



DBE

**DISADVANTAGED BUSINESS  
ENTERPRISE PROGRAM PLAN**

July 2016

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## **POLICY STATEMENT**

The City of Fresno has established a Disadvantaged Business Enterprise (DBE) Program in accordance with the regulations of the U.S Department of Transportation (DOT) 49 CFR Part 26; 49 CFR Part 23. The City of Fresno in the past has received federal financial assistance from the Department of Transportation and as a condition of receiving this future/ongoing assistance, the City of Fresno has signed an assurance that it will comply with 49 CFR Part 26 (Part 26) and 49 CFR Part 23 (Part 23).

The City of Fresno also receives federal financial assistance from the US Department of Housing and Urban Development (HUD) 2 CFR Part 200, and the US Environmental Protection Agency (EPA) 40 CFR Part 33 through the State of California State Water Resources Control Board.

It is the policy and commitment of the City of Fresno to ensure that DBEs as defined in Part 26, Part 23, Part 200 and Part 33 have an equal opportunity to receive and participate in DOT, HUD and EPA -assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT, HUD and EPA-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to construction, professional services, supplies, equipment, materials and other services for DOT, HUD and EPA-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that meet 49 CFR Part 26, 49 CFR Part 23, 2 CFR Part 200 and 40 CFR Part 33 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT, HUD and EPA -assisted contracts;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
7. To outreach to local firms and encourage certification and participation in the DBE Program.

The City Manager of the City of Fresno has the general responsibility for implementing Council policy.

The Purchasing Manager, 2600 Fresno Street, Room 2156, Fresno, CA 93721, (559-621-1332) has been designated the DBE Liaison Officer. The DBE Liaison Officer has direct, independent access to the City Manager concerning DBE Program matters. The City shall ensure that the DBE Liaison Officer is at all times provided with staff adequate and sufficient to administer the DBE Program in compliance with 49 CFR Part 26, 49 CFR Part 23, 2 CFR Part 200 and 40 CFR Part 33 including a DBE Program Coordinator. The DBE Liaison Officer is responsible for implementing and administering 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 the City in its financial assistance agreements with the DOT, HUD and EPA.

The DBE operating expenditures participation shall be delegated and administered directly by the departments which, at minimum, contribute to the overall goals of the City as a whole.

This policy statement will be circulated throughout the City of Fresno departments and the community in general. Copies of this policy will be sent to DBE and to non-DBE business communities that perform work for us on DOT, HUD and EPA-assisted contracts.

The Council of the City of Fresno hereby adopts its policy statement expressing a commitment to use Disadvantaged Business Enterprises (DBEs) and other small businesses in all aspects of contracting financed in whole or in part by the Federal Government, U.S. Department of Transportation; US Department of Housing and Urban Development and the US Environmental Protection Agency.

The Council shall establish by Resolution the basic policy of the City relative to the Disadvantaged Business Enterprise Program.

*(Original Signed)*

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Bruce Rudd, City Manager

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Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **A.1 THE OBJECTIVES OF THE DBE PROGRAM [49 CFR Part 26.1]**

Objectives of the DBE Program are to:

- To seek out and identify firms owned and controlled by socially and economically disadvantaged individuals who are qualified to provide the City of Fresno, Fresno Area Express (FAX) and the Yosemite International Airport with required goods, materials, supplies, construction and services needed for the maintenance and operations.
- Develop and implement communication procedures geared to acquaint prospective DBEs with contracting and procurement procedures and requirements.
- Develop the necessary interdepartmental relationships within, which will promote, foster, and facilitate the implementation of the DBE Program.
- Contribute to the economic stability and growth of DBEs in the Fresno metropolitan area.
- Attain the annual DBE overall goals as established with the Federal Transportation Administration (FTA), Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and any other federal agency requiring goal submission, and to meet all Federal guidelines in the administration of this program.

### **A.2 APPLICABILITY [49 CFR Part 26.3]**

The City of Fresno government structure includes the departments of Fresno Area Express (FAX) and the Fresno Yosemite International Airport. The DBE Program plan is prepared with the requirement to comply with Parts 23 and 26 for U.S. DOT funding the City of Fresno receives as described.

The DBE Program plan is structured to address the commonality of applying Parts 23 and 26 among the City of Fresno, FAX and Fresno Yosemite International Airport. Where there are differences on the DBE Program plan applicability among the three entities, this DBE Program plan will define the differences and respective applicability.

The City of Fresno is the recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

The City of Fresno is the recipient of federal-aid highway funds authorized under Moving Ahead for Progress in the 21st Century (MAP-21). MAP-21 took effect on October 1, 2012.

The City of Fresno is the recipient of federal transit funds authorized under MAP-21. MAP-21 took effect on October 1, 2012. Each reauthorization amends the Federal Transit Laws codified in 49 USC Chapter 53.

### **A.3 DEFINITIONS [49 CFR Part 26.5]**

The terms below shall be defined as follows unless inconsistent with or in conflict with any applicable provisions of federal law or regulation including 49 CFR Part 26, §26.5 and 49 CFR Part 23, §23.3, in which case the then current federal law or regulation shall control.

**Affiliation** has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121, except that the provisions of SBA regulations concerning affiliation in the context of joint ventures [13 CFR § 121.103(f)] do not apply to Part 23.

(1) Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:

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

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

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE Program.

**Alaska Native** means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

**Alaska Native Corporation** (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

**Car dealership** means, for purposes of Part 23, an establishment primarily engaged in the retail sale of new and/or used automobiles. Car dealerships frequently maintain repair departments and carry stocks of replacement parts, tires, batteries, and automotive accessories. Such establishments also frequently sell pickup trucks and vans at retail. In the standard industrial classification system, car dealerships are categorized in NAICS code 441110.

**Concession** means, for purposes of Part 23, one or more of the types of for-profit businesses listed in paragraph (1) or (2) of this definition:

(1) A business, located on an airport subject to Part 23, that is engaged in the sale of consumer goods or services to the public under an agreement with the recipient, another concessionaire, or the owner or lessee of a terminal, if other than the recipient.

(2) A business conducting one or more of the following covered activities, even if it does not maintain an office, store, or other business location on an airport subject to this part, as long as the activities take place on the airport: Management contracts and subcontracts, a web-based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business that provides advertising displays or messages to the public on the airport, or a business that provides goods and services to concessionaires.

*Example to paragraph (2):* A supplier of goods or a management contractor maintains its office or primary place of business off the airport. However the supplier provides goods to a retail establishment in the airport; or the management contractor operates the parking facility on the airport. These businesses are considered concessions for purposes of Part 23.

(3) For purposes of this definition, a business is not considered to be “located on the airport” solely because it picks up and/or delivers customers under a permit, license, or other agreement. For example, providers of taxi, limousine, car rental, or hotel services are not considered to be located on the airport just because they send shuttles onto airport grounds to pick up passengers or drop them off. A business is considered to be “located on the airport,” however, if it has an on-airport facility. Such facilities include in the case of a taxi operator, a dispatcher; in the case of a limousine, a booth selling tickets to the public; in the case of a car rental company, a counter at which its services are sold to the public or a ready return facility; and in the case of a hotel operator, a hotel located anywhere on airport property.

(4) Any business meeting the definition of concession is covered by this definition, regardless of the name given to the agreement with the recipient, concessionaire, or airport terminal owner or lessee. A concession may be operated under various types of agreements, including but not limited to the following:

(i) Leases.

(ii) Subleases.

(iii) Permits.

(iv) Contracts or subcontracts.

(v) Other instruments or arrangements.

(5) The conduct of an aeronautical activity is not considered a concession for purposes of this subpart. Aeronautical activities include scheduled and non-scheduled air carriers, air taxis, air charters, and air couriers, in their normal passenger or freight carrying capacities; fixed base operators; flight schools; recreational service providers ( e.g., sky-diving, parachute-jumping, flying guides); and air tour services.

(6) Other examples of entities that do not meet the definition of a concession include flight kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, telephone and electric service to the airport facility, holding companies, and skycap services under contract with an air carrier or airport.

**Commercially useful function** means to be responsible for the execution of a distinct element of work of the contract and for carrying out this responsibility by actually performing, managing and supervising the work involved; and to be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. It further has the same meaning as in Part 26, § 26.55(c), except that the requirements of §26.55(c)(3) do not apply to concessions under Part 23.

**Compliance** means that a recipient and contractor have correctly implemented the requirements of Part 26.

**Concessionaire/ACDBE** means, for purposes of Part 23, a firm that owns and controls a concession or a portion of a concession.

**Construction** means to build, form, or devise by fitting parts or elements together systematically and the process of supervision, inspection, building, and all activities related to the construction or reconstruction of projects. This includes construction and reconstruction of streets, buildings, the repair of buildings, demolition, and rehabilitation.

**Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of Part 26 and Part 23, a lease is considered to be a contract.

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

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

**Direct ownership arrangement** means, for purposes of Part 23, a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession.

**Disadvantaged business enterprise** or **DBE (also includes ACDBE)** means a for-profit small business concern—

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

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

***Disadvantaged Business Enterprises are also classified for HUD and EPA funds:***

- (1) entities owned and/or controlled by socially and economically disadvantaged individuals as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note) (10% statute), and Public Law 102-389 (42 U.S.C. 4370d) (8% statute), respectively;
- (2) a Minority Business Enterprise (MBE) are entities that are at least 51% owned and/or controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note), and Public Law 102-389 (42 U.S.C. 4370d), respectively.
- (3) a Women Business Enterprise (WBE) are entities that are at least 51% owned and/or controlled by women.
- (4) a Small Business Enterprise (SBE);
- (5) a Small Business in a Rural Area (SBRA);
- (6) a Labor Surplus Area Firm (LSAF); or
- (7) an Historically Underutilized Business (HUB) Zone Small Business Concern or a concern under a successor program.

***DOT-assisted contract*** means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

***DOT/SBA Memorandum of Understanding or MOU***, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development and Small Disadvantaged Business programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

***Good faith efforts*** means efforts to achieve a DBE goal or other requirement of Part 26 or Part 23 which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill or meet the program requirement.

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

***Immediate family member*** means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law; and, for purposes of Part 23, also means brother-in-law, sister-in-law, or registered domestic partner.

**Indian tribe** means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in this section.

**Joint venture** means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. For purposes of Part 23, joint venture entities are not certified as airport concession DBEs.

**Management contract or subcontract** means, for purposes of Part 23, an agreement with a recipient or another management contractor under which a firm directs or operates one or more business activities, the assets of which are owned, leased, or otherwise controlled by the recipient. The managing agent generally receives, as compensation, a flat fee or a percentage of the gross receipts or profit from the business activity. For purposes of this definition, the business activity operated or directed by the managing agent must be other than an aeronautical activity, be located at an airport subject to Part 23, and be engaged in the sale of consumer goods or provision of services to the public.

