Subject: REVIEW OF FISCAL POLICY 326 – DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

RECOMMENDED ACTION: [ ] Information Only  [ X ] Recommended Motion
   Review the District’s DBE Program and ratify minor revisions as described below..........................

Fiscal Impact: None

Prior Relevant Board Actions/Policies:

Board Policy No. 302 – Introduction to Fiscal Policies – was adopted in December 2001. It requires that the Board of Directors review the fiscal policies of the District at least every other year.

Fiscal Policy No. 326 – DBE Program – was approved by the Board of Directors on July 14, 1999.

Background/Discussion:

As a recipient of funds from the Federal Transit Administration (FTA) of the U.S. Department of Transportation, AC Transit is required to implement a DBE Program pursuant to 49 CFR Parts 23 and 26. The DBE Program is prepared in accordance with federal regulations, and is revised only when such regulations are amended.

BOARD ACTION: Approved as Recommended  [x]  Other  [ ]
   Approved with Modification(s)  [ ]

MOTION: PIRAS/PEEPLES to ratify revisions as presented. (7-0)

Ayes: Director Piras, Vice President Peeples, Harper, Wallace, Creason, Cross, President Williams - 7
Noes: None - 0
Abstain: None - 0
Absent: None - 0

The above order was passed and adopted on March 7, 2002.
Rose Martinez, District Secretary

By ________________________________
Macias, Gini & Company LLP was engaged to conduct a review of the fiscal policies and procedures of the District. A review of Policy No. 326, the DBE Program, was conducted, generating the following comment: “There is a typo in Section 1, paragraph 3 – the word “contacts” should be replaced with the word “contracts”. This correction has been made.

The following minor revisions to the 1999 document have been made:

(1) The title of the staff member responsible for the DBE Program is now DBE/Program Compliance Administrator (or DBE Administrator); and
(2) The DBE Administrator’s office address, phone and fax numbers, and e-mail address have changed from the Central Maintenance Facility to the General Office.

Attachments: DBE Program

Approved by: Rick Fernandez, General Manager

Prepared by: Deborah McClain, Chief Financial Officer
Carol Babington, Assistant General Counsel
Sandra Privett, DBE/Program Compliance Administrator

Date Prepared: February 12, 2002
ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

(AC TRANSIT)

DISADVANTAGED BUSINESS ENTERPRISE

(DBE) PROGRAM

APPROVED BY AC TRANSIT BOARD OF DIRECTORS:

July 14, 1999

APPROVED BY FEDERAL TRANSIT ADMINISTRATION:

July 20, 2000
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

I. POLICY (Section 26.3)

The Alameda-Contra Costa Transit District (“District”) is committed to a Program for the participation of Disadvantaged Business Enterprises (“DBEs”) in District contracting opportunities in accordance with 49 Code of Federal Regulations (C.F.R.) Part 26, effective March 4, 1999, as may be amended (“Regulations”). It is the policy of the District to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of the U.S. Department of Transportation (“U.S. DOT”) assisted contracts. It is the intention of the District to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to the District’s construction, procurement and professional service activities.

The Board of Directors is responsible for establishing the DBE policy of the District. The General Manager of the District is responsible to ensure adherence to this policy. The DBE/Program Compliance Administrator, in coordination with all District Officers, Executive Staff, Department Managers, and Purchasing and Buying Staff, is responsible for the development, implementation and monitoring of the DBE Program in accordance with the District’s nondiscrimination policy. It is the expectation of the Board of Directors and the General Manager that all District personnel shall adhere to the spirit, as well as the provisions and procedures, of this Program.

This policy will be circulated to all District personnel and to members of the community that perform or are interested in performing work on District contracts. The complete DBE Program and the overall annual DBE goal analysis are available for review at the office of the District’s DBE/Program Compliance Administrator, 1600 Franklin Street, Oakland, CA 94612.

If there are any questions or need for further information regarding this program, please contact the DBE Administrator, Sandra L. Privett, by telephone at (510) 891-7176, by fax at (510) 891-4724 or email – sprivett@actransit.org.

DATE: JULY 14, 1999

/s/ Matt Williams
MATT WILLIAMS
President, Board of Directors
A. **Applicability** (Sections 26.3 and 26.21)

The District, a recipient of federal financial assistance from the Federal Transit Administration (“FTA”) of the U.S. DOT, is required to implement a DBE Program in accordance with 49 C.F.R. Part 26, which is incorporated herein by this reference. The Program outlined herein applies to all District contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance. To the extent that the Program’s policy, objectives and efforts involve race-neutral and gender-neutral methods, the Program will apply to all District contracts regardless of funding source. In the event of any conflicts or inconsistencies between the Regulations and this DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail.

B. **Objectives** (Section 26.1)

The objectives of this Program are the following:

1. To remove barriers to DBE participation in the bidding, award and administration of District contracts;
2. To assist DBEs to develop and compete successfully outside of the Program;
3. To ensure that the Program is narrowly tailored in accordance with 49 C.F.R. Part 26;
4. To ensure that only DBEs meeting the eligibility requirements are permitted to participate as DBEs;
5. To identify business enterprises that are eligible as DBEs to provide the District with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;
6. To develop communication programs and procedures which will acquaint prospective DBEs with the District’s contract procedures, activities and requirements and allow DBEs to provide the District with feedback on existing barriers to participation and effective procedures to eliminate those barriers; and
7. To administer the Program in close coordination with the various divisions and departments within the District so as to facilitate the successful implementation of this Program.

C. **Prohibited Discrimination** (Section 26.7)

The District shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by 49 C.F.R. Part 26 on the basis of race, color, sex or national origin.
The District shall not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this program with respect to individuals of a particular race, color, sex or national origin.

II. **DEFINITIONS** (Section 26.5)

Any terms used in this Program that are defined in 49 C.F.R. § 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. Some of the most common terms are defined below:

A. **Disadvantaged Business Enterprise (DBE) (Section 26.5)**

A DBE is a for-profit, small business concern; 1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and 2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

B. **Small Business Concern (Section 26.5)**

A small business concern is an existing small business, as defined by Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 C.F.R. Part 121), whose average annual gross receipts for the previous three (3) years does not exceed $16.6 million (or as adjusted for inflation by the Secretary of U.S. DOT) pursuant to 49 C.F.R. § 26.65(b).

C. **Socially and Economically Disadvantaged Individuals (Section 26.5)**

There is a rebuttable presumption that an individual is both socially and economically disadvantaged if s/he is a citizen or lawfully admitted permanent resident of the United States and is:

1. Black American (including persons having origins in any of the Black racial groups of Africa);

2. Hispanic American (including persons of Central or South American, Cuban, Dominican, Mexican, Puerto Rican, or other Spanish or Portuguese culture or origin, regardless of race);

3. Native American (including persons who are Aleuts, American Indians, Eskimos, or Native Hawaiians);

4. Asian-Pacific American (including persons whose origins are from Brunei, Burma (Myanmar), Cambodia (Kampuchea), China, the Commonwealth of the Northern Marianas Islands, the Federated States of Micronesia, Fiji, Guam, Hong Kong, Indonesia, Japan,
Juvalu, Kirbati, Korea, Laos, Macao, Malaysia, Nauru, the Philippines, Samoa, Taiwan, Thailand, Tonga, the U.S. Trust Territories of the Pacific Islands (Republic of Pilau), or Vietnam;

5. Subcontinent Asian American (including persons whose origins are from Bangladesh, Bhutan, India, the Maldives Islands, Nepal, Pakistan, or Sri Lanka);

6. A Woman; or

7. A member of any additional group that is designated as socially and economically disadvantaged by the Small Business Administration.

