

Access Services
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

Table of Contents

I. Policy	3
A. Policy Statement	3
B. Objectives.....	3
II. Applicability.....	6
III. Definitions.....	7
IV. Responsibilities for DBE Program Implementation.....	12
A. DBE Liaison Officer	12
B. Reconsideration Official.....	13
V. Administrative Requirements	15
A. DBE Financial Institutions	15
B. DBE Directory.....	15
C. Overconcentration	15
D. Business Development Programs	16
VI. Establishing, Meeting and Counting Overall Annual DBE Goals for Federally-Assisted Contracts.....	17
A. Methodology for Setting Overall Annual DBE Goals	17
1. Projecting Federally-Assisted Contract Expenditures for Fiscal Year	17
2. Establishing a Base Figure	18
3. Adjusting the Base Figure.....	18
B. Transit Vehicle Manufacturer Certification	19
C. Procedures for Meeting Goals and DBE Participation Objectives.....	19
1. Race and Gender Neutral Measures.....	19
2. Race Conscious Measures	20
D. Methodology for Setting Contract-Specific Goals.....	20
E. Procedures to Evaluate Award of Contract with Contract-Specific Goals	21
1. Evaluation of Proposals	21
2. Evaluation of DBE Certification Status.....	22
3. Recommendation for Award	22
4. Administrative Reconsideration	22
F. Meeting Established Goals or Demonstrating Good Faith Efforts	23
1. Meeting Established Goals	23
2. Demonstrating Good Faith Efforts	23

G. Counting DBE Participation	24
1. Evaluation of Proposals with DBE Goals	25
2. Counting DBE Participation Towards the Contract Goal	25
H. Use of Set Asides or Quotas	26
VII. Required Contract Provisions	27
A. Non-Discrimination Assurances	27
B. Prompt Payment Provisions.....	27
C. Legal and Contracting Remedies.....	28
D. Contractor Reporting Requirements	29
1. Notification of Reporting Responsibilities.....	29
2. DBE Activity Reporting Forms	29
3. Contractor Good Faith Efforts and Reporting Obligations.....	29
a. Substitution of Subcontractors.....	29
b. Contract Compliance Reporting Requirements.....	30
c. Change in Contract Amount.....	30
4. Contractor’s Assurance Clause Regarding Non-Discrimination.....	30
VIII. Certification Standards	31
IX. Recordkeeping and Monitoring	32
A. Bidder’s List.....	32
B. Monitoring and Enforcement Mechanisms	33
C. Reporting to DOT.....	33
X. Public Participation and Outreach Efforts	35
A. Publication of Proposed Overall Annual Goals	35
B. Public Participation and Outreach.....	35
XI. Program Updates	36

Access Services

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

I. POLICY

A. Policy Statement (sections 26.3; 26.7; 26.21 and 26.23)

Access Services (hereinafter referred to as "Access") has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations published under U.S. Department of Transportation (U.S. DOT) Title 49 CFR Part 26. Access receives Federal financial assistance from the Department of Transportation, Federal Transit Administration (FTA) and as a condition of receiving this assistance, Access has signed an assurance that it will comply with Title 49, CFR Part 26.

It is the policy of Access to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in Access' DOT-assisted contracts. This Policy serves to outline specific actions which will be taken by Access to create a level playing field and foster equal opportunity in all federally funded Access Services Provider contracting opportunities.

B. Objectives (section 26.1)

It is also our policy to:

1. Provide a level playing field by which DBEs can compete fairly for and perform in Access' DOT-assisted contracting opportunities.
2. Ensure non-discrimination in the award and administration of all Access contracts and subcontracts.
3. Ensure that Access' DBE Program is narrowly tailored in accordance with applicable law and current legal standards, including the Ninth Circuit Ruling in *Western States Paving vs. Washington State Department of Transportation*.
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
5. Help remove procurement and contracting barriers, which impede DBE participation.
6. Monitor and enforce contractor's compliance in meeting established goal objectives and program requirements, including pre- and post-award good faith efforts criteria.
7. Assist in the development of DBEs to increase their ability to compete

successfully in the market place outside Access's DBE Program.

8. Ensure Access' contractors and subcontractors take all necessary and reasonable steps to comply with these policy objectives.

As evidence of Access' commitment to pursue these objectives, the Executive Director has designated Access Services Grants Analyst, Gilbert Garza, to serve as Access's DBE Liaison Officer. Other Access executive and management personnel, especially those responsible for procurement and contracting, shall give their full cooperation to the DBE Liaison Officer and/or designee in the implementation of this Policy. The Disadvantaged Business Enterprise Liaison Officer has direct access to the Executive Director for DBE related matters. Implementation of the DBE Program has the same priority with all other legal obligations incurred by Access within its financial assistance agreement with the U.S. DOT. Access will continue to carry out this Program until all funds from DOT financial assistance have been expended and will provide to DOT updates representing significant changes to the Program as necessary.

Access' DBE Policy Statement will be distributed to all Access personnel and to members of the DBE and non-DBE business contractors that perform or are interested in performing work on Access' DOT-assisted Service Provider contracts through the solicitation process and Access' website.

Through such efforts, Access will ensure DOT-assisted service provider contracting and procurement related processes promote equity in access, consideration and opportunity for DBEs in response to requirements set forth at 49 CFR Part 26; Participation of Disadvantaged Business Enterprises in U.S. Department of Transportation (DOT) Programs, effective March 4, 1999 and subsequently issued U.S. DOT Directives and Federal Registers.

Ms. Shelly Verrinder
Executive Director

Date

II. APPLICABILITY (sections 26.3 and 26.21)

Access is a direct recipient of Federal Section 5310 Grant Funds from the U.S. Department of Transportation (U.S. DOT), Federal Transit Administration (FTA). As a condition of funding assistance, and in accordance with federal regulations published at 49 CFR Part 26, Access is required to submit for approval, to the Federal Transit Administration, a Disadvantaged Business Enterprise Program, and an overall agency DBE goal which it agrees to implement in accordance with the prescribed regulations. This Program sets forth the policies and procedures to be implemented by Access to ensure that DBEs have an equitable opportunity to participate in Access' DOT-assisted Service Provider contracting opportunities.

