



Foothill Transit
Going Good Places

**Disadvantaged Business Enterprise
(DBE) Program**

FFY 2022 - FFY 2024

Foothill Transit DBE PROGRAM

POLICY STATEMENT

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

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

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

Foothill Transit's Deputy Chief Executive Officer has been delegated as the DBE Liaison Officer. In that capacity, the Deputy Chief Executive Officer is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by Foothill Transit in its financial assistance agreements with the Department of Transportation.

Foothill Transit has disseminated this policy statement to the Foothill Transit Executive Board and throughout our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.

This policy statement is included in the Executive Board agenda on a triennial basis for consideration with the approval of the agency DBE goal. This policy statement is also contained on the Foothill Transit website where DBE and non-DBE businesses may view possible contracting opportunities. The availability of this this statement is/will be advertised along with the DBE goal in local business newspapers. Foothill Transit also maintains relationships with various local and regional business associations in the area and will provide this policy statement to those organizations for publication and/or distribution.



Doran J. Barnes
Chief Executive Officer

June 28, 2021

Date

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SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

Foothill Transit is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, Titles I, II, and V of the TEA-21, Pub. L. 105-178 or Titles I, III and VI of SAFETEA-LU, Pub. L. 109-59, Divisions A and B of MAP-21 Pub. L. 112-141, and FAST Act, Pub. L. 114-94.

Section 26.5 Definitions

Foothill Transit will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

We will report DBE participation to DOT as follows:

We will report DBE participation on semi-annual basis. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

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

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We will collect bidders list information in the following ways:

- Foothill Transit's online vendor database for solicitations where registrants may submit DBE status.
- Contract clause requiring prime bidders to report information on firms who provide them with quotes on subcontracts.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

Foothill Transit shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to Foothill Transit of its failure to carry out its approved program, the Department may impose sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: 26.13b

The DBELO or his/her designee will review all DOT-assisted contracts and subcontracts before execution to ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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

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SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since Foothill Transit has received grants of \$250,000 or more in FTA planning, capital, and or operating assistance in multiple federal fiscal years we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

LaShawn King Gillespie
100 S. Vincent Ave.
Suite 200
West Covina, CA 91790
626.931.7206
lgillespie@foothilltransit.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that Foothill Transit complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Chief Executive Officer concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of four to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments within which DOT-assisted contracting opportunities exist or may exist to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment, if applicable) and identifies ways to improve progress.

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6. Analyzes Foothill Transit's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO\governing body on DBE matters and achievement.
9. Plans and participates in DBE training seminars.
10. Acts as liaison to the Uniform Certification Process in California.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

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

While we have identified Minority Financial Institutions by checking the Federal Reserve website, we have not been able to confirm their status as economically disadvantaged. Consistent with the direction provided by the FTA in its March 1, 2016 compliance review of Foothill Transit's DBE Program, Foothill Transit encourages the use of institutions identified on <http://www.federalreserve.gov/Releases/mob/current/default.htm> with the understanding provided by the FTA that the entry of social disadvantage is a sufficient criterion for identifying DBE financial institutions.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer. All DOT-assisted procurements will include information directing interested parties to the Federal Reserve's website for a listing of Minority Banking Institutions and encouraging them to make use of these institutions when possible.

Section 26.29 Prompt Payment Mechanisms

The DBELO or his/her designee will review all DOT-assisted contracts and subcontracts before execution to ensure that the following or an equivalent clause is placed in every DOT-assisted contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from Foothill Transit. The prime contractor agrees further to return any retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement

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of payment from the above referenced time frame may occur only for good cause following written approval of Foothill Transit. This clause applies to both DBE and non-DBE subcontracts.

Section 26.31 Directory

Foothill Transit's Contract Opportunities page on its website directs vendors and potential vendors to <https://dot.ca.gov/programs/civil-rights/dbe-search> so that they are able to identify all firms eligible to participate as DBEs. This resource lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE.

