



Southern California

LOGISTICS AIRPORT

SOUTHERN CALIFORNIA LOGISTICS AIRPORT AUTHORITY DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM MANUAL

**18374 Phantom West
Victorville, CA 92394**

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I. POLICY

A. Policy Statement (§26.1, §26.3)

The Southern California Logistics Airport Authority (hereinafter referred to as "SCLAA") is a recipient of U.S. Department of Transportation (DOT) Federal Assistance funds through the Federal Aviation Administration and as a condition of receiving such assistance has developed this Policy and DBE Program in conformance with the federal Disadvantaged Business Enterprise (DBE) Program and its regulations published under U.S. DOT 49 CFR Part 26. SCLAA will continue carrying out this Program until all funds from DOT have been expended. SCLAA is committed to fulfilling the spirit and intent of the federal DBE Program and its regulations, by ensuring that DBEs have equitable access to participate in all federally funded SCLAA contracting opportunities.

In accordance with these regulations SCLAA's policy is to ensure that minority-owned, women-owned, and other disadvantaged small businesses can fairly compete for and perform on contracts and subcontracts financed in whole, or in part with DOT funds.

B. Objectives (§26.1, §26.3)

It is the policy of SCLAA to ensure that DBEs, as defined in Title 49 CFR, Part 26, have an equitable opportunity to compete for and participate in SCLAA's U.S. DOT-assisted contracts and subcontracts. Pursuant to the intent of the DOT's DBE Program regulations, SCLAA's policy objectives are to:

1. Ensure non-discrimination in the award and administration of all SCLAA's DOT-assisted contracts and subcontracts;
2. Create a level playing field by which DBEs can compete fairly for and perform on SCLAA's DOT-assisted contracts;
3. Ensure SCLAA's DBE Program is narrowly tailored in accordance with applicable laws;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Assist in the removal, where feasible, of procurement and contracting barriers in DOT-assisted contracts which may inadvertently impede DBE participation;
6. Offer assistance to firms to enable them to compete successfully in the market place outside of the DBE Program;
7. Comply with federal regulations and financial assistance agreements;
8. Disseminate timely and accurate information regarding SCLAA's contracting opportunities to DBE Program participants and potential participants; and
9. Monitor and enforce contractor compliance with meeting established DBE goals and/or exercising Good Faith Efforts to do so as defined in 49 CFR 26.

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To oversee the Program, SCLAA has designated the City of Victorville (CITY) Finance Manager to serve as SCLAA's DBE Liaison Officer (DBELO). However, all of SCLAA's executives, management and staff share in the responsibility for making SCLAA's DBE Program a success and shall give their full cooperation to the DBELO in the implementation of this Policy. Implementation of the DBE Program has the same priority as all other legal obligations incurred by SCLAA as contained within its financial assistance agreement with the U.S. DOT.

SCLAA is a component unit of the City of Victorville and formed as a Joint Powers Authority (JPA) in 1997 between the City and the former Victorville Redevelopment Agency (RDA). In 2012, the RDA was dissolved pursuant to state law and the Victorville Water District replaced the RDA as the second JPA member. The purpose of SCLAA is to provide coordination of long range planning of the territory of the former George Air Force Base (now Southern California Logistics Airport). Victorville's City Council is the governing board of SCLAA and as a blended component unit of the City, has financial accountability over the operations of the authority. City staff is utilized as the Authority's DBELO along with support staff to the DBELO.

SCLAA's policy statement has been signed and dated by SCLAA's highest officer and is disseminated throughout its organization and to the DBE and non-DBE business communities that perform work on SCLAA's U.S. DOT-assisted contracts through SCLAA's procurement solicitation process. Furthermore, this DBE Policy Statement is posted on the City's website under the City's Purchasing webpage along with SCLAA's webpage and made available to the general business community and the general public.


Keith C. Metzler
Executive Director
Southern California Logistics Airport Authority


Date .

II. GENERAL REQUIREMENTS

A. Objectives (§26.21 and §26.3)

SCLAA's objectives have been provided within the policy statement, included in Section I of this DBE Program.

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

B. Applicability (§26.3) DBE Policy Directives

SCLAA, as a direct recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178. These funds were received from the U.S. DOT, and as a condition of Federal financial assistance, SCLAA is required to submit for approval, to the U.S. DOT Operating Administration from

which it receives the majority of its federal funding, a DBE Program developed in accordance with federal regulations published under Title 49 CFR, Part 26 and subsequent guidance. This Program sets forth the policies and procedures to be implemented by SCLAA to ensure that DBEs have an equitable opportunity to participate in SCLAA's U.S. DOT-assisted contracting opportunities.

Any terms used in this section that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and SCLAA's DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail. In conformance with 49 CFR 26, SCLAA will continue to carry out its DBE Program until all funds from U.S. DOT financial assistance have been expended.

In March 2006, Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals' decision in *Western States Paving Co. v. Washington State Department of Transportation* directed U.S. DOT financial recipients within the ninth circuit to utilize strictly race-neutral measures to meet their overall DBE goals and objectives, in the absence of verifiable data evidencing discrimination in DOT-assisted contracts.

III. DEFINITION OF TERMS (§26.5)

Any terms used in this Program that are defined in 49 CFR Part 26 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. Some of the most common terms are defined below:

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

Appeal: A formal filing by which a business entity challenges a legal decision made by a lower Authority and brings it to a higher Authority for review.

Affiliation: has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

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

- (i) One concern controls or has the power to control the other; or
- (ii) A third party or parties controls or has the power to control both; or
- (iii) An identity of interest between or among parties exists such that affiliation may be found.

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

Alaska Native: A citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut

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blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

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

Assets: All the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

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

Business, Business Concern or Business Enterprise: An entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

California Department of Transportation (CalTrans): The State of California's government department that manages the state highway system and is actively involved with public transportation systems throughout California. CalTrans is the largest recipient of U.S. DOT funds within California.

California Unified Certification Program (CUCP): California's one-stop certification clearinghouse which standardizes DBE certification criteria across all certifying members of the CUCP and enables applicants to apply once for DBE certification, which will be honored by all DOT recipients within California.

Code of Federal Regulations (CFR): Codification of the general and permanent rules and regulations of the executive departments and agencies of the U.S. federal government.

Commercially Useful Function: Work performed by a DBE that has a necessary and useful role in the contract scope of work and on which the firm's role is not a superfluous step added in an attempt to obtain credit toward goals. If, in SCLAA's judgment, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, the firm will not receive DBE credit.

Compliance: Correct and accurate implementation of U.S. DOT DBE Program requirements.

Contingent Liability: A liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

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. For purposes of this part, a lease is considered to be a contract.

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

Contractor: One who participates, through a prime or subcontract (at any tier), in a SCLAA contract.

County Business Patterns (CBP): Statistical data authorized by United States Code Titles 13 and 26 and compiled by the U.S. Census Bureau, which provides annual details of geographic, industry, and other information for U.S. business establishments.

Days: In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

DBE Directory: The California Unified Certification Program's (CUCP's) list of certified DBEs, which is used by SCLAA and its contractors to identify potential DBE prime and subcontractors, suppliers, etc.

DBE Liaison Officer (DBELO): A staff member of a public agency that receives U.S. DOT financial assistance, who is responsible for implementing all aspects of the agency's DBE Program.

De-certification: The result of the process initiated to remove a firm's DBE eligibility.

Disadvantaged Business Enterprise (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 Title 49 CFR, Part 26 by a certifying member agency of the CUCP.

Disparity Study: Fact-based technique and methodology used to establish whether or not underutilization of certain groups, i.e., minorities and women, exists in the purchasing and contracting practices of an entity. A disparity study must be conducted in order to establish the legal validity of any affirmative action program in public contracting.

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).

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

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Federal Fiscal Year (FFY): The annual period beginning October 1st and ending September 30th of any given year. The FFY is different than SCLAA's fiscal year, which runs from July 1st through June 30th.

Goal: A numerically expressed objective, which SCLAA or its contractors are required to make good faith efforts to achieve.

Good Cause: An acceptable reason for terminating a DBE subcontractor on an SCLAA contract. "Good cause" is defined as a situation where the DBE subcontractor has failed or refused to perform the work of its subcontract in accordance with normal industry standards.

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

Home State: The state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

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

Joint Venture: 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.

Liabilities: Financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

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.

Memorandum of Agreement (MOA): A cooperative agreement written between parties to cooperatively work together on an agreed-upon project or meet an agreed-upon objective. An MOA can take the form of a legal document that is binding and holds the parties responsible to their commitment, or just a partnership agreement.