**Material amendment** means, for purposes of Part 23, a significant change to the basic rights or obligations of the parties to a concession agreement. Examples of material amendments include an extension to the term not provided for in the original agreement or a substantial increase in the scope of the concession privilege. Examples of nonmaterial amendments include a change in the name of the concessionaire or a change to the payment due dates.

**Native Hawaiian** means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

**Native Hawaiian Organization** means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and for purposes of Part 26, whose business activities will principally benefit such Native Hawaiians.

**Noncompliance** means that a recipient has not correctly implemented the requirements of Part 23 or Part 26.

**Operating Administration or OA** means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA).

**Personal net worth** means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence; and, for purposes of Part 23, other assets that the individual

can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her airport concession DBE firm (or have in fact been encumbered to support existing financing for the individual's airport concession DBE business), to a maximum of \$3 million under Part 23 and \$1.32 million under Part 26. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

**Primary airport** means a commercial service airport that the Secretary determines to have more than 10,000 passengers enplaned annually.

**Primary industry classification** means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at:

<http://www.census.gov/eos/www/naics>

**Primary recipient** means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

**Principal place of business** means the business location where the individuals who manage the firm's day-to-day operations spend most working hours 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, the recipient will determine the principal place of business for DBE program purposes.

**Program** means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which Part 23 or Part 26 applies.

**Race-conscious** means a measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.

**Race-neutral** means a measure or program that is, or can be, used to assist all small businesses. For the purposes of Part 23 and Part 26, *race-neutral* includes gender-neutrality.

**Recipient** means any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

**Set-aside** means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms or small businesses.

**Small Business Administration** or **SBA** means the United States Small Business Administration.

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

**Small business or Small business concern** means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and SBA regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in Part 26, § 26.65(b). For purposes of Part 23, it means a for profit business that does not exceed the size standards of Part 23, § 23.33.

**Small hub airport** means a publicly owned commercial service airport that has a number of passenger boardings equal to at least 0.05 percent of all passenger boardings in the United States but less than 0.25 percent of such passenger boardings. The Fresno International Airport is a small hub airport.

**Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

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

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

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

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

(iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

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

(vi) Women; and,

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

**Tribally-owned concern** means any concern at least 51 percent owned by an Indian tribe as defined above.

#### **A.4 NON-DISCRIMINATION REQUIREMENTS [49 CFR PART §26.7]**

The City of Fresno, as a recipient, of U.S. DOT federal financial assistance will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Parts 23 and 26 on the basis of race, color, sex, or national origin.

In administering its DBE Program, the City of Fresno 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.

#### **A.5 RECORD KEEPING REQUIREMENTS [49 CFR PART 26.11]**

The City will report DBE awards, commitments and payments on the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to Part 26, at the intervals stated on the form.

The City of Fresno will report DBE participation to DOT as follows [Part 23, §23.27 and Part 26, §26.11(b)]:

- As an FAA recipient, the City of Fresno will submit annually on December 1 on the form provided in Appendix B to the DBE regulations.
- As an FTA recipient, the City of Fresno will report DBE participation on a semi-annual basis on June 1 and December 1, using the form provided in Appendix B to the DBE regulations. These reports will reflect payments actually made to DBEs on DOT-assisted contracts. FAX prepares and submits these forms directly to the FTA.
- As an FHWA subrecipient, the City of Fresno will report DBE participation to the California Department of Transportation as requested.

The DBE Program Coordinator shall prepare the required semi annual/annual compliance reports for the appropriate Operating Administration on the form provided in Appendix B to Part 26. These reports shall be coordinated with each department.

The DBE Program Coordinator shall prepare annual reports for department's receiving federal funds and the overall DBE goals for the procurement category of equipment, materials, supplies and professional services. The DBE Program Liaison Officer shall furnish the City Manager with a consolidated DBE Program report for presentation to the Council.

The DBE Program Coordinator shall keep on file for a period of three years, reports, records and DBE plans that will enable the respective Operating Administration to evaluate compliance with the federal requirements.

### **A.5.1 General Maintenance of Records**

The DBE Program Coordinator shall collaborate with departments to collect and maintain a record keeping system which will facilitate the monitoring and progress assessment of the DBE Program. This system will also provide necessary data for compliance reviews and uniform reporting requirements. Departments shall provide copies of the records to the DBE Program Coordinator who shall be the custodian in charge of maintaining records showing procedures which have been utilized to implement this DBE Program including outreach, technical assistance efforts and referrals, and communication programs.

The records shall also show the contract awards to DBEs including names, addresses, phone numbers, nature of the work, total value of the contract/subcontract and the overall percentage utilization of DBE awards. Records will provide data of actual DBE attainments. DBE participation will be credited toward overall goals only when payments are actually made to DBE firms. The contract awards to DBEs shall be measured against the overall contracts awarded annually and the overall DBE goals.

The records shall be provided to the DBE Program Coordinator on a semi-annual basis, same dates as the described in Part 26, for construction, professional services and other procurements, including procurements solicited under City of Fresno Charter Section 1208 for competitive bidding.

The DBE Program Coordinator will make efforts to obtain written reports from contractors on their progress in meeting DBE contractual obligations; and written reports from DBEs to verify that they have performed the work committed to DBEs at contract award, including payments actually made to DBE firms. Final utilization reports will be required to be completed by the contractor within 30 days of Notice of Completion. Reports will be on a form provided by the respective department.

### **A.5.2 Maintenance of Records by Fresno Area Express (FAX) for FTA Funded Projects**

In collaboration with the DBE Coordinator, FAX will maintain a records to evaluate progress in achieving DBE overall goals, determine the priorities for allocating DBE staff time, and identify problem areas in a timely fashion. In order to carry out this monitoring, a record keeping system will identify and assess DBE contract awards and other DBE information. This data will facilitate monitoring for internal management purposes, as well as provide data necessary for FTA compliance reviews and uniform reporting requirements.

Specifically, FAX will maintain records showing procedures which have been adopted to comply with the requirements of the FTA DBE Circular 1165.I and these instructions, including but not limited to:

- Outreach techniques;
- Technical assistance efforts and referrals, and communications programs;
- Maintaining copies of all relevant correspondence, minutes of meetings, and lists of attendees at conferences and workshops;
- Documenting awards to DBEs, including at a minimum:
  - Names of DBE contractors and subcontractors;

- Nature of work;
- Total value of the contract or subcontract; and
- The amount of DBE awards as a percentage of all contracts and subcontracts awarded.
- Measuring awards against projected DBE awards (to assist in this effort, the City should obtain regular reports from prime contractors on their progress in achieving contractual DBE obligations);
- Specifying efforts to identify and award contracts to DBEs including but not limited to:
  - Number and identity of DBEs contacted and invited to quote/bid by contract; and
  - Number and identity of DBEs responding by contract.

### **A.5.3 Meeting FTA Reporting Requirements**

FAX shall ensure compliance with FTA reporting requirements. The scope and intent of FTA's reporting requirements can be found in the following subsections of Chapter III, Section D, Guidelines for Project Administration, of the External Operating Manual:

- Accounting System and Internal Controls, pages 111D through 111D-6;
- Financial Reporting Requirements, page 111D-7;
- Other Financial Reporting Requirements, page 111D-7A;
- Record Retention, page 111D-I;
- These uniform DBE reporting requirements have been designed to be part of the quarterly financial status report which is submitted to the appropriate FTA Regional Office. The appropriate FTA Regional Civil Rights Officer of the Headquarters Office of Civil Rights will be responsible for reviewing the DBE portion of such reports.
- The quarterly report should include, as a minimum, the following for each active FTA assisted project for the previous calendar quarter:
  - Total FTA share;
  - Number of contracts awarded by budget line item;
  - Number, description, and dollar value of contracts awarded to DBEs by budget line item;
  - Number, description, and dollar value of all subcontracts, regardless of tier, awarded to DBEs by budget line item;
  - Cumulative number and dollar amount of all contracts and subcontracts, regardless of tier, awarded to DBEs under active grant projects.
  - Procurement award by ethnic group.
  - Quarterly reports should include the following information for the ensuing quarter by budget line item:
    - An estimate of project funds required for activities to be undertaken under each FTA grant project;
    - An estimate of the cumulative number, description, and dollar amount of contracts to be awarded;
    - An estimate of the cumulative number, description, and dollar amount of contracts to be awarded to DBEs; and
    - An estimate of the attainment of DBE percentage goals. Records will provide data of actual attainments. DBE participation will be credited toward overall goals only when payments are actually made to DBE firms.

- These computations shall be submitted to the DBE Program Coordinator for the addition of any construction project DBE awards and commitment activity. Fresno Area Express staff is responsible for assuring that the quarterly report is completed and submitted to the FTA Regional Office.

#### **A.5.4 CERTIFYING AGENCY RECORD KEEPING REQUIREMENTS**

As a certifying agency, the City of Fresno will maintain records documenting an applicant firm's compliance with the certification requirements of this part. At a minimum, the City of Fresno will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. We understand that these records must be retained in accordance with applicable record retention requirements of the Unified Certification Program (UCP) Agreement in the State of California. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for our financial assistance agreement, whichever is longer.

#### **A.6 BIDDERS LIST [49 CFR PART 26.11]**

The City of Fresno will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT, HUD or EPA assisted contracts. The purpose of this requirement is to allow use of the Bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE/ non-DBE status, age, and annual gross receipts of firms.

The City of Fresno will collect this information as part of the bidding process. The City of Fresno will request that each contractor list their subcontractors along with the type of work being performed. The three lowest bidders will be required to submit contact information, business size capacity and type of work performed for each subcontractor listed at bid time. The City of Fresno will compile a bidders list from the contractors that bid on projects by type, federally funded or non-federally funded, along with all of the subcontractors, DBE's and other small businesses listed.

#### **A.7 FEDERAL FINANCIAL ASSISTANCE AGREEMENT [49 CFR PART 26.13]**

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

*The City of Fresno 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 Parts 23 and 26. The City of Fresno shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The DBE Program, as required by 49 CFR Parts 23 and 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 Fresno of its failure to carry out its approved program, the Department may impose sanction as provided for under Parts 23 and 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.).*

#### **A.8 CONTRACT ASSURANCE [49 CFR PART 26.13(B)]**

The City of Fresno will also 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 which may include, but not limited to:*

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

The City of Fresno will also include the following assurances in all concession agreements and management contracts executed with any firm in accordance with Part 23:

*This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.*

*The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.*

#### **A.9 PROGRAM PERIOD**

This DBE Program shall be in full force and effect immediately upon Council approval and shall continue in effect unless rescinded by Council, or unless amended by Council or by the DBE Liaison Officer as may be authorized by Council or by the respective Operating Administration.