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Section 26.33 Overconcentration

Foothill Transit's analysis of its contracting opportunities over the past three years indicates that DBEs have performed work in a variety of disciplines including, but not limited to landscaping, elevator construction and installation, paving, trucking, and materials testing and the amount of work performed in those disciplines is not concentrated in any one area.

With each federally-assisted contract award, Foothill Transit will continue to monitor and analyze whether the type of contracts/subcontracts awarded to DBEs suggest an overconcentration in particular fields. After the award of each federally-assisted contract, Foothill Transit will: (1) review the level of DBE participation anticipated for that contract; (2) identify the applicable NAICS code(s) for the participating DBEs; (3) determine the extent to which other DBEs within the same NAICS codes have participated (or are participating) in federally-assisted contracts on which work is being or has been performed within the previous three years and (4) compare the percentage and volume of DBE firms within those NAICS codes with the overall participation and volume of all firms within those NAICS codes in the applicable geographic area to determine whether overconcentration is occurring.

If overconcentration is found to exist, Foothill Transit will inform the Federal Transit Administration of Foothill Transit's determination, encourage DBEs within the area of overconcentration to expand into other fields, and enhance its communication with its prime contractors and its outreach within the network of DBE vendors to address the overconcentration. These efforts will be documented by the DBELO.

Section 26.35 Business Development Programs

Foothill Transit's small business development program is set out in Section 26.39.

Section 26.37 Monitoring and Enforcement Mechanisms

Foothill Transit will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

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

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3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by regular visits to jobsites and interviews of the personnel performing work.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

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Section 26.39 Small Business Development Mechanisms

Foothill Transit fosters participation of small business concerns in projects resulting from procurement activities by implementing multiple strategies, including strategies suggested by Section 26.39(b) of Title 49 of the Code of Federal Regulations.

1. On prime contracts not having contract goals, we require the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
2. In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) we require bidders or proposers on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
3. To meet the portion of our overall goal we project to meet through race-neutral measures, we ensure that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
4. We identify alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

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SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program. This section of the program will be updated every three years.

In accordance with Section 26.45(f) Foothill Transit will submit its overall goal to DOT on August 1 at three-year intervals in accordance with the schedule established by FTA. Before establishing the three-year overall goal, Foothill Transit will, among other efforts, consult with agencies and organizations such as Los Angeles Metro, Latino Business Association, San Gabriel Regional Chamber of Commerce, the Southern California Minority Business Development Council to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Foothill Transit's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that Foothill Transit and DOT will accept comments on the goals for 30 days from the date of the notice. This notice will be published using a variety of means, including but not limited to Foothill Transit's website and through classified ads placed in the San Gabriel Valley News, the Inland Valley Daily Bulletin, Excelsior, Sing Tao, Downtown News, and the Los Angeles Times, as well as through our procurement portal at PlanetBids. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

We will begin using our three-year overall goal on October 1 of the calendar year following the August 1 submission to FTA, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.47 Shortfall Analysis

At the end of any DBE year in which Foothill Transit does not achieve its DBE goal as reflected for that year in Foothill Transit's Triennial DBE Goal, Foothill Transit will perform a

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Shortfall Analysis. The DBELO will conduct this Shortfall Analysis within two (2) months of the close of the DBE year.

The Shortfall Analysis will analyze, in detail, the reasons for the difference between the DBE goal for that year and the actual DBE participation for that year. The Shortfall Analysis will take into account any efforts previously undertaken by the agency to achieve the DBE Goal. To increase the likelihood that Foothill Transit will achieve its DBE Goal in future years, the DBELO will develop an action plan which will include:

1. Outreach to vendors who were invited to participate in Foothill Transit's contracting opportunities to identify the reasons for their non-participation, and
2. Investigate and utilize other available resources and methods to encourage DBE participation in future contracting opportunities.

