



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

**DATED:** \_\_\_\_\_

Objectives /Policy Statement (§§26.1, 26.23)

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

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

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

Tamika Smith has been delegated as the DBE Liaison Officer. In that capacity, Tamika Smith is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Rail Commission in its financial assistance agreements with the Department of Transportation.

The Rail Commission has disseminated this policy statement to the Board of Directors and all the components of the organization. The Rail Commission have distributed this statement to DBE and non-DBE business communities that perform work for the Rail Commission on DOT-assisted contracts by making it available on the agency website and in printed form at the agency headquarters.

*[Signature of Recipient's Executive Director]*

Date: \_\_\_\_\_

### **Nondiscrimination. (§26.7)**

The Rail Commission will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

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

### **DBE Program Updates (§26.21)**

The Rail Commission will continue to carry out this program until all funds from DOT financial assistance have been expended. The Rail Commission will review the program annually and will provide to DOT updates representing significant changes in the program.

### **Quotas (§26.43)**

The Rail Commission does not use quotas in any way in the administration of this DBE program.

### **DBE Liaison Officer (DBELO) (§26.45)**

The Rail Commission has designated the following individual as the DBE Liaison Officer:

Tamika Smith, Director of Rail Services  
949 E Channel St. Stockton, CA 95202  
209-944-6268  
[Tamika@acerail.com](mailto:Tamika@acerail.com)

In that capacity, Tamika Smith is responsible for implementing all aspects of the DBE program and ensuring that the Rail Commission complies with all provisions of 49 CFR Part 26. Tamika Smith has direct, independent access to Stacey Mortensen, Executive Director, concerning DBE program matters. The DBELO has a staff of two (2) professional employees assigned to the DBE program who devote a portion of their time to the program. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination other appropriate officials.

Duties and responsibilities include the following:

1. Working with all departments to set overall annual goals.
2. Analyzing the Rail Commission's progress toward goal attainment and identifies ways to improve progress.
3. Advising the Executive Director/governing body on DBE matters and achievement.

4. Participating with the legal counsel and project managers to determine contractor compliance with good faith efforts.
5. Coordinates outreach to DBEs and community organizations to advise them of opportunities.
6. Participates in DBE training seminars.

### Responsibilities of other personnel responsible for DBE Program implementation

1. Ensuring that bid notices and requests for proposals are available to DBEs in a timely manner.
2. Gathers and reports statistical data and other information as required by DOT.
3. Analyzes the Rail Commission's progress toward goal attainment and identifies ways to improve progress.
4. Participates in pre-bid meetings.
5. Participates in DBE training seminars.
6. Provides outreach to DBEs and community organizations to advise them of opportunities.
7. Reviews third party contracts and purchase requisitions for compliance with this program.
8. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
9. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
10. Participates with legal counsel and the project manager to determine contractor compliance with good faith efforts.
11. Maintains the Rail Commission's Vendor Portal which contains a directory on certified DBEs.

### **Federal Financial Assistance Agreement Assurance (§26.13)**

The Rail Commission has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

San Joaquin Regional Rail Commission shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the San Joaquin Regional Rail Commission 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.).

### **Directory (§26.25)**

The Rail Commission maintains a Vendor Portal, PlanetBids, which identifies and maintains DBE certified firms that are registered with the Vendor Portal. The Rail Commission also utilizes the California Uniform Certification Program directory. The directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as

a DBE. The Directory may be found on the California Department of Transportation website at: <https://dot.ca.gov/programs/civil-rights/dbe-search>.

### **Required Contract Clauses (§§26.13, 26.29)**

#### Contract Assurance

The Rail Commission will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor 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 Rail Commission 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. 49 C.F.R. § 26.13(b).

#### Prompt Payment

The Rail Commission will include the following clause in each DOT-assisted prime contract:

Consultant agrees to pay each subcontractor(s) under this Agreement for satisfactory performance of its contract no later than ten (10) days, as required by California State law, or thirty (30) days, unless otherwise required by law, from the receipt of each payment the Consultant receives from Rail Commission. Consultant agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Failure by Consultant to carry out this provision of the contract will be considered a material breach of this prime contract, which may result in the termination of the Agreement or other such remedy, as Rail Commission deems appropriate.

