

TO: A&F Committee

DATE: January 20, 2011

FROM: Janet Madrigal
Civil Rights Administrator

REVIEWED BY:

SUBJECT: Revised *DBE Program*

Background: The Board of Directors adopted the CCCTA *DBE Program* on October 20, 1983, pursuant to U.S. Department of Transportation (U.S. DOT) directives and guidelines. As a recipient of federal financial assistance from the Federal Transit Administration (FTA), CCCTA is now required to revise its *DBE Program* in accordance with the new rule issued on January 28, 2011 and to submit it by February 28, 2012 to FTA for approval.

Summary: The proposed changes in CCCTA's *DBE Program* conform to the U.S. DOT requirements for improved administration of its program. Specifically, these requirements reflect increased accountability, monitoring and post-award oversight, addition of a small business element, and implementation of updated certification requirements.

The small business element is one method of achieving race-neutral efforts for DBE participation. Its objective is to meet the maximum feasible portion of the overall goal by using race-neutral methods, including contract goals for small business enterprises (SBEs). An SBE is a small business concern that meets the same business size standard as a disadvantaged business enterprise (DBE). By definition, DBEs are also SBEs. SBE goals will be set on federally funded formal contracts with subcontracting opportunities when it is determined that CCCTA will not be able to achieve its overall goal. The small business element includes outreach activities, verification of certified SBEs, monitoring SBE participation on contracts, and tracking payments made to SBEs.

Financial Implications: A revised *DBE Program*, approved by FTA, will enable CCCTA to continue to be eligible for federal financial assistance.

Options:

- (1) Recommend that the Board adopt the revised *DBE Program* without changes and authorize staff to forward it to FTA.
- (2) Recommend that the Board adopt the revised *DBE Program* with changes and authorize staff to forward it to FTA.
- (3) Other action as determined by the A&F Committee.

Attachment: *CCCTA Plan for Utilization of Small Businesses Owned and Controlled by Disadvantaged Individuals (DBE Program)*

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Central Contra Costa Transit Authority

Plan for Utilization Of Small Businesses Owned and Controlled By Disadvantaged Individuals (DBE Program)

Adopted *
By CCCTA Board of Directors**

Submitted to

**U.S. Department of Transportation
Federal Transit Administration
San Francisco, California**

Clayton • Concord • Contra Costa County • Danville • Lafayette • Martinez
Moraga • Orinda • Pleasant Hill • San Ramon • Walnut Creek

CENTRAL CONTRA COSTA TRANSIT AUTHORITY

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Plan for Utilization of Small Businesses Owned and Controlled by Disadvantaged Individuals (DBE Program)

I. POLICY

The Central Contra Costa Transit Authority (CCCTA) is committed to a *Plan for Utilization of Small Businesses Owned and Controlled by Disadvantaged Individuals (DBE Program)* for the participation of Disadvantaged Business Enterprises (DBEs) in CCCTA's contracting opportunities, in accordance with federal Regulations 49 CFR Part 26, effective March 4, 1999, as may be amended.

It is the policy of CCCTA to ensure nondiscrimination based on race, color, sex or national origin in the award and administration of contracts assisted by the U.S. Department of Transportation. It is the intention of CCCTA to create a level playing field on which DBEs can compete fairly and participate in the performance of contracts and subcontracts relating to CCCTA's construction, procurement and professional services activities.

The General Manager has primary responsibility for adherence to provisions of the *DBE Program*. Responsibility for developing, implementing, monitoring and evaluating CCCTA's *DBE Program* is assigned to the Civil Rights Administrator. Other CCCTA management staff responsible for making decisions relative to construction, procurement and professional service contracts share in this responsibility. It is the expectation of the CCCTA Board of Directors and the General Manager that the stipulations and provisions contained in the *DBE Program* are adhered to, in the spirit and the letter, by all CCCTA personnel.

Notices setting forth this policy are posted at CCCTA's offices and website and they are available to the public and to the DBE and nonDBE business communities that perform, or are interested in performing, work on CCCTA's contracts. Questions regarding CCCTA's *DBE Program* should be addressed to Janet Madrigal, Civil Rights Administrator, 2477 Arnold Industrial Way, Concord, California 94520, telephone 925/680-2044.

To formalize its commitment, the CCCTA Board of Directors hereby adopts the *DBE Program* applicable to CCCTA's contracting operations effective February 16, 2012.