In direct response to these legislative requirements, Access hereby establishes a DBE Program, which will:

1. Comply with federal regulations and financial assistance agreements;
2. Meet legal standards for unique and narrow program tailoring;
3. Ensure non-discrimination in the award of DOT-assisted contracts; and
4. Reaffirm commitment to fairness and the principles of equal opportunity.

In the event of any conflicts or inconsistencies between the Regulations and the Access's DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail.

Access is currently implementing its DBE Program and corresponding Overall Agency DBE Goal utilizing strictly race-neutral measures, as Access has continued to demonstrate its responsiveness in meeting and/or exceeding its established Overall DBE goals.

Access is also effectively complying with directives and guidance received from DOT, specifically notices issued on March 23, 2006 and August 21, 2006 as a result of the Ninth Circuit ruling in *Western States Paving vs. Washington State Department of Transportation* requiring recipients to utilize strictly race-neutral measures.

III. DEFINITIONS (section 26.5)

The terms used in this Program are defined in 49 CFR Part 26.5. Some of the most common terms are defined below:

Affirmative Action: Positive activities undertaken by Access and its contractors to eliminate discrimination and effects of past discrimination and to ensure non-discriminatory practices in the future.

Bidders List: A list of all contractors that have expressed an interest in bidding on prime contracts and subcontracts on DOT-assisted projects.

California Unified Certification Program (CUCP): One-stop certification clearinghouse enabling applicants to apply once for DBE certification which will be honored by all DOT recipients in the state.

Commercially Useful Function: Work performed by a DBE firm in a particular transaction that, in light of industry practices and other relevant considerations, has a necessary and useful role in the transaction, i.e., the firm's role is not a superfluous step added in an attempt to obtain credit toward goals. If, in Access' judgment, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded.

Compliance: A contractor has correctly implemented the requirements of the DBE Program.

Contracting Opportunity: Any decision by Access or its contractors to institute a procurement action to obtain a product or service commercially (as opposed to inter-governmental actions).

Contract: A legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to construction and professional services) and the buyer to pay for them.

Contractor: One who participates, through a contract or subcontract (at any tier), in a DOT-assisted program.

DBE Directory: List of Certified firms, which is used by Access and its contractors to identify DBE potential prime contractors and subcontractors and suppliers. Access utilizes the online DBE Directory of the California Unified Certification Program.

Department or DOT: The U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged Business Enterprise or DBE: A for-profit small business concern—

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;

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

3. Has been certified as Disadvantaged in accordance with 49 CFR 26.

DOT-Assisted Contract: A contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land or improved real property.

Goal: A numerically expressed objective, which Access or its contractors are required to make good faith efforts to achieve in a race-conscious solicitation contract.

Good Faith Efforts: Efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and other appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate Family Member: Father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law and father-in-law.

Joint Venture: An association between a DBE firm and one or more other firms to carry out a single, for profit business enterprise, for which the parties combine property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interest.

Manufacturer: A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by specifications.

Noncompliance: A contractor has not correctly implemented the requirements of the DBE program.

Operating Administration or OA: Any of the following agencies of the U.S. Department of Transportation (DOT): the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

Personal Net Worth: The net values of the assets of an individual remaining after total liabilities are deducted. An individual’s personal net worth does not include: The individual’s ownership interest in an applicant or participative DBE firm or the individual’s equity in his or her primary place of residence. An individual’s personal net worth includes only his or her own share of assets jointly as a community property with the individual’s spouse.

Primary Industry Classification: The four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm.

Primary Recipient: A recipient of DOT financial assistance who passes some or all of it on to another recipient.

Principal Place of Business: The business location where the individuals who manage the firm’s day to day operations spend most working hours and where top management’s business records are kept. If the offices from which management is directed and where business records are kept are in different locations, Access will determine the principal place of business for DBE program purposes.

Program: Any undertaking on Access’ part to use DOT financial assistance authorized by laws to which the DBE Program applies.

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 Access’ procurement program. For the purposes of the DBE Program, “race neutral” includes gender neutrality.

Regular Dealer: A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. Any supplementing of regular dealers’ own

distribution equipment shall be by a long-term lease agreement and not on an ad-hoc or contract by contract basis.

Secretary: The Secretary of Transportation or his/her designee.

Set-Aside: A contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms or on some other basis not related to qualifications or pricing.

Small Business Administration or SBA: The federal United States Small Business Administration.

Small Business Concern: With respect to firms seeking to participate as DBEs in DOT-assisted contracts, a business which meets the definition contained in Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65 (b).

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

- (1) Found by Access to be a socially and economically disadvantaged individual on a case by case basis.
- (2) A member of any one or more of the following groups, members of which are rebuttably presumed to be social and economically disadvantaged:
 - (i) “Black Americans” which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) “Hispanic Americans” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) “Native Americans” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv) “Asian Pacific Americans” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

- (v) "Subcontinent Asian Americans" which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women; and
- (vii) Any additional group whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Subrecipient: Any entity that receives DOT financial assistance through a primary recipient.

Transit Vehicle: A vehicle used by Access, e.g. railcar, bus or van, for the primary program purpose of public mass transportation; this definition does not include locomotives or ferry boats.

Transit Vehicle Manufacturer or TVM: A manufacturer of vehicles used by Access for the primary program purpose of public mass transportation (e.g. railcars, buses, and van). The term does not apply to firms, which rehabilitate old vehicles, or to manufacturers of dealers in transit vehicles with respect to requirement of paragraph 26.49 of the Regulation.

Tribally Owned Concern: Any concern at least 51 percent owned by an Indian tribe as defined in this Program.

UDBE: An eligible certified DBE who is a member of at least one of the identified underutilized protected groups that evidenced substantial disparity.

IV. RESPONSIBILITIES FOR DBE PROGRAM IMPLEMENTATION

A. DBE Liaison Officer (section 26.25)

The Executive Director, while maintaining ultimate responsibility for Access's DBE Program, has designated the Grants Analyst/Compliance Administrator as the DBE Liaison Officer to implement all aspects of Access' DBE Program. The DBE Liaison Officer will have direct, independent access to the Executive Director concerning program matters and will be assigned staff as necessary to fully administer the Program in compliance with the provisions of 49 CFR Part 26.

The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate Agency personnel.

