



Simi Valley Transit

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

For Federal Fiscal Years 2018-19, 2019-20 & 2020-21

For Contracts Assisted by the Federal Transit Administration



DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

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Policy Statement/Objectives – Sections 26.23, 26.1

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

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

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

The Public Works Director has been designated as the DBE Liaison Officer. In this capacity, the Public Works Director 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 Simi Valley Transit (SVT) in its financial assistance agreements with the Department



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of Transportation. The DBELO shall have full authority for the implementation and administration of this program.

It is the expectation of the City Council and the City DBE Liaison Officer that all City personnel shall adhere to the provisions and procedures, as well as the spirit, of this Program. This policy will be circulated to all City personnel and to members of the community that perform or are interested in performing work on SVT contracts any time the DBE goal is updated. The complete overall DBE goals analysis is available for review online at or in person at:

City of Simi Valley
Department of Public Works
2929 Tapo Canyon Road
Simi Valley, CA 93063

<https://www.simivalley.org/departments/community-services/simi-valley-transit/disadvantaged-business-enterprise-dbe>

If you have any questions or would like further information regarding this Program, please contact the SVT DBE Liaison Officer, Ron Fuchiwaki, by email at publicworks@simivalley.org or by telephone at 805-583-6808.



Brian Paul Gabler
Interim City Manager

12/20/19

Date



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SUBPART A - General Requirements

Objectives – Section 26.1

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

Applicability – Section 26.3

The City of Simi Valley, receives Federal transit funds authorized by Titles I, III, V, and VI of the Intermodal Surface Transportation Efficiency Act (ISTEA), Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (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.

DBE Program Updates - Section 26.21

As the City of Simi Valley has received grants in excess of \$250,000, for FTA planning capital and/or operating assistance in a Federal Fiscal Year, the City will continue to carry out this program until all funds from DOT financial assistance have been expended. The City will provide the DOT with updates representing significant changes in the program to U.S. DOT and implement the complete updated DBE Program upon the approval of the FTA.

Definitions – Section 26.5

Any terms used in this Program defined in 49 CFR 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. Some of the most common terms are defined below:

Disadvantaged Business Enterprise or DBE – A DBE is a for-profit, small business concern; 1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially or economically disadvantaged, or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and 2) whose



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management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Race-Conscious Measure or Program – A program or portion thereof that focuses specifically on assisting only DBEs, by the development and inclusion of participation goals or best effort activities.

Race-Neutral Measure or Program – A program or portion thereof that assists all small businesses regardless of ownership through community outreach and awareness programs to participate successfully in Simi Valley Transit’s procurement program. For the purpose of the DBE Program, “race neutral” includes gender neutrality.

Socially and Economically Disadvantaged Individuals – Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

- 1) Found by the City to be socially and economically disadvantaged on a case by case basis by a certifying agency pursuant to the standards of the U.S. DOT Title 49 CFR, (part 121);
- 2) A member of one or more of the following groups, members of which are presumed reputable:

“Black Americans” which includes persons having origins in any of the Black racial groups of Africa;

“Hispanic Americans” which includes persons of Central or South America, Cuban, Dominican, Mexican, Puerto Rican, or other Spanish or Portuguese culture or origin, regardless of race;

“Native American” which includes persons who are Aleuts, American Indians, Eskimos, or Native Hawaiians;

“Asian Pacific Americans” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the



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commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia or Hong Kong;

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

Women; or,

A member of any additional group that is designated as socially and economically disadvantaged by the Small Business Administration (SBA).

Non-discrimination Requirements – Section 26.7

The City of Simi Valley will never knowingly exclude any person from participating 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, and/or national origin.

In administering its DBE program, the City of Simi Valley 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.

Record Keeping Requirements – Section 26.11

Reporting to DOT: Section 26.11(b)

The City will report DBE participation to DOT as follows:

The City of Simi Valley will report DBE participation on a semi-annual basis utilizing TRAMS, as required by the FTA.



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Bidders List – Section 26.11(c)

The City of Simi Valley will create and 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 calculating overall goals. The City will require all prime contractors bidding or proposing on DOT-assisted contracts to submit the following information about prime contract and all subcontractors who provide a bid or proposal under the prime contractor: firm’s name, address, DBE or non-DBE status, number of years in business, annual gross receipts, scope of work to be performed on the contract, and dollar amount of that work.

It is the policy of The City of Simi Valley to maintain the confidentiality of any proprietary information in accordance with applicable California law.