Section 26.49 Transit Vehicle Manufacturers Goals

Foothill Transit will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of Sections 26.49(b) and (c) of Title 49 of the Code of Federal Regulations. Alternatively, Foothill Transit may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Prior to awarding any federally-funded TVM contract, Foothill Transit will verify that the TVM awardee has fulfilled its requirement to submit a DBE goal methodology and complied with the TVM's DBE Program in accordance with the requirements of Section 26.49(a). In addition, Foothill Transit will notify the Federal Transit Administration within 30 days of making an award of a federally-funded contract to a TVM along with the name of the TVM and the dollar amount of the award.

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

Participation

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program. This section of the program will be updated when the goal calculation is updated and is likely to be revised once Foothill Transit implements the findings of a disparity study, if it is determined that a disparity study is appropriate.

Section 26.51(d-g) Contract Goals

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

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

We will express our contract goals as a percentage of *total amounts of a DOT-assisted contract*.

Section 26.53 Good Faith Efforts Procedures

Demonstration of Good Faith Efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The following personnel are responsible for determining whether a bidder/offeror who has not met a contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

Information to be submitted (26.53(b))

Foothill Transit treats bidder/offeror compliance with good faith efforts requirements as a matter of responsiveness.

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

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

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Administrative reconsideration (26.53(d))

Within two (2) business days of being informed by Foothill Transit that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

LaShawn King Gillespie
100 S. Vincent Ave.
Suite 200
West Covina, CA 91790
626.931.7206
lgillespie@foothilltransit.org

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

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

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

In this situation, we will require the prime contractor to obtain our prior approval of the termination and/or the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Once Foothill Transit implements the findings of any disparity study it conducts, the following or equivalent Bid Specification language will be included:

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 Foothill Transit to practice nondiscrimination based on race, color, sex, or national origin in the award or

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performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of ____ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

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

Section 26.55 Counting DBE Participation

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

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SUBPART D - CERTIFICATION STANDARDS

Section 26.61 - 26.73 Certification Process

Foothill Transit will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will rely on certification decisions of the California Unified Certification Program. However, Foothill Transit will consider the facts as a whole.

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

Office of Civil Rights
Attn: Certification Branch
PO Box 942874, MS 79
Sacramento, CA 94274
(916) 324-1700

Or:

Michelle Scott
(213) 897-0891
Michelle.scott@dot.ca.gov
D7SmallBusiness@dot.ca.gov

Certification application forms and documentation requirements are found at <https://dot.ca.gov/programs/civil-rights/dbe-certification-information>. Assistance is available at DBE.Certification@dot.ca.gov or at (916) 324-1700.

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SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

Foothill Transit is the member of a Unified Certification Program (UCP) administered by California Department of Transportation (CalTrans). The UPC will meet all of the requirements of this section. The following is a description of the UCP:

The California Unified Certification Program (CUCP) provides “one-stop shopping” certification services to small, minority and women businesses seeking to participate in the United States Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) Program. Certification services are offered to businesses seeking to obtain either DBE or airport concessionaire disadvantaged business enterprise (ACDBE) status.

As mandated by USDOT in the DBE Program, Final Rule 49 Code of Federal Regulations (CFR), Part 26, all public agencies that receive USDOT federal financial assistance must participate in a statewide unified certification program. These public agencies, commonly referred to as “recipients” of USDOT funds, include municipalities, counties, special districts, airports, transit agencies, and the State Department of Transportation (Caltrans).

The California Unified Certification Program (CUCP) went into effect on January 1, 2002. It is a “One-Stop Shopping” certification program that eliminates the need for a DBE or ACDBE firm to obtain certifications from multiple agencies within the State. A business certified as a DBE or ACDBE through the CUCP is automatically accepted by all USDOT recipients in California.

The CUCP is charged with the responsibility of overseeing the certification activities performed by various certifying agencies, and compiling and maintaining a single Statewide database of certified DBEs. The Database is intended to expand the use of DBE and ACDBE firms by maintaining complete and current information on those businesses and the products and services they can provide to all USDOT recipients in California. Select the “Directory” link on the top to access the Statewide database.

The CUCP certifying agencies are responsible for certifying DBE firms. You only need to apply for DBE certification at one agency. If your firm meets the General Criteria for DBE certification as provided on the Application Package, submit your completed application, along with the requested documentation, to one of the Certifying Agencies serving the geographical area where your firm has its principal place of business.

