

# **access**

## **ACCESS SERVICES**

**Federal Transit Administration (FTA)**

**Overall Disadvantage Business Enterprise (DBE)**

**Goal-Setting Methodology**

**Fiscal Federal Years (FFY) 2022-2024**

**August 1, 2021**

Submitted in fulfillment of:  
Title 49 Code of Federal Regulations Part 26

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# **DBE GOAL METHODOLOGY**

## **II. INTRODUCTION**

Access Services (Access) herein sets forth its Overall Disadvantaged Business Enterprise (DBE) Goal and corresponding federally prescribed goal-setting methodology for the three-year Federal Fiscal Year (FFY) goal period of 202-2024 (October 1, 2021 through September 30, 2024), pursuant to Title 49 Code of Federal Regulations (CFR) Part 26 "Participation by Disadvantaged Business Enterprises in U.S. Department of Transportation Programs." The purpose of the DBE goal-setting process is to level the playing field so that DBEs can compete fairly for Department of Transportation-assisted contracts, however, the program must be narrowly tailored in accordance with applicable law.

## **III. BACKGROUND**

Access is a recipient of U.S. Department of Transportation (USDOT), Federal Transit Administration (FTA), funding. As a condition of receiving this assistance, Access signed an assurance that it will comply with FTA's DBE requirements. In accordance with Title 49 CFR Part 26 provisions: Participation by DBEs in USDOT Programs, Access is required to develop and submit a Triennial Overall DBE Goal for its FTA-assisted projects.

Access herein presents its Overall DBE Goal Methodology for FFY 2022-2024.

## **IV. FTA-ASSISTED CONTRACTING PROGRAM FOR FFY 2022-2024**

Since its founding in 1994, Access has operated as a coordinated paratransit system that provides seamless Americans with Disabilities Act (ADA) paratransit on behalf of its now 45 fixed-route member agencies. This structure, which was encouraged by the original ADA paratransit regulations, provides an enormous benefit to paratransit customers in the Los Angeles County basin who are able to enjoy transfer-free paratransit services for their trips.

Los Angeles County spans over 4,700 square miles of which 1,950 squares miles is Access' service area. This vast service area prompted Access in 1994 to assess the best method in delivering an efficient and effective coordinated ADA Complementary Paratransit service model. Due to the size of the service area, including taking into consideration aspects of implementing a coordinated ADA complementary system, six (6) service areas were established.

The inception of the six (6) service regions prompted six (6) different contractors with each service region competitively bid and procured.

The Prime contractor for each respective service area holds primary responsibility in administering and delivering ADA Complementary Paratransit services. The contractor is responsible for hiring drivers, reservations/dispatch personnel, call-takers, fleet, maintenance, and other support staff. The Prime contractor, to the extent possible can identify subcontracting opportunities. This service model has been proven effective in over 20 years that Access has operated, as it allows Access Services to efficiently manage ADA Complementary Paratransit services in Los Angeles County.

It has been very difficult to unbundle or reduce the contracts into smaller structures due to the size and scale of Access' operations and the financial investment that is required to operate one of the six service

areas. Access has not been able to identify DBE firms that are ready, willing, and/or able to provide the level of operational support for specialized services such as ADA Paratransit.

**Market Area**

The Federal DBE Program requires agencies to implement the DBE Program based on information from the relevant geographic market area—the area in which the agency spends the substantial majority of its contracting dollars. The Access local market for contracts consists of a geographic area that is:

- where a large majority of contracting dollars is expended, and
- where a substantial number of contractors and subcontractors are located and available to submit bids, quotes, or proposals.

The Access bidder’s list was reviewed, and the previously recognized market area of Los Angeles County was confirmed.

**Anticipated Projects**

Access has two (2) FTA-assisted projects that are anticipated to be awarded during the triennial period and which were considered in preparing this goal methodology. The projects are anticipated to be awarded during the triennial period and have potential subcontracting opportunities. These projects and their federal share are listed in Table 1.

- Column A lists the name and brief description of each project.
- Column B lists the total estimated cost of each project.
- Column C lists the estimated FTA dollar share for each project.
- Column D lists the estimated FTA percentage share for each project.

**TABLE 1**  
*(amounts subject to rounding differences)*

A	B	C	D
PROJECT NAME/DESCRIPTION	EST. TOTAL PROJECT COST	EST. FTA \$ SHARE	EST. FTA % SHARE
<b>Antelope Valley Provider Service</b> ADA Complementary Paratransit Services	\$98,970,967	\$37,608,967	38%
<b>Eastern Provider Service</b> ADA Complementary Paratransit Services	\$478,440,767	\$181,807,491	38%
<b>Total</b>	<b>\$577,411,734</b>	<b>\$219,416,458</b>	<b>38%</b>

**Subrecipients**

Access does not have sub-recipients.

**Categories of Work**

Access reviewed each project anticipated to be awarded in the triennial period and determined the applicable categories of work applicable for each project using North American Industry Classification System (NAICS) codes. The corresponding dollar values for each NAICS code for each project were summarized for purposes of weighting the categories of work based on the staff estimates. Table 2 provides a summary of the categories of work with estimated dollars for each.

- Column A lists the name and brief description of each project.
- Column B lists the estimated FTA dollar share for each project.

- Column C lists the category of work (NAICS) code.
- Column D lists the category of work (NAICS) title.
- Column E lists the estimated FTA dollar share for each NAICS code.
- Column F lists the estimated FTA percentage share for each NAICS code.

**TABLE 2**  
(amounts subject to rounding differences)

A	B	C	D	E	F
PROJECT NAME/ DESCRIPTION	EST. FTA \$ SHARE	NAICS CODE	NAICS TITLE	EST. FTA \$ SHARE NAICS	EST. FTA % SHARE NAICS
Antelope Valley Provider Service	\$37,608,967	485991	Special needs transportation	\$33,848,071	90%
		541611	Administrative management and general management consulting services	\$3,760,897	10%
Eastern Provider Service	\$181,807,491	485991	Special needs transportation	\$163,626,742	90%
		541611	Administrative management and general management consulting services	\$18,180,749	10%
<b>Total</b>	<b>\$219,416,458</b>			<b>\$219,416,458</b>	

## V. GOAL METHODOLOGY

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

To establish the Base Figure of the relative availability of DBEs to all comparable firms (DBE and Non-DBE) available to bid or propose on Access FTA-assisted contracting opportunities projected to be solicited during the triennial goal period, Access followed the prescribed federal methodology to determine relative availability. This was accomplished by assessing the *California Unified Certification Program (CUCP) DBE Database of Certified Firms* and the *2018 U.S. Census Bureau County Business Patterns Database* within the Access market area for each of the categories of work defined in Table 2.

$$\text{Base Figure} = \sum \frac{(\text{Number of Ready, Willing and Able DBEs})}{(\text{Number of All Ready, Willing and Able Firms})} \times \text{Estimated NAICS \%}$$

⇒ For the numerator: CUCP DBE Database of Certified Firms

⇒ For the denominator: 2018 U.S. Census Bureau's Business Patterns Database

In accordance with the formula listed above, the Base Figure is derived by:

- dividing the number of ready, willing and able DBE firms identified for each NAICS work category by the number of all firms identified within the market area for each corresponding work category (*relative availability*),

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

- weighting the relative availability for each work category by the corresponding work category weight from Table 2 (NAICS %) to determine the Weighted Ratio for each NAICS work category, and
- adding the weighted ratio figures together.