### **A.9.1 Prior Operating Administration Concurrence to Administer DBE Program**

The City of Fresno understands that we are not required to obtain prior Operating Administration concurrence with administering the overall DBE goal. However, if the Operating Administration's review suggests that the FAX or Fresno Yosemite International Airport overall DBE goal has not been correctly calculated or that the method for calculating goals is inadequate, the respective Operating Administration may, after consulting with us, adjust our overall goal or require that we do so. The adjusted overall goal will be binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT Operating Administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to Part 26, §26.9.

## **SUBPART B – ADMINISTRATIVE REQUIREMENTS**

### **B.1 DBE PROGRAM UPDATES [49 CFR PART 26.21]**

Since the City of Fresno receives grants of \$250,000 or more for airport planning or development, \$250,000 or more in FTA planning capital, and /or operating assistance in a federal fiscal year, and grants as otherwise authorized by a statute to which Part 26 applies, the City of Fresno will continue to carry out this DBE Program until all funds from DOT financial assistance have been expended. The City of Fresno will provide to the respective Operating Administration updates representing significant changes in the DBE Program.

### **B.2 DESIGNATION OF DBE LIAISON OFFICER [49 CFR PART 26.25]**

Under policy set by the Council of the City of Fresno, the City Manager has designated the Purchasing Manager as the DBE Liaison Officer (DBELO). The DBELO is located at 2600 Fresno Street, Room 2156 Fresno, CA 93721. The phone number is (559) 621-1332.

The DBELO, individually or through his/her designee shall meet periodically to review the DBE Program and any proposed changes with City department Directors or their designees to: (1) review implementation of the DBE Program, (2) ascertain the progress and achievements of the Program, (3) identify problems and/or deficiencies, and (4) make recommendations concerning changes and improvements in the DBE Program.

#### **B.2.1 DUTIES OF THE DBE COORDINATOR**

The DBELO is responsible for developing, implementing and monitoring the DBE Program in coordination with other appropriate officials. The DBELO provides general direction to support staff in administering the DBE Program for federal funded projects. In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that the City of Fresno complies with all provision of 49 CFR Part 26 and Part 23. The DBELO has direct, independent access to the City Manager concerning DBE program matters. An organization chart displaying the DBELO's position in the City of Fresno, FAX and Fresno Yosemite International Airport organizations are found in **Attachment 1**.

The DBELO, has designated the DBE Program Coordinator, and the respective representatives for FAX and Fresno Yosemite International Airport, to assist in the administration of the DBE Program. The duties and responsibilities include:

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, including FAX and Fresno Yosemite International Airport to set overall annual goals for each respective Operating Administration.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.

5. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Analyzes and prepares the Uniform Report of DBE Commitments, Awards and Payment.
7. Advises the DBELO on DBE matters and achievement.
8. Participates in pre-bid meetings.
9. Provides DBEs with information and recommends resources to assist in preparing bids, obtaining bonding and insurance.
10. Facilitates DBE training seminars through partners.
11. Certifies DBEs according to the criteria set by Parts 23 and 26 and acts as liaison to the California Uniform Certification Program.
12. Provides outreach to DBEs and community organizations to advise them of bid opportunities.
13. Provides appropriate technical assistance activities to DBEs.

### **B.2.2 DUTIES OF THE FRESNO AREA EXPRESS SUPPORT STAFF**

The responsibility for the implementation and administration of the FAX DBE participation program shall rest with the FAX support staff that are appointed by the Director of Transportation and assist the DBE Coordinator.

Specific duties of the FAX staff shall include, but are not limited to the following:

- Manage, and implement the FAX DBE participation program.
- Disseminate information on available business opportunities for FAX operations.
- Maintain liaison with other City departments for contract compliance purposes.
- Maintain statistical data to report how the DBE goal is being met for FAX procurement of operating goods and services.
- Establish DBE Triennial goals for the FAX operation expenditures.

### **B.2.3 DUTIES OF DEPARTMENT DIRECTORS**

The Department Directors are responsible for the management and implementation of the DBE Program within their respective departments. The Directors of City departments receiving DOT financial assistance shall provide general direction to support staff in administering the DBE Program as it relates to their department's operating expenditures and shall designate a staff person to coordinate DBE activities with the DBE Program Coordinator.

### **B.3 DBE FINANCIAL INSTITUTIONS [49 CFR PART 26.27]**

It is the policy of the City of Fresno to thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. The City of Fresno has thoroughly investigated the availability of DBE Financial Institutions and

none are available in the local area. The DBE Program Coordinator will continuously check availability and make reasonable recommendations to the City of Fresno to use these institutions, when available.

#### **B.4 PROMPT PAYMENT MECHANISMS [49 CFR PART 26.29]**

The City of Fresno will include the following provisions in each DOT-assisted prime contract:

*The Contractor shall contain the following provisions in each of its subcontracts and require its subcontractors to pay their subcontractors in the same manner and to contain these provisions in each of their contracts for all tiers of subcontracting.*

All Contracts and Subcontracts (all tiers), shall contain the following provisions:

*Prompt Progress Payment to Subcontractors. A prime contractor or subcontractor shall pay a subcontractor not later than 7 days of receipt of each progress payment in accordance with Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 7 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the City's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontractor performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE subcontractors.*

*Prompt Payment of Withheld Funds to Subcontractors. The City shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the City of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the City. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE subcontractors.*

## **B.5 DBE DIRECTORY [49 CFR PART 26.31]**

The City of Fresno participates in a combined statewide directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The type of work is listed by using the most specific NAICS code available to describe each type of work. The City of Fresno makes the DBE Directory available as follows: on-line at [www.californiaucp.org](http://www.californiaucp.org) or by contacting the DBELO.

## **B.6 OVERCONCENTRATION [49 CFR PART 26.33]**

During the course of analyzing the NAICS codes and identifying the availability of DBEs and Non-DBEs for setting the DBE goals, the City of Fresno has not identified that over-concentration exists in the types of work that DBEs perform. If it is determined that DBE firms are over-concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, the City will identify measures to address the specific over-concentration and obtain the approval of the respective Operating Administrations before the measure is applied.

## **B.7 BUSINESS DEVELOPMENT/MENTOR-PROTÉGÉ PROGRAMS [49 CFR PART 26.35 AND 26.51]**

The City of Fresno has not established a business development program. The City of Fresno participates in the mentor-protégé program established by the California Department of Transportation and approved by FHWA, for DOT-assisted contracts through FHWA. Another DBE or non-DBE firm is the mentor and principal source of business development assistance to a DBE firm acting as the protégé. Only firms certified as DBEs before they are proposed for participation in the mentor-protégé program are eligible to participate in such program. During the course of the mentor-protégé relationship, no DBE credit will be awarded to a non-DBE mentor firm for using its own protégé firm either for more than one half of its goal on any contract let by the City, or for more than every other contract performed by the protégé firm. For purposes of making determinations of business size under Part 26, protégé firms are not treated as affiliates of mentor firms, when both firms are participating under a mentor-protégé program.

## **B.8 SMALL BUSINESS PARTICIPATION ELEMENT [49 CFR PART 26.39]**

A requirement of good faith effort implementation of the DBE Program, includes the active implementation of DBE Program requirements to foster small business participation. Contracting requirements shall be structured to facilitate competition by small businesses, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation as prime contractors or subcontractors.

In meeting a portion of the City's overall goal projected to be met through race-neutral measures, a reasonable number of prime contracts are to be of a size that small businesses, including DBEs, can reasonably perform.

Bidders on design-build contracts for megaprojects shall be required to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

The DBE Program is open to all small businesses, including DBEs, regardless of their location, and there are no limits on the number of contracts that can be awarded to firms participating in the DBE Program. Every effort will be made to avoid creating barriers to the use of new, emerging or untried businesses.

The departments and DBE Program Coordinator shall offer the following assistance directly to DBEs and other small businesses:

- Information on its organization and contractual needs;

- Instructions to interpret bid specifications, procurement policy procedures, and general bid requirements;
- Opportunity to review and evaluate successful bid documents of previous, similar procurements;
- Information on specific reasons for unsuccessful bids through debriefing sessions;
- Projected procurement opportunities;
- Instruction on job performance requirements;
- Referrals to firms who offer advice and assistance through mentor-protégé programs;
- Monitor and insure that prime contractors make prompt payments to DBE and other subcontractors; and,
- Disseminate contracting information through written materials, seminars, workshops, and specialized assistance to individual firms.

In addition, the departments and DBE Program Coordinator may refer DBEs and other small businesses to other agencies (i.e., Small Business Administration, Minority Business Development Agency) for financial management, personnel management, and other technical assistance related to the specific needs of DBEs or other small businesses. The departments should maintain a list of agencies offering these types of assistance with a description of the services offered. The staff should also familiarize these agencies with the nature of the City's operations and procurement needs.

### **B.8.1 Formal Bids and Requests for Proposals**

The outreach and techniques for consideration by the City of Fresno and FAX to encourage DBE and other small business participation in the formal bid process may include:

- Develop bid packages and requests for proposals so as to increase potential DBE and other small business participation.
- Consider breaking down large project and or material procurements into smaller contracts for work that small businesses, including DBEs, can reasonably perform;
- Encourage the formation of joint ventures between DBEs and other small businesses which would provide opportunities for DBEs and other small businesses to gain experience;
- Consider purchasing supplies and/or leasing the required equipment for a job and then contracting only for the expertise required to perform the work;
- Use the least complicated bid forms;

- Hold a pre-bid conference to emphasize the DBE and other small business requirements, to explain the forms that must be submitted with the bid regarding DBE and other small business participation, documentation required outlining efforts to obtain DBE and other small business subcontractors and joint venture partners, the use and availability of the DBE Directory and small business directory and to answer any questions;
- Place bid notices in pertinent websites, or trade papers, small business focus newspapers or other publications allowing adequate time for development of responsive bids;
- Send bid notices to DBE and small business trade associations, technical assistance agencies, economic development groups for DBEs and other small businesses, and DBE's and other small businesses with capabilities relevant to the bid notice;
- Make available bid specifications to DBE and other small business contractor associations and technical assistance agencies;
- Provide contract specifications, Request for Proposals, bid packages with a lead time of not less than 10 days, unless otherwise required by the respective Operating Administration for advertisement of all invitations for bids and requests for proposals in order that all firms have ample time to develop a complete bid package or proposal and secure necessary assistance.

Since DBE and small business trade associations, small business development agencies, and technical assistance agencies can be important resources for the DBE and Small Business Program, the departments and DBE Program Coordinator shall establish extensive contacts with these organizations. The departments and DBE Program Coordinator shall become familiar with the services and capabilities provided by these groups.

The fostering small business and DBE participation will be circulated through written materials, seminars, workshops, and specialized assistance to individual firms and coordinated in conjunction with the City's DBE and Small Business seminars. The various Chambers of Commerce and Small Business Development Centers will be used as a means of enhancing communications with DBEs and small businesses.