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Section 26.83 Procedures for Certification Decisions

“No Change” Affidavits and Notices of Change (26.83(j))

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

We also require all owners of all certified DBEs to submit, in a written affidavit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j). The test of this affidavit is the following:

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

We require DBEs to submit with this affidavit documentation of the firm’s size and gross receipts.

We will notify all currently certified DBE firms participating in Foothill Transit’s procurements of these obligations by contacting the firms and requesting submission of the “no change” affidavit through an email and/or regular mail request. Additionally, all firms identified in Foothill Transit’s bidders’ list will be asked to submit the affidavit via email notification annually. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.85 Interstate Certification

Foothill Transit will rely on the CUCP to properly consider, evaluate and process certification applications based upon any firm’s DBE certification from a state other than California.

Section 26.87 Removal of a DBE’s Eligibility

In the event we propose to remove a DBE’s certification, we will forward our proposal to the CUCP.

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SUBPART F - COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

We will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law as applicable in the State of California.

The statement below is included in all Requests for Proposals (RFPs):

The Proposals received become the exclusive property of Foothill Transit. At such time as a contract award is made by Foothill Transit, all Proposals submitted in response to this RFP shall become a matter of public record and shall be regarded as public records, with the exception of those elements of each Proposal which are trade secrets as that term is defined in California Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL" or "PROPRIETARY." Foothill Transit shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, without limitation, those so marked if disclosure is deemed required by law or by an order of a court. Proposals that indiscriminately identify all or most of the Proposal as exempt from disclosure without justification may be found technically unacceptable.

The statement below is included in all Invitations for Bids (IFBs):

The Bids received become the exclusive property of Foothill Transit. At such time as Foothill Transit publishes its Executive Board Agenda containing a recommended action concerning a contract award, all Bids submitted in response to this IFB shall become a matter of public record and shall be regarded as public records, with the exception of those elements of each Bid which are trade secrets as that term is defined in California Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL" or "PROPRIETARY." Foothill Transit shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, without limitation, those so marked if disclosure is deemed required by law or by an order of a court. Bids that indiscriminately identify all or most of the Bid as exempt from disclosure without justification may be found technically unacceptable.

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

Monitoring Payments to DBEs

Foothill Transit includes the following or an equivalent clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from Foothill Transit. The prime contractor agrees further to return any retainage payments to each subcontractor within 30 days after the

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subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Foothill Transit. This clause applies to both DBE and non-DBE subcontracts.

The DBELO or his/her designee will review each of the Contractor's subcontracts with DBEs to ensure that the appropriate contract provisions are included.

Foothill Transit engages the services of a Federal labor compliance consultant to audit records and ensure that timely payments are made and that retainage is returned to subcontractors within 30 days of the subcontractor's work being completed.

Foothill Transit's DBELO or his/her designee makes regular, random visits to job sites for DOT-assisted projects on which primes indicate that there is DBE participation to ensure that DBEs are actually performing the work. Foothill Transit's labor compliance consultant reviews records to ensure that payments are being made to those DBEs.