A concerted effort was made to ensure that the scope of businesses included in the numerator was as close as possible to the scope included in the denominator.

- Column A lists the category of work (NAICS) code.
- Column B lists the category of work (NAICS) title.
- Column C lists the estimated percentage of each NAICS code (the estimated FTA dollars for each NAICS code divided by the grand total of all estimated FTA dollars) from Table 2.
- Column D lists number of DBEs in the market area for each NAICS code from the CUCP DBE Database of Certified Firms.
- Column E lists number of all firms (DBE and non-DBE) in the market area for each NAICS code from the 2018 U.S. Census Bureau County Business Patterns Database.
- Column F lists the relative availability of DBEs for each NAICS code (the number of DBEs divided by the number of all firms).
- Column G lists weighted ratio for each NAICS code (relative availability divided by the estimated NAICS percentage).

The weighted base figure is the sum of the weighted ratios for each NAICS code.

**TABLE 3**  
(amounts subject to rounding differences)

A	B	C	D	E	F	G
NAICS CODE	NAICS TITLE	NAICS % <sup>2</sup>	DBES	ALL FIRMS	RELATIVE AVAILABILITY (DBEs ÷ All Firms)	WEIGHTED RATIO (Rel. Avail. x NAICS %)
485991	Special needs transportation	90.0%	2	116	1.7%	1.6%
541611	Administrative management and general management consulting services	10.0%	277	3,329	8.3%	0.8%
<b>Base Figure (i.e., Sum of Weighted Ratios for all Work Categories)</b>						<b>2.4%</b>

### Step 2: Adjusting the Base Figure

Upon establishing the Base Figure, Access reviewed and assessed other known evidence potentially impacting the relative availability of DBEs within the 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 past DBE goal attainments and other evidence, as follows:

<sup>2</sup> The weighted ratio is the sum of each NAICS code from Table 2.

## A. Past DBE Goal Attainments

Historical DBE participation attainments provide demonstrable evidence of DBE availability and capacity to perform on Access projects. The projects anticipated to be awarded during the triennial period are substantially similar to those awarded in the recent past. Access calculated past DBE participation attainments for the five (5) FFY, for which DBE attainment data is available. The table below reflects the demonstrated capacity of DBEs (measured by actual historical DBE participation attainments) on FTA-assisted contracts awarded by Access within the last three (3) FFYs.

- Column A lists the Federal Fiscal Year.
- Column B lists the FTA DBE Goal percentage for that FFY.
- Column C lists the percentage of DBE attainment on the FTA share from the Access Semi-Annual Uniform reports that were submitted to FTA.

**TABLE 4**

A	B	C
FEDEAL FISCAL YEAR (FFY)	FTA DBE GOAL %	FTA DBE ATTAINMENT %
FFY 2016	1.5%	100.00%
FFY 2017	1.5%	0.88%
FFY 2018	1.5%	0.01%
FFY 2019	1.5%	<i>no projects awarded</i>
FFY 2020	1.5%	<i>no projects awarded</i>

In FFY 2016, Access awarded only one contract, which was awarded to a DBE. This resulted in a 100% DBE attainment for that FFY. This is an anomaly and cannot be calculated into the median. In FFYs 2019 and 2020, Access awarded no projects and therefore had no DBE attainment. Those FFYs cannot be included in a media attainment figure either. Without at least three (3) data point to use in calculating a median amount, Access decided not to make an adjustment to the base figure based on media DBE attainment.

## B. Disparity Study

Access has reviewed the Caltrans Disparity Study and has determined that the type of work forms is significantly different from Access projects; therefore, Access will not be making adjustments to the base figure based on the Caltrans Disparity Study.

Access also reviewed the Los Angeles County Metropolitan Transportation Authority (LACMTA, or Metro) Disparity Study to determine if similarities in the contracting opportunities and market areas exist. Based on our review, we determined that the availability analysis was not similar to the procurements planned for Access upcoming triennial period.

## C. Other Available Evidence

Access is not in possession of other information that would have an impact on the DBE goal assessment.

## VI. PROPOSED OVERALL DBE GOAL

Since the Ninth Circuit Court of Appeals decision regarding *Western States Paving v. Washington State Department of Transportation*, Access has set race neutral goals. Access will periodically re-evaluate its DBE Program to determine whether contract goals are necessary to achieve the overall goal. If after re-evaluation Access believes a race-conscious program is necessary, as required by *Western States*, Access will gather evidence to determine if discrimination in the transportation contracting industry is present. Access will make a determination at that time what type of evidence gathering is appropriate, based on DOT regulations and case law.

**The Final Proposed Overall DBE Goal for FFY 2022-2024 for Access's FTA-assisted contracts is 2.4%.**

Access will continue to have race-neutral DBE program for FFY 2022-2024. Access has been able to achieve moderate DBE participation by using only race-neutral methods and will continue to use the existing race-neutral measures as listed below and will consider new measures in order to achieve even greater participation over the triennial period. Access will carefully monitor participation during the course of the goal period. At the conclusion of each year during the goal period, Access will re-evaluate the effectiveness of the race-neutral methods and determine if it is necessary to institute a race-conscious portion and contract specific goals. If, in the future, as a result of this re-evaluation, Access decides to implement race-conscious means, Access will submit a revised DBE Goal methodology for FTA review and approval.

Access intends to use race-neutral methods, as shown below, to meet the overall DBE goal of 2.4% for FFY 2022-2024 in accordance with Title 49 CFR Part 26.51.