Memorandum of Understanding (MOU): A document describing a bilateral agreement between parties. It expresses a convergence of will between the parties, indicating an intended common line of action, rather than a legal commitment. It is a more formal alternative to a gentlemen's agreement, but generally lacks the binding power of a contract.

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

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

Non-compliance: Failure, either willful or inadvertent, to correctly and accurately implement DBE Program requirements.

Operating Administration: Any of the following agencies of the U.S. Department of Transportation (DOT): Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and Federal Aviation Administration (FAA).

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

Primary Industry Classification: means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

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

Principal Place of Business: means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

Program: Any undertaking on SCLAA's part to use U.S. DOT financial assistance as authorized by laws to which the DBE Program applies.

Race-Conscious Measure or Program: A program or measure that focuses specifically on assisting DBEs, i.e., by the development and inclusion of participation goals or Good Faith Effort activities.

Race-Neutral: A program or measure that focuses on assisting all small businesses equally, regardless of gender, ethnicity, or social/economic disadvantage, i.e., community outreach and awareness programs. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient: An entity, public or private, that receives U.S. DOT financial assistance (through the programs of the FAA, FHWA, or FTA), including primary recipient (an entity that passes some or all of the financial assistance to another recipient) and subrecipient (an entity that receives U.S. DOT financial assistance through a primary recipient).

Regular Dealer/Supplier: 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

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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.

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

Small Business Concern: A business that 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 the CUCP certifying member agency to be socially and economically disadvantaged 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 socially and economically disadvantaged:
 - (i) "Black Americans" which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans" which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans" which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv) "Subcontinent Asian Americans" which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (v) "Asian Pacific Americans" which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong.
 - (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.

3. Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

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

Transit Vehicle Manufacturer (TVM): A manufacturer of vehicles used by SCLAA for the primary purpose of public mass transportation (e.g. railcars, buses, and vans). The term does not apply to firms that rehabilitate old vehicles or to manufacturers or dealers of 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 section.

Under-Utilized DBE (UDBE): A Disadvantaged Business Enterprise (DBE) defined as under-utilized pursuant to the results of a disparity study.

Unified Certification Program (UCP): A one-stop certification clearinghouse which standardizes DBE certification criteria across all certifying members of the UCP and enables applicants to apply once for DBE certification, which will be honored by all DOT recipients within the state.

U.S. Census Bureau: The U.S. government agency responsible for the U.S. Census, as well as other national demographic and economic data.

U.S. Department of Transportation (DOT): Department of the U.S. federal government that is actively involved with U.S. transportation at the national, state, and local levels. The DOT includes the Office of the Secretary, Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA).

IV. RECORD KEEPING REQUIREMENTS

SCLAA maintains a recordkeeping system which identifies U.S. DOT-assisted contract awards and tracks prime contractors' progress in achieving DBE goals. SCLAA verifies payments made to DBEs and keeps record of actual DBE attainments. Any areas of identified non-compliance are subject to administrative sanctions as outlined in this manual.

SCLAA's records serve to document all information, for each U.S. DOT-assisted contract, needed to comply with U.S. DOT regulations. Records will include, but will not be limited to, the following information:

1. Contract funding source(s);
2. Contract title and number;
3. DBE contract goal, if applicable, and methodology used in establishing the goal;
4. Prime contractor/consultant name, address and primary contact;

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5. DBE commitment (percentage and dollar value of contract allocated to DBEs);
6. Good Faith Effort (GFE) scoring sheet and evaluation results, if applicable;
7. Name, certification status (DBE or non-DBE) and subcontract dollar value for each listed subcontractor;
8. DBE status, gender, ethnicity, and dollar value of participation for each listed DBE;
9. Type of work performed by each listed DBE (i.e., subcontractor, regular dealer/supplier, broker, manufacturer, trucking company, etc.);
10. Copy of current certification for each listed DBE or CUCP website printout;
11. Tally of DBE utilization throughout the life of the contract, including final DBE utilization reported at contract close-out;
12. Field observation/on-site interview forms;
13. Report measuring DBE commitment percentage and dollar amount vs. actual attainment;
14. Certification by SCLAA, attesting to having monitored contractor compliance, documentation submittal requirements, and on-site performance; and
15. Outreach efforts made by SCLAA to inform DBEs of the contracting opportunity and inform prime bidders/proposers of DBE availability and interest in the contract.

A. Uniform Reports of DBE Awards/Commitments and Payments §26.11(a)

SCLAA's DBELO or designee shall submit for FAA review and approval, the annual *Uniform Report of DBE Awards or Commitments and Payments*. In conformance with FAA direction SCLAA will submit reports through FAA's Civil Rights Connect System by December 1 of each federal fiscal year. The reports shall list the dollar value of contracts and subcontracts awarded to DBEs and shall demonstrate SCLAA's progress toward reaching the FAA-approved overall/triennial DBE goal.

Pursuant to DBE Program regulations effective November 3, 2014, SCLAA will also report DBE participation and payments on ongoing contracts.

B. Bidders List §26.11(c)

49 CFR §26.11 requires SCLAA to develop and maintain a Bidders List. All DOT-assisted contracts shall include a contract clause requiring all prime bidders/proposers to submit a completed Bidders List to SCLAA, for their firm and for all firms (DBE and non-DBE) that submitted a bid, quote or proposal to the prime bidder/proposer on DOT-assisted contracts. The Bidders List shall, at a minimum, contain the following information for each firm:

1. Firm name
2. DBE certification status

3. Address
4. Phone #
5. Age
6. Contact name and title
7. Type of product/service provided
8. Range of annual gross receipts

SCLAA will use this information to assist in establishing the SCLAA's market area and as a resource in SCLAA's DBE goal-setting process.

V. ASSURANCES AND REQUIRED CONTRACT PROVISIONS

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

SCLAA 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, SCLAA 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.

SCLAA shall ensure that the following language and/or procedures are included in all bid/RFP specifications and/or contract documents:

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

B. Contractor Non-Discrimination Assurance Clause (49 CFR 526.13b)

SCLAA shall ensure that the following language and/or procedures are included in all financial assistance agreements with sub-recipients:

"SCLAA shall require that the prime contractor include the following clause in every U.S. DOT assisted contract and subcontract:

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"The contractor 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 SCLAA deems appropriate."

****Please note the language in Section A and B above is to be used verbatim****

C. Use of Set Asides or Quotas (§26.43 and §26.47)

SCLAA shall not permit the use of quotas for DBEs on DOT assisted contracts, in accordance with 49 CFR Part 26.43. Further, SCLAA 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.

VI. ADMINISTRATIVE REQUIREMENTS AND STAFFING

A. DBE Program Updates (§26.21)

As a recipient of more than \$250,000 of U.S. DOT financial assistance over a Federal Fiscal Year and pursuant to 49 CFR §26.21, SCLAA shall continue to implement the DBE Program unless and until all funds from DOT financial assistance have been expended.

SCLAA will regularly review directives issued by DOT to update its DBE Program as necessary to fully comply with the intent of the US DOT's DBE Program.

B. DBE Liaison Officer (DBELO) (§26.25)

SCLAA's Executive Director while maintaining ultimate responsibility for SCLAA's DBE Program, has designated the City's Finance Manager to serve as the DBE Liaison Officer (DBELO) and has responsibility for the implementation all aspects of SCLAA's DBE Program and ensuring that SCLAA complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director concerning DBE Program matters. Contact information for SCLAA's DBELO is as follows:

John Mendiola
Finance Manager
DBE Liaison Officer
Southern California Logistics Airport Authority
18374 Phantom West
Victorville, CA 92394
Telephone: (760) 953-5957
Email: jmendiola@victorvilleca.gov

The DBELO's duties include, but are not limited to, the following activities:

- Analyze and revise DBE program policies and procedures as necessary.