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ATTACHMENTS

Attachment 1 Organizational Chart

Attachment 2 DBE Directory

Attachment 3 Monitoring and Enforcement Mechanisms

Attachment 4 Overall Goal Calculations

Attachment 5 Breakout of Estimated Race-Neutral & Race-Conscious Participation

Attachment 6 Form 1 & 2 for Demonstration of Good Faith Efforts

Attachment 7 Certification Application Forms

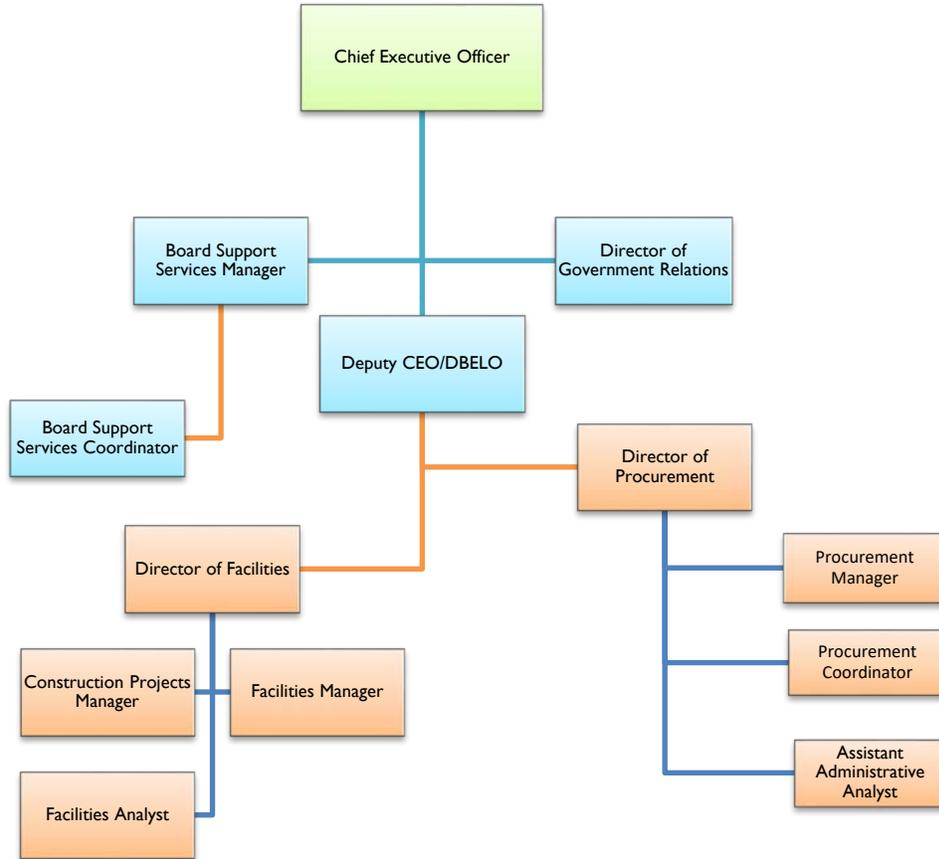
Attachment 8 Procedures for Removal of DBE's Eligibility

Attachment 9 Regulations: 49 CFR Part 26

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Attachment 1

Foothill Transit Organizational Chart



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Attachment 2

Please reference the California Department of Transportation DBE database:
<https://dot.ca.gov/programs/civil-rights/dbe-search>

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Attachment 3

Monitoring and Enforcement Mechanisms

Foothill Transit will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

The following regulations, provisions, and contract remedies are available to Foothill Transit in the event of non-compliance with the DBE regulations by a contractor in its procurement activities:

1. DBE:

- A. Foothill Transit has established a DBE Program pursuant to 49 C.F.R. Part 26. The requirements and procedures of Foothill Transit's DBE Program are hereby incorporated by reference into this Contract. Failure by any Party to carry out Foothill Transit's DBE Program procedures and requirements or applicable requirements of 49 C.F.R. Part 26 shall be considered a material breach of this Agreement, and may be grounds for termination of this Agreement, or other such appropriate administrative remedy. Each Party shall ensure that compliance with Foothill Transit's DBE Program shall be included in any and all sub-agreements entered into which arise out of or are related to this Agreement.
- B. The Contractor agrees that it will take necessary and reasonable steps to ensure that DBEs as defined in 49 C.F.R. Part 26 have a fair opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Contract.

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

The Contractor agrees that it will adapt and use the race-neutral means identified in 49 C.F.R. 26.51(b) as appropriate for application to services under this Contract and will, to the maximum extent feasible, undertake these means of encouraging race neutral participation in the performance of its work. Each subcontract the Contractor signs with a sub-contractor will include the above statement.