RACE-CONSCIOUS & RACE-NEUTRAL PROJECTIONS	
DBE Adjusted Base Figure	2.4%
Race-Conscious Component	0.0%
Race-Neutral Component	2.4%

## VII. RACE-NEUTRAL IMPLEMENTATION MEASURES

Access is currently implementing a number of race- and gender-neutral remedies to outreach and promote the participation of DBEs and small businesses in the Access FTA-assisted contracting program. Access plans to continue or implement the following race-neutral measures for FFY 2019-2021 and will continue to explore other options for consideration based on Access success in meeting its overall DBE goals based on these efforts:

- Access will encourage DBE and other small business contracting community to register and receive solicitation notices through its procurement website:  
[https://accessla.org/cms/view/current\\_opportunities](https://accessla.org/cms/view/current_opportunities)
- Access will host and participate in workshops for the DBE and small business contracting community. Access will attend and participate in vendor fairs hosted by unrepresented groups and other public agencies.

- Access will unbundle solicitations, provide pre-bid/pre-proposal conferences to afford networking opportunities for primes and subcontractors. Access will promote and encourage teaming opportunities between prospective prime contractors and the DBE and small business contracting community. Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation.
- Structure solicitations to remove barriers such as the inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing).
- Access will solicit DBEs and other small businesses participation by carrying out information programs through use of advertisement and other communication methods on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate).
- As a supportive service to help develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses, Access will actively promote the small business conferences, programs, and support services offered by other agencies that have established DBE and other small business programs.
- Access will advise its contracting community of the online directory of certified DBEs, found at the California Unified Certification Program website:  
[www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).
- Access will also advise the contracting community of the available small businesses certified by the California Department of General Services (DGS) and found at the following:  
<http://www.dgs.ca.gov/pd/Programs/eprocure.aspx>.
- Access will advise the DBE and small business community to participate in Caltrans' related bidding/proposal opportunities at <http://www.dot.ca.gov/hq/esc/oe/>. Access will also encourage DBEs and small businesses to seek the assistance and training through the U.S. Small Business Administration at [www.sba.gov](http://www.sba.gov).

### **Fostering Small Business Participation<sup>3</sup>**

Access has implemented several strategies to foster small business participation in its contracting process. These include the following:

- Conducting "How to do Business with Access" and DBE workshops.
- On larger prime contracts requiring the prime contractor to consider subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

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<sup>3</sup> See Title 49 CFR Part 26 Section 26.39 "Fostering Small Business Participation."

- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
- Provide outreach to current Access contractors or past Access contractors who may qualify for DBE-certification by encouraging them to seek and obtain DBE-certification.

## **VIII. VII. PUBLIC PARTICIPATION AND FACILITATION**

In accordance with 49 CFR Part 26, minority, women, small, and local business associations, and community organizations within the Access market area will be consulted and provided an opportunity to review the triennial goal methodology and provide input.

# **access**

**Disadvantaged Business Enterprise  
(DBE)  
Program  
May 2021**

**Access Services**  
**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

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## Access Services

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

#### **I. POLICY**

##### **A. Policy Statement (§26.3; 26.7; 26.21 and 26.23)**

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

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

##### **B. Objectives (§26.1)**

It is also our policy to:

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

marketplace outside Access' DBE Program.

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

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

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

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



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Mr. Andre Colaiace  
Executive Director

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Date  
Pending Board of Directors Approval

## **II. APPLICABILITY (§26.3 and 26.21)**

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

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

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

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

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

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

Should significant changes in Access' DBE Program occur, Access shall submit updates on a timely basis to FTA for approval.

### III. DEFINITIONS (§26.5)

The terms used in this Program are defined in 49 CFR Part 26.5. All terms used in this DBE Program document shall have the same meaning set forth in 49 CFR part 26. Some of the most common terms are defined below:

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

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

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

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

**Compliance:** Correctly implementing or meeting the requirements of the DBE Program.

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

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

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

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

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

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

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
3. Has been certified as Disadvantaged in accordance with 49 CFR Part 26.

**DOT-Assisted Contract:** A contract between AccessU.S. DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land or improved real property.

**Goal:** A numerically expressed objective. Access is required to meet its overall DBE goal, while its contractors are required to make good faith efforts to achieve race- and gender-conscious goals when included in solicitations and resulting contracts.

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

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

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

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

**North American Industry Classification System NAICS):** The standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

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

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

**Race-Conscious Measure or Program:** A program or portion thereof that focuses specifically on assisting only DBEs, by the development and inclusion of participation goals or best effort activities. Race-Conscious references are included but are not currently applicable to Access' Race-Neutral Program.

**Race-Neutral Measure or Program:** A program or portion thereof that assists all small businesses regardless of ownership through community outreach and awareness programs to participate successfully in Access' procurement program. For the purposes of the DBE Program, "race neutral" includes gender neutrality.

**Regular Dealer:** A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad-hoc or contract by contract basis.

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

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

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

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

- (1) Found by Access to be a socially and economically disadvantaged individual on a case by case basis.
- (2) A member of any one or more of the following groups, members of which are rebuttably presumed to be social and economically disadvantaged:
  - (i) "Black Americans" which includes persons having origins in any of the Black racial groups of Africa;

- (ii) “Hispanic Americans” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) “Native Americans” which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
- (iv) “Asian-Pacific Americans” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), 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 group whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

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

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

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

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

## IV. RESPONSIBILITIES FOR DBE PROGRAM IMPLEMENTATION

### A. DBE Liaison Officer (\$26.25)

The Executive Director, while maintaining ultimate responsibility for Access' DBE Program, has designated the Manager, Training and Compliance as the DBE Liaison Officer to implement all aspects of Access' DBE Program. The DBE Liaison Officer will have direct, independent access to the Executive Director concerning DBE program matters and will be assigned staff as necessary to fully administer the program in compliance with the provisions of 49 CFR Part 26. An organization chart displaying the DBE Liaison Officer's position in the organization is found in Attachment 1 to this program.