### **B.8.2 Participation by DBEs and Other Small Businesses in Airport Concessions**

The Airports Department has developed a DBE concession plan in accordance with the regulations of the U.S. DOT, 49 CFR Part 23.

All opportunities for concession/lease agreements with the Airports Department which are aviation related shall be administered pursuant to the DBE Concession Plan and the City's DBE Program.

DBEs with experience in the type of concession under consideration may, upon request, be sent a copy of the Notice of Concession/Lease Opportunity. Each Notice of Concession/Lease Opportunity shall be submitted for publication in newspapers of general circulation. Such notice shall also be sent to business technical assistance organizations and other appropriate and women business organizations.

Each Notice of Concession/Lease Agreement Opportunity, to the extent feasible, shall be submitted for publication at least 60 days prior to the award of such concession or lease agreement.

The Airports Department representative in conjunction with the DBE Program Coordinator shall actively seek out firms interested in concession/lease opportunities. If any such firms have not been officially certified as a DBE through the DBE Certification Process, the Airport Department representative shall refer that business to the DBE Program Coordinator. The Airports Department representative shall, upon request, provide technical assistance to any certified business expressing an interest in concession/lease opportunities.

Concession/lease agreements shall be subject to the City's overall goals for Disadvantaged Business Enterprises. The City will not use quotas in any way in the administration of the DBE program or to achieve DBE participation.

The Airports Department representative shall submit a written report to the DBE Program Coordinator on an annual basis, in a form satisfactory to the DBE Program Coordinator, addressing the progress made in obtaining certified DBE businesses as lessees and concessionaires at the Fresno Air Terminal.

### **B.9 MONITORING AND ENFORCEMENT MECHANISMS [49 CFR PART 26.37]**

The City of Fresno will utilize the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Parts 23 and 26. The City of Fresno will bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with the DBE 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 Part 26, § 26.109. The City of Fresno will also consider similar action under our own legal authorities, including responsibility determinations in future contracts. **Attachment 2** lists the regulation, provisions, and contract remedies available to the

City of Fresno in the event of non-compliance with the DBE regulation by a participant in our procurement activities.

### **B.9.1 Verification**

The City of Fresno will provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by the following:

- Requiring 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 Fresno or DOT. This reporting requirement also extends to any certified DBE subcontractor.
- The City of Fresno 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 stated in the schedule of DBE participation.
- In conjunction with monitoring contract performance, the City will certify in writing that it has reviewed the contracting records and monitored work sites for the purpose of ensuring that work committed to DBEs at contract award or subsequently is actually performed by the DBEs to which the work was committed.
- The City of Fresno will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award or subsequently and compare this to the actual commitments made at the time of award or subsequently.

### **B.9.2 Non-Compliance with DBE Requirements**

It is the intent of the City of Fresno that contractors, on construction or professional service contracts involving DBE subcontractors, shall diligently carry out and adhere to the DBE requirements as set forth in this DBE Program and in the subject contract. The failure of a contractor to comply with the requirements of this DBE Program shall be deemed a material breach of contract and, after due notice and opportunity to cure the breach is afforded the contractor, such breach may result in, among other remedies, termination by City of the awarded contract.

Per 49 CFR Part 26, §26.13(b) the City may impose liquidated damages be paid by a contractor and or other options for failing to comply with DBE requirements on the contract. Upon a final determination by the City of Fresno that a contractor has materially breached the DBE terms of his/her contract, and after due notice of this determination is given to the contractor, liquidated damages, on account of non-compliance with the DBE requirements, may be withheld by the City from progress payments, or the final payment, due to the contractor for work performed under the contract in question. In no event shall the amount of liquidated damages exceed the full dollar amount of the DBE subcontract which is the subject of the contractor's non-compliance with the DBE requirements.

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

### **C.1 SET-ASIDES OR QUOTAS [49 CFR PART 26.43]**

The City of Fresno does not use DBE set-asides or quotas in any way in the administration of this DBE program. However, the City recognizes it may use set-asides in fostering a Small Business Program, under 49 CFR Part 26 §26.39.

### **C.2 OVERALL GOALS [49 CFR PART 26.45]**

In accordance with Part 26, §26.45(f), the City of Fresno will submit its overall DBE goal on August 1 every three years based upon the FTA or FAA schedule of submission.

A description of the methodology to calculate the overall triennial DBE goal and the goal calculations can be found in **Attachment 3**. This Attachment to the DBE Program will be updated every three years based upon the then current schedule established by FAA and FTA and annually based upon the then current schedule established by FHWA through California Department of Transportation (Caltrans).

The DBE goals will be established in accordance with the two-step process as specified in 49 CFR Part §26.45. If the City of Fresno does not anticipate awarding FTA or FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any of the years within the three-year reporting period, we will not develop an overall goal; however, this DBE Program will remain in effect and the City of Fresno will seek to fulfill the objectives outlined in 49 CFR Part §26.1 and operate under race-neutral measures as outlined in 49 CFR Part §26.51.

#### **C.2.1 GOAL METHODOLOGY**

The first step is to determine the actual relative availability of DBEs, in the market area, to perform the types of contracts (both prime and sub) that we intend to let in the next three years.

Step 1 will determine what percentage DBEs (or firms that could be certified as DBEs) representative of all firms that are ready, willing and able to compete on FTA and FAA assisted contracting. This percentage is calculated by dividing the number of DBEs ready, willing, and able to bid for the types of work that will fund over the next three years, by the number of all firms (DBEs and non-DBEs) ready, willing, and able to bid for the types of work that will be funded over the next three years. That is, the number of DBEs will be in the numerator, and the number of all firms (DBEs and non-DBEs) will be in the denominator. The results is the “base figure.”

The numerator will come from the best available data in the California Unified Certification Program (CUCP) DBE Directory and a Bidder’s List. The denominator will come from the CUCP DBE Directory, Census Bureau Data, and or a Bidders List.

This percentage is calculated by dividing the number of DBEs ready, willing, and able to bid for the types of work you will fund this year, by the number of all firms (DBEs and non-DBEs) ready, willing, and able to bid for the types of work you will fund this year. That is, the number of DBEs will be in the numerator, and the number of all firms (DBEs and non-DBEs) will be in

the denominator. This is true regardless of the type of data you are employing to measure the relative availability (e.g., bidders list, census data and DBE directory, disparity study, alternate method, etc.) In other words, whatever data is used, the ratio would be:

*Step 1* Base Figure = Ready, willing and able DBEs divided by All firms ready, willing and able

$$\text{Step One Base Figure} = \frac{\text{Ready, willing, and able DBEs}}{\text{All firms ready, willing, and able (including DBEs and non-DBEs)}}$$

If a Bidder's List is used; the methodology and ratio would still follow the Step 1 Base Figure as stated. When using the Bidder's List data, we will establish a mechanism (documented in our goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on FTA or FAA-assisted contracts.

Any methodology we choose will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in our market. We understand that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of this section (above), is not an acceptable alternative means of determining the availability of DBEs.

*Step 2.* Once we have calculated a base figure, we will examine all of the evidence available in our local market to determine what adjustment, if any, is needed to the base figure to arrive at the overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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 FAX and Fresno Yosemite International Airport would expect in its contracting opportunities in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on contracts.

These factors will be considered for appropriate adjustment to the overall triennial DBE goal.

## **C.2.2 BREAKOUT OF ESTIMATED RACE-NEUTRAL & RACE-CONSCIOUS GOALS**

The race/gender-neutral and race/gender-conscious division of the goal is an exceedingly important component of the goal-setting process. The FAX and Fresno Yosemite International Airport will make efforts to meet the maximum feasible portion of the overall triennial DBE goal by using race/gender-neutral means of facilitating DBE participation as described in fostering small business participation. The factors that will be considered in the breakout of the race-neutral and race-conscious goal will include:

- A. The amount by which we exceeded the DBE goals in the past.
- B. Past participation by DBE prime contractors.
- C. Past participation by DBE subcontractors on contracts without a DBE race-conscious goal.
- D. The effectiveness of the Small Business Program on DBE participation
- E. Past history of inability *to achieve DBE goal in previous years.*

## **C.2.3 PUBLIC PARTICIPATION, COMMENT AND CONSULTATION**

49 CFR Part 26.45 (g)(1) indicates in developing the overall triennial DBE goal, an opportunity for public participation, comment and consultant will occur before the overall triennial DBE goal and methodology is submitted to FTA or FAA. This includes consultation with, the local area Minority chambers of commerce, non-Minority Chambers of Commerce, local trade and general contractor organizations, and women and minority business organizations, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the inference of discrimination on opportunities for DBEs, and the City of Fresno's efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, or teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before we are required to submit our goal methodology to the Operating Administration for review. We will document in our goal submission the consultation process that we engaged in.

Consecutively, the City of Fresno will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the FAX or Fresno Yosemite International Airport and on the websites for 30 days following the date of the notice, and informing the public that the comments to the goal and methodology will be accepted for 30 days from the date of the notice. The notice will be posted on the respective websites and the notice may be published in *The Advocate*, *Vida en el Valle*, the local area Builder's Exchange and minority and women business association websites. Normally, this notice will be issued by June 1 of each year. The notice will include addresses to which comments may be sent and office addresses and websites where the proposed goal and methodology may be reviewed. **The public comment period will not extend the August 1st deadline.**

The overall triennial DBE goal submission to FTA or FAA will include a summary of information and comments received, if any, during this public participation process and the responses to the comments.

The overall goal will begin on October 1 of each year, unless other instructions have been received from DOT. If an individual goal has been established on a project basis, the goal will be used starting with the time of the first solicitation for a DOT-assisted contract for the project.

#### **C.2.4 GENERAL ESTABLISHMENT OF GOALS**

Once the overall goals are established and approved by the respective Operating Administration; they shall be incorporated into this DBE Program by reference in **Attachment 3**. The maximum feasible portion of overall DBE goals will be met by using race-neutral measures in facilitating DBE participation. Race-neutral measures will include outreach and technical assistance to small businesses. The City of Fresno, FAX and Fresno Yosemite International Airport will incorporate the actions described in this plan to achieve the overall DBE goals as established by the goal and methodology. Where appropriate, the use of race-conscious measures to meet overall DBE goals on FAA or FTA or FHWA-assisted projects, will be implemented. The City will not use set asides or quotas in any way in the administration of the DBE Program or to achieve DBE participation.