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- C. The Contractor will be required to demonstrate that it has undertaken “good faith efforts” to achieve DBE participation as that term is defined in Section 26.5 of Title 49 of the Code of Federal Regulations and in accordance with the guidance provided in Appendix A to Part 26 of Title 49. The Contractor’s failure to make good faith efforts shall be considered a material breach of the Agreement, and may give rise to certain administrative penalties and proceedings, including, but not limited to, those set forth in 49 C.F.R. 26.107.

2. Prompt Payment:

- A. Within thirty (30) calendar days from receipt by Foothill Transit of an invoice for each payment described in this Section and upon notification to the Contractor by Foothill Transit that Contractor has performed the professional services necessary for payment, Foothill Transit will pay Contractor the amount due. Neither payment of amounts due by Foothill Transit nor acceptance of any such payment by the Contractor shall constitute a waiver of any claim for errors or omission in invoices or payments.
- B. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from Foothill Transit. The prime contractor agrees further to return any retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Foothill Transit. This clause applies to both DBE and non-DBE subcontracts.

3. Performance Requirement:

- A. The Contractor shall, at all times during the term of the Contract, perform all of its professional services in accordance with appropriate prevailing professional practice standards; and shall furnish all labor, supervision, material and supplies necessary therefor. Notwithstanding the provision of any drawings, technical specifications or other data by Foothill Transit, the Contractor shall have the responsibility of supplying all items and details required to perform the professional services specified in this Contract.
- B. The Contractor shall perform all of its professional services in its own name and as an independent Contractor, and not in the name of, or as an agent for, Foothill Transit. Under the terms of the Contract, the Contractor is an independent contractor and has and retains full control and supervision of the services performed by and full control over the employment and direct compensation and discharge of all persons, other than Foothill Transit representatives, assisting in the performance of its services. The Contractor agrees to be solely responsible for all matters relating to wages, hours of work, and working conditions and payment of employees, including compliance with social security, all payroll taxes and withholdings, unemployment compensation, and all other requirements relating to such matters. The Contractor agrees to be

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responsible for its own acts and those of its subordinates, employees, and any and all sub-Contractors during the term of the Contract.

- C. The Contractor shall prepare, complete, and submit to Foothill Transit the necessary reports, plans, specifications and the supporting data required to complete the Scope of Work set forth in this Contract.

4. Indemnification:

- A. The Contractor agrees to indemnify, defend, indemnify and hold harmless Foothill Transit against any claims, losses, costs, liability or damages in any way related to a claim that Foothill Transit is violating federal, state or local laws, or any contractual provisions, relating to copyrights, trade names, licenses, franchises, patents or other means of protecting interests in products or inventions. The Contractor shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked materials, equipment, devices or processes used on or incorporated in the services provided and Works produced under this Agreement. In case such materials, equipment, devices or processes are held to constitute an infringement and their use is enjoined, the Contractor, at its expense, shall: (a) secure for Foothill Transit the right to continue using the materials, equipment, devices or processes by suspension of any injunction or by procuring a license or licenses for Foothill Transit; or (b) modify the materials, equipment, devices, or processes so that they become non-infringing. This covenant shall survive the termination of this Agreement.

5. Disputes:

- A. Any dispute between the Contractor and Foothill Transit relating to the implementation or administration of the Contract shall be resolved in accordance with this Section.
- B. The Parties shall first attempt to resolve the dispute informally in meetings or communications between the Contractor and Foothill Transit's Representative. If the dispute remains unresolved 15 days after it first arises, the Contractor may request that Foothill Transit's Representative issue a recommended decision on the matter in dispute. Foothill Transit's Representative shall issue the recommended decision in writing and provide a copy to the Contractor.
- C. The recommended decision of Foothill Transit's Representative will become final unless, within 15 days of receipt of such recommended decision, the Contractor submits a written request for review to the Foothill Transit Chief Executive Officer. In connection with any such review, the Contractor and Foothill Transit's Representative shall be afforded an opportunity to be heard and to offer evidence on the issues presented. If the dispute remains unresolved after review by the Foothill Transit Chief Executive Officer, either party may seek resolution through referral to non-binding mediation. If such mediation is unsuccessful, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California. Any party seeking

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resolution through the Courts of the State of California must, as a condition precedent to the commencement of litigation, demonstrate that it has made a good faith effort to resolve the dispute through the use of non-binding mediation.