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

The Rail Commission will bring to the attention of the United States Department of Transportation (DOT) any false, fraudulent, or dishonest conduct in connection with the program, so that the DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. The Rail Commission will also consider similar action under the Rail Commission's own legal authorities, including responsibility determinations in future contracts and termination of existing contract.

### **Overall Goals (§26.45)**

See DBE Goal and Goal Setting Methodology document attached to this Program as Attachment B.

### Transit Vehicle Manufacturers (TVM) (\$26.49)

The Rail Commission will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the Rail Commission may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

### Process

The Rail Commission submits its overall goal to DOT on or before September 30th of each third year.

Before establishing the overall goal, the Rail Commission will consult with the California Uniform Certification Program (CUCP) and U.S. Census Bureau's County Business Pattern databases as well as the general public and Chambers of Commerce to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Rail Commissions efforts to establish a level playing field for the participation of DBEs.

Following this consultation with minority, women's general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged business, The Rail Commission will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Rail Commission's principal office for thirty (30) days following the date of the notice, and informing the public that Rail Commission and DOT will accept comments on the goals for thirty (30) days from the date of the notice. Public Notices will be posted on the Rail Commission's official website and posted in the lobby of Rail Commission headquarters located at 949 E Channel Street, Stockton, CA 95202. Public Notices may also be posted in prominent newspapers along the operating corridors, and at local Chambers of Commerce. Normally, The Rail Commission will issue this notice by June 1 of the year in which the methodology is due. The notice will include the email address to which comments may be sent and the physical and web addresses where the proposed goal may be reviewed.

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

The Rail Commission will begin using the overall goal on October 1 of each year unless the Rail Commission has received other instructions from DOT.

### Breakout of Estimated Race-Neutral and Race-Conscious Participation

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

- A. Publicly announce all bid opportunities.

- B. Invite DBE firms to bid.
- C. Unbundle large contracts to make them more accessible.
- D. Encourage prime contractors to subcontract portions of the work.
- E. Provide technical assistance, outreach, and communications programs through local outreach.

The Rail Commission estimates that, in meeting the overall goal, The Rail Commission will obtain 100% from race-neutral participation and 0% through race-conscious measures.

The Rail Commission will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and the Rail Commission will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

- DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures.
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal.
- DBE participation on a prime contract exceeding a contract goal; and
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

### **Contract Goals (§26.51)**

The Rail Commission will use contract goals to meet any portion of the overall goal that it is not projected to being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

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

The Rail Commission will express the contract goals as a percentage of the total amount of a DOT-assisted contract.

### **Good Faith Efforts (§26.53)**

#### Information to be submitted

The Rail Commission treats bidder/proposers' compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/proposers to submit the following information at the time the bid is turned in:

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 participation.
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal.
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.
6. If the contract goal is not met, evidence of good faith efforts.

### Demonstration of good faith efforts

The obligation of the bidder/proposer is to make good faith efforts. The bidder/proposer can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

The Procurement and Contracts Department is responsible for determining whether a bidder/proposer who has not met the contract goal has documented sufficient good faith efforts to be regarded responsive.

The Rail Commission will ensure that all information is complete and accurate and adequately documents the bidder/proposer's good faith efforts before The Rail Commission commit to the performance of the contract by the bidder/proposer.

### Administrative reconsideration

Within ten (10) days of being informed by the Rail Commission that it is not responsive because it has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidder/proposers should make this request in writing to the following reconsideration official:

Brian Schmidt, Director of Equipment Services  
949 E Channel St. Stockton, CA 95202  
209-944-6241  
[brian@acerail.com](mailto:brian@acerail.com)

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

As part of this reconsideration, the bidder/proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/proposer will have the opportunity to meet in person with the Rail Commission's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Rail Commission will send the bidder/proposer a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

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

### Good Faith Efforts when a DBE is replaced on a contract

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

In this situation, the Rail Commission will require the prime contractor to obtain prior written approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the Procurement and Contracts Department will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the Procurement and Contracts Department may issue a termination for default proceeding.

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

The Rail Commission will count DBE participation toward overall and contract goals as provided in 49 CFR §26.55.

