

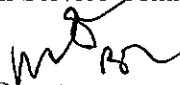


Edwin M. Lee
Mayor

Micki Callahan
Human Resources Director

Date: November 4, 2016

To: The Honorable Civil Service Commission

Through: Micki Callahan 
Human Resources Director

From: Melissa Ng, CON
Cynthia Hamada, MTA
Shamica Jackson/Stacey Lo, PUC
Jolie Gines, TIS
Jacquie Hale, DPH
Cynthia Avakian, AIR
Stacey Camillo, DPW
Belle La, CPC

Subject: **Personal Services Contracts Approval Request**

This report contains thirteen (13) personal services contracts (PSCs) in accordance with the revised Civil Service Commission (CSC) procedures for processing PSCs that became effective on November 5, 2014.

The services proposed by these contracts have been reviewed by Department of Human Resources (DHR) staff to evaluate whether the requesting departments have complied with City policy and procedures regarding PSCs. The proposed PSCs have been posted on the DHR website for seven (7) calendar days. CSC procedures for processing PSCs require that any appeal of these contracts be filed in the office of the CSC, Executive Officer during the posting period.

No timely appeals have been filed regarding the PSCs contained in this report. These proposed PSCs are being submitted to the CSC for ratification/approval.

DHR has prepared the following cost summary for personal services contracts that have been processed through the Department of Human Resources to date:

Total of this Report	YTD Expedited Approvals FY2016-2017	Total for FY2016-2017
\$20,495,000	\$515,342,637	\$1,471,422,595

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San Francisco, CA 94102
415-554-5109

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Shamica Jackson
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Published on *Personal Services Request Database* (<http://apps.sfgov.org/dhrdrupal>)

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POSTING FOR**November 21, 2016****PROPOSED PERSONAL SERVICES CONTRACTS – REGULAR****Commission Hearing Date**

2016-11-21

APPLY

PSC No	Dept Designation	PSC Amount	Description of Work	PSC Estimated Start Date	PSC Estimated End Date	Type of Approval
48168 - 16/17	CONTROLLER	\$250,000.00	Contractor will conduct administrative hearings for dog owners and complainants regarding reports of potentially vicious an dangerous dogs. The contractor will receive, review and evaluate testimony, physical evidence and other information. The contractor will issue written decisions including specific remedies consistent with a fair and impartial review to protect the health, safety and welfare of the community.	December 1, 2016	June 30, 2021	REGULAR
48462 - 16/17	MUNICIPAL TRANSPORTATION AGENCY	\$950,000.00	The contractor will provide labor, materials, consumables, and supervision to repair, restore and rebuild collision-damaged Historic Streetcar #162. Will repair and restore significant structural and cosmetic damage to Historic Streetcar #162 to its original configuration so that it can be returned to revenue service. The contractor will provide a storage and repair facility.	January 10, 2017	July 1, 2018	REGULAR
49277 - 16/17	PUBLIC UTILITIES COMMISSION	\$500,000.00	The San Francisco Public Utilities Commission (SFPUC) is seeking eligible firms or non-profit organizations to provide unique teaching environments and opportunities for disadvantaged workers to develop skills in watershed and vegetation management, and to assist with the grounds maintenance of the diverse watersheds owned and operated by the SFPUC. The contractor will implement an employment readiness training program that includes: the provision of on-the-job vocational training, academic instruction, safety training, basic language and literacy skill-building necessary to retain employment, and life skills instruction on topics such as time management, personal financial management, appropriate attire, job seeking, and interviewing. The field maintenance to be provided by the contractor would include, but not be limited to, vegetation management (including plant identification, cultivation, and planting), the removal and eradication of non-desirable species, and water conservation techniques.	December 1, 2016	November 30, 2019	REGULAR
45047 - 16/17	GENERAL SERVICES AGENCY - TECHNOLOGY	\$250,000.00	To expand its services and to provide equal access to all of the residents of the City, SFGovTV simulcasts its content on the internet. SFGovTV seeks a vendor that can: 1. Video stream the SFGovTV channel live 24/7. 2. Host SFGovTV video content for on-demand viewing. 3. Conserve the City's bandwidth. 4. Increase the quality of the live stream. 5. Provide universal format delivery to PC, MAC and mobile platforms. 6. Add additional functions to improve usability of SFGovTV archive content.	December 15, 2016	December 14, 2021	REGULAR
41289 - 16/17	PUBLIC HEALTH	\$5,000,000.00	The contractor(s) will provide access to a variety of online applications such as Health Information Exchanges which collect, store, benchmark clinical outcomes, share data between providers, and provide online	November 1, 2016	June 30, 2025	REGULAR

PSC No	Dept Designation	PSC Amount	Description of Work	PSC Estimated Start Date	PSC Estimated End Date	Type of Approval
45682 - 14/15	PUBLIC HEALTH	\$3,000,000.00	<p>educational and or reference resources to the Department of Public Health.</p> <p>Contractor(s) will perform emergency clean-up work on and as needed basis and would be available to respond 24 hours a day, 7 days a week. Contractor(s) will (1) perform medical waste clean-up to include Category A (i.e., Ebola) infectious wastes; (2) will perform proper clean-up and removal of any bodily fluids, disinfecting, packaging and transporting waste for disposal; (3) will clean-up residences, emergency medical facilities, emergency transport vehicles, public transportation vehicles and other areas which are contaminated with medical wastes. All clean-up activities will be performed in accordance with guidelines prepared by the Center for Disease Control (CDC), the California Department of Public Health (CDPH), California Occupational Safety and Health Administration (CalOSHA) and all Federal, State and Local laws governing the clean-up and transportation of medical waste.</p>	July 1, 2015	December 31, 2017	REGULAR
49010 - 16/17	AIRPORT COMMISSION	\$300,000.00	<p>Contractor will provide consulting services for the San Francisco International Airport (SFO) Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs in compliance with Code of Federal Regulations (CFR) Title 49, Part 23 (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_mai...) and 26 (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_mai...), both attached to this request. Contractor will provide ACDBE certification and consulting services including: 1) ACDBE certification, 2) DBE/ACDBE reporting, 3) DBE/ACDBE goal setting, 4) DBE/ACDBE compliance monitoring.</p>	December 1, 2016	June 30, 2021	REGULAR
49614 - 16/17	GENERAL SERVICES AGENCY - PUBLIC WORKS	\$8,000,000.00	<p>Provide architectural and multi-discipline design services involving renovation, relocation, adaptive re-use of existing health facilities, installation of specialized medical equipment, modifications to life safety systems and other infrastructure, and new health facilities. Selected firms shall have extensive knowledge of, and experience with general acute care facilities under jurisdiction of the Office of Statewide Health and Planning (OSHPPD).</p> <p>The department intends to award up to 4 contracts with an aggregate contract limit of \$8,000,000.</p>	November 21, 2016	December 31, 2022	REGULAR

TOTAL AMOUNT \$18,250,000



Published on *Personal Services Request Database* (<http://apps.sfgov.org/dhrdrupal>)[Home >](#)**Posting For November 21, 2016****Proposed Modifications to Personal Services Contracts**

Commission Hearing Date

2016-11-21

APPLY

PSC Number	Commission Hearing Date	Department	Additional Amount	Cumulative Total	Description	Start Date	End Date	Approval Type
4024 12/13 - MODIFICATIONS	November 21, 2016	CITY PLANNING -- CPC	\$300,000	\$2,800,000	<p>The San Francisco Planning Department is seeking a consultant to assist the Department in the preparation, production, management and successful completion of environmental analysis, including an environmental impact report (EIR) and transportation impact study (TIS) and possibly other technical documentation for the Central Corridor Plan. This EIR will analyze proposed land use controls, changes to existing height districts, and area plan policies at the programmatic level. Primary environmental issues are expected to be land use and planning, aesthetics, cultural resources, transportation and circulation, air quality, wind, shadow, and open space/recreation.</p> <p>Scope Change: The Planning Department is seeking additional services from the consultant to address the potential for a high amount of public comments on the Draft EIR. Pursuant to the California Environmental Quality Act, public comments on the DRAFT EIR must be responded to in writing and may require additional analysis beyond that already conducted for the EIR.</p>	01/01/2017	12/31/2018	REGULAR
4093-10/11 - MODIFICATIONS	November 21, 2016	GENERAL SERVICES AGENCY - PUBLIC WORKS -- DPW	\$1,500,000	\$9,925,000	<p>Two contracts will be awarded to furnish construction management support services to City staff to address specialized expertise and temporary peak workloads for pre-construction and construction phase services for cost estimating, construction scheduling, constructability review, construction administration, construction inspections services, Leadership in Energy and Environmental Design (LEED)/sustainable building construction management, and existing building forensic investigations for projects of the Earthquake Safety and Emergency Response (ESER) Bond Program, including the Public Safety Building, selected neighborhood fire stations, and selected projects of the Auxiliary Water Supply System.</p>	11/01/2019	12/30/2020	REGULAR

PSC Number	Commission Hearing Date	Department	Additional Amount	Cumulative Total	Description	Start Date	End Date	Approval Type
4058-13/14 - MODIFICATIONS	November 21, 2016	MUNICIPAL TRANSPORTATION AGENCY -- MTA	\$200,000	\$400,000	<p>The contractor will conduct executive searches to identify, assess and recruit candidates for five high-level specialized management positions at the San Francisco Municipal Transportation Agency (SFMTA). Services will include: developing search strategies; identifying and recruiting potential candidates; evaluating interested candidates; presenting final candidates; and performing follow-up duties as required.</p> <p>Scope Change: The contractor will conduct executive searches to identify, assess and recruit candidates for five or more high-level specialized management positions at the San Francisco Municipal Transportation Agency (SFMTA). Services will include: developing search strategies; identifying and recruiting potential candidates; evaluating interested candidates; presenting final candidates; and performing follow-up duties as required.</p>	01/01/2016	12/31/2018	REGULAR
37905 - 15/16 - MODIFICATIONS	November 21, 2016	MUNICIPAL TRANSPORTATION AGENCY -- MTA	\$45,000	\$145,000	<p>The contractor will perform off-street parking analysis via three principal components. First, the contractor will complete a detailed, current conditions analysis of the Moscone Parking Garage including a comparative analysis of pricing and revenue performance and a profile of garage patrons. Second, the contractor will prepare a supply and demand analysis of off-street parking in the immediate vicinity of the garage. Based on forecasted development and transportation investments in the South of Market area, the contractor will project how demand for parking will evolve. Third, the contractor will recommend an appropriate quantity of public, off-street parking at the garage, given that the garage is presently under-utilized and given the forecasted changes in supply and demand.</p>	01/04/2017	06/14/2017	REGULAR
48959 - 15/16 - MODIFICATIONS	November 21, 2016	CITY PLANNING -- CPC	\$200,000	\$500,000	<p>This analysis will support potential programs in the Mission and other neighborhoods where zoning controls were modified through the Eastern Neighborhoods and other recent re-zonings. In these areas other controls including height, bulk, open space, rear yard, and bedroom mix requirements determine the number of units that can be built on a site. The Planning Department is seeking digital modeling, market study, and financial feasibility analysis work to identify opportunities for San Francisco's local guidelines to encourage greater levels of affordable housing in all residential</p>	01/01/2018	01/01/2020	REGULAR

PSC Number	Commission Hearing Date	Department	Additional Amount	Cumulative Total	Description	Start Date	End Date	Approval Type
					development projects in these areas.			
					<p>Scope Change: Increase scope of work to include inventory of housing stock, both renter and owner-occupied to understand the current housing stock and residential makeup through both quantitative and qualitative analysis. By understanding characteristics of the existing housing stock the City can pursue strategies to further preserve its affordability.</p>			

TOTAL AMOUNT \$2,245,000

**Regular/Continuing/Annual
Personal Services Contracts**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CONTROLLER -- CON

Dept. Code: CON

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Vicious and Dangerous Animals Hearing Officer

Funding Source: Annual Appropriation

PSC Amount: \$250,000

PSC Est. Start Date: 12/01/2016 PSC Est. End Date 06/30/2021

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Contractor will conduct administrative hearings for dog owners and complainants regarding reports of potentially vicious and dangerous dogs. The contractor will receive, review and evaluate testimony, physical evidence and other information. The contractor will issue written decisions including specific remedies consistent with a fair and impartial review to protect the health, safety and welfare of the community.

B. Explain why this service is necessary and the consequence of denial:

Consequences of denial would be that the City would not be able to carry out the requirement to provide due process in cases of an alleged vicious or dangerous dog. The San Francisco Health Code specifies statutory deadlines for providing hearings, e.g., within three days the hearing officer must inform the owner of the allegations and a hearing must take place between 15-90 days following notice the owner.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

These services have been provided by a Contractor. Previously to that, it was provided by a Q004 Police Officer 3 as an assigned satellite assignment. The Police Department has decided to discontinue this model for providing hearing officer services.

D. Will the contract(s) be renewed?

Unknown

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

Highly specialized and certified services are intermittent and short-term and highly specialized in nature

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Knowledge of the City of San Francisco Health Code Section 42.3 and related ordinances, administrative procedures, mediation methods and techniques. Knowledge of canine behavior. Ability to plan, organize and conduct administrative hearings, interpret and apply codes

with an emphasis on restorative justice. Ability to assign just and proper remedies that will withstand potential judicial review.

B. Which, if any, civil service class(es) normally perform(s) this work? 8167, Administrative Hearing Examiner; 8177, Attorney (Civil/Criminal); Q004, Police Officer 3;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Q004 Police Officer 3 was previously assigned on a satellite assignment. The Police Department has decided to discontinue this model for providing hearing officer services.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Other classifications do not have the expertise in canine behavior necessary to understand issues faced by dog owners and complainants.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. Workload is unpredictable, as needed.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No, because services are intermittent and the City had previously discontinued the in-house model for providing hearing officer services.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 08/19/2016, the Department notified the following employee organizations of this PSC/RFP request:

Municipal Attorney's Association; Professional & Tech Engrs, Local 21; SFPOA - Q2-Q50

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Melissa Ng Phone: 415-554-5109 Email: melissa.ng@sfgov.org

Address: City Hall, Room 306 San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48168 - 16/17

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 11/21/2016

Receipt of Union Notification(s)

From: dhr-psscordinator@sfgov.org on behalf of melissa.ng@sfgov.org
To: [Ng_Melissa \(CON\); L21PSCReview@fote21.org; Ng_Melissa \(CON\); DHR-PSCCoordinator, DHR \(HRD\)](mailto:Ng_Melissa (CON); L21PSCReview@fote21.org; Ng_Melissa (CON); DHR-PSCCoordinator, DHR (HRD)@fote21.org)
Subject: Receipt of Notice for new PCS over \$100K PSC # 48168 - 16/17
Date: Friday, August 19, 2016 3:15:41 PM

RECEIPT for Union Notification for PSC 48168 - 16/17 more than \$100k

The CONTROLLER – CON has submitted a request for a Personal Services Contract (PSC) 48168 - 16/17 for \$250,000 for Initial Request services for the period 12/01/2016 – 06/30/2021. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/7993> For union notification, please see the

TO: field of the email to verify receipt. If you do not see all the unions you

intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

From: Ng, Melissa (CON)
To: "gdelagness@sfgoa.org"; Connolly, Sean (CAT)
Cc: DHR-PSCCoordinator, DHR (HRD)
Subject: FW: Receipt of Notice for new PCS over \$100K PSC # 48168 - 16/17
Date: Friday, September 23, 2016 3:05:00 PM

Hi.

Please see message below, sent on 8/19/16, as it might not have been received by your union.

Thank you.
Melissa Ng

—Original Message—

From: dhr-psccordinator@sfgov.org [<mailto:dhr-psccordinator@sfgov.org>] On Behalf Of melissa.ng@sfgov.org
Sent: Friday, August 19, 2016 3:15 PM
To: Ng, Melissa (CON); L21PSCReview@ifpte21.org; Ng, Melissa (CON); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Notice for new PCS over \$100K PSC # 48168 - 16/17

RECEIPT for Union Notification for PSC 48168 - 16/17 more than \$100k

The CONTROLLER -- CON has submitted a request for a Personal Services Contract (PSC) 48168 - 16/17 for \$250,000 for Initial Request services for the period 12/01/2016 – 06/30/2021. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/7993> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again, change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Additional Attachment(s)

San Francisco Health Code Section 42.3

SEC. 42.3. SEIZURE OF DOG: HEARINGS.

(a) **Subject to Seizure.** Upon the receipt of a signed complaint, or upon the personal observation of an Animal Control Officer, or a representative of the Department of Public Health or Police Department, that a dog is vicious and dangerous, and said dog is on its owner, guardian, keeper or harborer's property, the Animal Control Officer, or the Department of Public Health or Police Department representative, may find the dog presents a danger and is subject to seizure and impoundment. Upon a finding that the dog is subject to seizure, written notice of such finding shall be made to the owner, guardian, keeper or any adult in apparent control or possession of the dog. Prior to the seizure of the dog, the owner, guardian, or keeper of the dog shall be entitled to a hearing as described in paragraph (c) of this section.

(b) **Immediate Seizure.**

(i) Should any Animal Control Officer, representative of the Department of Public Health or the Police Department determine that probable cause exists to believe that a dog is vicious and dangerous and cannot be properly controlled, such dog is subject to immediate seizure. The owner, guardian, or keeper of the dog shall be entitled to a hearing upon seizure as described in paragraph (c) of this section, and upon the hearing the owner or guardian of any dog found to be vicious or dangerous shall be assessed the costs of sheltering the dog and of administering the ordinance.

(ii) Upon the receipt of a signed complaint, or upon the personal observation of an Animal Control Officer, or a representative of the Department of Public Health or Police Department, that a dog has killed or wounded, or assisted in killing or wounding any domestic animal, or has attacked, assaulted, bit or otherwise injured any person or assisted in attacking, assaulting, biting or otherwise injuring any person, such dog shall be subject to immediate seizure and impoundment. The owner, guardian, or keeper of the dog shall be entitled to a hearing upon seizure as described in paragraph (c) of this section.

(c) (i) Prior to the seizure of any dog authorized by paragraph (a) and within three days of the seizure of any dog pursuant to paragraph (b) a hearing officer shall inform, in writing, the owner, guardian, or keeper of the dog that the person's dog is alleged to be vicious and dangerous and be subject to penalties under this ordinance. Unless the hearing is waived by the owner, guardian, or keeper of the dog, or the hearing is scheduled on an agreed-upon date, the hearing officer shall fix a time not less than 15 nor more than 90 days from date that the enforcement agency locates the dog and/or the owner, guardian or keeper, and fix a place for said hearing and cause all parties to be notified, not less than 10 days before the date of such hearing. The hearing may be informal and the rules of evidence not strictly observed. It shall not be necessary, for the City, to prove that the owner, guardian, or keeper of the dog knew that the dog was vicious and dangerous. Within 15 days following the hearing, the hearing officer shall issue his or her decision to all parties.

(ii) Should the hearing officer find the dog to be vicious and dangerous, the hearing officer shall order the dog be registered pursuant to Section 42.2, and that the dog be spayed or neutered. The hearing officer may, in addition, order other remedies as may be appropriate for the safety of the public, including, but not limited to, an order that the dog and the owner, guardian, keeper and any person in control of the dog attend and complete a basic obedience course under an approved and recognized obedience trainer or dog-training organization. If the hearing officer finds that the owner, guardian, keeper, or other person in control of the dog has not or cannot adequately control his or her dogs, the hearing officer may also prohibit that person or persons from owning or possessing dogs for a period of three years from the date of the order.

(iii) In the event the hearing officer concludes that the dog is vicious and dangerous and that the health, safety and welfare of the community is not adequately addressed by the requirements provided in Section 42.3(c)(ii), the hearing officer may order the dog destroyed.

(iv) The decision of the hearing officer is final.

(Added by Ord. 408-87, App. 10/9/87; amended by Ord. 5-03, File No. 021645, App. 1/24/2003; Ord. 12-05, File No. 041544, App. 1/21/2005; Ord. 267-05, File No. 051606, App. 11/22/2005)

☐ SEC. 42.4. PENALTY; MISDEMEANOR OR INFRACTION.

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY – MTA

Dept. Code: MTA

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Repair and Restore Historic Streetcar #162.

Funding Source: Prop K Local Funds

PSC Amount: \$950,000

PSC Est. Start Date: 01/10/2017

PSC Est. End Date 07/01/2018

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor will provide labor, materials, consumables, and supervision to repair, restore and rebuild collision-damaged Historic Streetcar #162. Will repair and restore significant structural and cosmetic damage to Historic Streetcar #162 to its original configuration so that it can be returned to revenue service. The contractor will provide a storage and repair facility.

B. Explain why this service is necessary and the consequence of denial:

The San Francisco Municipal Transportation Agency (SFMTA) has a limited number of double-ended cars and they are the only ones that can be run on the new E-line service and, therefore, imperative that #162 be repaired as quickly as possible. If this service is denied, the SFMTA's fleet for this line will be reduced and any further reduction due to regularly required maintenance of the existing fleet will cause less public transportation availability and result in the agency not meeting strategic goals.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Similar services have been provided in the past via PSC #4036-09/10, PSC #4011-08/09, and PSC #4012-08/09.

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.
not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

The San Francisco Municipal Transportation Agency (SFMTA) has a limited number of double-ended cars and they are the only ones that can be run on the new E-line service and, therefore, imperative that #162 be repaired as quickly as possible. If this service is denied, the SFMTA's fleet for this line will be reduced and any further reduction due to regularly required maintenance of the existing fleet will cause less public transportation availability and result in the agency not meeting strategic goals. This service is required to avoid a critical operations situation from arising. The contractor will provide facilities to store, repair, and restore Historic Streetcar #162.

3. **Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: The contractor must possess demonstrated expertise in: repair and restoration of wood and steel car body structure; and, repair or replace of pneumatic piping and electrical conduit. Must possess the ability to paint historic streetcars. The contractor must provide an appropriate storage and repair facility.
- B. Which, if any, civil service class(es) normally perform(s) this work? 7306, Automotive Body & Fender Wrk; 7309, Car and Auto Painter; 7344, Carpenter;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The contractor will provide facilities to store, repair, and restore Historic Streetcar #162.

4. **If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Civil service classes: 7306 Automotive Body and Fender Worker; 7371 Electrical Transit System Mechanic; 7309 Car and Auto Painter; and, 7344 Carpenter can perform this work. The damage to Historic Streetcar #162 is so significant, that it would require many months of focused, full-time work in the SFMTA shop to complete the repairs, leaving the a growing number of short turnaround cars unrepaired during that time.

5. **Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.
Civil service classes are applicable, but existing staff is fully engaged repairing other damaged SFMTA "short turnaround time" vehicles.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. Civil service classifications already exist and have the responsibility for repairing other damaged vehicles.

6. **Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
Training is not a component of this contract. The services will be provided off-site.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service?
If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 09/30/2016, the Department notified the following employee organizations of this PSC/RFP request:
Automotive Machinists, Local 1414; Carpenters, Local 22; Electrical Workers, Local 6; Professional & Tech Engrs, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Hamada Phone: 415.701.5381 Email: cynthia.hamada@sfmta.com

Address: 1 South Van Ness Avenue, 6th Floor San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48462 - 16/17

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 11/21/2016

Receipt of Union Notification(s)

Hamada, Cynthia

From: dhr-psccordinator@sfgov.org on behalf of cynthia.hamada@sfmta.com
Sent: Friday, September 30, 2016 10:36 AM
To: Hamada, Cynthia; L21PSCReview@ifpte21.org; khughes@ibew6.org; smcgary@nccrc.org; agonzalez@iam1414.org; speedy4864@aol.com; Hamada, Cynthia; DHR-PSCCoordinator, DHR
Subject: Receipt of Notice for new PCS over \$100K PSC # 48462 - 16/17

RECEIPT for Union Notification for PSC 48462 - 16/17 more than \$100k

The MUNICIPAL TRANSPORTATION AGENCY – MTA has submitted a request for a Personal Services Contract (PSC) 48462 - 16/17 for \$950,000 for Initial Request services for the period 01/10/2017 – 07/01/2018. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/8143> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Additional Attachment(s)

Hamada, Cynthia

From: Hamada, Cynthia
Sent: Thursday, October 27, 2016 11:03 AM
To: DHR-PSCCoordinator, DHR
Cc: Summerlott, Lee; Middleton, Scott
Subject: PSC #48462-16/17 Repair and Restore Historic Streetcar #162

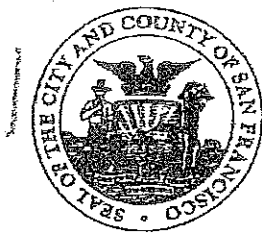
Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Green Category

To: DHR-PSC Coordinator (Suzanne Choi)

Please note that this is an update on the meeting requested by both unions, Local 22 and Local 1414. On October 20, 2016, the SFMTA met with Sean McGarry (Carpenters, Local 22) and Arthur Gonzalez (IAM, Local 1414) in order to discuss the subject PSC. The results of that meeting, following thorough discussion, were that the unions would support this contract due to the critical timelines, limited staff resources, and shortage of double-ended historic vehicles required for use on the new E-Line service.

Cynthia Hamada
Senior Personnel Analyst
Employee and Labor Relations Division
San Francisco Municipal Transportation Agency
415.701.5381



CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

GAVIN NEWSOM
MAYOR

4038-09/10 211,634
4021-09/10 mod
36752 504
Total 56,163 594

September 23, 2009

MORGAN R. GORRONO
PRESIDENT

E. DENNIS NORMANDY
VICE PRESIDENT

JOY Y. BOATWRIGHT
COMMISSIONER

DONALD A. CASPER
COMMISSIONER

MARY Y. JUNG
COMMISSIONER

ANITA SANCHEZ
EXECUTIVE OFFICER

NOTICE OF CIVIL SERVICE COMMISSION ACTION

SUBJECT: REVIEW OF REQUEST FOR APPROVAL OF PROPOSED
PERSONAL SERVICES CONTRACT NUMBERS 4030-09/10
THROUGH 4038-09/10; 4112-06/07; 4163-07/08 AND 4021-09/10.

At its meeting of September 21, 2009 the Civil Service Commission had for its consideration the above matter.

PLEASE NOTE: It is important that a copy of this action be kept in the department files as you will need it in the future as proof of Civil Service Commission approval. Please share it with everyone responsible for follow-up.

It was the decision of the Commission to approve the request for proposed personal services contracts. Notify the offices of the Controller and the Office of Contract Administration.

If this matter is subject to Code of Civil Procedure (CCP) Section 1094.5, the time within which judicial review must be sought is set forth in CCP Section 1094.6.

CIVIL SERVICE COMMISSION

Anita Sanchez
ANITA SANCHEZ
Executive Officer

Attachment

- c: Parveen Boparai, Municipal Transportation Agency
- Micki Callahan, Human Resources Director
- Luis Cancel, Arts Commission
- Gordon Choy, Department of Public Works
- Vivian Day, Department of Building Inspection
- Jessica Huey, Department of Human Resources
- Shamica Jackson, Public Utilities Commission
- Naomi Kelly, Office of Contract Administration
- Florence Kyaun, Public Utilities Commission
- Mary Ng, Department of Human Resources
- Esther Reyes, Controller's Office
- Briggette Rockett, Department of Human Resources
- Ben Rosenfield, Controller
- Tajel Shah, Treasurer/Tax Collector's Office
- Commission File
- Chron

POSTING FOR
September 21, 2009

PROPOSED PERSONAL SERVICES CONTRACTS

PSO No.	Depth	Department	Approval Type	Contract Amount	Description of Work	Duration
4030-09/10	90	DPW-Bureau of Architecture	Regular	\$ 4,000,000	Will provide as-needed design services for Health Facilities involving renovation, adaptive re-use of existing facilities, installations of specialized medical equipment, modifications to life safety systems and other infrastructure, and facilities.	28-Apr-16
4031-09/10	90	Public Works	Regular	\$ 3,000,000	Will provide all necessary services required for a turnkey management solution for the following: procurement process for furniture, fixtures, and equipment (FF&E) for the San Francisco General Hospital-Rebuild Program.	31-Dec-16
4032-09/10	28	Arts Commission	Regular	\$ 306,000	Will conduct creative writing classes with youth in need at up to 10 sites in San Francisco. Artists-In-Residence will serve youth who may be educationally disadvantaged, recently immigrated, homeless, incarcerated or in crisis.	30-Jun-10
4033-09/10	40	San Francisco Public Utilities Commission	Regular	\$ 2,500,000	Will provide professional construction management services to oversee a Wastewater Enterprise construction project, the Sunnydale Sewer Auxiliary Tunnel, on behalf of the SFPUUC.	01-Mar-12
4034-09/10	40	San Francisco Public Utilities Commission	Regular	\$ 400,000	Will provide at minimum, daily aerial patrol of Watershed lands during CALFIRE declared fire season to be coordinated by the respective parties' designated representatives.	01-Oct-17
4035-09/10	0	Treasurer and Tax Collector's Office	Regular	\$ 400,000	Will provide new payment processing system; licensing fees and annual software maintenance costs and professional services in custom programming, installation and training.	31-Dec-14
4036-09/10	35	San Francisco Municipal Transportation Agency	Regular	\$ 217,634	Will provide labor, materials, consumables and supervision to repair, restore and rebuild two accident damaged LRVs from SFMTA's fleet of 151 vehicles.	01-Nov-10
4037-09/10	19	Building Inspection	Regular	\$ 4,200,000	Will install, configure, customize, test, and train City staff on the design, configuration, implementation, maintenance, and operation of a new proprietary Permit and Project Tracking System (PPTS).	31-Dec-10
4038-09/10	9	Controller's Office	Regular	\$ 1,500,000	Will provide municipal financing advisory services to Office of Public Finance, Controller's Office, and other City department staff in the following areas: general obligation bonds, certificates of participation and lease revenue bonds.	10-Oct-14

PERSONAL SERVICES CONTRACT SUMMARY

DATE: August 21, 2009

DEPARTMENT NAME: San Francisco Municipal Transportation Agency DEPARTMENT NUMBER: 35

TYPE OF APPROVAL: () EXPEDITED (X) REGULAR (OMIT POSTING) () CONTINUING () ANNUAL

TYPE OF REQUEST: (X) INITIAL REQUEST () MODIFICATION (PSC#)

TYPE OF SERVICE: Restore two accident damaged LRVs No. 1451 & 1502 to their original configuration

FUNDING SOURCE: Prop K (San Francisco Transportation Authority)

PSC AMOUNT: \$217,634.00 PSC DURATION: 11/02/09 - 11/01/10

1. DESCRIPTION OF WORK

A. Concise description of proposed work:

The Contractor will provide labor, materials, consumables and supervision to repair, restore and rebuild two accident damaged LRVs from SFMTA's fleet of 151 vehicles. During the course of normal operation, LRV 1451 and 1502 sustained moderate structural and cosmetic damage resulting from collisions. The contractor will restore these two LRVs and return these LRVs back in a configuration and condition suitable for active revenue service.

B. Explain why this service is necessary and the consequences of denial:

The SFMTA currently has 10 LRVs out of 151 total vehicles that are out of service due to accidents. This service is necessary in order to return these two vehicles back into service in a timely manner. The consequence of denial will be that the SFMTA will not have enough vehicles to meet the daily service demands of the LRVs.

C. Explain how this service has been provided in the past (if this service was previously approved by the Civil Service Commission, indicate most recent personal services contract approval number):

Similar services have been provided in the past with the repair of PCC cars by other vendors like Brookville Equipment but on a larger scale. The most recent personal services contract approval similar to this project was for the rehabilitation of PCCs under PSC 4011-08/09 and PSC 4012-08/09.

D. Will the contract(s) be renewed:

No.

2. UNION NOTIFICATION: Copy of this summary is to be sent to employee organizations as appropriate (refer to instructions for specific procedures):

IAM, Local 1414 Union Name Signature of person mailing / faxing form Date 8-21-09
IBEW, Local 6 Union Name Signature of person mailing / faxing form Date 8-21-09

RFP sent to Union Name on Date Signature

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 4036-09/10

SFMTA approved 8-21-09

STAFF ANALYSIS/RECOMMENDATION: CIVIL SERVICE COMMISSION ACTION:

3. DESCRIPTION OF REQUIRED SKILLS/EXPERTISE

A. Specify required skills and/or expertise:

The required skills for this work are as follow:

- 1. Ability to repair exterior and interior body panels of transit vehicles.
- 2. Ability to trouble shoot and work with electrical systems
- 3. Ability to paint rail vehicles

B. Which, if any, civil service class normally performs this work?

- 7306 – Automotive Body and Fender Worker
- 7371 – Electric Transit Mechanics
- 7309 – Car & Auto Painters

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:

Yes. The work will be performed in the facility of the contractor because all the spaces in the SFMTA's body shop are occupied with the repair of other accident damaged vehicles.

4. WHY CLASSIFIED CIVIL SERVICE CANNOT PERFORM

A. Explain why civil service classes are not applicable:

Civil service classes are applicable. However, due to the number of accidents vehicle needing body repair, all the body repair facilities of the SFMTA are fully occupied. The SFMTA needs to have these LRVs repaired as soon as possible in order to return these vehicles into service.

B. Would it be practical to adopt a new civil service class to perform this work? Explain.

No, the above civil service classifications exist.

5. ADDITIONAL INFORMATION (if "yes", attach explanation)

	<u>Yes</u>	<u>No</u>
A. Will the contractor directly supervise City and County employees?	()	(x)
B. Will the contractor train City and County employees?	()	(x)
C. Are there legal mandates requiring the use of contractual services?	()	(x)
D. Are there federal or state grant requirements regarding the use of contractual services?	()	(x)
E. Has a board or commission determined that contracting is the most effective way to provide this service? <i>SFMTA Board approval will be sought prior to award.</i>	(x)	()
F. Will the proposed work be completed by a contractor that has a current personal services contract with your department?	()	(x)

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD:

Parveen Boparai

Signature of Departmental Personal Services Contract Coordinator

Parveen Boparai
Print or Type Name

415-701-5377
Telephone Number

San Francisco Municipal Transportation Agency, Human Resources



CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

GAVIN NEWSOM
MAYOR

4013-08/09
IM
1011-08/09 3014
1017-08/09 1,785

August 22, 2008

DONALD A. CASPER
PRESIDENT

MORGAN R. GORRONO
VICE PRESIDENT

MARY Y. JUNG
COMMISSIONER

YU-YEE WU SHERIDAN
COMMISSIONER

NOTICE OF CIVIL SERVICE COMMISSION ACTION

SUBJECT: REVIEW OF REQUEST FOR APPROVAL OF PROPOSED
PERSONAL SERVICES CONTRACT NUMBERS 4009-08/09
THROUGH 4015-08/09.

At its meeting of August 18, 2008 the Civil Service Commission had for its consideration the above matter.

PLEASE NOTE: It is important that a copy of this action be kept in the department files as you will need it in the future as proof of Civil Service Commission approval.

It was the decision of the Commission to:

1. Postpone PSC #4013-08/09 to the meeting of September 2, 2008 at the request of IFPTE Local 21.
2. Postpone PSC #4014-08/09 to the meeting of September 2, 2008 at the request of the Public Utilities Commission.
3. Adopt the Human Resources Director's report on all remaining contracts. Notify the offices of the Controller and the Purchaser.