Additionally, any individual can demonstrate, by a preponderance of evidence, that s/he is socially and economically disadvantaged on a case-by-case basis. The District will follow the guidelines in 49 C.F.R. Part 26, Appendix E.

An individual cannot be presumed or determined on a case-by-case basis to be economically disadvantaged if s/he has a personal net worth exceeding $750,000 (excluding the individual’s ownership interests in the small business concern and his or her primary residence).

D. **Race-Neutral** (Section 26.5)

A procedure or program that is used to assist all small businesses. For the purposes of this Program, race-neutral includes ethnic and gender neutrality.

E. **Race-Conscious** (Section 26.5)

A measure or program that is specifically focused on assisting only DBEs, including women-owned DBEs.

F. **Personal Net Worth** (Section 26.5)

The net value of the assets of an individual remaining after total liabilities is deducted. An individual’s personal net worth does not include the individual’s ownership interest in an applicant or participating DBE firm, or the individual’s equity in his or her primary place of residence. An individual’s personal net worth includes only his or her share of community property.

III. **RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION**

A. **Duties of the DBE Administrator** (Section 26.25)

Pursuant to 49 C.F.R. § 26.23, the Program shall be administered by the DBE/Program Compliance Administrator (herein called DBE Administrator), who shall be appointed by and have direct access to the General Manager of the District on DBE issues. The DBE Administrator will be the primary person responsible for implementing all aspects of this Program, and will work closely with all other departments and consultants of the District,
including legal, procurement, and others who are responsible for making decisions relative to the District’s construction, procurement and professional service contracts.

The DBE Administrator’s specific duties and responsibilities are attached as Exhibit A and incorporated herein.

B. **Duties of the DBE Program Review Committee**
   **(Sections 26.53 and 26.87)**

   The Purchasing & Materials Manager and the Capital Projects & Grants Department Manager shall comprise the DBE Program Review Committee (“DBE Review Committee”). The DBE Administrator shall attend all meetings and furnish background information, but shall not be a voting member of the Committee. The DBE Review Committee shall concur with recommendations of the DBE Administrator to implement this Program and review recommendations to the General Manager and the Board of Directors with respect to the establishment of an overall annual DBE participation goal and contract-specific goals for appropriate individual contracts. The DBE Review Committee shall preside over hearings that may be held pursuant to this Program, including administrative reconsideration of the DBE Administrator’s determination of a bidder’s compliance with good faith efforts or of the removal of DBE certification, in accordance with 49 C.F.R. §§ 26.53(d) and 26.87(e), respectively.

C. **Duties of District Officers, Department Managers, and Purchasing and Buying Staff** **(Section 26.53)**

   All District Officers, Department Managers, and Purchasing and Buying staff are responsible for the implementation of the DBE program in their respective areas of authority in coordination with the DBE Administrator.

D. **Regional Transit Coordinating Council Minority Affairs Committee**
   **(Section 26.83)**

   The DBE Administrator is designated by the General Manager to represent the District as a member of the Regional Transit Coordinating Council Minority Affairs Committee (“RTCC MAC”). The District will participate in RTCC MAC programs and activities in the San Francisco Bay Area, in order to create a level playing field on which DBEs can compete fairly; to enhance outreach and communication efforts with these firms; to provide appropriate assistance and information for participation in U.S. DOT-assisted contracts; to develop joint resources among recipients; and to coordinate DBE certification efforts through reciprocity and the development of a statewide Unified Certification Program. To this end, the DBE Administrator will attend scheduled meetings of the RTCC MAC and will contribute to the achievement of RTCC MAC projects approved by the District’s General Manager.
IV. ADMINISTRATIVE REQUIREMENTS

A. DBE Financial Institutions (Section 26.27)

The DBE Administrator shall explore the full extent of services offered by banks and other financial institutions that qualify as DBEs in the San Francisco Bay Area and determine areas in which the District may reasonably utilize their services. The District shall also encourage its prime contractors to use the services of DBE financial institutions.

B. DBE Database (Section 26.31)

The DBE Database is a consolidated and automated DBE Directory that identifies firms that have been certified as DBEs by the RTCC MAC member agencies. The DBE Database is jointly maintained and updated by the RTCC MAC member agencies in coordination with the Metropolitan Transportation Commission (“MTC”). The DBE Administrator will maintain and update the DBE Database. The District will use the DBE Database as the primary resource in developing overall and contract-specific DBE participation goals and conducting outreach and other activities to promote DBE participation in U.S. DOT contracts. The DBE Database is available at MTC’s website on the Internet, www.mtc.ca.gov and shall be distributed to contractors and shall be made available to the public on request. The DBE Database shall include the firm’s name, address, telephone number, and types of work (utilizing Standard Industry Classification Codes (SICs)) for which the firm is certified as a DBE. Additionally, the DBE Database may include, whenever possible, the date the firm was established, the legal structure of the firm, the percentage owned by disadvantaged individuals, capacity, previous work experience and a contact person. The DBE Database shall not in any way prequalify the identified DBE firms with respect to licensing, bondability, competence or financial responsibility.

C. Bidders List (Section 26.11)

The Purchasing Department and DBE Administrator will create and maintain a bidders list consisting of all firms bidding on prime contracts and bidding or quoting on subcontracts on U.S. DOT-assisted projects. For every firm, the following information will be included: firm name, firm address, firm status as a DBE or non-DBE, the age of the firm, and the annual gross receipts of the firm. District staff will maintain the confidentiality of any proprietary information in accordance with applicable California law. This information will be requested of all bidders as further described in Section IX.

D. Over-Concentration (Section 26.33)

If the DBE Administrator determines that DBE participation is so over-concentrated in certain types of work or contracting opportunities that it unduly burdens the participation of non-DBEs in that type of work, the DBE Administrator will develop appropriate measures to address the over-concentration. The DBE Administrator will seek approval of such measures from the FTA and, at that time, the measures will become a part of this Program. Currently, the District is unaware of any types of work that have a burdensome over-concentration of DBE participation.
E. **Business Development Programs** (Section 26.51)

The District will provide race-neutral and gender-neutral efforts to promote small business concerns, including DBEs, in District contracting opportunities through business development programs. Each year the DBE Administrator will facilitate at least two small business events, which may be coordinated with other U.S. DOT grantees, federal agencies, or local organizations, to promote DBE outreach programs. Small businesses will be invited to meet with the DBE Administrator, Purchasing and Project Management staff and learn about the District’s contracting opportunities. District staff will have an opportunity to become acquainted with qualified business owners who are interested in supplying services and products to the District. In addition, the DBE Administrator will provide information on DBE certification and DBE program requirements and procedures. These events will include procedures explaining how to do business with the District and explore best business practices that may be used to market small businesses at the District.

F. **Dissemination of Policy Statement** (Section 26.23)

The District shall issue a signed and dated Policy Statement throughout the District and to the business community, including DBEs and non-DBEs that perform work on U.S. DOT-assisted contracts for the District. The entire Program will be made generally available to the public upon request.

G. **Monitoring Actual DBE Participation** (Sections 26.37 and 26.55)

The DBE Administrator shall monitor and track the actual DBE participation through contractor and subcontractor reports of payments, and other appropriate monitoring, as further described in Section IX. The DBE Administrator shall ensure that DBE participation is counted toward contract goals and the overall annual goal in accordance with the Regulations.

H. **Reporting to U.S. DOT** (Section 26.11)

The DBE Administrator will continue to provide the reports regarding DBE participation required by the Regulations to U.S. DOT.