#### **C.2.5 ESTABLISHMENT OF GOAL BY FAX for FTA-ASSISTED PROJECTS**

Every three years, FAX will submit to FTA, 60 days prior to the new federal fiscal year, its DBE goal and methodology, for both the anticipated FTA funding and anticipated percentage of participation by DBEs. The Transportation Director is responsible for establishing the triennial DBE participation goals as they relate to operating expenditures for FAX. The DBE Program Coordinator shall work with FAX to establish the triennial goals for DBE participation for construction/capital improvement projects. FAX will use the same methodology to establish the overall triennial DBE goal as described this section of this plan. FAX will not use quotas in any way in the administration of the DBE Program to achieve DBE participation.

#### **C.2.6 FAX GOAL REVISION**

The Transportation Director may determine during a fiscal year that it is necessary or appropriate to revise that year's overall DBE goal. In such event, the revised goal shall be approved by FTA. The new established goal shall then be amended accordingly into the DBE Program, under Attachment 3. Any overall DBE goal revisions shall be coordinated with the DBE Program Coordinator.

### **C. 2.7 TRANSIT VEHICLE MANUFACTURERS GOALS [49 CFR PART 26.49]**

The City of Fresno 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 Part 26, § 26.49 -- *How are Overall Goals Established For Transit Vehicle Manufacturers.*

### **C.2.8 INDIVIDUAL DBE GOAL ON A CONTRACT [49 CFR PART 26.51, 26.53]**

The City of Fresno, as a sub-recipient of FHWA-assisted projects through Caltrans' is required to follow the Disadvantaged Business Enterprise Implementation Agreement for Local Agencies, in establishing and submitting individual DBE goal on such contracts.

The City of Fresno will establish an individual DBE contract goal on FHWA-assisted contracts to meet any portion of the overall goal the City of Fresno does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall DBE goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

The City of Fresno will establish contract goals on federally-assisted contracts with a race-conscious component and that have subcontracting possibilities. The City need not establish a contract goal on every such contract, and the DBE percentage goal on the contract 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 of Fresno will express the contract goal as a percentage of the total amount of the DOT federal-assisted contract.

On FAA and FTA assisted contracts, the method for requiring DBE participation on individual contracts will be predicated by the overall DBE goal breakout of the race neutral means and or race-conscious components. In the event, FAX or Fresno Yosemite International Airport has a race-conscious component in their overall DBE triennial goal, the FAX or Fresno Yosemite International Airport will follow the steps in this section to set an individual DBE goal on a contract.

### **C.2.9 FAILURE TO MEET OVERALL DBE GOALS [49 CFR PART 26.47]**

The City of Fresno, FAX and Fresno Yosemite International Airport will maintain an approved DBE Program and overall DBE goal, where applicable, as well as administer the DBE Program in good faith to be compliant with Parts 23 and 26.

If the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will do the following in order to be regarded by the Operating Administration as implementing the DBE Program in good faith:

- (1) Analyze in detail the reasons for the shortfall between the overall goal and the awards

- and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable us to fully meet the DBE goal for the new fiscal year;
  - (3) Prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions to address the shortfall analysis.

The analysis and corrective action plan will be submitted to the respective Operating Administration –FAA or FTA.

### **C.3 GOOD FAITH EFFORTS PROCEDURES FOR CONTRACTS WITH A DBE GOAL**

#### **C.3.1 Demonstration of Good Faith Efforts [49 CFR PART 26.53]**

When a race-conscious DBE contract goal has been established on a contract, 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 under Minimum Documentation of Good Faith Efforts, below.

The DBE Program Coordinator 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. The City of Fresno will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

The Purchasing Manager or responsible department shall forward copies of the bid proposals to the DBE Program Coordinator for evaluation of compliance with DBE Program requirements. The DBE Program Coordinator shall review all the information submitted by the bidders. Should the DBE Program Coordinator determine that additional information is needed to assess whether a particular DBE listed by a bidder/offeror will be performing a commercially useful function in the contract work, whether a particular DBE listed by a bidder/offeror has been previously certified, or for any other pertinent reason, the DBE Program Coordinator shall require said bidder/offeror to submit such information.

In the event the bidder/offeror(s) does not meet the goal or fails to demonstrate that adequate good faith efforts were made or fails to submit the required documentation, the DBE Program Coordinator shall so advise the Purchasing Manager and the responsible department.

A bidder/offeror who has been informed by the City of Fresno that it is not responsive because it has not documented sufficient good faith efforts, will be permitted to request administrative reconsideration. Such reconsideration will be by an official who did not play 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 official to discuss the issue or make such argument. The City of Fresno will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder/offeror did or did not meet the goal or make adequate good faith efforts to do so. The

result of the reconsideration process is not administratively appealable to DOT.

A bidder/offeror which fails to achieve the specified DBE goal or alternatively fails to demonstrate adequate good faith efforts to meet the goal shall be deemed nonresponsive and, therefore, ineligible for award of the contract.

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

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

Additional requirements include the following:

- a. Submission of information required under this section shall be on a form provided by the City.
- b. The DBE information required under this section is in addition to the subcontractor information required pursuant to the provisions of sections 4100 to 4113, inclusive, of the California Public Contract Code.
- c. All bidders must submit the names and location of the place of business of all proposed DBEs regardless of the dollar amount of the work they will perform.
- d. All bidders must submit a summation of the total dollar value of the proposed work to be performed by all DBEs stated as a percentage of the total bid amount.
- e. The three lowest bidders shall submit to the Purchasing Manager, no later than 5:00 p.m. on the third City working day following the date of the bid opening, (unless a later date is authorized by the DBE Program Coordinator) a complete description of work or supplies to be provided by each of the DBEs and the dollar value of each DBE transaction. Such information is subject to verification by the DBE Program Coordinator who may require additional information or clarification. Such additional information or clarification can apply only to the DBEs listed in the bid proposal. Additional DBEs not listed with the bid will not be considered in awarding the contract.
- f. Bidders, other than the three lowest bidders, need not submit DBE information unless requested to do so by the DBE Program Coordinator. When such information is requested, the DBE information must be submitted within five calendar days from the date of request, unless a later time is authorized by the DBE Program Coordinator.
- g. Bidders are cautioned that even though the information submitted indicates they have met the goal, they should document and submit their good faith effort information no later than 5 p.m. on the third working day following the date of bid opening (unless a later date is authorized by the DBE Program Coordinator), to protect their eligibility for award of the contract, in the event the DBE Program Coordinator finds in his/her review that the goal has not been met.

### **C.3.2 Minimum Documentation of Good Faith Efforts**

It shall be noted that, in order to be declared a responsive bidder on an FHWA-assisted project for which a contract goal has been established, the bidder/offeror must clearly document that it has obtained enough DBE participation to meet the goal or that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. This means that prior to submitting the bid proposal, the bidder/offeror must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirements of 49 CFR Part 26, which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. The types of actions which will be considered as part of the bidder/offeror's good faith efforts to obtain DBE participation include, but are not limited to, the following:

- Attendance at the Pre-Bid meeting, if a meeting is scheduled.
- Advertisement in a pertinent trade association newsletter or minority/women focus newspapers and/or publications, no less than 10 calendar days (or other reasonable period of time, as determined by the City, is sufficient time to allow the DBEs to respond to the solicitation) before bids are due. Acceptable publications include, but are not limited to: The Fresno Bee, the Fresno Business Journal and the Daily Pacific Builders.
- Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- Soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors

and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

- A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- Rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the effort to meet the project goal.
- Making efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance as required by the City or contractor.
- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
- The three lowest bidders must include, in the DBE report filed with the Purchasing Manager before 5:00 p.m on the third City working day following the bid opening (unless a later date is authorized by the DBE Program Coordinator), documentation regarding their good faith efforts. Only DBEs listed on the DBE Certification of Good Faith Effort will be considered in evaluating Good Faith Effort. The documentation must include a detailed statement of efforts made to select portions of the work to be performed by DBEs and of the contact with DBEs, including the following minimum information: (a) the names, addresses, and telephone numbers of the individuals directly contacted, and the date and time when the DBEs were contacted; (b) a description of the information provided to DBEs regarding the plans and portions of the work to be performed; (c) a list of all DBE bids which were received but not used, giving reasons for rejection (d) copies of all advertisements indicating the date of advertisement; (e) fax or email confirmations; (f) description of work that was broken out for subcontractors and suppliers; and (g) evidence that the California Unified Certification Program (CUCP) data base was accessed at least 10 days prior to bid.

### **C.3.3 Good Faith Efforts When a DBE is Replaced on a Contract**

The City of Fresno will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the DBE commitment made by the contractor on the contract.

The City will require the prime contractor to give notice in writing to the DBE, with a copy to the City, of its intent to request to terminate and/or substitute a DBE and the reason for such request. The prime contractor will be required to give the DBE five (5) calendar days to respond to the contractor's notice and advise the City and the contractor of its reasons, if any, why it objects to the proposed termination and why the City should not approve the contractor's action. If a matter of public necessity (e.g., safety), the City may provide a response period shorter than five (5) calendar days.

The City will require the prime contractor to notify the City immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, the City will require the prime contractor to obtain the City's prior approval of the substitute DBE and to provide copies of new or amended subcontracts, and documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, the City of Fresno may issue an order stopping all or part of payment/work until satisfactory action has been taken or proceed with other contract remedies including, without limitation, termination of the contract for contractor's breach.

The foregoing applies in instances where the contractor seeks to perform the work itself, except in those extreme circumstances where it becomes necessary to perform a particular contract item (such as traffic control, erosion control, etc.) at a moment's notice to protect the public safety with the approval of the City.

The prime contractor is to exert the necessary good faith effort to replace/substitute DBEs for those DBEs unable or unwilling to perform during the life of the contract to the extent needed to meet the contract goal established for the contract or project.

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

### **C.4 Sample Bid Specifications**

The sample specification, below, is intended for use in both nonconstruction and construction contracts for which a contract goal has been established. Thus, it can be included in invitations for bid for construction, in requests for proposals for architectural/engineering and other professional services, and in other covered solicitation documents. A bid specification is required only when a contract goal is established.

*The 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 Fresno 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, to meet the contract goal for DBE participation in the performance of this contract.*

*The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and; (6) if the contract goal is not met, evidence of good faith efforts.*

#### **C.5 Counting DBE Participation [49 CFR PART 26.55]**

The DBE participation will be counted towards the overall and individual contract goals as provided in Part 26, §26.55.

The DBEs listed by bidders for participation in the contract work shall be certified by the California Unified Certification Program (CUCP) as eligible DBEs prior to bidding. Where the certification of a proposed DBE has not been established prior to bidding, credit for DBE participation will not be allowed.

