misc. - Landscaping	\$1,301,160
Infrastructure O&M_Misc. - Parking Pavement	\$3,690,540
Infrastructure O&M_Misc. - IT Equipment	\$2,271,120
Infrastructure O&M_Misc. - Vehicles/Leases	\$999,300
Infrastructure O&M_Misc. - Waste Disposal	\$272,520
Infrastructure O&M_Misc. - Security Guards and Patrol Service	\$29,842,380
Infrastructure O&M_Guideway	\$4,731,480
Infrastructure O&M_Core Staff	\$31,492,710
Operating System (OS) Operations & Maintenance Attachments D-1/D-2	
Operating System O&M_Labor - Operations	\$47,244,979
Operating System O&M_Labor - Maintenance & other O&M Support	\$194,885,539
Operating System O&M_Materials	\$66,324,682
Operating System O&M_Uilities and Other Engineering Support	\$36,334,800
Future Capital Costs for Infrastructure - Attachment E-1	
Future Capital Costs_Stations - HVAC Replacement	\$137,643
Future Capital Costs_Stations - Escalators Overhaul	\$3,441,075
Future Capital Costs_Stations - Elevators Overhaul	\$1,101,144
Future Capital Costs_MSF - HVAC Replacement	\$458,810

Future Capital Costs_MSF - Elevators Overhaul	\$183,524
Future Capital Costs_Misc. - Pavement Rehab	\$3,914,223

<b>Total</b>	<b>\$1,147,071,249.10</b>
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#### IV. GOAL METHODOLOGY

##### Step 1: Determination of a Base Figure (26.45)<sup>1</sup>

To establish the Owner's Base Figure of the relative availability of DBEs to all comparable firms (DBE and Non-DBEs) available to propose on the Owner's FFY 2022/24 FTA-assisted contracting opportunities projected to be solicited during the respective goal period, the Owner followed one of the five prescribed federal goal-setting methodologies in accordance with 49 CFR Part 26 regulations. This was accomplished by accessing the **California Unified Certification Program (CUCP) Directory of Certified DBE Firms** and the **2020 U.S. Census Bureau County Business Patterns (CBP) Database**. Comparisons were made within the Owner's market area (defined as Los Angeles County) and by specified industries and types of businesses identified in Table 2 (refer to Exhibit A). The Owner's local market was determined by identifying where the substantial majority of the Owner's contracting dollars are anticipated to be expended and/or where the substantial majority of contractors' and subcontractors' bids or quotes are anticipated to be received.

The Owner made a concerted effort to ensure that the scope of businesses included in the numerator was as close as possible to the scope included in the denominator. For corresponding detail of all work category classifications grouped, refer to Table 3 below.

**For the numerator:** *California UCP DBE Database of Certified Firms*  
**For the denominator:** *2020 U.S. Census Bureau's Business Pattern Database (CBP)*

To determine the relative availability of DBEs, the Owner divided the numerator<sup>2</sup> representing the ratio of ready, willing and able DBE firms, by the denominator<sup>3</sup> representing all firms (DBE and Non-DBEs) available in each work category, see below:

<sup>1</sup> 26.45 represents Title 49 CFR Part 26 regulatory goal setting methodology reference.

<sup>2</sup> Numerator represents all DBE firms established within the City's market area.

<sup>3</sup> Denominator represents all comparable available established firms within the City's market area.

*Number of Ready, Willing and Able DBEs* = DBE Availability %  
*Number of All Available Firms*  
**(Including DBEs and Non-DBEs)**

To determine the appropriate weighting percent by NAICS, the estimated dollar value by NAICS was divided by the total estimated federal dollars for FFY 2022/24. The weighting percent by NAICS was then multiplied by the DBE Availability % to determine the Base Figure % by NAICS, see below:

**Weighting X DBE Availability % = Base Figure % by NAICS**

To determine the Step 1 Base Figure, the Owner added together all Base Figure % by NAICS in Table 3 below, resulting in a 16.16% to produce a Step 1 Base Figure of 16 percent (rounded).