If this matter is subject to Code of Civil Procedure (CCP) Section 1094.5, the time within which judicial review must be sought is set forth in CCP Section 1094.6.

CIVIL SERVICE COMMISSION

ANITA SANCHEZ
Executive Officer

Attachment

- c:
- Rachelle Axel, Arts Commission
 - Parveen Boparai, Municipal Transportation Agency
 - Jesusa Bushong, San Francisco Fire Department
 - Micki Callahan, Human Resources Director
 - Connie Chang, Public Utilities Commission
 - Shamica Jackson, Public Utilities Commission
 - Jennifer Johnston, Department of Human Resources
 - Sheila Maxwell, Department of Telecommunications and Information Services
 - Brigette Rockett, Department of Human Resources
 - Commission File
 - Chron

POSTING FOR
August 18, 2008

RECOMMENDED APPROVAL OF PROPOSED PERSONAL SERVICES CONTRACTS

FSC No.	Dept No	Dept Name	Approval Type	Contract Amount	Description of Work	Duration
4009-08/09	28	Arts Commission	Regular	\$300,000.00	Will provide design, fabricate, and install original artworks for each of the following San Francisco Public Library branches: Bayview/Annex E, Warden, Ortega, North Beach and Visitacion Valley.	31-Dec-11
4010-08/09	31	San Francisco Fire Department	Regular	\$150,000.00	Will perform maintenance and repair of telescopic doors, controls, and motors at fire facilities as necessary. Provider must be available to perform maintenance and repair 24 hours per day, and seven days per week and a qualified, certified vendor.	30-Jun-10
4011-08/09	35	San Francisco Municipal Transportation Agency (SFMTA)	Regular	\$20,000,000.00	Will perform a rehabilitation of 18 SFMTA Presidents Conference Committee (PCCs) historic streetcars which includes a major rehabilitation of 5 PCCs and partial rehabilitation (electrical and mechanical) of 11 PCCs.	30-Sep-12
4012-08/09	35	San Francisco Municipal Transportation Agency (SFMTA)	Regular	\$1,785,000.00	Will perform a completed rehabilitation of SFMTA Historic Streetcar No. 1 so that it may be safely operated in daily revenue service for at least 20 years.	30-Sep-12
4013-08/09	35	San Francisco Municipal Transportation Agency	Regular	\$1,000,000.00	Provide a full service work-site based Employee Assistance Program (EAP) to provide clinical supervision of the staff of three full-time paid Peer Assistants, and up to 8 volunteer Peer Assistants.	30-Aug-11
4014-08/09	40	San Francisco Public Utilities Commission	Regular	\$33,000,000.00	Will provide professional construction management services to oversee the Peninsula Regional WSP construction projects, on behalf of the SFPUC.	01-Jan-14
4015-08/09	75	Telecom & Information Services	Regular	\$650,000.00	Will provide captioned text added to video for the City's Board of Supervisors' meetings, Mayor's press conferences, 14 City Commission video tape, and cablecast by the San Francisco Government Television (SFGTV) on cable channels 28 and 76.	31-Mar-12

PERSONAL SERVICES CONTRACT SUMMARY

DATE: July 10, 2008

DEPARTMENT NAME: San Francisco Municipal Transportation Agency (SFMTA) DEPARTMENT NUMBER 35

TYPE OF APPROVAL: () EXPEDITED (X) REGULAR (OMIT POSTING)
() CONTINUING () ANNUAL

TYPE OF REQUEST: (X) INITIAL REQUEST () MODIFICATION (PSC#)

TYPE OF SERVICE: REHABILITATE SFMTA's SIXTEEN (16) HISTORIC STREETCARS

FUNDING SOURCE: Federal Transportation Administration Grant and Local Match Funds

PSC AMOUNT: \$20,000,000.00 PSC DURATION: September 1, 2008 to September 31, 2012

1. DESCRIPTION OF WORK

A. Concise description of proposed work:

The scope of this project is to perform a rehabilitation of 16 SFMTA Presidents Conference Committee (PCCs) historic streetcars which includes a major rehabilitation of 5 PCCs and partial rehabilitation (electrical and mechanical) of 11 PCCs. After rehabilitation, these cars will be returned to revenue service and safely operated for at least 20 years. The Contractor shall supply all labor, inspections, engineering, tools, materials, parts, facilities, and equipment required to complete this work. The work will include: body, frame, interior and exterior work; lead paint removal; repainting of the interior and exterior; mechanical and electrical work; safety features; accessibility improvements; and other work to prepare the vehicle for revenue service. The Contractor shall prepare all required detailed drawings, design calculations, stress analysis, and other specified technical documentation in connection with the remanufacture of this unique car.

B. Explain why this service is necessary and the consequences of denial:

SFMTA which operates Muni has 24 historic streetcars in revenue service, and the F-Line ridership has grown from 10,000 to 20,000 per weekday from 2000 to present day. This growth in ridership and planned future expansion service requires SFMTA to add vehicles to its historic streetcar fleet.

These 16 PCCs, when completed, will be returned to regular historic streetcar service as part of the fleet expansion to operate on the F-Line and future E-Line.

This service is necessary in order to provide enough vehicles for the increased vehicle demand for the F-Line and the soon to open E-Line to run from the ballpark to Fort Mason. Denial of this request will mean that SFMTA will not have enough vehicles to meet the Proposition E requirements for vehicle demands of the F-line and the E-line.

C. Explain how this service has been provided in the past (if this service was previously approved by the Civil Service Commission, indicate most recent personal services contract approval number):

PSC No. 4031-04/05 approved on October 04, 2004.

D. Will the contract(s) be renewed: No.

2. UNION NOTIFICATION: Copy of this summary is to be sent to employee organizations as appropriate (refer to instructions for specific procedures):

Local 21, Local 6
Union Name

Signature of person mailing / faxing form

7.11.08
Date

Local 22, Local 1414
Union Name

Signature of person mailing / faxing form

7.11.08
Date

RFP sent to Union Name on Date Signature

3. DESCRIPTION OF REQUIRED SKILLS/EXPERTISE

- A. **Specify required skills and/or expertise:**
The required skills and expertise for this work includes: transit system electrical and mechanical systems installation, equipment engineering design, body work, painting, and retrofit experience on historic PCC streetcars.
- B. **Which, if any, civil service class normally performs this work?**
There is no civil service classification that performs procurement and remanufacturing of streetcars. Classifications such as Assistant Engineer (5203), Associate Engineer (5207), LRV Equipment Engineer (9195), Sr. LRV Equipment Engineer (9196), Administrative Engineer (5174), Electrical Transit Mechanic Asst Supervisor (7380), Electrical Transit System Mechanic (7371), Automotive Body and Fender worker (7303), Carpenter Supervisor (7226), and Carpenter (7344) can only maintain and perform upgrades on MTA historic fleets, and MTA is currently utilizing these classifications for these duties.
- C. **Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:**
Yes. The contractor will use their facility for all rehabilitation works and storage of these SFMTA Historic Streetcars

4. WHY CLASSIFIED CIVIL SERVICE CANNOT PERFORM

- A. **Explain why civil service classes are not applicable:**
MTA civil service classes do not have the expertise to perform this work. MTA staffs' expertise is in the maintenance of these vehicles, and not in the rehabilitation of vehicles and remanufacture parts of these historic streetcars.
- B. **Would it be practical to adopt a new civil service class to perform this work? Explain.**
No because the SFMTA is not in the business of overhauling street cars. SFMTA staffs' expertise is in the operation and maintenance of streetcars. Overhauling of street cars can be done for effectively and efficiently by a company that has performed this type of work throughout the country and has developed the skills and necessary tools to do the work in the most cost effective way without sacrificing quality. The skills developed in overhauling street cars will be lost if the work is not performed on a regular basis.

5. ADDITIONAL INFORMATION (if "yes", attach explanation)

	<u>Yes</u>	<u>No</u>
A. Will the contractor directly supervise City and County employees?	()	(X)
B. Will the contractor train City and County employees?	()	(X)
C. Are there legal mandates requiring the use of contractual services?	()	(X)
D. Are there federal or state grant requirements regarding the use of contractual services?	()	(X)
E. Has a board or commission determined that contracting is the most effective way to provide this service? <i>MTA Board Resolution No. 08-094 on June 17, 2008</i>	(X)	()
F. Will the proposed work be completed by a contractor that has a current personal services contract with your department?	()	(X)

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD:

Parveen Boparai

Signature of Departmental Personal Services Contract Coordinator

Parveen Boparai

Print or Type Name

415-554-4160

Telephone Number

San Francisco Municipal Transportation Agency, Human Resources

401 Van Ness Avenue, Room 320, San Francisco, CA 94102
Address

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. 08-094

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA), which operates the Municipal Railway (Muni), has 24 historic streetcars in revenue service; and,

WHEREAS, The F-line ridership has grown from 10,000 to 20,000 per weekday from the year 2000 to the present day; and,

WHEREAS, This growth in ridership and planned future expansion service requires Muni to add vehicles to its historic streetcar fleet; and,

WHEREAS, There are several procurements and rehabilitation projects moving forward to expand the size of the fleet; and,

WHEREAS, SFMTA requires that 16 SFMTA Presidents Conference Committee historic streetcars be rehabilitated and returned to their original conditions so that they may be used to supplement and expand the existing historic streetcar fleet and extend their useful life for at least 20 years; and,

WHEREAS, When completed, these cars will be available to operate on the F-Line and future B-Line; and,


WHEREAS, MTA has capital funding for this project from federal and local sources; and,

WHEREAS, The Contract Compliance Office has established a five percent SBE participation goal for this contract; and,

WHEREAS, Municipal Transportation Agency staff will seek the approval of this Board prior to the award of the Contract; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CBO to issue a Request for Proposals for Contract No. 583-03, Complete Rehabilitation of 16 SFMTA Historic Streetcars, evaluate proposals, select the highest ranking proposer, and negotiate a contract with the most qualified proposer.

I certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of JUN 17 2008


Secretary, Municipal Transportation Agency Board

PERSONAL SERVICES CONTRACT SUMMARY

DATE: July 10, 2008

DEPARTMENT NAME: San Francisco Municipal Transportation Agency (SFMTA) DEPARTMENT NUMBER 35

TYPE OF APPROVAL: () EXPEDITED (X) REGULAR (OMIT POSTING)

() CONTINUING () ANNUAL

TYPE OF REQUEST: (X) INITIAL REQUEST () MODIFICATION (PSC#)

TYPE OF SERVICE: REHABILITATE SFMTA HISTORIC STREETCAR No.1

FUNDING SOURCE: Federal Transportation Administration Grant and Local Match Funds

PSC AMOUNT: \$1,785,000.00 PSC DURATION: September 1, 2008 to September 31, 2012

1. DESCRIPTION OF WORK

A. Concise description of proposed work:

The scope of this project is to perform a complete rehabilitation of SFMTA Historic Streetcar No. 1 so that it may be safely operated in daily revenue service for at least 20 years. The Contractor shall supply all labor, inspections, engineering, tools, materials, parts, facilities, and equipment required to complete this work. This shall include body, frame, interior and exterior work; lead paint removal; repainting of the interior and exterior; mechanical and electrical work; safety features; accessibility improvements; and other work to prepare the vehicle for revenue service. The Contractor shall prepare all required detailed drawings, design calculations, stress analysis, and other specified technical documentation in connection with the remanufacture of this unique car.

B. Explain why this service is necessary and the consequences of denial:

SFMTA, has 24 historic streetcars in revenue service, and the F-Line ridership has grown from 10,000 to 20,000 per weekday from 2000 to present. This growth in ridership and planned future expansion service requires SFMTA to add vehicles to its historic streetcar fleet.

Car No. 1, Muni's first streetcar, needs to be completely rehabilitated to its original condition in time to commemorate Muni's 100-Year Anniversary Celebration in 2012. When completed, it will be returned to regular historic streetcar service as part of the fleet expansion to operate on the F-Line and future E-Line.

This service is necessary in order to provide enough vehicles for the increased vehicle demand for the F-Line and the soon to open E-Line to run from the ballpark to Fort Mason. Denial of this request will mean that MTA will not have enough vehicles to meet the Proposition E requirements for vehicle demands of the F-line and the E-line.

C. Explain how this service has been provided in the past (if this service was previously approved by the Civil Service Commission, indicate most recent personal services contract approval number):

Similar Services were approved with PSC No. 4031-04/05 on October 04, 2004.

D. Will the contract(s) be renewed: No.

2. UNION NOTIFICATION: Copy of this summary is to be sent to employee organizations as appropriate (refer to instructions for specific procedures):

Local 21, Local 6 Union Name Signature of person mailing / faxing form Date 7-11-08
Local 22, Local 1414 Union Name Signature of person mailing / faxing form Date 7-11-08

RFP sent to Union Name on Date Signature

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 4012-08/09 MTA approved 7-11-08 PB
STAFF ANALYSIS/RECOMMENDATION:
CIVIL SERVICE COMMISSION ACTION:

3. DESCRIPTION OF REQUIRED SKILLS/EXPERTISE

- A. **Specify required skills and/or expertise:**
The required skills and expertise for this work includes: Transit System electrical and mechanical systems installation, equipment engineering design, body work, painting, and retrofit experience on historic PCC streetcars.
- B. **Which, if any, civil service class normally performs this work?**
There is no civil service classification that performs procurement and remanufacturing of streetcars. Classifications such as Assistant Engineer (5203), Associate Engineer (5207), LRV Equipment Engineer (9195), Sr LRV Equipment Engineer (9196), Administrative Engineer (5174), Electrical Transit Mechanic Asst Supervisor (7380), Electrical Transit System Mechanic (7371), Automotive Body and Fender worker (7306), Carpenter Supervisor (7226), and Carpenter (7344) can only maintain and perform upgrades on MTA historic fleets, and MTA is currently utilizing these classifications for these duties.
- C. **Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:**
Yes. The contractor will use their facility for all rehabilitation works and storage of the SFMTA Historic Streetcars.

4. WHY CLASSIFIED CIVIL SERVICE CANNOT PERFORM

- A. **Explain why civil service classes are not applicable:**
MTA civil service classes do not have the expertise to perform this work. MTA staffs' expertise is in the maintenance of these vehicles, and not in the rehabilitation of vehicles and remanufacture of parts of these historic streetcars.
- B. **Would it be practical to adopt a new civil service class to perform this work? Explain.**
No because the SFMTA is not in the business of overhauling street cars. SFMTA staffs' expertise is in the operation and maintenance of streetcars. Overhauling of street cars can be done for effectively and efficiently by a company that has performed this type of work throughout the country and has developed the skills and necessary tools to do the work in the most cost effective way without sacrificing quality.

5. ADDITIONAL INFORMATION (if "yes", attach explanation)

	<u>Yes</u>	<u>No</u>
A. Will the contractor directly supervise City and County employees?	()	(X)
B. Will the contractor train City and County employees?	()	(X)
C. Are there legal mandates requiring the use of contractual services?	()	(X)
D. Are there federal or state grant requirements regarding the use of contractual services?	()	(X)
E. Has a board or commission determined that contracting is the most effective way to provide this service? <i>-MTA Board Resolution No. 08-095 on June 17, 2008</i>	(X)	()
F. Will the proposed work be completed by a contractor that has a current personal services contract with your department?	()	(X)

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD:

Parveen Boparai

Signature of Departmental Personal Services Contract Coordinator

Parveen Boparai
Print or Type Name

415-554-4160
Telephone Number

San Francisco Municipal Transportation Agency, Human Resources

401 Van Ness Avenue, Room 320, San Francisco, CA 94102
Address

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. 08-095

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA), which operates the Municipal Railway (Muni), has twenty four historic streetcars in revenue service; and,

WHEREAS, The F-line ridership has grown from 10,000 to 20,000 per weekday from 2000 to present day; and,

WHEREAS, This growth in ridership and planned future expansion service requires Muni to add vehicles to its historic streetcar fleet; and,

WHEREAS, There are several procurements and rehabilitation projects moving forward to expand the size of the fleet; and,

WHEREAS, Car No. 1, Muni's first streetcar, needs to be completely rehabilitated to its original condition in time to commemorate Muni's 100-Year Anniversary Celebration in 2012; and,

WHEREAS, It will be returned to regular historic streetcar service as part of the fleet expansion to operate on the F-Line and future E-Line; and,

WHEREAS, MTA has capital funding for this project from federal and local sources; and

WHEREAS, The Contract Compliance Office has established a five percent Small Business Enterprise (SBE) participation goal for this contract; and,

WHEREAS, Municipal Transportation Agency staff will seek the approval of this Board prior to the award of the Contract; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to issue a Request for Proposals for Contract No. 583-2, Complete Rehabilitation of SFMTA Streetcar Car No.1, evaluate proposals, and negotiate a contract with the most qualified proposer.

I certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of JUN 17 2008



Secretary, Municipal Transportation Agency Board

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSION – PUC

Dept. Code: PUC

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Watershed Maintenance Training Project (CS-1055)

Funding Source: SFPUC Natural Resources, WE

PSC Duration: 2 years 52 weeks

PSC Amount: \$500,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The San Francisco Public Utilities Commission (SFPUC) is seeking eligible firms or non-profit organizations to provide unique teaching environments and opportunities for disadvantaged workers to develop skills in watershed and vegetation management, and to assist with the grounds maintenance of the diverse watersheds owned and operated by the SFPUC. The contractor will implement an employment readiness training program that includes: the provision of on-the-job vocational training, academic instruction, safety training, basic language and literacy skill-building necessary to retain employment, and life skills instruction on topics such as time management, personal financial management, appropriate attire, job seeking, and interviewing. The field maintenance to be provided by the contractor would include, but not be limited to, vegetation management (including plant identification, cultivation, and planting), the removal and eradication of non-desirable species, and water conservation techniques.

B. Explain why this service is necessary and the consequence of denial:

This service is necessary to meet the goals of the Watershed Management Plans. The deferred maintenance is used to prevent the spread of these plants into non infected areas and reduce fuel load. Furthermore, this service is aligned with the SFPUC Community Benefits Policy to provide workforce development opportunities for local disadvantaged residents. Without this service, maintenance on SFPUC's watersheds will be delayed, risking the health the watersheds, and increasing the risk of fires. Furthermore, the SFPUC will not be able to provide a significant workforce development program to the City's disadvantaged workers.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The services has been provided via PSC No. 42385-13/14 (CS-361).

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

The use of consulting services is necessary to meet the goals of the Watershed Management Plans. The deferred maintenance is used to prevent the spread of these plants into non infected areas and reduce fuel load. City staff doesn't have the expertise to provide the required training services, nor the necessary specialized skills in native plant species and endangered species. In addition, the work is seasonal on an as-needed basis.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: •Expertise in watershed and vegetation maintenance, including specialized experience and expertise with native plant species and endangered species. •Expertise in the administration of employment readiness programs, vocational training, academic instruction, educational models, and/or life skills instruction. •Extensive experience providing services to disadvantaged workers.
- B. Which, if any, civil service class(es) normally perform(s) this work? 3424, Integrated Pest Mgmt Specialist; 3434, Arborist Technician; 7514, General Laborer; 7542, Watershed Worker (Seasonal);
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes, all materials and supplies, including tools, transportation, port-a-potties, proper work clothing and footwear, and personal protective equipment (PPE) will be provided by the contractor. These materials and supplies will not be retained by the City upon completion of the contract.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Though the civil servants in the classes listed in this PSC can perform basic maintenance work, these City staff do not have the expertise to provide the required training services, nor the necessary specialized skills in native plant species and endangered species.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
The work involves the provision of specialized employment readiness training, including basic literacy, language, and life skills instruction, as well as specialized vocational training, specifically for disadvantaged workers. The required expertise to provide these specialized services is not available via existing civil service resources.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. Educational opportunities on SFPUC's watersheds are limited to the spring and summer seasons. It would not be practical to adopt a new civil service class for this short-term seasonal work.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No training to City staff will be provided given the seasonal nature of the work.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 09/23/2016, the Department notified the following employee organizations of this PSC/RFP request:
Laborers, Local 261; SEIU 1021 Miscellaneous; SEIU Local 1021

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Shamica Jackson Phone: 415-554-0727 Email: SJackson@sfwater.org

Address: 525 Golden Gate Avenue, 8th Floor San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 49277 - 16/17

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 11/21/2016

Receipt of Union Notification(s)

From: dhr-psccordinator@sfgov.org on behalf of SJackson@sfgwater.org
To: Jackson_Shamica; thomas.vitale@seiu1021.org; Sandeep.lal@seiu1021.me; leah.berlanga@seiu1021.org; Lopez_Ricardo_Basconillo_Kathy; pcamarillo_seiu@sbcglobal.net; Wendy.Frigilliana@seiu1021.org; pscreview@seiu1021.org; ted.zarzecki@seiu1021.net; davidmkersten@gmail.com; ablood@cirseiu.org; xiumin.li@seiu1021.org; Sin.Yee.Poon@sfgov.org; david.canham@seiu1021.org; jtanner940@aol.com; LilJNA.local261@gmail.com; Jackson_Shamica; DHR-PSCCoordinator; DHR
Subject: Receipt of Notice for new PCS over \$100K PSC # 49277 - 16/17
Date: Friday, September 23, 2016 4:23:00 PM

RECEIPT for Union Notification for PSC 49277 - 16/17 more than \$100k

The PUBLIC UTILITIES COMMISSION -- PUC has submitted a request for a Personal Services Contract (PSC) 49277 - 16/17 for \$500,000 for Initial Request services for the period 12/01/2016 -- 11/30/2019. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/8119> For union notification, please see the

TO: field of the email to verify receipt. If you do not see all the unions you

intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended


From: [Kyger, Todd](#)
To: [Jackson, Shamica](#)
Subject: FW: PSC #49277
Date: Monday, October 24, 2016 1:44:39 PM
Importance: High

Todd Kyger

Workforce & Economic Program Services Bureau
Infrastructure Division
San Francisco Water, Power, Sewer
415-554-3412 | tkyger@sfwater.org

From: Ben Sizemore [<mailto:Ben.Sizemore@seiu1021.org>]
Sent: Monday, October 24, 2016 10:45 AM
To: Kyger, Todd
Cc: XiuMin Li
Subject: PSC #49277
Importance: High

Hello Todd,

 Thank you for your patience. After a close review and consultation with our members the Union does not protest PSC #49277 – 16/17 (CS-1055) for its duration. Please let me know if you have any further questions or concerns.

Thank you,

Ben Sizemore
Field Representative

SEIU Local 1021
350 Rhode Island
Suite 100 South Bldg.
San Francisco, CA 94103
phone 415-848-3645
cell 415-717-7928
fax 415-431-6241

bs cwa9404/aff-cio

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSION – PUC Dept. Code: PUC

Type of Request: [X] Initial [] Modification of an existing PSC (PSC # _____)

Type of Approval: [] Expedited [X] Regular ([] Omit Posting)

Type of Service: Watershed Maintenance Project (CS-361)

Funding Source: Natural Resources PSC Duration: 3 years 1 day
PSC Amount: \$150,000 PSC Est. Start Date: 06/30/2014 PSC Est. End Date: 06/30/2017

1. Description of Work

A. Scope of Work:

The San Francisco Public Utilities Commission (SFPUC) is seeking eligible firms or non-profit organizations to provide unique teaching environments and opportunities for disadvantaged workers to develop skills in watershed and vegetation management and to assist with the grounds maintenance of the diverse watersheds owned and operated by the SFPUC. This field maintenance would include, but not be limited to, vegetation management (including plant identification, cultivation, and planting), the removal and eradication of non-desirable species, and water conservation techniques.

B. Explain why this service is necessary and the consequence of denial:

This service is necessary to meet the goals of the Peninsula Watershed Management Plans. The deferred maintenance is used to prevent the spread of these plants into non infected areas and reduce fuel load. Furthermore, this service is aligned with the SFPUC Community Benefits Policy to provide workforce development opportunities for local disadvantaged residents.

C. Has this service been provided in the past. If so, how? If the service was provided via a PSC, provide the most recently approved PSC # and upload a copy of the PSC.

Work has been performed in past by San Francisco Conservation Corps, Earth Steward's alongside Summer Watershed Workers, and Laborers. It was not provided through a PSC.

D. Will the contract(s) be renewed? Maybe.

2. Union Notification: On 03/19/2014, the Department notified the following employee organizations of this PSC/RFP request: Laborers, Local 261; SEIU 1021 Miscellaneous; SEIU Local 1021

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 42385 - 13/14

DHR Analysis/Recommendation:

06/16/2014

Commission Approval Required

DHR Approved for 06/16/2014

Approved by Civil Service Commission with conditions

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise:

Expertise in good work practices including safety, ability to follow instruction, good physical health, ability to work under adverse conditions.

Expertise in watershed maintenance as well as the administration of employment readiness programs, vocational training, academic instruction, educational models, and/or life skills instruction to local disadvantaged workers

B. Which, if any, civil service class(es) normally perform(s) this work?

7514,3524,3434,7542,

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:

Yes, all materials and supplies, tools including transportation, port-a-potties, proper work clothing and footwear, personal protective equipment (PPE) etcetera will be provided by the contractor.

4. Why Classified Civil Service Cannot Perform

A. Explain why civil service classes are not applicable:

The contractor will provide on-site training and specialized work which the existing civic service classes do not perform.

B. Would it be practical to adopt a new civil service class to perform this work? Explain.

No, civil service classes that can perform this work already exist; however this on-site training for disadvantaged workers is specialized.

5. Additional Information (if "yes", attach explanation)

	<u>YES</u>	<u>NO</u>
A. Will the contractor directly supervise City and County employee?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
B. Will the contractor train City and County employee?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
C. Are there legal mandates requiring the use of contractual services?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
D. Are there federal or state grant requirements regarding the use of contractual services?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
E. Has a board or commission determined that contracting is the most effective way to provide this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
F. Will the proposed work be completed by a contractor that has a current PSC contract with your department?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD

ON 03/19/2014 BY:

Name: Shamica Jackson Phone: 415-554-0727 Email: S.Jackson@sfgwater.org

Address: 525 Golden Gate Ave. San Francisco, CA

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - TECHNOLOGY - TIS

Dept. Code: TIS

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Video streaming

Funding Source: Departmental budget

PSC Duration: 5 years

PSC Amount: \$250,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

To expand its services and to provide equal access to all of the residents of the City, SFGovTV simulcasts its content on the internet. SFGovTV seeks a vendor that can:

1. Video stream the SFGovTV channel live 24/7.
2. Host SFGovTV video content for on-demand viewing.
3. Conserve the City's bandwidth.
4. Increase the quality of the live stream.
5. Provide universal format delivery to PC, MAC and mobile platforms.
6. Add additional functions to improve usability of SFGovTV archive content.

B. Explain why this service is necessary and the consequence of denial:

SFGovTV requires video streaming to provide general and Americans with Disabilities Act (ADA)-related access to official City business as well as City and County of San Francisco feature programming.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Service was previous approved under PSC 4163-06/07 on 19 July 2010.

D. Will the contract(s) be renewed?

Yes.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

Third party vendors are in the best position to invest in, maintain, and operate multi-platform compatible hardware to provide video streaming on demand.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

The City and County of San Francisco does not possess or intend to acquire specialized equipment to perform video streaming and storage.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Expert knowledge of video streaming equipment and multi-platform software technologies.

B. Which, if any, civil service class(es) normally perform(s) this work? none

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes: mobile encoding, indexing, storage, and high-definition audio and video equipment. Closed captioning equipment may also be offered by vendors.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

The City and County of San Francisco has outsourced these required services since 2007. Hardware and software advancements over time make this specialized work difficult to justify bringing in-house to the Department of Technology.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Real-time events may require off-site or extended programming hours that would be difficult to plan and schedule for regular civil service classes.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No training due to the limited overlap between SFGovTV production performed in-house, and the post-production services required.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 09/08/2016, the Department notified the following employee organizations of this PSC/RFP request:
all unions were notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jolie Gines Phone: 415 581 3974 Email: jolie.gines@sfgov.org

Address: One South Van Ness, 2d floor San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 45047 - 16/17

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 11/21/2016

Receipt of Union Notification(s)

Choi, Suzanne (HRD)

From: dhr-psccoordinator@sfgov.org on behalf of jolie.gines@sfgov.org
Sent: Thursday, September 08, 2016 4:20 PM
To: Gines, Jolie (TIS); amakayan@ifpte21.org; jb@local16.org; Lopez-Barrios, Ricardo (PDR); Basconcillo, Katherine (PUC); Sandeep.lal@seiu1021.me; pcamarillo_seiu@sbcglobal.net; MRainsford@Local39.org; Wendy.Frigillana@seiu1021.org; pscreview@seiu1021.org; agonzalez@iam1414.org; ted.zarzecki@seiu1021.net; leah.berfanga@seiu1021.org; gall@sfdlocal798.org; cityworker@sfcwu.org; davidmkersten@gmail.com; djohnson@opcmialocal300.org; hodlocal@pacbell.net; ablood@cirseiu.org; pkarinen@nccrc.org; tony@dc16.us; stevek@bac3-ca.org; xiumin.li@seiu1021.org; Poon, Sin Yee (HSA) (DSS); smcgarry@nccrc.org; ritchell@twusf.org; grojo@Local39.org; jduritz@uapd.com; staff@sfmea.com; mike@dc16.us; khughes@ibew6.org; L21PSCReview@ifpte21.org; sfsmsa@gmail.com; mshelley@dc16.us; david.canham@seiu1021.org; jtanner940@aol.com; L21PSCReview@ifpte21.org; LiUNA.local261@gmail.com; local200twu@sbcglobal.net; speedy4864@aol.com; camaguey@sfmea.com (contact); ecdemvoter@aol.com; thomas.vitale@seiu1021.org; Lu, Kathy (TIS); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Notice for new PCS over \$100K PSC # 45047 - 16/17

RECEIPT for Union Notification for PSC 45047 - 16/17 more than \$100k

The GENERAL SERVICES AGENCY - TECHNOLOGY -- TIS has submitted a request for a Personal Services Contract (PSC) 45047 - 16/17 for \$250,000 for Initial Request services for the period 11/21/2016 – 11/21/2021. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrrupal/node/7904> For union notification, please see the

TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Additional Attachment(s)

City and County of San Francisco

**Request for Proposals for
SFGovTV Video Streaming**

DT RFP 2017 - 04



Date issued:	Monday, 1 December 2016
Pre-proposal conference:	3 p.m., Tuesday, 13 December 2016
Proposal due:	5 p.m., Thursday, 5 January 2017

Request for Proposals for SFGovTV Video Streaming

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Appendices:

- A. CMD Attachment 2: Requirements for Architecture, Engineering and Professional Services Contracts, for contacts \$50,000 and over document (separate document).
Proposers must submit the following forms:

- Form 2A CMD Contract Participation form
- Form 2B CMD "Good Faith" Outreach Requirements form
- Form 3 CMD Non-discrimination Affidavit
- Form 5 CMD Employment form

The following form may be required, depending on the circumstances:

- Form 4 Joint Venture Participation Schedule

- B. Standard Forms: Listing and Internet addresses of Forms related to Taxpayer Identification Number and Certification, to Business Tax Declaration, and to Chapters 12B and 12C, and 14B of the S.F. Administrative Code. B-1
- C. Agreement for Professional Services (form P-600) separate document

**Request for Proposals for
SFGovTV Video Streaming**

I. Introduction and Schedule

A. General

SFGovTV – San Francisco Government Television, cable 26 and 78, is the City and County of San Francisco’s government television channel. The purpose of the government channel is to cablecast government-related programming of interest to the residents of the City that will inform, educate, as well as encourage, participation in government services, activities and decision-making. Examples of content are live gavel-to-gavel coverage of the Board of Supervisors’ meetings, the Planning Commission, Building Inspection Commission, Board of Appeals, the Transportation Authority, the Port Commission, the Mayor’s Disability Council, and the Mayor’s press conferences. The channel also produces original programming for and about City and County departments and agencies. The channel is managed by the City’s Department of Technology.

To expand its services and to provide equal access to all of the residents of the City, the channel simulcasts its content on the internet. SFGovTV seeks a vendor that can video stream the channel live 24/7 and host its video content for on-demand viewing. Additionally, the City would like to add additional functions to improve usability of its archive content.

The contract shall have an original term of three (3) years. In addition, the City shall have one (1) option to extend the term for a period of one (1) year, which the City may exercise in its sole, absolute discretion.

System Architecture and Conversion for Existing Solution

The City streams the audio and video of its public meetings over the internet (live and on-demand). The City has approximately 3000 archived streaming video clips. The current streaming format is mp4.

Contractor must describe how it would approach the conversion of these files into its system if necessary.

The City does not have dedicated staff to manage and administer streaming content management software. Contractor must describe how its system is designed and the resources that the City would need to allocate.

Contractor must include how upgrades and bug fixes to the software would be managed.

B. Schedule

The anticipated schedule for selecting a consultant is:

RFP for SFGovTV Video Streaming

<u>Proposal Phase</u>	<u>Date</u>
RFP is issued by the City	<u>Thursday, 1 December 2016</u>
Pre-proposal conference	<u>3 p.m., Tuesday, 13 December 2016</u>
Deadline for submission of written questions or requests for clarification	<u>5 p.m., Tuesday, 20 December 2016</u>
Proposals due	<u>5 p.m., Thursday, 5 January 2017</u>
Oral interview with firms selected for Evaluators' clarification (if necessary)	<u>2 p.m., Wednesday, 13 January 2017</u>

II. Scope of Work

This Scope of Work is to be used as a general guide and is not intended to be a complete list of all work necessary to complete the project. Proposals must include itemized pricing for items A to E. Item F must be included at no additional cost because it is a built-in function in the video stream.

Please follow the format of the Excel sheet in Appendix C to organize your response.

A. Live Webcasts for Internet and Intranet Distribution and mobile streaming from off-site locations

The City's current streaming solution is a hybrid hosted architecture standardized on the mp4 (H.264) format. The City manages its own internal (intranet) server and encoders and a contractor manages a public (internet) server. The City would like to continue the current distribution architecture for the live broadcast of the City's cable channels (two channels live 24x7) and public meetings. Below are the desired benefits.

1. Conservation of the City's bandwidth.
2. Increase the quality of the live stream.
3. Universal format delivery to PC, MAC and mobile platform.

1. Services, Systems, and Tools Requirements

- Outline the City tasks and the vendor tasks that will be performed to install and configure all necessary hardware and software.

RFP for SFGovTV Video Streaming

- What, if any, aspects of the (intranet) on-site distribution solution are managed by the contractor and what is the City responsible for after the deployment is complete?
- Is the proposed system capable of routing citizen requests for live video content to a hosted facility and internal user requests to the on-site distribution system?
- What limits are imposed on the City with respect to the number of simultaneous live streams distributed by the proposed solution?
- The contractor is required to provide 24×7 monitoring of the live video stream. How will the City be notified when a video stream is down?
- Outline specifications for video streaming format, bit-rate; minimum and maximum frame size.

2. Experience

Please list three current municipalities or organizations to which you have successfully delivered each of the following solution components. Please include links to the websites, which demonstrate this solution.