V. **DETERMINING, ACHIEVING GOALS AND COUNTING OVERALL ANNUAL DBE PARTICIPATION** (Section 26.45)

The Board of Directors shall establish overall annual goals on a fiscal year basis for the participation of DBEs in all budgeted contracts utilizing U.S. DOT federal financial assistance to be submitted to FTA. The overall annual goals shall be expressed as a percentage of the total amount of U.S. DOT funds the District anticipates expending in the fiscal year. The District’s overall annual 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 the District would expect absent the effects of discrimination. The District intends to meet those goals to the maximum extent feasible through the race-neutral measures described in Section V.D. Where race-neutral measures are inadequate to meet the overall annual goals, the District will establish specific contract goals for particular projects with subcontracting opportunities.
A. Methodology For Setting Overall Annual DBE Goals (Section 26.45)


In conjunction with the preparation and adoption of the budget for each fiscal year, the DBE Administrator, in consultation with the appropriate District 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 that fiscal year. This analysis will exclude projected contract expenditures with transit vehicle manufacturers, which are exempt from the Program as described in Section V.C.

2. Establishing a Base Figure. The District will develop a base figure based upon the projected fiscal year budget to express the availability of DBEs as a percentage of all consultants, contractors, subcontractors, manufacturers and suppliers in the relevant contracting markets. The District will follow one of the methodologies provided in the Regulations or develop an alternative methodology and provide the appropriate documentation in the Overall Annual Goals Analysis Report described in Section V.B.

   a. Analyzing Available Businesses in the Relevant Contracting Markets. The DBE Administrator, in conjunction with the appropriate District departments, will conduct a thorough analysis of the relevant contracting markets in which the District will solicit participation from consultants, subconsultants, contractors, subcontractors, manufacturers and suppliers for the fiscal year. This analysis will include a description of geographical boundaries of the solicitations, the SICs for the types of work to be contracted and any other indicators that the District determines to be relevant in defining its contracting markets for the fiscal year. The DBE Administrator will then determine the total available businesses according to the relevant contracting markets. The DBE Administrator will consult a variety of sources including, but not limited to, the District’s Bidders List, the U.S. Census, the County Business Patterns Database and relevant disparity studies.
b. **Analyzing Available DBEs in the Relevant Contracting Markets.** The DBE Administrator will conduct a similar analysis to determine the DBEs that are available to participate as contractors, subcontractors, consultants, subconsultants, manufacturers and suppliers in the projected contracts for the fiscal year. This analysis will include a description of the available DBEs relative to the geographical boundaries of the solicitations, the SICs for the types of work to be contracted, and any other factors as described in Section V.A.2.a. The District will consult a variety of sources including, but not limited to, the DBE Database, the Caltrans Database, the District’s Bidders List, the U.S. Census, the County Business Patterns Database and any relevant disparity studies.

c. **Calculating the Base Figure.** The DBE Administrator will compare the available DBEs in the relevant contracting markets for the fiscal year to the available businesses in the relevant contracting markets for the fiscal year. The calculation may include a weighting factor according to the contract expenditure patterns analyzed in Section V.A.1.

3. **Adjusting the Base Figure.** The District will adjust the base figure based on demonstrable evidence indicating that the availability of DBEs for U.S. DOT-assisted contracts for the fiscal year may be higher or lower than the base figure indicates. At a minimum, the DBE Administrator will analyze the results of the District’s efforts to contract with DBEs for the current and past two years, any available and relevant disparity studies (to the extent that they are not accounted for in the base figure), and any available and relevant results of other and similar U.S. DOT recipients’ efforts to contract with DBEs.

4. **Projection of Percentage of Overall Goals to Be Achieved Through Race-Neutral and Race-Conscious Measures.** Once the overall annual goal is proposed, the DBE Administrator will analyze and project the maximum feasible portion of that goal that can be achieved by using race-neutral methods. Where the projected portion of the goal using race-neutral methods is less than the overall annual goal, the remaining portion will be achieved by establishing contract goals for particular projects that have subcontracting opportunities.

The DBE Administrator shall monitor and adjust the use of contract-specific goals in accordance with 49 C.F.R. § 26.51(f). When projecting the percentage of the overall annual goal to be achieved through establishing contract-specific goals, the DBE Administrator shall analyze the actual achievement of the overall annual goal through race-neutral methods in the current and previous two years. When establishing contract-specific goals during the current fiscal year, the DBE Administrator shall analyze the progress towards achieving the overall annual goal and increase or reduce the use of contract-specific goals accordingly.

B. **Publishing and Adopting the Overall Annual Goals (Section 26.45(g))**

1. **Overall Annual Goals Analysis Report.** Upon completion of the analysis described in Section V.A, the DBE Administrator will prepare an Overall Annual Goals Analysis Report for review by the DBE Review Committee. The report shall document the analysis and methodology, as well as the proposed goal and estimate to be achieved through race-neutral measures. The Committee shall review the report and, upon the Review
Committee’s concurrence, the DBE Administrator shall furnish it to the General Manager. Upon the General Manager’s approval and recommendation, the proposed overall annual goals will be submitted to the Board of Directors. The DBE Administrator shall concurrently notify all DBE resource and community organizations of the availability of the Overall Annual Goals Analysis Report for review and comment, and of the Committee and Board meetings at which the Overall Annual Goal Analysis Report will be considered. The Board of Directors will authorize publication of the proposed goals for public comment.

2. **Publication of the Proposed Overall Annual Goals.** The District will publish the proposed overall annual goals in general circulation, trade association and DBE-oriented media. The notice shall include a statement that the methodology and proposed goals are available for inspection by the public for thirty (30) days from the date of publication. The notice shall also include a statement that the District will accept public comments regarding the proposed goals and methodology for a period of 45 days from the date of publication and provide instructions for the submission of comments. Upon receipt of public comments, if any, the DBE Administrator will prepare a summary report analyzing the public comments and recommending any modifications to the overall annual goals or methodology and will furnish it to the DBE Review Committee for review and concurrence. The DBE Administrator shall furnish the General Manager with a final Overall Annual Goals Analysis Report to be presented to the Board of Directors for consideration. If no comments are received that would change the goals analysis substantially, the results of the public comment period will be presented as an informational matter to the Board with no further action required.

3. **Adoption of Total Overall Annual Goals.** Following review of the Overall Annual Goals Analysis Report, the Board of Directors shall adopt overall annual goals for DBE participation in FTA-assisted contracts, which shall include a projection of the portion of the goals that can be achieved through race-neutral and race-conscious measures. Unless otherwise directed, separate Overall Annual Goals Analysis Reports shall be submitted to FTA for approval by September 1 for Fiscal Year 1999-2000, and by August 1 in succeeding years.

C. **Transit Vehicle Manufacturers Certification (Section 26.49)**

The District shall require any transit vehicle manufacturers to certify that they have established an overall annual DBE participation goal that has been approved by FTA before they can bid on any District contracts. Expenditures for FTA-assisted transit vehicle procurements are not included in the funding base to which the overall annual goal for other FTA-assisted contract expenditures applies.

D. **Achieving the Overall Annual Goals (Section 26.51)**

The District shall achieve the overall annual goals for DBE participation through a combination of race-neutral and gender-neutral measures and contract goals for particular contracts with subcontracting opportunities.