Federal Financial Assistance Agreement - Section 26.13

The City of Simi Valley has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance - Section 26.13(a)

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

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



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Contract Assurance – Section 26.13(b)

The City of Simi Valley will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

DBE Program Updates – Section 26.21

Since the City of Simi Valley has received grants in excess of \$250,000, for FTA planning capital and/or operating assistance in a Federal Fiscal Year, the City will continue to carry out this program until all funds from DOT financial assistance have been expended. The City will provide the DOT with updates representing significant changes in the program to U.S. DOT and implement the complete updated DBE Program upon the approval of the FTA.

Policy Statement – Section 26.23

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

DBE Liaison Officer (DBELO) - Section 26.25

The City of Simi Valley has designated the following individual as the City's DBE Liaison Officer:

Ronald K. Fuchiwaki, Public Works Director
City of Simi Valley/Department of Public Works
2929 Tapo Canyon Road
Simi Valley, CA 93063
Phone (805) 583-6808 Email: RFuchiwaki@simivalley.org



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In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City of Simi Valley complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in *Attachment A* to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO shall assign such staff as is necessary to fully implement this policy. The Transit Senior Management Analyst has been assigned to assist the DBELO as necessary in the development of the annual goal and reporting on its attainment and shall have the responsibility for monitoring Program compliance. The duties and responsibilities of the DBELO and/or assigned staff include the following:

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



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DBE Financial Institutions – Section 26.27

It is the policy of the City of Simi Valley 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 such institutions. A list of financial institutions was obtained from the State of California, Department of General Services, Office of Small Business Certification and Resources, and the website for The Federal Reserve Board <http://www.federalreserve.gov/releases/mob> to identify minority-owned banks derived from the Consolidated Reports of Condition and income filed quarterly by banks (FFIEC 031 through 034). The DBELO will continue to use these sources to continue to solicit minority owned banks to participate in the VCTC's DBE Program and will also re-evaluate the availability of DBE financial institutions every two years. The DBELO has researched the website for The Federal Reserve Board at the above website to identify minority-owned banks derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 through 034) and from other information on the Board's National Information Center database. The City of Simi Valley will continue to use this source to solicit minority-owned banks to participate in The City of Simi Valley's DBE Program.

Pursuant to the database, to date the following institutions are amongst the few identified in communities located near Simi Valley:

Bank of Hope; Northridge, CA
Cathay Bank; Northridge, CA
Commercial Bank of California; Sherman Oaks, CA
Community Commerce Bank; Tarzana, CA; Woodland Hills, CA
East West Bank; Encino, CA
Hanmi Bank; Northridge, CA; Van Nuys, CA
Preferred Bank; Tarzana, CA
Royal Business Bank; Westlake Village, CA



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

Prompt Payment Mechanisms – Section 26.29

The City of Simi Valley will include the following clause in each DOT-assisted prime contract:

“The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the City of Simi Valley. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Simi Valley. This clause applies to both DBE and non-DBE subcontracts.”

Retainage - Section 26.29(b)

The prime contractor agrees to return retainage payments to each subcontractor within 30 working days after the subcontractors work is satisfactorily complete. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the City of Simi Valley. This clause applies to both DBE and non-DBE subcontracts.

DBE Directory – Section 26.31

The City of Simi Valley utilizes the California Unified Certification Program (CUCP) to identify all firms eligible to participate as DBEs. The DBE Database is a consolidated and automated directory that identifies firms that have been certified as DBEs by the CUCP. The directory lists the firm’s name, address, phone number, date of the most recent certification, utilizing the North American Industry Classification System (NAICS) codes for which the firm is certified as a DBE. Additionally, the DBE Database may include, whenever possible, the date the firm was established, the legal structure of the firm, the percentage owned by disadvantaged individuals, capacity, previous work experience and a contact person. The DBE Database shall not in any way prequalify the identified DBE firms with respect to licensing, bonding, competence or financial responsibility. The directory is jointly maintained and updated by the CUCP certifying member



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agencies statewide, and is hosted by the California Department of Transportation (Caltrans).

The DBE Database is available at Caltrans' website at: <http://www.dot.ca.gov/hq/bep>. The City of Simi Valley will use the DBE Database as a primary resource in developing overall goals, contract-specific goals, conducting outreach and other activities to promote DBE participation in U.S. DOT contracts.