#### **1. DBE "Frauds" and "Fronts"**

Only legitimate DBEs are eligible to participate in federally funded contracts. Therefore, bidders/proposers are cautioned against knowingly and willfully using "fronts" to meet DBE goals. The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of Federal funds should be immediately reported to the Office of Inspector General (OIG), U.S. Department of Transportation, via the toll-free hotline at 800-424-9071, email at <https://www.oig.dot.gov/hotline> or U.S. mail at U.S. DOT Inspector General, 1200 New Jersey Avenue SE, West Bldg. 7<sup>th</sup> Floor, Washington, CA 20590. The hotline is open 24 hours per day, seven days per week. Additional information can be found on [www.oig.dot.gov/hotline](https://www.oig.dot.gov/hotline).

#### **2. Commercially Useful Function (§26.55)**

To be considered as performing a Commercially Useful Function (CUF), the DBE shall meet all of the following:

- i. The DBE is responsible for the execution of a distinct element of work in the Contract; and
- ii. The DBE carries out its obligation by actually performing, managing, and supervising the work involved; and

- iii. The DBE performs work that is normal for its business, services, and function; and
- iv. The DBE performs or exercises responsibility for at least 30 percent of the total cost of its Contract with its own work for and is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practice.

The following factors shall be used in determining whether a DBE trucking company is performing a commercially useful function:

- i. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- ii. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- iii. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- iv. The DBE may lease trucks from another DBE firm, including an owner- operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- v. The DBE may also lease trucks from a non-DBE firm, including from an owner- operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE- owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Rail Commission Operating Administration.

### **3. DBE Participation Credit**

The Rail Commission requires that all DBEs listed by bidders/proposers for participation in contracts with goals, be certified as eligible DBEs at the time of bid/proposal submission, in order for their participation to be counted towards meeting the established DBE contract goal and/or the Rail Commission's overall DBE goal.

In accordance with 49 CFR §26.55 and §26.71, the following guidelines apply in calculating/ counting DBE participation:

- i. Only the participation of firms certified in accordance with 49 CFR Part 26 may be counted as DBE participation.

- ii. Only work (represented by NAICS code(s)) for which the firm is certified as a DBE may be counted as DBE participation.
- iii. Only work performed by a DBE's own work forces (including cost of supplies, materials and equipment leases obtained by the DBE for the work of the contract, except supplies and equipment the subcontractor purchases and/or leases from the prime contractor or its affiliate), may be counted as DBE participation.
- iv. When a DBE subcontracts part of its work of its contract to another firm, the value of the subcontracted work may be counted as DBE participation only if the DBE subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count as DBE participation. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce.
- v. When a DBE performs as a participant in a joint venture with a non-DBE, only the portion of the total contract dollar value equal to the distinct, clearly defined portion of the work to be performed by the DBE's own forces may be counted as DBE participation.
- vi. Only work considered to perform a commercially useful function may be counted as DBE participation.
- vii. For transportation services that are required under the contract and provided by a DBE trucking company, DBE participation is counted on the total value of the transportation services the DBE trucking company provides using trucks it owns, insures, and operates and using drivers it employs.
- viii. For materials and supplies that are required under the contract and obtained from a DBE manufacturer, one hundred percent (100%) of the materials/supplies may be counted as DBE participation. 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.
- ix. For materials and supplies that are required under the contract and obtained from a DBE supplier/regular dealer, sixty percent (60%) of the materials/supplies may be counted as DBE participation. For purposes of this section, a supplier/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.
- x. A bidder/proposer may count as DBE participation, 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.

- xi. A bidder/proposer may count as DBE participation, all transportation services provided by a DBE trucking firm that 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 must itself own and operate at least one fully licensed, insured, and operation truck used on 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 the lessee DBE provides on the contract. The DBE who 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.
- xii. Prime contractors are advised to not count participation of DBE subcontractors towards DBE attainment until the amount being counted has been paid to the DBE.
- xiii. In cases where a DBE's certification has ceased during the performance period of the contract, although the prime contractor will continue to report to the Rail Commission, the dollar value of the work performed by the firm, any work performed after the DBE ceases to be certified will not count towards DBE participation credit or the Rail Commission overall DBE Goal.

#### **Certification (§§26.61 – 26.91)**

The Rail Commission will not certify DBE firms as that is done by the state of California through the Unified Certification Program (CUCP).