- a) Internal Distribution of Live streaming behind the municipalities' or organizations' firewall.
- b) External Distribution of Live Steaming to public viewers.
- c) Hosting of video on demand content.

3. References

For each of the examples in Item 2, include a client contact name, title and phone number.

4. Pricing

List the cost for proposed software, installation, and configuration of all hardware and software required to meet the above requirements and to support the proposed solution.

Include:

- Hourly cost for support;
- Hourly cost for night/weekend support if any;
- Cost per unit (define) live video stream;
- Cost for video on demand video hosting;
- Cost per megabyte for bandwidth;
- Cost for upgrade and maintenance;
- Cost for website/page update; and
- Cost for customization.

5. Vendor Staff

List the staff your firm will use to deploy, train and support the proposed solution. Include the years of relevant experience and the number of similar solutions each staff member has worked on.

B. On-site Storage and Distribution of Video Archives

The City's current streaming solution for archive video is a 100% hosted architecture of archived video storage. **The City would like to move to a shared automated onsite and offsite hosted storage and distribution architecture for archived video content.** The contractor will provide video storage for internet requests and the City will provide its own onsite storage. The contractor will make available direct File Transfer Protocol (FTP) access and content management access to the hosted server(s). The City will have the ability to update or change its content at any time. The City will provide its own video server for onsite storage. Below are the desired benefits:

1. Conservation of the City's bandwidth.
2. More control of the retention cycle of the City's video content.
3. Video on Demand distribution.
4. Universal format delivery to PC, MAC and mobile platforms.

1. Services, Systems and Tools Requirements

- Outline the City tasks and the vendor tasks that will be performed to install and configure all necessary hardware and software.
- What, if any, aspects of the on-site distribution and storage solution will be managed by the vendor and what is the City responsible for after the deployment is complete?
- Is the proposed system capable of routing citizen request (internet) for archived video content to a hosted facility and on-site (intranet) requests to the on-site storage and distribution system?
- How will City staff make sure that the content in the hosted facility matches the content that is hosted on-site?
- What limits are imposed on the City with respect to the amount of video content that can be stored in the hosted facility and the on-site storage system?
- What tools will you give City staff that will help them control the video content in the post-meeting environment?
- Outline specifications for video streaming format; bit-rate; minimum and maximum frame size.

RFP for SFGovTV Video Streaming

2. Experience

Please list three current municipalities or organizations to which you have successfully delivered each of the following solution components. Please include links to the websites that demonstrate this solution.

- a) Internal Distribution of on-demand streaming in the internal network.
- b) External Distribution of on-demand streaming outside the municipalities' or organizations' firewall.

3. Reference

For each of the examples in Item 2, include a client contact name, title and phone number.

4. Pricing

List the cost for propose software, install and configure all hardware and software required to meet the above requirements and to support the proposed solution.

Include:

- Hourly cost for support;
- Cost for night/weekend support if any;
- Cost per gigabyte of storage;
- Cost per megabyte for bandwidth;
- Cost for upgrade and maintenance;
- Cost for upgrade and maintenance;
- Cost for website/page update; and
- Cost for customization.

5. Vendor Staff

List the staff your firm will use to deploy, train and support the proposed solution. Include the years of relevant experience and the number of like solutions each staff member has worked-on.

C. Live Meeting Indexing and Minutes Annotation Service

The City currently streams the audio/video of its public meetings over the internet (live and on-demand). The City is interested in integrating the streaming video broadcast and archives with the City's legislative process. The City has an interest in integrating these two processes for the following reasons.

1. Linked Minutes - Minutes that are linked to the audio/video recording of the meeting. This will allow citizens to access each document through the City web site that has agenda items that are hyperlinks to the audio/video recording of the meeting.
2. Video Indexing via the clerk's minutes annotation process – SFGovTV staff is tasked with manually indexing the City's public meetings by agenda item. The City would like to streamline this task by allowing City clerk staff to build

minutes in a tool that will index the video as a result of live and post-meeting annotation.

Finally, the City would like to link supporting documents (e.g., Staff Reports) to their associated agenda items and index them against the audio/video of the meeting. When viewing a live stream, end users should have access to the supporting documents. Users should also be able to access supporting documents via hyperlinks within the linked minutes.

1. Services, Systems and Tools Requirements

- Describe how meeting agenda item titles will flow into the system used to index the meetings.
- Describe how your system will link supporting documents to agenda item titles.
- Describe the system/tools that the City clerks will use to capture roll call, motions, votes and discussion summaries as they occur in the meeting and how the actions in this tool will create index points in the digital recording.
- Describe the tools the clerk staff will have access to when completing their meeting minutes (post-meeting).
- Explain the process that the clerks will go through to publish the linked minutes via the proposed system.
- Is your company able to deliver a searchable meeting archive? If so, what information is searchable and how does your search technology work?
- Will the City be expected to change our legislative process to fit the proposed systems/tools or will the proposed system/tools be modified to fit the City's legislative process? Describe the customizations that your firm has performed to meet the unique legislative needs of your clients.
- When the City plans to use the minutes document produced by the proposed system as the official meeting record the format of the Minutes documents will remain as they are today. How will your systems/tools produce a minutes document that matches the current minutes document formats? The City minutes documents can be found at <http://www.sfgov.org>.
- Provide your company's methodology for training clerk staff how to migrate from their existing legislative process to your proposed legislative process and any on-going training if any.
- What levels of support will your firm offer for the clerk staff?

RFP for SFGovTV Video Streaming

- Describe your company's staff experience with local government meeting procedures (e.g., Roberts Rules of Order).
- Is the proposed solution compatible with current industry standard legislative systems? If so, provide a list of compatible systems.

2. Experience

Please list three current municipalities or organizations to which you have successfully delivered each of the following solution components. Include links to the websites, which demonstrate this solution.

- 1) Live minutes annotation;
- 2) Post meeting minutes clean up and publishing;
- 3) Integration with other legislative management solutions.

3. Reference

For each of the examples in Item 2, include a client contact name, title and phone number.

4. Pricing

List the cost for proposed software. Install and configure all hardware and software required to meet the above requirements and to support the proposed solution. Include hourly cost for support and cost for night/weekend support if any; cost for hardware if any; cost for upgrade and maintenance.

List the cost that your firm will charge in order to train City staff to use these tools.

5. Vendor Staff

List the staff your firm will use to deploy, train and support the proposed solution. Include the years of relevant experience and the number of similar solutions each staff member has experience implementing

D. Podcasting / .mp3 / RSS

The City have and existing audio archives in MP3 audio files suitable for podcasting. The City would also like all new archives to be automatically encoded or transcoded into MP3 audio files and a video format suitable for podcasting. The City hopes to achieve these benefits from a podcasting service.

1. Provide staff and citizens an off-line audio/video copy of the City's video content.
2. Give staff and citizens mobile access to an audio/video copy of the City's video content.

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1. Services, Systems and Tools Requirements

- Transcode all existing and new content from mp4 Format into MP3 Audio files for podcasting services.
- Describe all available distribution methods for the MP3 audio files and video files.
- Discuss how your firm will encode or transcode new video content as it is created with the proposed system.
- If transcoding is necessary, how long will it take to transcode new video content after the files are encoded?

Describe how citizens will subscribe to the podcasting services.

2. Experience

Please list three current municipalities or organizations to which you have successfully delivered each of the following solution components. Please include links to the websites, which demonstrate this solution.

- MP3 Podcasting

3. Reference

For each of the examples above also include a client contact name, title and phone number.

4. Pricing

List the hourly or event cost your firm will charge in order to encode or transcode all new video content into MP3 audio files.

List the hourly cost to support the podcasting services on an on-going basis. Include hourly pricing for night/weekend support if any; upgrade and maintenance.

E. Streaming Media Report

The contractor will provide monthly usage reports for streaming media statistics available. The reports will be made available on the internet to the City. The reports will be customized to the City's needs which will include, but are not limited to, the following minimum requirements: number of concurrent live streams, number of users per month, number of unique users, most requested file or meeting, and bandwidth transfer.

RFP for SFGovTV Video Streaming

F. Captions

Create or provide a way for the City to display the text from closed captions on-line with the streaming video. The City will handle the captioning and caption encoding of the video content.

This Scope of Work is to be used as a general guide and is not intended to be a complete list of all work necessary to complete the project. Proposals must include itemized pricing for items A to E. Item F must be included at no additional cost because it is a built-in function in the video stream.

The following are work tasks assumed necessary to accomplish the SFGovTV video streaming plan of operations. Proposing teams may suggest a modified scope as part of their proposal.

SFGovTV seeks a vendor that can:

1. Video stream the SFGovTV channel live 24/7.
2. Host SFGovTV video content for on-demand viewing.
3. Conserve the City's bandwidth.
4. Increase the quality of the live stream.
5. Provide universal format delivery to PC, MAC and mobile platforms.
6. Add additional functions to improve usability of SFGovTV archive content.

III. Submission Requirements

A. Time and Place for Submission of Proposals

Proposals must be received by 5:00 p.m., PDT, on **Thursday, 5 January 2017**. Postmarks will not be considered in judging the timeliness of submissions. Proposals may be delivered in person and left with the department receptionist, or mailed to:

DT-RFP FY2017-04
SFGovTV Video Streaming
City and County of San Francisco
Department of Technology
One South Van Ness, 2d floor
San Francisco, CA 94103

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Proposers shall submit **four (4)** hard copies of the proposal and two copies, separately bound, of required CMD Forms in a sealed envelope clearly marked **DT-RFP FY2017-04 SFGovTV Video Streaming** to the above location. Proposals that are submitted by fax will not be accepted. Late submissions will not be considered.

One copy of the proposal must also be submitted by email to DT.RFP@sfgov.org by the deadline.

B. Format

The department will place proposals in three-ring binders for the review panel. Please use three-hole recycled paper, print double-sided to the maximum extent practical, and bind the proposal with a binder clip, rubber band, or single staple, or submit it in a three-ring binder. Please do not bind your proposal with a spiral binding, glued binding, or anything similar. You may use tabs or other separators within the document.

For word processing documents, the department prefers that text be unjustified (i.e., with a ragged-right margin) and use a serif font (e.g., Times Roman, and not Arial), and that pages have margins of at least 1" on all sides (excluding headers and footers).

If your response is lengthy, please include a Table of Contents.

You must also submit an electronic version of the proposal.

C. Content

Firms interested in responding to this RFP must submit the following information, in the order specified below:

1. Introduction and Executive Summary (up to 2 pages)

Submit a letter of introduction and executive summary of the proposal. The letter must be signed by a person authorized by your firm to obligate your firm to perform the commitments contained in the proposal. Submission of the letter will constitute a representation by your firm that your firm is willing and able to perform the commitments contained in the proposal.

2. Project Approach (up to 3 pages)

Describe the services and activities that your firm proposes to provide to the City. Include the following information:

- a. Overall scope of work tasks; and
- b. Schedule and ability to complete the project within the City's required time frame; and
- c. Assignment of work within your firm's work team.

3. Firm Qualifications (up to 3 pages)

Provide information on your firm's background and qualifications which addresses the following:

- a. Name, address, and telephone number of a contact person; and
- b. A brief description of your firm, as well as how any joint venture or association would be structured; and
- c. A description of not more than four projects similar in size and scope prepared by your firm including client, reference and telephone numbers, staff members who worked on each project, budget, schedule and project summary. Descriptions should be

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limited to one page for each project. If joint consultants or subconsultants are proposed provide the above information for each.

4. Team Qualifications (up to 5 pages)

a. Provide a list identifying: (1) each key person on the project team, (2) the project manager, (3) the role each will play in the project, and (4) a written assurance that the key individuals listed and identified will be performing the work and will not be substituted with other personnel or reassigned to another project without the City's prior approval.

b. Provide a description of the experience and qualifications of the project team members, including brief resumes if necessary.

5. References (up to 5 pages)

Provide references for the lead consulting firm, lead project manager, and all subconsultants, including the name, address and telephone number of at least **three (3)** but no more than **five (5)** recent clients (preferably other public agencies).

6. Fee Proposal

The City intends to award this contract to the firm that it considers will provide the best overall program services. The City reserves the right to accept other than the lowest priced offer and to reject any proposals that are not responsive to this request.

Please provide a fee proposal in a sealed envelope that includes the following:

a. Total fee for each of the disciplines identified in the Scope of Work with a not-to-exceed figure; and

b. Hourly rates for all team members. Hourly rates and itemized costs may be used to negotiate changes in the Scope of Work if necessary.

IV. Evaluation and Selection Criteria

A. Minimum Qualifications

- Three (3) years of comparable experience for public sector or public-media clients.
- Professional portfolio accessible via online link to supplement a complete and timely written proposal.

Any proposal that does not demonstrate that the proposer meets these minimum requirements by the deadline for submittal of proposals will be considered non-responsive and will not be eligible for award of the contract.

B. Selection Criteria

The proposals will be evaluated by a selection committee comprised of parties with expertise in media and media access. The City intends to evaluate the proposals generally in accordance with the criteria itemized below. Up to three (3) of the firms with the highest scoring proposals may be interviewed by the committee to make the final selection, if needed. Selection to be interviewed is not an indication of a successful bid, nor is lack of an interview indicative of an unsuccessful bid.

Each complete and timely bid received will be scored by three reviewers. Each reviewer will allocate point scores as follows. The bid with the highest points from all reviewers will be ranked first, with other bid scores accorded the following ranks in descending order.

1. Project Approach (20 points)

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- a. Understanding of the project and the tasks to be performed, etc.
- b. Reasonableness of work schedule and fee proposal.
2. **Assigned Key Project Staff (20 points)**
 - a. Recent experience of staff assigned to the project and a description of the tasks to be performed by each staff person; and
 - b. Professional qualifications and education; and
 - c. Workload, staff availability and accessibility.
3. **Experience of Firm and Subconsultants (30 points)**
 - a. Expertise of the firm and subconsultants in the fields necessary to complete the tasks; and
 - b. Quality of recently completed projects, including adherence to schedules, deadlines and budgets; and
 - c. Experience with similar projects; and
 - d. Results of reference checks.
4. **Oral Interview (5 points)**
 - a. Substantive answers and clarification for evaluation purposes.
 - b. The interview will consist of standard questions asked of each of the up to three (3) proposers.
 - c. All viable bids not invited to participate in an interview automatically receive five (5) points.
5. **Price (25 points)**

V. Pre-proposal conference and Contract award

A. Pre-Proposal Conference

Proposers are encouraged to attend a pre-proposal conference on **Tuesday, 13 December 2016, at 3 p.m. PST** to be held at **One South Van Ness, 2d floor, San Francisco, CA, 94103**. **If this RFP requires a subcontracting goal under Chapter 14B, then proposers (primes) must attend the mandatory pre-proposal conference.** All questions will be addressed at this conference and any available new information will be provided at that time. If you have further questions regarding the RFP, please contact the individual designated in Section VI.B.

B. Contract Award

The Department of Technology will select a proposer with whom Department of Technology staff shall commence contract negotiations. The selection of any proposal shall not imply acceptance by the City of all terms of the proposal, which may be subject to further negotiations and approvals before the City may be legally bound thereby. If a satisfactory contract cannot be negotiated in a reasonable time the Department of Technology, in its sole discretion, may terminate negotiations with the highest ranked proposer and begin contract negotiations with the next highest ranked proposer.

VI. Terms and Conditions for Receipt of Proposals

A. Errors and Omissions in RFP

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the Department, in writing, if the proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the Department promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

B. Inquiries Regarding RFP

Inquiries regarding the RFP and all oral notifications of an intent to request written modification or clarification of the RFP, must be directed to:

DT.RFP@sfgov.org

Please include the subject line "DT-RFP FY2017-04 SFGovTV Video Streaming" in order to direct your question to the appropriate person. The deadline for all questions is 5 p.m. PST, 20 December 2016. All questions and answers will be posted in the same format, in the same fashion, that this RFP is published.

C. Objections to RFP Terms

Should a proposer object on any ground to any provision or legal requirement set forth in this RFP, the proposer must, not more than ten calendar days after the RFP is issued, provide written notice to the Department setting forth with specificity the grounds for the objection. The failure of a proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

D. Change Notices

Change Notices will be posted on the website in the same format, and in the same fashion, that this RFP is published. Proposers are responsible for checking the website frequently. The Department will not contact proposers to notify them of changes.

The Department may modify the RFP, prior to the proposal due date, by issuing Bid Addendum(s), which will be posted on the website. The proposer shall be responsible for ensuring that its proposal reflects any and all Bid Addendum(s) issued by the Department prior to the proposal due date regardless of when the proposal is submitted. Therefore, the City recommends that the proposer consult the website frequently, including shortly before the proposal due date, to determine if the proposer has downloaded all Bid Addendum(s).

E. Term of Proposal

Submission of a proposal signifies that the proposed services and prices are valid for 120 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

F. Revision of Proposal

A proposer may revise a proposal on the proposer's own initiative at any time before the deadline for submission of proposals. The proposer must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any proposer.

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At any time during the proposal evaluation process, the Department may require a proposer to provide oral or written clarification of its proposal. The Department reserves the right to make an award without further clarifications of proposals received.

G. Errors and Omissions in Proposal

Failure by the Department to object to an error, omission, or deviation in the proposal will in no way modify the RFP or excuse the vendor from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

H. Financial Responsibility

The City accepts no financial responsibility for any costs incurred by a firm in responding to this RFP. Submissions of the RFP will become the property of the City and may be used by the City in any way deemed appropriate.

I. Proposer's Obligations under the Campaign Reform Ordinance

Proposers must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the proposer is prohibited from making contributions to:

- the officer's re-election campaign
- a candidate for that officer's office
- a committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

1. **Criminal.** Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
2. **Civil.** Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. **Administrative.** Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

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For further information, proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

J. Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFPs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

K. Public Access to Meetings and Records

If a proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the proposer must comply with Chapter 12L. The proposer must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to proposer's meetings and records, and (2) a summary of all complaints concerning the proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in proposer's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

L. Reservations of Rights by the City

The issuance of this RFP does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right at any time to:

1. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Reissue a Request for Proposals;
4. Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
5. Procure any materials, equipment or services specified in this RFP by any other means; or
6. Determine that no project will be pursued.

M. No Waiver

No waiver by the City of any provision of this RFP shall be implied from any failure by the City to recognize or take action on account of any failure by a proposer to observe any provision of this RFP.

N. Local Business Enterprise Goals and Outreach

The requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it

now exists or as it may be amended in the future (collectively the "LBE Ordinance") shall apply to this RFP.

1. LBE Subconsultant Participation Goals

The LBE subconsulting goal for this project is [insert percentage; review pending] % of the total value of the goods and/or services to be procured.

Each firm responding to this solicitation shall demonstrate in its response that it has used good-faith outreach to select LBE subcontractors as set forth in S.F. Administrative Code §§14B.8 and 14B.9, and shall identify the particular LBE subcontractors solicited and selected to be used in performing the contract. For each LBE identified as a subcontractor, the response must specify the value of the participation as a percentage of the total value of the goods and/or services to be procured, the type of work to be performed, and such information as may reasonably be required to determine the responsiveness of the proposal. LBEs identified as subcontractors must be certified with the San Francisco Contract Monitoring Division at the time the proposal is submitted, and must be contacted by the proposer (prime contractor) prior to listing them as subcontractors in the proposal. Any proposal that does not meet the requirements of this paragraph will be non-responsive.

In addition to demonstrating that it will achieve the level of subconsulting participation required by the contract, a proposer shall also undertake and document in its submittal the good faith efforts required by Chapter 14B.8(C)&(D) and CMD Attachment 2, Requirements for Architecture, Engineering and Professional Services Contracts.

Proposals which fail to comply with the material requirements of S.F. Administrative Code §§14B.8 and 14B.9, CMD Attachment 2 and this RFP will be deemed non-responsive and will be rejected. During the term of the contract, any failure to comply with the level of LBE subcontractor participation specified in the contract shall be deemed a material breach of contract. Subconsulting goals can only be met with CMD-certified LBEs located in San Francisco.

2. LBE Participation

Chapter 14B also requires departments to adjust bid bonding and insurance requirements as recommended by the Risk Manager.

The City strongly encourages proposals from qualified LBEs. Pursuant to Chapter 14B, the following rating discount will be in effect for the award of this project for any proposers who are certified by CMD as a LBE, or joint ventures where the joint venture partners are in the same discipline and have the specific levels of participation as identified below. Certification applications may be obtained by calling CMD at (415) 252-2500. The rating discount applies at each phase of the selection process. The application of the rating discount is as follows:

- a. A 10% bid discount shall be applied to Small LBEs and Micro-LBEs bidding as primes; or
- b. A 2% bid discount will be applied to an SBA-LBE, except that the 2% discount shall not be applied at any stage if it would adversely affect a Small LBE or Micro-LBE bidder.

If applying for a rating discount as a joint venture: The LBE must be an active partner in the joint venture and perform work, manage the job and take financial risks in proportion to the required level of participation stated in the proposal, and must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the LBE joint venture's work shall be set forth in detail separately from the work to be performed by the non-LBE joint venture partner. The LBE joint venture's portion of the contract must be assigned a commercially useful function.

3. CMD Forms to be Submitted with Proposal

a. All proposals submitted must include the following Contract Monitoring Division (CMD) Forms contained in the CMD Attachment 2: 1) CMD Contract Participation Form, 2) CMD "Good Faith Outreach" Requirements Form, 3) CMD Non-Discrimination Affidavit, 4) CMD Joint Venture Form (if applicable), and 5) CMD Employment Form. If these forms are not returned with the proposal, the proposal may be determined to be non-responsive and may be rejected.

b. Please submit only two copies of the above forms with your proposal. The forms should be placed in a separate, sealed envelope labeled CMD Forms.

If you have any questions concerning the CMD Forms, you may call [insert name of individual], the Contract Monitoring Division Contract Compliance Officer for [insert Department name] at [insert telephone number].

VII. Contract Requirements

A. Standard Contract Provisions

The successful proposer will be required to enter into a contract substantially in the form of the Agreement for Professional Services, attached hereto as Appendix C. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsement, surety bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

Proposers are urged to pay special attention to the requirements of Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits, (§[insert section number of "Nondiscrimination; Penalties"] in the Agreement); the Minimum Compensation Ordinance (§[insert section number of "Requiring Minimum Compensation for Covered Employee"] in the Agreement); the Health Care Accountability Ordinance (§[insert section number of "Requiring Health Benefits for Covered Employees"] in the Agreement); the First Source Hiring Program (§[insert section number of "First Source Hiring Program"] in the Agreement); and applicable conflict of interest laws (§ [insert section number of "Conflict of Interest"] in the Agreement), as set forth in paragraphs B, C, D, E and F below.

B. Nondiscrimination in Contracts and Benefits

The successful proposer will be required to agree to comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the CMD's website at www.sfCMD.org.

C. Minimum Compensation Ordinance (MCO)

The successful proposer will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements. For the

contractual requirements of the MCO. see §[insert section number of "Requiring Minimum Compensation for Covered Employee" in the Agreement].

For the amount of hourly gross compensation currently required under the MCO, see www.sfgov.org/olse/mco. Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract.

Additional information regarding the MCO is available on the web at www.sfgov.org/olse/mco.

D. Health Care Accountability Ordinance (HCAO)

The successful proposer will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at www.sfgov.org/olse/hcao.

E. First Source Hiring Program (FSHP)

If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) may apply. Generally, this ordinance requires contractors to notify the First Source Hiring Program of available entry-level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment.

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at <http://www.workforcedevelopmentsf.org/> and from the First Source Hiring Administrator, (415) 401-4960.

F. Conflicts of Interest

The successful proposer will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the successful proposer might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful proposer that the City has selected the proposer.

VIII. Protest Procedures

A. Protest of Non-Responsiveness Determination

Within five working days of the City's issuance of a notice of non-responsiveness, any firm that has submitted a proposal and believes that the City has incorrectly determined that its proposal is non-responsive may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day following the City's issuance of the notice of non-responsiveness. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local

RFP for SFGovTV Video Streaming

ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

B. Protest of Contract Award

Within five working days of the City's issuance of a notice of intent to award the contract, any firm that has submitted a responsive proposal and believes that the City has incorrectly selected another proposer for award may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day after the City's issuance of the notice of intent to award.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

C. Delivery of Protests

All protests must be received by the due date. If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the City received the protest. Protests or notice of protests made orally (e.g., by telephone) will not be considered. Protests must be delivered to:

DT.RFP@sfgov.org

Subject line must reference FY2017-04 SFGovTV Video Streaming.

Appendix B

Standard Forms

Before the City can award any contract to a contractor, that contractor must file three standard City forms (items 1-3 on the chart). Because many contractors have already completed these forms, and because some informational forms are rarely revised, the City has not included them in the RFP package. Instead, this Appendix describes the forms, where to find them on the Internet (see bottom of page 2), and where to file them. If a contractor cannot get the documents off the Internet, the contractor should call (415) 554-6248 or e-mail Purchasing (purchasing@sfgov.org) and Purchasing will fax, mail or e-mail them to the contractor.

If a contractor has already filled out items 1-3 (see note under item 3) on the chart, **the contractor should not do so again unless the contractor's answers have changed.** To find out whether these forms have been submitted, the contractor should call Vendor File Support in the Controller's Office at (415) 554-6702.

If a contractor would like to apply to be certified as a local business enterprise, it must submit item 4. To find out about item 4 and certification, the contractor should call Contract Monitoring Division at (415) 252-2500.

Item	Form name and Internet location	Form	Description	Return the form to; For more info
1.	Request for Taxpayer Identification Number and Certification http://sfgsa.org/index.aspx?page=4762 www.irs.gov/pub/irs-fill/fw9.pdf	W-9	The City needs the contractor's taxpayer ID number on this form. If a contractor has already done business with the City, this form is not necessary because the City already has the number.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102 (415) 554-6702
2.	Business Tax Declaration http://sfgsa.org/index.aspx?page=4762	P-25	All contractors must sign this form to determine if they must register with the Tax Collector, even if not located in San Francisco. All businesses that qualify as "conducting business in San Francisco" must register with the Tax Collector	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102 (415) 554-6702
3.	S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits http://sfgsa.org/index	CMD-12B-101	Contractors tell the City if their personnel policies meet the City's requirements for nondiscrimination against protected classes of people, and in the provision of benefits between employees with	Human Rights Comm. 25 Van Ness, #800 San Francisco, CA 94102-6059 (415) 252-2500

RFP for SFGovTV Video Streaming

Item	Form name and Internet location	Form	Description	Return the form to; For more info
	aspx?page=4762 In Vendor Profile Application		spouses and employees with domestic partners. Form submission is not complete if it does not include the additional documentation asked for on the form. Other forms may be required, depending on the answers on this form. Contract-by-Contract Compliance status vendors must fill out an additional form for each contract.	
4.	CMD LBE Certification Application http://www.sfgsa.org/index.aspx?page=6058 In Vendor Profile Application		Local businesses complete this form to be certified by CMD as LBEs. Certified LBEs receive a rating bonus pursuant to Chapter 14B when bidding on City contracts. To receive the bid discount, you must be certified by CMD by the proposal due date.	Contract Monitoring Unit 30 Van Ness Avenue, Suite 200 San Francisco, CA 94102 Phone: (415) 581-2310

Where the forms are on the Internet

Office of Contract Administration

Homepage: www.sfgov.org/oca/
 Purchasing forms: Click on "Required Vendor Forms" under the "Information for Vendors and Contractors" banner.

Contract Monitoring Division

CMD's homepage: <http://sfgsa.org/index.aspx?page=5365>
 Equal Benefits forms: <http://sfgsa.org/index.aspx?page=5359>
 LBE certification form: <http://sfgsa.org/index.aspx?page=5364#Section%20V>



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

GAVIN NEWSOM
MAYOR

July 23, 2010

NOTICE OF CIVIL SERVICE COMMISSION ACTION

E. DENNIS NORMANDY
PRESIDENT

SUBJECT: REVIEW OF REQUEST FOR APPROVAL OF PROPOSED PERSONAL SERVICES CONTRACT NUMBERS 4000-10/11 THROUGH 4015-10/11; 4010-08/09; 4030-05/06; 4122-07/08; 4087-06/07; 4163-06/07 AND 4138-06/07.

DONALD A. CASPER
VICE PRESIDENT

At its meeting of July 19, 2010 the Civil Service Commission had for its consideration the above matter.

MORGAN R. GORRONG
COMMISSIONER

PLEASE NOTE: *It is important that a copy of this action be kept in the department files as you will need it in the future as proof of Civil Service Commission approval. Please share it with everyone responsible for follow-up.*

MARY Y. JUNG
COMMISSIONER

It was the decision of the Commission to:

ANITA SANCHEZ
EXECUTIVE OFFICER

- (1) Adopt the report; Approve request for PSC #4003-10/11 on the condition that one year from July 19, 2010, the Department of Public Health apprise the Commission of efforts made to have, as much as possible the proposed work to be contracted out be performed by civil service classifications, principally 1402 Junior Clerks. Notify the Office of the Controller and the Office of Contract Administration.
- (2) Adopt the report; Approve request for PSC #4005-10/11. Notify the Office of the Controller and the Office of Contract Administration.
- (3) Adopt the report; Approve request for PSC #4010-10/11 as amended to modify the contract amount from \$600,000 to \$500,000 and the duration from 06/30/14 to 06/30/15. Notify the Office of the Controller and the Office of Contract Administration.
- (4) Adopt the report; Approve request for PSC #4010-08/09. Notify the Office of the Controller and the Office of Contract Administration.
- (5) Adopt the report; Approve request for all remaining proposed personal contracts. Notify the Office of the Controller and the Office of Contract Administration.

If this matter is subject to Code of Civil Procedure (CCP) Section 1094.5, the time within which judicial review must be sought is set forth in CCP Section 1094.6.

CIVIL SERVICE COMMISSION

ANITA SANCHEZ
Executive Officer

Attachment

- c:
- Cynthia Avakian, Airport Commission
 - Parveen Boparai, Municipal Transportation Agency
 - Rachel Buerkle, Department of the Environment
 - Jesusa Bushong, San Francisco Fire Department
 - Micki Callahan, Human Resources Director
 - Gordon Choy, Department of Public Works
 - Kendall Gary, Department of Technology
 - Jacque Hale, Department of Public Health
 - Shamica Jackson, Public Utilities Commission
 - Florence Kyaun, Public Utilities Commission
 - Brent Lewis, Department of Human Resources
 - Joan Lubamersky, General Services Agency
 - Commission File
 - Chron

POSTING FOR
7/19/2010

PROPOSED PERSONAL SERVICES CONTRACTS
MODIFICATION TO INCREASE CONTRACT AMOUNT/DURATION

PSC No	DeptNo	DeptDescription	Approval Type	Modified Amount	Contract Amount	Description of Work	Duration
4163-06/07	75	Dept. of Technology	Regular	\$106,350	\$206,350	Host internet video streaming of SFQTV, the San Francisco Governmental Channel, cable channel 26, 2A/7. Provide monthly usage reports. Host and store up to one year's archive of video on the internet for the Board of Supervisors meetings, City commission meetings, Mayor's press conferences, State of the City Address and others, as necessary. Provide software to index meeting according to agenda items and link documents to streaming video. Provide software to include caption with video streaming content.	6/30/2014
4138-06/07	81	Public Health	Regular	30	\$5,000,000	Contractors will perform environmental and facility assessments, provide project support/oversight, and survey customers who utilize the services at the Community Health Network (CHN) and healthcare providers such as doctors, nurses and administrators) in order to fulfill accreditation and licensing requirements specific to healthcare facilities, and in preparation for replacement or renovation building plans. Contractors will act as consultants with expertise specific to healthcare in one or more of the following: healthcare programs and/or systems, safety management, emergency preparedness, life safety, facility planning, mechanical systems, emergency power systems, environmental control (automation) systems, information systems, hazardous materials management, utility management and security management. With regard to emergency preparedness and security management, the implementation of a medical helpline necessary in order for San Francisco General Hospital (SFGH) to be a complete trauma center. Contractors will share findings with staff assist in the implementation of changes needed to reduce risks; evaluate the impact of change on both Department staff and clients.	6/30/2013

Headell's Copy

PERSONAL SERVICES CONTRACT SUMMARY

DATE: 6-22-10

DEPARTMENT NAME: Department of Technology

DEPARTMENT NUMBER: 75

TYPE OF APPROVAL: EXPEDITED REGULAR (OMIT POSTING
 CONTINUING ANNUAL

TYPE OF REQUEST: INITIAL REQUEST MODIFICATION (PSC #4163-06/07)

TYPE OF SERVICE: Video Streaming Media Services

FUNDING SOURCE: General Fund
Original PSC Amount: \$100,000 Duration: January 1, 2007 to January 1, 2011
1st Modification: \$106,350 Duration: January 1, 2011 to June 30, 2014
Total PSC Amount: \$206,350 Duration: January 1, 2007 to June 30, 2014

1. DESCRIPTION OF WORK

A. Concise description of proposed work: *Host Internet video streaming of SFGTV, the San Francisco Government Channel, cable channel 26, 24/7. Provide monthly usage reports. Host and store up to one year's archive of video on the internet for the Board of Supervisors meetings, City commission meetings, Mayor's press conferences, State of the City Address and others, as necessary. Provide software to index meeting according to agenda items and link documents to streaming video. Provide software to include caption with video streaming content.*

B. Explain why this service is necessary and the consequence of denial: *This service is necessary to provide public access to the City's government cable channel. Without this service, only cable subscribers will be able to view Board of Supervisors and commission meetings. If this contract is denied, then broadcasts will not be available to the entire public and the indexing will not be available to City employees.*

C. Explain how this service has been provided in the past (if this service was previously approved by the Civil Service Commission, indicate most recent personal services contract approval number): *This service has been provided by a contractor under the current PSC #4163-06/07. This modification is needed to cover the term of the current contract/Agreement and to provide related compensation for the final one-year renewal of that agreement. The modified PSC will also allow the Department to proceed with its planned RFP solicitation for a new contract for this service.*

D. Will the contract(s) be renewed? *Yes, under a new multi-year contract.*

2. UNION NOTIFICATION: Copy of this summary is to be sent to employee organizations as appropriate (refer to instructions for specific procedure):

IFPTE Local 21 [Signature] 6-22-2010
Union Name Signature of person mailing/faxing form Date

SEIU L1021 [Signature] 6-22-2010
Union Name Signature of person mailing/faxing form Date

RFP sent to IFPTE Local 21, on 6-22-2010 [Signature]
Union Name Date Signature

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 4163-06/07
STAFF ANALYSIS/RECOMMENDATION:

CIVIL SERVICE COMMISSION ACTION:

RECEIVED BY
DEPARTMENT OF
HUMAN RESOURCES
JUN 23 AM 11:33

3. DESCRIPTION OF REQUIRED SKILLS/EXPERTISE

A. Specify required skills and/or expertise: The required skill sets needed to provide and maintain live video streaming and video on demand hosting for internet video are as follows: MySQL Enterprise Database Administration, Streaming Video Development experience with Windows Media Services, Flash Server, RealServer, Wowza Video Server; Transcoding experience between multiple media formats including h.264 experience managing and monitoring Word Class data centers that see over 1 million hits per day; Managing over 100TB of video streaming data; SAN/NAS management experience; HP Switching/Router Administration; ~~Server/iron Load Balancer Administration; Firewall administration of numerous different vendors; Management of Content Delivery networking provider programmatic interfaces, such as Akamis and Highwinds; Application development experience integrating with Social Networking sites, such as Facebook and Twitter; Development of ADA Compliant Closed Captioned streaming; Development experience with IBM Lucene.NET Search engine; PHP/PEAR development in a Windows environment; C#.NET/ASP.NET development; HTML/JAVA development; XML Web Services?ATOM/RSS; Development for Microsoft Message Queuing; JSON;XSLT; Adobe Acrobat development; Microsoft Visual Studio Tools for Office (VSTO), and Internet information services administration.~~

B. Which, if any, civil service class normally performs this work? None.

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain: Yes, vendor provides a newtwork of video streaming servers located around the United States for quick access to video on demand content.