Over Concentration Analysis – Section 26.33

If the City determines there is an over concentration of DBE firms in a particular type of activity or work unduly burdening non-DBE firms from access to the activity or type of work, it shall take appropriate steps, including, but not limited to, providing incentives, technical assistance, mentor programs, and other actions in order to assist DBE firms transition to other City activities or work areas.

The City shall obtain the DOT's approval prior to implementing any remedial action devised to correct an over concentration of DBE firms in a particular activity or work. When approved by the DOT, any such remedial action taken regarding DBE over concentration shall become a part of this DBE Program.

Business Development Programs - Section 26.35

The City of Simi Valley does not operate a business development or mentor-protégé program at the present time. If the City of Simi Valley ever implements such a program in the future, then the City of Simi Valley will describe the rationale for having the program element, the specific provisions of the element (e.g., who is eligible to participate, how the program element works, and how interested persons would obtain information about the program element). At the time of a decision to implement a business development or mentor-protégé program, the DBELO will seek approval of such program from FTA and, at that time, the program will become a part of the overall DBE Program. The City will re-evaluate the need for such a program every three years.



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Monitoring and Enforcement Mechanisms - Section 26.37

The DBELO shall be responsible for monitoring all aspects of the DBE Program, including ensuring that all prime contractors and subcontractors on DOT-assisted projects are applying, where necessary, the legal remedies set forth in 49 CFR Section 26.29 and under state and local law. Additionally, the DBELO, or his or her designee, shall ensure that DBEs submit all required documentation verifying the work actually performed by DBEs on projects receiving DOT-assistance.

To this end, the DBELO, or his or her designee, must obtain and tabulate payments made to DBE firms (both prime contractors and subcontractors on DOT-assisted projects) on all City projects receiving DOT assistance. No credit toward overall or contract goals shall be given unless and until the Liaison Officer, or his or her designee, has confirmed that payment on a DOT-assisted project has been actually made to a DBE certified firm or individual.

Monitoring Payments to DBEs

The City employs a record keeping system which will facilitate the monitoring of the DBE Program. This system provides necessary data for PTA compliance reviews and uniform reporting requirements. Specifically, the City shall maintain records on the following:

- Procedures which have been adopted to implement this Program, including technical assistance efforts and referral and communication procedures.
- Contracts awarded to DBEs, including name of firm, nature of work, total value of the contract and/or subcontract and the overall percentage of DBE awards.
- Specific efforts to identify and award contracts to DBEs including the number and names of firms contacted and invited to bid on a contract, the number of names of DBEs responding and the publications in which the contract procurement was advertised.
- Payments made by Prime Contractors to DBE subcontractors.
- All documentation related to the meeting of overall DBE goals through race neutral means and contract goals. Data related to race neutral and contract goals DBE program achievements shall be kept and recorded separately.



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Small Business Participation – Section 26.39

The City will incorporate the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted projects by small business concerns (both DBEs and non-DBE small businesses) and to ensure that the maximum feasible portion of the City's overall DBE goal is met by using race-neutral means. Prime contractors may use DBE and/or small business firms in order to satisfy the City's DBE goals. The City's policy will include the following:

1. Remove unnecessary and unjustified bundling of contract requirements;
2. Require bidders on large contracts to identify and/or provide specific subcontracts appropriate for small business participation; and
3. Include reasonably competitive contract, provide outreach, technical assistance and training opportunities for small businesses through various partnerships. City staff sponsors and participates in business outreach sessions conducted by local municipalities, non-profit agencies, local chambers of commerce, and minority and women business organizations, which are designed to introduce small and minority-owned businesses to the City's procurement processes and practices. The City will advertise contracting opportunities through various outlets, including local newspapers, as well as on the City's website.

The City's small business program will be an active part of its DBE program, but does not replace or act as a substitute for other critical elements of the DBE program, including use of contract goals (as appropriate), good faith efforts, evaluations, etc. To be considered a small business, a firm must meet the standards set forth by the Small Business Administration (SBA) for the type of work that will be performed, as found in 13 CFR part 121.



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SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Set-asides or Quotas - Section 26.43

The City of Simi Valley does not use set-asides or quotas in the administration of this DBE program.

Overall Goals – Section 26.45

A description of the methodology to calculate the overall goal and the goal calculations can be found on the City's website in the DBE Goal Document. The DBE Goal Document will be updated every three years in accordance with the FTA DBE Three-Year Goal Setting Schedule.