#### **Unified Certification Program**

The Rail Commission does not maintain a separate certification program but instead utilizes the CUCP. The program allows the Rail Commission to search available DBE firms by geographic location, work category, or Caltrans District and get the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The Program may be found on the California Department of Transportation website at: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm) .

#### **"No Change" Affidavits and Notices of Change**

The Rail Commission requires all DBEs to notify, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR part 26 or of any material changes in the information provided with DBE's application for certification.

The Rail Commission also require all owners of all DBEs to submit, a "no change" affidavit meeting the requirements of §26.83(j). The text of this affidavit is the following:

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

The Rail Commission will notify all currently certified DBE firms involved in contracts with the Rail Commission of these obligations via letter at the end of each federal fiscal year. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

### **DBE Participation Change Requests (§26.53 (f) and (g))**

#### DBE Additions

In the event a Contractor identifies additional DBE Subcontractor/subconsultants or suppliers not previously identified by for DBE participation under the Agreement, they must notify the Rail Commission by submitting a request in writing to enable the Rail Commission to verify the firm's eligibility, capacity, and ensure there is not a scope conflict with another listed firm. Proposed firms cannot be applied towards Contractor's DBE participation until approved by the Rail Commission. Contractor must also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

#### DBE Substitution, Termination, and On-going Good Faith Efforts

The Rail Commission requires that Contractors/Consultants not terminate a DBE without the Rail Commission's prior written consent. This includes, but is not limited to, instances in which Contractor seeks to perform work originally designated for a DBE with its own work force or those of an affiliate, a non-DBE firm, or with another DBE firm.

The Rail Commission will provide such written consent only if it agrees, for reasons stated in the concurrence document, that Contractor has good cause to terminate the DBE firm.

### **Information Collection and Reporting (§ 26.109)**

#### Bidders List

The Rail Commission will maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, and contact information of firms.

The Rail Commission will collect this information in the following ways:

- Contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts.
- Require contractors to include DBE subcontract participation.
- Pre-Proposal Meetings
- Regional Chamber of Commerce

The bidders list will be maintained within the Vendor Portal, PlanetBids. The Rail Commission will use this information to assist in establishing the market area and as a resource in the Rail Commission's DBE goal-setting process.

### Monitoring Payments to DBEs (§ 26.37)

The Rail Commission will require prime contractors to maintain records and documents of payments to DBEs for three (3) years, or as required by funding source, following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Rail Commission or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The Rail Commission will perform monthly reviews of contract payments to DBEs. The review will include payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts committed in the "DBE Participation Commitment" form or DBE subcontract.

*Additionally, the Rail Commission's DBE Program will include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. Such mechanism will provide a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. The Rail Commission will display both DBE commitments and attainments in its reports of DBE participation to the U.S. DOT.*

### Compliance Monitoring (§ 26.37)

The Rail Commission shall implement appropriate mechanisms to ensure prime and subcontractor compliance with DBE Program requirements as stated in 49 CFR Part 26, including but not limited to the following activities:

1. Once a DBE begins work, obtain proof of each DBE's participation on the contract, by collecting a copy of a signed subcontractor agreement between the prime Contractor and the DBE.
2. Collecting/reviewing monthly DBE utilization reports via Vendor Portal.
3. Verifying payments made to DBEs.
4. Verifying continued certification by DBEs.

5. Tracking DBE participation throughout the life of the contract.
6. Imposing administrative sanctions for contractor's willful contractor noncompliance with DBE Program requirements.
7. Recording and reporting final DBE participation at contract close-out.

In addition, at contract close-out, the Rail Commission will certify that it has monitored the contract to ensure compliance with DBE Program regulations and requirements.

### Reporting to DOT

The Rail Commission shall submit for FTA review and approval, a semiannual Report of DBE Awards or Commitments and Payments (Attachment C). In conformance with FTA direction the Rail Commission will submit reports through FTA's Transit Award Management System (TrAMS) by June 1 and December 1 of each federal fiscal year. The reports shall list the dollar value of DBE participation for U.S. DOT-assisted contracts and subcontracts awarded and closed and shall demonstrate the Rail Commission's progress toward reaching the FTA-approved overall/triennial DBE goal. All dollar amounts reported will reflect the federal share of such contracts.