4. WHY CLASSIFIED CIVIL SERVICE CANNOT PERFORM

A. Explain why civil service classes are not applicable: The skill set required to perform this service spreads across multi-classifications and it would be cost prohibitive for the the City to develop custom software that will allow SFGTV to index the archive videos and be able to to link closed captioning with the videos, and transcode the video to multiple platforms for video streaming and video on demand viewing.

B. Would it be practical to adopt a new civil service class to perform this work? Explain. No. Adopting a new civil service class to perform this type of work would not be practical for the City. The nature of the work does not lend itself to full-time employees. This contract costs approximately \$26,000 per year, which is roughly 25% of a FTE.

5. ADDITIONAL INFORMATION (if "yes," attach explanation)

A. Will the contractor directly supervise City and County employees?

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>

B. Will the contractor train City and County employees?

- Describe the training and indicate approximate number of hours.
- Indicate occupational type of City and County employees to receive training (i.e., clerks, civil engineers, etc.) and approximate numbers to be trained.

C. Are there legal mandates requiring the use of contractual services?

<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>

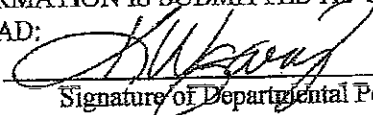
D. Are there federal or state grant requirements regarding the use of contractual services?

E. Has a board or commission determined that contracting is the most effective way to provide this service?

F. Will the proposed work be completed by a contractor that has a current personal services contract with your department?

<input checked="" type="checkbox"/>	<input type="checkbox"/>
-------------------------------------	--------------------------

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD:

 6/23/10
Signature of Departmental Personal Services Contract Coordinator

Kendall Gary
Print or Type Name

581-4066
Telephone Number

1 South Van Ness, 2nd Floor
San Francisco, CA 94103
Address

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH – DPH

Dept. Code: DPH

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Access to Online Applications for Clinical Information, and Health Information Exchanges

Funding Source: General Funds, Federal, State

PSC Duration: 8 years 34 weeks

PSC Amount: \$5,000,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor(s) will provide access to a variety of online applications such as Health Information Exchanges which collect, store, benchmark clinical outcomes, share data between providers, and provide online educational and or reference resources to the Department of Public Health.

B. Explain why this service is necessary and the consequence of denial:

In order to provide effective health care services to patients and clients of the Department there is an ever-present need to subscribe, procure, or collaborate and share data with other health care providers by using online applications or information exchanges. In addition, many resources which were previously procured through commodities such as books or stand-alone DVDs and CD-ROMs have moved to online Software as a Service (SaaS) models of delivery. The transition to an SaaS model has also moved the procurement vehicle used by the City from a traditional commodity Purchase Order (PO) to a formal contract. Denial of this request will result in the Department being unable to participate in Health Information Exchanges, which will result in a lack of visibility when providing health care services to patients, and which will in turn result in substandard patient care.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Health Information Exchanges are a relatively new concept in the delivery of health care services. Traditionally when information was shared, a patient would need to bring their medical records (on paper or a CD/DVD) to their provider, or providers would call a patient's previous or primary care provider(s) to obtain a patient's file(s). Other knowledge/reference resources – physicians and clinical manuals and the like – were provided by book or other electronic media such as DVDs or CD-ROMs and were treated as a commodity purchase.

D. Will the contract(s) be renewed?

Yes, if there is a continued need.

- E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

The requested approval is in excess of five years because the Department will have an ongoing need to access and utilize information in these applications. Typically, these application contain data that is either proprietary to the vendor, or in the case of a Health Information Exchange or clinical data sharing application data that is collected by a vendor and shared among all participating users of a given application. Hence, no one user of a shared application could recreate the full functionality afforded to all the users of a system if they were to develop there own standalone application. Therefore, the Department forecasts a continuing need to access such applications for a period of longer than five years.

2. Reason(s) for the Request

- A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

- B. Explain the qualifying circumstances:

Proprietary software and national access to patient data and best practices is needed in order to obtain the needed services for access to Health Information Exchanges and online educational/reference resources, which are not available through the City/civil service due to the proprietary nature of the information systems and the specific knowledge required to bring this new technology to full production status in the DPH environment.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Contractors must have a commercially available application(s) in a variety of healthcare focus areas. Applications may range from in-production Healthcare Information Exchanges which compile patient data from other healthcare providers throughout the country, current and updated resource material available through online portals, compiled and curated data from various healthcare providers used for patient outcomes and benchmarking or best practices processes, to online reference materials used in treatment plans or to establish baseline pharmaceutical formularies and/or listed benefits and adverse reactions or drug interactions of specific drugs.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1043, IS Engineer-Senior; 1044, IS Engineer-Principal; 1053, IS Business Analyst-Senior; 1070, IS Project Director; 1091, IT Operations Support Admin I; 1092, IT Operations Support Admin II; 1093, IT Operations Support Admn III; 1094, IT Operations Support Admin IV; 1095, IT Operations Support Admin V; 0923, Manager II; 0931, Manager III; 0932, Manager IV; 0933, Manager V;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The Contractor will provide the proprietary software over a SaaS (Software as a Service) model over the internet as well as the proprietary software and required hardware for remote data processing services.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

As these services require proprietary software, or established applications which coordinate maintain patient data from other healthcare facilities and related expertise, available resources are not able to provide these services.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Civil service classes are not applicable due to the proprietary nature of the information systems and the specific knowledge required to bring this new technology to full production status in the DPH environment. It is also necessary to augment existing DPH information systems positions with contractual support services to complete the healthcare business project deliverables, due to DPH's specific customization needs. Civil service staff will work with the Contractor in order to obtain the necessary knowledge for the day-to-day maintenance of the application.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, it is not practical to adopt a new civil service class because the new class would need to develop the relevant application, gather all of the resources and or data to populate the application, and most importantly in the case of a Health Information Exchange, the new class would need to establish ongoing relationships with the various health care providers which would need to be willing to share their health information with the developer of the application and in turn manage the information exchange on a national or regional level.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Civil service staff will work with the Contractor in order to obtain the necessary knowledge for the day-to-day maintenance of the application. Use of the software is expected to provide significant knowledge transfer for physicians and other clinical staff, enabling them to provide better patient care.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 09/09/2016, the Department notified the following employee organizations of this PSC/RFP request:

Architect & Engineers, Local 21; Management & Superv Local 21; Municipal Executive Association; Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jacquie Hale Phone: (415) 554-2609 Email: jacquie.hale@sfdph.org

Address: 101 Grove St., Rm. 307 San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 41289 - 16/17

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 11/21/2016

Receipt of Union Notification(s)

Choi, Suzanne (HRD)

From: dhr-psccordinator@sfgov.org on behalf of jacquie.hale@sfdph.org
Sent: Friday, September 09, 2016 7:02 PM
To: Hale, Jacquie (DPH); amakayan@ifpte21.org; camaguey@sfmea.com (contact); staff@sfmea.com; L21PSCReview@ifpte21.org; Longhitano, Robert (DPH); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Notice for new PCS over \$100K PSC # 41289 - 16/17

RECEIPT for Union Notification for PSC 41289 - 16/17 more than \$100k

The PUBLIC HEALTH -- DPH has submitted a request for a Personal Services Contract (PSC) 41289 - 16/17 for \$5,000,000 for Initial Request services for the period 11/01/2016 – 06/30/2025. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrcrupal/node/8034> For union notification, please see the

TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH -- DPH

Dept. Code: DPH

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Trauma Scene Waste Management, Infectious Agent Clean-up

Funding Source: General Fund

PSC Duration: 2 years 26 weeks

PSC Amount: \$3,000,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Contractor(s) will perform emergency clean-up work on and as needed basis and would be available to respond 24 hours a day, 7 days a week. Contractor(s) will (1) perform medical waste clean-up to include Category A (i.e., Ebola) infectious wastes; (2) will perform proper clean-up and removal of any bodily fluids, disinfecting, packaging and transporting waste for disposal; (3) will clean-up residences, emergency medical facilities, emergency transport vehicles, public transportation vehicles and other areas which are contaminated with medical wastes. All clean-up activities will be performed in accordance with guidelines prepared by the Center for Disease Control (CDC), the California Department of Public Health (CDPH), California Occupational Safety and Health Administration (CalOSHA) and all Federal, State and Local laws governing the clean-up and transportation of medical waste.

B. Explain why this service is necessary and the consequence of denial:

In the event that a confirmed or suspected case of Ebola or other potentially life threatening infectious disease is diagnosed in the City and County of San Francisco emergency clean-up, disinfection and disposal of contaminated materials will be required. The clean-up work may involve emergency vehicles, emergency clinics, hospital waiting rooms, public transportation vehicles, residential buildings and other areas which may have become contaminated with the infectious agent. The consequences of denial could mean the spread of a potentially life threatening disease and the inability to disinfect contaminated emergency response equipment, vehicles, hospitals, clinics and residential facilities.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This is a new service.

D. Will the contract(s) be renewed?

If the need continues and funding is available.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Immediately needed services to address unanticipated or transitional situations, or services needed to address emergency situations.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

Services will be immediately needed in the event they are needed at all, which requires the City to be prepared in case they are needed. Services are expected to be needed only intermittently, until any immediate need has passed. The City does not currently possess the expertise or appropriate equipment to provide the services.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: The contractor(s) must have (1) demonstrated ability to respond with equipment to a routine incident anywhere in the City and County of San Francisco within 4 to 6 hours; (2) proven ability to have a clear understanding of the Environmental Protection Agency (EPA) registered disinfectant agents for enveloped and non-enveloped viruses, and experience properly using these disinfecting agents. (3) been registered with California Department of Public Health as Trauma Scene Waste Management Practitioners; (Continued on attachment)
- B. Which, if any, civil service class(es) normally perform(s) this work? 2708, Custodian; 2716, Custodial Assistant Supervisor; 2718, Custodial Supervisor; 2719, Janitorial Svcs Asst Sprv; 2720, Janitorial Services Supervisor; 2736, Porter; 2738, Porter Assistant Supervisor; 2740, Porter Supervisor 1;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes, contractor(s) will provide the necessary and properly trained personnel to perform infectious agent clean-up, disinfection and disposal. This work will require specialized equipment and disinfecting agents approved for the proper clean-up of contagious and potentially deadly disease agents like Ebola. The contractor will also manage and properly dispose of the DOT Category A infectious waste produced as the result of the clean-up activities.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
No civil service classes are currently specified as able to provide the needed services.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. The services will be on an intermittent, as-needed basis in the event the city is faced with an situation which requires these highly specialized and potentially dangerous work.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
There is no training included in these services.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 03/07/2015, the Department notified the following employee organizations of this PSC/RFP request:
SEIU 1021 Miscellaneous; SEIU Local 1021

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jacquie Hale Phone: (415) 554-2609 Email: jacquie.hale@sfdph.org

Address: 101 Grove Street, Room 307 San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 45682 - 14/15

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 11/21/2016

Receipt of Union Notification(s)

Girma, Mahlet (DPH)

From: Girma, Mahlet (DPH)
Sent: Tuesday, September 13, 2016 5:05 PM
To: 'jtanner940@aol.com'; 'david.canham@seiu1021.org'; Poon, Sin Yee (HSA) (DSS); 'xiumin.li@seiu1021.org'; 'ablood@cirseiu.org'; 'davidmkersten@gmail.com'; 'ted.zarzecki@seiu1021.net'; 'pscreview@seiu1021.org'; 'Wendy.Frigillana@seiu1021.org'; 'pcamarillo_seiu@sbcglobal.net'; Basconcillo, Katherine (PUC); 'Ricardo.lopez@sfgov.org'
Cc: Jacquie Hale (Jacquie.Hale@sfdph.org); DHR-PSCCoordinator, DHR (HRD); Choi, Suzanne (HRD)
Subject: PSC 45682-14/15 Trauma Scene Waste Management, Infectious Agent Clean-up - ready for DHR Review
Attachments: attachment_to_45682-1415.pdf; 45682 1415 Trauma Scene Clean-up.pdf; RE_ Receipt of Notice for new PCS over \$100K PSC # 45682 - 14_15 - pls disregard.pdf

This is a courtesy email to inform SEIU representatives that the Department of Public Health is planning to have PSC 45682-14/15 Trauma Scene Waste Management, Infectious Agent Clean-up scheduled for the October 17, 2016 Civil Service Commission Meeting.

SEIU was originally notified in March of 2015 (see attached). We couldn't find any correspondence email with the union and we would like to move forward with it.

Please also see attached PDF of the PSC Form 1 for this PSC. If you need further information, of course, please feel free contact us.

Thank you,

Mahlet Girma, MPH
Office of Contract Management & Compliance
San Francisco Department of Public Health
1380 Howard Street, Room 421
San Francisco, CA 94103
Office 415.255.3504
Fax 415.252.3088

From: Hale, Jacquie (DPH)
To: [Hale, Jacquie \(DPH\)](mailto:Hale.Jacquie@sfph.org); Sandeep.lal@seiu1021.net; Wendy.Frigillana@seiu1021.org; leah.berlanga@seiu1021.org; davidmkersten@gmail.com; tiya.thlang@seiu1021.org; Lopez, Ricardo (PDR); Basconillo, Katherine (PUC); pcamarillo_seiu@sbcglobal.net; Carey.dall@seiu1021.org; pscreview@seiu1021.org; joe.brenner@seiu1021.org; ted.zarzecki@seiu1021.net; ablood@cirseiu.org; xiumin.li@seiu1021.org; Poon, SinYee (HSA) (DSS); david.canham@seiu1021.org; joe.tanner@seiu1021.net; Larry.Bradshaw@seiu1021.org; brenda_mendieta@sfdph.org; Isen, Richard (TIS); DHR-PSCCoordinator, DHR (HRD)
Cc: [DHR-PSCCoordinator, DHR \(HRD\)](mailto:DHR-PSCCoordinator, DHR (HRD))
Subject: RE: Receipt of Notice for new PCS over \$100K PSC # 45682 - 14/15
Date: Saturday, March 07, 2015 4:19:20 PM

Please note that this email is a correction to the earlier email notification sent to you today (please see email thread below) for this Personal Services Contract (PSC) 45682 - 14/15 for \$3,000,000 for Initial Request services, to correct the period to 07/01/2015 – 12/31/2017.

This is not a DHR database-generated email, but is in fulfillment of the requirements to notify SEIU within 60 days of this PSC.

Please do contact me if you have any questions about this PSC.

Also, please note that the email below sent to Leah Berlanga at the address below was returned to me as undeliverable.

Thank you,

Jacquie Hale
Director, Office of Contracts Management and Compliance
San Francisco Department of Public Health
101 Grove Street, Room 307/San Francisco, CA 94102
Phone: (415) 554-2609/Fax: (415) 554-2555
Jacquie.Hale@SFDPH.org

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-----Original Message-----

From: Hale, Jacquie (DPH)
Sent: Saturday, March 07, 2015 3:56 PM
To: Hale, Jacquie (DPH); Sandeep.lal@seiu1021.net; Wendy.Frigillana@seiu1021.org; leah.berlanga@seiu1021.org; davidmkersten@gmail.com; tiya.thlang@seiu1021.org; Lopez, Ricardo (PDR); Basconillo, Katherine (PUC); pcamarillo_seiu@sbcglobal.net; Carey.dall@seiu1021.org; pscreview@seiu1021.org; joe.brenner@seiu1021.org; ted.zarzecki@seiu1021.net; ablood@cirseiu.org; xiumin.li@seiu1021.org; Poon, SinYee (HSA) (DSS); david.canham@seiu1021.org; joe.tanner@seiu1021.net; Larry.Bradshaw@seiu1021.org; brenda_mendieta@sfdph.org; Isen, Richard (TIS); DHR-PSCCoordinator, DHR (HRD)
Subject: RE: Receipt of Notice for new PCS over \$100K PSC # 45682 - 14/15

Please disregard the notification below. Another corrected notification will follow. Thank you.

Jacquie
554-2609

-----Original Message-----

From: dhr-psccordinator@sfgov.org [<mailto:dhr-psccordinator@sfgov.org>] On Behalf Of

jacquie.hale@sfdph.org

Sent: Saturday, March 07, 2015 3:55 PM

To: Hale, Jacquie (DPH); Sandeep.lal@seiu1021.net; Wendy.Frigillana@seiu1021.org; leah.berlanga@seiu1021.org; davidmkersten@gmail.com; tiya.thlang@seiu1021.org; Lopez, Ricardo (PDR); Basconillo, Katherine (PUC); pcamarillo_seiu@sbcglobal.net; Carey.dall@seiu1021.org; pscreview@seiu1021.org; joe.brenner@seiu1021.org; ted.zarzecki@seiu1021.net; ablood@cirseiu.org; xiumin.li@seiu1021.org; Poon, SinYee (HSA) (DSS); david.canham@seiu1021.org; joe.tanner@seiu1021.net; Larry.Bradshaw@seiu1021.org; brenda_mendieta@sfdph.org; Isen, Richard (TIS); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Notice for new PCS over \$100K PSC # 45682 - 14/15

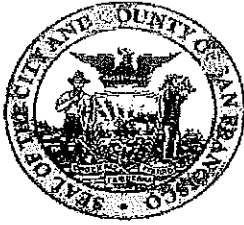
RECEIPT for Union Notification for PSC 45682 - 14/15 more than \$100k

The PUBLIC HEALTH -- DPH has submitted a request for a Personal Services Contract (PSC) 45682 - 14/15 for \$3,000,000 for Initial Request services for the period 01/01/2015 -- 12/31/2017. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/4210> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Additional Attachment(s)




Ed Lee
Mayor

San Francisco Department of Public Health

Jacquie Hale
Director of DPH Office of Contracts
Management and Compliance
of the DPH Business Office

October 28, 2016

To: Suzanne Choi, Citywide PSC Coordinator, Department of Human Resources

From: Jacquie Hale, Director, DPH Office of Contracts Management and Compliance,
DPH Business Office 

Subject: PSC 45682-14/15 Trauma Scene Waste Management, Infectious Agent Clean-up

Thank you for the opportunity to provide additional information on this PSC.

The services under this PSC allow the DPH and the City to be prepared to respond to situations which require infectious waste clean-up, removal, packaging, transportation and disposal as needed of residences, emergency medical facilities, emergency transport vehicles, public transportation vehicles and other areas contaminated areas.

The need for these specific services first arose as a critical need in response to the Ebola epidemic that in November 2014, so that the City would be prepared in the event the epidemic reached San Francisco from where it was then centered, in West Africa.

Toward that end, in order to have contracts for these services in place as soon as possible, two as-needed contracts for these services were made in December 2014 under PSC 4046-04/05, Hazardous Waste Transportation and Management Services, and the process for a PSC specifically for these services was begun with union notification on March 7, 2015.

Since that time, only one of these contracts has been used and only in one instance, for an unusual and unanticipated public health situation involving one person.

DPH has reviewed the ongoing need for these services and has determined that it would be prudent to maintain contracts for these services should they be needed. As a result, we sent a courtesy email/second union notification on September 13, 2016, regarding this PSC.

We appreciate your consideration of our request to calendar this for Civil Service Commission approval to contract out these services, as they do require specialized expertise and equipment, and are expected to be used only on an as-needed basis for the purposes stated in the PSC.

Please let me know if you need any further information. Thank you.

DPH Business Office-Office of Contracts Management and Compliance
email: jacquie.hale@sfdph.org
101 Grove St., Rm. 307, San Francisco, CA 94102 Phone: (415) 554-2609 Fax: (415) 554-2555

PERSONAL SERVICES CONTRACT SUMMARY
Attachment to PSC 45682-14/15

3. DESCRIPTION OF REQUIRED SKILLS/EXPERTISE (Continued)

A. Specify required skills and/or expertise:

(4) demonstrated expertise in responding to medical waste incidents or trauma scenes at hospitals or medical facilities; (5) demonstrated expertise with proper disinfecting, handling and disposal of medical waste include Category A infectious waste; (6) demonstrated expertise with the proper disinfecting of emergency response vehicles and equipment; (7) demonstrated experience in responding to residences which are contaminated with infectious agents to include agents like bacteria, viruses, spores and other infectious agents; (8) an understanding of the Centers for Disease Control, Environmental Protection Agency (EPA), Department of Transportation, California Occupational Safety and Health Administration (CalOSHA) and the California Department of Public Health laws, recommendations and guidelines regarding the clean-up, disinfecting packaging and disposal of infectious waste; (9) proven the ability to work with local, State and Federal government agencies on responses.

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION -- AIR

Dept. Code: AIR

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Disadvantaged Business Enterprise (DBE) & Airport Concession DBE Consulting Services

Funding Source: Airport Operating Funds

PSC Amount: \$300,000 PSC Est. Start Date: 12/01/2016 PSC Est. End Date 06/30/2021

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Contractor will provide consulting services for the San Francisco International Airport (SFO) Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs in compliance with Code of Federal Regulations (CFR) Title 49, Part 23 (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl) and 26 (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl), both attached to this request. Contractor will provide ACDBE certification and consulting services including: 1) ACDBE certification, 2) DBE/ACDBE reporting, 3) DBE/ACDBE goal setting, 4) DBE/ACDBE compliance monitoring.

B. Explain why this service is necessary and the consequence of denial:

Per the CFR regulations listed above, SFO is required to operate and report on DBE and ACDBE programs, both of which align with the City's mission to ensure economic opportunities for disadvantaged businesses. The Federal Aviation Administration (FAA) and the Department of Transportation (DOT) Office of the Inspector General (OIG) have suggested improvements to these programs at SFO. If denied, SFO would be unable to fully develop and monitor the program and risk non-compliance with federal regulations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.
This is a new service.

D. Will the contract(s) be renewed?
Yes, if there continues to be a need at SFO.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.
not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

As stated earlier, specialized skills are required on an intermittent basis and does not warrant full-time staffing. Services depend greatly on new concessions, construction opportunities, and the availability of the state to support certifications. Required services are unpredictable in volume and inconsistent throughout the year. Examples of intermittent tasks include goal setting, conducted once every three years, and annual utilization reporting.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Required expertise includes an in depth knowledge of, and experience with, Federal Regulations, DOT OIG practices, and with Airports enforcing compliance with CFR Title 49, Parts 23 and 26 (attached to this request).
- B. Which, if any, civil service class(es) normally perform(s) this work? 1824, Pr Administrative Analyst;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:
No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

No other City departments have Federal Aviation Administration (FAA) DBE or ACDBE programs. SFO is the only City department eligible to receive Airport Improvement Program (AIP) funding specifically administered by the FAA, which triggers SFO's DBE and ACDBE programs. No other City department has the resources or expertise in conducting ACDBE certifications, as this is specific to operating an Airport.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Existing civil service classifications do not possess the required knowledge and compliance experience of enforcing Airport adherence to DBE and ACDBE CFRs.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No as the specialized expertise is required on an intermittent basis. Certain functions, such as the goal-setting task, is conducted once every three years, while utilization reporting is submitted annually. Services and funding are inconsistent, partially driven by DBE provisions from new eligible construction projects and also dependent on the amount of concession leasing.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
None. Services are intermittent & depend on new concession opportunities.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 09/26/2016, the Department notified the following employee organizations of this PSC/RFP request:
Architect & Engineers, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfo.com

Address: PO Box 8097 San Francisco, CA 94128

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 49010 - 16/17

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 11/21/2016

Receipt of Union Notification(s)

Christina Chiong (AIR)

From: dhr-psccordinator@sfgov.org on behalf of cynthia.avakian@flyso.com
Sent: Monday, September 26, 2016 5:16 PM
To: Cynthia Avakian (AIR); L21PSCReview@ifpte21.org; Christina Chiong (AIR); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Notice for new PCS over \$100K PSC # 49010 - 16/17

RECEIPT for Union Notification for PSC 49010 - 16/17 more than \$100k

The AIRPORT COMMISSION -- AIR has submitted a request for a Personal Services Contract (PSC) 49010 - 16/17 for \$300,000 for Initial Request services for the period 12/01/2016 – 06/30/2021. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/8067> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Additional Attachment(s)

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of September 20, 2016

Title 49 → Subtitle A → Part 23

Title 49: Transportation

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS**Contents****Subpart A—General**

- §23.1 What are the objectives of this part?
- §23.3 What do the terms used in this part mean?
- §23.5 To whom does this part apply?
- §23.7 Program reviews.
- §23.9 What are the nondiscrimination and assurance requirements of this part for recipients?
- §23.11 What compliance and enforcement provisions are used under this part?
- §23.13 How does the Department issue guidance, interpretations, exemptions, and waivers pertaining to this part?

Subpart B—ACDBE Programs

- §23.21 Who must submit an ACDBE program to FAA, and when?
- §23.23 What administrative provisions must be in a recipient's ACDBE program?
- §23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?
- §23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?
- §23.29 What monitoring and compliance procedures must recipients follow?

Subpart C—Certification and Eligibility of ACDBEs

- §23.31 What certification standards and procedures do recipients use to certify ACDBEs?
- §23.33 What size standards do recipients use to determine the eligibility of ACDBEs?
- §23.35 What is the personal net worth standard for disadvantaged owners of ACDBEs?
- §23.37 Are firms certified under 49 CFR part 26 eligible to participate as ACDBEs?
- §23.39 What other certification requirements apply in the case of ACDBEs?

Subpart D—Goals, Good Faith Efforts, and Counting

- §23.41 What is the basic overall goal requirement for recipients?
- §23.43 What are the consultation requirements in the development of recipients' overall goals?
- §23.45 What are the requirements for submitting overall goal information to the FAA?
- §23.47 What is the base for a recipient's goal for concessions other than car rentals?
- §23.49 What is the base for a recipient's goal for car rentals?
- §23.51 How are a recipient's overall goals expressed and calculated?
- §23.53 How do car rental companies count ACDBE participation toward their goals?
- §23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?
- §23.57 What happens if a recipient falls short of meeting its overall goals?
- §23.59 What is the role of the statutory 10 percent goal in the ACDBE program?
- §23.61 Can recipients use quotas or set-asides as part of their ACDBE programs?

Subpart E—Other Provisions

- §23.71 Does a recipient have to change existing concession agreements?
- §23.73 What requirements apply to privately-owned or leased terminal buildings?
- §23.75 Can recipients enter into long-term, exclusive agreements with concessionaires?
- §23.77 Does this part preempt local requirements?
- §23.79 Does this part permit recipients to use local geographic preferences?

Appendix A to Part 23—Uniform Report of ACDBE Participation

AUTHORITY: 49 U.S.C. 47107; 42 U.S.C. 2000d; 49 U.S.C. 322; Executive Order 12138.

SOURCE: 70 FR 14508, Mar. 22, 2005, unless otherwise noted.

↑ Back to Top

Subpart A—General

↑ Back to Top

§23.1 What are the objectives of this part?

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
- (b) To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- (c) To ensure that the Department's ACDBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs;
- (e) To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and
- (f) To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing

opportunities for ACDBEs.

⚡ Back to Top

§23.3 What do the terms used in this part mean?

Administrator means the Administrator of the Federal Aviation Administration (FAA).

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

(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 ACDBE program.

Airport Concession Disadvantaged Business Enterprise (ACDBE) means a concession that is a for-profit small business concern--

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

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

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

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

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

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

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

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

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

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

- (i) Leases.
- (ii) Subleases.
- (iii) Permits.
- (iv) Contracts or subcontracts.
- (v) Other instruments or arrangements.

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

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

Concessionaire means a firm that owns and controls a concession or a portion of a concession.

Department (DOT) means the U.S. Department of Transportation, including the Office of the Secretary and the Federal

Aviation Administration (FAA).

Direct ownership arrangement means a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession.

Good faith efforts means efforts to achieve an ACDBE goal or other requirement of this part that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, or registered domestic partner.

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

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

Large hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least one percent of all passenger boardings in the United States.

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

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

Medium hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least 0.25 percent of all passenger boardings in the United States but less than one percent of such passenger boardings.

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

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii that is a not-for-profit organization chartered by the State of Hawaii, and is controlled by Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Nonhub primary airport means a commercial service airport that has more than 10,000 passenger boardings each year but less than 0.05 percent of all passenger boardings in the United States.

Part 26 means 49 CFR part 26, the Department of Transportation's disadvantaged business enterprise regulation for DOT-assisted contracts.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth (PNW) does not include the following:

(1) The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; (2) The individual's equity in his or her primary place of residence; and (3) Other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business) to a maximum of \$3 million. The effectiveness of this paragraph (3) of this definition is suspended with respect to any application for ACDBE certification made or any financing or franchise agreement obtained after June 20, 2012.

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

Primary industry classification means the North American Industrial Classification System (NAICS) code designation that best describes the primary business of a firm. The NAICS Manual is available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its Web site (<http://www.ntis.gov/naics>).

Primary recipient means a recipient to which DOT financial assistance is extended through the programs of the FAA and which passes some or all of it on to another recipient.

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

Race-conscious means a measure or program that is focused specifically on assisting only ACDBEs, including women-owned ACDBEs. For the purposes of this part, race-conscious measures include gender-conscious measures.

Race-neutral means a measure or program that is, or can be, used to assist all small businesses, without making distinctions or classifications on the basis of race or gender.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to ACDBE firms.

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

Small business concern means a for profit business that does not exceed the size standards of §23.33 of this part.

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

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

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

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

- (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Recipient means any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., "You must do XYZ" means that recipients must do XYZ).

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15816, Apr. 2, 2007; 77 FR 36931, June 20, 2012]

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§23.5 To whom does this part apply?

If you are a recipient that has received a grant for airport development at any time after January 1988 that was authorized under Title 49 of the United States Code, this part applies to you.

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§23.7 Program reviews.

In 2010, and thereafter at the discretion of the Secretary, the Department will initiate a review of the ACDBE program to determine what, if any, modifications should be made to this part.

[75 FR 16358, Apr. 1, 2010]

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§23.9 What are the nondiscrimination and assurance requirements of this part for recipients?

(a) As a recipient, you must meet the non-discrimination requirements provided in part 26, §26.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by this subpart.

(b) You must also take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements covered by this part.

(c) You must include the following assurances in all concession agreements and management contracts you execute with any firm after April 21, 2005:

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

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

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§23.11 What compliance and enforcement provisions are used under this part?

The compliance and enforcement provisions of part 26 (§§26.101 and 26.105 through 26.109) apply to this part in the same way that they apply to FAA recipients and programs under part 26.

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

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§23.13 How does the Department issue guidance, interpretations, exemptions, and waivers pertaining to this

part?

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 23 and issued after April 21, 2005, express the official positions and views of the Department of Transportation or the Federal Aviation Administration.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, and the FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or the FAA, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 23.

(c) You may apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation or the FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(d) You can apply for a waiver of any provision of subpart B or D of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate an ACDBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of subpart B or D of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the FAA. The application must include a specific program proposal and address how you will meet the criteria of paragraph (d)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the ACDBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of ACDBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or D of this part;

(ii) Conditions at your airport are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to concession opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and FAA program requirements.

(3) The FAA Administrator has the authority to approve your application. If the Administrator grants your application, you may administer your ACDBE program as provided in your proposal, subject to the following conditions:

(i) ACDBE eligibility is determined as provided in subpart C of this part, and ACDBE participation is counted as provided in §§23.53 through 23.55.

(ii) Your level of ACDBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of the your modified program; and

(iv) Any other conditions the Administrator makes on the grant of the waiver.

(4) The Administrator may end a program waiver at any time and require you to comply with this part's provisions. The Administrator may also extend the waiver, if he or she determines that all requirements of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program waiver.

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

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Subpart B—ACDBE Programs

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§23.21 Who must submit an ACDBE program to FAA, and when?

(a) Except as provided in paragraph (e) of this section, if you are a primary airport that has or was required to have a concessions DBE program prior to April 21, 2005, you must submit a revised ACDBE program meeting the requirements of this part to the appropriate FAA regional office for approval.

(1) You must submit this revised program on the same schedule provided for your first submission of overall goals in §23.45(a) of this part.

(2) Timely submission and FAA approval of your revised ACDBE program is a condition of eligibility for FAA financial assistance.

(3) Until your new ACDBE program is submitted and approved, you must continue to implement your concessions DBE program that was in effect before the effective date of this amendment to part 23, except with respect to any provision that is contrary to this part.

(b) If you are a primary airport that does not now have a DBE concessions program, and you apply for a grant of FAA funds for airport planning and development under 49 U.S.C. 47107 *et seq.*, you must submit an ACDBE program to the FAA at the time of your application. Timely submission and FAA approval of your ACDBE program are conditions of eligibility for FAA financial assistance.

(c) If you are the owner of more than one airport that is required to have an ACDBE program, you may implement one plan for all your locations. If you do so, you must establish a separate ACDBE goal for each location.

(d) If you make any significant changes to your ACDBE program at any time, you must provide the amended program to the FAA for approval before implementing the changes.

(e) If you are a non-primary airport, non-commercial service airport, a general aviation airport, reliever airport, or any other airport that does not have scheduled commercial service, you are not required to have an ACDBE program. However, you must take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

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§23.23 What administrative provisions must be in a recipient's ACDBE program?

(a) If, as a recipient that must have an ACDBE program, the program must include provisions for a policy statement, liaison officer, and directory, as provided in part 26, §§26.23, 26.25, and 26.31, as well as certification of ACDBEs as provided by Subpart C of this part. You must include a statement in your program committing you to operating your ACDBE program in a nondiscriminatory manner.

(b) You may combine your provisions for implementing these requirements under this part and part 26 (e.g., a single policy statement can cover both Federally-assisted airport contracts and concessions; the same individual can act as the liaison officer for both part 23 and part 26 matters).

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§23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?

(a) You must include in your ACDBE program a narrative description of the types of measures you intend to make to ensure nondiscriminatory participation of ACDBEs in concession and other covered activities.

(b) Your ACDBE program must provide for setting goals consistent with the requirements of Subpart D of this part.

(c) Your ACDBE program must provide for seeking ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others.

(d) Your ACDBE program must include race-neutral measures that you will take. You must maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. These are responsibilities that you directly undertake as a recipient, in addition to the efforts that concessionaires make, to obtain ACDBE participation. The following are examples of race-neutral measures you can implement:

(1) Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under this part;

(2) Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;

(3) When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs

(4) Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;

(5) Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the recipient's ACDBE program will affect the procurement process;

(6) Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and

(7) Establishing a business development program (see part 26, §26.35); technical assistance program; or taking other steps to foster ACDBE participation in concessions.