In accordance with Section 26.45(f) the City of Simi Valley submits its overall goal to DOT on August 1 of every third year. Before establishing the overall goal, the City will consult with the contracting and local business community to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City's efforts to establish a level playing field for the participation of DBEs.

Following this consultation and pursuant to City policy, the City will publish a notice of the proposed overall goals on the City's website informing the public that the proposed goal and its rationale are available for inspection. Typically, the notice is issued by July 1, and then the goal is submitted to FTA via TrAMS on August 1.

The overall goal will be established in accordance with the 2-step process as specified in 49 CFR Section 26.45(c)-(d). The first step is to determine the number of ready, willing and able DBEs relative to the number of all businesses ready, willing and able to participate in the local market area, "base figure."

The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the City of Simi Valley would expect in the absence of discrimination based on past participation of DBEs on projects.



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The City of Simi Valley's overall goal submission to U.S. DOT includes the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc. used to develop the goal; and a summary of information and comments received during the public participation process. The City begins using the City's overall goal on October 1 unless the City receives other instructions from DOT. If the City establishes a goal on a project basis, the City will begin using the City's goal by the time of the first solicitation for a DOT-assisted contract for the project.

The City's overall goal submission to DOT will include a summary of information and comments received during this public participation process and the City's responses.

Commitment to DBE Participation – Section 26.47

The City of Simi Valley is committed to ensuring maximum opportunities for DBE firms. To that end, for any year in which the City does not meet its triennial DBE goal, the City will analyze the reason(s) for the difference between the goal and the actual level of DBE awards and commitments. Once the reason(s) for the City not achieving its goal have been identified, the City will develop an action plan consisting of corrective actions for the next year. This analysis, corrective action plan, and documentation of implementation of the corrective actions will be maintained for no less than three years and will be provided to the FTA upon request.

Transit Vehicle Manufacturers Goals – Section 26.49

The City of Simi Valley will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section.

Within 30 days of making an award to a TVM, the City will submit the name of the successful bidder and the total dollar value of the contract to the FTA.



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FTA assistance used in transit vehicle procurements will not be included in the base amount used to calculate the overall DBE goal.

Alternatively, the City 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.

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

The breakout of estimated race-neutral and race-conscious participation can be found on the City’s website in the DBE Goal Document. This section of the program will be updated annually when the goal calculation is updated.

Means for Meeting Race-Neutral Goals – Section 26.51(b)

The City will endeavor to meet its DBE goals using race-neutral means. These may include arranging solicitations, presentations, and other contract-related schedules in a manner that facilitates participation by DBEs; making contracts more accessible to DBEs; reducing bonding requirements (where possible); and ensuring distribution of the City’s DBE directory to potential prime contractors.

Contract Goals – Sections 26.51(d-g)

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

The City will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The City 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 City will express the City’s contract goals as a percentage of the total amount of a DOT- assisted contract.



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Good Faith Efforts Procedures – Section 26.53

Demonstration of Good Faith Efforts – Sections 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.

To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.

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

Additionally, the DBELO will decide whether a contractor actively and aggressively made a “good faith” effort to seek DBEs to meet the goals as stated in that specific solicitation, prior to awarding further contracts to a contractor that has failed to meet DBE contract goals. To demonstrate a good faith effort to meet the DBE contract goal, a bidder/proposer must submit the “List of DBE/SBE Prime or Subcontractors.” For each DBE listed, the bidder must submit a properly completed “DBE/SBE Declaration Form” executed by the proposed DBE subcontractor/supplier. All prime contractors submitting bids must submit Form 4A, which shall list all firms submitting bids, sub bids or quotes for any portion of the work under the specific contract, by bid deadline.

The City will ensure that all information is complete and accurate and adequately documents the bidder/offeror’s good faith efforts before the City commit to the performance of the contract by the bidder/offeror. (*Attachment C*)

Information to Be Submitted – Section 26.53(b)

The City of Simi Valley treats bidder/offers’ compliance with good faith efforts’ requirements as a matter of responsiveness.

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



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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 if the contract goal is not met, evidence of good faith efforts.