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- **Submit updates to the DOT, regarding any significant changes to SCLAA's DBE Program.**
- **Works with SCLAA's airport staff and DBE consultant to perform goal-setting analysis, establish methodology, and calculate overall triennial DBE goals.**
- **Facilitate public participation in the overall goal-setting process.**
- **Conduct an annual review of SCLAA's overall DBE goal; adjust and/or re-calculate the goal as necessary and submit to the FAA.**
- **Review triennial/overall DBE goal commitments at the end of each Federal Fiscal Year (FFY); analyze any goal shortfall(s); provide to the FAA (under the DBELO's signature and within 90 days after FFY end), a written analysis of why the overall goal was not achieved, as well as a written plan for corrective actions that SCLAA will take, to remedy the goal shortfall.**
- **Analyze contract scope of work and subcontracting opportunities; assist in the calculation of DBE contract goals as applicable.**
- **Conduct and coordinate outreach efforts to DBEs and small businesses to provide information regarding contracting opportunities with SCLAA; utilize the assistance of minority and women business associations, small business development centers, industry/trade organizations, vendor fairs, workshops and minority-focused publications to assist with outreach efforts.**
- **Coordinate public information and communication programs regarding contracting opportunities ensuring bid notices and requests for proposals are made available to DBEs in a timely manner.**
- **Ensure that all solicitation documents and contract templates include all relevant DBE Program elements, contractor documentation submittal requirements and required contract provisions.**
- **Work with SCLAA's contracting/procurement staff to arrange solicitations, present bid/ proposal requirements, and determine required quantities, specifications, and proposal delivery schedules to facilitate a level playing field for DBEs.**
- **Work with SCLAA's contracting/procurement staff to remove, where feasible, barriers which may limit DBE participation, by ensuring that Invitations for Bids (IFBs) and Requests for Proposals (RFPs) do not contain unduly restrictive requirements; ensure that sufficient time is allowed during the pre-bid phase, for DBEs to schedule attendance at pre-bid/pre-proposal meetings and for non-DBEs to perform adequate Good Faith Efforts to meet established DBE contract goals.**
- **Maintain a Bidders List of firms that submit a bid, quote or proposal for participation on an SCLAA contract; ensure that the Bidder List contains all information required by 49 CFR §26.11.**
- **Evaluate Good Faith Efforts when bids/proposals do not meet DBE contract goals as applicable.**
- **Develop and implement technical assistance programs for DBEs, including resources and referrals to supportive services.**
- **Investigate services and resources offered by banks and/or financial institutions owned and**

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controlled by socially and economically disadvantaged individuals.

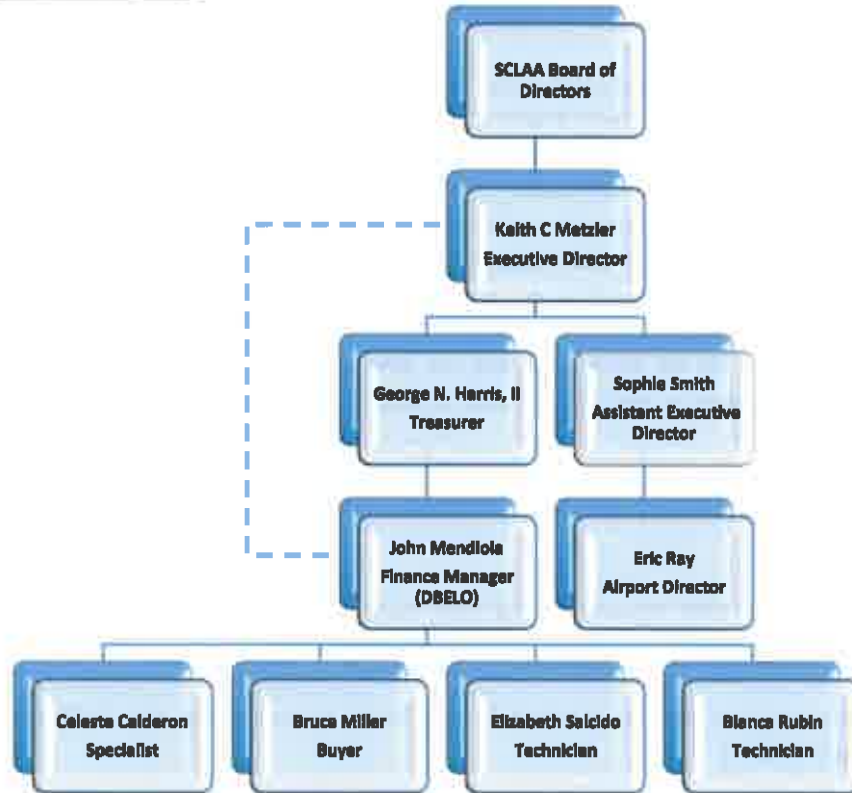
- Ensure that, prior to approval of the substitution of any DBE subcontractor, prime contractors evidence Good Faith Efforts to replace the original DBE with another eligible DBE.
- Ensure that any DBE subcontractor terminations by the prime Contractor are for “good cause” only, and that any such terminations receive prior written approval by SCLAA.
- Monitor and enforce contractor compliance with all DBE Program provisions including goal commitments, documentation submittal requirements, reporting requirements, prompt payment to subcontractors, and DBE utilization requirements; Impose administrative sanctions and/or monetary penalties for willful non-compliance.
- Upon completion of each contract on which DBEs were utilized, prepare and file a written affidavit attesting to monitoring and verification of contractor compliance with all DBE Program provisions.
- Maintain all necessary documentation to verify performance of activities included in the DBE Program.
- Provide timely DBE reports to the FAA, including the annual *Uniform Report of DBE Awards or Commitments and Payments*.
- Actively support and participate in the implementation of the California Unified Certification Program (CUCP).
- Implement provisions to facilitate participation of small businesses on FAA-assisted contracts.

C. DBE Program Staffing (\$26.25)

As support staff to the DBELO, the following City purchasing positions will provide support: Specialist, Buyer, and two (2) Technicians have been designated to provide direct support related to DBE matters. The support staff provides assistance to SCLAA in administering its approved Disadvantaged Business Enterprise (DBE) Program in accordance with U.S. Department of Transportation (DOT) DBE Program set forth under Title 49 Code of Federal Regulations (CFR) Part 26.

Additionally, a consulting firm, Padilla & Associates, Inc. provides additional well-qualified and seasoned staff to assist in managing SCLAA DBE Program on an on-call basis. Padilla & Associates, Inc., is well positioned to readily assist SCLAA in this regard, as their team of exceptionally experienced DBE compliance professionals will ensure that SCLAA is in full compliance with current governing regulations and timely kept abreast of proposed legislation in the area to further ensure it is proactive in implementing policies and practices that advance the goals and objectives of this important regulation.

D. DBE Organizational Chart



E. DBE Reconsideration Official (§26.53 (d)(2))

In instances where contract goals are established and the bidder/proposer either fails to satisfy the requirements for meeting the contract goal or fails to document a sufficient Good Faith Effort (GFE) to do so, SCLAA will afford the bidder/proposer, prior to award of the contract, an opportunity for administrative reconsideration of SCLAA’s determination of non-responsiveness.

Unless otherwise specified, the bidder/proposer may, within three (3) business days of being informed by SCLAA of its non-responsiveness due to its failure to document and provide sufficient and adequate Good Faith Efforts in the subject procurement, request administrative reconsideration. Bidders/Proposers must make this request in writing to the Reconsideration Official as designated herein.

To ensure integrity in the process, the Reconsideration Official will not have played any role in the original determination that the bidder/proposer did not meet the established contract-specific DBE goal, or adequately document Good Faith Efforts as specified in the subject procurement. SCLAA has designated the following individual to serve as DBE Reconsideration Official:

**Patricia Padilla, President
Padilla & Associates
211 E. City Place Drive**

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Santa Ana, CA 92705
Telephone: (714) 973-1335

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written evidence/documentation or argument concerning the issue of whether it met the goal or made adequate Good Faith Efforts to do so. Further, the bidder/ proposer will have the opportunity to meet with the Reconsideration Official in person to discuss the issue of whether it met the goal or made adequate Good Faith Efforts to do so. SCLAA will document the basis for the reconsideration determination and forward the final determination to the bidder/proposer within seven (7) working days of the hearing date. All parties shall be advised that reconsideration final decisions are NOT administratively appealable to U.S. DOT.

Further, SCLAA's Reconsideration Official and/or designee shall also perform oversight of the reconsideration process. The Reconsideration Official and/or designee's duties include, but are not limited to, the following activities:

1. Ensures that all DBE administrative reconsideration procedural actions are consistent with the requirements and standards specified in Title 49 CFR, Sections 26.53 and 26.87, and that the Program's integrity is maintained at all times.
2. Reviews bidder/proposer written documentation or argument concerning the issue of whether it met the goal or made adequate Good Faith Efforts to do so.
3. Upon review of the bidder's/proposer's request for consideration, the Reconsideration Official sends the bidder/proposer a written decision on reconsideration, explaining the basis for finding that the bidder/proposer did or did not meet the goal or make adequate Good Faith Efforts to do so.
4. Maintains records of conducted hearings.
5. Provides determinations in writing to SCLAA's DBELO.