The DBE Liaison Officer's duties include, but are not limited to the following:

1. Analyze and revise DBE program policies and procedures as necessary.
2. Implement and monitor DBE Program, in coordination with Executive staff and Board of Directors.
3. Advises the Executive Director and Board of Directors on DBE matters and achievements.
4. Perform goal-setting analysis for establishing overall DBE goals and contract- specific goals as necessary, for DBE participation.
5. Conduct and coordinate outreach efforts to DBEs and community organizations to provide information of upcoming contract opportunities.
6. Participate at pre-proposal conferences to inform potential competitors of DBE requirements and availability.
7. Remove barriers, which may limit DBE participation by ensuring that Invitation for Bids (IFBs) and Request for Proposals (RFPs) do not contain unduly restrictive requirements.
8. Develop and implement technical assistance programs for DBEs, including resources and referrals to supportive services.
9. Arrange solicitations, presentation of bids or proposals and determine required quantities, specifications, and proposal delivery schedules, to facilitate a level playing field for DBEs.
10. Coordinate information and communication programs regarding contracting opportunities within a timely manner.
11. Investigate services and resources offered by banks and/or financial institutions owned and controlled by socially and economically

disadvantaged individuals.

12. Ensure that, prior to approval of the substitution of any DBE sub-contractor, that prime contractor service providers evidence good faith efforts, to replace the DBE initially proposed, with another eligible DBE in a race-conscious contract.
13. Perform analysis of good faith efforts when the project goal is not achieved in a race-conscious solicitation contract with a contract specific goal.
14. Review service provider/contractor compliance with all DBE provisions including DBE goal commitments made within bids or proposal, throughout the performance of the contract; and, imposes administrative sanctions for non-compliance.
15. Maintain documentation as necessary to verify performance of activities included in this Program.
16. Gather and maintain statistical data and other information as required by U.S. DOT.
17. Actively support and participate in the establishment of a Uniform Certification Program as a non-certifying member Agency.
18. Analyzes Access's progress toward meeting established goal objectives and identify ways to improve progress.

The Access DBE Liaison Officer can be contacted at (213) 270-6000.

B. Reconsideration Official (section 26.53 (d) (2))

In instances where race-conscious contract goals are established, and an apparent successful proposer fails to satisfy the requirements for meeting the contract goal, or good faith efforts, Access will provide the proposer prior to award of the contract, an opportunity for administrative reconsideration. The administrative reconsideration process will be facilitated by Access's Reconsideration Official who may be an outside consultant. The Reconsideration Official shall be another recipient agency's DBE Liaison Officer or an outside consultant as an independent, impartial party. To ensure integrity in the process, the Reconsideration Official will not have taken part in the original determination relative to the goal or good faith efforts of the subject procurement.

The process will provide an opportunity to the proposer for an in-person hearing with the Reconsideration Official, to discuss and submit written evidence/documentation of compliance with goal or good faith effort requirements as set forth in the solicitation.

Access will sufficiently document the basis for the reconsideration determination, and forward the final determination to the proposer within seven (7) working days of the hearing date. All parties shall be advised that the result of the reconsideration process is not administratively appealable to U.S. DOT.

Oversight of this process shall be performed jointly by Access' Executive Director and/or designee and the Reconsideration Official, who shall:

1. Ensure that all DBE administrative reconsideration procedural actions are consistent with 49 CFR 26.53 and 26.87 requirements and standards, and that program integrity is maintained at all times.
2. Maintain verbatim records of hearings conducted.
3. Provide determinations in writing to the Access' DBE Liaison Officer.

V. ADMINISTRATIVE REQUIREMENTS

A. DBE Financial Institutions (section 26.27)

Access shall thoroughly investigate the full extent of services offered by banks and/or financial institutions owned and controlled by socially and economically disadvantaged individuals within Access's jurisdiction and make the greatest feasible use of these institutions. Further, it is Access' commitment to encourage prime contractors to use such institutions as well. Please see Attachment 4 for a listing of available DBE financial institutions and encourage Prime Contractors on DOT-assisted contracts to make use of those institutions.

B. DBE Directory (section 26.31)

Access will utilize the CUCP directory of Disadvantaged Business Enterprise Firms as the primary resources for establishing and achieving DBE participation goals and good faith effort requirements for Access' service provider contracts. The CUCP DBE Directory is organized according to type of firm specialty, to enable identification of businesses with capabilities relevant to a particular trade, industry or procurement. The CUCP DBE Directory includes the following information for each certified DBE:

1. Name, address and telephone numbers;
2. Type of work/service provided;
3. Contact persons; and
4. DBE certification status.

Access will refer to the CUCP DBE Directory prior to sending out contract specifications of a particular procurement, for purposes of establishing contract-specific goals when warranted to meet Access' overall annual goal, and, for identifying eligible DBEs interested in participating in service provider contracting opportunities.

The CUCP DBE Directory of certified DBE Firms can be assessed on-line at: www.dot.ca/gov/hq/bep.

C. Overconcentration (section 26.33)

Access has developed policies and procedures to address overconcentration of DBE utilization in certain types of work. This is to be accomplished through regular tracking of contract awards, and compliance monitoring, whereby Access will identify and directly respond to identified overconcentration within specific trades or specialty areas, by modifying contract goals as required. Currently, Access has not

identified any types of work that have an overconcentration of DBE participation, which unduly burdens the opportunity of non-DBE firms to participate.

**D. Business Development Programs (section 26.35; Appendix C
And Appendix D)**

Access acknowledges the role of Business Development and Mentor-Protégé Programs in its DBE Program designed to facilitate meeting the objectives of the federal DOT DBE Program. Access may consider enacting such programs, in the future to assist disadvantaged firms in enhancing their firms' skills and abilities within their respective industries and to successfully compete for service provider contracts.