**Total Dollars (A): \$1,147,071,249.10**

**Table 3**

		B	C	D	E	F	G*
NAICS	Description	Value	Weight (B/A)	# of DBE's	# of All Items Census	DBE Availability (D/E)	Base Figure (CxF)
115112	Soil Preparation, Planting, and Cultivating	\$898,219.18	0.08%	3	10	30.00%	0.02%
213112	Support Activities for Oil and Gas Operations	\$10,787.45	0.00%	1	24	4.17%	0.00%
221122	Electric Power Distribution	\$1,647,001.89	0.14%	3	72	4.17%	0.00%
221310	Water Supply and Irrigation Systems	\$645,026.60	0.06%	15	70	21.43%	0.01%
236220	Commercial and Institutional Building Construction	\$0.00	0.00%	200	930	21.51%	0.00%
237110	Water and Sewer Line and Related Structures Construction	\$3,180,988.10	0.28%	100	77	100.00%	0.28%
237120	Oil and Gas Pipeline and Related Structures Construction	\$42,199.60	0.00%	18	20	90.00%	0.00%
237130	Power and Communication Line and Related Structures Construction	\$913,373.50	0.08%	40	50	80.00%	0.06%
237310	Highway, Street, and Bridge Construction	\$2,866,541.45	0.25%	221	76	100.00%	0.25%
237990	Other Heavy and Civil Engineering Construction	\$13,550,509.86	1.18%	144	43	100.00%	1.18%

238110	Poured Concrete Foundation and Structure Contractors	\$20,898,201.98	1.82%	93	253	36.76%	0.67%
238120	Structural Steel and Precast Concrete Contractors	\$40,559,562.13	3.54%	72	127	56.69%	2.01%
238130	Framing Contractors	\$469,734.03	0.04%	25	160	15.63%	0.01%
238140	Masonry Contractors	\$1,778,943.44	0.16%	32	223	14.35%	0.02%
238150	Glass and Glazing Contractors	\$1,849,173.15	0.16%	14	183	7.65%	0.01%
238160	Roofing Contractors	\$1,605,826.00	0.14%	13	430	3.02%	0.00%
238170	Siding Contractors	\$2,381,341.10	0.21%	1	52	1.92%	0.00%
238190	Other Foundation, Structure, and Building Exterior Contractors	\$37,970,478.45	3.31%	49	151	32.45%	1.07%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$42,837,471.58	3.73%	154	2147	7.17%	0.27%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$3,941,037.64	0.34%	46	2523	1.82%	0.01%
238290	Other Building Equipment Contractors	\$38,775,062.91	3.38%	16	185	8.65%	0.29%
238310	Drywall and Insulation Contractors	\$893,168.63	0.08%	22	357	6.16%	0.00%
238320	Painting and Wall Covering Contractors	\$381,627.15	0.03%	43	793	5.42%	0.00%
238330	Flooring Contractors	\$328,710.15	0.03%	12	396	3.03%	0.00%
238340	Tile and Terrazzo Contractors	\$980,496.65	0.09%	10	276	3.62%	0.00%
238350	Finish Carpentry Contractors	\$165,462.20	0.01%	21	542	3.87%	0.00%
238390	Other Building Finishing Contractors	\$44,428.92	0.00%	27	197	13.71%	0.00%
238910	Site Preparation Contractors	\$22,552,053.35	1.97%	131	359	36.49%	0.72%
238990	All Other Specialty Trade Contractors	\$29,530,398.07	2.57%	156	577	27.04%	0.69%
321211	Hardwood Veneer and Plywood Manufacturing	\$69,205.50	0.01%	0	8	0.00%	0.00%
324121	Asphalt Paving Mixture and Block Manufacturing	\$1,782,959.20	0.16%	1	22	4.55%	0.01%
327211	Flat Glass Manufacturing	\$5,521,880.20	0.48%	0	4	0.00%	0.00%