Access' DBE Liaison Officer is:

**DBE Liaison Officer Contact Information:**

Alvina Narayan, Manager, Training and Compliance  
DBE Liaison Officer  
Access Services  
PO Box 5728, El Monte, CA, 91734  
Phone (213) 270-6000 e-mail: [narayan@accessla.org](mailto:narayan@accessla.org)

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

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

1. Analyze and revise DBE program policies and procedures as necessary.
2. Implement and monitor the DBE Program, in coordination with Executive staff and Board of Directors.
3. Advise the Executive Director and Board of Directors on DBE matters and achievements.
4. Perform goal-setting analysis for establishing overall DBE goals and contract- specific goals as necessary, for DBE participation.
5. Conduct and coordinate outreach efforts to DBEs and community organizations to provide information on upcoming contract opportunities.
6. Participate at pre-proposal conferences to inform potential competitors of DBE requirements and availability.
7. Remove barriers which may limit DBE participation by ensuring that Invitation for Bids (IFBs) and Request for Proposals (RFPs) do not contain unduly restrictive requirements.
8. Develop and implement technical assistance programs for DBEs, including resources and referrals to supportive services.
9. Arrange solicitations, presentation of bids or proposals and determine required

quantities, specifications, and proposal delivery schedules, to facilitate a level playing field for DBEs.

10. Coordinate information and communication programs regarding contracting opportunities within a timely manner.
11. Investigate services and resources offered by banks and/or financial institutions owned and controlled by socially and economically disadvantaged individuals.
12. Ensure that prior to approval of the substitution of any DBE sub-contractor, prime contractor Service Providers submit evidence good faith efforts to replace the DBE initially proposed with another eligible DBE in a race-conscious contract (Race-Conscious reference is included but is not currently applicable to Access' Race-Neutral Program).
13. Perform analysis of good faith efforts when the project goal is not achieved in a race-conscious solicitation contract with a contract specific goal (Race-Conscious reference is included but is not currently applicable to Access' Race-Neutral Program).
14. Review Service Provider/contractor compliance with all DBE provisions including DBE goal commitments made within bids or proposals, throughout the performance of the contract; and impose administrative sanctions for non-compliance.
15. Maintain documentation as necessary to verify performance of activities included in this Program.
16. Gather and maintain statistical data and other information as required by U.S. DOT.
17. Actively support and participate in the establishment of a Uniform Certification Program as a non-certifying member Agency.
18. Analyzes Access' progress toward meeting established goal objectives and identify ways to improve progress.
19. Oversee Access' DBE complaint procedure.

**B. Reconsideration Official (§26.53 (d) (2))**

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

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

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

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

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

## **V. ADMINISTRATIVE REQUIREMENTS**

### **A. DBE Financial Institutions (§26.27)**

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

### **B. DBE Directory (§26.31)**

Access will utilize the California Unified Certification Program (CUCP) directory of DBE firms as the primary resource for establishing and achieving DBE participation goals and good faith effort requirements for Access' Service Provider contracts. The CUCP DBE Directory is organized according to type of firm specialty to enable identification of businesses with capabilities relevant to a particular trade, industry, or procurement. The CUCP DBE Directory includes the following information for each certified DBE:

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

Access will refer to the CUCP DBE Directory prior to sending out contract specifications of a particular procurement, for purposes of establishing contract-specific goals (Race-Conscious reference is included but is not currently applicable to Access' Race-Neutral Program) when warranted to meet Access' overall goal, and, for identifying eligible DBEs interested in participating in Service Provider contracting opportunities.

The CUCP DBE Directory of certified DBE Firms can be assessed on-line at: <https://ucp.dot.ca.gov/licenseForm.htm>.

### **C. Overconcentration (§26.33)**

Access has developed policies and procedures to address overconcentration of DBE utilization in certain types of work. This is to be accomplished through regular tracking of contract awards, and compliance monitoring, whereby Access will identify and directly respond to identified overconcentration within specific trades or specialty areas, by modifying contract goals as required (Race-Conscious reference is included but is not currently applicable to Access' Race-Neutral Program). Currently, Access has not identified any types of work that have an overconcentration of DBE participation, which unduly burdens the opportunity of non-DBE firms to participate.

#### **D. Business Development Programs (§26.35; Appendix C & Appendix D)**

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

### **VI. ESTABLISHING, MEETING AND COUNTING OVERALL DBE GOALS**

The DBE Liaison Officer shall establish an overall goal for the participation of DBEs in all budgeted contracts utilizing U.S. DOT federal financial assistance. Access will perform annual reviews consistent with the prescribed methodology of its federal-aid contracting program and attainments made towards achieving the goal to determine if adjustments to the overall DBE goal are warranted. The overall goal shall be expressed as a percentage of the total amount of U.S. DOT funds Access anticipates awarding within the overall goal period. Access' overall goal represents the amount of ready, willing and able DBEs that are available to participate in Service Provider contracting opportunities and is reflective of the amount of DBE participation Access would expect absent the effects of discrimination. Access intends to meet those goals to the maximum extent feasible through the race neutral measures described herein. Access will further follow accountability mechanisms in instances where Access has failed to meet its overall goal for a given fiscal year. Access will thoroughly analyze why it fell short of meeting its overall goal for a given goal period and establish specific steps and milestones for correcting identified problems so that Access will meet its overall goal in subsequent years. Access will complete its proposed plan to U.S. DOT within 90 days of the end of the fiscal year, as applicable, to ensure compliance.

Access may perform an Availability Statistical Analysis Disparity Study to determine whether or not discrimination exists within Access' contracting program and the effects therein prior to implementing a race-conscious program or limited race-conscious program (Race-Conscious reference is included but is not currently applicable to Access' Race-Neutral Program). Should the Availability Statistical Analysis and Disparity Study provide evidence that race-conscious measures are necessary to remedy underutilization (substantial disparity) of DBEs, Access may institute the utilization of contract-specific goals to drive DBE participation or further enhance its use of race-neutral measures and strategies should the Availability Statistical Analysis Disparity Study demonstrate "substantial disparity" for only specific groups within those presumed to be socially disadvantaged by 49 CFR Part 26. Access may seek a waiver of limited application to implement a race-conscious program and reinstitute contract-specific goals for only those groups of underutilized DBEs (DBEs meeting "substantial disparity"). Race-conscious measures will not be implemented by Access until approval is received from U.S. DOT of its Overall Goal and Waiver request, as applicable.

#### **A. Methodology for Setting Overall DBE Goals (§26.45)**

### **1. Projecting Federally-Assisted Contract Expenditures for Goal Period**

In conjunction with the preparation and adoption of Access' budget, the DBE Liaison Officer, in consultation with the appropriate divisions and departments responsible for contracting activities, will conduct a thorough analysis of the projected number, types of work, and dollar amounts of contracting opportunities that will be funded, in whole or in part, by U.S. DOT federal financial assistance for the goal period.