VI. ESTABLISHING, MEETING AND COUNTING OVERALL ANNUAL DBE GOALS FOR FEDERALLY-ASSISTED CONTRACTS

The DBE Liaison Officer shall establish an overall goal for the participation of DBEs in all budgeted contracts utilizing U.S. DOT federal financial assistance. Effective March 4, 2010, the Federal Transit Authority placed Access's Overall DBE Goal submittal on a new schedule, requiring a submission every three (3) years. Access was placed on schedule "C" requiring submittal on August 10, 2012 and every three years thereafter. However, Access will perform annual reviews consistent with the prescribed methodology of its Federal-aid contracting Program and attainments made towards achieving the goal to determine if adjustments to the Overall DBE Goal are warranted. The overall annual goal shall be expressed as a percentage of the total amount of U.S. DOT funds the Department anticipates expending within the Overall goal period. Access' overall annual goal represents the amount of ready, willing and able DBEs that are available to participate in service provider contracting opportunities and, is reflective of the amount of DBE participation Access would expect, absent the effects of discrimination. Access intends to meet those goals to the maximum extent feasible through the race neutral measures described herein. Access may perform an Availability Statistical Analysis Disparity Study to determine whether or not discrimination exists within Access' contracting program and the effects therein prior to implementing a race-conscious program or limited race-conscious program. Should the Availability Statistical Analysis and Disparity Study evidence that race-conscious measures are necessary to remedy underutilization (substantial disparity) of DBEs, Access may reinstitute the utilization of Contract-Specific goals to drive DBE participation or further enhance its use of race-neutral measures and strategies should the Availability Analysis and/or Study demonstrate "substantial disparity" for only specific groups within the groups presumed to be socially disadvantaged by 49 CFR Part 26, Access may seek a waiver of limited application to implement a race-conscious program and reinstitute contract-specific goals for only those groups of underutilized DBEs (DBEs meeting "substantial disparity"). Race-conscious measures will not be implemented by Access until approval is received from U.S. Department of Transportation of its Overall Goal and Waiver request (as applicable).

A. Methodology for Setting Overall DBE Goals (section 26.45)

1. Projecting Federally-Assisted Contract Expenditures for Goal Period

In conjunction with the preparation and adoption of Access' budget, the DBE Liaison Officer, in consultation with the appropriate divisions and departments responsible for contracting activities, will conduct a thorough analysis of the projected number,

types of work and dollar amounts, of contracting opportunities that will be funded, in whole or in part, by U.S. DOT federal financial assistance for the goal period.

2. Establishing a Base Figure

Once Access defines its contracting opportunities for the goal period, Access will establish a base figure following one of the methodologies, as an initial step in the goal setting process in accordance with 49 CFR Part 26.45.

Access will determine a base figure of relative availability of DBEs by:

1. Calculating the number of DBEs within respective areas of need, as contained within similar local area agencies DBE Directories, and, dividing it by the number of all comparable representative business firms.
2. Utilizing the Census Bureau's County Business Pattern database to identify available DBEs within Standard Industry Classifications.
3. Comparing the number of firms performing similar work within the same geographic area.
4. Weighting the resultant figure based on the amount of federal funds Access is projected to award and/or expend on various industries.

3. Adjusting the Base Figure

As a mandatory second step, Access will adjust the base figure based on other local evidence which Access determines relevant to its market, which may include, but is not limited to:

1. Demonstrated DBE capacity to perform work on Access's contracting opportunities;
2. Real market conditions;
3. Disparity studies conducted within the jurisdiction; and
4. Other relevant factors, including:
 - (i) The number, types and dollar value of service provider contracting opportunities projected to be financed with federal funds, and, to be awarded during the fiscal year.
 - (ii) The number of willing, ready and capable DBEs available to compete for such service provider contracts.
 - (iii) Other recipients' results of goal attainment in similar contracting opportunities and markets, and the reasons for the level of attainment.
 - (iv) The methods used by Access to increase DBE participation in DOT-assisted contracts.
 - (v) The demographics and business activity of the geographical area in which Access will solicit bids or proposals.

B. Transit Vehicle Manufacturer Certification (section 26.49)

Access will require each Transit Vehicle Manufacturer to certify that they have established an overall annual DBE participation goal that has been approved by FTA before they can bid on any Access contracts. Expenditures for FTA-assisted transit vehicle procurements are not included in the funding base used to calculate Access's goal for DBE participation.

C. Procedures for Meeting Goals and DBE Participation Objectives

1. Race and Gender Neutral Measures

Access intends to wholly use race and gender neutral methods to achieve its overall annual goal. DBE participation that is obtained on contracts that have no specific DBE goal, or where prime contractors use a strictly competitive bidding process or do not consider the DBE's status as a DBE in awarding a subcontract shall be considered race and gender neutral DBE participation. In addition, Access will use the following measures as appropriate:

- a. Reconfiguring large service provider contracts into smaller contracts when feasible, which would make service provider contracts more accessible to small business, and would not impose significant additional cost, delay or risk to Access;
- b. Identifying components of the work, which represents service provider subcontracting opportunities and identifying the availability of DBE subcontractors to participate in proportion to the total available subcontractors. Service providers will be encouraged to consider subcontractors for components of the work for which there is a known supply of ready, willing, and able subcontractors, including DBE subcontractors, in preparing their proposals;
- c. Assisting in overcoming limitations in bonding and financing;
- d. Providing technical assistance in orienting small businesses to public service provider contracting procedures, use of the Internet, and facilitating introductions to Access' and other U.S. DOT recipients' contracting activities;

- e. Providing outreach and communications programs on contract procedures and contract opportunities to ensure the inclusion of DBEs;
- f. Ensuring the distribution of the DBE Directories to the widest feasible universe of potential prime contractors; and
- g. Providing business development assistance.

2. Race-Conscious Measures (Access is currently implementing a strictly Race-Neutral DBE Program)

In accordance with 49 CFR 26, Access will project how much of the overall goal can be achieved through race and gender-neutral measures, and, will only use race-conscious measures such as contract-specific goals, to meet that portion of the overall goal which is not likely to be met utilizing race-neutral measures only after receiving approval from U.S. DOT (Currently not utilized as Access is implementing a strictly Race-Neutral DBE Program, refer to introductory paragraph for process to reinstitute utilization of numeric contract-specific goals). Further, Access shall monitor and adjust the estimated utilization of race-neutral and race-conscious methods as required in accordance with 49 CFR 26.51(f).

D. Methodology for Setting Contract-Specific Goals (section 26.51)

The DBE Liaison Officer and/or designee shall establish contract-specific DBE participation goals on particular service provider contracting opportunities to the extent that Access cannot achieve its overall goals with race and gender-neutral measures after approval is received from U.S. DOT. Where a contract-specific DBE goal has been established, the proposer must meet the contract-specific goal or demonstrate that they made sufficient good faith efforts to do so. A proposer shall be ineligible for contract award if it does not meet the goal or demonstrate sufficient good faith efforts.