The Rail Commission will adhere to the following reporting period based on the Federal Fiscal Year:

- Reporting period: October 1st through March 31st report due June 1<sup>st</sup>.
- Reporting period: April 1st through September 30th due December 1<sup>st</sup>.

### Annual Review and Remedy Reports (49 CFR §26.47)

The Rail Commission is required to analyze, on a semi-annual basis, the DBE awards and commitments reported to the FTA. If the Rail Commission's DBE awards/commitments are less than the Rail Commission's overall DBE goal for that Federal Fiscal Year (FFY), the Rail Commission is required to develop a written analysis of the shortfall:

1. Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year.
2. Establish specific steps and milestones to correct the problems identified through the analysis and meet fully the goal for the new fiscal year.

### Confidentiality

The Rail Commission will safeguard from disclosure to third parties' information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

“Public records in the California Public Records Act are defined as “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”<sup>1</sup>

Notwithstanding any contrary provisions of state or local law, The Rail Commission will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter as such information does not fall under the act.

### **Attachments**

*Attachment A – Organizational Chart*

*Attachment B - DBE Goal and Goal Setting Methodology*

*Attachment C - Copy of Uniform Report due to FTA*

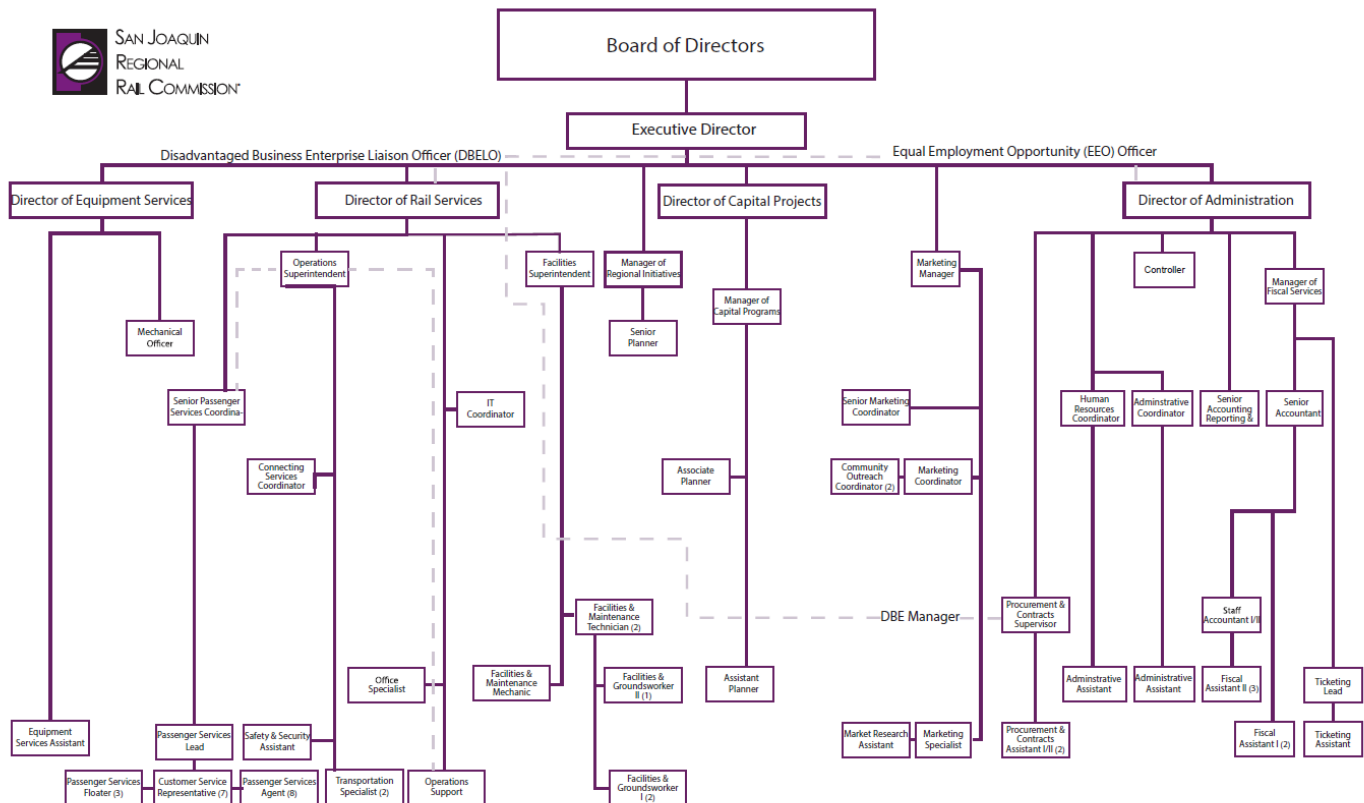
*Attachment D – Copy of 49 CFR Part 26*

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<sup>1</sup> (National Freedom of Information Coalition, n.d.)