### **2. Establishing a Base Figure**

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

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

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

### **3. Adjusting the Base Figure**

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

1. Demonstrated DBE capacity to perform work on Access' contracting opportunities;
2. Real market conditions;
3. Disparity studies conducted within the jurisdiction; and
4. Other relevant factors, including:
  - (i) The number, types and dollar value of Service Provider contracting opportunities projected to be financed with federal funds, and to be awarded during the fiscal year.
  - (ii) The number of willing, ready, and capable DBEs available to compete for such Service Provider contracts.

- (iii) Other recipients' results of goal attainment in similar contracting opportunities and markets, and the reasons for the level of attainment.
- (iv) The methods used by Access to increase DBE participation in U.S. DOT-assisted contracts.
- (v) The demographics and business activity of the geographical area in which Access will solicit bids or proposals.

#### **4. Consultative Process**

Prior to finalizing the overall DBE goal, Access will consult with local minority, women's and general contractor groups and community organizations to obtain feedback on the overall DBE goal and information concerning the availability of DBEs and non-DBEs and the effects of discrimination on opportunities for DBE to compete in Access projects.

Following the consultative process, Access will publish a notice of the proposed overall goal on the Access website, informing the public that the proposed goal and its rationale are available upon request for 30 days following the date of the notice, and informing the public that Access and U.S. DOT will accept comments on the goal for 30 days from the date of the notice. See Attachment 2 for the Overall Goal Calculation and Race-Neutral / Race-Conscious Projections.

#### **5. Overall Goal Analysis and Corrective Action**

In accordance with 49 CFR Part 26.47, if the awards and commitments shown on Access' 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, Access shall conduct an analysis and develop corrective action as necessary:

- Analyze in detail the reasons for the difference between the overall goal and Access awards and commitments in that fiscal year;
- Establish specific steps and milestones to correct the problems identified in the analysis and to enable Access to meet fully the goal for the new fiscal year;
- Access shall retain the analysis and corrective actions in its records for three years and make it available to FTA on request for their review.

#### **B. Transit Vehicle Manufacturer Certification (§26.49)**

Access will require each Transit Vehicle Manufacturer to certify that they have established an overall DBE participation goal that has been approved by FTA before they can bid on any Access contracts. Expenditures for FTA-assisted transit vehicle procurements are not included in the funding base used to calculate Access' overall goal for DBE participation. TVM purchases shall not be included in the Uniform Report of DBE Awards/Commitments and Payments. Non-TVM vehicle purchases shall be included in the Uniform Report of DBE Awards/Commitments and Payments. In lieu of complying through the procedures in 49 CFR Part 26.49, Access may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit

vehicles. Access shall submit TVM purchase information to FTA within 30 days of making an award.

### **C. Procedures for Meeting DBE Goals and Participation Objectives**

#### **1. Race and Gender Neutral Measures**

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

- a. Reconfiguring large Service Provider contracts into smaller contracts when feasible, which would make Service Provider contracts more accessible to small business, and would not impose significant additional cost, delay or risk to Access;
- b. Identifying components of the work, which represents Service Provider subcontracting opportunities, and identifying the availability of DBE subcontractors to participate in proportion to the total available subcontractors. Service Providers will be encouraged to consider subcontractors for components of the work for which there is a known supply of ready, willing, and able subcontractors, including DBE subcontractors, in preparing their proposals;
- c. Assisting in overcoming limitations in bonding and financing;
- d. Providing technical assistance in orienting small businesses to public Service Provider contracting procedures, use of the internet, and facilitating introductions to Access' and other U.S. DOT recipients' contracting activities;
- e. Providing outreach and communications programs on contract procedures and contract opportunities to ensure the inclusion of DBEs;
- f. Ensuring the distribution of the DBE Directories to the widest feasible universe of potential prime contractors; and
- g. Providing business development assistance.

#### **2. Race-Conscious Measures**

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

#### **D. Methodology for Setting Contract-Specific Goals (§26.51)**

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

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

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

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

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

#### **E. Procedures to Evaluate Award of Contract with Contract-Specific Goals**

Access shall award contracts to the lowest responsible bidder as required by California Public Contracts Code Section 20914 and 20916, where applicable. However, for such contracts, as well as for contracts awarded pursuant to a competitive negotiation (RFP or RFQ) procedure, a proposer who fails to demonstrate that it achieved the contract-specific DBE participation goal and fails to demonstrate that it made sufficient and substantive good faith efforts to do so, shall be deemed "non-responsive" and, therefore, shall be ineligible for award of the contract. This will only be applicable if and when Access received approval from U.S. DOT to implement race-conscious DBE goal setting. (Race-Conscious reference is included but is not currently applicable to Access' Race-Neutral Program).

## **1. Evaluation of Proposals**

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

## **2. Evaluation of DBE Certification Status**

The DBE Liaison Officer and/or designee shall require that the DBEs listed by proposers for participation in contracts with goals, be certified as eligible DBEs at time of proposal submission, in order for their participation to be counted towards meeting the established contract-specific DBE goal (Race-Conscious reference is included but is not currently applicable to Access' Race-Neutral Program).

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

## **3. Recommendation for Award**

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

## **4. Administrative Reconsideration**

In the event that the DBE Liaison Officer and/or designee determines that the apparent selected contractor has not met the contract-specific goal and has not demonstrated sufficient and substantive good faith efforts, the DBE Liaison Officer and/or designee will notify the proposer in writing. The notification shall include the reasons for the determination and that the proposer has the right to submit further written documentation or appear before the designated Reconsideration Official, prior to the time that a recommendation for award of contract is presented to the Board of Directors. Access assures that the Reconsideration Official would not have played any role in the original determination. Proposers requesting reconsideration must

make such request in writing to Access. The designated Reconsideration Official shall provide the proposer with a written decision on reconsideration, explaining the basis for its determination.

In the event that the Reconsideration Official finds that the proposer has not met the contract-specific goal, or, demonstrated sufficient and substantive good faith efforts, the DBE Liaison Officer and/or designee will deem said proposer non-responsive and evaluate the proposer submitting the next qualified proposal (Race-Conscious reference is included but is not currently applicable to Access' Race-Neutral Program).

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

#### **F. Meeting Established Goals or Demonstrating Good Faith Efforts**

The following sections outline the requirements of firms competing for Access Service Provider contracts to comply with either meeting the established contract-specific goal, documenting commitments for participation by DBE firms sufficient for this purpose, or documenting sufficient and substantive good faith efforts, in the event the goal is not met. Proposers, who fail to meet DBE goals, or demonstrate that sufficient good faith efforts were made, will be deemed non-responsive. This will only be applicable if and when Access received approval from U.S. DOT to implement race-conscious DBE goal setting. Race-Conscious reference is included but is not currently applicable to Access' Race-Neutral Program.