- D. Pending final resolution of a dispute under this Section, the Contractor shall proceed diligently with performance in accordance with the Contract and the recommended decision of Foothill Transit's Representative.

6. Subcontracting:

- A. The Contractor will not enter into any subcontract except with the prior review and written approval of Foothill Transit. The Contractor shall be fully responsible for all work performed by any sub-Contractor.
- B. Any approval of a subcontract shall not be construed as making Foothill Transit a party to such subcontract, giving the sub-Contractor privity of contract with Foothill Transit, or subjecting Foothill Transit to liability of any kind to any sub-Contractor.
- C. All subcontracts will incorporate in full all appropriate conditions and terms as set forth in this Contract.

7. Compliance with Laws and Permits:

In any of the following cases, Foothill Transit shall have the right to cancel the Contract without expense to Foothill Transit: (1) the Contractor is guilty of misrepresentation; (2) the Contract is obtained by fraud, collusion, conspiracy, or other unlawful means; or (3) the Contract conflicts with any statutory or constitutional provision of the State of California or the United States. This Section shall not be construed to limit Foothill Transit's right to terminate the Contract for convenience or default, as provided in Sections 18 and 19, respectively.

8. Cancellation of Contract:

In any of the following cases, Foothill Transit shall have the right to cancel the Contract without expense to Foothill Transit: (1) the Contractor is guilty of misrepresentation; (2) the Contract is obtained by fraud, collusion, conspiracy, or other unlawful means; or (3) the Contract conflicts with any statutory or constitutional provision of the State of California or the United States. This Section shall not be construed to limit Foothill Transit's right to terminate the Contract for convenience or default, as provided in Sections 18 and 19, respectively.

9. Termination for Default:

- A. Subject to the provisions of subsection C of this Section, Foothill Transit may terminate the whole or any part of the Contract in any one of the following circumstances:

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- (1) If the Contractor fails to provide the services in the manner required by the Contract;
- (2) If the Contractor fails to perform any of the provisions of the Contract in accordance with its terms; or
- (3) If the Contractor fails to make progress in the prosecution of the work under the Contract so as to endanger such performance.

- B. In the event that Foothill Transit terminates the Contract in whole or in part as provided in Subsection A of this Section, Foothill Transit may procure, upon such terms and in such manner as Foothill Transit may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to Foothill Transit for costs associated with the termination of the Contract, the procurement of replacement services by Foothill Transit, any excess costs of such similar supplies or services, and any increase in the total Contract cost as a result of the reprocurement of services from the date of termination to the expiration date of the original Contract. The Contractor shall continue the performance of the Contract to the extent not terminated under the provisions of this Section. Any disputes arising under this Section that cannot be resolved by the Contractor and Foothill Transit are subject to resolution pursuant to Section 11.
- C. If Foothill Transit determines that an event of default under this Section has occurred, it shall immediately notify the Contractor in writing and provide the Contractor with thirty (30) days in which to provide a plan to cure such default including a timetable for accomplishing the cure. Foothill Transit must approve the plan and the timetable, which approval shall not be unreasonably withheld. If the Contractor fails to cure in accordance with its plan and timetable, Foothill Transit may declare the Contractor to be in default and terminate the Contract in whole or in part.
- D. Except as otherwise provided, settlement of claims by the Contractor under this termination Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

10. False or Fraudulent Statement and Claims:

By executing this Contract the Contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose penalties under the program Fraud Civil Remedies Act of 1986, as amended (31 U. S. C. 3801 et seq.), and implementing Department of Transportation regulations set forth at 49 C.F.R. Part 31.

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Attachment 4

Section 26.45: Overall Goal Calculation

Amount of Goal

1. Foothill Transit's overall goal for the following time period 2022 - 2024 is the following: Four (4) percent of the Federal financial assistance we will expend in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.
2. \$15,135,000 is the dollar amount of DOT-assisted contracts that Foothill Transit expects to award during FFY 2022 - 2024. This means that Foothill Transit has set a goal of expending \$605,400 with DBEs on these projects during these fiscal years.