The following procedures will be followed in setting contract-specific goals for DBE participation, when necessary, to meet Access's overall DBE participation goal.

The DBE Liaison Officer will receive an advance notification form for all project/contract needs, with cost estimates and detailed scope of work from the designated Access department.

The DBE Liaison Officer and/or designee will determine whether a contract-specific goal should be established for the particular contract and, if so required, what the percentage goal should be based upon:

The projected portion of the overall goals which will be met by establishing establishing contract-specific goals;

2. The progress toward achieving the overall DBE goal;
3. The full range of contracting activities identified within the proposed contract;
4. The availability of DBEs as prime contractors or subcontractors in the types of work involved in the performance of the proposed contract;
5. The unique conditions of the project which might affect the ability of a service provider to coordinate utilize or incorporate subcontractors or suppliers into the project.
6. The effect that the contract-specific goal might have on the time of completion; and
7. Any other relevant criteria.

E. Procedures to Evaluate Award of Contract with Contract-Specific Goals (Currently not utilized as Access is implementing a strictly Race-Neutral DBE program)

Access shall award contracts to the lowest responsible bidder as required by California Public Contracts Code Section 20914 and 20916, where applicable. However, for such contracts, as well as for contracts awarded pursuant to a competitive negotiation (RFP or RFQ) procedure, a proposer which fails to demonstrate that it achieved the contract-specific DBE participation goal and fails to demonstrate that it made sufficient and substantive good faith efforts to do so, shall be deemed "non-responsive" and, therefore, shall be ineligible for award of the contract.

1. Evaluation of Proposals

After the submission deadline for proposals, the DBE Liaison Officer and/or designee shall evaluate all bids/proposals to determine whether the proposers submitted all of the information required by 49 CFR Part 26.53(b). The responsible proposer with the lowest apparent bid price, or the most highly ranked proposer, who also meets the contract-specific DBE goal or demonstrates sufficient and substantive good faith efforts shall be recommend for contract award. In the event the proposer with the lowest monetary bid price fails to meet the contract-specific goal or fails to demonstrate sufficient and substantive good faith efforts, or is otherwise unresponsive or not responsible, the DBE Liaison Officer and/or designee shall evaluate the proposer with the next lowest bid price. Should the DBE Liaison Officer and/or designee determine that additional information is needed to evaluate a proposer's submission with regard to the DBE requirements, the DBE Liaison Officer and/or designee shall request the proposer to submit the required information, or may contact the listed DBE(s) directly to request such.

2. Evaluation of DBE Certification Status

The DBE Liaison Officer and/or designee shall require that the DBEs listed by proposers for participation in contracts with goals, be certified as eligible DBEs at time of proposal submission, in order for their participation to be counted towards meeting the established contract-specific DBE goal.

Access will accept certifications from all members of the Southern California Regional Reciprocity Council and any other U.S. DOT recipients, which certify DBEs, in accordance with 49 CFR Part 26.

3. Recommendation for Award

Following the determination of the lowest responsive and responsible proposer, the DBE Liaison Officer and/or designee shall prepare a report on the lowest responsive and responsible proposer's compliance with the DBE requirements, to be submitted for presentation to the Board of Directors at the time the contract award is considered. The Board of Directors decision regarding contract award shall be final and binding for all parties, subject to compliance with Access' appeals procedures.

4. Administrative Reconsideration

In the event that the DBE Liaison Officer and/or designee determines that the apparent selected contractor has not met the contract-specific goal, and, has not demonstrated sufficient and substantive good faith efforts, the DBE Liaison Officer and/or designee will notify the proposer in writing. The notification shall include the reasons for the determination and that the proposer has the right to submit further written documentation or appear before the designated Reconsideration Official, prior to the time that a recommendation for award of contract is presented to the Board of Directors. Access assures that the Reconsideration Official would not have played any role in the original determination. Access reserves the discretion to utilize the Regional Reciprocity Council as a resource in fulfilling this role. Proposers requesting reconsideration must make such request in writing to Access. The designated Reconsideration Official shall provide the proposer with a written decision on reconsideration, explaining the basis for its determination.

In the event that the Reconsideration Official finds that the proposer has not met the contract-specific goal, or, demonstrated sufficient and substantive good faith efforts, the DBE Liaison Officer and/or designee will deem said proposer non-responsive and evaluate the proposer submitting the next qualified proposal.

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

F. **Meeting Established Goals or Demonstrating Good Faith Efforts**
(Section 26.53; Appendix A)(Currently not utilized as Access is implementing a strictly Race-Neutral DBE program)

The following sections outline the requirements of firms competing for Access service provider contracts to comply with either meeting the established contract-specific goal, documenting commitments for participation by DBE firms sufficient for this purpose, or documenting sufficient and substantive good faith efforts, in the event goal is not met. Proposers, who fail to meet DBE goals, or demonstrate that sufficient good faith efforts were made, will be deemed non-responsive.

1. Meeting Established Goals

Each solicitation for which a contract goal has been established will require the proposer to submit the following information to Access at the time of proposal submission:

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 the proposer's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal, utilizing the *Access's DBE Responsive Requirement - List of Proposed DBEs Form*;
5. Written and signed confirmation from the DBE firm that it is participating in the contract as provided in the service provider's commitment; and
6. Written and signed confirmation that the proposed DBE has been certified in accordance with 49 CFR Part 26, at the time bid/proposal is submitted.
7. If the contract goal is not met, evidence of good faith efforts.

2. Demonstrating Good Faith Efforts

The obligation of the proposer is to make good faith efforts to meet the established contract goal for DBE participation. The proposer can demonstrate that it has done so, either by meeting the contract goal or documenting good faith efforts.

If the amount of DBE participation proposed does not meet the contract-specific goal, the DBE Liaison Officer shall review and determine responsiveness of good faith efforts submitted by the proposer. The DBE Liaison Officer shall determine whether

the proposer has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the contract-specific goals in accordance with 49 CFR Part 26 Appendix A of the Regulations.