F. Prompt Payment Mechanisms (§26.29)

SCLAA 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, SCLAA established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 days from the prime contractor's receipt of each payment from SCLAA.

SCLAA 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(b), SCLAA has selected the following method to comply with this requirement:

SCLAA will 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 your

payment to the prime contractor.

To implement this measure, SCLAA includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime contract:

Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, prepared by the Engineer, of the value of the work performed and materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with the subsection 90-07. No partial payment will be made when the amount due to the Contractor since the last estimate amounts to less than five hundred dollars.

A. From the total of the amount determined to be payable on a partial payment, five percent of such total amount will be deducted and retained by the Owner for protection of the owner's interest. The amount retained by the Owner will be in effect until the final payment is made except as follows:

(1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with subsection 50-03. Contractor must provide a certified invoice to the Engineer that supports the value of retainage held by the Owner for partially accepted work.

(2) In lieu of retainage, the Contractor may exercise at their own option the establishment of an escrow account per subsection 90-08 of the FAA Advisory Circular 150/5370-10.

B. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. The Owner must ensure prompt and full payment of retainage from the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

C. When at least 95% of the work has been completed, the Engineer shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

G. DBE Financial Institutions (§26.27)

SCLAA 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 SCLAA's jurisdiction and make the greatest feasible use of these institutions. SCLAA will encourage prime bidders/ contractors on DOT-assisted contracts and procurements, to utilize such institutions as well.

SCLAA has made efforts to identify these institutions and has provided a list of them on their website.

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SCLAA will re-evaluate the availability of DBE financial institutions every 24 months. Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

H. **DBE Directory (§26.31 and §26.81)**

SCLAA is a non-certifying member of the California Unified Certification Program (CUCP). 49 CFR §26.81 requires each state's UCP to maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by §26.31.

SCLAA utilizes the CUCP online state-wide DBE Directory, which contains the following information for each certified DBE, as applicable:

1. DBE name
2. Contact name
3. Business address
4. County(ies) of performance
5. Telephone number
6. Fax number
7. Email address
8. NAICS code(s) under which the firm is certified
9. Work category code(s) (optional)
10. Contractor's license classification
11. Gender
12. Ethnicity
13. Certification status (DBE or ACDBE)
14. Certifying agency

This directory is made available to the public electronically (on the internet). The electronic version is downloadable into a searchable and sortable Excel spreadsheet. SCLAA refers prime bidders and proposers to the directory to locate available DBEs at their pre-proposal/bid conferences, through the link on their website and through their solicitation packages (reference Section B).

I. **Over-Concentration (§26.33)**

SCLAA has not identified that over-concentration exists in the types of work that DBEs perform. Should there be a time when SCLAA's DBE Program includes a race-conscious component, SCLAA will develop policies and procedures to address overconcentration of DBE utilization in certain types of work when applicable.

J. **SCLAA Written Certification (§26.37)**

At contract close-out, SCLAA's DBELO or designee will complete and file, a written certification attesting to having reviewed and monitored contractor documentation, on-site performance when applicable, and payments to DBEs to verify compliance with DBE requirements.

K. Business Development Programs (§26.35; Appendices C and D)

SCLAA has not established a business development program. SCLAA will re-evaluate the need for such a Program every year. If SCLAA identifies that such a program is necessary to meet the objectives of the federal DOT DBE Program, and to assist disadvantaged firms in enhancing their firms' skills and abilities to successfully compete for contracts within their respective industries in the marketplace It will extend all efforts to develop such a program.

L. Small Business Participation and Small Business Element (§26.39)

The U.S. DOT final rule issued on January 28, 2011 added §26.39 to 49 CFR Part 26. This section required recipients (local agencies) of U.S. DOT financial assistance to include an element in their contracting requirements, to facilitate competition by small businesses.

SCLAA has established a Small Business Element as a supplement to their 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). For purposes of capturing Small Business utilization, SCLAA adheres to the U.S. Department of Transportation's Small Business definition for what constitutes a Small Business Enterprise. This Small Business Element will include, but is not limited to the following assertive strategies:

- The SCLAA will hold a pre-proposal conference for each federally assisted procurement it releases that will include a networking component to encourage teaming and partnering between primes and small businesses as well as providing them access to SCLAA's key procurement individuals. This networking component will provide small businesses valuable access and resources needed to promote their capabilities and strengthen competitiveness, marketability and participation of small businesses firms within SCLAA's contracting program.
- SCLAA will refer Small Business Enterprises to existing supportive services entities that will develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBES and other Small Business by setting up a DBE page on their website that includes support services such as U.S. Small Business Program (SBA) and California Department of General Services (DGS) via www.sba.gov/contracting/resources-small-businesses, and <http://www.dbe-advantage.com/>.
- SCLAA utilizes an online bid management SaaS (Software as a Service) tool called E-Bid Board to maximize efficiency and communication to their small business contracting community. Through E-Bid Board, SCLAA has digitized and automated its communication with bidders and created an effective information channel between the owner (or owner's soliciting agent) and the entire participating bidder community, inclusive of DBE and small business firms. SCLAA provides Small Business firms the ability to utilize and review bid/procurement plans at no cost through their website. Bidders, inclusive of DBEs are provided free access to key plan holder information and electronic notification of addendums. SCLAA is confident that providing Small Business firms online access to these crucial plans at no additional cost will aid in leveling the playing field and enable them to submit quality proposals and bids.

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SCLAA will actively implement the Small Business elements to foster small business participation as a requirement of good faith implementation of SCLAA's DBE program.

VII. GOALS, GOOD FAITH EFFORTS AND COUNTING

A. Set-asides or Quotas (§26.43)

SCLAA does not use quotas in any way in the administration of this DBE program.

B. Overall and Contract-Specific DBE Goals

The DBELO shall establish an overall DBE goal over a three-year (Federal Fiscal Year) period, for the participation of DBEs in all budgeted contracts utilizing U.S. DOT federal financial assistance. SCLAA's overall DBE goals represent the amount of ready, willing and able DBEs that are available to participate in contracting opportunities and is reflective of the amount of DBE participation SCLAA would expect, absent the effects of discrimination. SCLAA intends to meet those goals to the maximum extent feasible through the race neutral measures described herein. Where race-neutral measures are inadequate to meet the overall goals, SCLAA will establish DBE goals on contracts with subcontracting opportunities and relative DBE availability.

C. Overall DBE Goal-Setting Methodology (§26.45)

SCLAA will establish an overall DBE goal covering a three-year federal fiscal year period if SCLAA anticipates awarding DOT/FAA funded prime contracts for a cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period.

In accordance with Section 26.45(f) SCLAA will submit its overall goal to FAA on August 1 of each three year goal period. SCLAA's current goal covers the goal period of Federal Fiscal Years 2019-2021 and SCLAA is projected to submit its next overall goal on August 1, 2021.

A description of the methodology utilized to calculate the overall goal submitted for FFYs 2019/21 and the goal calculations can be found on SCLAA's website.

The following delineates the federally prescribed goal-setting methodology (Step 1 and Step 2) and other components SCLAA will follow in establishing an Overall DBE goal, as follows:

1. **Projecting Federal Assisted Contract Expenditures for Three Fiscal Year Period**

In conjunction with the preparation and adoption of the budget for each fiscal year, the DBELO, 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 upcoming three year fiscal period.

2. **Establishing a Base Figure**

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Once SCLAA defines its contracting markets for the upcoming three fiscal year period, SCLAA will establish a base figure following one of the methodologies, in accordance with 49 CFR §26.45, as an initial step in the goal-setting process.

SCLAA may determine the relative availability of DBEs accordingly:

- i. Utilize the CUCP online DBE Directory to establish the number of certified DBEs located within SCLAA's market area, in each NAICS code/category representing a contract scope of work;
- ii. Utilize the U.S. Census Bureau's SCLAA Business Patterns (CBP) data to establish the number of all businesses (DBEs and non-DBEs) located within SCLAA's market area, in each NAICS code/category representing a contract scope of work;
- iii. Determine the ratio of DBEs to all business located within SCLAA's market area, in each NAICS code/category representing a contract scope of work;
- iv. Apply a weighting factor each resulting ratio, based on the percentage of federal funds SCLAA is projected to award and/or expend on various industries; and/or
- v. Utilize a Bidders List.