(e) Your ACDBE program must also provide for the use of race-conscious measures when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of race-conscious measures you can implement:

(1) Establishing concession-specific goals for particular concession opportunities.

(i) If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with a ACDBE, calculate the goal as a percentage of the total estimated annual gross receipts from the concession.

(ii) If the goal applies to purchases and/or leases of goods and services, calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire.

(iii) To be eligible to be awarded the concession, competitors must make good faith efforts to meet this goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so.

(iv) The administrative procedures applicable to contract goals in part 26, §26.51-53, apply with respect to concession-specific goals.

(2) Negotiation with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the concession.

(3) With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

(f) Your ACDBE program must require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs.

(g) As provided in §23.61 of this part, you must not use set-asides and quotas as means of obtaining ACDBE participation.

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§23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?

(a) As a recipient, you must retain sufficient basic information about your program implementation, your certification of ACDBEs, and the award and performance of agreements and contracts to enable the FAA to determine your compliance with this part. You must retain this data for a minimum of three years following the end of the concession agreement or other covered contract.

(b) Beginning March 1, 2006, you must submit an annual report on ACDBE participation using the form found in appendix A to this part. You must submit the report to the appropriate FAA Regional Civil Rights Office.

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§23.29 What monitoring and compliance procedures must recipients follow?

As a recipient, you must implement appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program. You must include in your concession program the specific provisions to be inserted into concession agreements and management contracts setting forth the enforcement mechanisms and other means you use to ensure compliance. These provisions must include a monitoring and enforcement mechanism to verify that the work committed to ACDBEs is actually performed by the ACDBEs. This mechanism must include a written certification that you have reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements and monitored the work on-site at your airport for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of concession performance for other purposes.

[77 FR 36931, June 20, 2012]

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Subpart C—Certification and Eligibility of ACDBEs

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§23.31 What certification standards and procedures do recipients use to certify ACDBEs?

(a) As a recipient, you must use, except as provided in this subpart, the procedures and standards of part 26, §§26.61-91 for certification of ACDBEs to participate in your concessions program. Your ACDBE program must incorporate the use of these standards and procedures and must provide that certification decisions for ACDBEs will be made by the Unified Certification Program (UCP) in your state (see part 26, §26.81).

(b) The UCP's directory of eligible DBEs must specify whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

(c) As an airport or UCP, you must review the eligibility of currently certified ACDBE firms to make sure that they meet the eligibility standards of this part.

(1) You must complete these reviews as soon as possible, but in no case later than April 21, 2006 or three years from the anniversary date of each firm's most recent certification, whichever is later.

(2) You must direct all currently certified ACDBEs to submit to you by April 21, 2006, a personal net worth statement, a certification of disadvantage, and an affidavit of no change.

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§23.33 What size standards do recipients use to determine the eligibility of ACDBEs?

(a) As a recipient, you must, except as provided in paragraph (b) of this section, treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed \$56.42 million.

(b) The following types of businesses have size standards that differ from the standard set forth in paragraph (a) of this section:

- (1) *Banks and financial institutions*: \$1 billion in assets;
- (2) *Car rental companies*: \$75.23 million average annual gross receipts over the firm's three previous fiscal years, as adjusted by the Department for inflation every two years from April 3, 2009.
- (3) *Pay telephones*: 1,500 employees;
- (4) *Automobile dealers*: 350 employees.

(c) The Department adjusts the numbers in paragraphs (a) and (b)(2) of this section using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment. The Department publishes a FEDERAL REGISTER document informing the public of each adjustment.

[77 FR 36931, June 20, 2012]

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§23.35 What is the personal net worth standard for disadvantaged owners of ACDBEs?

The personal net worth standard used in determining eligibility for purposes of this part is \$1.32 million. Any individual who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

[70 FR 14508, Mar. 22, 2005, as amended at 77 FR 36931, June 20, 2012]

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§23.37 Are firms certified under 49 CFR part 26 eligible to participate as ACDBEs?

(a) You must presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. By meeting the size, disadvantage (including personal net worth), ownership and control standards of part 26, the firm will have also met the eligibility standards for part 23.

(b) However, before certifying such a firm, you must ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in the concessions program. In addition, you are not required to certify a part 26 DBE as a part 23 ACDBE if the firm does not do work relevant to the airport's concessions program.

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§23.39 What other certification requirements apply in the case of ACDBEs?

(a) The provisions of part 26, §§26.83 (c)(2) through (c)(6) do not apply to certifications for purposes of this part. Instead, in determining whether a firm is an eligible ACDBE, you must take the following steps:

- (1) Obtain the resumes or work histories of the principal owners of the firm and personally interview these individuals;
- (2) Analyze the ownership of stock of the firm, if it is a corporation;
- (3) Analyze the bonding and financial capacity of the firm;
- (4) Determine the work history of the firm, including any concession contracts or other contracts it may have received;
- (5) Obtain or compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive;
- (6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform.

(b) In reviewing the affidavit required by part 26, §26.83(j), you must ensure that the ACDBE firm meets the applicable size standard in §23.33.

(c) For purposes of this part, the term prime contractor in part 26, §26.87(f) includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient.

(d) With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of part 26, §26.73(i) do not apply under this part. The eligibility of ANC-owned firms for purposes of this part is governed by §26.73(h).

(e) When you remove a concessionaire's eligibility after the concessionaire has entered a concession agreement, because the firm exceeded the small business size standard or because an owner has exceeded the personal net worth standard, and the firm in all other respects remains an eligible DBE, you may continue to count the concessionaire's participation toward DBE goals during the remainder of the current concession agreement. However, you must not count the concessionaire's participation toward DBE goals beyond the termination date for the concession agreement in effect at the time of the decertification (e.g., in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

(f) When UCPs are established in a state (see part 26, §26.81), the UCP, rather than individual recipients, certifies firms for the ACDBE concession program.

(g) You must use the Uniform Application Form found in appendix F to part 26. However, you must instruct applicants to take the following additional steps:

(1) In the space available in section 2(B)(7) of the form, the applicant must state that it is applying for certification as an ACDBE.

(2) With respect to section 4(C) of the form, the applicant must provide information on an attached page concerning the address/location, ownership/lease status, current value of property or lease, and fees/lease payments paid to the airport.

(3) The applicant need not complete section 4(I) and (J). However, the applicant must provide information on an attached page concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession.

(h) Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs. As a car rental company or private terminal owner or lessee, you must obtain ACDBE participation from firms which a recipient or UCPs have certified as ACDBEs.

(i) You must use the certification standards of this part to determine the ACDBE eligibility of firms that provide goods and services to concessionaires.

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Subpart D—Goals, Good Faith Efforts, and Counting

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§23.41 What is the basic overall goal requirement for recipients?

(a) If you are a recipient who must implement an ACDBE program, you must, except as provided in paragraph (b) of this section, establish two separate overall ACDBE goals. The first is for car rentals; the second is for concessions other than car rentals.

(b) If your annual car rental concession revenues, averaged over the three-years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit a car rental overall goal. If your annual revenues for concessions other than car rentals, averaged over the three years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit a non-car rental overall goal.

(c) Each overall goal must cover a three-year period. You must review your goals annually to make sure they continue to fit your circumstances appropriately. You must report to the FAA any significant adjustments that you make to your goal in the time before your next scheduled submission.

(d) Your goals established under this part must provide for participation by all certified ACDBEs and may not be subdivided into group-specific goals.

(e) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive FAA financial assistance.

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§23.43 What are the consultation requirements in the development of recipients' overall goals?

(a) As a recipient, you must consult with stakeholders before submitting your overall goals to FAA.

(b) Stakeholders with whom you must consult include, but are not limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the recipient's efforts to increase participation of ACDBEs.

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§23.45 What are the requirements for submitting overall goal information to the FAA?

(a) You must submit your overall goals to the appropriate FAA Regional Civil Rights Office for approval. Your first set of overall goals meeting the requirements of this subpart are due on the following schedule:

(1) If you are a large or medium hub primary airport on April 21, 2005, by January 1, 2006. You must make your next submissions by October 1, 2008.

(2) If you are a small hub primary airport on April 21, 2005, by October 1, 2006.

(3) If you are a nonhub primary airport on April 21, 2005, by October 1, 2007.

(b) You must then submit new goals every three years after the date that applies to you.

(c) Timely submission and FAA approval of your overall goals is a condition of eligibility for FAA financial assistance.

(d) In the time before you make your first submission under paragraph (a) of this section, you must continue to use the overall goals that have been approved by the FAA before the effective date of this part.

(e) Your overall goal submission must include a description of the method used to calculate your goals and the data you relied on. You must "show your work" to enable the FAA to understand how you concluded your goals were appropriate. This means that you must provide to the FAA the data, calculations, assumptions, and reasoning used in establishing your goals.

(f) Your submission must include your projection of the portions of your overall goals you propose to meet through use of race-neutral and race-conscious means, respectively, and the basis for making this projection (see §23.51(d)(5)).

(g) FAA may approve or disapprove the way you calculated your goal, including your race-neutral/race-conscious "split," as part of its review of your plan or goal submission. Except as provided in paragraph (h) of this section, the FAA does not approve or disapprove the goal itself (i.e., the number).

(h) If the FAA determines that your goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with you, adjust your overall goal or race-conscious/race-neutral "split." The adjusted goal represents the FAA's determination of an appropriate overall goal for ACDBE participation in the recipient's concession program, based on relevant data and analysis. The adjusted goal is binding on you.

(i) If a new concession opportunity, the estimated average annual gross revenues of which are anticipated to be \$200,000 or greater, arises at a time that falls between normal submission dates for overall goals, you must submit an appropriate adjustment to your overall goal to the FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity.

[70 FR 14508, Mar. 22, 2005, as amended at 77 FR 36931, June 20, 2012]

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§23.47 What is the base for a recipient's goal for concessions other than car rentals?

(a) As a recipient, the base for your goal includes the total gross receipts of concessions, except as otherwise provided in this section.

(b) This base does not include the gross receipts of car rental operations.

(c) The dollar amount of a management contract or subcontract with a non-ACDBE and the gross receipts of business activities to which a management or subcontract with a non-ACDBE pertains are not added to this base.

(d) This base does not include any portion of a firm's estimated gross receipts that will not be generated from a concession.

Example to paragraph (c): A firm operates a restaurant in the airport terminal which serves the traveling public and under the same lease agreement, provides in-flight catering service to air carriers. The projected gross receipts from the restaurant are included in the overall goal calculation, while the gross receipts to be earned by the in-flight catering services are not.

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§23.49 What is the base for a recipient's goal for car rentals?

Except in the case where you use the alternative goal approach of §23.51(c)(5)(ii), the base for your goal is the total gross receipts of car rental operations at your airport. You do not include gross receipts of other concessions in this base.

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§23.51 How are a recipient's overall goals expressed and calculated?

(a) Your objective in setting a goal is to estimate the percentage of the base calculated under §§23.47-23.49 that would be performed by ACDBEs in the absence of discrimination and its effects.

(1) This percentage is the estimated ACDBE participation that would occur if there were a "level playing field" for firms to work as concessionaires for your airport.

(2) In conducting this goal setting process, you are determining the extent, if any, to which the firms in your market area have suffered discrimination or its effects in connection with concession opportunities or related business opportunities.

(3) You must complete the goal-setting process separately for each of the two overall goals identified in §23.41 of this part.

(b)(1) Each overall concessions goal must be based on demonstrable evidence of the availability of ready, willing and able ACDBEs relative to all businesses ready, willing and able to participate in your ACDBE program (hereafter, the "relative availability of ACDBEs").

(2) You cannot simply rely on the 10 percent national aspirational goal, your previous overall goal, or past ACDBE participation rates in your program without reference to the relative availability of ACDBEs in your market.

(3) Your market area is defined by the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms which receive the substantial majority of concessions-related revenues are located. Your market area may be different for different types of concessions.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of ACDBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining the evidence available to you. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the FAA.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able ACDBEs in your market area from your ACDBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market area that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their Web site, <http://www.census.gov/epcd/cbp/view/cbpview.html>.) Divide the number of ACDBEs by the number of all businesses to derive a base figure for the relative availability of ACDBEs in your market area.

(2) *Use an Active Participants List.* Determine the number of ACDBEs that have participated or attempted to participate in your airport concessions program in previous years. Determine the number of all businesses that have participated or attempted to participate in your airport concession program in previous years. Divide the number of ACDBEs who have participated or attempted to participate by the number for all businesses to derive a base figure for the relative availability of ACDBEs in your market area.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another recipient.* If another airport or other DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* (i) You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of ACDBEs in your market area.

(ii) In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services. In this case, you would calculate your car rental overall goal by dividing the estimated dollar value of such purchases from ACDBEs by the total estimated dollar value of all purchases to be made by car rental companies.

(d) *Step 2.* Once you have calculated a base figure, you must examine all relevant evidence reasonably available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include, but are not limited to:

(i) The current capacity of ACDBEs to perform work in your concessions program, as measured by the volume of work ACDBEs have performed in recent years; and

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure.

(2) If your base figure is the goal of another recipient, you must adjust it for differences in your market area and your concessions program.

(3) If available, you must consider evidence from related fields that affect the opportunities for ACDBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of ACDBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for ACDBEs to perform in your program.

(4) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination, or the effects of an ongoing ACDBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(5) Among the information you submit with your overall goal (see 23.45(e)), you must include description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, as well as the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and an explanation of how you used that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see §§26.51(c)).

(e) You are not required to obtain prior FAA concurrence with your overall goal (i.e., with the number itself). However, if the FAA's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the FAA may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(f) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the FAA Administrator for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(1) Reflect the relative availability of ACDBEs in your local market area to the maximum extent feasible given the data available to you; and

(2) Avoid imposing undue burdens on non-ACDBEs.

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§23.53 How do car rental companies count ACDBE participation toward their goals?

- (a) As a car rental company, you may, in meeting the goal the airport has set for you, include purchases or leases of vehicles from any vendor that is a certified ACDBE.
- (b) As a car rental company, if you choose to meet the goal the airport has set for you by including purchases or leases of vehicles from an ACDBE vendor, you must also submit to the recipient documentation of the good faith efforts you have made to obtain ACDBE participation from other ACDBE providers of goods and services.
- (c) While this part does not require you to obtain ACDBE participation through direct ownership arrangements, you may count such participation toward the goal the airport has set for you.
- (d) The following special rules apply to counting participation related to car rental operations:
- (1) Count the entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (2) Count the entire amount of the fee or commission charged by a ACDBE to manage a car rental concession under an agreement with the concessionaire toward ACDBE goals, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) Do not count any portion of a fee paid by a manufacturer to a car dealership for reimbursement of work performed under the manufacturer's warranty.
- (e) For other goods and services, count participation toward ACDBE goals as provided in part 26, §26.55 and §23.55 of this part. In the event of a conflict between these two sections, §23.55 controls.
- (f) If you have a national or regional contract, count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract. Use the proportion of your applicable gross receipts as the basis for making this pro-rated assignment of ACDBE participation.

Example to paragraph (f): Car Rental Company X signs a regional contract with an ACDBE car dealer to supply cars to all five airports in a state. The five airports each account for 20 percent of X's gross receipts in the state. Twenty percent of the value of the cars purchased through the ACDBE car dealer would count toward the goal of each airport.

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§23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?

- (a) You count only ACDBE participation that results from a commercially useful function. For purposes of this part, the term commercially useful function has the same meaning as in part 26, §26.55(c), except that the requirements of §26.55(c)(3) do not apply to concessions.
- (b) Count the total dollar value of gross receipts an ACDBE earns under a concession agreement and the total dollar value of a management contract or subcontract with an ACDBE toward the goal. However, if the ACDBE enters into a subconcession agreement or subcontract with a non-ACDBE, do not count any of the gross receipts earned by the non-ACDBE.
- (c) When an ACDBE performs as a subconcessionaire or subcontractor for a non-ACDBE, count only the portion of the gross receipts earned by the ACDBE under its subagreement.
- (d) When an ACDBE performs as a participant in a joint venture, count a portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces toward ACDBE goals.
- (e) Count the entire amount of fees or commissions charged by an ACDBE firm for a *bona fide* service, provided that, as the recipient, you determine this amount to be reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
- (f) Count 100 percent of the cost of goods obtained from an ACDBE manufacturer. For purposes of this part, the term manufacturer has the same meaning as in part 26, §26.55(e)(1)(ii).
- (g) Count 100 percent of the cost of goods purchased or leased from a ACDBE regular dealer. For purposes of this part, the term "regular dealer" has the same meaning as in part 26, §26.55(e)(2)(ii).
- (h) Count credit toward ACDBE goals for goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer as follows:
- (1) Count the entire amount of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.
 - (2) Count the entire amount of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of goods themselves.
- (i) If a firm has not been certified as an ACDBE in accordance with the standards in this part, do not count the firm's participation toward ACDBE goals.
- (j) Do not count the work performed or gross receipts earned by a firm after its eligibility has been removed toward ACDBE goals. However, if an ACDBE firm certified on April 21, 2005 is decertified because one or more of its disadvantaged owners do not meet the personal net worth criterion or the firm exceeds business size standards of this part during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement (but not extensions or renewals of such contracts or agreements).
- (k) Do not count costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "build-out").
- (l) Do not count the ACDBE participation of car rental companies toward your ACDBE achievements toward this goal.

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§23.57 What happens if a recipient falls short of meeting its overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this part, simply because your ACDBE participation falls short of your overall goals. You can be penalized or treated as being in noncompliance only if you have failed to administer your ACDBE program in good faith.

(b) If the awards and commitments shown on your Uniform Report of ACDBE Participation (found in Appendix A to this Part) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your ACDBE program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3) (i) If you are a CORE 30 airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA for approval. If the FAA approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to the FAA, on request, for their review.

(4) The FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this part, and therefore subject to the remedies in §23.11 of this part and other applicable regulations, for failing to implement your ACDBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of this section;

(ii) FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement:

(A) The corrective actions to which you have committed, or

(B) Conditions that FAA has imposed following review of your analysis and corrective actions.

(c) If information coming to the attention of FAA demonstrates that current trends make it unlikely that you, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FAA may require you to make further good faith efforts, such as modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

[70 FR 14508, Mar. 22, 2005, as amended at 77 FR 36931, June 20, 2012]

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§23.59 What is the role of the statutory 10 percent goal in the ACDBE program?

(a) The statute authorizing the ACDBE program provides that, except to the extent the Secretary determines otherwise, not less than 10 percent of concession businesses are to be ACDBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in airport concessions.

(c) The national 10 percent aspirational goal does not authorize or require recipients to set overall or concession-specific goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

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§23.61 Can recipients use quotas or set-asides as part of their ACDBE programs?

You must not use quotas or set-asides for ACDBE participation in your program.

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Subpart E—Other Provisions

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§23.71 Does a recipient have to change existing concession agreements?

Nothing in this part requires you to modify or abrogate an existing concession agreement (one executed before April 21, 2005) during its term. When an extension or option to renew such an agreement is exercised, or when a material amendment is made, you must assess potential for ACDBE participation and may, if permitted by the agreement, use any means authorized by this part to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

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§23.73 What requirements apply to privately-owned or leased terminal buildings?

(a) If you are a recipient who is required to implement an ACDBE program on whose airport there is a privately-owned or leased terminal building that has concessions, or any portion of such a building, this section applies to you.

(b) You must pass through the applicable requirements of this part to the private terminal owner or lessee via your agreement with the owner or lessee or by other means. You must ensure that the terminal owner or lessee complies with the requirements of this part.

(c) If your airport is a primary airport, you must obtain from the terminal owner or lessee the goals and other elements of the ACDBE program required under this part. You must incorporate this information into your concession plan and submit it to the FAA in accordance with this part.

(d) If the terminal building is at a non-primary commercial service airport or general aviation airport or reliever airport, you must ensure that the owner complies with the requirements in §23.21(e).

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§23.75 Can recipients enter into long-term, exclusive agreements with concessionaires?

(a) Except as provided in paragraph (b) of this section, you must not enter into long-term, exclusive agreements for concessions. For purposes of this section, a long-term agreement is one having a term longer than five years.

(b) You may enter into a long-term, exclusive concession agreement only under the following conditions:

- (1) Special local circumstances exist that make it important to enter such agreement, and
- (2) The responsible FAA regional office approves your plan for meeting the standards of paragraph (c) of this section.

(c) In order to obtain FAA approval of a long-term-exclusive concession agreement, you must submit the following information to the FAA regional office:

- (1) A description of the special local circumstances that warrant a long-term, exclusive agreement.
- (2) A copy of the draft and final leasing and subleasing or other agreements. This long-term, exclusive agreement must provide that:
 - (i) A number of ACDBEs that reasonably reflects their availability in your market area, in the absence of discrimination, to do the types of work required will participate as concessionaires throughout the term of the agreement and account for at a percentage of the estimated annual gross receipts equivalent to a level set in accordance with §§23.47 through 23.49 of this part.

(ii) You will review the extent of ACDBE participation before the exercise of each renewal option to consider whether an increase or decrease in ACDBE participation is warranted.

(iii) An ACDBE concessionaire that is unable to perform successfully will be replaced by another ACDBE concessionaire, if the remaining term of the agreement makes this feasible. In the event that such action is not feasible, you will require the concessionaire to make good faith efforts during the remaining term of the agreement to encourage ACDBEs to compete for the purchases and/or leases of goods and services to be made by the concessionaire.

(3) Assurances that any ACDBE participant will be in an acceptable form, such as a sublease, joint venture, or partnership.

(4) Documentation that ACDBE participants are properly certified.

(5) A description of the type of business or businesses to be operated (e.g., location, storage and delivery space, "back-of-the-house facilities" such as kitchens, window display space, advertising space, and other amenities that will increase the ACDBE's chance to succeed).

(6) Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE.

(7) Information on the estimated gross receipts and net profit to be earned by the ACDBE.

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§23.77 Does this part preempt local requirements?

(a) In the event that a State or local law, regulation, or policy differs from the requirements of this part, the recipient must, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of this part.

(b) You must clearly identify any State or local law, regulation, or policy pertaining to minority, women's, or disadvantaged business enterprise concerning airport concessions that adds to, goes beyond, or imposes more stringent requirements than the provisions of this part. FAA will determine whether such a law, regulation, or policy conflicts with this part, in which case the requirements of this part will govern.

(c) If not deemed in conflict by the FAA, you must write and administer such a State or local law, policy, or regulation separately from the ACDBE program.

(d) You must provide copies of any such provisions and the legal authority supporting them to the FAA with your ACDBE program submission. FAA will not approve an ACDBE program if there are such provisions that conflict with the provisions of this part.

(e) However, nothing in this part preempts any State or local law, regulation, or policy enacted by the governing body of a recipient, or the authority of any State or local government or recipient to adopt or enforce any law, regulation, or policy relating to ACDBEs, as long as the law, regulation, or policy does not conflict with this part.

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§23.79 Does this part permit recipients to use local geographic preferences?

No. As a recipient you must not use a local geographic preference. For purposes of this section, a local geographic preference is any requirement that gives an ACDBE located in one place (e.g., your local area) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

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Appendix A to Part 23—Uniform Report of ACDBE Participation

INSTRUCTIONS FOR UNIFORM REPORT OF ACDBE PARTICIPATION

1. Insert name of airport receiving FAA financial assistance and AIP number.
2. Provide the name and contact information (phone, fax, e-mail) for the person FAA should contact with questions about the report.
- 3a. Provide the annual reporting period to which the report pertains (e.g., October 2005-September 2006).

3b. Provide the date on which the report is submitted to FAA.

4. This block and blocks 5 and 6 concern *non-car rental* goals and participation only. In this block, provide the overall non-car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.

5. For purposes of this block and blocks 6, 8, and 9, the participation categories listed at the left of the block are the following: "Prime Concessions" are concessions who have a direct relationship with the airport (e.g., a company who has a lease agreement directly with the airport to operate a concession). A "subconcession" is a firm that has a sublease or other agreement with a prime concessionaire, rather than with the airport itself, to operate a concession at the airport. A "management contract" is an agreement between the airport and a firm to manage a portion of the airport's facilities or operations (e.g., manage the parking facilities). "Goods/services" refers to those goods and services purchased by the airport itself or by concessionaires and management contractors from certified DBEs.

Block 5 concerns *all* non-car rental concession activity covered by 49 CFR part 23 during the reporting period, both new or continuing.

In Column A, enter the total concession gross revenues for concessionaires (prime and sub) and purchases of goods and services (ACDBE and non-ACDBE combined) at the airport. In Column B, enter the number of lease agreements, contracts, etc. in effect or taking place during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBE and non-ACDBE combined).

Because, by statute, non-ACDBE management contracts do not count as part of the base for ACDBE goals, the cells for total management contract participation and ACDBE participation as a percentage of total management contracting dollars are not intended to be filled in blocks 5, 6, 8, and 9.

In Column C, enter the total gross revenues in each participation category (ACDBEs) only. In Column D, enter the number of lease agreements, contracts, etc., in effect or entered into during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBEs only).

Columns E and F are subsets of Column C: break out the total gross revenues listed in Column C into the portions that are attributable to race-conscious and race-neutral measures, respectively. Column G is a percentage calculation. It answers the question, what percentage of the numbers in Column A is represented by the corresponding numbers in Column C?

6. The numbers in this Block concern only *new* non-car rental concession opportunities that arose during the current reporting period. In other words, the information requested in Block 6 is a subset of that requested in Block 5. Otherwise, this Block is filled out in the same way as Block 5.

7. Blocks 7-9 concern car rental goals and participation. In Block 7, provide the overall car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.

8. Block 8 is parallel to Block 5, except that it is for car rentals. The instructions for filling it out are the same as for Block 5.

9. Block 9 is parallel to Block 6, except that it is for car rentals. The information requested in Block 9 is a subset of that requested in Block 8. The instructions for filling it out are the same as for Block 6.

10. Block 10 instructs recipients to bring forward the cumulative ACDBE participation figures from Blocks 5 and 8, breaking down these figures by race and gender categories. Participation by non-minority women-owned firms should be listed in the "non-minority women" column. Participation by firms owned by minority women should be listed in the appropriate minority group column. The "other" column should be used to reflect participation by individuals who are not a member of a presumptively disadvantaged group who have been found disadvantaged on a case-by-case basis.

11. This block instructs recipients to attach five information items for each ACDBE firm participating in its program during the reporting period. If the firm's participation numbers are reflected in Blocks 5-6 and/or 8-9, the requested information about that firm should be attached in response to this item.

UNIFORM REPORT OF ACDBE PARTICIPATION

1. Name of Recipient and AIP Number:

2. Contact Information:

3a. Reporting Period:

3b. Date of Report:

4. Current Non-Car Rental ACDBE Goal: Race Conscious Goal ___% Race Neutral Goal ___% Overall Goal ___%

5. Non-car rental Cumulative ACDBE participation	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions							
Subconcessions							
Management Contracts	XXXXXXX	XXXXXXX					XXXXXX
Goods/Services							
Totals							

6. Non-Car rental New ACDBE participation this period	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions							
Subconcessions							
Management Contracts	XXXXXXX	XXXXXXX					XXXXXX
Goods/Services							
Totals							

7. Current Car Rental ACDBE Goal: Race Conscious Goal ___% Race Neutral Goal ___% Overall Goal ___%

8. Car rental Cumulative ACDBE participation	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs

Prime Concessions								
Subconcessions								
Goods/Services								
Totals								
	A	B	C	D	E	F	G	
9. Car rental	Total	Total	Total to ACDBEs	Total to ACDBEs	RC to ACDBEs	RN to ACDBEs	% of	
New ACDBE participation this period	dollars	number	(dollars)	(number)	(dollars)	(dollars)	dollars to	
	(everyone)	(everyone)					ACDBEs	
Prime Concessions								
Subconcessions								
Goods/Services								
Totals								
	A	B	C	D	E	F	G	H
10. Cumulative ACDBE	Black	Hispanic	Asian-Pacific	Asian-Indian	Native	Non-minority	Other	Totals
participation by race/gender	Americans	Americans	Americans	Americans	Americans	Women		
Car Rental								
Non-Car Rental								
Totals								

11. On an attachment, list the following information for each ACDBE firm participating in your program during the period of this report: (1) Firm name; (2) Type of business; (3) Beginning and expiration dates of agreement, including options to renew; (4) Dates that material amendments have been or will be made to agreement (if known); (5) Estimated gross receipts for the firm during this reporting period.

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Need assistance?

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e-CFR data is current as of September 20, 2016

Title 49 → Subtitle A → Part 26

Title 49: Transportation

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

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- Appendix F to Part 26—Uniform Certification Application Form
- Appendix G to Part 26—Personal Net Worth Statement

AUTHORITY: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, et seq.; 49 U.S.C. 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105-178, 112 Stat. 107, 113.

SOURCE: 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

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Subpart A—General

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§26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.
- (g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (h) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

[64 FR 5126, Feb. 2, 1999, as amended at 79 FR 59592, Oct. 2, 2014]

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§26.3 To whom does this part apply?

(a) If you are a recipient of any of the following types of funds, this part applies to you:

- (1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.
- (2) 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, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.
- (3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

[64 FR 5126, Feb. 2, 1999, as amended at 79 FR 59592, Oct. 2, 2014]

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§26.5 What do the terms used in this part mean?

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

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

Assets mean 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.

Business, business concern or business enterprise means 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.

Compliance means that a recipient has correctly implemented the requirements of this part.

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

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

Days mean calendar 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.

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

Disadvantaged business enterprise or DBE means a for-profit small business concern—

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

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

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

Good faith efforts means 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 means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

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

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

Liabilities mean 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.

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

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

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

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

Primary 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 means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

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

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

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

Secretary means the Secretary of Transportation or his/her designee.

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

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

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

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and 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 means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

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

- (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
- (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(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.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered transit vehicle manufacturers.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., "You must do XYZ" means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003; 76 FR 5096, Jan. 28, 2011; 79 FR 59592, Oct. 2, 2014]

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§26.7 What discriminatory actions are forbidden?

(a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.

(b) In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

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§26.9 How does the Department issue guidance and interpretations under this part?

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 express the official positions and views of the Department of Transportation or any of its operating administrations.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are

issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

[72 FR 15617, Apr. 2, 2007]

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§26.11 What records do recipients keep and report?

(a) You must transmit the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.

(b) You must continue to provide data about your DBE program to the Department as directed by DOT operating administrations.

(c) You must create and maintain a bidders list.

(1) The purpose of this list is to provide you as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.

(2) You must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:

(i) Firm name;

(ii) Firm address;

(iii) Firm's status as a DBE or non-DBE;

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; etc.) rather than requesting an exact figure from the firm.

(3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (e.g., collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

(d) You must maintain records documenting a firm's compliance with the requirements of this part. At a minimum, you must keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records must be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever is longer.

(e) The State department of transportation in each UCP established pursuant to §26.81 of this part must report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

(1) Women;

(2) Socially and economically disadvantaged individuals (other than women); and

(3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 76 FR 5096, Jan. 26, 2011; 79 FR 59593, Oct. 2, 2014]

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§26.13 What assurances must recipients and contractors make?

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

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments;

(2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non-responsible.

[79 FR 59593, Oct. 2, 2014]

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§26.15 How can recipients apply for exemptions or waivers?

(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;

(ii) Conditions in your jurisdiction are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:

(i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in §26.49;

(ii) Your level of DBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of your modified program; and

(iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

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Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

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§26.21 Who must have a DBE program?

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA primary recipients receiving funds authorized by a statute to which this part applies;

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts the cumulative total value of which exceeds \$250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 79 FR 59593, Oct. 2, 2014]

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§26.23 What is the requirement for a policy statement?

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

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§26.25 What is the requirement for a liaison officer?

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

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§26.27 What efforts must recipients make concerning DBE financial institutions?

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

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§26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You 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. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

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

(c) For purposes of this section, 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 recipient. When a recipient 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.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

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§26.31 What information must you include in your DBE directory?

(a) In the directory required under §26.81(g) of this Part, you must list all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE.

(b) You must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. You must make any changes to your current directory entries necessary to meet the requirement of this paragraph (a) by August 26, 2011.

[76 FR 8096, Jan. 28, 2011]

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§26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with §26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

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§26.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a "mentor-protégé" program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

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§26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

(c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 76 FR 5097, Jan. 28, 2011]

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§26.39 Fostering small business participation.

(a) Your DBE program must include an element to structure contracting requirements 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.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).

(2) In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

(c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.

[76 FR 5097, Jan. 28, 2011]

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Subpart C—Goals, Good Faith Efforts, and Counting

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§26.41 What is the role of the statutory 10 percent goal in this program?

(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less

than 10 percent of the authorized funds are to be expended with DBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.

(c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

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§26.43 Can recipients use set-asides or quotas as part of this program?

(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.

(b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

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§26.45 How do recipients set overall goals?

(a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.

(2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in §26.1.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quotes by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. When using this approach, you must establish a mechanism (documented in your goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on your DOT-assisted contracts.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another DOT recipient.* If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* Except as otherwise provided in this paragraph, you may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market. The exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this section, is not an acceptable alternative means of determining the availability of DBEs.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at your overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming three fiscal years.

(2) If you are an FTA or FAA recipient, as a percentage of all FT or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the three forthcoming fiscal years.

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

(i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.

(ii) A project goal covers the entire length of the project to which it applies.

(iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

(iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(f)(1)(i) If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency's Web site.

(ii) You may adjust your three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. You must submit such an adjustment to the concerned operating administration for review and approval.

(iii) The operating administration may direct you to undertake a review of your goal if necessary to ensure that the goal continues to fit your circumstances appropriately.

(iv) While you are required to submit an overall goal to FHWA, FTA, or FAA only every three years, the overall goal and the provisions of Sec. 26.47(c) apply to each year during that three-year period.

(v) You may make, for informational purposes, projections of your expected DBE achievements during each of the three years covered by your overall goal. However, it is the overall goal itself, and not these informational projections, to which the provisions of section 26.47(c) of this part apply.

(2) If you are a recipient and set your overall goal on a project or grant basis as provided in paragraph (e)(3) of this section, you must submit the goal for review at a time determined by the FHWA, FTA or FAA Administrator, as applicable.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see 26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the operating administration will be guided by goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

(6) Timely submission and operating administration approval of your overall goal is a condition of eligibility for DOT financial assistance.

(7) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive DOT financial assistance.

(g)(1) In establishing an overall goal, you must provide for consultation and publication. This includes:

(i) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before you are required to submit your methodology to the operating administration for review pursuant to paragraph (f) of this section. You must document in your goal submission the consultation process you engaged in. Notwithstanding paragraph (f)(4) of this section, you may not implement your proposed goal until you have complied with this requirement.

(ii) A published notice announcing your proposed overall goal before submission to the operating administration on

August 1st. The notice must be posted on your official Internet Web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal must be posted on your official Internet Web site.