Methodology used to Calculate Overall Goal

STEP ONE:

- Projects on which federal funds are expected to be invested during FFY 2022 through FFY 2024 were identified.
 - In-depot hydrogen fueling station
 - Cal Poly Pomona Bronco Mobility Hub
- The various disciplines to be utilized on each project were listed
- The federal investment on each discipline within each project was estimated and listed
- The NAICS codes associated with each discipline was identified and listed
- For each project and NAICS code, a weighting factor was calculated based on the federal financial investment as a percentage of the overall federal financial investment for all of the listed projects
- The relative availability of DBEs by NAICS codes was then calculated by:
 - Identifying the number of DBEs available in Los Angeles County under each of the relevant NAICS codes in the most current list of DBE Certified firms on the Caltrans website
 - Identifying the number of firms (DBE and non-DBE) in the Los Angeles County catchment area available to perform work in each discipline
 - Calculating relative availability as the ratio of the number of DBE firms available in each NAICS code to the number of all firms available in each NAICS code
- The weighted base figure of five (5) percent was calculated by multiplying the weighting factors by the relative availability for each Project and NAICS code and then summing the weighted base figures.

STEP TWO:

- A comparison was made between the projects undertaken in the previous three-year period and those to be undertaken in the upcoming three-year period. The upcoming projects are similar to past projects and utilize many of the same disciplines as in prior years.

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- FFY 2019 - FFY 2021 Projects: Transit Center and Park & Ride Construction; Park & Ride surface lot development; Electric Bus charging station construction
- FFY 2022 - FFY 2024 Projects: Transit Center Construction; Hydrogen Fuel Cell Bus infrastructure construction
- Because the upcoming projects are similar to those undertaken recently, the median DBE past participation (2.17%) on contracts completed during the last three years and the relative availability of ready, willing and able DBEs in the appropriate NAICS codes were considered and averaged in with the weighted base figure calculated in Step One to determine the DBE Program Goal of four percent for FFY 2022 - FFY 2024.
- The Step 2 adjustment appears reasonable in light of the significant construction activity in and around downtown Los Angeles that is currently occurring and projected to continue through the next several years.

Public Participation

We published our goal information using a variety of means, including but not limited to Foothill Transit's website and through classified ads placed in the San Gabriel Valley News, the Inland Valley Daily Bulletin, Excelsior, Sing Tao, Downtown News, and the Los Angeles Times, as well as through our procurement portal at PlanetBids.

We received comments from these individuals or organizations: No comments were received

Summaries of these comments are as follows: n/a

Our responses to these comments are: n/a

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Attachment 5

Section 26.51: Breakout of Estimated

Race-Neutral & Race Conscious Participation

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

Encourage participation of DBE's in pre-bid conferences

Outreach to DBE trade associations to provide information on Foothill Transit contracting opportunities

Solicit support of DBE trade associations to distribute bid announcements including bid specifications.

Encourage DBE's to discuss their capabilities with prime contractors at pre-bid conferences.

We estimate that, in meeting our overall goal of 4%, we will obtain 4% from race-neutral participation.

As a transit agency operating in California and covered by the decision of the U.S. Court of Appeals for the Ninth Circuit in the case of *Western States Paving Co., Inc. v. Washington State DOT*, Foothill Transit will not adopt race-conscious measures of DBE participation prior to the implementation of a disparity study.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if we use contract goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

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

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Attachment 6

Forms 1 & 2 for Demonstration of Good Faith Efforts

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FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

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

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature)

Title _____

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FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

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

Affirmation

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

By _____ (Signature) _____ (Title)

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

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Attachment 7

Certification Application Forms - N/A

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Attachment 8

Procedures for Removal of DBE's Eligibility

In the event we propose to remove a DBE's certification, we will forward our proposal to the CUCP.

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Attachment 9

Regulations: 49 CFR Part 26