3. Adjusting the Base Figure

As a mandatory second step, SCLAA will consider, as a basis for adjusting the overall DBE base figure, additional factors/indicators determined to be relevant to DBE availability. These factors may include, but are not limited to:

- i. Demonstrated evidence of DBE capacity to perform work in SCLAA's program;
- ii. Real market conditions;
- iii. Disparity studies conducted within the jurisdiction;
- iv. Other recipients' goal results in similar contracting opportunities and markets, and the reasons for the level of those results;
- v. Methods used by SCLAA to increase DBE participation in U.S. DOT-assisted contracts;
- vi. Demographics and business activity of the geographical area in which SCLAA will solicit bids or proposals;
- vii. Data from statistical disparities of DBEs to obtain financing, bonding and/or insurance;
- viii. Data on employment, self-employment, education and training programs, to the extent that SCLAA can relate it to opportunities for DBEs to perform on federally assisted contracts; and
- ix. Input from public participation.

D. Public Participation (§26.45)

1. Consultation with Community Groups and Constituents

Prior to publication of SCLAA's proposed overall DBE goal, SCLAA will consult with, and solicit input from, a variety of constituent groups representing minority- and women-owned business organizations, contractor organizations, and other industry, ethnic and community-based organizations reasonably expected to possess information regarding the availability of disadvantaged businesses, their capability to perform on SCLAA contracts, and the impacts and effects of contracting discrimination on DBEs.

Upon receipt of any comments, SCLAA's DBELO will analyze the comments, summarize the results, and modify the proposed overall goal, if appropriate.

2. Commercial Advertising of Proposed Overall DBE Goals

Pursuant to new DBE Program regulations effective November 3, 2014, SCLAA understands that commercial advertising of the overall DBE goal is now at SCLAA's discretion. SCLAA will post a public notice to SCLAA's website announcing SCLAA's proposed Overall Goal. If SCLAA commercially advertises its proposed triennial goal, the public notice shall include the following:

- i. Proposed triennial goal percentage for DBE participation
- ii. A statement that the proposed goal and methodology are available for public inspection for a period of 30 days from the date of publication.
- iii. A statement that SCLAA will accept public comments on the proposed goal and methodology for a period of 30 days from the date of publication.
- iv. Contact information and instructions for viewing SCLAA's goal/methodology and/or submitting a public comment.

Upon receipt of any public comments, SCLAA's DBELO will analyze the comments, summarize the results, and modify the overall goal, if appropriate. This will occur prior to final adoption of the triennial goal by SCLAA's Board of Directors and submission to FAA for review.

E. Annual Review and Remedy Reports (49 CFR §26.47)

Pursuant to 49 CFR §26.47(c), SCLAA is required to analyze, on an annual basis, the DBE awards and commitments reported to the FAA. If SCLAA's DBE awards/commitments are less than SCLAA's overall DBE goal for that Federal Fiscal Year (FFY), SCLAA is required to develop a written analysis of the shortfall, as well as establish specific steps and milestones to correct the problems identified in the analysis. SCLAA will submit their written analysis to their FAA Civil Rights Regional Office within 90 day of the FFY end, or by the end of the calendar year.

F. Transit Vehicle Manufacturers (§26.49)

SCLAA shall require all Transit Vehicle Manufacturers (TVMs) to certify that they have complied with 49 CFR §26.49 and have established an overall DBE participation goal that has been approved (or not disapproved) by the FAA before they can bid on any SCLAA transit vehicle procurement.

G. Methods for Meeting Goals (§26.51)

1. Race and Gender-Neutral Measures

SCLAA intends to use race and gender-neutral methods to the maximum extent feasible to achieve its overall DBE goal. DBE participation that is obtained on contracts that have no established DBE contract goal, or where prime contractors use a strictly competitive bidding process and do not consider the DBE's status as a factor in awarding a subcontract shall be considered race and gender-neutral DBE participation.

In addition, SCLAA will use the following measures as appropriate:

- i. When feasible, unbundle large contracts (>\$15 million) to make contracts more accessible to DBEs;
- ii. Identify components of the work which represent subcontracting opportunities and identify the availability of DBE subcontractors to participate in proportion to total available subcontractors. Contractors 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 bids;
- iii. Provide technical assistance to DBEs, in areas relevant to public contracting success; provide referrals to small/minority business assistance organizations;
- iv. Facilitate the distribution of the CUCP DBE Directory to the widest feasible universe of potential prime contractors;
- v. Include small and disadvantaged businesses in SCLAA's outreach, public information, and communications programs, to ensure that DBEs are made aware of SCLAA's contracting opportunities; and

2. Race and Gender Conscious Measures

In accordance with 49 CFR Part 26, SCLAA will project how much of the overall DBE goal can be achieved through race and gender-neutral measures, and will use race-conscious measures, such as contract-specific DBE goals, only to meet that portion of the overall goal which is not likely to be met utilizing race-neutral measures.

Further, SCLAA shall monitor and adjust the estimated utilization of race-neutral and race-conscious methods as required in accordance with 49 CFR 26.51(f).

H. Contract-Specific Goals (§26.51)

The DBELO shall establish contract-specific DBE goals to meet any portion of the overall DBE goal that SCLAA does not project being able to meet using race-neutral means. SCLAA will establish contract-specific goals only on those DOT-assisted contracts that have subcontracting opportunities.

The DBELO will receive from the Southern California Logistics Airport Department, an advance notification form for each upcoming contract, with cost estimates, scope of work, and possible subcontracting opportunities. The DBELO will determine whether a contract DBE goal should be established and if so, will express each goal as a percentage of the total contract value.

SCLAA may establish a DBE contract goal that is higher or lower than its overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract.

SCLAA's contract goals will provide for participation by all certified DBEs and will not be subdivided into group-specific goals.

I. Evaluation and Award of Contracts with DBE Goals (§26.53(a))

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. SCLAA shall award contracts to the lowest responsive and responsible bidder as required by California Public Contract Code, where applicable. However, for such contracts, as well as for contracts awarded pursuant to a competitive negotiation procedure, a bidder/proposer that 1) fails to demonstrate its commitment to meet the established DBE contract goal by listing sufficient DBEs on its "DBE Participation Listing" form required to be submitted with their bids/proposals AND/OR 2) fails to demonstrate that it made an adequate Good Faith Effort to meet the goal, shall be deemed "non-responsive" and shall be ineligible for contract award.

1. Evaluation of Bids and Proposals

After the bid opening or proposal due date, the DBELO shall evaluate all bids/proposals to determine whether the bidders/proposers submitted all information required by 49 CFR §26.53(b). On contracts with established DBE contract goals, the lowest successful bidder or highest ranked proposer who demonstrates its commitment to meet the DBE contract goal or demonstrates an adequate Good Faith Effort (GFE) shall be recommended for contract award. In the event that the lowest bidder or highest ranked proposer fails to either meet the contract goal or demonstrate an adequate GFE, or is otherwise unresponsive or not responsible, the DBELO shall evaluate the second lowest bidder or second highest ranked proposer. Should the DBELO determine that additional information is needed to evaluate a bid or proposal with regard to DBE requirements, the DBELO shall request the bidder/proposer to submit the required information, or may contact the listed DBE(s) directly.

2. Evaluation of DBE Certification Status and DBE Eligibility

The DBELO shall require that all DBEs listed by bidders/proposers for participation in contracts with goals, be certified as such before bids/proposals are due, in order for the DBE participation to be counted towards meeting the DBE contract goal.

SCLAA accepts DBE certifications from all certifying members of the California UCP, and any other U.S. DOT recipients, which certify DBEs in accordance with 49 CFR Part 26. It is the bidder's/proposer's responsibility to verify certification status of all proposed DBEs, prior to listing them on the DBE Participation Listing which is due with the bid or proposal.

When evaluating DBE certification status, SCLAA ensures that the DBE: 1) is certified before bids/proposals are due (§26.81(c)) and 2) is certified in the NAICS code that represents the scope of work to be performed by the DBE on the contract (§26.71).

After award of the contract, it is the prime contractor's responsibility to monitor the DBE certification expiration dates of its DBEs, and to ensure that credit for DBE participation is only granted to DBEs with current DBE certification status.

J. Meeting Established Goals or Demonstrating Good Faith Efforts (§26.53; Appendix A)

If a bidder's/proposer's value of DBE participation does not meet the established DBE contract goal, the DBELO shall review the bidder's/proposer's Good Faith Effort (GFE) documentation to determine responsiveness and shall determine whether the bidder/proposer has performed the quality, quantity, and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the DBE contract goal. Please note, only efforts detailed on SCLAA's "Good Faith Efforts-Information" Form coupled with DBE participation proposed on "DBE Participation Listing" form will be evaluated for demonstration of a Bidder/Proposer's good faith efforts.