1. **Race-Neutral and Gender-Neutral Methods.** The District intends to use race-neutral and gender-neutral methods to the maximum extent feasible to achieve its overall annual goals. DBE participation that is obtained on contracts that have no specific DBE goal, or
where prime contractors use a strictly competitive bidding process or do not consider the DBE’s status as a DBE in awarding a subcontract shall be considered race-neutral and gender-neutral DBE participation. In addition, the District will use the following measures as appropriate:

(a) Configuring large contracts in smaller contracts when feasible, when to do so would make contracts more accessible to small businesses, and would not impose significant additional cost, delay or risk to the District;

(b) Identifying components of the work which represent subcontracting opportunities and identifying 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;

(c) Assisting in overcoming limitations in bonding and financing;

(d) Providing technical assistance in orienting small businesses to public contract procedures, use of the Internet, and facilitating introductions to the District’s and other U.S. DOT recipients’ contracting activities;

(e) Providing outreach and communications programs on contract procedures and contract opportunities to ensure the inclusion of DBEs;

(f) Ensuring the distribution of the DBE Database to the widest feasible universe of potential prime contractors; and

(g) Providing business development assistance.

2. Contract Goals. The District shall establish contract-specific DBE participation goals on particular prime contracts with subcontracting opportunities to the extent that the District cannot achieve its overall annual goals with race-neutral and gender-neutral measures. Where a contract-specific DBE goal has been established, the bidder or proposer must meet the contract-specific goal or demonstrate that it made sufficient good faith efforts to do so. A bidder shall be ineligible for contract award if it does not meet the goal or demonstrate sufficient good faith efforts.

The goal shall be established by the District substantiated by information furnished by the DBE Administrator. The contract-specific goal shall apply to the percentage participation of DBEs in the total contract work and be set forth in the Special Provisions of the contract specifications. The District is not required to establish a contract-specific goal for every prime contract with subcontracting opportunities. For each contract involving subcontracting opportunities, the factors outlined below will be considered to determine whether a contract-specific goal should be established for the particular contract and, if so, what the percentage goal shall be:
(a) The projected portion of the overall annual goals that will be met by establishing contract-specific goals;

(b) The progress toward achieving the overall annual goals;

(c) The full range of activities in the proposed contract;

(d) The availability of DBEs as prime contractors or subcontractors in the types of work involved in the performance of the proposed contract;

(e) The unique conditions of the project that might affect the ability of the prime contractor to coordinate, utilize or incorporate subcontractors or suppliers into the project. (Projects consisting of only one or two subtrades may not be appropriate for a contract-specific goal due to the fact that establishing a goal could result in restrictive bidding.);

(f) The effect that the contract-specific goal might have on the time of completion; and

(g) Any other relevant criteria.

3. Awarding Contracts with Contract-Specific Goals. The District shall award contracts to the lowest responsible bidder as required by applicable law. For such contracts, as well as for contracts awarded pursuant to a Request for Proposal procedure where the lowest responsible bidder standard does not apply, a bidder that fails to demonstrate that it achieved the contract-specific DBE participation goal and fails to demonstrate that it made sufficient good faith efforts to do so shall not be deemed “responsive” and, therefore, shall be ineligible for award of the contract.

   a. Evaluation of Bids or Proposals. After the bid opening, or submission deadline for proposals, the DBE Administrator shall evaluate all bids/proposals to determine whether the bidders/proposers submitted all of the information required by 49 C.F.R. § 26.53(b). The responsible bidder with the lowest apparent bid price, or the most highly ranked proposer, who also meets the contract-specific DBE goal or demonstrates sufficient good faith efforts shall be recommended for the contract award. In the event that the bidder with the lowest monetary bid price fails to meet the contract-specific goal or fails to demonstrate sufficient good faith efforts, or is otherwise unresponsive or not responsible, the DBE Administrator shall evaluate the bidder with the next lowest bid price. Should the DBE Administrator determine that additional information is needed to evaluate a bidder’s or proposer’s submission with regard to the DBE requirements, the DBE Administrator shall request said bidder or proposer to submit the required information, or may contact the listed DBEs directly.

   b. Evaluation of DBE Certification Status. The District shall require that any DBEs listed by bidders for participation in the contract be certified as eligible DBEs as of the time of bid opening. The DBE Administrator shall review the Bidder’s DBE Report to confirm each DBE firm’s certification status. The District will accept current certifications by the District, U.S. DOT and its agencies, the Small Business Administration, or
other U.S. DOT federal financial assistance recipients. If a completed application for DBE certification is submitted as of bid opening, but has not been processed, the District may count the applicant’s participation toward achieving the DBE contract specific goal, assuming that the applicant’s certification application is approved.

c. **Determination of Amount of DBE Participation.** The DBE Administrator shall review the total dollar value of the work and the percentage of the total contract bid price reported on the Bidder’s DBE Report for accuracy and shall compare it to the contract-specific goal established for the contract.

d. **Determination of Good Faith Efforts.** If the amount of DBE participation does not meet the contract-specific goal, the DBE Administrator shall review the good faith efforts report submitted by the bidder. The DBE Administrator shall determine whether the bidder has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the contract-specific goal in accordance with 49 C.F.R. Part 26 Appendix A, which is incorporated herein.

e. **Bidder’s Right to Administrative Reconsideration.** In the event that the DBE Administrator determines that the apparent low bidder has not met the contract-specific goal and has not demonstrated good faith efforts, the DBE Administrator will notify the bidder in writing. The notification shall include the reasons for the determination and that the bidder has the right to submit further written documentation or appear before the DBE Review Committee for reconsideration prior to the time that a recommendation for award of contract is presented to the Board of Directors. The DBE Review Committee shall provide the bidder with a written decision on reconsideration, explaining the basis for its determination.

In the event that the DBE Review Committee finds that the bidder has not met the contract goal or demonstrated good faith efforts, the DBE Administrator will deem said bidder not responsive and evaluate the bidder submitting the next lowest bid.

f. **Recommendation for Award.** Following the determination of the lowest responsive and responsible bidder with the assistance of the DBE Review Committee, the DBE Administrator shall prepare a report on the lowest responsive and responsible bidder’s compliance with the DBE requirements for review by the General Manager and for presentation to the Board of Directors at the time the contract award is considered. If the Board disagrees with the recommendation, it shall reject all bids or refer the matter back to the General Manager for further evaluation and recommendation. The decision of the Board of Directors on the award of contract, if such a decision is made, shall be final and binding on all parties, subject to compliance with the District’s bid protest procedures.

E. **Counting and Tracking DBE Participation** (Section 26.55)

Only the work actually performed by a DBE will be counted towards the DBE goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted.
Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. Expenditures may only be counted if the DBE is performing a commercially useful function. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own work force.

If materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, 60 percent of the cost will be counted.

DBE achievement will not be counted toward the overall goal until the DBE has been paid. The DBE Administrator will track the participation of DBEs in contract-specific goal contracts separately from the participation of DBEs that is considered race-neutral. Additionally, the DBE Administrator will not count that portion of a DBE’s participation that is achieved after the certification of the DBE has been removed during the performance of a contract.

VI. **REQUIRED CONTRACT PROVISIONS** (Section 26.13)

U.S. DOT-assisted contracts that the District lets will include, as appropriate, the model contract provisions that are included as Exhibit B and incorporated herein. The District shall have discretion to modify the provisions for particular contracts as needed. These required contract provisions consist of:

A. Notice of DBE requirements in the Invitation for Bids
B. General Conditions
   1. DBE Program
   2. Prompt Payment to Subcontractors
C. Special Provisions
   1. DBE Participation Goal (where applicable)

VII. **CERTIFICATION STANDARDS** (Appendix E)

In determining whether to certify a firm as eligible to participate as a DBE, the District will apply the standards of Subpart D and Appendix E of the Regulations, which provide guidance based on regulations from the Small Business Administration (13 C.F.R. §§ 123.104 and 124.103(c)).