The following are examples of good faith efforts and types of documentation necessary to evidence such efforts:

1. Attend a pre-bid/pre-proposal meeting, if any, scheduled by Access to inform potential prime contractors and DBEs of subcontracting opportunities.
2. Identify portions of the work to be performed by subcontractors in which DBEs may participate.
3. Advertise in general circulation media, trade association publications, or disadvantaged focus media identifying specific subcontracting opportunities.
4. Provide written notice to a number of specific DBEs soliciting their interest in the contract. There should be sufficient number of such written invitations to DBE firms for trade subcontracts or material quotations so as to equal or exceed Access' established DBE goal for the project.
5. Document efforts to negotiate with DBEs for specific sub-contracts, including, at a minimum:
 - a) Names, addresses and telephone numbers of DBEs that were contacted
 - b) Description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed; and
 - c) A statement of why additional agreements with DBEs were not reached
6. Negotiate in good faith with interested DBEs, not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities.
7. Assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the contractor.
8. Use services of available DBE community organizations, disadvantaged contractor groups, local, state and federal DBE offices and other organizations that provide assistance in the recruitment and placement of DBEs.

Access will ensure that all information is complete and accurate and adequately documents the proposer's good faith efforts before Access commits to the performance of a contract by the proposer.

G. Counting DBE Participation (section 26.55)

The DBE Liaison Officer shall require that the DBEs listed by proposers for participation in contracts with goals, be certified as eligible DBEs at time of proposal

submission, in order for their participation to be counted towards meeting the established contract-specific goal for DBE participation.

Access will accept certifications from certifying member agencies of the CUCP, which certifies the eligibility of DBEs in accordance with 49 CFR Part 26.

1. Evaluation of Proposals with DBE Goals (Currently not utilized as Access is implementing a strictly Race-Neutral DBE program)

The DBE Liaison Officer shall evaluate all proposals and required information submitted by proposers to determine compliance with DBE provisions and formalize a recommendation for contract award. This information includes all efforts to either meet or exceed the established DBE goal, or, documented evidence of good faith efforts to meet the goal.

2. Counting DBE Participation towards the Contract Goal

This section will address how DBE participation is counted toward Access's DBE goals, once a DBE is determined to be certified and eligible to participate in Access's DBE Program. The following guidelines apply in calculating DBE participation toward meeting established goals in accordance with 49 CFR 26.55:

- a) Only the work actually proposed to be performed by a DBE's own workforces will be counted towards the DBE goal. The cost of supplies, materials and equipment leases obtained by the DBE (except supplies and equipment the subcontractor purchases and/or leases from the prime contractor or its affiliate) may also be counted toward the DBE goal.
- b) When a DBE subcontracts part of its work of its contract scope to another firm, the value of the subcontracted work may be counted toward the DBE goal, only if the DBE subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce.
- c) In instances of joint venture, a proposer may only count toward its DBE goal, the portion of work proposed to be performed by the DBE partnering firm, which meets certification, ownership and control standards.
- d) A proposer may count toward its DBE goal, only expenditures to firms that are proposed to perform a commercially useful function on that contract. A DBE performs a commercially useful function when it is responsible for

execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved.

- e) A proposer may count toward its DBE goal, sixty percent (60%) of its expenditures for materials and supplies required under the contract and obtained from a DBE regular dealer, and, one hundred (100%) percent of such expenditures to a DBE manufacturer. For purposes of this section, a **manufacturer** is a firm that operates or maintains a factory or establishment that produces on the premises the materials and supplies obtained by the contractor. A **regular dealer** is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.
- f) A proposer may count towards its DBE goal, fees and commissions paid to DBE firms that are not manufacturers or regular dealers, provided that the fees or commissions are determined to be reasonable and not excessive, as compared with fees customarily allowed for similar services.
- g) Special Provisions for Trucking - A proposer may count towards its goal, all transportation services provided by DBE trucking firms, who can demonstrate control of trucking operations for which it seeks credit, and, it owns, insures, and operates, using drivers it employs in the performance of the contract. The DBE trucking firm may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE receives credit for the total value of the transportation services which the leasee DBE provides on the contract. The DBE which leases trucks from a non-DBE is entitled to credit only for the fees or commissions it receives as a result of the lease arrangement.
- h) Prime contractors are advised not to count the participation of DBE subcontractors towards the prime contractor's DBE achievements, until the amount being counted toward the goal has been paid to the DBE.
- i) In cases where DBE certification has ceased during the performance period of the contract, the prime contractor will continue to report the dollar value of the work performed to Access on the monthly DBE Paid Report (Form 103), however, Access will not count the participation towards its overall agency goal.

The DBE Liaison Officer will track the participation of DBEs in contract-specific goal contracts separately from the participation of DBEs that is considered race-neutral.

H. Use of Set Asides or Quotas (sections 26.43 and 26.47)

Access shall not permit the use of quotas for DBEs on DOT assisted contracts, in accordance with 49 CFR Part 26.43. Further, Access shall not set aside contracts for DBEs, except in limited and extreme circumstances, where no other method could reasonably be expected to redress egregious instances of discrimination.

VII. REQUIRED CONTRACT PROVISIONS

A. Non-Discrimination Assurances (section 26.13)

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

Access shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any U.S. DOT assisted contract or in the administration of its DBE Program or the requirements of the CFR Part 26. Access shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in the award and administration of U.S. DOT assisted contracts. Access' DBE Program, as required by 49 CFR Part 26 and as approved by U.S. 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 Access of its failure to carry out its approved Program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

B. Prompt Payment Provisions (section 26.29)

Access has, by a contract clause, adopted a prompt payment provision on all DOT assisted contracts, pursuant to 49 CFR 26.29; "Prompt Payment Mechanisms for Recipients", to facilitate timely payment to all subcontractors. This provision, governing the payment to subcontractors (DBEs and non-DBEs), requires the prime contractor to issue payment to all subcontractors for satisfactory work performed, no later than ten (10) days from the prime contractor's receipt of payment from Access. A provision shall also apply to the disbursement of retention proceeds withheld by the prime contractor, requiring returning retainage payments to each subcontractor within ten (10) days, after the subcontractor's work is satisfactorily complete. These prompt payment provisions are required to be incorporated in all subcontract agreements issued by the prime contractor.