DBE subcontractors, suppliers, and manufacturers must perform a commercially useful function in the work of the contract in order for their contribution toward the total contract work to be included in the DBE contract participation percentages. A DBE firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of the contract and for carrying out its obligations by actually performing, managing and supervising the work involved. A DBE supplier or manufacturer shall be deemed to perform a commercially useful function in the contract work, provided that actual and contractual responsibility for the provision of the materials and supplies is assumed. A DBE subcontractor which, in turn, further subcontracts a significantly greater portion of the assigned work than would be expected on the basis of normal industry practices shall be presumed not to be performing a commercially useful function. Such DBE may present evidence to rebut this presumption to the DBE Program Coordinator; however, this must be done as part of the documentation submitted to the Purchasing Manager before 5:00 p.m. on the third City working day following the bid opening (unless a later date is authorized by the DBE Program Coordinator).

## **SUBPART D - DBE CERTIFICATION STANDARDS**

### **D.1 CERTIFICATION PROCESS [49 CFR PART 26.61 THROUGH 26.91]**

The City of Fresno is the member of a Unified Certification Program administered by the California Unified Certification Program (CUCP). The CUCP will meet all of the requirements of this section. For information about the certification process or to apply for certification, firms should contact:

DBE Program Coordinator  
2600 Fresno Street, Room 2156  
Fresno CA 93721  
(559) 621-1163

The CUCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The CUCP will make certification decisions based on the facts as a whole.

### **D.2 CUCP PROCEDURES FOR CERTIFICATION DECISIONS**

The CUCP will ensure that only firms certified as eligible DBEs under this section participate as DBEs in our program. We will take the required steps outlined in Part 26, §26.83(c) in determining whether a DBE firm meets the standards of Subpart D of this part.

The firms that we have certified or reviewed and found eligible under Part 26, we will again review their eligibility every five years. Part 26 says you may conduct such reviews more often than every three years, but you are not required to conduct them at any specific interval]. These reviews will include the following components: Current Personal Net Worth Statement, most current personal federal income taxes, corporate meeting minutes and most current firm and its affiliate's federal income taxes.

Once we have certified a DBE, it shall remain certified until and unless we have removed its certification, in whole or in part, through the procedures of Part 26, §26.87 of this part, except as provided in Part 26, §26.67(b)(1) of this part.

We will not require DBEs to reapply for certification or undergo a recertification process. However, we may conduct a certification review of a certified DBE firm, including a new onsite review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under Part 26, §26.88), a complaint, or other information concerning the firm's eligibility. If information comes to our attention that leads us to question the firm's eligibility, we may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

### **D.3 “NO CHANGE” AFFIDAVITS AND NOTICES OF CHANGE**

The CUCP requires all DBEs owners 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 of Fresno’s application for certification.

The CUCP also requires all DBE owners we have certified to submit every year, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of Part 26, §26.83(j).

The CUCP requires DBEs to submit with this affidavit documentation of the firm’s size and business gross receipts (e.g., submission of federal tax returns).

The CUCP will notify all currently certified DBE firms of these obligations. 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.

### **D.4 INTERSTATE CERTIFICATION**

When a firm currently certified in its home state (“State A”) applies to another State (“State B”) for DBE certification, State B may, at its discretion, accept State A’s certification and certify the firm, without further procedures. We will follow the procedures defined in Part 26, §26.85.

### **D.5 DENIAL OF INITIAL REQUESTS FOR CERTIFICATION**

If the CUCP were to deny a firm’s application or decertify it, it may not reapply until 12 months have passed from the CUCP action. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the applicant firm. An applicant’s appeal of the CUCP decision to the U.S. DOT pursuant to Part 26, §26.89 does not extend this period.

### **D.6 REMOVAL OF A DBE’S ELIGIBILITY**

In the event the CUCP proposes to remove a DBE’s certification, the CUCP will follow procedures consistent with Part 26, §26.87.

## **D.7 SUMMARY SUSPENSION OF CERTIFICATION**

The CUCP shall follow the procedures consistent with Part 26, §26.88 regarding suspending a DBEs certification.

The CUCP shall immediately suspend a DBE's certification without adhering to the requirements in Part 26, §26.87(d) when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

We will immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify CUCP in writing of any material change in circumstances as required by Part 26, §26.83(i) of this part or fails to timely file an affidavit of no change under Part 26, §26.83(j).

When a firm is suspended pursuant to Part 26, §26.88 (a) or (b), the CUCP will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under Part 26, §26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

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

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the [*Recipient*] information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, we will either lift the suspension and reinstate the firm's certification or commence a decertification action under Part 26, §26.87 of this part. If we commence a decertification proceeding, the suspension remains in effect during the proceeding. The decision to immediately suspend a DBE under paragraph Part 26, §26.88 (a) or (b) is not appealable to the U.S. DOT.

The failure the CUCP to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. DOT under Part 26, §26.89 of this part, as a constructive decertification.

## **D.8 CERTIFICATION APPEALS**

Any firm or complainant may appeal our decision in a certification matter to U.S. DOT. A firm that wants to file an appeal, must send a letter to the U.S. DOT 90 days of the date of the CUCP final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. The U.S. DOT may accept an appeal filed later than 90 days after the date of the decision if the U.S. DOT determines that there was good cause for the late filing of the appeal or in the interest of justice.

Such appeals may be sent to:

U.S. Department of Transportation  
Departmental Office of Civil Rights  
1200 New Jersey Ave., S.E.  
Washington, DC 20590-0001

The U.S. DOT makes its decision based solely on the entire administrative record as supplemented by the appeal. The U.S. DOT does not make a de novo review of the matter and does not conduct a hearing. The U.S. DOT may also supplement the administrative record by adding relevant information made available by the U.S. DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT Operating Administration or other appropriate U.S. DOT office; a recipient; or a firm or other private party.

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

A reference to certification application forms and documentation requirements are found at [http://www.dot.ca.gov/hq/bep/business\\_forms.htm](http://www.dot.ca.gov/hq/bep/business_forms.htm).

## **SUBPART E - DBE CERTIFICATION PROCEDURES**

### **E.1 UNIFIED CERTIFICATION PROGRAM [49 CFR PART 26.81]**

On January 8, 2001, the City Council approved a Letter of Agreement/Declaration of Status for the City of Fresno to participate in a statewide DBE Unified Certification Program. The City of Fresno is a member of a Unified Certification Program administered by California Unified Certification Program (CUCP). The CUCP will meet all of the requirements of this section. The following is a description of the CUCP: The CUCP provides “one-stop shopping” certification services to small, minority and women businesses seeking to participate in the United States Department of Transportation Disadvantaged Business Enterprise (DBE) Program. Certification services are offered to businesses seeking to obtain either DBE or airport concession disadvantaged business enterprise (ACDBE) status.

When applicants that are not located within a radius feasible for the DBE Program Coordinator or DBE staff to make a personal interview, the DBE Program Coordinator shall coordinate data with the CUCP in that locality or other certifying agencies.

DBE application forms may be obtained from the City of Fresno Purchasing Division or at

[http://www.dot.ca.gov/hq/bep/business\\_forms.htm](http://www.dot.ca.gov/hq/bep/business_forms.htm).

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

### **F.1 INFORMATION, CONFIDENTIALITY, COOPERATION [49 CFR PART 26.101 THROUGH 26.109]**

The City of Fresno will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law, including the California Public Records Act (California Government Code § 6250, et.seq.).

Notwithstanding any contrary provisions of state or local law, the City of Fresno 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.

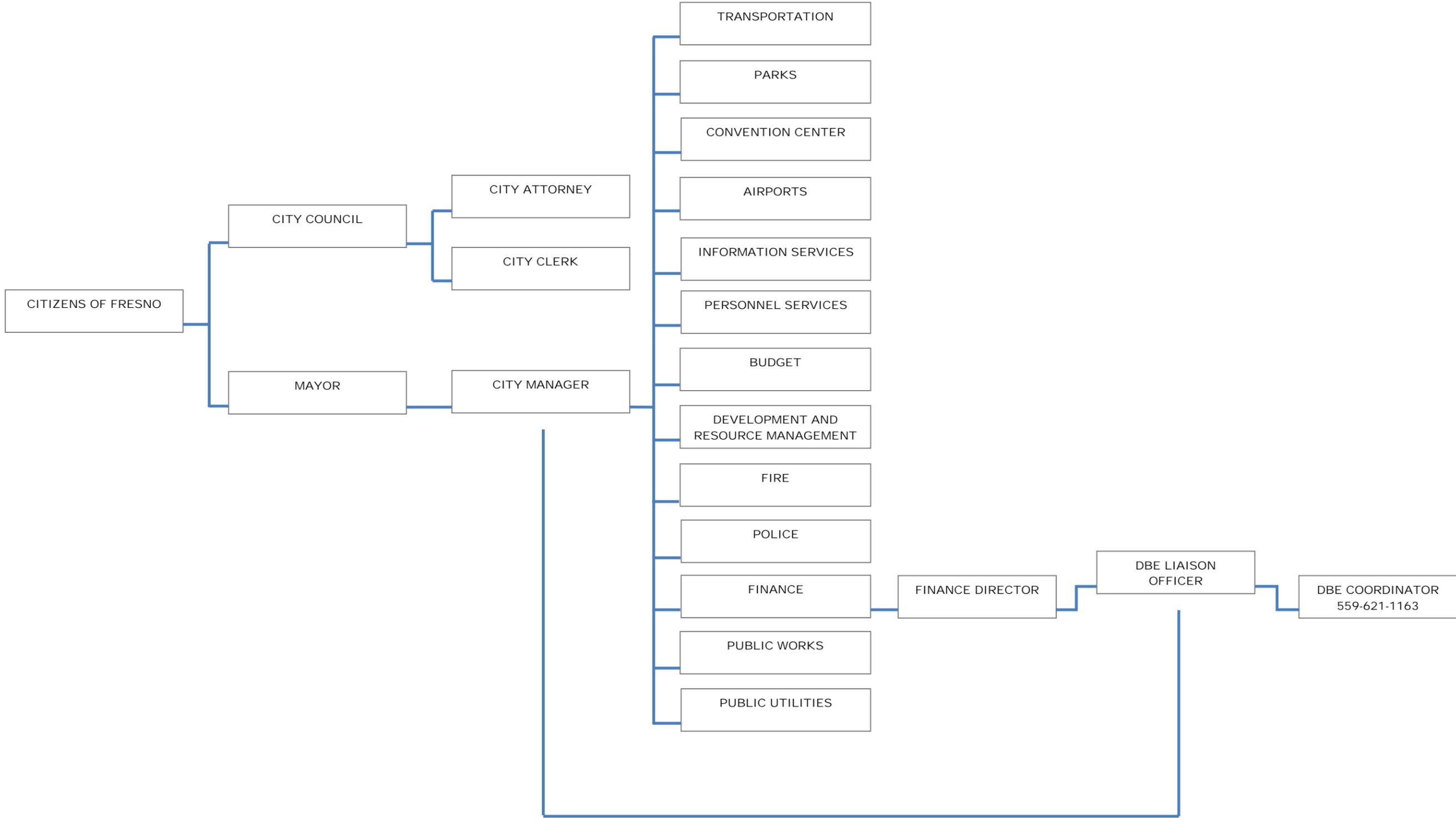
### **F.2 MONITORING PAYMENTS TO DBES**

Prime contractors will be required 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 Fresno or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Interim audits will be performed by the City of Fresno or its representatives on 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 stated in the schedule of DBE participation. See **Attachment 2**.