A. **Burdens of Proof** (Subpart D, Section 26.61)

The firm seeking certification has the burden of demonstrating to the District, by a preponderance of the evidence, that it meets the requirements concerning group membership or individual disadvantage, business size, ownership and control. The District will make determinations concerning whether individuals and firms have met the burden of demonstrating
group membership, ownership, control, and social and economic disadvantage by considering all
the facts in the record, viewed as a whole.

B. **Group Membership Determinations** (Section 26.63)

The District will presume that members of the groups identified herein are socially and
economically disadvantaged unless the presumption is rebutted. These individuals do not have
the burden to prove they are socially and economically disadvantaged. However, if the District
has reason to question whether an individual is a member of such a group, the District will
require the individual to produce appropriate documentation of group membership. In making a
group membership determination, the District will consider: (1) whether or not the person has
held himself/herself out to be a member of the group over a long period of time prior to
application for certification; and (2) whether the person is regarded as a member of the group by
the relevant community. If the District determines an individual is not a member of a designated
group, the individual must demonstrate social and economic disadvantage on an individual basis.
The District’s decision concerning membership in a designated group will be subject to
certification appeals procedures.

Individuals who are United States citizens (or lawfully admitted permanent residents)
who are also members of the following designated groups will be presumed to be socially and
economically disadvantaged:

1. Black Americans;
2. Hispanic Americans;
3. Native Americans;
4. Asian-Pacific Americans;
5. Subcontinent Asian Americans;
6. Women; or
7. Other groups found to be socially and economically disadvantaged by the
   Small Business Administration.

C. **Individual Determinations of Social and Economic Disadvantage**
   (Appendix E)

If an individual is not a member of a designated group, s/he must demonstrate that s/he is
socially and economically disadvantaged in accordance with 49 C.F.R. Part 26, Appendix E.

1. **Social Disadvantage.** Socially disadvantaged individuals are those who
   have been subjected to racial or ethnic prejudice or cultural bias within American society
   because of their identities as members of groups and without regard to their individual qualities.
The District will consider any relevant evidence in its assessment of this element, and in every
case the District will consider education, employment, and business history to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

2. **Economic Disadvantage.** Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or a similar line of business who are not socially disadvantaged. In considering diminished capital and credit opportunities, the District will examine all factors relating to personal financial condition, including personal income for the past two years, personal net worth, and the fair market value of all assets applicable. The District will also consider the financial condition of applicants compared to financial profiles of small businesses in the same primary industry classification(s) or similar lines of business.

D. **Statement of Personal Net Worth (Section 26.67)**

Each socially and economically disadvantaged individual owner must demonstrate that s/he does not have a personal net worth exceeding $750,000. In determining net worth, the District will exclude an individual’s ownership interest in the applicant firm and the individual’s equity in his/her primary residence. If the individual’s personal net worth exceeds $750,000, the individual’s presumption of economic disadvantage based on group membership or the individual’s demonstration of economic disadvantage will be conclusively rebutted without any further formal proceedings.

When an individual’s presumption of social and/or economic disadvantage has been rebutted, his/her ownership and control of the firm cannot be used for purposes of DBE eligibility unless and until s/he makes an individual showing of social and/or economic disadvantage in the future. If the basis for rebutting the presumption is a determination that the individual’s personal net worth exceeds $750,000, the individual will no longer be eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

E. **Business Size Determinations (Section 26.65)**

To be an eligible DBE, a firm (including its affiliates) must be an existing small business as defined by SBA standards. The District will apply current SBA business size standards found in 23 CFR Part 121 appropriate to the types of work the firm seeks to perform in U.S. DOT-assisted contracts. Even if the firm meets the SBA requirements, a firm is not an eligible DBE in any federal fiscal year if the firm (including its affiliates) has had average annual gross receipts as defined by SBA regulations over the firm’s previous three (3) fiscal years in excess of $16.6 Million, as adjusted for inflation from time to time by U.S. DOT.

F. **Ownership Determinations (Section 26.69)**

To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding. In the case of a partnership, 51 percent of each class of partnership interest
must be owned by socially and economically disadvantaged individuals and must be reflected in the firm’s partnership agreement. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

The firm’s ownership by socially and economically disadvantaged individuals must be real, substantial and continuing, going beyond pro forma ownership of the firm as reflected in the ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. The District will consider factors such as whether the disadvantaged individual holds the ownership securities, whether the disadvantaged individual made contributions of capital and/or expertise that were substantial, and that the disadvantaged individual’s business interests were not gifted or transferred from a non-DBE firm or non-disadvantaged individual related to the applicant DBE, or acquired through the improper counting of marital assets.

The specific considerations for determining ownership by socially and economically disadvantaged individuals are outlined in the Regulations as may be supplemented by written procedures issued by the District from time to time.

G. **Control Determinations** (Section 26.71)

Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms. In determining whether a potential DBE is an independent business, the District will scrutinize relationships with non-DBE firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. The District will consider present or recent employer/employee relationships, the firm’s relationship with prime contractors, and factors related to the independence of a potential DBE firm. Further, the District will consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day; as well as long-term decisions on matters of management, policy and operations. The District will consider factors such as the position, managerial role, time commitment and competence in the types of work the firm conducts of the disadvantaged individual owners, the delegation of authority to non-disadvantaged individuals, licensing, and the firm’s capacity to do the work.

The specific considerations for determining control by socially and economically disadvantaged individuals are outlined in the Regulations as may be supplemented by written procedures issued by the District from time to time.

H. **Other Considerations** (Section 26.73)
1. **Commercially Useful Function.** The District will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE. Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals any participation of firms which have already been certified as DBEs.

2. **Pattern of Conduct.** In making certification decisions, the District will consider whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

3. **Present Circumstances.** The District will evaluate the eligibility of a firm on the basis of present circumstances and will not refuse to certify a firm based solely on historical information indicating lack of ownership or control by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets ownership and control standards. The District will not refuse to certify a firm solely on the basis that it is a newly formed firm.

4. **DBE Cooperation.** The District expects DBE firms and firms seeking DBE certification to cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

5. **For-Profit Firms.** Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

6. **Subsidiaries and Affiliates.** An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided by this policy, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.

7. **Prequalification.** The District will not require a DBE firm to be prequalified as a condition for certification unless the District requires all firms that participate in its contracts and subcontracts to be prequalified.

8. **Tribal Organizations.** The District recognizes that a firm owned by an Indian tribe, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians as individuals, may be eligible for certification as long as such firm meets the size standards and is controlled by socially and economically disadvantaged individuals.
VIII. CERTIFICATION PROCEDURES (Subpart E)

A. Unified Certification Program (Section 26.81)

The District is a participant in a reciprocal regional DBE certification program. It is the intent of the District to cooperate fully in the facilitation of a statewide DBE Unified Certification Program (UCP) to be fully operational by September 2003.

B. Initial Certification (Section 26.83)

The District will ensure that only firms certified as eligible DBEs participate as DBEs in the DBE program. The District will determine the eligibility of firms as DBEs consistent with standards of the Regulations. The District will take the following steps in determining whether a DBE firm meets the certification standards of the regulation:

1. Application. The District will require potential DBEs to complete and submit an appropriate application form. The District will ensure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States. The District will review all information in the form prior to making a decision about the DBE eligibility of the firm.

   The applicant will also be required to submit the following:

   (i) A signed, notarized certification of disadvantage (including a narrative if the individual is demonstrating disadvantage on an individual basis); and

   (ii) A signed, notarized statement of personal net worth with supporting documentation.

   The District will not impose an application fee for firms to participate in the DBE certification process.