327320	Ready-Mix Concrete Manufacturing	\$34,532,793.58	3.01%	3	58	5.17%	0.16%
327331	Concrete Block and Brick Manufacturing	\$355,939.30	0.03%	3	7	42.86%	0.00%
327390	Other Concrete Product Manufacturing	\$13,234,191.20	1.15%	6	15	40.00%	0.46%
327420	Gypsum Product Manufacturing	\$79,333.07	0.01%	0	5	0.00%	0.00%
332312	Fabricated Structural Metal Manufacturing	\$12,288,788.60	1.07%	18	51	35.29%	0.38%
332321	Metal Window and Door Manufacturing	\$6,330,708.57	0.55%	4	39	10.26%	0.06%
332322	Sheet Metal Work Manufacturing	\$2,133,897.42	0.19%	13	161	8.07%	0.02%
332323	Ornamental and Architectural Metal Work Manufacturing	\$2,376,046.40	0.21%	16	83	19.28%	0.04%
332439	Other Metal Container Manufacturing	\$45,922.36	0.00%	1	8	12.50%	0.00%
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing	\$1,220,577.80	0.11%	9	99	9.09%	0.01%
333318	Other Commercial and Service Industry Machinery Manufacturing	\$237,005.65	0.02%	1	43	2.33%	0.00%
333413	Industrial and Commercial Fan and Blower and Air Purification Equipment Manufacturing	\$109,540.35	0.01%	0	9	0.00%	0.00%
333414	Heating Equipment (except Warm Air Furnaces) Manufacturing	\$47,198.40	0.00%	0	7	0.00%	0.00%
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing	\$28,210.65	0.00%	1	33	3.03%	0.00%
333912	Air and Gas Compressor Manufacturing	\$158,162.20	0.01%	0	6	0.00%	0.00%
333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing	\$75,966.20	0.01%	0	12	0.00%	0.00%

333921	Elevator and Moving Stairway Manufacturing	\$23,759,345.72	2.07%	2	4	50.00%	1.04%
334118	Computer Terminal and Other Computer Peripheral Equipment Manufacturing	\$66,312.90	0.01%	0	19	0.00%	0.00%
334310	Audio and Video Equipment Manufacturing	\$227,212.90	0.02%	2	39	5.13%	0.00%
334519	Other Measuring and Controlling Device Manufacturing	\$184,255.20	0.02%	1	32	3.13%	0.00%
335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing	\$122,518.85	0.01%	2	49	4.08%	0.00%
335129	Other Lighting Equipment Manufacturing	\$109,650.64	0.01%	2	12	16.67%	0.00%
335311	Power, Distribution, and Specialty Transformer Manufacturing	\$726,338.59	0.06%	2	9	22.22%	0.01%
335312	Motor and Generator Manufacturing	\$197,433.00	0.02%	0	16	0.00%	0.00%
335313	Switchgear and Switchboard Apparatus Manufacturing	\$227,925.90	0.02%	4	11	36.36%	0.01%
335314	Relay and Industrial Control Manufacturing	\$18,888.80	0.00%	2	15	13.33%	0.00%
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing	\$8,343.75	0.00%	10	30	33.33%	0.00%
337215	Showcase, Partition, Shelving, and Locker Manufacturing	\$22,660.15	0.00%	2	48	4.17%	0.00%
339950	Sign Manufacturing	\$1,254,701.25	0.11%	14	136	10.29%	0.01%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	\$399,720.00	0.03%	2	238	0.84%	0.00%
423210	Furniture Merchant Wholesalers	\$88,934.40	0.01%	4	356	1.12%	0.00%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	\$9,197,199.61	0.80%	30	67	44.78%	0.36%