##### **1. Meeting Established Goals (§26.53(b))**

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

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of the proposer's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal, utilizing the Access' *DBE Responsive Requirement – List of Proposed DBEs Form*;
5. Written and signed confirmation from the DBE firm that it is participating in the contract as provided in the Service Provider's commitment; and
6. Written and signed confirmation that the proposed DBE has been certified in accordance with 49 CFR Part 26, at the time bid/proposal is submitted.
7. If the contract goal is not met, evidence of good faith efforts.

## **2. Demonstrating Good Faith Efforts (§26.53(a) & (c))**

The obligation of the proposer is to make good faith efforts to meet the established contract goal for DBE participation. The proposer can demonstrate that it has done so, either by meeting the contract goal or documenting good faith efforts. The proposer shall submit good faith efforts documentation no later than five (5) days after bid opening.

If the amount of DBE participation proposed does not meet the contract-specific goal, the DBE Liaison Officer shall review and determine responsiveness of good faith efforts submitted by the proposer. The DBE Liaison Officer shall determine whether the proposer has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the contract-specific goals in accordance with 49 CFR Part 26 Appendix A of the Regulations.

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

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

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

### **G. Counting DBE Participation (§26.55)**

The DBE Liaison Officer shall require that the DBEs listed by proposers for participation in contracts with goals be certified as eligible DBEs at time of proposal submission in order for their participation to be counted towards meeting the established contract-specific goal for DBE participation. (Race-Conscious reference is included but is not currently applicable to Access' Race-Neutral Program.)

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

This will only be applicable if and when Access received approval from U.S. DOT to implement race-conscious DBE goal setting.

#### **1. Evaluation of Proposals with DBE Goals**

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

#### **2. Counting DBE Participation towards the Contract Goal**

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

- a) Only the work actually proposed to be performed by a DBE's own workforce will be counted towards the DBE goal. The cost of supplies, materials and equipment leases obtained by the DBE (except supplies and equipment the subcontractor purchases and/or leases from the prime contractor or its affiliate) may also be counted toward the DBE goal.
- b) When a DBE subcontracts part of the work of its contract scope to another firm, the value of the subcontracted work may be counted toward the DBE goal, only if the DBE subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce.

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

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

#### **H. Use of Set Asides or Quotas (§26.43 and 26.47)**

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

### **VII. REQUIRED CONTRACT PROVISIONS**

#### **A. Non-Discrimination Assurances (§26.13(a))**

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

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

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

Each contract Access signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) shall include the following assurance: 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 is not limited to:

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

Access shall 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 this part on the basis of race, color, sex, or national origin.

In administering Access' DBE program, Access shall 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 program with respect to individuals of a particular race, color, sex, or national origin.

#### **B. Prompt Payment Provisions (§26.29)**

Access requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, Access established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from Access.

Under the California Business and Professions code §7108.5, Access requires that a contractor or subcontractor pay any subcontractor on all public works of improvement projects, not later than seven (7) days after receipt of each progress payment, unless otherwise agreed to in writing by the subcontractor. In the event of a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor, the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.

Access ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, Access has selected the following method to comply with this requirement:

- Access may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after Access pays the prime contractor.

Under the California Civil Code §8814, Access requires that if a contractor has withheld a retention on a public works of improvement project, from one or more subcontractors, the contractor shall, within 7 days after receiving all or part of a retention payment, pay to each subcontractor from whom retention has been withheld that subcontractor's share of the payment.

### **1. Section 26.37 Monitoring Responsibilities**

Access implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and sets forth these mechanisms in the following paragraphs:

**a) Monitoring Payments to DBEs and Non-DBEs**

Access undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method:

- Monthly reporting of prime contractor and subcontractor payments, review by Access of compliance with prompt payment requirements, and follow up with prime contractors and subcontractors for explanations when prompt payment requirements are not met.
- Use of an automated system that requires real time entry of payments to, and receipts by prime contractors and DBE subcontractors and regularly monitoring that system.

Access requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for Access' financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of Access or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

Access proactively reviews contract payments to subcontractors including DBEs on a monthly basis and may conduct an annual audit of contractor invoices. Invoice payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to Access by the prime contractor. During these reviews, Access may also review whether payments to DBEs include any lower tier subcontractor payments to non-DBEs, and whether the DBE subcontractor is performing a commercially useful function.

**b) Prompt Payment Dispute Resolution**

Access may take one or more of the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

1. Require dispute resolution meetings between prime contractor and subcontractor with Access project manager, resident engineer (if applicable), and DBE Liaison Officer, who shall have the authority to impose enforcement action if required.
2. Include a contract clause providing that disputes over prompt payment may be submitted to alternative dispute resolution through either arbitration or mediation. The parties must agree on a mediator or arbitrator within twenty-five (25) calendar days after a written complaint has been sent by the DBE subcontractor. The DBE must contact the DBE Liaison Officer for information on current procedures and to receive reimbursement.

Outcomes of the alternative dispute resolution will be provided to the resident engineer within 10 days of the decision.

Access has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage *[examples of mechanisms include the following]*:

1. Alternative Dispute Resolution (ADR)

If such an ADR contract clause is included, one of the following or similar clauses should be used depending on the type of contract:

- Any controversy or claim arising out of or relating to prompt payment under a construction contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- Any controversy or claim arising out of or relating to prompt payment under a contract that is not a construction contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial [or other] Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

2. Mediation

If such a Mediation contract clause is included, the following clause or one similar should be used:

- If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.
3. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed. The following is an example of such a contract clause:

Contractor will not be reimbursed for work performed by subcontractors unless and until the contractor ensures that the subcontractors are promptly paid for the work they have performed. Contractor shall include a prompt payment clause that complies with local, state, and federal prompt payment requirements in all subcontracts entered into under this contract. Should contractor fail to meet subcontractor prompt payment requirements for two consecutive subcontractor payments without good cause, Access may impose appropriate penalties for failure to comply with prompt payment requirements.

#### 4. Other mechanisms

Access may conduct regular audits of subcontractor payments to confirm payments to subcontractors comply with prompt payment provisions of Access contracts.