Administrative Reconsideration – Section 26.53(d)

Within 5 business days of being informed by the City 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:

Robin Walker, Senior Management Analyst
Department of Public Works/Transit Division
City of Simi Valley
2929 Tapo Canyon Rd
Simi Valley, CA 93063

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 the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The City 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



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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 – Section 26.53(f)

In the event that a bidder wishes to modify its percentage of DBE participation within the “List of DBE/SBE Prime or Subcontractors” after its submission or after a contract is awarded, the bidder must request approval for the modification from the DBELO, in writing. If a bidder intends to terminate and/or substitute a DBE firm, it must also provide written notice to the DBE subcontractor, with a copy to the DBELO, of bidder's intent to terminate and/or substitute the firm. A prime contractor may not, without The City of Simi Valley's prior consent, terminate for convenience a DBE subcontractor approved under this contract and then perform the work of the contract with its own forces or those of an affiliate. A modification includes any change to items of work, material, services, subcontract value or DBE firms that differ from those identified on the approved “List of DBE/SBE Prime or Subcontractors.” The prime contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE, when a DBE subcontractor is terminated and/or fails to complete its work for any reason. These good faith efforts must be directed at finding other DBEs to perform at least the same amount of work under the contract as the former DBE to the extent needed to meet the contract goal. A Contractor must have good cause to remove/terminate/substitute/replace a DBE contractor and such removal termination/substitution/replacement requires the City of Simi Valley's approval. To initiate the termination, substitution, removal or replacement process with a DBE contractor, the Contractor (any tier) must do the following:

- a) The contractor must give notice in writing to the DBE contractor and the City of Simi Valley before transmitting to the City of Simi Valley its request to terminate and/or substitute a DBE contractor. The notice must include its request to terminate and/or substitute, replace and/or remove the DBE, the reason for the request and all documentation to support its claim. The Contractor must submit a copy of the notice and support documentation to



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the City of Simi Valley at the time the original letter is sent to the DBE contractor;

- b) The Contractor must give the DBE contractor five (5) business days to respond to the notice and provide The City of Simi Valley with reasons, if any, why it objects to the proposed termination of its DBE contract and why the City of Simi Valley should not consent to the Contractor's action;
- c) The City of Simi Valley will then open a formal investigation inclusive of reviewing of all documentation, conducting interviews and making site visits, if necessary. The Contractor carries the burden of proof to demonstrate good cause for the termination and/or substitution;
- d) If the City determines the Contractor has good cause to terminate the DBE firm, the City will provide written consent of the DBE removal and the requirements to substitute work to another DBE firm. If the City finds that good cause does not exist to terminate the DBE firm, the City will provide a written denial of the request to terminate/replace the DBE contractor and immediately request a corrective action plan from the Contractor.
- e) One or more of the following circumstances should exist for purpose of good cause, to remove, terminate or replace a DBE: (1) Failure or refusal to execute a written contract. (2) Failure or refusal to perform the work of its subcontract in a way consistent with normal industry practice and the contractor has not acted in bad faith. (3) Failure to meet the contractor's reasonable bonding or insurance requirements. (4) Insolvency, bankruptcy or credit unworthiness. (5) Ineligibility to work on public works project because of suspension or debarment proceedings. (6) A determination that the DBE is not a responsible contractor. (7) Voluntary withdrawal from the project by written notification that is verified. (8) Other documented good cause that compels the replacement of the DBE.
- f) If the contractor is approved to replace/remove/terminate the DBE, the contractor must make good faith efforts to replace the DBE with another certified DBE and shall not self-perform the work/services. The prime contractor must provide the City of Simi Valley with any/all documents and



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information as may be requested with respect to the modification. If the City of Simi Valley determines that the prime contractor failed to make good faith efforts, the City of Simi Valley may consider such failure a breach of contract, entitling the City of Simi Valley to remedies provided herein, in addition to any other available remedy.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City of Simi Valley to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of # percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 and found in *Attachment B*, 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; and (6) if the contract goal is not met, evidence of good faith efforts.

Counting DBE Participation – Section 26.55

The City of Simi Valley counts DBE participation toward overall and contract goals as provided in 49 CFR 26.55. Only the work actually performed by a DBE will be counted towards the DBE goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted. Work that a DBE subcontracts to a non-DBE firm



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does not count toward DBE goals. Expenditures may only be counted if the DBE is performing a commercially useful function. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own work force. If materials or supplies are obtained from a DBE manufacturer, 100 percent (100%) of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, 60 percent (60%) of the cost will be counted. DBE achievement will not be counted toward the overall goal until the DBE has been paid. If contract-specific goals are set, The City of Simi Valley will track the participation of DBEs in contract-specific goal contracts separately from the participation of DBEs that is considered race-neutral. Additionally, The City of Simi Valley will not count that portion of a DBE's participation that is achieved after the certification of the DBE has been removed during the performance of a contract. A DBE subcontractor may not be terminated (or an approved substitute DBE firm) without prior written consent from The City of Simi Valley. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