423330	Roofing, Siding, and Insulation Material Merchant Wholesalers	\$4,025,853.95	0.35%	8	57	14.04%	0.05%
423390	Other Construction Material Merchant Wholesalers	\$4,202,953.05	0.37%	23	106	21.70%	0.08%
423410	Photographic Equipment and Supplies Merchant Wholesalers	\$148,690.50	0.01%	6	49	12.24%	0.00%
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	\$13,564.30	0.00%	24	366	6.56%	0.00%
423440	Other Commercial Equipment Merchant Wholesalers	\$52,184.50	0.00%	8	205	3.90%	0.00%
423490	Other Professional Equipment and Supplies Merchant Wholesalers	\$31,411.68	0.00%	6	71	8.45%	0.00%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	\$19,037,699.02	1.66%	27	383	7.05%	0.12%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	\$22,447,020.47	1.96%	68	577	11.79%	0.23%
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	\$8,593.84	0.00%	2	255	0.78%	0.00%
423690	Other Electronic Parts and Equipment Merchant Wholesalers	\$321,948.09	0.03%	20	581	3.44%	0.00%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	\$2,834,998.83	0.25%	11	182	6.04%	0.02%
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	\$4,245,409.50	0.37%	8	114	7.02%	0.03%
423740	Refrigeration Equipment and Supplies Merchant Wholesalers	\$24,956.10	0.00%	1	44	2.27%	0.00%

423830	Industrial Machinery and Equipment Merchant Wholesalers	\$833,492.61	0.07%	13	692	1.88%	0.00%
423840	Industrial Supplies Merchant Wholesalers	\$128,887.25	0.01%	33	368	8.97%	0.00%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	\$60,053.14	0.01%	20	174	11.49%	0.00%
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	\$3,552,808.10	0.31%	28	152	18.42%	0.06%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	\$7,692.00	0.00%	49	705	6.95%	0.00%
424690	Other Chemical and Allied Products Merchant Wholesalers	\$28,857.73	0.00%	23	275	8.36%	0.00%
424950	Paint, Varnish, and Supplies Merchant Wholesalers	\$109,763.85	0.01%	7	62	11.29%	0.00%
442110	Furniture Stores	\$11,116.80	0.00%	0	601	0.00%	0.00%
444190	Other Building Material Dealers	\$1,252,286.78	0.11%	22	667	3.30%	0.004%
444210	Outdoor Power Equipment Stores	\$76,545.85	0.01%	0	29	0.00%	0.00%
444220	Nursery, Garden Center, and Farm Supply Stores	\$400,413.14	0.03%	2	171	1.17%	0.00%
484110	General Freight Trucking, Local	\$8,668,524.17	0.76%	141	2085	6.76%	0.05%
484220	Specialized Freight (except Used Goods) Trucking, Local	\$3,408,615.98	0.30%	372	389	95.63%	0.29%
485112	Commuter Rail Systems	\$433,449,913.06	37.79%	0	0	0.00%	0.00%
488210	Support Activities for Rail Transportation	\$14,022,954.04	1.22%	20	28	71.43%	0.87%
518210	Data Processing, Hosting, and Related Services	\$113,556.00	0.01%	69	591	11.68%	0.00%
524126	Direct Property and Casualty Insurance Carriers	\$3,831,423.20	0.33%	5	178	2.81%	0.01%
524210	Insurance Agencies and Brokerages	\$5,678,232.80	0.50%	19	3946	0.48%	0.00%

531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	\$4,010,090.70	0.35%	5	1662	0.30%	0.00%
531130	Lessors of Miniwarehouses and Self-Storage Units	\$916,592.16	0.08%	0	473	0.00%	0.00%
532112	Passenger Car Leasing	\$299,790.00	0.03%	1	15	6.67%	0.00%
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	\$99,930.00	0.01%	12	159	7.55%	0.00%
532412	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing	\$461,681.10	0.04%	39	96	40.63%	0.02%
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	\$2,249,978.20	0.20%	16	556	2.88%	0.01%
541330	Engineering Services	\$31,215,960.87	2.72%	437	1687	25.90%	0.70%
541350	Building Inspection Services	\$549,687.45	0.05%	86	233	36.91%	0.02%
541360	Geophysical Surveying and Mapping Services	\$916,145.75	0.08%	17	8	100.00%	0.08%
541370	Surveying and Mapping (except Geophysical) Services	\$366,458.30	0.03%	76	67	100.00%	0.03%
541380	Testing Laboratories	\$2,300,558.15	0.20%	73	189	38.62%	0.08%
541511	Custom Computer Programming Services	\$227,112.00	0.02%	243	2310	10.52%	0.00%
541512	Computer Systems Design Services	\$813,445.28	0.07%	289	1926	15.01%	0.01%
541513	Computer Facilities Management Services	\$567,780.00	0.05%	72	141	51.06%	0.03%
541519	Other Computer Related Services	\$227,112.00	0.02%	168	245	68.57%	0.01%
541611	Administrative Management and General Management Consulting Services	\$78,112,532.34	6.81%	826	4481	18.43%	1.26%
541618	Other Management Consulting Services	\$3,138,565.20	0.27%	425	207	100.00%	0.27%
541620	Environmental Consulting Services	\$7,014,619.70	0.61%	338	252	100.00%	0.61%