   The District will safeguard from disclosure from unauthorized persons all information gathered as part of the certification process that may be regarded as proprietary or other confidential business information, consistent with applicable federal, state and local laws.

2. Review of Eligibility. The DBE Administrator will take the following steps in reviewing the application information and eligibility circumstances of the applicant firm:

   a. Conduct an on-site visit to the office(s) of the firm, interview the principal(s) of the firm and review their resumes and/or work histories. The DBE Administrator shall also visit any job sites if there are such sites on which the firm is working at the time of the eligibility investigation. The District may rely upon the site visit reports of any other U.S. DOT grantee with respect to a firm applying for certification;
b. If the firm is a corporation, analyze the ownership of stock in the firm;

c. Analyze the bonding and financial capacity of the firm;

d. Analyze the work history of the firm, including previous contracts and completed work;

e. Determine the types of work the firm prefers to perform as part of the DBE program and the preferred locations for performing the work, if any; and

f. Determine the equipment owned by or available to the firm and the licenses of the firm and its key personnel.

The DBE Administrator will make a determination on each application for DBE certification within ninety (90) days of receiving all the information required of the applicant firm. The DBE Administrator may extend this time period once, for no more than an additional sixty (60) days, upon written notice to the firm explaining the reasons for the extension. If no decision is made by the deadline, the application is deemed denied and the applicant may appeal the denial to the U.S. DOT.

C. **Reciprocal Certifications** (Section 26.81)

When another U.S. DOT grantee has certified a firm, the District has the discretion to take any of the following actions:

1. Accept another grantee’s certification on a reciprocal basis;

2. Make an independent certification decision based on documentation provided by the other grantee augmented by any additional information the District requires the applicant firm to provide; or

3. Require the applicant firm to go through the District’s certification process without regard to the action of the other grantee.

When another grantee, in connection with its consideration of the eligibility of a firm, makes a written request for certification information the District has obtained about that firm, the District will promptly make the information available to the other grantee.

D. **Certification Duration** (Section 26.83)

Once the DBE Administrator certifies a firm as an eligible DBE, it shall remain certified for a period of at least three (3) years unless and until its certification is removed or expires. The District will not require DBEs to reapply for certification as a condition of continuing to participate in the program during this three (3)-year period. The DBEs will have to reapply and be recertified if their certification is removed or expires at the end of the certification
period. The DBE Administrator will update the DBE Database regularly with new certification actions.

1. **Notification of Change in Circumstances.** During a DBE firm’s three (3)-year certification period, it must inform the District, in writing, of any changes in circumstances affecting the firm’s ability to meet disadvantaged status, business size, ownership, control requirements, or any material change in the information provided in the certification application process, and attach supporting documentation describing in detail the nature of such changes. Such notice of change from the DBE firm must take the form of an affidavit sworn to before a person authorized by state law to administer oaths, or of an unsworn declaration executed under penalty of perjury. 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 change(s), it will be deemed to have failed to cooperate under the Regulations.

2. **Annual Affidavit of Continuing Eligibility.** Every firm certified by the District as a DBE must provide to the District every year on the anniversary of the date of its initial certification, an affidavit sworn to by the firm’s owner(s) before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm’s circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of the Regulations or any material changes to the information provided in its original application, or the last notification of a change in circumstances. The affidavit shall specifically affirm that the DBE continues to meet SBA business size criteria and the overall gross receipts cap, documenting this affirmation with supporting documentation of the DBE’s size and gross receipts. If the DBE fails to provide this information in a timely manner, it will be deemed to have failed to cooperate with the requirements of the Regulations.

E. **Denials and Reapplication Procedures** (Section 26.85)

When the DBE Administrator determines that a firm is not eligible for certification, the DBE Administrator will provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based will be made available to the applicant firm upon request. When a firm is denied certification, it is required to wait twelve (12) months before it may reapply for DBE certification with the District. The time period for reapplication begins to run on the date the explanation for denial of certification is received by the applicant firm. The firm may appeal any denial of certification to U.S. DOT.

F. **Removal Procedures (Decertification)** (Section 26.87)

A DBE firm which no longer meets the eligibility standards (or misrepresented information during the certification process) will be removed from the DBE Program by having its certification removed. A firm shall remain certified during the removal process.

1. **Initiating Removal.**
a. **Ineligibility Complaints.** Any person may file a written complaint that alleges a currently certified firm is ineligible. A written complaint must specify reasons for the allegation and include any information or arguments supporting the allegation. A general allegation or anonymous complaint will not be accepted. The DBE Administrator will review the complaint, all certification records and other available information in order to determine whether there is reasonable cause to believe the firm is ineligible. The DBE Administrator will ensure confidentiality of complainant’s identity.

b. **District-Initiated Proceedings.** The DBE Administrator will review all notifications of changes in circumstances or other information that comes to the District’s attention, including notification of removal actions of other U.S. DOT recipients, to determine whether there is reasonable cause to believe a currently certified firm is ineligible.

c. **U.S. DOT Directive to Initiate Proceeding.** A U.S. DOT agency may direct the District to initiate removal proceedings, because it has determined that information in the certification records or other information available provides reasonable cause to believe that a firm is ineligible. The U.S. DOT agency must provide the District and the firm a notice setting forth reasons for the directive, including relevant documentation.

2. **Reasonable Cause to Believe a Firm is Ineligible.** If the DBE Administrator determines that there is no reasonable cause to believe the firm is ineligible, s/he shall provide a written notice to the firm and the complainant stating the reasons therefor in such cases where a complaint was filed with the District. If the DBE Administrator determines that there is reasonable cause to believe the firm is ineligible, the following steps shall be taken to remove the firm’s certification:

a. **Written Notice.** The DBE Administrator will provide written notice to the firm that it proposes to find the firm ineligible for further participation in the DBE Program. The notice shall include the reasons for the proposed removal and reference evidence in the record that supports the determination. The notice shall also include notification that the firm has the right to an informal hearing.

b. **Informal Hearing.** The DBE Review Committee shall provide an opportunity to the firm to hold an informal hearing so that the firm may respond in person to the reasons for the proposed removal of eligibility and provide any information or arguments concerning why it should remain certified. The firm also may provide written arguments and information in lieu of a hearing. In either case, the DBE Administrator’s determination must demonstrate, by a preponderance of the evidence, that the firm does not meet the certification standards. The DBE Review Committee will maintain a transcript and complete record of the hearing.

c. **Removal Decision.** After the hearing, the DBE Review Committee will make a final determination to remove or maintain the firm’s certification. The Committee will not base any decision to remove certification on a reinterpretation or change of opinion regarding information that was available during the original certification of the firm. The DBE Review Committee will only base removal decisions on one or more of the following:
changes in the firm’s circumstances since the certification, information or evidence not available at the time of certification, information that was concealed or misrepresented by the firm in previous certification actions, change in the certification standards or requirements of the Program since the firm was certified, or a documented finding that the District’s determination to certify the firm was factually erroneous.

d. **Notice of Decision.** The DBE Review Committee will provide the firm written notice of its final decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice will inform the firm of the consequences of the District’s decision and of the availability of an appeal to U.S. DOT. The District will send copies of the notice to the complainant in an ineligibility complaint or the concerned U.S. DOT agency that directed the District to initiate the proceeding.

e. **Effects of Removal of Eligibility.** The DBE Administrator will take the following actions upon the removal of a firm’s certification:

   (i) Update the DBE Database and determine whether the decertified firm is currently participating in a District contract or has been included in a recent bid;

   (ii) If a contract that has not been executed before the removal notice involves a commitment by a prime contractor to use the ineligible firm or by the District to use the ineligible firm as a DBE prime contractor, the ineligible firm cannot be counted toward the contract goal or the overall annual goal. The Regulations require that the District direct a prime contractor to meet the contract goal with another eligible DBE subcontractor or to demonstrate that it has made sufficient good faith efforts to do so;

   (iii) If a subcontract has been executed by a prime contractor or a prime contract has been executed by the District with the ineligible firm before the removal notice, the prime contractor or the District may continue to use the firm on the contract and may continue to count the firm’s participation toward the contract goal. The District shall not count that portion of the ineligible firm’s performance remaining on the contract or subcontract after the removal notice toward the overall annual goals; and

   (iv) If the DBE’s ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the District will continue to count its participation on that contract toward overall and contract goals.