SUBPART D - CERTIFICATION STANDARDS

Certification Process – Sections 26.61 – 26.73

The City of Simi Valley is a participant of the CUCP that uses certification standards of subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in U.S. DOT-assisted contracts. The CUCP MOA provides U.S. DOT recipients the option to be either a certifying member or a non-certifying member. The City of Simi Valley is a non-certifying member. The CUCP makes all DBE certification decisions on behalf of U.S. DOT recipients in the State. The City of Simi Valley relies upon the CUCP for the certification of DBE firms and ensures that only firms certified as eligible DBEs participate in the Program. The City of Simi Valley uses and counts for DBE credit DBE firms certified by the UCP. To be certified as a DBE, a firm must meet all certification eligibility standards. The following link provides information on required documentation and the certification process: http://www.caltrans.ca.gov/hq/bep/business_forms.html



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SUBPART E - CERTIFICATION PROCEDURES

Unified Certification Programs – Section 26.81

The CUCP statewide DBE Directory is hosted by the California Department of Transportation (Caltrans) and is available through a query form or you may download the entire directory in spreadsheet format or query the DBE directory using this link: http://www.caltrans.ca.gov/hq/bep/find_certified.htm.

The CUCP meets all requirements of this section. Interested parties are encouraged to use the link below to obtain current contact information on certifying agencies: <http://www.caltrans.ca.gov/hq/bep/ucp.htm>

Procedures for Certification Decisions – Section 26.83

Re-certifications – Sections 26.83(a, c)

The City of Simi Valley depends on the CUCP DBE certification program and does not make certification decisions or recertify. The City of Simi Valley follows the certification standards of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. A copy of the CUCP certification procedures and/or CUCP program is available at <http://www.caltrans.ca.gov/hq/bep>

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

U.S. Departmental Office of Civil Rights
External Civil Rights Program Division, Room W78-101
1200 New Jersey Avenue, SE
Washington, D.C. 20590

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



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

The City 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 the City’s application for certification.

The City also requires all owners of all DBEs to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The test of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have provided written notice to the City of Simi Valley [Recipient] 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.

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

The City will notify all currently certified DBE firms of these obligations in writing. 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.

Denials of Initial Requests for Certification – Section 26.85

If the City deny a firm's application or decertify it, it may not reapply until twelve months have passed from the City’s action.



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Removal of a DBE's Eligibility – Section 26.87

In the event the City is involved in the removal of a DBE's certification, the City will follow procedures consistent with Section 26.87. The City would use the Small Business Administration (SBA) or the certification of another DOT recipient in lieu of conducting the City's own certification procedure. If conditions occur that call into question the eligibility of a DBE firm, based on the City's direct or acquired knowledge of that firm, the City would report information available to us to the certifying agency for their action under paragraph 26.87. In light of the conditions cited, specific procedure for the City to remove a DBE's eligibility does not appear appropriate at this time.

Certification Appeals – Section 26.89

Any firm or complainant may appeal the City's decision in a certification matter to DOT. Such appeals may be sent to:

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

Appeals must be submitted to DOT within 90 days of the date of the City's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact the City failed to consider, or what provisions of 46 CFR Part 26 the City did not properly apply. The City will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for the City's DOT-assisted contracting (e.g., certify a firm if DOT has determined that the City's denial of its application was erroneous).



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SUBPART F - COMPLIANCE AND ENFORCEMENT

Information, Confidentiality, Cooperation – Section 26.109

The City will not release any information that may reasonably be construed as confidential business information to any third party, consistent with Federal, state, and local law with attention to the application of FOIA laws. Notwithstanding any contrary provisions of state or local law, the City 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 – Section 26.37

The City will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Simi Valley or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