(2) At your discretion, you may inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at your principal office and for a 30-day comment period. Notice of the comment period must include addresses to which comments may be sent. The public comment period will not extend the August 1st deadline set in paragraph (f) of this section.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 68 FR 35553, June 16, 2003; 75 FR 5536, Feb. 3, 2010; 76 FR 5097, Jan. 28, 2011; 79 FR 59593, Oct. 2, 2014]

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§26.47 Can recipients be penalized for failing to meet overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

(c) If the awards and commitments shown on your Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your DBE program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3)(i) If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review.

(4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in §26.103 or §26.105 of this part and other applicable regulations, for failing to implement your DBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;

(ii) FHWA, FTA, or FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement the corrective actions to which you have committed or conditions that FHWA, FTA, or FAA has imposed following review of your analysis and corrective actions.

(d) If, as recipient, your Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current trends make it unlikely that you will achieve DBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

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§26.49 How are overall goals established for transit vehicle manufacturers?

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(1) Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.

(2) A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout 49 CFR part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.

(3) FTA recipient's failure to comply with the requirements set forth in paragraph (a) of this section may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).

(4) FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal.

(1) In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying §26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will bid on during the fiscal year in question, less the portion(s) attributable to the manufacturing process performed entirely by the transit vehicle manufacturer's own forces.

(i) You must consider and include in your base figure all domestic contracting opportunities made available to non-DBE firms; and

(ii) You must exclude from this base figure funds attributable to work performed outside the United States and its territories, possessions, and commonwealths.

(iii) In establishing an overall goal, the transit vehicle manufacturer must provide for public participation. This includes consultation with interested parties consistent with §26.45(g).

(2) The requirements of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) Transit vehicle manufacturers awarded must comply with the reporting requirements of §26.11 of this part including the requirement to submit the Uniform Report of Awards or Commitments and Payments, in order to remain eligible to bid on FTA assisted transit vehicle procurements.

(d) Transit vehicle manufacturers must implement all other applicable requirements of this part, except those relating to UCPs and DBE certification procedures.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

(f) As a recipient you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

[79 FR 59594, Oct. 2, 2014]

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§26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

(b) Race-neutral means include, but are not limited to, the following:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the 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. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order to meet your overall goal.

Example to paragraph (f)(1): Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year 1, you could begin setting race-conscious DBE contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example to paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example to paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral means alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (*i.e.*, not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example to paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (*i.e.*, from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two consecutive years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in §26.11.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011; 79 FR 59595, Oct. 2, 2014]

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§26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeree who makes good faith efforts to meet it. You must determine that a bidder/offeree has made good faith efforts if the bidder/offeree does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeree does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeree failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeree's good faith efforts.

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeree's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work

provided in the prime contractor's commitment.

(vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and

(3)(i) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—

(A) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or

(B) No later than 7 days after bid opening as a matter of responsibility. The 7 days shall be reduced to 5 days beginning January 1, 2017.

(ii) Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.

(d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.

(1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

(2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.

(3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

(4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

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

(e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

(f)(1)(i) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(ii) You must include in each prime contract a provision stating:

(A) That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph (f); and

(B) That, unless your consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

(3) For purposes of this paragraph, good cause includes the following circumstances:

(i) The listed DBE subcontractor fails or refuses to execute a written contract;

(ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

(iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.

(iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;

(vi) You have determined that the listed DBE subcontractor is not a responsible contractor;

(vii) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

(viii) The listed DBE is ineligible to receive DBE credit for the type of work required;

(ix) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

(x) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

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

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

(g) When a DBE subcontractor is terminated as provided in paragraph (f) of this section, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts 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 contract goal you established for the procurement. The good faith efforts shall be documented by the contractor. If the recipient requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

(h) You must include in each prime contract the contract clause required by §26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section you deem appropriate if the prime contractor fails to comply with the requirements of this section.

(i) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

(j) You must require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011; 79 FR 59595, Oct. 2, 2014]

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§26.55 How is DBE participation counted toward goals?

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) 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.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) 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.

(4) 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.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers 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 DOT operating administration.

Example to paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

(6) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services:

Example to paragraph (d)(6): DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

(7) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is 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 the specifications.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is 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.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. 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.

(C) Packers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(4) You must determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expeditor) on a contract-by-contract basis.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in §26.87(l).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 79 FR 59595, Oct. 2, 2014]

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Subpart D—Certification Standards

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§26.61 How are burdens of proof allocated in the certification process?

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups identified in §26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in §26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (see §26.67).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)

(e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

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§26.63 What rules govern group membership determinations?

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see §26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate §26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

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§26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.

(b) Even if it meets the requirements of paragraph (a) of this section, 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 (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$23.98 million.

(c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

[74 FR 15224, Apr. 3, 2009, as amended at 79 FR 59596, Oct. 2, 2014]

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§26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed \$1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, you must use the DOT personal net worth form provided in appendix G to this part without change or revision. Where necessary to accurately determine an individual's personal net worth, you may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or State law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under §26.89 of this part or to any other State to which the individual's firm has applied for certification under §26.85 of this part.

(b) *Rebuttal of presumption of disadvantage.* (1) An individual's presumption of economic disadvantage may be rebutted in two ways.

(i) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

Example to paragraph (b)(1)(i): An individual with very high assets and significant liabilities may, in accounting terms, have a PNW of less than \$1.32 million. However, the person's assets collectively (e.g., high income level, a very expensive house, a yacht, extensive real or personal property holdings) may lead a reasonable person to conclude that he or she is not economically disadvantaged. The recipient may rebut the individual's presumption of economic disadvantage under these circumstances, as provided in this section, even though the individual's PNW is less than \$1.32 million.

(ii)(A) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, as a certifying agency, you may consider factors that include, but are not limited to, the following:

- (1) Whether the average adjusted gross income of the owner over the most recent three year period exceeds \$350,000;
- (2) Whether the income was unusual and not likely to occur in the future;
- (3) Whether the earnings were offset by losses;
- (4) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;
- (5) Other evidence that income is not indicative of lack of economic disadvantage; and
- (6) Whether the total fair market value of the owner's assets exceed \$6 million.

(B) You must have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of §26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage, so long as his or her PNW remains above that amount.

(c) *Transfers within two years.* (1) Except as set forth in paragraph (c)(2) of this section, recipients must attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of recipient's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients must not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of appendix E of this part.

[79 FR 59596, Oct. 2, 2014]

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§26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices.

(b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) 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.

(c)(1) The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Proof of contribution of capital should be submitted at the time of the application. When the contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan.

(2) Insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value for the firm.

(3) The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. Any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial.

(4) Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

Examples to paragraph (c): (i) An individual pays \$100 to acquire a majority interest in a firm worth \$1 million. The individual's contribution to capital would not be viewed as substantial.

(ii) A 51% disadvantaged owner and a non-disadvantaged 49% owner contribute \$100 and \$10,000, respectively, to acquire a firm grossing \$1 million. This may be indicative of a pro forma arrangement that does not meet the requirements of (c)(1).

(iii) The disadvantaged owner of a DBE applicant firm spends \$250 to file articles of incorporation and obtains a \$100,000 loan, but makes only nominal or sporadic payments to repay the loan. This type of contribution is not of a continuing nature.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

(1) The owner's expertise must be—

(i) In a specialized field;

(ii) Of outstanding quality;

(iii) In areas critical to the firm's operations;

(iv) Indispensable to the firm's potential success;

(v) Specific to the type of work the firm performs; and

(vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual—

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

(h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—

(i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(ii) Involved in the same or a similar line of business; or

(iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—

(i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(f) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(i) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because—

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

[64 FR 5126, Feb. 2, 1999, as amended at 79 FR 59597, Oct. 2, 2014]

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§26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) 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.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) 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. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in §26.69(j)(2).

(d) 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.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged or immediate family members may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control

over the firm's operations, management, and policy.

(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k)(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the nondisadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm demonstrates to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a nondisadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You must not require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(1) The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. If you choose, you may also, in addition to applying the appropriate NAICS code, apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification. If your Directory does not list types of work for any firm in a manner consistent with this paragraph (a)(1), you must update the Directory entry for that firm to meet the requirements of this paragraph (a)(1) by August 28, 2011.

(2) Firms and recipients must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.

(3) If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

(4) A certifier is not precluded from changing a certification classification or description if there is a factual basis in the record. However, certifiers must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5099, Jan. 28, 2011; 79 FR 59597, Oct. 2, 2014]

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§26.73 What are other rules affecting certification?

(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, 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.

(b)(1) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

(2) You must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of this Part, the firm is eligible for certification.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) 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.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, 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.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

Example 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of §26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a DBE firm to be prequalified as a condition for certification.

(h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of §26.65. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in §26.71.

(i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (see Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (e.g., information that would appear in your DBE Directory).

(3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

[84 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5099, Jan. 28, 2011; 79 FR 59598, Oct. 2, 2014]

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Subpart E—Certification Procedures

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§26.81 What are the requirements for Unified Certification Programs?

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) The UCP shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

(3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

(c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

(e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.

(g) Each UCP shall 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. The UCP shall make the directory available to the public electronically, on the Internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made and shall revise the print version of the Directory at least once a year.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5100, Jan. 28, 2011]

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§26.83 What procedures do recipients follow in making certification decisions?

(a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

(b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.

(c)(1) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(i) Perform an on-site visit to the firm's principal place of business. You must interview the principal officers and review their résumés and/or work histories. You may interview key personnel of the firm if necessary. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(ii) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing

(iii) Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;

(iv) Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;

(v) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any.

(vi) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(vii) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service.

(viii) Require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in §26.85 of this part.

(2) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the written approval of the concerned operating administration, for supplementing the form by requesting specified additional information not inconsistent with this part.

(3) You must make sure 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 who is 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.

(4) You must review all information on the form prior to making a decision about the eligibility of the firm. You may request clarification of information contained in the application at any time in the application process.

(d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.

(e) [Reserved]

(f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

(g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

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

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

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

(f) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under §26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners 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 this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.

(l) As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

(m) Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the application at any time. As a recipient or UCP, you may not apply the waiting period provided under §26.86(c) of this part before allowing the applicant to resubmit its application. However, you may place the reapplication at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. You may also apply the waiting period provided under §26.86(c) of this part to a firm that has established a pattern of frequently withdrawing applications before you make a decision.

[64 FR 6126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5100, Jan. 28, 2011; 79 FR 59598, Oct. 2, 2014]

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§26.85 Interstate certification.

(a) This section applies with respect to any firm that is currently certified in its home state.

(b) When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures.

(1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.

(2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.

(c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.

(1) You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A or any other state related to your firm's certification. This includes affidavits of no change (see §26.83(j)) and any notices of changes (see §26.83(i)) that you have submitted to State A, as well as any correspondence you have had with State A's UCP or any other recipient concerning your application or status as a DBE firm.

(2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified DBE in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.

(3) If you have filed a certification appeal with DOT (see §26.89), you must inform State B of the fact and provide your letter of appeal and DOT's response to State B.

(4) You must submit an affidavit sworn to by the firm's owners 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.

(i) This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by §26.85(c)(1), is an identical copy of the information submitted to State A.

(ii) If the on-site report from State A supporting your certification in State A is more than three years old, as of the date of your application to State B, State B may require that your affidavit also affirm that the facts in the on-site report remain true and correct.

(d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:

(1) Within seven days contact State A and request a copy of the site visit review report for the firm (see §26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by "State A" or any other State of not complying with such requests in a timely manner is noncompliance with this Part.

(2) Determine whether there is good cause to believe that State A's certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:

(i) Evidence that State A's certification was obtained by fraud;

(ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;

(iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;

(iv) The State law of State B requires a result different from that of the State law of State A.

(v) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.

(3) If, as State B, unless you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.

(4) If, as State B, you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.

(i) This notice must state with particularity the specific reasons why State B believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity to respond to State B with respect to these reasons.

(ii) The firm may elect to respond in writing, to request an in-person meeting with State B's decision maker to discuss State B's objections to the firm's eligibility, or both. If the firm requests a meeting, as State B you must schedule the meeting to take place within 30 days of receiving the firm's request.

(iii) The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized issues raised by State B's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.

(iv) The decision maker for State B must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.

(v) State B must issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.

(vi) The firm's application for certification is stayed pending the outcome of this process.

(vii) A decision under this paragraph (d)(4) may be appealed to the Departmental Office of Civil Rights under s§26.89 of this part.

(e) As State B, if you have not received from State A a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.

(f)(1) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. You must enter the following information:

(i) The name of the firm;

(ii) The name(s) of the firm's owner(s);

(iii) The type and date of the action;

(iv) The reason for the action.

(2) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.

(3) For any such firm that is on the list, you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

(g) You must implement the requirements of this section beginning January 1, 2012.

[76 FR 5100, Jan. 28, 2011]

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§26.86 What rules govern recipients' denials of initial requests for certification?

(a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must 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 must be made available to the applicant, on request.

(b) [Reserved]

(c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm. An applicant's appeal of your decision to the Department pursuant to §26.89 does not extend this period.

(d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under §26.89.

[64 FR 5126, Feb. 2, 1999. Redesignated and amended at 68 FR 35555, June 16, 2003; 79 FR 59598, Oct. 2, 2014]

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§26.87 What procedures does a recipient use to remove a DBE's eligibility?

(a) *Ineligibility complaints.* (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in §26.109(b).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(b) *Recipient-initiated proceedings.* If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) *DOT directive to initiate proceeding.* (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.

(2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

(3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) *Hearing.* When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

(1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbal record of an administrative hearing. If there is an appeal to DOT under §26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

(3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

(e) *Separation of functions.* You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

(1) Your method of implementing this requirement must be made part of your DBE program.

(2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.

(3) Before a UCP is operational in its state, a small airport or small transit authority (i.e., an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) *Grounds for decision.* You may base a decision to remove a firm's eligibility only on one or more of the following grounds:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information relevant to eligibility that has been concealed or misrepresented by the firm;

(4) A change in the certification standards or requirements of the Department since you certified the firm;

(5) Your decision to certify the firm was clearly erroneous;

(6) The firm has failed to cooperate with you (see §26.109(c));

(7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see §26.73(a)(2)); or

(8) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (g) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph (d) of this section.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

(h) [Reserved]

(i) *Status of firm during proceeding.* (1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

(3) *Exception:* If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

(k) *Availability of appeal.* When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011; 79 FR 59599, Oct. 2, 2014]

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§26.88 Summary suspension of certification.

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

(b)(1) A recipient may immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by §26.83(i) of this part or fails to timely file an affidavit of no change under §26.83(j).

(2) In determining the adequacy of the evidence to issue a suspension under paragraph (b)(1) of this section, the recipient shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(c) The concerned operating administration may direct the recipient to take action pursuant to paragraph (a) or (b) this section if it determines that information available to it is sufficient to warrant immediate suspension.

(d) When a firm is suspended pursuant to paragraph (a) or (b) of this section, the recipient shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.

(e) Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under §26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

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

(g) Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the recipient information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under §26.87 of this part. If the recipient commences a decertification proceeding, the suspension remains in effect during the proceeding.

(h) The decision to immediately suspend a DBE under paragraph (a) or (b) of this section is not appealable to the US Department of Transportation. The failure of a recipient to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. Department of Transportation under §26.89 of this part, as a constructive decertification.

[79 FR 59599, Oct. 2, 2014]

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§26.89 What is the process for certification appeals to the Department of Transportation?

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms, you may make an administrative appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in §26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(3) Send appeals to the following address: U.S. Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal or in the interest of justice.

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

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

(f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

(1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

(2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35556, June 16, 2003; 73 FR 33329, June 12, 2008; 79 FR 58599, Oct. 2, 2014]

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§26.91 What actions do recipients take following DOT certification appeal decisions?

(a) If you are the recipient from whose action an appeal under §26.89 is taken, the decision is binding. It is not binding on other recipients.

(b) If you are a recipient to which a DOT determination under §26.89 is applicable, you must take the following action:

(1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in §26.87(i) take effect.

(2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in §26.87.

(3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

(4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.

(5) If the Department affirms your determination, no further action is necessary.

(c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under §26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed

your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

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Subpart F—Compliance and Enforcement

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§26.101 What compliance procedures apply to recipients?

(a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

(b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

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§26.103 What enforcement actions apply in FHWA and FTA programs?

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

(a) *Noncompliance complaints.* Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in §26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

(b) *Compliance reviews.* The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(c) *Reasonable cause notice.* If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.

(d) *Conciliation.* (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.

(3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.

(4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) *Enforcement actions.* (1) Enforcement actions are taken as provided in this subpart.

(2) Applicable findings in enforcement proceedings are binding on all DOT offices.

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§26.105 What enforcement actions apply in FAA programs?

(a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

(b) The provisions of §26.103(b) and this section apply to enforcement actions in FAA programs.

(c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

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§26.107 What enforcement actions apply to firms participating in the DBE program?

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to

use it to meet DBE goals, should be suspended or debarred.

(d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

(e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5101, Jan. 28, 2011]

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§26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

(2) Notwithstanding any provision of Federal or state law, you must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, you must transmit this information to DOT in any certification appeal proceeding under §26.89 of this part or to any other state to which the individual's firm has applied for certification under §26.85 of this part.

(b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

(c) *Cooperation.* All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

(d) *Intimidation and retaliation.* If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011]

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Appendix A to Part 26—Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, you have the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. (1) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in §26.53(b)(2)(vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

[79 FR 69600, Oct. 2, 2014]

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Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS/COMMITMENTS AND PAYMENTS

Recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid for with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) to which this report will be submitted.

1. Indicate the DOT (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.

2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If you are an FTA recipient, indicate the Grant/Project numbers covered by this report. If more than ten attach a separate sheet.

3. Specify the Federal fiscal year (*i.e.*, October 1–September 30) in which the covered reporting period falls.

4. State the date of submission of this report.

5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. For FHWA and FTA recipients, if this report is due June 1, data should cover October 1–March 31. If this report is due December 1, data should cover April 1–September 30. If the report is due to the FAA, data should cover the entire year.

6. Provide the name and address of the recipient.

7. State your overall DBE goal(s) established for the Federal fiscal year of the report being submitted to and approved by the relevant OA. Your overall goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral projections (both of which include gender-conscious/neutral projections). The Race Conscious projection should be based on measures that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a race conscious measure. The Race Neutral projection should include measures that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.

Section A: Awards and Commitments Made During This Period

The amounts in items 8(A)-10(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts and should be rounded to the nearest dollar.

Line 8: Prime contracts awarded this period: The items on this line should correspond to the contracts directly between the recipient and a supply or service contractor, with no intermediaries between the two.

8(A). Provide the *total dollar amount* for all prime contracts assisted with DOT funds and awarded during this reporting period. This value should include the entire Federal share of the contracts without removing any amounts associated with resulting subcontracts.

8(B). Provide the *total number* of all prime contracts assisted with DOT funds and awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the *dollar amount* awarded in prime contracts to certified DBE firms during this reporting period. This amount should not include the amounts sub contracted to other firms.

8(D). From the total number of prime contracts awarded in item 8(B), specify the *number* of prime contracts awarded to certified DBE firms during this reporting period.

8(E&F). This field is closed for data entry. Except for the very rare case of DBE-set asides permitted under 49 CFR part 28, all prime contracts awarded to DBEs are regarded as race-neutral.

8(G). From the total dollar amount awarded in item 8(C), provide the *dollar amount* awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral in item 7 and the explanation in item 8 of project types to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the *number* awarded to DBEs through Race Neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

Line 9: Subcontracts awarded/committed this period: Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.

9(A). If filling out the form for general reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded in prime contracts in 8(A), and therefore should never be greater than the amount awarded in prime contracts. If filling out the form for project reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded or previously in prime contracts in 8(A). The sum of all subcontract amounts in consecutive periods should never exceed the sum of all prime contract amounts awarded in those periods.

9(B). Provide the total number of all sub contracts assisted with DOT funds that were awarded or committed during this reporting period.

9(C). From the total dollar amount of sub contracts awarded/committed this period in item 9(A), provide the total dollar amount awarded in sub contracts to DBEs.

9(D). From the total number of sub contracts awarded or committed in item 9(B), specify the number of sub contracts awarded or committed to DBEs.

9(E). From the total dollar amount of sub contracts awarded or committed to DBEs this period, provide the amount in dollars to DBEs using Race Conscious measures.

9(F). From the total number of sub contracts awarded or committed to DBEs this period, provide the number of sub contracts awarded or committed to DBEs using Race Conscious measures.

9(G). From the total dollar amount of sub contracts awarded/committed to DBEs this period, provide the amount in dollars to DBEs using Race Neutral measures.

9(H). From the total number of sub contracts awarded/committed to DBEs this period, provide the number of sub contracts awarded to DBEs using Race Neutral measures.

9(I). Of all subcontracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round percentage to the nearest tenth.

Line 10: Total contracts awarded or committed this period. These fields should be used to show the total dollar value and number of contracts awarded to DBEs and to calculate the overall percentage of dollars awarded to DBEs.

10(A)-10(B). These fields are unavailable for data entry.

10(C-H). Combine the total values listed on the prime contracts line (Line 8) with the corresponding values on the subcontracts line (Line 9).

10(I). Of all contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the total dollars awarded to DBEs in item 10(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

Section B: Breakdown by Ethnicity & Gender of Contracts Awarded to DBEs This Period

11-17. Further breakdown the contracting activity with DBE involvement. The Total Dollar Amount to DBEs in 17(C)

should equal the Total Dollar Amount to DBEs in 10(C). Likewise the total number of contracts to DBEs in 17(F) should equal the Total Number of Contracts to DBEs in 10(D).

Line 16: The "Non-Minority" category is reserved for any firms whose owners are not members of the presumptively disadvantaged groups already listed, but who are either "women" OR eligible for the DBE program on an individual basis. All DBE firms must be certified by the Unified Certification Program to be counted in this report.

Section C: Payments on Ongoing Contracts

Line 18(A-E). Submit information on contracts that are currently in progress. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

18(A). Provide the total dollar amount paid to all firms performing work on contracts.

18(B). Provide the total number of contracts where work was performed during the reporting period.

18(C). From the total number of contracts provided in 18(A) provide the total number of contracts that are currently being performed by DBE firms for which payments have been made.

18(D). From the total dollar amount paid to all firms in 18(A), provide the total dollar value paid to DBE firms currently performing work during this period.

18(E). Provide the total number of DBE firms that received payment during this reporting period. For example, while 3 contracts may be active during this period, one DBE firm may be providing supplies or services on all three contracts. This field should only list the number of DBE firms performing work.

18(F). Of all payments made during this period, calculate the percentage going to DBEs. Divide the total dollar value to DBEs in item 18(D) by the total dollars of all payments in 18(B). Round percentage to the nearest tenth.

Section D: Actual Payments on Contracts Completed This Reporting Period

This section should provide information only on contracts that are closed during this period. All dollar amounts are to reflect the entire Federal share of such contracts, and should be rounded to the nearest dollar.

19(A). Provide the total number of contracts completed during this reporting period that used Race Conscious measures. Race Conscious contracts are those with contract goals or another race conscious measure.

19(B). Provide the total dollar value of prime contracts completed this reporting period that had race conscious measures.

19(C). From the total dollar value of prime contracts completed this period in 19(B), provide the total dollar amount of dollars awarded or committed to DBE firms in order to meet the contract goals. This applies only to Race Conscious contracts.

19(D). Provide the actual total DBE participation in dollars on the race conscious contracts completed this reporting period.

19(E). Of all the contracts completed this reporting period using Race Conscious measures, calculate the percentage of DBE participation. Divide the total dollar amount to DBEs in item 19(D) by the total dollar value provided in 19(B) to derive this percentage. Round to the nearest tenth.

20(A)-20(E). Items 21(A)-21(E) are derived in the same manner as items 19(A)-19(E), except these figures should be based on contracts completed using Race Neutral measures.

20(C). This field is closed.

21(A)-21(D). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.

21(C). This field is closed.

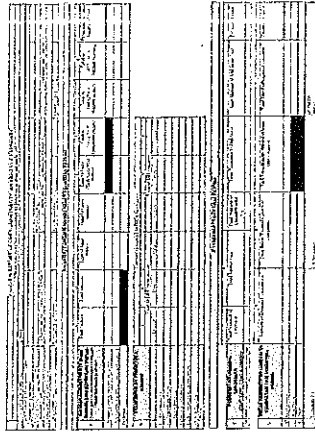
21(E). Calculate the overall percentage of dollars to DBEs on completed contracts. Divide the Total DBE participation dollar value in 21(D) by the Total Dollar Value of Contracts Completed in 21(B) to derive this percentage. Round to the nearest tenth.

23. Name of the Authorized Representative preparing this form.

24. Signature of the Authorized Representative.

25. Phone number of the Authorized Representative.

**Submit your completed report to your Regional or Division Office.



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[79 FR 59601, Oct. 2, 2014]

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Appendix C to Part 26—DBE Business Development Program Guidelines

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the recipient.

(A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.

(B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.

(C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.

(D) The business plan should contain at least the following:

(1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.

(2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.

(3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;

(4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and

(5) Such other information as the recipient may require.

(E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

(1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;

(2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;

(3) The types of contract opportunities being sought, based on the firm's primary line of business; and

(4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to,

the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.

(J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.

(K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:

- (1) Profitability;
- (2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
- (3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;
- (4) Ability to obtain bonding;
- (5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and
- (6) Good management capacity and capability.

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

(M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

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Appendix D to Part 26—Mentor-Protégé Program Guidelines

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

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Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

SOCIAL DISADVANTAGE

I. 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. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will

consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) *Education.* Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) *Employment.* Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) *Business history.* The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

ii. With respect to paragraph i.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

iii. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

ECONOMIC DISADVANTAGE

(A) *General.* 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 similar line of business who are not socially disadvantaged.

(B) *Submission of narrative and financial information.* (1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) *Factors to be considered.* In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.* (1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.


(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]

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Appendix F to Part 26—Uniform Certification Application Form


 Appendix
DISADVANTAGED BUSINESS ENTERPRISE (DBE) AIRPORT CONSTRUCTION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) INFORM CERTIFICATION APPLICATION
 49 CFR, Part 23, Subpart 23.101

Instructions for Applicants

- Who May Apply?**
 - 1.1 Only a DBE-owned, controlled, and operated business may apply for certification. The business must be a legal entity under the laws of the United States or a State of the United States.
 - 1.2 The business must be a small business as defined in 13 CFR 121.201.
 - 1.3 The business must be a disadvantaged business as defined in 13 CFR 121.202.
 - 1.4 The business must be a business that is currently or has been a disadvantaged business as defined in 13 CFR 121.203.
- How to Apply?**
 - 2.1 The applicant must complete and submit the application to the appropriate Federal Aviation Administration (FAA) office.
 - 2.2 The applicant must submit the application with the required supporting documents.
 - 2.3 The applicant must submit the application with the required fee.
- What is the Review Process?**
 - 3.1 The FAA will review the application and supporting documents.
 - 3.2 The FAA will determine if the applicant is eligible for certification.
 - 3.3 The FAA will issue a certification decision to the applicant.
- What is the Effect of Certification?**
 - 4.1 A certified DBE business is eligible to compete for DBE set-aside contracts.
 - 4.2 A certified DBE business is eligible to compete for DBE set-aside contracts on a non-exclusive basis.
 - 4.3 A certified DBE business is eligible to compete for DBE set-aside contracts on a sole-source basis.

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INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) AIRPORT CONSTRUCTION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) INFORM CERTIFICATION APPLICATION

NOTE: Applicants must complete this form for the primary contact. If you are not the primary contact, do NOT qualify for certification. This form must be completed by the applicant. It is not a contract. It is a certification application. It is not a contract. It is a certification application. It is not a contract. It is a certification application.

Section I: GENERAL INFORMATION

- 1.1 Enter the name and title of the person completing this application and the person who is the primary contact for this application.
- 1.2 Enter the name of the business and the date of formation.
- 1.3 Enter the primary contact's name, title, and address.
- 1.4 Enter the primary contact's phone number.
- 1.5 Enter the primary contact's fax number.
- 1.6 Enter the primary contact's e-mail address.
- 1.7 Enter the primary contact's mobile phone number.
- 1.8 Enter the primary contact's home address.
- 1.9 Enter the primary contact's home phone number.
- 1.10 Enter the primary contact's home fax number.
- 1.11 Enter the primary contact's home e-mail address.
- 1.12 Enter the primary contact's home mobile phone number.
- 1.13 Enter the primary contact's home address.
- 1.14 Enter the primary contact's home phone number.
- 1.15 Enter the primary contact's home fax number.
- 1.16 Enter the primary contact's home e-mail address.
- 1.17 Enter the primary contact's home mobile phone number.

Section II: GENERAL INFORMATION

- 2.1 Enter the name and title of the person completing this application and the person who is the primary contact for this application.
- 2.2 Enter the name of the business and the date of formation.
- 2.3 Enter the primary contact's name, title, and address.
- 2.4 Enter the primary contact's phone number.
- 2.5 Enter the primary contact's fax number.
- 2.6 Enter the primary contact's e-mail address.
- 2.7 Enter the primary contact's mobile phone number.
- 2.8 Enter the primary contact's home address.
- 2.9 Enter the primary contact's home phone number.
- 2.10 Enter the primary contact's home fax number.
- 2.11 Enter the primary contact's home e-mail address.
- 2.12 Enter the primary contact's home mobile phone number.
- 2.13 Enter the primary contact's home address.
- 2.14 Enter the primary contact's home phone number.
- 2.15 Enter the primary contact's home fax number.
- 2.16 Enter the primary contact's home e-mail address.
- 2.17 Enter the primary contact's home mobile phone number.

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Section 1: CERTIFICATION INFORMATION

A. Basic General Information

(1) Customer product code: _____ (2) Type of use of item: _____

(3) Please check (1) Other (describe) _____ (2) For POC _____

(4) End use: _____ (5) Form No. 1010-1

(6) Number of units of item: _____ (7) Country of origin: _____ (8) State: _____ (9) Zip: _____

(10) Making of item in U.S.A.: _____ (11) Country of origin: _____ (12) State: _____ (13) Zip: _____

B. Buyer Order Information and Location

(14) Is your firm currently certified for any of the following U.S. DOT programs?
 (a) ACP (15) State of certifying agency: _____
 (b) Buy America (16) Is your firm currently certified for any of the following U.S. DOT programs?
 (a) Buy America (17) State of certifying agency: _____

(18) Has your firm ever been certified by your home state and any other states or DOT members?
 Yes: _____ State: _____ Date: _____
 No: _____ State: _____ Date: _____

(19) Has your firm ever been certified by your home state and any other states or DOT members?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

(20) Has your firm ever been certified by your home state and any other states or DOT members?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

Section 2: GENERAL INFORMATION

A. Has your firm ever been certified for any of the following U.S. DOT programs?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

(21) Has your firm ever been certified for any of the following U.S. DOT programs?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

(22) Has your firm ever been certified for any of the following U.S. DOT programs?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

(23) Has your firm ever been certified for any of the following U.S. DOT programs?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

(24) Has your firm ever been certified for any of the following U.S. DOT programs?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

(25) Has your firm ever been certified for any of the following U.S. DOT programs?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

U.S. DOT Form 1010-1 (REVISED) Certificate Application - Page 1 of 1

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Section 3: CERTIFICATION INFORMATION

A. Basic General Information

(1) Customer product code: _____ (2) Type of use of item: _____

(3) Please check (1) Other (describe) _____ (2) For POC _____

(4) End use: _____ (5) Form No. 1010-1

(6) Number of units of item: _____ (7) Country of origin: _____ (8) State: _____ (9) Zip: _____

(10) Making of item in U.S.A.: _____ (11) Country of origin: _____ (12) State: _____ (13) Zip: _____

B. Buyer Order Information and Location

(14) Is your firm currently certified for any of the following U.S. DOT programs?
 (a) ACP (15) State of certifying agency: _____
 (b) Buy America (16) Is your firm currently certified for any of the following U.S. DOT programs?
 (a) Buy America (17) State of certifying agency: _____

(18) Has your firm ever been certified by your home state and any other states or DOT members?
 Yes: _____ State: _____ Date: _____
 No: _____ State: _____ Date: _____

(19) Has your firm ever been certified by your home state and any other states or DOT members?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

(20) Has your firm ever been certified by your home state and any other states or DOT members?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

Section 2: GENERAL INFORMATION

A. Has your firm ever been certified for any of the following U.S. DOT programs?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

(21) Has your firm ever been certified for any of the following U.S. DOT programs?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

(22) Has your firm ever been certified for any of the following U.S. DOT programs?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

(23) Has your firm ever been certified for any of the following U.S. DOT programs?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

(24) Has your firm ever been certified for any of the following U.S. DOT programs?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

(25) Has your firm ever been certified for any of the following U.S. DOT programs?
 (a) Buy America (17) State of certifying agency: _____
 (b) Buy America (17) State of certifying agency: _____

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Section A: COMPANY OWNER INFORMATION

A. Identify the individual owner of the first holding company or parent ownership interest

(a) Full Name: _____ (b) Title: _____ (c) Home Phone #: _____

(d) Home Address (street and number): _____ City: _____ State: _____ Zip: _____

(e) Gender: Male Female (f) Date of Birth (month/day/year): _____

(g) Date group membership started (month/day/year): _____

None Repeat Associate Non-Associate

Associate Non-Associate

(h) U.S. Citizenship: U.S. Citizen Lawfully Admitted Permanent Resident

(i) U.S. Citizenship: U.S. Citizen Lawfully Admitted Permanent Resident

(j) U.S. Citizenship: U.S. Citizen Lawfully Admitted Permanent Resident

B. Additional Owner Information

(1) Describe family relationships to other owners and employees: _____

(2) Does this owner perform management or supervisory functions for any other business? Yes No

(3) Does this owner work for any other firm that has a relationship with this firm? Yes No

(4) Does this owner work for any other firm, not just in partnership, as an employee for any other activity more than 10 hours per week? If yes, identify the activity: _____

(5) What is the period of month of this discharge ever applying for credit? _____

(6) Has any individual been created for the benefit of this discharge ever? Yes No

(7) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? Yes No

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Section A: OWNER INFORMATION, Case #

A. Identify all individuals, firms, or holding companies who hold LESS THAN 1% ownership interest in the first holding company for the first time

(a) Full Name: _____ (b) Title: _____ (c) Home Phone #: _____

(d) Home Address (street and number): _____ City: _____ State: _____ Zip: _____

(e) Gender: Male Female (f) Date of Birth (month/day/year): _____

(g) Date group membership started (month/day/year): _____

None Repeat Associate Non-Associate

Associate Non-Associate

(h) U.S. Citizenship: U.S. Citizen Lawfully Admitted Permanent Resident

(i) U.S. Citizenship: U.S. Citizen Lawfully Admitted Permanent Resident

(j) U.S. Citizenship: U.S. Citizen Lawfully Admitted Permanent Resident

B. Additional Owner Information

(1) Describe family relationships to other owners and employees: _____

(2) Does this owner perform management or supervisory functions for any other business? Yes No

(3) Does this owner work for any other firm that has a relationship with this firm? Yes No

(4) Does this owner work for any other firm, not just in partnership, as an employee for any other activity more than 10 hours per week? If yes, identify the activity: _____

(5) What is the period of month of this discharge ever applying for credit? _____

(6) Has any individual been created for the benefit of this discharge ever? Yes No

(7) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? Yes No

U.S. DOT Form 4000-0001 (Section A) Application Page 1 of 11

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Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors (Attach separate sheet, attach separate sheet)

Name	Title	Date Appointed	Category
------	-------	----------------	----------

B. Do any of the persons listed in section A, above, own or work for any other firm that has a relationship with this firm? (See instructions for definitions of terms and relationships.)