541690	Other Scientific and Technical Consulting Services	\$2,847,855.50	0.25%	330	1286	25.66%	0.06%
541720	Research and Development in the Social Sciences and Humanities	\$1,465,833.20	0.13%	61	64	95.31%	0.12%
541990	All Other Professional, Scientific, and Technical Services	\$366,458.30	0.03%	167	883	18.91%	0.01%
561110	Office Administrative Services	\$6,287,836.20	0.55%	122	1655	7.37%	0.04%
561210	Facilities Support Services	\$18,905,519.40	1.65%	41	177	23.16%	0.38%
561612	Security Guards and Patrol Services	\$29,842,380.00	2.60%	50	704	7.10%	0.18%
561621	Security Systems Services (except Locksmiths)	\$233,818.70	0.02%	20	204	9.80%	0.00%
561710	Exterminating and Pest Control Services	\$1,637,100.00	0.14%	4	410	0.98%	0.00%
561720	Janitorial Services	\$14,036,700.00	1.22%	91	1283	7.09%	0.09%
561730	Landscaping Services	\$2,884,834.00	0.25%	44	1212	3.63%	0.01%
561790	Other Services to Buildings and Dwellings	\$9,822,540.00	0.86%	38	303	12.54%	0.11%
561990	All Other Support Services	\$30,709.20	0.00%	58	379	15.30%	0.00%
562111	Solid Waste Collection	\$902,914.20	0.08%	15	189	7.94%	0.01%
562119	Other Waste Collection	\$40,878.00	0.00%	28	24	100.00%	0.00%
562212	Solid Waste Landfill	\$293,527.80	0.03%	4	13	30.77%	0.01%
562219	Other Nonhazardous Waste Treatment and Disposal	\$195,685.20	0.02%	6	6	100.00%	0.02%
562910	Remediation Services	\$0.00	0.00%	53	96	55.21%	0.00%
562998	All Other Miscellaneous Waste Management Services	\$13,626.00	0.00%	11	20	55.00%	0.00%
811111	General Automotive Repair	\$199,860.00	0.02%	8	2277	0.35%	0.00%
811212	Computer and Office Machine Repair and Maintenance	\$681,336.00	0.06%	17	180	9.44%	0.01%
811213	Communication Equipment Repair and Maintenance	\$266,685.60	0.02%	8	37	21.62%	0.00%
926150	Regulation, Licensing, and Inspection of	\$659,098.80	0.06%	0	0	0.00%	0.00%

Miscellaneous Commercial Sectors						
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**Total Base Figure** 16.16%

**Base Figure (rounded)** **16%**

\*Availability percentages that produced over 100% were modified to reflect 100%.

### **Step 2: Adjusting the Base Figure**

Upon establishing the Base Figure, the Owner reviewed and assessed other known evidence potentially impacting the relative availability of DBEs within the Owner’s market area, in accordance with prescribed narrow tailoring provisions set forth under 49 CFR Part 26.45 Step 2: DBE Goal Adjustment Guidelines.

Evidence considered in making an adjustment to the Base Figure included the Owner’s *Past DBE Goal Attainments*, Evidence from *Disparity Studies conducted in the Owner’s market area*, and *Other Evidence*, as follows:

#### **A. Past DBE Goal Attainments**

The Owner did not receive Federal Funds in the previous three fiscal years and did not set an Overall Goal on the previous goal period or collect detailed DBE Program award/attainment data. Although the Owner did consider awards to DBEs on non-federally funded projects in the market area, it was determined that these projects were not like in scope or scale to the ITC Project (Infrastructure).