Failure to comply with these provisions or delay in payment without prior written approval from Access will constitute noncompliance, which will result in appropriate administrative sanctions, including, but not limited to, a penalty of one percent (1%) of the amount due per month for every month that payment is not made.

Prior to Access' issuance of progress payments, commencing with the second invoice, the prime contractor shall provide Access with a certificate, in the form provided, executed by the prime contractor, stating that all subcontractors have been paid all amounts due, in accordance with the work performed in a satisfactory manner by each subcontractor.

C. Legal and Contract Remedies (section 26.37; Appendix B)

Access will monitor compliance of DOT-assisted contracts with the requirements of 49 CFR Part 26 and the DBE Program. Access may impose such contract remedies as are available under federal, state and local law and regulations for non-compliance. Such remedies may include, but are not limited to, withholding of progress payments, contract retention, imposition of liquidated damages, and termination of the contract in whole or in part.

Access 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 CFR 49 Part 26.109. Access will also consider similar action under Access' own legal authorities, including responsibility determinations in future contracts.

Complaints relative to Access "DBE" Program implementation or other individual complaints may be forwarded to Access's DBELO at:

*Access Services
PO Box 5728, El Monte, CA, 91734
Attn: Gilbert Garza*

or the U.S. DOT at:

*U.S. Department of Transportation
1200 New Jersey Ave., SE
Washington, DC 20590
Attn: Office of Civil Rights*

Procurement protests related to DBE Program matters/component will be processed accordance with Access's Bid/Proposal protest procedures.

D. Contractor Reporting Requirements (section 26.55)

1. Notification of Reporting Responsibilities

Prior to execution of all contracts containing DBE goals or contracts with race-neutral DBE requirements, the service provider shall be directed to the contract specification for Access' specific DBE reporting and record keeping requirements.

2. DBE Activity Reporting Forms

For each monthly performance period, the Contractor shall submit a *Monthly DBE Subcontractors Paid Report Summary* (see Appendix B), by the 15th of the following month. Failure to comply with these provisions by the designated due date, may result in financial penalty of \$500.00 per day beyond the due date, up to a maximum of \$5,000.00 per month.

3. Contractor Good Faith Efforts and Reporting Obligations

On contract-specific DBE goals, during the term of the service provider contract, the service provider shall continue to make good faith efforts to ensure that DBEs have an opportunity to successfully perform in the contract, and that the service provider meets its DBE goal. These efforts shall include, but not be limited to, the following:

- (i.) Negotiating in good faith to attempt to finalize and execute a subcontract agreement with the DBEs committed to in the proposal.
- (ii.) Documenting efforts to seek out and utilize additional DBE suppliers, vendors and DBE subcontractors, when additional subcontractors are necessary and is authorized by Access.
- (iii.) Continuing to provide assistance to DBE subcontractors, vendors and suppliers in obtaining bonding, lines of credit, etc., if required by the contractor.
- (iv.) Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting Access approval to substitute the DBE.
- (v.) Ensuring timely payment of all monies due and owing to DBE subcontractors, vendors and suppliers in accordance with prompt payment provisions.
- (vi.) Alerting Access in a timely manner of any problems anticipated in attaining the DBE participation goal committed to in the proposal.
- (vii.) Reviewing of the contractor's monthly progress reports to determine whether the utilization of DBE firms is consistent with the commitment of the service provider as stated in its bid or proposal.

a. Substitution of Subcontractors

If a service provider requests a substitution of DBE subcontractors or suppliers, the service provider shall exercise good faith efforts to replace a DBE with another DBE subject to the approval of Access.

b. Contract Compliance Reporting Requirements

The service provider shall submit monthly progress reports to Access, in conformance with the currently approved contract performance schedule reflecting its DBE participation. The Summary Subcontracts Award and Paid Report (forms available from the DBE Liaison Officer) shall be submitted to comply with this reporting requirement. Failure to submit this report in a timely manner shall result in the imposition of administrative remedies pursuant to Access's DBE Policy and U.S. Department of Transportation regulations (49 CFR 26).

c. Change in Contract Amount

The dollar amount of Change Orders or any other contract modifications that increase or decrease the work area in which DBE's participation has been committed to in the proposal, shall be commensurately added to or subtracted from, the total contract base figure used to compute actual dollars paid to DBEs. Revised total contract dollar values shall be reflected in the monthly progress report submitted to Access.

In the event that the service provider is unable to meet the DBE goal or demonstrate good faith efforts or contracts with contract specific DBE goals, Access reserves the right to assess liquidated damages equal to the difference between the goal amount and the amount of DBE participation. The liquidated damages shall not apply if the contractor is able to demonstrate to the satisfaction of Access that good faith efforts had been made to attempt to meet the goal.

4. Contractor's Assurance Clause Regarding Non-Discrimination

Access will ensure the following clause is placed in every U.S. DOT assisted service provider 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 U.S. 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 Access deems appropriate."

VIII. CERTIFICATION STANDARDS

In accordance with 49 CFR Part 26.81, Access is a non-certifying member agency of the California Unified Certification Program (CUCP).

As a non-Certifying member agency of the CUCP will recognize DBE certifications from CUCP Certifying Member Agencies.

IX. RECORDKEEPING AND MONITORING (Sections 26.11 and 26.37)

Access has developed and maintains a recordkeeping system, which identifies and assesses DBE contract awards and service providers' progress in achieving DBE goals by verifying actual payments made to committed DBEs throughout the performance of the contract, including a running tally of actual DBE attainments. Any areas of identified non-compliance will be subject to administrative sanctions outlined in Section VII-C.

These records serve to document:

- a. Procedures adopted by Access to comply with the U.S. DOT regulations.
- b. Background documentation used to compile FTA reports which include the following data for each contract and subcontract award to a DBE:
 1. Type of contract;
 2. Name and address of each DBE;
 3. A current certification file for each DBE credited toward the goal;
 4. The dollar amount of each contract and subcontract; and
 5. Reports from service providers and supplier(s) with an accounting of actual expenditures to DBEs and the progress to date in meeting their DBE participation commitment.

A DBE may enter into subcontracts whose value may be counted toward its DBE goal. However, where a DBE subcontracts a significantly greater portion of the work than is usual according to industry practice, it is presumed not to be performing a commercially useful function and neither the value of the DBE contract nor lower tier subcontracts may be counted toward meeting the DBE goal. The DBE may present evidence to Access to rebut this presumption.