If Yes, list the name of the firm, its address, and its relationship to this firm.

If No, state so.

C. Complete for all Officers, Directors, Managers, and Key Personnel who control the following business for the firm (attach separate sheet, attach separate sheet)

Name	Current Title	Current Business	Current Value

US DOT Census ECF-0005 (Rev. 11/01)

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D. Do any of the persons listed in section B, above, own or work for any other firm that has a relationship with this firm? (See instructions for definitions of terms and relationships.)

If Yes, list the name of the firm, its address, and its relationship to this firm.

If No, state so.

E. Inventory - Identify your firm's inventory and equipment, attach separate sheet (attach separate sheet)

1. Equipment and Vehicles

Make and Model	Current Value	Owned or Leased by Firm or Owner?	Used as collateral?	Where is item stored?

2. Other Assets

Name of Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease

US DOT Census ECF-0005 (Rev. 11/01)

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2. Storage Space for the past two years (see instructions)

Unit Address District or Locality
District or County?

Current Value of Property at Lease

D. Do any other firms rely on any other firm for management (executive or employee payroll) (2 Vts. QN)?

E. Financial Position Information about bond sales or other securities

Name of bank City and State
The following information is for all bonds or other securities

Name of bank City and State
The following information is for all bonds or other securities

Bonding Information: Where have bonding companies, banks, etc. been bonding appropriate and projects (include Agency Name)?

F. Identify all sources, amounts, and purposes of money loaned or used from including from financial institutions. Identify whether you are owner and any other persons to whom loaned money is to be applied (DIT/DIT/DE). Include the names of any persons to whom you are lending the loan, if other than the DIT/DIT/DE. (Do not report of cash loan or credit line agreement)

Name of Source	Address of Source	Name of Person Contacted by the Firm	Original Amount	Current Balance	Purpose of Loan
1					
2					
3					

G. List all encumbrances or transfers of assets to other persons and to determine any of its executive officers held during the past two years (date of transfer and agency)

Description of Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1					
2					
3					

H. List current licenses/permits held by any owner and employee of job firm (e.g. contractor license, architect, etc.) (include address of job firm)

Name of License/Permit Holder	Type of License/Permit	Expiration Date	State
1			
2			
3			

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I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Contract Executive	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1			
2			
3			

J. List the three largest active jobs on which your firm is currently working:

Name of Office Contractor and Project Name	Location of Project	Type of Work	Project Start Date	Project Completion Date	Dollar Value of Contract
1					
2					
3					

ADDITIONAL INFORMATION FOR APPLICANTS ONLY (DO NOT COMPLETE THIS SECTION)

Provide the following information for the LEAD applicant firm:

Contract Name	Address of Project or Office	Value of Contract	From/To/Project to/For the Month

Provide information concerning any other subject contracts held on the applicant firm or any affiliate or subsidiary, including name, address, type of contract, and dollar value of contract:

Name of Contract	Location	Value of Contract	Contract Date of Award

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U.S. Department of Transportation
Federal Motor Vehicle Safety Council
FMVSS No. 108
Lighting Devices

1. This section contains the text of the Standard. It is to be read in conjunction with the other parts of the Standard. Each column of the table contains the text of a paragraph of the Standard. The text of the Standard is given in full in the table. The text of the Standard is given in full in the table.

2. The text of the Standard is given in full in the table.

3. The text of the Standard is given in full in the table.

4. The text of the Standard is given in full in the table.

Section	Paragraph	Text	Section	Paragraph	Text
TABLE 1 - Summary of Requirements	1.1	...	1.1
	1.2	...	1.2
	1.3	...	1.3
	1.4	...	1.4
	1.5	...	1.5
	1.6	...	1.6
	1.7	...	1.7
	1.8	...	1.8
	1.9	...	1.9
	1.10	...	1.10

U.S. DOT Form 108-1, Rev. 10/2014

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U.S. Department of Transportation
Federal Motor Vehicle Safety Council
FMVSS No. 108
Lighting Devices

1. This section contains the text of the Standard. It is to be read in conjunction with the other parts of the Standard. Each column of the table contains the text of a paragraph of the Standard. The text of the Standard is given in full in the table. The text of the Standard is given in full in the table.

Section	Paragraph	Text	Section	Paragraph	Text
TABLE 2 - Summary of Requirements	1.1	...	1.1
	1.2	...	1.2
	1.3	...	1.3
	1.4	...	1.4
	1.5	...	1.5
	1.6	...	1.6
	1.7	...	1.7
	1.8	...	1.8
	1.9	...	1.9
	1.10	...	1.10

U.S. DOT Form 108-2, Rev. 10/2014

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Section	Section Title	Section Number	Section Title	Section Number	Section Title
101.1	Section 101.1	101.1	Section 101.1	101.1	Section 101.1
101.2	Section 101.2	101.2	Section 101.2	101.2	Section 101.2
101.3	Section 101.3	101.3	Section 101.3	101.3	Section 101.3
101.4	Section 101.4	101.4	Section 101.4	101.4	Section 101.4
101.5	Section 101.5	101.5	Section 101.5	101.5	Section 101.5
101.6	Section 101.6	101.6	Section 101.6	101.6	Section 101.6
101.7	Section 101.7	101.7	Section 101.7	101.7	Section 101.7
101.8	Section 101.8	101.8	Section 101.8	101.8	Section 101.8
101.9	Section 101.9	101.9	Section 101.9	101.9	Section 101.9
101.10	Section 101.10	101.10	Section 101.10	101.10	Section 101.10
101.11	Section 101.11	101.11	Section 101.11	101.11	Section 101.11
101.12	Section 101.12	101.12	Section 101.12	101.12	Section 101.12
101.13	Section 101.13	101.13	Section 101.13	101.13	Section 101.13
101.14	Section 101.14	101.14	Section 101.14	101.14	Section 101.14
101.15	Section 101.15	101.15	Section 101.15	101.15	Section 101.15
101.16	Section 101.16	101.16	Section 101.16	101.16	Section 101.16
101.17	Section 101.17	101.17	Section 101.17	101.17	Section 101.17
101.18	Section 101.18	101.18	Section 101.18	101.18	Section 101.18
101.19	Section 101.19	101.19	Section 101.19	101.19	Section 101.19
101.20	Section 101.20	101.20	Section 101.20	101.20	Section 101.20
101.21	Section 101.21	101.21	Section 101.21	101.21	Section 101.21
101.22	Section 101.22	101.22	Section 101.22	101.22	Section 101.22
101.23	Section 101.23	101.23	Section 101.23	101.23	Section 101.23
101.24	Section 101.24	101.24	Section 101.24	101.24	Section 101.24
101.25	Section 101.25	101.25	Section 101.25	101.25	Section 101.25
101.26	Section 101.26	101.26	Section 101.26	101.26	Section 101.26
101.27	Section 101.27	101.27	Section 101.27	101.27	Section 101.27
101.28	Section 101.28	101.28	Section 101.28	101.28	Section 101.28
101.29	Section 101.29	101.29	Section 101.29	101.29	Section 101.29
101.30	Section 101.30	101.30	Section 101.30	101.30	Section 101.30
101.31	Section 101.31	101.31	Section 101.31	101.31	Section 101.31
101.32	Section 101.32	101.32	Section 101.32	101.32	Section 101.32
101.33	Section 101.33	101.33	Section 101.33	101.33	Section 101.33
101.34	Section 101.34	101.34	Section 101.34	101.34	Section 101.34
101.35	Section 101.35	101.35	Section 101.35	101.35	Section 101.35
101.36	Section 101.36	101.36	Section 101.36	101.36	Section 101.36
101.37	Section 101.37	101.37	Section 101.37	101.37	Section 101.37
101.38	Section 101.38	101.38	Section 101.38	101.38	Section 101.38
101.39	Section 101.39	101.39	Section 101.39	101.39	Section 101.39
101.40	Section 101.40	101.40	Section 101.40	101.40	Section 101.40
101.41	Section 101.41	101.41	Section 101.41	101.41	Section 101.41
101.42	Section 101.42	101.42	Section 101.42	101.42	Section 101.42
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101.99	Section 101.99	101.99	Section 101.99	101.99	Section 101.99
102.00	Section 102.00	102.00	Section 102.00	102.00	Section 102.00

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General Instructions for Completing the Personal Net Worth Statement for IRAC/SAFE Program Eligibility

This document provides instructions for completing the Personal Net Worth Statement for IRAC/SAFE Program Eligibility. It includes information on how to fill out the form, what information is required, and how to calculate net worth. The instructions are organized into sections corresponding to the form's parts.

Part 1: General Information

- Fill out this section for each individual whose net worth is being reported.
- Provide the individual's name, date of birth, and Social Security Number (SSN).
- Indicate the individual's relationship to the applicant.

Part 2: Assets

- List all assets owned by the individual, including real estate, vehicles, bank accounts, investments, and other property.
- Provide the fair market value of each asset as of the reporting date.
- Exclude certain assets, such as the individual's primary residence, a vehicle used for commuting, and certain life insurance policies.

Part 3: Liabilities

- List all liabilities owed by the individual, including mortgages, loans, credit cards, and other debts.
- Provide the fair market value of each liability as of the reporting date.

Part 4: Net Worth

- Calculate the individual's net worth by subtracting total liabilities from total assets.
- Report the net worth in the designated field on the form.

Additional Instructions:

- Use the most recent information available as of the reporting date.
- Round all values to the nearest dollar.
- Sign and date the form.
- Attach supporting documentation for all assets and liabilities.

US DOT Personal Net Worth Statement for IRAC/SAFE Program Eligibility of page 4/5

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bill was on April 27, 1987, and the bill was passed by the House on May 15, 1987. The bill was then passed by the Senate on June 11, 1987. The bill was signed into law by President Reagan on June 18, 1987.

Subtitle

Subtitle A—General Provisions

Section 101. Purpose and scope of subtitle A.

Section 102. Definitions.

Section 103. Construction of subtitle A.

Section 104. Short title.

Section 105. Effective date.

Section 106. Savings provisions.

Section 107. General provisions.

Section 108. Definitions.

Section 109. Construction of subtitle A.

Section 110. Short title.

Section 111. Effective date.

Section 112. Savings provisions.

Part 100

Section 100.1. Purpose and scope of part 100.

Section 100.2. Definitions.

Section 100.3. Construction of part 100.

Section 100.4. Short title.

Section 100.5. Effective date.

Part 101

Section 101.1. Purpose and scope of part 101.

Section 101.2. Definitions.

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[79 FR 59617, Oct. 2, 2014]

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PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - PUBLIC WORKS -- DPW

Dept. Code: DPW

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: As-Needed Architectural Services for Health Facilities

Funding Source: Inter-Departmental Work Orders

PSC Amount: \$8,000,000 PSC Est. Start Date: 11/21/2016 PSC Est. End Date 12/31/2022

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Provide architectural and multi-discipline design services involving renovation, relocation, adaptive re-use of existing health facilities, installation of specialized medical equipment, modifications to life safety systems and other infrastructure, and new health facilities. Selected firms shall have extensive knowledge of, and experience with general acute care facilities under jurisdiction of the Office of Statewide Health and Planning (OSHPD).

The department intends to award up to 4 contracts with an aggregate contract limit of \$8,000,000.

B. Explain why this service is necessary and the consequence of denial:

The as-needed contracts will only be utilized when Public Works cannot provide the services in a timely manner due to unavailability of staff, or when specialty services are required. If services cannot be provided in a timely fashion, it will significantly impact the Department of Public Health's ongoing operations and jeopardize the expenditure of annual and/or grant funding.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

These services have been previously provided through as-needed design services contracts via PSC #4030-09/10, approved on 9/21/2009. The total modified amount for this original PSC has exceeded \$10M and is expiring soon, thus we are requesting this new PSC.

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

This is an as-needed contract and it will have a maximum duration of 5 years. The PSC duration is greater than 5 years to account for additional time to advertise and award contracts.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

Health facilities projects involve specific specialty expertise, such as isolation wards/infectious disease, trauma/intensive care, radiology equipment/imaging suites, psychiatric care, fire/life safety code compliance for acute care (code certification) and emergency medical care. Some health facilities projects also require experience in acute care facilities under jurisdiction of OSHPD including operational requirements, practices/standards for basic inpatient services, supplementary services, specialty inpatient occupancies and support operations. These as-needed consultants will be utilized to supplement City Staff expertise where needed. These as-needed consultants will be utilized when the Architecture Division is working at full capacity and postponement of pending projects would be contrary to the public interest.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: • Experience in acute care facilities under jurisdiction of OSHPD including operational requirements, practices/standards for basic inpatient services, supplementary services, specialty inpatient occupancies and support operations. • Specific specialty expertise such as isolation wards/infectious disease, trauma/intensive care, radiology equipment/imaging suites, psychiatric care, fire/life safety code compliance for acute care (code certification) and emergency medical care.
- B. Which, if any, civil service class(es) normally perform(s) this work? 5120, Architectural Administrator; 5211, Eng/Arch/Landscape Arch Sr; 5212, Engineer/Architect Principal; 5260, Architectural Assistant 1; 5261, Architectural Assistant 2; 5265, Architectural Associate 1; 5266, Architectural Associate 2; 5268, Architect;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Public Works utilizes City staff for this work. Public Works plans to utilize these design services to supplement City staff or for specialized design services. Determinations are made on a case by case basis based on the project scope and schedule.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
These are as-needed contract services only. They will only be used when: • The Architecture Division is working at full capacity and postponement of pending projects would be contrary to the public interest, or • Specialized services are required that are not available internally and for which there is no ongoing demand that justifies the hiring of permanent City staff with the necessary expertise. These projects normally don't happen frequently; equipment updating cycle is 15 to 20 years. The demand does not justify the need to hire permanent city staff with this kind of expertise.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. The services are only going to be utilized on an as-needed basis.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
Training will not be provided, as this service will only be utilized if the department is at full capacity or if specialized services are needed.
- C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

No.

7. **Union Notification:** On 09/26/2016, the Department notified the following employee organizations of this PSC/RFP request:
Prof & Tech Eng, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Stacey Camillo Phone: 415-554-4886 Email: stacey.camillo@sfdpw.org

Address: 1155 Market Street, 4th Floor San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 49614 - 16/17

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 11/21/2016

Receipt of Union Notification(s)

Tsang, Tiffany (DPW)

From: dhr-psccordinator@sfgov.org on behalf of stacey.camillo@sfdpw.org
Sent: Monday, September 26, 2016 2:54 PM
To: Camillo, Stacey (DPW); amakayan@ifpte21.org; L21PSCReview@ifpte21.org; Tsang, Tiffany (DPW); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Notice for new PCS over \$100K PSC # 49614 - 16/17

RECEIPT for Union Notification for PSC 49614 - 16/17 more than \$100k

The GENERAL SERVICES AGENCY - PUBLIC WORKS -- DPW has submitted a request for a Personal Services Contract (PSC) 49614 - 16/17 for \$8,000,000 for Initial Request services for the period 11/21/2016 – 12/31/2022. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhr Drupal/node/8127> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Modification

Personal Services Contracts

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CITY PLANNING

Dept. Code: CPC

Type of Request: Initial Modification of an existing PSC (PSC # 4024 12/13)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Transportation Impact Study Environmental Impact Report for the Central Corridor Plan

Funding Source: General Fund and Federal Grant

PSC Original Approved Amount: \$1,200,000

PSC Original Approved Duration: 09/18/12 - 12/31/15 (3 years 14 weeks)

PSC Mod#1 Amount: \$600,000

PSC Mod#1 Duration: no duration added

PSC Mod#2 Amount: \$700,000

PSC Mod#2 Duration: 09/18/12-12/31/16 (1 year 1 day)

PSC Mod#3 Amount: \$300,000

PSC Mod#3 Duration: 01/01/17-12/31/18 (2 years)

PSC Cumulative Amount Proposed: \$2,800,000

PSC Cumulative Duration Proposed: 6 years 15 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The San Francisco Planning Department is seeking a consultant to assist the Department in the preparation, production, management and successful completion of environmental analysis, including an environmental impact report (EIR) and transportation impact study (TIS) and possibly other technical documentation for the Central Corridor Plan. This EIR will analyze proposed land use controls, changes to existing height districts, and area plan policies at the programmatic level. Primary environmental issues are expected to be land use and planning, aesthetics, cultural resources, transportation and circulation, air quality, wind, shadow, and open space/recreation.

Scope Change

The Planning Department is seeking additional services from the consultant to address the potential for a high amount of public comments on the Draft EIR. Pursuant to the California Environmental Quality Act, public comments on the DRAFT EIR must be responded to in writing and may require additional analysis beyond that already conducted for the EIR.

B. Explain why this service is necessary and the consequence of denial:

The service is necessary because the City does not have the staffing to perform the service in-house. These services are routinely provided in the same way for other similar projects. Denial would result in delay in the completion of the Central Corridor Plan, which is part of the San Francisco General Plan.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.
Services have been provided in the past through earlier PSC request. See 4024 12/13

D. Will the contract(s) be renewed?
No, services are required for this one-time project.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:
Project is still underway and has not been completed.

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

This is a one time specialized project requiring diverse skills, expertise and knowledge.

B. Reason for the request for modification:

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Experience in the preparation of Environmental Impact Reports (EIR)s in plan areas, particularly within a major urban setting and also with experience working on California Environmental Quality Act (CEQA) documents where land use planning scenario is analyzed in detail. Expertise and experience with the full range of environmental issues including analysis of transportation, cultural resources and air quality.

B. Which, if any, civil service class(es) normally perform(s) this work? 5299, Planner 4-Environmental Review;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Services are required for this one-time project only. The Planning Department lacks the staff resources to fully perform the range of planning and review tasks, e.g. air quality technical analysis, historic architectural survey, geotechnical study, noise technical analysis, needed for this project, which are highly specialized.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. This is a one-time, technically specific and deadline driven project.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Vendor is not required to train City and County employees.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
All grant funds are allocated to consultant costs.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 10/12/16, the Department notified the following employee organizations of this PSC/RFP request:

Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21; Management & Superv Local 21; Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Belle La Phone: 415-575-6833 Email: belle.la@sfgov.org

Address: 1650 Mission Street, Suite 400, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 4024 12/13

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 11/21/2016

Receipt of Union Notification(s)

Choi, Suzanne (HRD)

From: dhr-psccordinator@sfgov.org on behalf of belle.la@sfgov.org
Sent: Wednesday, October 12, 2016 5:37 PM
To: La, Belle (CPC); amakayan@ifpte21.org; L21PSCReview@ifpte21.org; DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Modification Request to PSC # 4024 12/13 - MODIFICATIONS

PSC RECEIPT of Modification notification sent to Unions and DHR

The CITY PLANNING -- CPC has submitted a modification request for a Personal Services Contract (PSC) for \$300,000 for services for the period January 1, 2017

– December 31, 2018. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrrupal/node/974>

Email sent to the following addresses: L21PSCReview@ifpte21.org amakayan@ifpte21.org

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CITY PLANNING Dept. Code: CPC

Type of Request: [] Initial [x] Modification of an existing PSC (PSC # 4024 12/13)

Type of Approval: [] Expedited [x] Regular [] Omit Posting

Type of Service: Transportation Impact Study Environmental Impact Report for the Central Corridor Plan

Funding Source: General Fund and Federal Grant

PSC Original Approved Amount: \$1,200,000 PSC Original Approved Duration: 09/18/12 - 12/31/15 (3 years 14 w
PSC Mod#1 Amount: \$600,000 PSC Mod#1 Duration: no duration added
PSC Mod#2 Amount: \$700,000 PSC Mod#2 Duration: 09/18/12-12/31/16 (1 year 1 day)
PSC Cumulative Amount Proposed: \$2,500,000 PSC Cumulative Duration Proposed: 4 years 15 weeks

1. Description of Work

A. Scope of Work:

The San Francisco Planning Department is seeking a consultant to assist the Department in the preparation, production, management and successful completion of environmental analysis, including an environmental impact report (EIR) and transportation impact study (TIS) and possibly other technical documentation for the Central Corridor Plan. This EIR will analyze proposed land use controls, changes to existing height districts, and area plan policies at the programmatic level. Primary environmental issues are expected to be land use and planning, aesthetics, cultural resources, transportation and circulation, air quality, wind, shadow, and open space/recreation.

B. Explain why this service is necessary and the consequence of denial:

The service is necessary because the City does not have the staffing to perform the service in-house. These services are routinely provided in the same way for other similar projects. Denial would result in delay in the completion of the Central Corridor Plan, which is part of the San Francisco General Plan.

C. Has this service been provided in the past. If so, how? If the service was provided via a PSC, provide the most recently approved PSC # and upload a copy of the PSC.

Services have been provided in the past through earlier PSC request. See 4024 12/13

D. Will the contract(s) be renewed? No, services are required for this one-time project.

2. Union Notification: On 10/20/15, the Department notified the following employee organizations of this PSC/RFP request: Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21; Management & Superv Local 21; Architect & Engineer

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 4024 12/13

DHR Analysis/Recommendation:

12/07/2015

Commission Approval Required

Approved by Civil Service Commission with condi

DHR Approved for 12/07/2015

12/07/2015

July 2013

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise:

Experience in the preparation of Environmental Impact Reports (EIR)s in plan areas, particularly within a major urban setting and also with experience working on California Environmental Quality Act (CEQA) documents where land use planning scenario is analyzed in detail. Expertise and experience with the full range of environmental issues including analysis of transportation, cultural resources and air quality.

B. Which, if any, civil service class(es) normally perform(s) this work?
5299,

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:
No.

4. Why Classified Civil Service Cannot Perform

A. Explain why civil service classes are not applicable:

Services are required for this one-time project only. The Planning Department lacks the staff resources to fully performs the range of planning and review tasks, e.g. air quality technical analysis, historic architectural survey, geotechnical study, noise technical analysis, needed for this project, which are highly specialized.

B. Would it be practical to adopt a new civil service class to perform this work? Explain.
No. This is a one-time, technically specific and deadline driven project.

5. Additional Information (if "yes", attach explanation)

	<u>YES</u>	<u>NO</u>
A. Will the contractor directly supervise City and County employee?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
B. Will the contractor train City and County employee? Vendor is not required to train City and County employees.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
C. Are there legal mandates requiring the use of contractual services?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
D. Are there federal or state grant requirements regarding the use of contractual services? All grant funds are allocated to consultant costs.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
E. Has a board or commission determined that contracting is the most effective way to provide this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
F. Will the proposed work be completed by a contractor that has a current PSC contract with your department?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD
ON 10/20/15 BY:

Name: _____ Phone: 415-575-6833 Email: belle.la@sfgov.org

Address: 1650 Mission Street, Suite 400 San Francisco, CA 94103

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - PUBLIC WORKS

Dept. Code: DPW

Type of Request: Initial Modification of an existing PSC (PSC # 4093-10/11)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Specialized Construction Management Support Services

Funding Source: General Obligation Bond Sales

PSC Original Approved Amount: \$6,700,000

PSC Original Approved Duration: 04/25/11 - 01/01/17 (5 years 36 weeks)

PSC Mod#1 Amount: no amount added

PSC Mod#1 Duration: 01/18/17-06/14/18 (1 year 23 weeks)

PSC Mod#2 Amount: \$1,725,000

PSC Mod#2 Duration: 06/15/18-10/31/19 (1 year 19 weeks)

PSC Mod#3 Amount: \$1,500,000

PSC Mod#3 Duration: 11/01/19-12/30/20 (1 year 8 weeks)

PSC Cumulative Amount Proposed: \$9,925,000

PSC Cumulative Duration Proposed: 9 years 36 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Two contracts will be awarded to furnish construction management support services to City staff to address specialized expertise and temporary peak workloads for pre-construction and construction phase services for cost estimating, construction scheduling, constructability review, construction administration, construction inspections services, Leadership in Energy and Environmental Design (LEED)/sustainable building construction management, and existing building forensic investigations for projects of the Earthquake Safety and Emergency Response (ESER) Bond Program, including the Public Safety Building, selected neighborhood fire stations, and selected projects of the Auxiliary Water Supply System.

B. Explain why this service is necessary and the consequence of denial:

Specialized Construction Management Support Services and existing-building forensic investigation will significantly minimize risks of exceeding project schedules and budgets due to unforeseen hidden conditions and constructability issues. The denial of use of specialized services and supplemental staff to address peak workloads poses the risk that program goals will not be met, and cause projects that are part of the Earthquake Safety and Emergency Response Program to not be delivered in accordance with established budgets and schedules.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 4093-10/11

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

There are two bond programs utilizing PSC 4093-10/11: the Earthquake Safety and Emergency Bond Program 2010 (ESER 2010) \$412.3 million and the Earthquake Safety and Emergency Bond Program 2014 (ESER 2014) \$400 million. Under the ESER 2010, two contracts were utilized for two of the three components: Public Safety Building and Neighborhood Fire Stations. Under the ESER 2014, one contract is being used for two of the five components: Neighborhood Fire Stations and Police Facilities. The services for ESER 2010 are expected to be completed in December 2016. However, the services for ESER 2014 are expected to conclude in December 2020.

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

Specialized expertise in Cost Estimating, Scheduling, Constructability Analysis, Sustainable Building Construction Management, and Existing-Building Forensic Investigations across a variety of project types that include new buildings, major and minor building alterations, and seismic improvement of the dedicated to fire-fighting high-pressure city-wide water system infrastructure. To avoid unanticipated program delays that could impair public safety, exceptional accuracy and precision in the above listed specialized skills particularly in renovation of multiple existing facilities in a dense, zero lot line, urban environment are required. Services provided by a Licensed Engineer or a Registered Architect in the State of California is highly-desirable and pertinent to the Program's success.

B. Reason for the request for modification:

The modification is necessary to accommodate the increased level of support needed to effectively manage the ESER 2014 Neighborhood Fire Stations and Police Facilities. These two components contain a large volume of projects varying in size and complexity and have demanding schedules that require prompt cost estimating, constructability review services and document control services from the specialized construction management support consultants.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Specialized expertise in Cost Estimating, Scheduling, Constructability Analysis, Sustainable Building Construction Management, and Existing-Building Forensic Investigations across a variety of project types that include new buildings, major and minor building alterations, and seismic improvement of the dedicated to fire-fighting high-pressure city-wide water system infrastructure. To avoid unanticipated program delays that could impair... (see attached "PSC 4093-10/11 - PSC Summary & Union Notification" for full response)

B. Which, if any, civil service class(es) normally perform(s) this work? 5201, Junior Engineer; 5207, Assoc Engineer; 5209, Industrial Engineer; 5212, Engineer/Architect Principal; 5214, Building Plans Engineer; 5215, Fire Protection Engineer; 5218, Structural Engineer; 5219, Senior

Structural Engineer; 5241, Engineer;

- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. Existing-Building Forensic Investigation will require special equipment and apparatus for explorative and investigative purposes.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Permanent civil service employees do not possess the experience and specialized expertise in interdisciplinary coordination and delivery of the indicated services, which are beyond the core competencies of construction management. Timely delivery of Earthquake Safety and Emergency Response projects is critical for essential firefighting facilities and the Public Safety Building, but may be challenged by peak work load at Bureau of Construction Management.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. The specialized expertise for these building types is needed on an intermittent basis.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
(see attached "PSC 4093-10/11 - PSC Summary & Union Notification" for full response)
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 10/18/16, the Department notified the following employee organizations of this PSC/RFP request:
Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Stacey Camillo Phone: 415-554-6417 Email: stacey.camillo@sfdpw.org

Address: 875 Stevenson Street, Rm 420, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 4093-10/11

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 11/21/2016

Receipt of Union Notification(s)

Lim, Michelle (DPW)

From: Dea, Tiffany (DPW)
Sent: Tuesday, October 18, 2016 11:47 AM
To: Lim, Michelle (DPW)
Subject: FW: Receipt of Modification Request to PSC # 4093-10/11 - MODIFICATIONS

Tiffany (Tsang) Dea
Ph: 415-554-6416

-----Original Message-----

From: dhr-psccordinator@sfgov.org [mailto:dhr-psccordinator@sfgov.org] On Behalf Of stacey.camillo@sfdpw.org
Sent: Tuesday, October 18, 2016 11:45 AM
To: Kim, Sung (DPW) <Sung.Kim@sfdpw.org>; L21PSCReview@ifpte21.org; Dea, Tiffany (DPW) <tiffany.dea@sfdpw.org>; DHR-PSCCoordinator, DHR (HRD) <dhr-psccordinator@sfgov.org>
Subject: Receipt of Modification Request to PSC # 4093-10/11 - MODIFICATIONS

PSC RECEIPT of Modification notification sent to Unions and DHR

The GENERAL SERVICES AGENCY - PUBLIC WORKS -- DPW has submitted a modification request for a Personal Services Contract (PSC) for \$1,500,000 for services for the period November 1, 2019 – December 30, 2020. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/4060>

Email sent to the following addresses: L21PSCReview@ifpte21.org

Additional Attachment(s)

"PSC 4093-10/11 - PSC Summary & Union Notification"

B. Will the contractor train City and County employees?

- Describe the training and indicate approximate number of hours.
- Indicate occupational type of City and County employees to receive training (i.e., clerks, civil engineers, etc.) and approximate number to be trained.

Constructability reviews and lesson learned seminars for about 8 architects, engineers, and construction management staff. Five seminars (1 per year) = 40 employees.

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - PUBLIC WORKS Dept. Code: DPW

Type of Request: [] Initial [x] Modification of an existing PSC (PSC # 4093-10/11)

Type of Approval: [] Expedited [x] Regular ([] Omit Posting)

Type of Service: Specialized Construction Management Support Services

Funding Source: General Obligation Bond Sales

PSC Original Approved Amount: \$6,700,000

PSC Original Approved Duration: 04/25/11 - 01/01/17 (5 years 36 w

PSC Mod#1 Amount: no amount added

PSC Mod#1 Duration: 01/18/17-06/14/18 (1 year 23 weeks)

PSC Mod#2 Amount: \$1,725,000

PSC Mod#2 Duration: 06/15/18-10/31/19 (1 year 19 weeks)

PSC Cumulative Amount Proposed: \$8,425,000

PSC Cumulative Duration Proposed: 8 years 27 weeks

1. Description of Work

A. Scope of Work:

Two contracts will be awarded to furnish construction management support services to City staff to address specialized expertise and temporary peak workloads for pre-construction and construction phase services for cost estimating, construction scheduling, constructability review, construction administration, construction inspections services, Leadership in Energy and Environmental Design (LEED)/sustainable building construction management, and existing building forensic investigations for projects of the Earthquake Safety and Emergency Response (ESER) Bond Program, including the Public Safety Building, selected neighborhood fire stations, and selected projects of the Auxiliary Water Supply System.

B. Explain why this service is necessary and the consequence of denial:

Specialized Construction Management Support Services and existing-building forensic investigation will significantly minimize risks of exceeding project schedules and budgets due to unforeseen hidden conditions and constructability issues. The denial of use of specialized services and supplemental staff to address peak workloads poses the risk that program goals will not be met, and cause projects that are part of the Earthquake Safety and Emergency Response Program to not be delivered in accordance with established budgets and schedules.

C. Has this service been provided in the past. If so, how? If the service was provided via a PSC, provide the most recently approved PSC # and upload a copy of the PSC.

Yes, services have been provided in the past through earlier approved PSC No. 4093-10/11.

D. Will the contract(s) be renewed? No.

2. Union Notification: On 10/16/14, the Department notified the following employee organizations of this PSC/RFP request: Architect & Engineers, Local 21;

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 4093-10/11

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Not Required

Approved by DHR on 10/27/2014

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise:

Specialized expertise in Cost Estimating, Scheduling, Constructability Analysis, Sustainable Building Construction Management, and Existing-Building Forensic Investigations across a variety of project types that include new buildings, major and minor building alterations, and seismic improvement of the dedicated to fire-fighting high-pressure city-wide water system infrastructure. To avoid unanticipated program delays that could impair... (see attached "PSC 4093-10/11 - PSC Summary & Union Notification" for full response)

B. Which, if any, civil service class(es) normally perform(s) this work?

5201,5207,5209,5212,5214,5215,5218,5219,5241,

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:

Yes. Existing-Building Forensic Investigation will require special equipment and apparatus for explorative and investigative purposes.

4. Why Classified Civil Service Cannot Perform

A. Explain why civil service classes are not applicable:

Permanent civil service employees do not possess the experience and specialized expertise in interdisciplinary coordination and delivery of the indicated services, which are beyond the core competencies of construction management. Timely delivery of Earthquake Safety and Emergency Response projects is critical for essential firefighting facilities and the Public Safety Building, but may be challenged by peak work load at Bureau of Construction Management.

B. Would it be practical to adopt a new civil service class to perform this work? Explain.

No. The specialized expertise for these building types is needed on an intermittent basis.

5. Additional Information (if "yes", attach explanation)

	<u>YES</u>	<u>NO</u>
A. Will the contractor directly supervise City and County employee?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
B. Will the contractor train City and County employee? (see attached "PSC 4093-10/11 - PSC Summary & Union Notification" for f	<input checked="" type="checkbox"/>	<input type="checkbox"/>
C. Are there legal mandates requiring the use of contractual services?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
D. Are there federal or state grant requirements regarding the use of contractual services?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
E. Has a board or commission determined that contracting is the most effective way to provide this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
F. Will the proposed work be completed by a contractor that has a current PSC contract with your department?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD ON 10/16/14 BY:

Name: Sung Kim Phone: 415-554-6417 Email: sung.kim@sfdpw.org

Address: 875 Stevenson Street, Rm 420 San Francisco, CA 94103



Edwin M. Lee, Mayor
Mohammed Nuru, Director



Gordon Choy, Division Manager

MEMORANDUM

March 5, 2012

TO: Citywide Personal Services Contract Coordinator
Department of Human Resources

FROM: Gordon Choy, PSC Coordinator *Gordon Choy*
Department of Public Works (90)

SUBJECT: Civil Service Commission PSC Modification Less than 50% of Approved Amount or Time

The Public Works Department is proposing to modify an approved Personal Services Contract Summary (PSC) and is requesting your consideration for an administrative review of the PSC Modification because the proposed modification is less than 50% of the Civil Service Commission's approved PSC amount and/or duration.

Following is the information about the PSC modification:

PSC No. 4093-10/11 Approved on: 9/23/2011

Description:

Original Approved Amount	<u>\$6,700,000</u>	Original Approved Duration	<u>4/25/2011 – 1/17/2017</u>
Modification Amount:	<u>\$0</u>	Modification of Duration	<u>4/25/2011 – 6/14/2018</u>
Total Modified Amount:	<u>\$6,700,000</u>	Total Modified Duration:	<u>4/25/2011 – 6/14/2018</u>

Reason for the modification: The PSC duration is being extended due to delays during the contract award.