The following sections outline the requirements of firms competing for SCLAA contracts to comply with either meeting the DBE contract goal by committing to utilizing sufficient DBEs or by documenting an adequate GFE. Failure for a bidder/proposer to meet a DBE goal or demonstrate that an adequate GFE was made, will deem the bid/proposal non-responsive.

1. Meeting Established Goals

For each solicitation on which a DBE contract goal has been established, SCLAA shall require bidders/proposers to submit the following information to SCLAA at the time of bid/proposal submission, or as designated in the solicitation instructions.

- i. Written and signed documentation of the bidder's/proposer's commitment to utilize DBEs, to be submitted on SCLAA's "DBE Participation Listing" form. Information listed on the form shall include:
 - a. Name, address and contact information for each DBE listed on the contract;
 - b. Description of the work that each DBE will perform;
 - c. Dollar amount of participation of each DBE;

- d. Percentage of total contract value allocated to each DBE;
- e. Prime bidder's/proposer's name, title and contact information;
- f. SCLAA's contract number;
- g. Total dollar amount of participation of all DBEs;
- h. Percentage of total contract value allocated to all DBEs;
- i. DBE commitment percentage;
- j. Prime bidder's/proposer's signature and date
- k. For each listed DBE, proof of valid and current DBE certification in the NAICS code directly applicable to the work the DBE will perform on the contract.

2. Demonstrating Good Faith Efforts (§26.53(b)(2)(vi))

If a bidder/proposer does not list sufficient DBEs on its "DBE Participation Listing" form, to meet the established DBE contract goal, and/or if the DBELO's evaluation of the "DBE Participation Listing" form reveals that the bidder/proposer did not meet the established DBE contract goal, the bidder/proposer must demonstrate an adequate Good Faith Effort (GFE) to be deemed responsive to SCLAA's DBE requirements. The bidder/proposer must demonstrate that it took all necessary and reasonable steps to meet the DBE goal, even if not fully successful.

If a bidder/proposer does not list sufficient DBE commitments to meet the DBE contract goal, then the bidder/proposer shall submit its GFE documentation with their bid/proposal. The GFE must demonstrate that the bidder/proposer took all necessary and reasonable steps to meet the DBE contract goal.

3. Bidder's Right to Administrative Reconsideration

In the event that the DBELO determines that the apparent successful bidder/proposer has not demonstrated its commitment to meet the DBE contract goal AND has not demonstrated an adequate Good Faith Effort, the bidder/proposer will be notified in writing. Please refer to Section VI. E of this Program for further details regarding the Administrative Reconsideration process.

K. Counting DBE Participation (§26.55)

SCLAA 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 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

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hotline at 800-424-9071, email at hotline@oig.dot.gov, online at <https://www.oig.dot.gov/hotline> or U.S. mail at DOT Inspector General, 1200 New Jersey Avenue SE, West Bldg. 7th 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.

2. Commercially Useful Function (§26.55)

To be considered as performing a commercially useful function, 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;
- ii. The DBE carries out its obligation by actually performing, managing, and supervising the work involved;
- 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 force 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 Department Operating Administration.

During the course of the contract containing a DBE goal, SCLAA or an agent of SCLAA may conduct on-site monitoring interview/observation to ensure that work committed to DBEs is actually being

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performed by DBEs in the same capacity as the DBE participation being reported. This monitoring effort is fully incorporated into SCLAA's DBE On-site Compliance field observation process. This observed work will be reconciled against the DBE subcontractor agreement(s) and Prime Contractor Form 103.

3. DBE Participation Credit

SCLAA 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 SCLAA'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 SCLAA, 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 contract goal fulfillment.

VIII. DBE CERTIFICATION AND ELIGIBILITY

Certification is the process by which all businesses seeking to participate in SCLAA's DBE Program are determined to be legitimate DBEs as defined by U.S. DOT at 49 CFR Part 26.61-26.91, Subpart D and Appendix E, as amended and as defined by SBA at 13 CFR Part 121.

A. California Unified Certification Program (§26.81)

49 CFR §26.81 requires all public agencies that receive U.S. DOT financial assistance to participate in a statewide Unified Certification Program (UCP). A UCP is a "one-stop shopping" certification program that standardizes DBE eligibility criteria and the application process and eliminates the need for a DBE to certify with multiple agencies within the state.

SCLAA is a non-certifying member of a Unified Certification Program (UCP) administered by the California Unified Certification Program (CUCP). The UCP will meet all of the requirements of this section. SCLAA will use and count for DBE credit only those DBE firms certified by the CUCP.

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CUCP agencies are classified as certifying and non-certifying members. CUCP certifying members perform DBE certifications which apply to all U.S. DOT funded contracts. Certification activities include processing applications, reviewing financial and company ownership information, performing site visit and employee interviews, making certification decisions, investigating certification complaints and appeals, and maintaining a single statewide directory of certified DBEs. A business certified as a DBE by any CUCP certifying member is automatically accepted by all U.S. DOT recipients in California.

Effective August 1, 2013, the California UCP (including Caltrans) is no longer issuing DBE Certificates as evidence of certification. A copy of a printout from the DBE Database should be sufficient proof of a firm's certification. Prime contractors and awarding agencies should not impose on DBE firms the burden of providing a DBE certificate in their bid packages - it is not required.

A non-certifying member agency adheres to all aspects of the U.S. DOT DBE program, except that it does not perform DBE certification activities. SCLAA is a NON-certifying member of the CUCP; therefore, SCLAA accepts DBE certifications from all CUCP certifying members. SCLAA maintains a copy of the latest CUCP Memorandum of Agreement (MOA) on file, as well as a Declaration of Status Letter signed by SCLAA's DBELO and the CUCP Secretary and Chair.

For certification inquiries, contact one of the agencies listed below:

Agency	Business Address	Telephone No.	Fax No.
City of Los Angeles Office of Contract Compliance <i>www.lacity.org/bca</i>	1149 South Broadway Street, Room 300 Los Angeles, CA 90015	(213) 847-2684	(213) 847-2777
Los Angeles City Metropolitan Transportation City (METRO) Diversity and Economic Opportunity Department <i>www.metro.net</i>	One Gateway Plaza Los Angeles, CA 90012	(213) 922-2600	(213) 922-7660
S. F. Bay Area Rapid Transit District (BART) Office of Civil Rights <i>www.bart.gov</i>	300 Lakeside Drive, 18th Floor Oakland, CA 94612	(510) 464-7580	(510) 464-7587
City of Fresno DBE Program <i>www.ci.fresno.ca.us</i>	2101 G Street, Building A Fresno, CA 93706	(559) 621-1182	(559) 488-1069
Santa Clara Valley Transportation Authority (VTA) Small & Disadvantaged Businesses <i>www.vta.org</i>	3331 North First Street San Jose, CA 95134	(408) 321-5962	(408) 955-9729
Central Contra Costa Transit Authority (CCCTA) Office of Civil Rights <i>www.cccta.org</i>	2477 Arnold Industrial Way Concord, CA 94520	(925) 676-1976	(925) 686-2630

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San Francisco Municipal Transportation Agency (SFMTA) Contract Compliance Office San Francisco Municipal Railway <i>www.sfmuni.org</i>	1 South Van Ness Avenue, 3rd Floor San Francisco, CA 94103	(415) 701-4443	(415) 701-4347
San Mateo City Transit District (SAMTRANS) / Peninsula Corridor Joint Powers Board (CALTRAIN) DBE Office <i>www.samtrans.com</i>	1250 San Carlos Avenue San Carlos, CA 94070	(650) 508-7939	(650) 508-7738
California Department of Transportation (CALTRANS) Office of Business & Economic Opportunity – MS #79 <i>www.dot.ca.gov</i>	1823 14th Street Sacramento, CA 95814	(916) 324-1700 (866) 810-6346	(916) 324-1862

B. Scope of Work Covered by Certification (§26.71(n))

Firms must be DBE certified in the scope of work (represented by NAICS/WCC code(s)) directly applicable to their performance on a contract. If a firm wishes to participate on a contract under a scope of work for which the firm is not currently certified (i.e., if the firm wishes to add one or more NAICS/WCC codes to its certification), the firm must contact its certifying agency and submit all required documentation to demonstrate DBE ownership and control of the specific type(s) of work the firm wishes to add to its DBE certification. The firm shall then submit proof of DBE certification in the applicable scope(s) of work to SCLAA, in order to receive DBE credit for performing that scope of work. For a firm’s DBE participation to be counted towards a bidder’s/proposer’s initial DBE commitment, the firm must be DBE certified in the applicable scope of work prior to the bid/proposal due date.