Rick Ramacier
CCCTA General Manager

Amy R. Worth, Chair
CCCTA Board of Directors

A. Applicability

Pursuant to 49 CFR §§ 26.3 and 26.21, CCCTA, a recipient of federal financial assistance from the Federal Transit Administration (FTA) of the United States Department of Transportation (U.S. DOT), is required to implement a *DBE Program* in accordance with 49 CFR Part 26 (Regulations). The requirements of the Regulations are incorporated by reference. In the event of any conflicts or inconsistencies between the Regulations and the *DBE Program* with respect to U.S. DOT-assisted contracts, the Regulations shall prevail. The *DBE Program* outlined herein applies to all CCCTA contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance. To the extent that the Program's policy, objectives and efforts involve race-neutral methods, the *DBE Program* will apply to all CCCTA contracts regardless of funding source.

B. Program Objectives

The objectives of the *DBE Program* are to:

- Ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
- Create a level playing field on which DBEs can compete fairly for U.S. DOT-assisted contracts;
- Ensure the *DBE Program* is narrowly tailored in accordance with 49 CFR Part 26 and applicable law;
- Ensure that only firms that fully meet the eligibility standards in 49 CFR Part 26 are permitted to participate as DBEs;
- Help remove barriers to DBE participation in the bidding, award and administration of U.S. DOT-assisted contracts;
- Identify business enterprises that are eligible as DBE to provide CCCTA with required materials, equipment, supplies and services;
- Develop communications programs and procedures that will acquaint prospective DBEs with CCCTA's contracting procedures, activities and requirements, and allow DBEs to provide CCCTA with feedback on existing barriers to participation and effective procedures to eliminate those barriers; and
- Assist the development of firms that can compete successfully in the marketplace outside the *DBE Program*.

C. Prohibited Discrimination

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

II. DEFINITIONS

Any terms used in this *DBE Program* that are defined in 49 CFR § 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. Some of the most common terms are defined below.

Disadvantaged Business Enterprise (DBE) means a for-profit, small business concern

- (1) That is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Business Size Standard is defined by the U.S. Small Business Administration (SBA) found in 23 CFR Part 121 appropriate to the types of work the firm seeks to perform. In addition, for purposes of this *DBE Program*, even if the firm meets the SBA requirements, a firm is not an eligible DBE or SBE if the firm (including its affiliates) has had average annual gross receipts as defined in SBA regulations over the firm's previous three fiscal years in excess of \$22.41 million, as adjusted for inflation from time to time by U. S. DOT.

Good Faith Efforts means efforts to achieve a DBE or SBE goal or other requirements of this part that, by their scope, intensity and appropriateness to the objective can reasonably be expected to fulfill the program requirements.

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

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.

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 *DBE Program*, race-neutral includes gender neutrality.

Small Business Concern means a small business seeking to participate as a DBE or SBE in U.S. DOT-assisted contracts, as defined by section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121) whose average annual gross receipts for the previous three years do not exceed the SBA business size standard and the cap of \$22.41 million (as adjusted for inflation by the Secretary of U.S. DOT) pursuant to 49 CFR § 26.65(b).

Small Business Enterprise (SBE) means a for-profit Small Business Concern that does not exceed the Business Size Standard.

Socially and Economically Disadvantaged Individuals means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is

- (1) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - Black Americans (including persons having origins in any of the Black racial groups of Africa);
 - Hispanic Americans (including persons of Central or South American, Cuban, Dominican, Mexican, Puerto Rican, or other Spanish or Portuguese culture or origin, regardless of race);
 - Native Americans (including persons who are Aleuts, American Indians, Eskimos, or Native Hawaiians);
 - Asian-Pacific Americans (including persons whose origins are from Brunei, Burma (Myanmar), Cambodia (Kampuchea), China, the Commonwealth of the Northern Marianas Islands, the Federated States of Micronesia, Fiji, Guam, Hong Kong, Indonesia, Japan, Juvalu, Kiribati, Korea, Laos, Macao, Malaysia, Nauru, the Philippines, Samoa, Taiwan, Thailand, Tonga, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), or Vietnam);
 - Subcontinent Asian Americans (including persons whose origins are from Bangladesh, Bhutan, India, the Maldives Islands, Nepal, Pakistan, or Sri Lanka);
 - Women.
- (2) Any additional groups whose members are designated as socially and economically disadvantaged by the U.S. Small Business Administration (SBA), at such time as the SBA designation becomes effective.
- (3) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. To make this determination, CCCTA will follow the guidelines in 49 CFR Part 26, Appendix E. However, an individual cannot be presumed or determined on a case-by-case basis to be economically disadvantaged if s/he has a personal net worth exceeding \$1.32 million (excluding the individual's ownership interests in the small business concern and his or her primary, personal residence).

III. RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION AND ADMINISTRATION

A. CCCTA Board of Directors

The Board of Directors ultimately is responsible for ensuring that the *DBE Program* has a high priority and is a reality at CCCTA.

B. General Manager

The General Manager has primary responsibility for ensuring that the Board's policies are implemented throughout CCCTA.

C. Senior Management Staff

Senior management staff (Directors, Managers and Assistant Managers), who are responsible for making contracting decisions, share in the responsibility of assuring the processes of contracting and procurement of goods and services are carried out in a nondiscriminatory manner. In coordination with the Civil Rights Administrator, senior management staff will assist in problem identification and resolution, monitor and audit contracts, and remove any contracting obstacles to ensure the *DBE Program* guidelines are being followed.

D. Civil Rights Administrator

The Civil Rights Administrator (CRA) is responsible for development, implementation, monitoring, and evaluation of the *DBE Program*. The CRA shall be appointed by and report directly to the General Manager. The CRA will work closely with Legal Counsel and management staff responsible for construction, procurement and professional service contracts. Specific responsibilities of the CRA include, but are not limited to:

1. Developing, recommending, monitoring, evaluating, and revising the *DBE Program*, DBE policies and procedures, and internal and external communications mechanisms. Issuing supplementary policies and procedures for implementation of the *DBE Program* by CCCTA staff, as necessary.
2. Gathering, analyzing and assessing available resources and evidence for the establishment and achievement of an overall DBE participation goal for three fiscal years. Adjusting an overall DBE goal during that three-year period, if required, due to changed circumstances. Preparing and submitting CCCTA's *DBE Overall Goal and Goal Setting Methodology (DBE Report)*.
3. Maintaining and updating the Bidders List in accordance with 49 CFR § 26.11.
4. Conducting race-neutral measures to facilitate participation of small business concerns, including DBEs, through outreach and other communication programs, training and business development programs, restructuring contracting opportunities, simplifying bonding, surety and insurance requirements, or other race-neutral means.

5. Identifying contracts and procurements where DBE or SBE goals can be included in solicitations (both race-neutral methods and contract-specific goals).
6. Participating in the contract solicitation and award process, including recommending specific contract goals, where appropriate, reviewing contract specifications, attending prebid and preproposal conferences, and evaluating bids and proposals for contractor responsiveness, responsibility and good faith efforts related to the DBE or SBE requirements of the contract.
7. Providing outreach to DBEs, SBEs and community organizations to advise them of contracting opportunities. Ensuring contracting information is available to identified DBEs and SBEs in a timely manner.
8. Providing DBEs and SBEs with information and assistance, as appropriate, in preparing bids/proposals and obtaining bonding and insurance.
9. Monitoring specific contract performance and actual DBE and SBE participation and contract payments.
10. Monitoring overall DBE participation, adjusting overall DBE goal and means of achievement, and assessing any areas of over-concentration of DBE participation.
11. Determining DBE certification actions, including initial certification, recertification, denial and removal of certification (decertification).
12. Participating as a member of the Business Outreach Committee (BOC). Representing CCCTA, as assigned, on other regional, state and national groups or organizations working in support of DBEs and SBEs.
13. Participating as a member of the California Unified Certification Program (CUCP) in accordance with 49 CFR § 26.81 and the CUCP Memorandum of Agreement (MOA).
14. Inputting and updating information in the CUCP DBE Database in accordance with 49 CFR § 26.31 and the CUCP MOA.
15. Maintaining all appropriate records and documentation of the *DBE Program*.
16. Advising the General Manager, Board of Directors and U.S. DOT officials, as required, on DBE matters and achievement. Preparing and submitting reports and documents, as required.