**Attachment 1**

**City and FAX Organizational Charts**



## **Monitoring and Enforcement Mechanisms**

The City of Fresno has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Retainage of additional funds until full contract compliance has been met.

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

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001 and 2 CFR Parts 180 and 1200.

49 CFR Part 26, §26.29 requires DOT-assisted contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

The City of Fresno shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the City of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the city. (49 CFR Part 26, §26.29(b)(3), referenced herein as “Method 3”)

The following procedures will be used to comply with Method 3;

- At pre-bid meetings - The DBE Coordinator will point out the requirements for prompt payment under the federal requirements. The successful bidder will provide a list of all subcontractors to be used under the contract and a full description of subcontracted work.
- At the pre-construction meeting - The construction or project manager will require the above list to be provided as a submittal along with a project schedule that identifies any of the subcontractors which may have their work completed/accepted prior to the completion of the entire project.
- During construction - When a progress payment is prepared, the construction or project manager will review the schedule and the actual completed work to date and determine if there is any subcontractor which has completed 100% of their contract.
- If no subcontractor has completed 100% of their contract, the review which has taken place is documented for that payment.
- If there is a subcontractor which has completed 100% of their contract, staff will contact the prime contractor and verify that the subcontractor has completed 100% of his work.

- If the prime contractor agrees that the subcontractor's work is complete, a letter of acceptance for that subcontractor's portion of work will be sent to the prime contractor and subcontractor, and the payment will be processed releasing retention for that portion of the work. If the prime contractor disagrees, the remaining work is documented and no release is included for that payment.
- After a release of retention for incremental acceptance, staff will contact the subcontractor to verify payment to the subcontractor within 30 days after City payment to the prime contractor. Documentation of verification of payment will be filed. If prompt payment has not been made, the City will notify the prime contractor and will proceed with penalties, sanctions, and other remedies specified in the contract.

### **Overall Goal Calculation and Methodologies**

The current (as amended, or superseded for future time periods) overall goal and calculations methodologies are attached and incorporated by reference in the following attachments:

Attachment 3-1 - Overall Goal Calculation and Methodology for FTA-assisted Projects

Attachment 3-2 - Overall Goal Calculation and Methodology for FAA-assisted Projects

The Step 1 – Base Figure and Step 2 Adjustment to Base Figure are described in section **C.2.1 Goal Methodology** in this plan.

The Fresno Area Express and Fresno Yosemite International Airport submits its individual triennial overall DBE goal and methodology to either Federal Transit Administration or the Federal Aviation Administration. Refer to each department's triennial overall DBE goal and methodology on the respective websites.

The City of Fresno, as a sub-recipient of FHWA-assisted projects through the California Department of Transportation (Caltrans') is required to follow the Disadvantaged Business Enterprise Implementation Agreement for Local Agencies, in participating in Caltrans DBE Program requirements and overall DBE goal as established by Caltrans.

**FRESNO AREA EXPRESS  
DISADVANTAGED BUSINESS ENTERPRISE  
OVERALL TRIENNIAL DBE GOAL AND METHODOLOGY  
FOR FEDERAL FISCAL YEARS 2016-2018**

## **I. INTRODUCTION**

The Fresno Area Express (FAX) is required to prepare and submit a Disadvantaged Business Enterprise (DBE) Overall Goal for DBE participation as a condition of receiving federal financial assistance, pursuant Moving Ahead for Progress in the 21<sup>st</sup> Century; 49 CFR Part 26 “Participation by Disadvantaged Business Enterprises in U.S. Department of Transportation Programs” and the Federal Transportation Administration (FTA) Master Funding Agreement.

## **II. BACKGROUND**

Effective March 3, 2010, the United States Department of Transportation (“DOT”) issued a final rule affecting the implementation and management of the DOT’s DBE Program. The final rule, requires submission of a goal-setting methodology on a three-year cycle. Pursuant to this final rule, the FAX is still required to conduct an annual review to account for changes that may warrant an adjustment to the overall goal or make an adjustment based on changed circumstances (i.e. significant change in the legal standards governing the DBE Program, new contracting opportunities presented by the availability of new or different grant opportunities, etc.) to ensure the goal and program as a whole are narrowly tailored throughout the goal period. Under the three-year schedule, the FAX’s DBE goal and methodology submission is due to FTA on August 1, 2016 for proposed FTA funded contracting activities for Federal Fiscal Years (FFY) 2016/18.

**The FAX herein presents its Proposed Overall Triennial DBE Goal Methodology for FFY 2016/18, which resulted in a 13% Overall Race-Neutral DBE Goal**

## **III. FTA-ASSISTED CONTRACTING PROGRAM FOR FFY 2016-2018**

**Table 1** represents the nine (9) proposed projects in consideration for preparing the **Overall DBE Goal-Setting Methodology**. The projects include: CNG Replacement Compressor, Building/Facility Maintenance, Intermodal Facility, Shelter Improvements/Passenger Amenities, BRT, Signal Prioritization, Mariposa Project, Professional Services, and Bus Wash which have viable subcontracting possibilities, a required criterion for Overall Goal consideration, and are anticipated to be awarded within FFYs 2016-2018.

**Table 1**

<b>Project Name</b>	<b>Total Estimated Project Cost (Federal Share)</b>	<b>Estimated Federal Dollar Share of Construction</b>	<b>Estimated Federal Dollar Share of Professional Services</b>	<b>Estimated Federal Dollar Share of Materials &amp; Supplies</b>
CNG Replacement Compressor	\$860,000.00	\$860,000.00	-	-
Building/Facility Maintenance	\$5,816,000.00	\$5,816,000.00	-	-
Intermodal Facility	\$2,004,900.00	\$2,004,900.00	-	-
Shelter Improvements/Passenger Amenities	\$8,289,400.00	\$8,289,400.00	-	-
BRT	\$44,828,000.00	\$44,828,000.00	-	-
Signal Prioritization	\$1,565,700.00	\$1,565,700.00	-	-
Mariposa Project	\$2,405,900.00	\$2,405,900.00	-	-
Professional Services	\$4,091,600.00	-	\$4,091,600.00	-
Bus Wash	\$4,500,000.00	\$4,500,000.00	-	-
<b>TOTAL</b>	<b>\$74,361,500.00</b>	<b>\$70,269,900.00</b>	<b>\$4,091,600.00</b>	<b>\$0.00</b>

**Table 2** provides a summary of work grouped into one (3) primary categories: Construction, Professional Services and Materials and Supplies, utilizing the North American Industry Classification System (NAICS) work categories and comparable 2013 Census Business Patterns NAICS Work Codes. **Table 2** also serves to identify the estimated Federal Dollar Share and the Percent of Federal funding, as follows:

**Table 2**

<b>CONTRACT CATEGORY</b>	<b>NAICS CUCP DATABASE</b>	<b>ESTIMATED FEDERAL DOLLAR SHARE</b>	<b>% OF FEDERAL FUNDING</b>
<b>Construction</b>	237120, 238990, 237310, 238210, 236210	\$70,269,900.00	95%
<b>Professional Services</b>	541330	\$4,091,600.00	5%
<b>Materials &amp; Supplies</b>	332323,334118,337127	\$0.00	0%
<b>TOTAL</b>		<b>\$74,361,500.00**</b>	<b>100%</b>

\*\*Goal Calculation based on Federal Dollar share

**Table 3** represents the most refined data available and provides a summary of work grouped into scope of work categories within the overall primary work categories: utilizing the NAICS work

categories and comparable 2013 Census Business Patterns NAICS Work Codes. *Table 3* also serves to identify the estimated Percent of Federal Funding per related scope of work, as follows:

**Table 3**

CATEGORY OF WORK	NAICS CODES	ESTIMATED % OF CONTRACT
Heavy & Civil Engineering	237990	
All Other Specialty Trade Contractors	238990	
Industrial Building Construction	236220	
Engineering Services	541330	
Ornamental	332323	
Peripheral Equipment	334118	
Furniture	337127	
<b>TOTAL</b>		<b>100%</b> (Federal \$)

#### IV. FAX OVERALL DBE GOAL METHODOLOGY

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

To establish the FAX Base Figure of the relative availability of DBEs to all comparable firms (DBE and Non-DBEs) available to propose on the projected FFYs 2019-2021 FTA-assisted contracting opportunities; the FAX followed 1 of the 5 prescribed federal goal-setting methodologies in accordance with 49 CFR Part 26 regulations. This was accomplished by accessing the **California Unified Certification Program (CUCP) Directory of Certified DBE Firms** and the **2012-2016 U.S. Census Bureau County Business Patterns (CBP) Database**. Comparisons were made within FAX's market area (defined as Fresno County) and by specified industries and types of businesses identified in Table 2. The FAX's local market area represents where the substantial majority of FAX's contracting dollars are expended and/or where the substantial majority of contractors and subcontractors bids or quotes are received.

The FAX made a concerted effort to ensure that the scope of businesses included in the numerator was as close as possible to the scope included in the denominator. For corresponding detail of all work category classifications grouped, refer to *Table 4*.

- ⇒ **For the numerator: California UCP DBE Database of Certified Firms**
- ⇒ **For the denominator: 2013-2016 U.S. Census Bureau's Business Pattern Database (CBP)**

To determine the relative availability of DBEs, FAX divided the numerator<sup>2</sup> representing the ratio of ready, willing and able DBE firms, by the denominator<sup>3</sup> representing all firms (DBE and Non-DBEs) available in each work category. Application of this formula yielded the following baseline information:

$$\frac{\text{Number of Ready, Willing and Able DBEs}}{\text{Number of All Available Firms (including DBEs and Non-DBEs)}} = \text{BASE FIGURE}$$

<sup>1</sup> §26.45 represents Title 49 CFR Part 26 regulatory referenced section.

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

<sup>3</sup> Denominator represents all comparable available established firms.