C. Annual Affidavit of Continuing Eligibility

Each certified DBE is required to submit a written affidavit to its certifying agency once annually, on the anniversary date of the firm’s initial certification, to certify that the firm continues to meet DBE eligibility criteria as defined in 49 CFR Part 26. The affidavit must affirm that there have been no changes in the firm’s circumstances affecting its ability to meet DBE eligibility, including size, gross receipts, DBE status, ownership, or control requirements. The affidavit must also affirm that there have been no material changes to the information provided in the original certification application.

If the DBE fails to submit an affidavit, or any required supporting documentation, in a timely manner, it will be deemed to have failed to cooperate with 49 CFR Part 26 and will no longer be considered a certified DBE. It is the DBE’s sole responsibility to maintain its certification status with the certifying agency.

D. Notification of Change in Circumstances

If a DBE's circumstances affecting the firm's DBE eligibility change at any time after the firm has been identified as a DBE participant on an SCLAA contract, the DBE must provide written notification of such change(s) to its certifying agency, SCLAA and the prime contractor, if applicable. Such changes include, but are not limited to, business size, gross receipts, disadvantaged status, ownership, and/or control requirements. The written notification shall be provided by the DBE within thirty (30) days of occurrence of the change(s). If the DBE fails to make timely notification of such changes, it will be deemed to have failed to cooperate with 49 CFR Part 26.

E. Lapse in Certification Status

If a DBE participant on an SCLAA contract ceases to be certified at any time during the life of the contract, any participation by that DBE after the firm ceases to be certified will not count as DBE participation in SCLAA's reporting to FTA.

F. Procedures for Removal of DBE Eligibility (§26.87)

Pursuant to 49 CFR §26.87, any person may file a written complaint alleging that a currently certified DBE is ineligible to be certified as such, and specifying the alleged reasons why the firm is ineligible. Because SCLAA is a NON-certifying member of the CUCP, SCLAA will implement the following procedures upon receipt of a written complaint challenging a firm's DBE certification status. SCLAA will also protect the confidentiality of complainants' identities as required by 49 CFR §26.09(b).

1. Obtain the name of the CUCP certifying member agency that issued the DBE's certification;
2. Provide the complainant(s) with contact information for the CUCP certifying member agency;
3. Provide the complainant(s) with a copy of 49 CFR §26.87, which outlines the DBE eligibility removal process; and
4. Provide a written notification to the DBE in question, stating that the firm's DBE eligibility has been challenged and that the complainant has been referred to the DBE's certifying agency; include a copy of 49 CFR §26.87. If the DBE in question is a current participant in SCLAA's DBE Program, remind the DBE of its obligation to notify SCLAA of any change in the DBE's certification status within 30 days of the change.

G. Certification Denials and Appeals (§26.89)

Firms that have applied for and were denied DBE certification under one or more NAICS codes, and/or firms whose certification has been removed by a CUCP certifying member agency, may file an administrative appeal with the U.S. DOT within 90 days from the date of denial, in accordance with 49 CFR §26.89. Certification decisions are NOT appealable to SCLAA.

To file a DBE certification appeal, firms should send a letter to the U.S. DOT Office of Civil Rights. The appeal should, at a minimum, include information and arguments concerning why the recipient's decision should be reversed, a copy of the denial letter, and any additional information the denied

firm believes to be pertinent to the appeal. Firms must provide the name(s) and address(es) of any DOT recipient the firm is currently certified with or who has rejected its application for certification or removed the firm's eligibility within one year prior to the date of the appeal. This includes applications currently pending certification action.

All appeals should be submitted to: U.S. Department of Transportation, Office of Civil Rights, External Civil Rights Programs Division (S-33), 1200 New Jersey Avenue S.E., Washington, DC 20590, Phone: (202) 366-4754, TTY: (202) 366-9696, Fax: (202) 366-5575.

IX. COMPLIANCE AND ENFORCEMENT OVERSIGHT

A. Information, Confidentiality, Cooperation (§ 26.109)

SCLAA will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, SCLAA 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.

B. Monitoring Payments to DBEs and Non-DBEs (§ 26.37)

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

SCLAA will perform interim audits of contract payments to DBEs and non-DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts committed in the DBE Participation Listing or DBE subcontract.

Additionally, SCLAA'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. SCLAA will display both DBE commitments and attainments in its reports of DBE participation to the U.S. DOT.

C. Compliance Monitoring (§26.37)

SCLAA 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 requiring Prime's to submit a copy of a signed subcontractor agreement between the prime contractor/consultant and the DBE within ten (10) days;
2. Collecting/reviewing monthly DBE utilization reports (SCLAA Form 103) quarterly;

3. Verifying payments made to DBEs;
4. Tracking DBE participation throughout the life of the contract;
5. Conducting site visits, field observations and construction worker interviews on applicable contracts;
6. Imposing administrative sanctions for willful contractor non-compliance with DBE Program requirements;
7. Recording and reporting final DBE participation at contract close-out; and
8. Measuring achieved DBE participation in comparison to committed participation.

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

D. DBE Substitutions and Terminations (§26.53 (f) and (g))

1. DBE Substitutions/Additions

If a contractor wishes to add or substitute a DBE firm during the contract term, the contractor will be required to submit a completed "DBE Addition Form" or "DBE Substitution/Termination Form" for SCLAA's approval, along with sufficient information to justify such change(s). When substituting a DBE with another firm, whether DBE or non-DBE, the contractor shall fully comply with DBE subcontractor termination regulations detailed in 49 CFR §26.53 (f) and (g). Requests for DBE substitutions and additions shall be subject to prior written approval by SCLAA.

2. DBE Terminations

Contractors shall be required to comply with 49 CFR §26.53 regarding DBE subcontractor terminations, including the following:

- i. A Contractor shall not terminate a listed DBE subcontractor without SCLAA's prior written consent.
- ii. A Contractor may only terminate a DBE subcontractor for "good cause."
- iii. Prior to the termination request, the prime contractor must notify the DBE, in writing, of the intent to terminate, allowing for five days of response time in opposition of the rejection.
- iv. "Good cause" includes the following circumstances:
 - a. DBE subcontractor fails or refuses to execute a written contract;
 - b. DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards;

- c. DBE subcontractor fails or refuses to meet the prime Contractor's reasonable, nondiscriminatory bond requirements;
 - d. DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - e. DBE subcontractor is ineligible to work on public works projects because of suspension or debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
 - f. DBE subcontractor is determined to be not a responsible contractor;
 - g. DBE subcontractor voluntarily withdraws, with written notification, from the project;
 - h. DBE subcontractor is ineligible to receive DBE credit for the type of work required;
 - i. DBE subcontractor's owner dies or becomes disabled, resulting in the DBE's inability to complete the contract work;
 - j. Other documented compelling reason(s), including violating SCLAA's on-site safety rules and requirements.
 - k. The Contractor's reason(s) for terminating the DBE subcontractor must make the termination essential, not merely discretionary or advantageous.
- v. 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 (e.g., failure of the prime contractor to make timely payments or the unnecessary placing of obstacles in the path of the DBE's work). Good cause also does NOT exist if the prime Contractor seeks to terminate a DBE so that it can self-perform the work of the terminated DBE.
- vi. The Contractor must make a Good Faith Effort (GFE) to replace the terminated DBE with another DBE within five (5) days of the approved termination. The contractor's GFE shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the established DBE contract goal and/or the Contractor's DBE participation commitment approved by SCLAA prior to award of the Contract.
- vii. Failure by the Contractor to adhere to these requirements may constitute a material breach of contract, which may result in the termination of the contract or such other remedy as SCLAA deems appropriate.

E. Administrative Sanctions for Non-Compliance

Non-compliance with DBE Program requirements may subject the Contractor to administrative sanctions as outlined below:

1. A non-compliant contractor may be notified by the DBELO or designee, that administrative remedies shall be imposed when DBE requirements are not met, inclusive of but not limited to failure to: (a) meet the contractor's DBE commitment by contract end, (b) submit documentation of Good Faith Efforts, (c) submit required and accurate DBE utilization reports, (d) submit verification of prompt payment to DBE subcontractors, and/or (e) comply with proper DBE substitutions/termination procedures. The notice shall state the administrative remedy(ies) to be imposed.
2. The contractor shall be given ten (10) working days from the date of the notice to file a written appeal to SCLAA's DBELO. Failure to respond within the ten (10) day period shall constitute a waiver of appeal.
3. The DBELO or his designee may schedule a hearing to gather additional facts and evidence, and shall issue a final written determination on the matter within thirty (30) working days following receipt of the written appeal. The written decision of SCLAA's DBELO or designee is final and there is no further appeal.