E. Reconsideration Official

In accordance with 49 CFR §§ 26.53(d)(2) and 26.87(e), all proceedings by CCCTA regarding the reconsideration of compliance with provisions of the DBE Regulations concerning a contract award or the DBE status of a firm shall be made by the General Manager or his/her designated representative who did not take part in the original determination. This official shall preside over CCCTA hearings that may be held pursuant to this *DBE Program*, including administrative reconsideration of the CRA's determination of a bidder's or proposer's compliance with good faith efforts or the CRA's proposal to remove certification from a DBE firm.

IV. ADMINISTRATIVE REQUIREMENTS

A. Dissemination of Policy Statement

Pursuant to 49 CFR § 26.23, the CRA shall distribute a signed and dated Policy Statement throughout CCCTA's offices, on the CCCTA website and to the business community, including DBEs and nonDBEs that perform work on U.S. DOT-assisted contracts for CCCTA. The entire *DBE Program* will be available to the public upon request.

B. Regional Coordination

The CRA is designated by the General Manager to represent CCCTA as a member of the Business Outreach Committee (BOC). The CRA will participate in BOC programs, activities and efforts to create a level playing field on which DBEs and SBEs can compete fairly; to enhance outreach and communication efforts with these firms; to provide appropriate assistance and information for participation in U.S. DOT-assisted contracts; and to develop joint resources among U.S. DOT-recipients. To this end, the CRA will attend scheduled meetings of the BOC and will contribute to the achievement of projects approved by CCCTA's General Manager.

CCCTA is a signatory to the California Unified Certification Program (CUCP) Memorandum of Agreement (MOA). As a certifying member of the CUCP, the CRA is designated by the General Manager to represent CCCTA as a member of the CUCP Executive Committee and CUCP Part 26 Cluster. The CRA will participate in CUCP activities to further the objectives of the *DBE Program*, consistent with the Regulations and the CUCP MOA, as approved by the U.S. Department of Transportation Secretary on March 13, 2002, and as may be amended from time to time.

As designated by the General Manager, the CRA will represent CCCTA on other regional, state and national groups or organizations working in support of DBEs and SBEs.

C. DBE Database

The DBE Database is a consolidated and automated directory that identifies firms that have been certified as DBEs pursuant to the CUCP and the certification standards listed in 49 CFR Part 26, Subpart D. The DBE Database is jointly maintained and updated by the CUCP certifying member agencies, in coordination with the California Department of Transportation (Caltrans) as the CUCP DBE Database Manager.

Pursuant to 49 CFR § 26.31 and the CUCP MOA, the CRA will maintain and update information in the CUCP DBE Database for CCCTA certification activities, as required, subject to certifying member agency status. CCCTA will defer all DBE Database maintenance activities to the other CUCP certifying member agencies if it elects to become a non-certifying member of the CUCP.

CCCTA will use the DBE Database as a resource when developing overall and contract-specific DBE participation goals and conducting outreach and other activities to promote DBE participation on U.S. DOT-assisted contracts. The CUCP DBE Database is available in printed form and electronically on the Internet at the Caltrans website, www.dot.ca.gov/hq/bep. It will be made available, on request, to contractors, DBE firms, other public agencies and the public.

Potential contractors will be apprised of the availability of the DBE Database as a means of identifying DBEs with capabilities relevant to general contracting requirements and particular solicitations, thereby facilitating contractors' efforts to meet DBE requirements. DBE firms that come to the attention of CCCTA, but are not included in the DBE Database, will be advised of its existence. The importance of taking advantage of this resource as a means of increasing the likely use of DBE firms will be emphasized, and the procedure by which their businesses can be included in the DBE Database will be explained.

The DBE Database shall include, at a minimum: name of firm, name of owner(s), business and mailing addresses, telephone and facsimile numbers, and types of work utilizing the CUCP Work Codes and North American Industry Classification System (NAICS) Codes for which the firm is certified as a DBE. Additionally, the Database may include, whenever possible: the date the firm was originally established, date of on-site review, legal structure of the firm, certification status, race/ethnicity, licenses, and email/website addresses. The DBE Database does not, in any way, prequalify the identified DBE firms with respect to licensing, bondability, competence or financial responsibility.

Pursuant to 49 CFR § 26.85, CCCTA will assist the CUCP to update an Ineligibility Determination Online Database developed by the U.S. DOT Office of Civil Rights. This Database will include companies where certifying members of the CUCP have denied a firm's application, rejected the application of a firm certified in another state, or decertified a firm in whole or in part. The following information will be entered into this Database: the name of the firm; the name(s) of the firm's owner(s), the type and date of the action, and the reason for the action.