Specifically, the Owner considered additional Automated Transit System (ATS)/Automated People Mover (APM) projects of a similar scope and/or market area, as indicated below:

ATS/APM Projects			
Project Name	Market Area	Goal(s)	Notes
LAX Automated People Mover	Los Angeles	30% Small and Local Business Goal. SB Design Goal: 22% SB Construction Goal: 18%	SBE goal, goal not developed based on available DBE firms. Goal on O&M not available
Oakland Airport Connector	Northern California	Civil Construction & Trucking Goal 18%  Professional Services (no goal)	Goal on O&M not available. CA market area, but northern.

Phoenix Sky Harbor International Airport (PHX) Automated People Mover (Sky Train)	Phoenix, Arizona	12%	Goal based strictly on O&M. Arizona is within region 9 but out of CA.
O'Hare International Airport's Automated Transit System (ATS) – the People Mover	Chicago	19%	Outside of market area

In review of the four (4) ATS/APM projects identified above, the Owner found that none of the projects included DBE goals for projects within the market area that included infrastructure construction, operations and maintenance.

As the Owner did not have past attainment data and could not identify like projects with viable attainment data, the Owner has elected not to apply an adjustment to the Base Figure in accordance with the DOT's issued guidance "Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program" which states in pertinent part:

*"..an adjustment for past participation is not required if you are developing a DBE program for the first time and do not have any statistics on past DBE participation."*

**B. Evidence from Disparity Studies**  
**Barriers to Entry: Employment, Self Employment, Education and Training, Business Ownership Rates and Access to Capital**

The Owner did not find it feasible to conduct an independent availability/disparity study; however, the Owner identified two disparity studies, inclusive of market areas like the Owner's, to consider whether a Race-Conscious DBE Program should be implemented. The two identified Disparity Studies were the California Department of Transportation (Caltrans) Disparity Study and the Los Angeles County Metropolitan Transportation Authority (Metro) Disparity Study

The first Disparity Study considered was that of Caltrans, completed in 2016, which included review of contracts and availability within the Owner's market area. The Caltrans Disparity Study reviewed Construction and Engineering contracts state-wide between the years January 1, 2011 to December 31, 2014. As the Caltrans' Disparity Study included thousands of contracts from areas outside of the Owner's market area as well as projects that had no relation to the scopes included in the upcoming goal period, the Owner opted to not utilize this Disparity Study to apply an adjustment to their current race-neutral/race-conscious DBE application measures.

The second Disparity Study taken into consideration was Metro's Disparity Study due to the similarities in market area, inclusivity of scopes utilized in the Owner's



Overall Goal Methodology and timeliness of the contracts reviewed. The Metro Study focused on Los Angeles County which aligns with the Owner's market area. The Metro Disparity Study was initiated in November 2016 and included a five-year study period (January 1, 2011 through December 31, 2015) to determine any differences between the participation of minority- and woman-owned businesses in relevant contracts and the availability of those businesses to perform that work (referred to as disparities). Disparity analysis results indicated that most racial/ethnic and gender groups showed disparities on contracts where race- and gender-conscious measures were not in place during the study period. As a result, the Disparity Study recommended the use of contract DBE goals.

As Metro's Disparity Study satisfies the legal standards established by the Ninth Circuit Court of Appeals in *Western States Paving Co., Inc. v. Washington State Department of Transportation*, and guidance from the = DOT/FTA concerning the implementation of race-conscious application, the Owner has elected to utilize this study as a basis for implementing a race-conscious component of its Overall DBE goal. The Owner will ensure that the use of race-conscious goals is narrowly tailored and consistent with other relevant legal standards.

The Owner will continue to review applicable Disparity Studies as they become available and apply the appropriate adjustments to their Race-Neutral/Race-Conscious DBE goal application.