Administrative remedies shall be determined by the DBELO and may include, but not be limited to:

1. Suspension of progress payments to the contractor or of any monies held by SLCA as retention on the contract until the contractor is brought into compliance; and/or
2. Termination of the contract in part or in whole.

F. Dispute Resolution

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for dispute resolution remedies in instances where contractors violate or breach DBE Program requirements, inclusive but not limited to, prompt payment and provide for such sanctions and penalties as may be appropriate

SCLAA will require prime contractors to include in their subcontracts language providing that prime and subcontractors will use the following alternative dispute resolutions to resolve disputes relating to the DBE Program requirements.

The Contractor and Subcontractor agree to notify SCLAA within five (5) business days of any prompt payment and/or DBE Program disputes which cannot be settled by discussions between the parties involved.

The Contractor and Subcontractor further agree to proceed through informal meetings, mediation, or arbitration, or any combination thereof as further detailed below. Dispute submittals shall include the method(s) of dispute resolution selected, terms, timeframes and a detailed summary of assistance being requested (as applicable).

1. Informal Meetings

SCLAA is available to assist the prime with coordination of Informal meeting requests, to assist in the resolution of disputes between Contractor and subcontractor. SCLAA's DBELO or a designated DBE support representative will conduct the Informal meetings with parties in dispute.

Representatives from the Contractor and Subcontractor, for the purpose of dispute resolution, must include individuals authorized to bind each interested party. All parties must agree to the procedure.

2. Mediation

The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third-party organizations. SCLAA's DBELO and designated support staff is considered an independent third party. Submission to informal mediation is voluntary; is not binding and offers advisory opinions.

3. Arbitration

Should the parties fail to resolve any DBE related dispute arising out of or related to the contract via informal meetings or mediation, the parties are contractually obligated to submit the claims for arbitration within 120 days from date SCLAA is notified of the dispute. Arbitration conducted pursuant to the contract shall be binding upon all parties to the arbitration, however, the findings do not in any way relieve the contractor of its obligation to meet a DBE goal. All arbitration is to be conducted in a manner consistent with section 1020 et seq. of the Public Contract Code and Section 1296 of Code of Civil Procedure

Should the parties proceed to arbitration, moneys due, if any, shall be placed in a trust account. Such funds shall be released to the appropriate party within five (5) working days of a determination being issued by the arbitrator.

Unless otherwise directed by SCLAA, the prime contractor and its sub tiers shall continue performance under the Contract while matters in dispute are being resolved.

These provisions shall not apply to disputes between the prime contractor and SCLAA. These provisions do not alter in any way or waive compliance with other provisions in the contract agreement.

G. Contractor Reporting and Documentation Submittal Requirements

SCLAA shall define all required DBE-related forms to be submitted by the bidder/proposer and/or selected contractor, as applicable, and shall list its contract monitoring mechanisms to ensure contractor compliance with all DBE provisions set forth in SCLAA's DBE Program.

1. Notification of Contractor Reporting Responsibilities

Prior to execution of all contracts containing DBE goals and/or DBE commitments, the prime contractor shall be directed to the contract specifications for SCLAA's specific DBE reporting and

recordkeeping requirements. SCLAA will include templates of required reporting forms in the bid/RFP documents and sample contracts.

2. Bidders List

All prime bidders/proposers are required to complete and submit to SCLAA, a Bidders List for their firm and for all firms (DBEs and non-DBEs) that submitted a bid, quote or proposal to the prime bidder/proposer.

3. Pre-Award: DBE Participation Listing Form

All prime bidders/proposers are required to complete and submit a "DBE Participation Listing" form with the their bid/proposal submission. Bidders/proposers shall also submit a DBE Commitment Letter from each DBE Firm listed on the Participation Listing to SCLAA, confirming the value and scope the prime bidders/proposer has listed them to perform.

4. Contract Compliance Reporting Responsibilities

If a contractor is a DBE firm and/or has proposed to utilize DBE firms, the contractor will be required to complete and submit to SCLAA, monthly and final DBE utilization reports (Form 103 and Payment Verification) by the 15th of each month until completion of their contract or agreement to facilitate reporting of DBE participation, following the first month of contract activity. Failure to submit these reports in a timely manner shall result in a penalty of \$25 per day, per report. Failure to submit required reports may also result in additional administrative sanctions pursuant to SCLAA's DBE Policy and 49 CFR Part 26. The Contractor is advised not to credit the participation of DBEs on the respective reporting form until the amount being credited has been paid to the DBE firm. SCLAA Form 103 Report shall include the following information:

- a) Name of each DBE Subcontractor/consultant.
- b) General work assignment of each DBE Subcontractor/consultant.
- c) The specific portion of work executed by each DBE Subcontractor/consultant during the reporting period.
- d) The dollars committed to each DBE Subcontractor/consultant.
- e) The dollar value committed to lower-tier subcontractors/consultants under each listed DBE.
- f) The dollars paid to each DBE Subcontractor/consultant during the reporting period.
- g) The dollars paid to date for each DBE Subcontractor.
- h) The dollar value paid to date for lower tier subcontractors/consultant under each listed DBE.
- i) The dollars paid to the DBE as a result of a change order or other cost modification.
- j) The dollars paid to date as a percentage of the total commitment to each DBE.

- k) Date of last progress payment
- l) Prime Contractor/Consultant signature under penalty of perjury that it has complied with all requirements of 49 CFR, Part 26 and prompt payment requirements of the California Public Contract Code.

For each payment reflected to a DBE firm in Form 103 Reporting Month an associated Payment Verification must be submitted. The Payment Verification shall include the following information:

- a) Invoice number, amount and Invoice Date
- b) Payment value and associated payment date to DBE firm
- c) Check Number or wired Transfer number
- d) Invoice number corresponding to last payment to subcontractor
- e) Retention, as applicable
- f) Clear detailing of payment to lower-tiers under the DBE firm
- g) DBE signature under penalty of perjury that payment data reported is accurate.

5. Good Faith Efforts (GFE)

During the term of the contract, the contractor shall continue to make a Good Faith Effort (GFE) to ensure that DBEs have an opportunity to successfully perform in the contract, and that the contractor actualizes DBE commitments. These efforts shall include but shall 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 bid or proposal;
- ii. Documenting efforts to seek out and utilize additional DBE suppliers and subcontractors when necessary and authorized by SCLAA;
- iii. Continuing to provide assistance to DBE subcontractors or suppliers in obtaining bonding, lines of credit, etc.;
- iv. Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting SCLAA approval to substitute the DBE.
- v. Paying all subcontractors (DBEs and non-DBEs) in a timely manner, as listed in the contract specifications;
- vi. Alerting SCLAA in a timely manner of any problems anticipated in attaining the DBE participation goal committed to in the bid or proposal;

- vii. If a DBE substitution is necessary, making a Good Faith Effort to replace the DBE with another DBE, subject to the approval of SCLAA.

X. OUTREACH EFFORTS

SCLAA conducts a variety of outreach activities in support of its DBE Program and to facilitate small and disadvantaged business participation on SCLAA contracts and procurements. DBE-focused, as well as race and gender-neutral outreach activities include, but are not limited to, the following:

SCLAA participates in the San Bernardino County Purchasing Department Annual Vendor Show. This event features over 500 vendors and gives them an opportunity to meet decision makers from local government agencies from across California.

A. Vendor Database and Electronic Notification of Contracting Opportunities

SCLAA utilizes eBidboard to provide DBEs with the detailed information they need to effectively bid and win California public works construction projects. SCLAA has found that eBidboard has improved the solicitation, proposal and bid process utilizing web-enabled interactive data services that have resulted in revenue generating, cost effective opportunities for small businesses and DBEs.

B. Pre-Bid and Pre-Proposal Meetings

SCLAA holds pre-bid/pre-proposal meetings for Federally-assisted bid and RFP opportunities to provide an opportunity for firms to meet SCLAA staff and buyers and provide an opportunity for small and large firms to meet and build relationships for future teaming opportunities. These meetings provide a venue for prime and subcontractor teaming and partnering.

C. DBE Program Website

SCLAA maintains a DBE Program webpage at <https://victorvilleca.gov/government/city-departments/airport>. The website contains an overview of SCLAA's DBE Program, a link to a copy of SCLAA's DBE Program Policy Statement, contact information for SCLAA's DBE Liaison Officer, a link to the CUCP website and DBE certification information, a link to the CUCP state-wide online DBE directory and a link to detailed instructions for locating DBEs on the online DBE directory.