Attachment: Copy of Approved PSC Summary

Thank you for your consideration in issuing an administrative decision on this PSC Modification. Please call me at (415) 554-6230 if there are any questions.

Cc: Samuel Chui, BDC - Contract Manager
Tammy Wong, GSA Human Resources

FOR DEPARTMENT OF HUMAN RESOURCES USE

DHR ACTION: Approved

Approval Date: 3/7/12

By: *Micki Callahan*
Micki Callahan, Human Resources Director





CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

March 28, 2011

E. DENNIS NORMANDY
PRESIDENT

DONALD A. CASPER
VICE PRESIDENT

MORGAN R. GORRONO
COMMISSIONER

MARY Y. JUNG
COMMISSIONER

LISA SEITZ GRUWELL
COMMISSIONER

ANITA SANCHEZ
EXECUTIVE OFFICER

NOTICE OF CIVIL SERVICE COMMISSION ACTION

SUBJECT: REVIEW OF REQUEST FOR APPROVAL OF PROPOSED
PERSONAL SERVICES CONTRACT NUMBERS 4086-10/11
THROUGH 4094-10/11; 4024-09/10; 4021-07/08; AND 4171-07/08.

At its meeting of March 21, 2011 the Civil Service Commission had for its
consideration the above matter.

PLEASE NOTE: It is important that a copy of this action be kept in the
department files as you will need it in the future as proof of Civil
Service Commission approval. Please share it with everyone
responsible for follow-up.

It was the decision of the Commission to:

- (1) Postpone PSC #4089-10/11 to the meeting of April 4, 2011 due to lack of vote for
action. (Quorum consisted of three Commissioners and concurrence of all three needed
for action; Commissioner Seitz Gruell recused, making only two votes available.)
(2) Withdraw PSC #4090-10/11 at the request of the Municipal Transportation Agency.
(3) Postpone PSC #4092-10/11 to the meeting of April 18, 2011 at the request of the Public
Utilities Commission.
(4) Adopt the report; Approve request for PSC #4093-10/11 on the condition that one
Bureau of Construction Management (BCM) employee be provided by BCM for two
months at no cost to the ESER Program during the 2012-13 budget year. Notify the
Office of the Controller and the Office of Contract Administration.
(5) Adopt the report; Approve request for PSC #4094-10/11 on the condition that the
Treasurer/Tax Collector consult with IFPTE Local 21 in efforts to transfer knowledge
and research techniques in so far as possible; Report back to the Commission in six (6)
months. Notify the Office of the Controller and the Office of Contract Administration.
(6) Adopt the report; Approve request for PSC #4021-07/08 on the condition that existing
vacant OLSE positions be filled and that there are no cuts to OLSE staff, and that this
matter be revisited and reviewed in six (6) months. Notify the Office of the Controller
and the Office of Contract Administration.
(7) Adopt the report as verbally amended from Yes to No in 5B; Approve request for PSC
#4171-07/08 on the condition that a minimum of eighteen BCM personnel will be
trained in the JOC unit price information for future use. Notify the Office of the
Controller and the Office of Contract Administration.
(8) Adopt the report; Approve request for all remaining contracts. Notify the Office of the
Controller and the Office of Contract Administration.

CONTRACT ADMINISTRATION
DPA

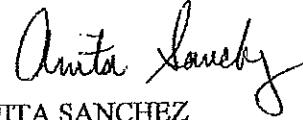
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RECEIVED

CSC Notice of Action
March 28, 2011
Page 2

If this matter is subject to Code of Civil Procedure (CCP) Section 1094.5, the time within which judicial review must be sought is set forth in CCP Section 1094.6.

CIVIL SERVICE COMMISSION



ANITA SANCHEZ
Executive Officer

Attachment

- c: Parveen Boparai, Municipal Transportation Agency
- Micki Callahan, Human Resources Director
- Carino Carlos, Department of Public Works
- Gordon Choy, Department of Public Works
- Marie de Vera, Department of Human Resources
- Oliver Hack, Mayor's Office of Housing
- Kan Htun, Art Commission
- Shamica Jackson, Public Utilities Commission
- Florence Kyaun, Public Utilities Commission
- Joan Lubamersky, General Services Agency
- Maria Ryan, Department of Human Resources
- Tajel Shak, Treasurer/Tax Collector
- Shawn Wallace, San Francisco Police Department
- Commission File
- Chron

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DPM
CONTRACT ADMINISTRATION

POSTING FOR
3/21/2011

PROPOSED PERSONAL SERVICES CONTRACTS

Regular, Continuing, Annual

PSC No	Dept No.	Dept Name	Approval Type	Contract Amount	Description of Work	Start Date	End Date
*4093-10/11	90	Public Works	Regular	\$6,700,000	Two contracts will be awarded to furnish construction management support services to City staff to address specialized expertise and temporary peak workloads for pre-construction and construction phase services for cost estimating, construction scheduling, constructability review, construction administration, construction inspections services, LEED/sustainable building construction management, and existing building forensic investigations for projects of the Earthquake Safety and Emergency Response (ESER) Bond Program, including the Public Safety Building, selected neighborhood fire stations, and selected projects of the Auxiliary Water Supply System.	4/25/2011	1/1/2017
4094-10/11	08	Treasurer/Tax Collector	Regular	\$100,000	A consultant will be engaged to assist the Treasurer-Tax Collector in implementing a Request for Proposals process for banking services that will result in a contract for bank services for the City and County of San Francisco.	3/21/2011	12/31/2012

CONTRACT ADMINISTRATIONS
DPM

11 MAR 30 AM 11:46

RECEIVED

PERSONAL SERVICES CONTRACT SUMMARY

DATE: February 14, 2011

DEPARTMENT NAME: PUBLIC WORKS DEPARTMENT NUMBER 90

TYPE OF APPROVAL: [] EXPEDITED [X] REGULAR (OMIT POSTING) [] CONTINUING [] ANNUAL

TYPE OF REQUEST: [X] INITIAL REQUEST [] MODIFICATION (PSC#)

TYPE OF SERVICE: Specialized Construction Management Support Services

FUNDING SOURCE: General Obligation Bond Sales

PSC AMOUNT: \$6,700,000 PSC DURATION: April 25, 2011- January 1, 2017

1. DESCRIPTION OF WORK

A. Concise description of proposed work:

Two contracts will be awarded to furnish construction management support services to City staff to address specialized expertise and temporary peak workloads for pre-construction and construction phase services for cost estimating, construction scheduling, constructability review, construction administration, construction inspections services, LEED/ sustainable building construction management, and existing building forensic investigations for projects of the Earthquake Safety and Emergency Response (ESER) Bond Program, including the Public Safety Building, selected neighborhood fire stations, and selected projects of the Auxillary Water Supply System.

B. Explain why this service is necessary and the consequences of denial:

Specialized CM Support Services and existing-building forensic investigation will significantly minimize risks of exceeding project schedules and budgets due to unforeseen hidden conditions and constructability issues. The denial of use of specialized services and supplemental staff to address peak workloads poses the risk that program goals will not be met, and cause projects that are part of the Earthquake Safety and Emergency Response Program to not be delivered in accordance with established budgets and schedules.

C. Explain how this service has been provided in the past (if this service was previously approved by the Civil Service Commission, indicate most recent personal services contract approval number):

These specialized services have not been provided previously for the Public Safety Building or a similar Program of Essential Services Facilities.

D. Will the contract(s) be renewed: No

2. UNION NOTIFICATION: Copy of this summary is to be sent to employee organizations as appropriate (refer to instructions for specific procedures):

Local 21 Union Name, Carina Carlos Signature of person mailing/faxing form, 2/15/11 Date

RFP sent to Local 21 Union Name, on 11/10/10 Date, Carina Carlos for Jim Baker Signature

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# STAFF ANALYSIS/RECOMMENDATION:

CIVIL SERVICE COMMISSION ACTION:

3. DESCRIPTION OF REQUIRED SKILLS/EXPERTISE

A. Specify required skills and/or expertise:

Specialized expertise in Cost Estimating, Scheduling, Constructability Analysis, Sustainable Building Construction Management, and Existing-Building Forensic Investigations across a variety of project types that include new buildings, major and minor building alterations, and seismic improvement of the dedicated to fire-fighting high-pressure city-wide water system infrastructure. To avoid unanticipated program delays that could impair public safety, exceptional accuracy and precision in the above listed specialized skills particularly in renovation of multiple existing facilities in a dense, zero lot line, urban environment are required. Services provided by a Licensed Engineer or a Registered Architect in the State of California is highly-desirable and pertinent to the Program's success.

B. Which, if any, civil service class normally performs this work?

Resident Engineers and Construction Managers at DPW Bureau of Construction Management (BCM) normally provide services to perform core competencies of general construction management such as Construction Administration and Document Planning/Control. The construction management workload for certain ESER projects will exceed the capacity of staff at DPW BCM. Construction Administration and Document Planning tasks on individual neighborhood Fire Station projects may be performed by the Engineer Series (5201 - 5241);

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:

Yes. Existing-Building Forensic Investigation will require special equipment and apparatus for explorative and investigative purposes.

4. WHY CLASSIFIED CIVIL SERVICE CANNOT PERFORM

A. Explain why civil service classes are not applicable:

Permanent civil service employees do not possess the experience and specialized expertise in interdisciplinary coordination and delivery of the indicated services, which are beyond the core competencies of construction management. Timely delivery of Earthquake Safety and Emergency Response projects is critical for essential firefighting facilities and the Public Safety Building, but may be challenged by peak work load at Bureau of Construction Management.

B. Would it be practical to adopt a new civil service class to perform this work? Explain.

No. The specialized expertise for these building types is needed on an intermittent basis.

ADDITIONAL INFORMATION (if "yes," attach explanation)

A. Will the contractor directly supervise City and County employees?

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>

B. Will the contractor train City and County employees?

<input checked="" type="checkbox"/>	<input type="checkbox"/>
-------------------------------------	--------------------------

- Describe the training and indicate approximate number of hours.
- Indicate occupational type of City and County employees to receive training (i.e., clerks, civil engineers, etc.) and approximate number to be trained.

Constructability reviews and lesson learned seminars for about 8 architects, engineers, and construction management staff. Five seminars (1 per year) = 40 employees.

C. Are there legal mandates requiring the use of contractual services?

<input type="checkbox"/>	<input checked="" type="checkbox"/>
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D. Are there federal or state grant requirements regarding the use of contractual services?

<input type="checkbox"/>	<input checked="" type="checkbox"/>
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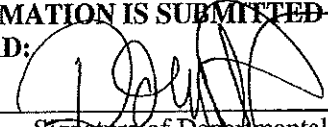
E. Has a board or commission determined that contracting is the most effective way to provide this service?

<input type="checkbox"/>	<input checked="" type="checkbox"/>
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F. Will the proposed work be completed by a contractor that has a current personal services contract with your department? **To Be Determined**

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD:



 Signature of Departmental Personal Services Contract Coordinator
Gordon Choy

 Print or Type Name

 (415) 554-6230

 Telephone Number

875 Stevenson Street, Room 420
 San Francisco, CA 94103

 Address

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY

Dept. Code: MTA

Type of Request: Initial Modification of an existing PSC (PSC # 4058-13/14)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Executive Search and Recruitment

Funding Source: Operating Funds

PSC Original Approved Amount: \$200,000

PSC Original Approved Duration: 12/17/13 - 12/31/14 (1 year 2 weeks)

PSC Mod#1 Amount: no amount added

PSC Mod#1 Duration: 01/27/14-01/20/15 (2 weeks 6 days)

PSC Mod#2 Amount: no amount added

PSC Mod#2 Duration: 01/21/15-07/01/15 (23 weeks 23 hours)

PSC Mod#3 Amount: no amount added

PSC Mod#3 Duration: 07/02/15-12/31/15 (26 weeks 1 day)

PSC Mod#4 Amount: \$200,000

PSC Mod#4 Duration: 01/01/16-12/31/18 (3 years 1 day)

PSC Cumulative Amount Proposed: \$400,000

PSC Cumulative Duration Proposed: 5 years 2 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor will conduct executive searches to identify, assess and recruit candidates for five high-level specialized management positions at the San Francisco Municipal Transportation Agency (SFMTA). Services will include: developing search strategies; identifying and recruiting potential candidates; evaluating interested candidates; presenting final candidates; and performing follow-up duties as required.

Scope Change

The contractor will conduct executive searches to identify, assess and recruit candidates for five or more high-level specialized management positions at the San Francisco Municipal Transportation Agency (SFMTA). Services will include: developing search strategies; identifying and recruiting potential candidates; evaluating interested candidates; presenting final candidates; and performing follow-up duties as required.

B. Explain why this service is necessary and the consequence of denial:

Executive search is necessary to provide a greater degree of exposure in order to recruit and attract the most viable potential candidates. Denial of this service may result in restricting the ability to hire the best candidates for these positions that are mission critical for the SFMTA's Sustainable Streets, Taxi and Accessible Services, Transit and Capital Projects and Controls Divisions.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.
Yes.

D. Will the contract(s) be renewed?
No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:
The need for an extension in duration is due to the nature of recruitment and retention in reference to executive level positions/vacancies. This service is only utilized when such a need arises and is focused and short-term.

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

The list of executive search consultants possess the unique skills and resources required to research, identify, and recruit at the executive level. Such services are used on a very intermittent, as-needed basis.

B. Reason for the request for modification:

The SFMTA is occasionally met with the need to recruit for high-level and specialized management positions. Therefore additional funds and an extension on duration is being requested.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: These services require a high level of expertise unique to executive level recruitment, including the ability to provide analytical assessments of potential candidates in order to determine the appropriateness for the positions, and use of media and other external resources not normally available to the City. The contractor will be selected through a mini-Request-For-Proposal process using the Department of Human Resources' list of pre-qualified consultants.

B. Which, if any, civil service class(es) normally perform(s) this work? 1244, Senior Personnel Analyst; 1246, Principal Personnel Analyst;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

The list of executive search consultants possess the unique skills and resources required to research, identify, and recruit at the executive level. Such services are used on a very intermittent, as-needed basis.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. Classifications already exist.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.

Training is not included in the service provided due to high level of expertise unique to executive level recruitment.

C. Are there legal mandates requiring the use of contractual services?

No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

Cooperative Personnel Services.

7. Union Notification: On 10/14/16, the Department notified the following employee organizations of this PSC/RFP request:

Professional & Tech Engrs, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Hamada Phone: 415.701.5381 Email: cynthia.hamada@sfmta.com

Address: 1 South Van Ness Avenue, 6th Floor, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 4058-13/14

DHR Analysis/Recommendation:

Commission Approval Required

DHR Approved for 11/21/2016

Civil Service Commission Action:

Receipt of Union Notification(s)

Hamada, Cynthia

From: dhr-psccordinator@sfgov.org on behalf of cynthia.hamada@sfmta.com
Sent: Friday, October 14, 2016 12:47 PM
To: Hamada, Cynthia; L21PSCReview@ifpte21.org; Hamada, Cynthia; DHR-PSCCoordinator, DHR
Subject: Receipt of Modification Request to PSC # 4058-13/14 - MODIFICATIONS

PSC RECEIPT of Modification notification sent to Unions and DHR

The MUNICIPAL TRANSPORTATION AGENCY -- MTA has submitted a modification request for a Personal Services Contract (PSC) for \$200,000 for services for the period January 1, 2016 -- December 31, 2018. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/1289>

Email sent to the following addresses: L21PSCReview@ifpte21.org

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCYDept. Code: MTAType of Request: Initial Modification of an existing PSC (PSC # 4058-13/14)Type of Approval: Expedited Regular Annual Continuing (Omit Posting)Type of Service: Executive Search and RecruitmentFunding Source: Operating FundsPSC Original Approved Amount: \$200,000PSC Original Approved Duration: 12/17/13 - 12/31/14 (1 year 2 weeks)PSC Mod#1 Amount: no amount addedPSC Mod#1 Duration: 01/27/14-01/20/15 (2 weeks 6 days)PSC Mod#2 Amount: no amount addedPSC Mod#2 Duration: 01/21/15-07/01/15 (23 weeks 23 hours)PSC Mod#3 Amount: no amount addedPSC Mod#3 Duration: 07/02/15-12/31/15 (26 weeks 1 day)PSC Cumulative Amount Proposed: \$200,000PSC Cumulative Duration Proposed: 2 years 2 weeks**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

The contractor will conduct executive searches to identify, assess and recruit candidates for five high-level specialized management positions at the San Francisco Municipal Transportation Agency (SFMTA). Services will include: developing search strategies; identifying and recruiting potential candidates; evaluating interested candidates; presenting final candidates; and performing follow-up duties as required.

Scope Change

The contractor will conduct executive searches to identify, assess and recruit candidates for five or more high-level specialized management positions at the San Francisco Municipal Transportation Agency (SFMTA). Services will include: developing search strategies; identifying and recruiting potential candidates; evaluating interested candidates; presenting final candidates; and performing follow-up duties as required.

B. Explain why this service is necessary and the consequence of denial:

Executive search is necessary to provide a greater degree of exposure in order to recruit and attract the most viable potential candidates. Denial of this service may result in restricting the ability to hire the best candidates for these positions that are mission critical for the SFMTA's Sustainable Streets, Taxi and Accessible Services, Transit and Capital Projects and Controls Divisions.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes.

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

This service is not used on a full-time basis and only intermittently and as-needed when executive level positions become vacant.

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

The list of executive search consultants possess the unique skills and resources required to research, identify, and recruit at the executive level. Such services are used on a very intermittent, as-needed basis.

B. Reason for the request for modification:

This is an extension of duration as the service may be needed to finalize recruitment efforts.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: These services require a high level of expertise unique to executive level recruitment, including the ability to provide analytical assessments of potential candidates in order to determine the appropriateness for the positions, and use of media and other external resources not normally available to the City. The contractor will be selected through a mini-Request-For-Proposal process using the Department of Human Resources' list of pre-qualified consultants.

B. Which, if any, civil service class(es) normally perform(s) this work? 1244, Senior Personnel Analyst; 1246, Principal Personnel Analyst;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

The list of executive search consultants possess the unique skills and resources required to research, identify, and recruit at the executive level. Such services are used on a very intermittent, as-needed basis.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. Classifications already exist.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No training is provided with this service. This contract provides accessibility to resources that are unavailable to City employees.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Cooperative Personnel Services.

7. Union Notification: On 06/05/15, the Department notified the following employee organizations of this PSC/RFP request:
Professional & Tech Engrs, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Phone: 415.701.5381 Email: cynthia.hamada@sfmta.com

Address: 1 South Van Ness Avenue, 6th Floor, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 4058-13/14

DHR Analysis/Recommendation:

07/20/2015

Commission Approval Required

Approved by Civil Service Commission

07/20/2015 DHR Approved for 07/20/2015

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY

Dept. Code: MTA

Type of Request: Initial Modification of an existing PSC (PSC # 37905 - 15/16)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Off-Street Parking Analysis of Moscone Parking Garage

Funding Source: Operating Fund

PSC Original Approved Amount: \$100,000

PSC Original Approved Duration: 01/04/16 - 01/03/17 (1 year)

PSC Mod#1 Amount: \$45,000

PSC Mod#1 Duration: 01/04/17-06/14/17 (23 weeks 23 hours)

PSC Cumulative Amount Proposed: \$145,000

PSC Cumulative Duration Proposed: 1 year 23 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor will perform off-street parking analysis via three principal components. First, the contractor will complete a detailed, current conditions analysis of the Moscone Parking Garage including a comparative analysis of pricing and revenue performance and a profile of garage patrons. Second, the contractor will prepare a supply and demand analysis of off-street parking in the immediate vicinity of the garage. Based on forecasted development and transportation investments in the South of Market area, the contractor will project how demand for parking will evolve. Third, the contractor will recommend an appropriate quantity of public, off-street parking at the garage, given that the garage is presently under-utilized and given the forecasted changes in supply and demand.

B. Explain why this service is necessary and the consequence of denial:

The San Francisco Municipal Transportation Agency (SFMTA) is considering redeveloping the site of the Moscone Garage into a more intensive housing and/or commercial development. Before undertaking a major redevelopment of the site, the SFMTA needs to have a better understanding of how much public parking should be included in any redevelopment plans. The amount of replacement parking will affect the parameters of the redevelopment plans, and it will also impact the amount of parking and non-parking revenue that the SFMTA can expect to receive post-redevelopment.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes. Via PSC #37905-15/16.

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

2. Reason(s) for the Request

A. Display all that apply.

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

The need for this type of analysis rises infrequently and this specialization is a much smaller niche in the larger planning profession. This is a one-time, short-term project.

B. Reason for the request for modification:

Additional cost and duration due to the possibility of more meetings and presentations that were identified during the REP and Award process.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: The contractor must possess highly specialized knowledge and experience in analyzing both off-street and on-street parking supply and demand, forecasting parking supply and demand based on development activity and transportation trends, and analyzing parking operations in the context of supply and demand trends. Must be able to understand the relationship between land use and transportation and the ability to integrate transportation data, primary research, land use data, demographic forecasts, and possess knowledge of the industry. The contractor must have successfully completed five similar projects in a comparable urban environment.

B. Which, if any, civil service class(es) normally perform(s) this work? 5290, Transportation Planner IV; 5291, Planner 3; 5293, Planner 4;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

City staff will coordinate with the contractor and will provide basic information and data that will inform the contractor's analysis, but the kind of work that this project calls for is extremely specialized. The contractor is responsible for synthesizing all of the data using an established methodology and producing a credible forecast.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. Civil service classifications already exist. The need for this type of analysis rises infrequently and this specialization is a much smaller niche in the larger planning profession. This is a one-time, short-term project.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Training is not included in the scope of services.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
via Adavant Consulting.

7. Union Notification: On 10/12/16, the Department notified the following employee organizations of this PSC/RFP request:
Professional & Tech Engrs, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Hamada Phone: 415.701.5381 Email: cynthia.hamada@sfmta.com

Address: 1 South Van Ness Avenue, 6th Floor, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 37905 - 15/16

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 11/21/2016

Receipt of Union Notification(s)

Hamada, Cynthia

From: dhr-psccordinator@sfgov.org on behalf of cynthia.hamada@sfmta.com
Sent: Wednesday, October 12, 2016 8:58 AM
To: Hamada, Cynthia; L21PSCReview@ifpte21.org; Hamada, Cynthia; DHR-PSCCoordinator, DHR
Subject: Receipt of Modification Request to PSC # 37905 - 15/16 - MODIFICATIONS

PSC RECEIPT of Modification notification sent to Unions and DHR

The MUNICIPAL TRANSPORTATION AGENCY -- MTA has submitted a modification request for a Personal Services Contract (PSC) for \$45,000 for services for the period January 4, 2017 – June 14, 2017. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/8167>

Email sent to the following addresses: L21PSCReview@ifpte21.org

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY -- MTA

Dept. Code: MTA

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Off-Street Parking Analysis of Moscone Parking Garage

Funding Source: Operating Fund

PSC Amount: \$100,000

PSC Est. Start Date: 01/04/2016

PSC Est. End Date 01/03/2017

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor will perform off-street parking analysis via three principal components. First, the contractor will complete a detailed, current conditions analysis of the Moscone Parking Garage including a comparative analysis of pricing and revenue performance and a profile of garage patrons. Second, the contractor will prepare a supply and demand analysis of off-street parking in the immediate vicinity of the garage. Based on forecasted development and transportation investments in the South of Market area, the contractor will project how demand for parking will evolve. Third, the contractor will recommend an appropriate quantity of public, off-street parking at the garage, given that the garage is presently under-utilized and given the forecasted changes in supply and demand.

B. Explain why this service is necessary and the consequence of denial:

The San Francisco Municipal Transportation Agency (SFMTA) is considering redeveloping the site of the Moscone Garage into a more intensive housing and/or commercial development. Before undertaking a major redevelopment of the site, the SFMTA needs to have a better understanding of how much public parking should be included in any redevelopment plans. The amount of replacement parking will affect the parameters of the redevelopment plans, and it will also impact the amount of parking and non-parking revenue that the SFMTA can expect to receive post-redevelopment.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This service has not been provided in the past.

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

B. Explain the qualifying circumstances:

The need for this type of analysis rises infrequently and this specialization is a much smaller niche in the larger planning profession. This is a one-time, short-term project.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: The contractor must possess highly specialized knowledge and experience in analyzing both off-street and on-street parking supply and demand, forecasting parking supply and demand based on development activity and transportation trends, and analyzing parking operations in the context of supply and demand trends. Must be able to understand the relationship between land use and transportation and the ability to integrate transportation data, primary research, land use data, demographic forecasts, and possess knowledge of the industry. The contractor must have successfully completed five similar projects in a comparable urban environment.
- B. Which, if any, civil service class(es) normally perform(s) this work? 5290, Transportation Planner IV; 5291, Planner 3; 5293, Planner 4;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:
No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Civil service classes such as the Transportation Planner IV (#5290), Transportation Planner III (#5289), Planner IV (#5293), and Planner III (#5291) can perform a portion of the work (i.e., provide basic data and conduct data assembly).

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
City staff will coordinate with the contractor and will provide basic information and data that will inform the contractor's analysis, but the kind of work that this project calls for is extremely specialized. The contractor is responsible for synthesizing all of the data using an established methodology and producing a credible forecast.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. Civil service classifications already exist. The need for this type of analysis rises infrequently and this specialization is a much smaller niche in the larger planning profession. This is a one-time, short-term project.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Training is not included in the scope of services.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 12/16/2015, the Department notified the following employee organizations of this PSC/RFP request:
Professional & Tech Engrs, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Hamada Phone: 415.701.5381 Email: cynthia.hamada@sfmta.com

Address: 1 South Van Ness Avenue, 6th Floor San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 37905 - 15/16

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 01/05/2016

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CITY PLANNING

Dept. Code: CPC

Type of Request: Initial Modification of an existing PSC (PSC # 48959 - 15/16)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Affordable Housing Incent. Prog. in Mission and other Area Plans: Design, Market & Feasibility

Funding Source: General Fund

PSC Original Approved Amount: \$300,000

PSC Original Approved Duration: 01/01/16 - 12/31/17 (2 years)

PSC Mod#1 Amount: \$200,000

PSC Mod#1 Duration: 01/01/18-01/01/20 (2 years 1 day)

PSC Cumulative Amount Proposed: \$500,000

PSC Cumulative Duration Proposed: 4 years 1 day

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

This analysis will support potential programs in the Mission and other neighborhoods where zoning controls were modified through the Eastern Neighborhoods and other recent re-zonings. In these areas other controls including height, bulk, open space, rear yard, and bedroom mix requirements determine the number of units that can be built on a site. The Planning Department is seeking digital modeling, market study, and financial feasibility analysis work to identify opportunities for San Francisco's local guidelines to encourage greater levels of affordable housing in all residential development projects in these areas.

Scope Change

Increase scope of work to include inventory of housing stock, both renter and owner-occupied to understand the current housing stock and residential makeup through both quantitative and qualitative analysis. By understanding characteristics of the existing housing stock the City can pursue strategies to further preserve its affordability.

B. Explain why this service is necessary and the consequence of denial:

The City is seeking a variety of policy ideas to address the dire need for affordable housing in different neighborhood of the city. Policies may vary by neighborhoods as the existing zoning controls as well as the housing market varies by neighborhood. Additionally, State law requires jurisdictions to provide density bonuses to private developers when affordable housing is provided. Failure of having such analysis would adversely affect these neighborhoods and the residents who are struggling to find affordable housing. The need for affordable housing in San Francisco is critical as the middle class has increasingly been shrinking and the federal and State dollars to subsidize low income housing has also dramatically decreased.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes

D. Will the contract(s) be renewed?

No, The timeline for this contract is 6 to 12 months and the work is expected to be done within this timeframe.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

The proposed RFP needs some expertise that either the Department lacks or the existing Civil service classes with those expertise are already at capacity with other pre-assigned work program item (example the design and architecture). Other expertise such as the market analysis does not exist at the Department.

B. Reason for the request for modification:

Increase scope of work to include inventory of housing stock, both renter and owner-occupied to understand the current housing stock and residential makeup through both quantitative and qualitative analysis. By understanding characteristics of the existing housing stock the City can pursue strategies to further preserve its affordability.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: The consultant should have expertise in developing design modeling (3D modeling), market study research, pro forma analysis and financial feasibility for private development.

B. Which, if any, civil service class(es) normally perform(s) this work? 1314, Public Relations Officer; 5277, Planner 1; 5278, Planner 2; 5291, Planner 3;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No specific facilities and equipment will be provided.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Civil service classes are not applicable for this one time project.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: It is not practical to adopt a new civil service class for this one time project.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.

In conjunction with the Planning Department's relevant work conducted in the past, the Contractor will provide an analysis of the feasibility report and provide outreach materials to the public.

C. Are there legal mandates requiring the use of contractual services?

No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

No.

7. Union Notification: On 10/19/16, the Department notified the following employee organizations of this PSC/RFP request:

Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Belle La Phone: 415-575-6833 Email: belle.la@sfgov.org

Address: 1650 Mission Street, Suite 400, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48959 - 15/16

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 11/21/2016

Receipt of Union Notification(s)

La, Belle (CPC)

From: dhr-psccordinator@sfgov.org on behalf of belle.la@sfgov.org
Sent: Wednesday, October 19, 2016 4:36 PM
To: La, Belle (CPC); L21.PSCReview@ifpte21.org; La, Belle (CPC); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Modification Request to PSC # 48959 - 15/16 - MODIFICATIONS

PSC RECEIPT of Modification notification sent to Unions and DHR

The CITY PLANNING -- CPC has submitted a modification request for a Personal Services Contract (PSC) for \$200,000 for services for the period January 1, 2018

– January 1, 2020. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

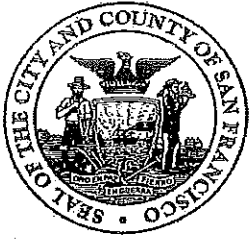
If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/8189>

Email sent to the following addresses: L21PSCReview@ifpte21.org

Additional Attachment(s)



CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

Sent Via Electronic Mail

January 13, 2016

DOUGLAS S. CHAN
PRESIDENT

GINA M. ROCCANOVA
VICE PRESIDENT

KATE FAVETTI
COMMISSIONER

SCOTT R. HELDFOND
COMMISSIONER

NOTICE OF CIVIL SERVICE COMMISSION ACTION

SUBJECT: REVIEW OF REQUEST FOR APPROVAL OF PROPOSED PERSONAL SERVICES CONTRACTS NUMBERS 48959-15/16; 41409-15/16; 42155-15/16; 45629-15/16; 44722-15/16; 41837-14/15; 44383-15/16; 46840-13/14; 33469-14/15; 4124-11/12; AND 2006-08/09.

At its meeting of January 4, 2016 at 3:00 p.m., the Civil Service Commission had for its consideration the above matter.

The Commission adopted the report. Approved the request for proposed Personal Services Contracts; Notify the Office of the Controller and the Office of Contract Administration.

MICHAEL L. BROWN
EXECUTIVE OFFICER

If this matter is subject to Code of Civil Procedure (CCP) Section 1094.5, the time within which judicial review must be sought is set forth in CCP Section 1094.6.

PLEASE NOTE: It is important that a copy of this action be kept in the department files as you will need it in the future as proof of Civil Service Commission approval. Please share it with everyone responsible for follow-up.

CIVIL SERVICE COMMISSION

MICHAEL L. BROWN
Executive Officer

Attachment

- Cc: Cynthia Avakian, Airport Commission
- Suzanne Choi, Department of Human Resources
- Jacque Hale, Department of Public Health
- Cynthia Hamada, Municipal Transportation Agency
- Shamica Jackson, Public Utilities Commission
- Belle La, City Planning
- Brent Lewis, Department of Human Resources
- Stacey Lo, Public Utilities Commission
- John Tsutakawa, Human Services Agency
- Commission File
- Chron

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CITY PLANNING --- CPC Dept. Code: CPC

Type of Request: [X] Initial [] Modification of an existing PSC (PSC # _____)

Type of Approval: [] Expedited [X] Regular ([] Omit Posting)

Type of Service: Affordable Housing Incent. Prog. in Mission and other Area Plans: Design, Market & Feasibility

Funding Source: General Fund PSC Duration: 2 years
PSC Amount: \$300,000 PSC Est. Start Date: 01/01/2016 PSC Est. End Date: 12/31/2017

1. Description of Work

A. Scope of Work:

This analysis will support potential programs in the Mission and other neighborhoods where zoning controls were modified through the Eastern Neighborhoods and other recent re-zonings. In these areas other controls including height, bulk, open space, rear yard, and bedroom mix requirements determine the number of units that can be built on a site. The Planning Department is seeking digital modeling, market study, and financial feasibility analysis work to identify opportunities for San Francisco's local guidelines to encourage greater levels of affordable housing in all residential development projects in these areas.

B. Explain why this service is necessary and the consequence of denial:

The City is seeking a variety of policy ideas to address the dire need for affordable housing in different neighborhood of the city. Policies may vary by neighborhoods as the existing zoning controls as well as the housing market varies by neighborhood. Additionally, State law requires jurisdictions to provide density bonuses to private developers when affordable housing is provided. Failure of having such analysis would adversely affect these neighborhoods and the residents who are struggling to find affordable housing. The need for affordable housing in San Francisco is critical as the middle class has increasingly been shrinking and the federal and State dollars to subsidize low income housing has also dramatically decreased.

C. Has this service been provided in the past. If so, how? If the service was provided via a PSC, provide the most recently approved PSC # and upload a copy of the PSC.

Similar services have been provided for the Affordable Housing Bonus Program and the Transportation Sustainability Fee. PSC 37202-14/15

D. Will the contract(s) be renewed? No, The timeline for this contract is 6 to 12 months and the work is expect

2. Union Notification: On 11/09/2015, the Department notified the following employee organizations of this PSC/RFP request: Architect & Engineers, Local 21

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48959 - 15/16

DHR Analysis/Recommendation:

01/04/2016

Commission Approval Required

Approved by Civil Service Commission

DHR Approved for 01/04/2016

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise:

The consultant should have expertise in developing design modeling (3D modeling), market study research, pro forma analysis and financial feasibility for private development.

B. Which, if any, civil service class(es) normally perform(s) this work?

5291,,1314,5277,5278,

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:

No specific facilities and equipment will be provided.

4. Why Classified Civil Service Cannot Perform

A. Explain why civil service classes are not applicable:

Civil service classes are not applicable for this one time project.

B. Would it be practical to adopt a new civil service class to perform this work? Explain.

It is not practical to adopt a new civil service class for this one time project.

5. Additional Information (if "yes", attach explanation)

	<u>YES</u>	<u>NO</u>
A. Will the contractor directly supervise City and County employee?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
B. Will the contractor train City and County employee? In conjunction with the Planning Department's relevant work conducted in t	<input type="checkbox"/>	<input checked="" type="checkbox"/>
C. Are there legal mandates requiring the use of contractual services?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
D. Are there federal or state grant requirements regarding the use of contractual services?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
E. Has a board or commission determined that contracting is the most effective way to provide this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
F. Will the proposed work be completed by a contractor that has a current PSC contract with your department?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD
ON 11/13/2015 BY:

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