The Step 1: Base Figure was further weighted by contract type of work to be performed and corresponding contract value. The Base Figure resulting from this weighted calculation is as follows:

**Table 4**

237120 Oil and Gas Pipeline and Related Structures Construction	238990 All Other Specialty Trade Contractors
Base Figure = $\left( \frac{50\% \text{ (DBEs in NAICS 237120)}}{\text{(CBPs in NAICS 237120)}} \right)$	Base Figure = $\left( \frac{23.63\% \text{ (DBEs in NAICS 238990)}}{\text{(CBPs in NAICS 238990)}} \right)$
Base Figure = $\left( .5000 \frac{1}{2} \right)$	Base Figure = $\left( .2363 \frac{43}{182} \right)$
Base Figure = .5000 (0.0116)	Base Figure = .2363 (0.2166)
Base Figure= <b>0.0058</b>	Base Figure = <b>0.0512</b>
237310 Highway, Street, and Bridge Construction	238210 Electrical Contractors and Other Wiring Installation Contractors
Base Figure = $\left( \frac{23.86\% \text{ (DBEs in NAICS 237310)}}{\text{(CBPs in NAICS 237310)}} \right)$	Base Figure = $\left( \frac{6.04\% \text{ (DBEs in NAICS 238210)}}{\text{(CBPs in NAICS 238210)}} \right)$
Base Figure = $\left( .2386 \frac{21}{88} \right)$	Base Figure = $\left( .0604 \frac{9}{149} \right)$
Base Figure = .2386 (.6028)	Base Figure = .0604 (0.2110)
Base Figure = <b>0.1438</b>	Base Figure= <b>0.0013</b>
236210 Industrial Building Construction	541330 Engineering Services
Base Figure = $\left( \frac{56.25\% \text{ (DBEs in NAICS 236210)}}{\text{(CBPs in NAICS 236210)}} \right)$	Base Figure = $\left( \frac{4.59\% \text{ (DBEs in NAICS 541330)}}{\text{(CBPs in NAICS 541330)}} \right)$
Base Figure = $\left( .5625 \frac{9}{16} \right)$	Base Figure = $\left( .0459 \frac{14}{305} \right)$
Base Figure = .5625 (.0929)	Base Figure = .0459 (0.0550)
Base Figure = <b>0.0523</b>	Base Figure= <b>0.0025</b>
BASE FIGURE	
Base Figure = 0.0058 + 0.0512 + 0.1439 + 0.0013 + 0.0523 + 0.0025 = 0.257	
<b>Base Figure= (0.257) 100 = 25.7 = <u>26%*</u></b>	
* Rounded to the nearest whole number	

**Step 2: Adjusting the Base Figure**

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

Evidence considered in making an adjustment to the Base Figure included FAX's Past DBE Goal Attainments, Disparity Studies, and Public Participation, as follows:

**A. Past DBE Goal Attainments**

**Table 5**

<i>Project</i>	<i>DBE Contract Goal</i>	<i>DBE Goal Commitment</i>	<i>DBE Goal Attainment</i>
<i>2011</i>	<i>0.00%</i>	<i>0.00%</i>	<i>0.00%</i>
<i>2012</i>	<i>0.00%</i>	<i>0.00%</i>	<i>0.57%</i>
<i>2013</i>	<i>0.00%</i>	<i>0.00%</i>	<i>0.00%</i>
<i>2014</i>	<i>0.00%</i>	<i>0.00%</i>	<i>0.85%</i>
<i>Average of Past Attainments = 0.36% = 0.00%*</i>			
<i>* Rounded to the nearest whole number</i>			

FAX considered an adjustment to the Step 1 Base Figure based on historical past DBE goal attainments for federal FFYs 2013/15 with the new proposed contracting opportunities identified and considered in the Overall DBE Goal Analysis for FFYs 2016/18. One project was completed and found to have attainment data within the last three (3) FFYs. Although four (4) projects were found to have attainment data, it was utilized due to similarity of the scopes of work included within the Transit Amenities and Enhancements Projects, specifically CNG Replacement Compressor, Building/Facility Maintenance, Intermodal Facility, Shelter Improvements/Passenger Amenities, BRT, Signal Prioritization, Mariposa Project, Professional Services, and Bus Wash. The FFYs 2016/18 proposed projects are primarily for infrastructure which makes them far different in type of work and dollar value to previous FFYs projects which was for operations and maintenance projects.

The formula for adjusting the base figure follows:

Step 1 Base Figure (26%) + Average Past Participation (0%) = Adjusted Base Figure

Average Past Participation =	0%
Average + Step 1 Base Figure =	26% + 0% = 26%
Base Figure Adjusted =	$\frac{26\%}{2} = 13\%$
Adjusted Base Figure =	13% (Rounded)

### ***B. Disparity Study***

FAX did not conduct a disparity study for its FTA financial assistance. However, FAX considered Caltrans' disparity study that was completed in 2014 for its FTA financial assistance. The FAX reviewed the disparity study and determined Caltrans disparity study methodology and the statewide market area for Caltrans FTA grant funding are greater than FAX's grants and market area. The Caltrans disparity study is not relevant to the FAX market area or contracting activity. Consequently, the Caltrans disparity study was not used.

### ***C. Public Participation and Consultation***

In accordance with public participation regulatory requirements under 49 CFR Part 26, §26.45(g), minority, women, local business chambers, and community organizations within FAX market area were consulted and asked to provide comment to the goal and methodology and share information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and their efforts to establish a level playing field for the participation of DBEs.

#### **Public Notice**

On July 1, 2016 the FAX published a public notice, informing the public that the draft proposed goal and methodology were available for inspection during normal business hours at the FAX principal office and on the FAX website for 30 days. The public notice encouraged the public to provide comments on the goal and invited the public to attend a public meeting, at the FAX office, on July 15, 2016 where FAX representatives were available to answer questions and receive public comments.

The notice was posted on the FAX and City of Fresno website, Central Valley Business Journal, publication that cover Fresno, Kings, Madera and Tulare counties and also included addresses to which comments may be sent. An email, with the public notice, was also sent to over 3000 businesses interested in FAX contract opportunities.

## Public Consultation

FAX also worked in partnership with business organizations in the market area, included the Greater Fresno Area Chamber of Commerce to announce and invite members

In order to facilitate public participation and consultation the FAX requested meetings with the following minority and women businesses, local leaders, general contractor and community organizations:

- Central California Hispanic Chamber of Commerce
- Fresno Area Hispanic Foundation
- Fresno Builders Exchange
- Fresno Chamber of Commerce
- Fresno Metro Black Chamber of Commerce
- Building Industry of Fresno and Madera Counties
- Madera Hispanic Chamber of Commerce
- Mariposa Chamber of Commerce
- Merced County Hispanic Chamber of Commerce
- Merced and Mariposa Builder Exchange
- National Association of Minority Contractors
- Tulare Chamber of Commerce
- Tulare Kings Hispanic Chamber of Commerce
- Tulare-Kings Counties Builders Exchange
- Central California Builders Exchange
- Kern Black Chamber of Commerce
- Central Valley Asian American Chamber of Commerce
- Women in Construction Owners & Executives USA
- National Association of Women in Construction

FAX conducted face-to face meetings and hosted conference calls with the representatives of the following organizations:

- **Greater Fresno Area Chamber of Commerce**, Nathan Alonzo, with an active membership of more than 1,400 businesses and organizations (*One of the largest Chambers in the state of California*).
- **Fresno Metro Black Chamber of Commerce**, Tate Hill II, with an active membership of 194 businesses.
- **Central California Hispanic Chamber of Commerce**, Jose Elizondo and Brandie Carpenter, with an active membership of more than 300 businesses.
- **Fresno Area Hispanic Foundation**, Yery Olivares and Sandra Vidrios with an active membership of 200 businesses.
- **Asian Business Institute and Resources Center**, Blong Xiong, representing the Asian business communities in Fresno County.
- **National Association of Minority Contractors**, Pete Varma, representing the Northern California Chapter, with over 1000 business members.

- **Women Construction Owners and Executives USA**, Lee Cunningham, representing over women in construction businesses in California.

### **July 15, 2016 Public Meeting**

The FAX representatives were available all day on July 15, 2016 to receive comments about the overall DBE goal and methodology and answer questions. Business members of the Fresno Metro Black Chamber of Commerce and Greater Fresno Area Chamber of Commerce dropped in. The business representatives did not provide comment to the proposed overall DBE goal and methodology.

### **Public Comments**

During the 30 day period, the FAX provided the public with the proposed overall DBE goal and methodology, along with the draft DBE Program plan. The FAX received 1 comment on the DBE goal and methodology and 35 comments on the DBE Program.

In summation, one commenter indicated the “DBE goal should be higher based on the availability of 1269 DBEs in California.” The FAX requested the commenter to provide additional information to support its comment and the commenter reiterated its comment without further reasoning.

35 other comments centered on:

- Monitor prime contractors to achieve the goal
- Breakdown projects into economically feasible units in order for DBEs and small businesses to bid as a prime or subcontractors
- The certification process remains too cumbersome and time consuming and is an obstacle for firms seeking certification or even re-certification.
- Provide training on preparing responsive proposals
- Provide more information on procurement opportunities

The FAX gave full consideration to all comments and input and assessed the impact from the one comment on the goal and methodology. The one comment on the DBE goal did not provide sufficient information to amend the proposed DBE triennial goal of 13%.

## ***V. FAX OVERALL TRIENNIAL DBE GOAL AND PROJECTION OF RACE-NEUTRAL AND RACE-CONSCIOUS PARTICIPATION***

**The Overall DBE Goal for FFY 2019-2021 for FAX’s FTA-assisted contracts is 10% race neutral.** The overall triennial goal is expressed as a percentage of FTA-assisted funds that the FAX will expend in applicable FTA-assisted contracts in the given FFY.

The goal further serves to identify the relative availability of DBE’s based on evidence of ready willing, and able DBE’s to all comparable firms, which are known to be available to compete for and perform on the FAX FTA-assisted contracts.

## **VI. FAX RACE-NEUTRAL MEASURES**

In conformance with 49 CFR Part 26; “Participation by Disadvantaged Business Enterprises in Department of Transportation Programs” and in further response to FTA Notices issued to Public Transportation Providers regarding DOT’s DBE Program and Race-Neutral Policy Implementation Guidance, the FAX proposes to implement a **strictly Race-Neutral Overall Triennial DBE Goal for FFYs 2019-2021**. The race-neutral positioning is due to the absence of readily available evidence of discrimination and its effects in FAX’s marketplace. In the event FAX determines at any time during the FFYs that it will not reach the overall triennial DBE goal using race-neutral means, FAX will consider amending the proposed goal to implement a race-conscious DBE Program and present its amended DBE Program and goal to FTA for approval.

The FAX will implement Race-Neutral measures to meet its Overall Triennial DBE Goal in accordance with 49 CFR Part 26.51, including but not limited to:

- Arranging timely solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBEs and other small business firms’ participation.
- Unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own work forces.
- Providing technical assistance and other services to small businesses, including DBE firms.
- Providing information and communications programs on contracting procedures and specific contract opportunities.
- Providing assistance to small businesses in overcoming limitations in obtaining bonding, lines of credit and building financing capital.

Based on public participation and consultation and other factors as addressed in the Step 2 discussion, the FAX overall triennial DBE goal for FFYs 2019/21 is 10% race-neutral and is considered final.