A. Bidder's List (sections 26.11 and 26.37)

Access will create and maintain a bidder's list consisting of all firms proposing on prime contracts, and subcontracts on Access's DOT-assisted Service Provider contracts. For every firm, the following information will be maintained:

1. Firm Name;
2. Firm Address;

3. Firm Status as a DBE or non-DBE;
4. Type of Work of Firm;
5. Date Firm Established
6. Annual Gross Receipts

Access will maintain the confidentiality of any proprietary information in accordance with applicable California laws. This information will be requested of all bidders.

B. Monitoring and Enforcement Mechanisms (section 26.37)

Access shall monitor and enforce contractor's compliance with the prompt payment provisions as well as all other applicable provisions, to ensure all contract terms and conditions are fully adhered to. Evidence of payment made to subcontractors must be provided by the prime contractor starting with the second request for payment/invoice. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs. Failure to comply with these provisions or delay in payment without prior written approval from Access will constitute noncompliance, which will result in appropriate administrative sanctions, up to and including withholding of payment to the prime contractor.

It is the contractor's responsibility to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of Access or U.S. DOT. This reporting requirement is also extended to any certified DBE subcontractor.

Access may 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 the dollar amounts stated in the report of proposed DBE participation at the inception of the contract.

C. Reporting to DOT (section 26.11)

Access will report DBE participation semi-annually, using the Uniform Report of DBE Awards or Commitments and Payments. These reports will reflect the actual dollar value of payments made to DBEs and contract awards on DOT-assisted contracts and an assessment of Access' progress toward achieving the FTA-approved overall annual goal.

Access will continue to provide reports about the Access' DBE Program to U.S. DOT-FTA as directed by the DOT operating administration. These reports will provide DBE participation information regarding Access' race and gender neutral contracts;

race-conscious contracts; and the combined DBE participation on all federally assisted procurement activities.

Upon the U.S. DOT-FTA's request, Access will compile and submit ad hoc DBE contract award and progress reports for specific U.S. DOT-FTA grant-funded projects. Access shall also periodically submit DBE progress reports to the Board of Directors.

X. PUBLIC PARTICIPATION & OUTREACH EFFORTS (Sections 26.45; 26.51 and 26.15)

A. Publication of Proposed Overall Annual Goals

Prior to submission to the U.S. Department of Transportation (DOT), Access will publish the proposed overall goal in general circulation; trade associations and available minority focused media. Said publication shall include:

1. A statement that the methodology and proposed overall goal for DBE participation in Access' DOT-assisted contracts are available for public inspection for a period of 30 days from the date of publication.
2. Notification that Access will accept public comments on the goal and rationale for a period of 45 days from the date of publication and provide instructions for the submission of such comments.
3. Provide the date when the plan will be considered by the Board of Directors.

Upon receipt, Access' DBE Liaison Officer will analyze the public comments, summarize the results and formulate modifications to the overall goal or methodology as warranted and forward such to the Executive Director. This will occur prior to final adoption of the DBE Program and Goal by the Board of Directors.

B. Public Participation and Outreach

In addition to the provision of public notice regarding the overall annual DBE goal, Access will undertake specific efforts to foster public participation, to consult with, and solicit input from a variety of constituent groups representing minorities, women, general contractors, community groups, officials and other organizations reasonably expected to possess information regarding the availability of disadvantaged and non-disadvantaged businesses, the impacts and adverse effects of discrimination on DBE contracting, and Access' efforts to promote fair competition through Access DBE contracting program.

Both the DBE Program and Overall Goal will be reaffirmed by public notice annually, prior to formal adoption by Access' Board of Directors and submission to U.S. DOT/FTA. In addition to the foregoing, interested disadvantaged and non-minority contractor organizations will receive direct mailings of Access' DBE Program and Goals.

XI. PROGRAM UPDATES

1. Access is currently implementing its DBE Program and corresponding Overall Agency DBE Goal utilizing strictly race-neutral measures, as Access has continued to demonstrate its responsiveness in meeting and/or exceeding its established Overall DBE goals.

Access is also effectively complying with directives and guidance received from DOT, specifically notices issued on March 23, 2006 and August 21, 2006. In response to U.S. DOT's Western States Guidance (Docket No. FTA-2006-24063) Notice of New Policy Implementation, Access is currently utilizing strictly race-neutral measures to meet its overall DBE goals, and while race-conscious measures are incorporated within Access' DBE Program, Access is not currently implementing these measures at this time. In the event of any conflicts or inconsistencies between the applicable Regulations and Access' DBE Program with respect to U.S. DOT-assisted contracts, the Regulations shall prevail.

2. Effective May 2005, Access has a new Executive Director, Shelly Verrinder; this change does not impact the DBE policy statement.
3. Effective June 24, 2009, Access' DBE Liaison Officer is:

DBE Liaison Officer Contact Information:

Mr. Gilbert Garza
Manager Grants Analyst/ Compliance Administrator
DBE Liaison Officer
Access Services
PO Box 5728, El Monte, CA, 91734
Phone (213) 270-6000 e-mail: garza@Accessla.org

This position reports directly to the CEO for matters pertaining to the DBE program.

4. Effective March 3, 2010 the United States Department of Transportation ('DOT') recently issued a new final rule affecting the implementation and management of the Department's Disadvantaged Business Enterprise ('DBE') program. The new rule, which effectively amends the current provision requiring annual submission of DBE goals and goal setting methodology, now requires submission of a three-year DBE goal and goal setting methodology. Pursuant to that rule, Access's next DBE goal and methodology submission is due to FTA on August 1, 2012, and every three (3) years following that.

XII. ATTACHMENTS

Attachments:

Attachment 1: Organizational Chart

Attachment 2: Overall Goal Calculation and Race-Neutral / Race-Conscious Projections

Attachment 3: Tips for Good Faith Efforts (U.S. DOT)

Attachment 4: List of DBE Financial Institutions

Attachment 5: DBE Utilization Form

Attachment 6: Letter of Intent

Resources:

- Governing Regulations (49 CFR Part 26) available online at : www.fta.dot.gov/civilrights/dbe/civil_rights_5263.html

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