G. **Certification Appeals to U.S. DOT**  (Section 26.89)

A firm that has been denied certification or whose eligibility is removed may make an administrative appeal to the U.S. DOT. A complainant in an ineligibility complaint to the District may appeal to U.S. DOT if the District does not find reasonable cause to propose removing the firm’s eligibility. Pending the U.S. DOT appeal decision, the District’s decision shall remain in effect. All appeals shall be sent to:
All requests for an appeal must be sent, in writing, within ninety (90) days of the District’s final decision on the matter. The appeal request shall include information and arguments regarding why the decision should be reversed. If the appeal is from a firm, the request must include information regarding certification with other U.S. DOT recipients. If the appeal is from a third party, the party will be requested to provide the same information.

The DBE Administrator shall provide a copy of a complete, well-organized administrative record within twenty (20) days of a request from U.S. DOT. U.S. DOT will make its decision based solely on the entire administrative record without conducting a hearing. The firm and complainants shall have access to any information reviewed by U.S. DOT in accordance with public records and privacy laws.

U.S. DOT will affirm the District’s decision if it determines, based on the entire administrative record, that the decision is supported by substantial evidence or is consistent with the substantive or procedural provisions concerning certification. U.S. DOT will reverse the District’s decision if it determines it was unsupported by substantial evidence or inconsistent with certification provisions. U.S. DOT shall send written notification of its decision, including the reasons therefor to the District, the firm and any complainant. If the District’s decision is reversed, the DBE Administrator will take all appropriate actions to conform with the U.S. DOT’s decision immediately upon receiving the written notice. U.S. DOT decisions are final and binding on the District only.

IX. MONITORING AND RECORDKEEPING (Sections 26.11 and 26.37)

A. Bidders List (Section 26.11)

The District will require all prime contractors bidding on U.S. DOT-assisted contracts to return, at the time of bid opening (options apply as to the time this information is required so long as it is prior to the award of the contract), the following information about the prime contractor and all subcontractors who provided a bid or were contacted by the prime:

- Firm name
- Firm address
- Firm’s status as a DBE or non-DBE
- Age of the firm
- Type of work

The District will use this information to maintain and update its Bidders List.
B. **Monitoring Payments to DBEs** *(Section 26.37)*

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

The District will maintain a running tally of payments actually made to DBE firms and may require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs.

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

C. **Reporting to U.S. DOT** *(Section 26.11)*

The District will continue to report DBE participation and overall annual goal setting methods to U.S. DOT agencies as directed. Statistical data will be maintained as prescribed on a quarterly basis to provide reports to U.S. DOT agencies reflecting the DBE participation on the District’s federally-assisted procurement activities. These reports will provide DBE participation information on the District’s race-neutral and gender-neutral contracts; race-conscious contracts; and the combined DBE participation on all federally-assisted procurement activities.

D. **Contract Remedies** *(Section 26.37)*

The District will monitor compliance of its contractors on federally-assisted contracts with the requirements of the Regulations and the DBE Program. The District may impose such contract remedies as are available under federal, state and local law and regulations for non-compliance. Such remedies may include, but are not limited to, withholding of progress payments and contract retentions, imposition of liquidated damages, and termination of the contract in whole or in part.

X. **PUBLIC PARTICIPATION AND OUTREACH EFFORTS** *(Sections 26.45 and 26.51)*

The District’s activities managing public participation and outreach efforts are directed at assisting the District to solicit public input to set overall annual DBE participation goals and meet District overall annual DBE goals.

In establishing overall annual DBE goals, the District will provide for public participation. This will include:

Prior to finalizing the Overall Annual Goals Analysis Report, the District will consult with U.S. DOT agencies, other U.S. DOT grantees, minority, women’s and general contractor
groups, community organizations, or other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the District’s efforts to establish a level playing field for the participation of DBEs.

The District will publish an annual notice announcing its proposed overall annual goals, informing the public that the District’s Overall Annual Goals Analysis Report is available for inspection during normal business hours at the office of the DBE Administrator for a period of thirty (30) days, and that the District and the U.S. DOT will accept comments on the proposed goals for forty-five (45) days from the date of the notice. The notice will be distributed in general circulation media, local minority-focused media, and trade association publications.

In conjunction with the District’s activities to meet its overall annual DBE goals, the District will implement various public participation and outreach activities designed to broaden awareness of the District’s DBE Program. The measures described in 49 C.F.R. § 26.51, focusing on race-neutral means will be actively pursued, and the District will also encourage its contractors to make similar outreach efforts to include DBE participation in subcontracting opportunities. In conjunction with the RTCC MAC, the District will continue to organize and offer training programs for meeting DBE eligibility requirements, familiarize potential contractors with District procurement procedures and requirements, and to otherwise develop effective programs to further the inclusion of DBEs in the District’s contracting activities.
Exhibit A

Disadvantaged Business Enterprise Representative
Duties and Responsibilities

In accordance with 49 C.F.R. § 26.23 and Section III.A of this Program, the specific duties and responsibilities of the DBE Administrator shall include, but not be limited to the following:

1. Analyzing and assessing the available resources and evidence for the establishment and achievement of overall annual DBE goals for U.S. DOT-assisted contracts each fiscal year;

2. Developing, monitoring and evaluating the DBE Program, and preparing supplemental written procedures and guidelines to implement the Program;

3. Maintaining and updating the DBE Database in accordance with 49 C.F.R. § 26.31;*

4. Assisting the Purchasing Department in maintaining and updating the Bidders List in accordance with 49 C.F.R. § 26.11;*

5. Conducting race-neutral and gender-neutral measures to facilitate the participation of small business concerns, including DBEs, through outreach and other community programs, training and business development programs, restructuring contracting opportunities, simplifying bonding, surety and insurance requirements or other race-neutral and gender-neutral means;*

6. Participating in the contract bid and award process, including recommending specific contract goals where appropriate, reviewing contract specifications, attending pre-bid conferences and evaluating bids for contractor responsiveness, responsibility and good faith efforts;

7. Monitoring specific contract performance and actual DBE participation and contract payments;*

8. Monitoring overall DBE participation, adjusting overall goals and means of achievement, assessing areas of over-concentration of DBE participation and reporting to the General Manager, the District Board of Directors and FTA, as needed;

9. Determining all certification actions including initial certifications, recertifications, denials and removals;*
10. Participating in the development of a statewide Unified Certification Program in accordance with 49 C.F.R. § 26.81;*

11. Assisting the District’s DBE Program Review Committee;*

12. Participating in the Regional Transit Coordinating Council Minority Affairs Committee;

13. Participating in the American Public Transit Association Minority Affairs Committee and other organizations working on common issues pertaining to DBE Program issues; and

14. Maintaining all appropriate records and documentation of the Program.

Note: Asterisk (*) indicates new or revised responsibility in 49 C.F.R. Part 26.
A. **NOTICE INVITING SEALED BIDS**

Any Notice Inviting Sealed Bids or Requests for Proposals issued by the District shall include the following information:

The successful Bidder (or Proposer) shall cooperate with the District in meeting its commitments and objectives with regard to ensuring nondiscrimination in the award and administration of U.S. DOT-assisted contracts and shall use its best efforts to ensure that barriers to participation of DBEs do not exist.