## ATTACHMENT A



Total Positions Shown: 73

**ATTACHMENT B**

[Draft Methodology is being worked on. Final is due to FTA on or before August 1, 2022]



## Attachment C

### Copy of Uniform Report due to FTA

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS										
**Please refer to the instruction sheet for directions on filling out this form**										
1	Submitted to (check only one)	<input type="checkbox"/> FHWA	<input type="checkbox"/> FAA	<input checked="" type="checkbox"/> FTA - Recipient ID Number						
2	AIP Numbers (FAA Recipients); Grant Number (FTA Recipients):									
3	Federal Fiscal year in which reporting period falls	FY 20XX			4. Date This Report Submitted:					
5	Reporting Period	<input checked="" type="checkbox"/> Report due June 1 (for period Oct 1-Mar 31)			<input type="checkbox"/> Report due Dec 1 (for period April 1-Sep 30)			<input type="checkbox"/> FAA annual report due Dec 1		
6	Name and address of Recipient:									
7	Annual DBE Goal(s):	Race Conscious Projection:			Race Neutral Projection:			OVERALL Goal:		
Awards/Commitments this Reporting Period										
A	AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD <small>(Total contracts and subcontracts committed during this reporting period)</small>	A Total Dollars	B Total Number	C Total to DBEs (dollars)	D Total to DBEs (number)	E Total to DBEs/Race Conscious (dollars)	F Total to DBEs/Race Conscious (number)	G Total to DBEs/Race Neutral (dollars)	H Total to DBEs/Race Neutral (number)	I Percentag e of total dollars to DBEs
8	Prime contracts awarded this period	\$ -	0	\$ -	0		0	\$ -	0	#DIV/0!
9	Subcontracts awarded/committed this period	\$ -	0	\$ -	0	\$ -	0	\$ -	0	#DIV/0!
10	<b>TOTAL</b>			\$ -	0	\$ -	0	\$ -	0	#DIV/0!
B	BREAKDOWN BY ETHNICITY & GENDER	Total to DBE (dollar amount)			Total to DBE (number)					
		A Women	B Men	C Total	D Women	E Men	F Total			
11	Black American	\$ -	\$ -	\$ -	0	0	0			
12	Hispanic American	\$ -	\$ -	\$ -	0	0	0			
13	Native American	\$ -	\$ -	\$ -	0	0	0			
14	Asian-Pacific American	\$ -	\$ -	\$ -	0	0	0			
15	Subcontinent Asian Americans	\$ -	\$ -	\$ -	0	0	0			
16	Non-Minority	\$ -	\$ -	\$ -	0	0	0			
17	<b>TOTAL</b>	\$ -	\$ -	\$ -	0	0	0			
Payments Made this Period										
C	PAYMENTS ON ONGOING CONTRACTS	A Total Number of Contracts	B Total Dollars Paid	C Total Number of Contracts with DBEs	D Total Payments to DBE firms	E Total Number of DBE firms Paid	F Percent to DBEs			
18	Prime and subcontracts currently in progress	0	\$ -	0	\$ -	0	#DIV/0!			
D	TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A Number of Contracts Completed	B Total Dollar Value of Contracts Completed	C DBE Participation Needed to Meet Goal (Dollars)	D Total DBE Participation (Dollars)	E Percent to DBEs				
19	Race Conscious	0	\$ -	\$ -	\$ -	#DIV/0!				
20	Race Neutral	0	\$ -		\$ -	#DIV/0!				
21	<b>Totals</b>	0	\$ -		\$ -	#DIV/0!				
22	Submitted by:			23. Signature:			24. Phone Number:			

**ATTACHMENT D**  
**Copy of 49 CFR Part 26**  
***[93-page PDF]***