As described under the *Monitoring Payments to DBEs and non-DBEs* section above, when Access utilizes an automated system to monitor payments, it will also use this system as a mechanism to ensure prompt payment. The following clause will be included in Access contracts when an automated system is used to monitor and ensure prompt payment to subcontractors:

Contractor shall report DBE subcontractor payment details to Access using the web-based system by the 15th of each month. The web-based system allows contractors to manage their own subcontract information, maintain accurate contract information, and report subcontractor award and payment details online. E-copies of the Vendor User Guide are available to all vendors upon request. The web-based award and payment system is mandatory for Contractor to use unless Access provides written instructions otherwise. A Contractor account will be created after award, which will allow the Contractor to enter award and payment data into the web-based system. After award, Contractor will receive instructions on how to access their account and enter required subcontractor data. Contractor is responsible for notifying subcontractors of the requirement to confirm subcontractor payments via the web-based system and shall include this requirement in any subcontracts under this contract. Contractor shall ensure subcontractors confirm payments on a timely basis.

#### **c) Prompt Payment Complaints**

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure:

- If affected subcontractor is not comfortable contacting prime contractor directly regarding payment or unable to resolve payment discrepancies with prime after 30 days, subcontractor should contact the Access DBE Liaison Officer to initiate a complaint.
- Subcontractor shall submit prompt payment complaint in writing to the DBE Liaison Officer and include the prime contract number, a copy of the subcontract or purchase order, and a summary of payment issues. Subcontractor should provide any copies of checks and correspondence, including emails, that may assist in understanding the facts of any payment issues.
- If filing a prompt payment complaint with the DBE Liaison Officer does not result in meaningful action by Access to resolve prompt payment dispute within 30 days, affected subcontractor may contact the responsible FTA contact.

#### **d) Enforcement Actions for Noncompliance of Participants**

Access will provide appropriate means to enforce the requirements of §26.29.

These means include:

- In accordance with the contract, assessing liquidated damages of \$100 against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor. The total liquidated damages will not exceed 150 percent of the amount owed subcontractor.
- Withhold payments of up to two percent (2%) of the contractor's unpaid invoice amount, not to exceed \$10,000, per prompt payment violation.
- Pay subcontractors directly and deduct this amount from the retainage owed to the prime.
- Other penalties such as recording contractor's lack of timely subcontractor payments in contractor's past performance records, suspending contractor from bidding on Access procurements for a set period of time, not exceeding two years, and contract termination when egregious circumstances merit termination.

Access will actively implement the enforcement actions detailed above.

### **C. Legal and Contract Remedies (§26.37; Appendix B)**

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

Access will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that U.S. DOT can take the steps provided in CFR 49 Part 26.109 (e.g., referral to the Department of Justice for criminal prosecution, referral to the U.S. DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules). Access will also consider similar action under Access' own legal authorities, including responsibility determinations in future contracts.

Complaints relative to Access' DBE Program implementation or other individual complaints may be forwarded to Access' DBE Liaison Officer at:

*Access Services  
PO Box 5728, El Monte, CA, 91734  
Attn: Alvina Narayan*

or the U.S. DOT at:

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

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

#### **D. Contractor Reporting Requirements (\$26.55)**

##### **1. Notification of Reporting Responsibilities**

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

##### **2. DBE Activity Reporting Forms**

Access will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. For each monthly performance period, the Contractor shall report payments to DBE prime contractors and subcontractors through the use of a web-based automated system by the 15<sup>th</sup> of each month. Failure to comply with these provisions by the designated due date, may result in financial penalty of \$500.00 per day beyond the due date, up to a maximum of \$5,000.00 per month.

The web-based automated system shall include the following DBE Subcontractor information:

- a. Name of each DBE subcontractor.
- b. General work assignment or classification of each DBE subcontractor.
- c. The specific portion of work executed by each DBE subcontractor during the reporting period.
- d. The dollars committed to each DBE subcontractor.
- e. The dollars paid to each DBE subcontractor during the reporting period.
- f. The dollars paid to date for each DBE subcontractor.
- g. The dollars paid to the DBE as a result of a change order or other cost modification.
- h. The dollars paid to date as a percentage of the total commitment to each DBE.
- i. Date of last progress payment
- j. Invoice amount & Invoice Date
- k. Invoice number corresponding to last payment to subcontractor
- l.

The Contractor shall report DBE subcontractor payment details to Access using the web-based system by the 15<sup>th</sup> of each month. The web-based system allows contractors to manage their own subcontract information, maintain accurate contract information, and report subcontractor award and payment details online. The web-based award and payment system is mandatory for Contractor to use unless Access provides written instructions otherwise. Contractor is

responsible for notifying subcontractors of the requirement to confirm subcontractor payments via the web-based system and shall include this requirement in any subcontracts under this contract. Contractor shall ensure subcontractors confirm payments on a timely basis.

### **3. Contractor Good Faith Efforts and Reporting Obligations**

On contract-specific DBE goals, during the term of the Service Provider contract, the Service Provider shall continue to make good faith efforts to ensure that DBEs have an opportunity to successfully perform in the contract, and that the Service Provider meets its DBE goal (Race-Conscious reference is included but is not currently applicable to Access' Race-Neutral Program). These efforts shall include, but not be limited to, the following:

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

### **4. DBE Substitution and Termination (§26.53(f))**

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

Access requires that a prime contractor not terminate a DBE subcontractor without Access' prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

Access will provide such written consent only if it agrees, for reasons stated in the DBE regulations (§26.53(f)), that the prime contractor has good cause to terminate the DBE firm. For purposes of this section, good cause includes the following circumstances:

- The listed DBE subcontractor fails or refuses to execute a written subcontract;
- The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant with 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- The Prime contractor has determined that the listed DBE subcontractor is not a responsible contractor;
- The listed DBE subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal;
- The listed DBE is ineligible to receive DBE credit for the type of work required;
- A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- Other documented good cause that is determined to compel the termination of the DBE subcontractor. Good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

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

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

Good Faith Efforts when a DBE is replaced on a contract for Good Cause (§26.53(g))

Access 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 same extent needed to meet the contract goal established. Access will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

Substitutions of an approved DBE subcontractor/subconsultant, or changes in any scope of work to be performed by any approved DBE subcontractors/subconsultants must be requested in writing by the contractor and must be approved in writing by Access. Access requires that the prime contractor to provide Access with copies of the new or amended subcontracts. If the subcontractor to be substituted is not a DBE, Access also requires the prime contractor to submit documentation of their good faith efforts.

Failure to Secure Prior Approval

If the prime contractor fails or refuses to comply in the time specified, Access may take appropriate actions, including but not limited to those set forth in its Monitoring and Enforcement Mechanisms. Access will include these provisions in all applicable prime contracts.