### **C. *Other Evidence***

The Owner did not receive any anecdotal evidence nor is it aware of any other factors or adverse considerations that would have had a material effect on DBEs availability within the Owner's marketplace, or on DBEs' ability to participate (meeting bonding, insurance and financial requirements) in the Owner's anticipated FTA-assisted contracting programs at this time. However, as part of the Owner's 30-day period public facilitation process, it will request comments/input from industry groups both representing DBEs and non-DBEs to determine whether further consideration in making an adjustment is warranted.

The Overall DBE Goal for FFY 2022/24 goal period for the Owner's FTA-assisted contracts is **16 percent.**

The proposed goal serves to identify the relative availability of DBEs based on evidence of ready, willing, and able DBEs to all comparable firms, which are known to be available to compete for and perform on the Owner's FTA-assisted contracts. The proposed goal reflects a determination of the level of DBE participation, which would be expected absent the effects of discrimination.

### **V. RACE-NEUTRAL/RACE-CONSCIOUS APPLICATION**

In accordance with 49 CFR part 26.51, the Owner intends to meet the maximum feasible portion of the overall goal by using race/gender-neutral means of

facilitating DBE participation. The Owner reviewed guidance from DOT provided through “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program” which includes experience and best practices provided by DOT officials. Specifically, the guidance relevant to determining the Overall Goal Race-Neutral/Race-Conscious Application includes review of the following:

**A. Consideration of the Amount by which the Owner has Exceeded Goals in the Past**

DOT has identified the amount a recipient has exceeded their overall goals in the past years as a useful tool in projecting the race/gender-neutral participation one can expect in future Federal Fiscal Years. As the Owner has not previously received Federal assistance and has not procured a project of a similar scope and size, there is no viable data to determine the amount the Owner has exceeded goals in the past.

**B. Past Participation by DBE Prime Contractors**

DOT has identified that the amount of past participation obtained through the use of DBE primes should be considered achieved race/gender-neutrally and that those attainments can be used as a basis for estimating a similar level of race/gender-neutral participation in the next overall goal period. As the Owner has not previously received Federal assistance and has not procured a project of a similar scope and size, there is no viable data regarding participation by DBE prime contractors.

**C. Consider Past Participation by DBE Subcontractors on Contracts without Goals**

DOT has identified that the amount of past participation obtained through the use of DBE subcontractors on contracts without DBE goals should be considered achieved race/gender-neutrally and that those attainments can be used as a basis for estimating a similar level of race/gender-neutral participation in the next overall goal period. As the Owner has not previously received Federal assistance and has not procured a project of a similar scope and size, there is no viable data regarding participation by DBE subcontractors on race-neutral contracts.

**D. Consider MBE/WBE/DBE Participation Pursuant to Race/Gender-Neutral State or Local Programs.**

The Owner does not currently track MBE/WBE/DBE participation on Race/Gender-Neutral or Local Programs. The Owner will consider methods of tracking this information in the future for use in considering the proper race/gender-neutral application.

### **E. Consider Concrete Plans to Implement New Race-Neutral Methods**

The Owner is considering including Small Business aspirational goals on Design-Build projects in addition to applying a DBE contract goal. The purpose of this would be to encourage utilization of Small and Disadvantaged businesses, inclusive of minority, woman, and veteran-owned businesses, and increase their likelihood of successfully participating.

Potential bidders/offerors would submit Small Business utilization data relevant to the firms they are proposing. This information will be utilized by the Owner to track current small business utilization within its contracting program and identify impactful supportive services that could aid in optimizing Small and Disadvantaged business communities' success in the program but ability to meet the goal would not be a condition of award.

### **F. Past History of Inability to Achieve Goals**

DOT has identified that a recipient's past inability to meet their goals in the past years as a powerful indicator that the recipient may be justified in applying race-/gender-conscious measures to achieve their goals in future FFY.