B. **GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS**

The General Conditions shall include the following provisions:

1. **“DBE Program”**. The District, recipient of federal financial assistance from the Federal Transit Administration (FTA) is committed to and has adopted a DBE Program in accordance with 49 C.F.R. Part 26, issued by U.S. DOT.

   It is the policy of the District to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts and to create a level playing field on which Disadvantaged Business Enterprises (DBEs) can compete fairly for contracts and subcontracts relating to the District’s construction, procurement and professional services activities. To this end, the District has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside of the DBE program. In connection with the performance of this contract, the Contractor will cooperate with the District in meeting these commitments and objectives.

   Pursuant to 49 C.F.R. § 26.13, the Contractor is required to make the following assurance in its agreement with the District and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

   The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the
Contractor or Subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the District deems appropriate.

Additionally, all of the requirements described in the DBE Program shall be met. A contract that has a specific DBE participation goal will be described in the Special Provisions.

Any Bidder who would like to request additional information or ask questions regarding the District’s DBE Program may contact the District's DBE Administrator at (510) 891-7176.

2. **“Prompt Payment to Subcontractors”**. In accordance with the District’s DBE Program, the Contractor shall pay any Subcontractors approved by the District for work that has been satisfactorily performed no later than thirty (30) days from the date of Contractor’s receipt of progress payments by the District. Within sixty (60) days of satisfactory completion of all work required of the Subcontractor, Contractor shall release any retainage payments withheld to the Subcontractor.

C. **SPECIAL PROVISIONS**

1. **“DBE Participation Goal”**. A ___ % DBE participation goal has been established for this contract. For a bid to be determined a responsive bid, a bidder must demonstrate that it can meet this goal in the performance of this contract or if it cannot, that it performed sufficient good faith efforts to meet this goal. A bidder who is not responsive shall be ineligible for award of contract.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. POLICY</td>
<td>(SECTION 26.3)</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>A. APPLICABILITY (SECTIONS 26.3 AND 26.21)</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>B. OBJECTIVES (SECTION 26.1)</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>C. PROHIBITED DISCRIMINATION (SECTION 26.7)</td>
<td>3</td>
</tr>
<tr>
<td>II. DEFINITIONS</td>
<td>(SECTION 26.5)</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>A. DISADVANTAGED BUSINESS ENTERPRISE (DBE) (SECTION 26.5)</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>B. SMALL BUSINESS CONCERN (SECTION 26.5)</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>C. SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS (SECTION 26.5)</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>D. RACE-NEUTRAL (SECTION 26.5)</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>E. RACE-CONSCIOUS (SECTION 26.5)</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>F. PERSONAL NET WORTH (SECTION 26.5)</td>
<td>5</td>
</tr>
<tr>
<td>III. RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>A. DUTIES OF THE DBE ADMINISTRATOR (SECTION 26.25)</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>B. DUTIES OF THE DBE PROGRAM REVIEW COMMITTEE (26.53 AND 26.87)</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>C. DUTIES OF DISTRICT OFFICERS AND STAFF (SECTION 26.53)</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>D. REGIONAL TRANSIT COORDINATING COUNCIL MINORITY AFFAIRS COMMITTEE (26.83)</td>
<td>6</td>
</tr>
<tr>
<td>IV. ADMINISTRATIVE REQUIREMENTS</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>A. DBE FINANCIAL INSTITUTIONS (SECTION 26.27)</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>B. DBE DATABASE (SECTION 26.31)</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>C. BIDDERS LIST (SECTION 26.11)</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>D. OVER-CONCENTRATION (SECTION 26.33)</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>E. BUSINESS DEVELOPMENT PROGRAMS (SECTION 26.51)</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>F. DISSEMINATION OF POLICY STATEMENT (SECTION 26.23)</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>G. MONITORING ACTUAL DBE PARTICIPATION (SECTIONS 26.37 AND 26.55)</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>H. REPORTING TO U.S. DOT (SECTION 26.11)</td>
<td>8</td>
</tr>
<tr>
<td>V. DETERMINING, ACHIEVING GOALS AND COUNTING OVERALL ANNUAL DBE PARTICIPATION</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>A. METHODOLOGY FOR SETTING OVERALL ANNUAL DBE GOALS (SECTION 26.45)</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>1. PROJECTING U.S. DOT-ASSISTED CONTRACT EXPENDITURES FOR FISCAL YEAR.</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>2. ESTABLISHING A BASE FIGURE.</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>3. ADJUSTING THE BASE FIGURE.</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>4. PROJECTION OF PERCENTAGE OF OVERALL GOALS TO BE ACHIEVED THROUGH RACE-NEUTRAL AND RACE-CONSCIOUS MEASURES.</td>
<td>10</td>
</tr>
</tbody>
</table>
B. Publishing and Adopting the Overall Annual Goals (Section 26.45(g)) ...................... 10
   1. Overall Annual Goals Analysis Report ................................................................. 10
   2. Publication of the Proposed Overall Annual Goals ............................................... 11
   3. Adoption of Total Overall Annual Goals ............................................................. 11
C. Transit Vehicle Manufacturers Certification (Section 26.49) ................................... 11
D. Achieving the Overall Annual Goals (Section 26.51) ........................................... 11
   1. Race-Neutral and Gender-Neutral Methods ......................................................... 11
   2. Contract Goals ..................................................................................................... 12
E. Counting and Tracking DBE Participation (Section 26.55) .................................... 14
VI. REQUIRED CONTRACT PROVISIONS (SECTION 26.13) ........................................ 15
VII. CERTIFICATION STANDARDS (APPENDIX E) ..................................................... 15
   A. Burdens of Proof (Subpart D, Section 26.61) ...................................................... 15
   B. Group Membership Determinations (Section 26.63) ........................................... 14
   C. Individual Determinations of Social and Economic Disadvantage (Appendix E) ... 16
      1. Social Disadvantage ......................................................................................... 15
      2. Economic Disadvantage .................................................................................. 17
   D. Statement of Personal Net Worth (Section 26.67) .............................................. 17
   E. Business Size Determinations (Section 26.65) .................................................... 17
   F. Ownership Determinations (Section 26.69) ......................................................... 17
   G. Control Determinations (Section 26.71) .............................................................. 18
   H. Other Considerations (Section 26.73) ................................................................. 18
      1. Commercially Useful Function ......................................................................... 19
      2. Pattern of Conduct ........................................................................................... 19
      3. Present Circumstances ..................................................................................... 19
      4. DBE Cooperation ............................................................................................. 19
      5. For-Profit Firms ............................................................................................... 19
      6. Subsidiaries and Affiliates ............................................................................... 19
      7. Prequalification ............................................................................................... 19
      8. Tribal Organizations ......................................................................................... 19
VIII. CERTIFICATION PROCEDURES (SUBPART E) .................................................. 20
   A. Unified Certification Program (Section 26.81) .................................................... 20
   B. Initial Certification (Section 26.83) ................................................................. 20
      1. Application ...................................................................................................... 20
      2. Review of Eligibility ...................................................................................... 20
   C. Reciprocal Certifications (Section 26.81) ......................................................... 21
   D. Certification Duration (Section 26.83) ............................................................... 21