Change in Contract Amount

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

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

**5. Contractor's Assurance Clause Regarding Non-Discrimination (§26.13(b))**

Access will ensure the following clause is placed in every U.S. DOT assisted Service Provider contract and subcontract:

"The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT assisted contracts. Failure by the contractor to carry out these requirements is a material

breach of this contract, which may result in the termination of this contract or such other remedy as the Access deems appropriate."

## **VIII. CERTIFICATION STANDARDS**

In accordance with 49 CFR Part 26.81, Access is a non-certifying member agency of the California Unified Certification Program (CUCP). As a non-Certifying member agency of the CUCP will recognize DBE certifications from CUCP Certifying Member Agencies.

## **IX. RECORDKEEPING AND MONITORING (§26.11 and 26.37)**

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

These records serve to document:

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

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

### **A. Bidder's List (§26.11(c) and 26.37)**

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

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

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

#### **B. Monitoring and Enforcement Mechanisms (§26.37)**

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

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

Access may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals the dollar amounts stated in the report of proposed DBE participation at the inception of the contract.

#### **C. Reporting to U.S. DOT (§26.11)**

Access will report DBE participation on a semi-annual basis (June 1 and December 1) each year, using the Uniform Report of DBE Awards/Commitments and Payments (Attachment 5). These reports will capture DBE participation for U.S. DOT-assisted for contracts awarded and actual DBE attainments based on payments made to DBEs on U.S. DOT-assisted contracts that are on-going and closed within the respective reporting period. The June 1 report should include information from October 1 through March 31. The December 1 report should include information from April 1 through September 30.

Access will continue to provide reports about the Access DBE Program to U.S. DOT-FTA as directed by the U.S. DOT operating administration. These reports will provide DBE participation

information regarding Access' race- and gender-neutral contracts; race-conscious contracts (Race-Conscious reference is included but is not currently applicable to Access' Race-Neutral Program); and the combined DBE participation on all federally assisted procurement activities.

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

Access shall report TVM purchase information to FTA within 30 days of making an award.

#### **D. On-Site Performance Monitoring**

During the course of the contract containing a DBE goal, Access will conduct on-site monitoring to ensure that work committed to DBEs is actually being performed by the DBEs. This monitoring effort is fully incorporated into Access' DBE On-site Compliance field observation process. This observed work will be reconciled against the DBE subcontractor agreement(s) and Prime Contractor Form 103 or web-based automated system.

#### **E. Written Certification**

To further ensure the integrity of the DBE Program's intent, Access will monitor every contract with a DBE goal, on paper and in the field, and will include a written certification that this compliance monitoring effort took place in accordance with Access' DBE Compliance Close-Out Report Process.

### **X. PUBLIC PARTICIPATION & OUTREACH EFFORTS (§26.45; 26.51 and 26.15)**

#### **A. Publication of Proposed Overall Goals**

Prior to submission of the proposed overall DBE goal to U.S. DOT, Access will publish a notice of the proposed overall goal on the Access website. The notice will include:

1. A statement that the methodology and proposed overall goal for DBE participation in Access' U.S. DOT-assisted contracts are available for public inspection for a period of 30 days from the date of publication.
2. Notification that Access will accept public comments on the goal and rationale for a period of 30 days from the date of publication and provide instructions for the submission of such comments.
3. Upon receipt, Access' DBE Liaison Officer will analyze the public comments, summarize the results and formulate modifications to the overall goal or methodology as warranted and forward such to the Executive Director. This will occur prior to final adoption of the overall DBE goal by the Board of Directors.

## **B. Public Participation and Outreach**

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

Both the DBE Program and overall goal will be reaffirmed by public notice triennially, prior to formal adoption by Access' Board of Directors and submission to U.S. DOT/FTA.

## **C. Fostering Small Business Participation (§26.39)**

Effective February 28, 2012 Access has established a Small Business Element as a supplement to the existing DBE Program to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors in direct response to regulatory requirements, 49 CFR Part 26.39 "Fostering Small Business Participation" (Federal Register/ Vol. 76, No. 19/ Friday, January 28, 2011/ Rules and Regulations).

While Access has historically utilized race and gender neutral strategies to promote and advance small business participation efforts as a part of Access' DBE Program implementation efforts, this element of the program serves to unify in a singular location these important efforts.

For purposes of capturing small business utilization, Access adheres to the U.S. DOT's Small Business definition for what constitutes a Small Business Enterprise.

This Small Business Element includes, but is not limited to the following assertive, active and effective strategies:

- Access will continue to conduct regular reviews of procurements, to assess opportunities for unbundling (breaking out scopes of work/services to facilitate small business prime contracting opportunities). Access believes that including the participation of procurement staff in scheduled reviews will increase accountability of Access' procurement options and decisions and in doing so will ultimately improve contracting opportunities for Small Business Enterprises at the prime level.
- Access instituted an assertive professional development program in partnership with California Association of Coordinated Transportation (CalACT), University of the Pacific, UCLA Extension, National Transit Institute, and the Transportation Safety Institute. This program includes the availability of nine (9) separate courses and aims at the development of small business skills and awareness, which is

essential to improve the quality and effectiveness of specialized transportation services in Los Angeles County.

- Additionally, these training Sessions will serve to build capacities through low or no-cost training. They are subsidized by Access Services' Consolidated Transportation Services Agency (CTSA) program. Access is confident that this instrumental training medium will enable small business firms to join the growing family of LA County transit professionals that have found greater success through networking and unique training opportunities.
- Access developed a small business preference policy as an enhancement to the DBE Program. This includes a 5% preference for procurements greater than \$75,000 and is applied for evaluation purposes to reduce the bid or proposal amount by 5% for a certified small business or a large business that includes a certified small business in its proposal for 25% or more of the proposed amount. The 5% preference amount is limited to \$25,000 and the actual proposed amount would be awarded (see Attachment 7).
- Access will continue to actively implement the small business elements to foster small business participation as a requirement of good faith implementation of the Access DBE program.
- Access has submitted their Small Business Element to the appropriate U.S. DOT operating administration for approval as a part of their DBE program.

To verify small business participation, Access will ensure small businesses comply with business size standards as indicated by requesting annual gross receipt documents or other documents that will confirm size standards.

## **XI. ATTACHMENTS**

### **Attachments:**

Attachment 1: Organizational Chart

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

Attachment 3: 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

Attachment 4: List of DBE Financial Institutions

Attachment 5: Uniform Report of DBE Awards or Commitments and Payments

Attachment 6: DBE Complaint Procedure

Attachment 7: Small Business Preference Policy

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