As the Owner has not previously received Federal assistance and has not procured a project of a similar scope and size, there is no viable attainment data to determine what percent of the 16% Overall DBE Goal can be met race-neutrally. The Owner then considered attainment data on ATS/ATM Projects with a similar scope and/or market area:

ATS/APM Projects			
Project Name	Market Area	Attainment	Notes
LAX Automated People Mover	Los Angeles	35% Small and Local Business	SBE goal, goal not developed based on available DBE firms. Goal on O&M not available
Oakland Airport Connector	Northern California	Civil Construction & Trucking Goal = 20.21% Professional Services = 33.1%	Goal on O&M not available. CA market area, but northern.
Phoenix Sky Harbor International Airport (PHX) Automated People Mover (Sky Train)	Phoenix, Arizona	15%	Goal based strictly on O&M. Arizona is within region 9 but out of CA.
O'Hare International Airport's Automated	Chicago	19% goal but attainment data not available	Outside of market area

Transit System (ATS) – the People Mover			
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In review of these four (4) ATS/APM projects, the Owner found that none of the projects included DBE attainment data for projects within the market area that included both the infrastructure construction, operations and maintenance that could be utilized to support that a percentage of the overall DBE goal could be met race-neutrally.

Consistent with the FTA guidance provided and the reasons delineated above, the Owner has found it advisable to implement a 16% race-conscious component and 0% race-neutral breakout to meet the proposed Overall DBE Goal of 16% in accordance with 49 CFR Part 26.51.

The Owner will use contract goals, for all groups, to meet any portion of the overall goal the Owner does not project being able to meet using race-neutral means. DBE contract goals will be a condition of award. Contract goals will be established so that, over the period to which the overall goal applies, contract goals will cumulatively result in meeting any portion of the Owner’s overall goal that is not projected to be met through the use of race-neutral means.

**F. Monitor DBE Participation to Determine Whether an Adjustment to the Use of Race/Gender-Conscious Measures is Necessary**

The Owner will continue to monitor its DBE participation during the overall goal period to determine whether the application of the Owner’s race-neutral/race-conscious measures to meet the proposed Overall DBE Goal of 16% remains on target. The Owner will adjust the application of race/gender-neutral and race/gender-conscious measures as necessary to ensure the Owner meets the maximum feasible portion of the overall goal by using race/gender-neutral means of facilitating DBE participation.

**VI. PUBLIC PARTICIPATION AND FACILITATION**

In accordance with Public Participation Regulatory Requirements of Title 49 CFR Part 26, minority, women, local business chambers, and community organizations within the Owner’s market area will be consulted and provided an opportunity to review the Owner’s goal analysis and provide input.

The Owner issued a Public Notice, publishing the Owner’s Proposed Overall Goal for the FFYs 2022/24. The Notice informed the public that the proposed goal and rationale were available for inspection at the Owner’s website for 30 days following the date of the Public Notice and that the Owner will accept comments on the goal analysis for 30 days from the date of the Public Notice.

Furthermore, the Owner consults and will continue to consult with minority groups and

organizations (inclusive of virtual and in-person events and consultations) regarding input they have on DBE opportunities and any real and/or perceived barriers to DBE participation.

Staff has initiated the public participation process. This includes the following: 1) sending the proposed goal and methodology to local/ethnic chambers of commerce and other business/community organizations in the Owner's market area; 2) advertising the goal (via a public notice) on the Owner's website and 3) including, in the public notice, instructions for viewing and/or providing feedback on the proposed goal and methodology.

To further support the public participation process, the Owner will also be hosting a virtual Public Consultation Meeting. This meeting is designed to facilitate receiving input from the Owner's contracting community, stakeholders, which include minority and women business groups, community organizations, trade associations and other officials or organizations that may have information concerning the availability of disadvantaged businesses and comments on the Owner's proposed DBE overall goal and corresponding methodology.

After completion of the public participation process, staff will consider any feedback as a factor in making a further adjustment to the goal. If the goal percentage changes from the proposed 16%, staff will return to the Owner for approval of the adjusted goal, post the updated goal to its website and will then submit the goal and methodology to the FTA.

## **ATTACHMENT 6**

### **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, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. 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, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

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. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

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 to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

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.

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. 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 employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

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