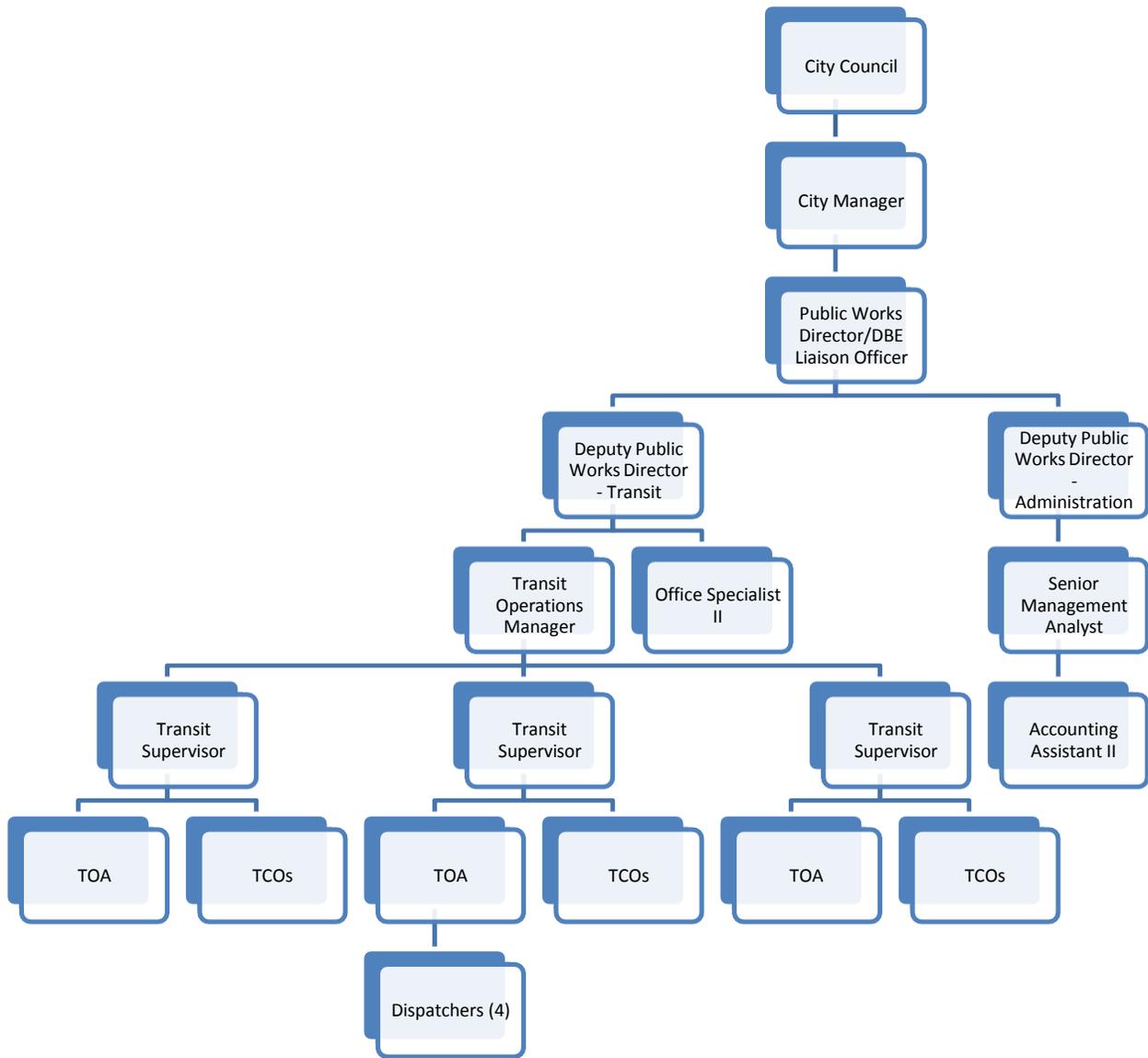


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Attachment A

CITY OF SIMI VALLEY – SIMI VALLEY TRANSIT ORG CHART





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Attachment B

Electronic Code of Federal Regulations

Regulations: 49 CFR, part 26 (click on link below)

<https://www.ecfr.gov/cgi-bin/text-idx?SID=53cd5c89e0e9bdafc93bae3ae3efb10c&mc=true&node=pt49.1.26&rgn=div5>

E-CFR data is current as of November 8, 2018



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Attachment C

Form 1 & 2 for Demonstration of Good Faith Efforts

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

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

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By: _____

Signature

Title

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____



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Attachment C

FORM 2: LETTER OF INTENT (Continued)

Description of work to be performed by DBE firm:

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

Affirmation

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

By _____

Signature

Title

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

(Submit this page for each DBE contractor)



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Attachment D

Certification Application Forms

Download a copy of the most current DBE Certification Application forms at:
http://www.dot.ca.gov/hq/bep/business_forms.htm

Link is current as of November 8, 2018