The CUCP will establish mechanisms to check this Database at least once a month to determine whether any firm is listed that is applying for certification or is currently certified. For any such firms included on the list that CCCTA certified or is reviewing an application for certification, CCCTA will request a copy of the decision from the UCP that made it. CCCTA will consider the information in the decision to determine what action is necessary with respect to the certified firm or applicant. If CCCTA receives a request from another UCP for a firm that CCCTA denied, rejected or decertified, CCCTA will provide a copy of its decision to that UCP within seven (7) days of receiving its written request.

D. Bidders List

CCCTA will require all prime contractors bidding or proposing on U.S. DOT-assisted contracts to submit the following information about the prime contractor and all subcontractors who provided a bid, proposal or quote to the prime contractor: the firm's name, address, status as a DBE or nonDBE, age of the firm, annual gross receipts, description of work to be performed or type of materials/supplies to be furnished on the contract, and dollar amount of that prime or subcontract. CCCTA will use this information to maintain and update its

Bidders List. CCCTA will maintain the confidentiality of any proprietary information in accordance with applicable California laws and the Regulations.

E. Monitoring Actual DBE and SBE Participation and Payments

It is the prime contractor's responsibility to maintain records and documents for three (3) years following performance of the contract. This reporting requirement is extended also to any DBE or SBE subcontractors. Records maintained by prime contractors and DBE or SBE subcontractors will be made available for inspection, upon request of any authorized representative of CCCTA or U.S. DOT.

The CRA shall monitor and track actual DBE and SBE participation through contractor reports of payments and other appropriate monitoring mechanisms. The CRA will maintain a running tally of payments actually made to DBE and SBE firms and may require prime contractors and DBE or SBE subcontractors and suppliers to provide appropriate documentation to verify such payments.

The CRA shall ensure that DBE and SBE participation is counted toward contract goals and DBE participation is counted toward the overall DBE goal in accordance with the Regulations. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs or SBEs.

CCCTA may perform interim audits of contract payments to DBEs and SBEs. The audit will review payments to DBE and SBE subcontractors to ensure that the actual amount paid to them equals or exceeds the dollar amounts stated on the List of Prime Contractor and Subcontractors/Suppliers form and any contract amendments.

F. Monitoring the Performance of Program Participants

CCCTA will apply legal and contract remedies available under federal, state and local laws to ensure all program participants comply with the requirements. The CRA and project managers will monitor contractor performance to ensure that work committed to DBEs or SBEs at contract award, and subsequent contract amendments, is actually performed by the identified DBEs or SBEs and payments are made to those firms in accordance with the contract requirements.

G. This monitoring mechanism will include a written certification that the CRA and/or the project manager has reviewed contracting records and monitored work sites in the CCCTA service area of firms performing CCCTA contracts. This monitoring may be conducted in combination with monitoring of contract performance for other purposes (e.g., close-out review for a contract). Reporting to U.S. Department of Transportation

The CRA will continue to report DBE participation, overall goal setting methodology, revisions in the *DBE Program*, and other information and documentation to FTA as directed. Statistical data will be maintained as prescribed and the Uniform Report of DBE Awards or Commitments and Payments form will be submitted to FTA at the intervals stated on the form, reflecting the DBE participation on CCCTA's federally assisted procurement activities. These reports will provide DBE participation on CCCTA's race-neutral contracts, race-conscious contracts, and the combined DBE participation on all U.S. DOT-assisted procurement activities.

H. DBE Financial Institutions

It is the policy of CCCTA to investigate the full extent of services offered by financial institutions located in its service area that are owned and controlled by socially and economically disadvantaged individuals, to make reasonable efforts to use these institutions, and to encourage prime contractors on U.S. DOT-assisted contracts to use these institutions.

The CRA researched the website for the Federal Reserve Board at www.federalreserve.gov to identify minority-owned banks derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database. As of June 30, 2011, the Federal Reserve Board listed no minority-owned financial institutions located in the CCCTA service area. The CRA will continue to use this source to identify and solicit minority-owned banks to participate in CCCTA's *DBE Program*.

I. Over-Concentration

Pursuant to 49 CFR § 26.33, if the CRA determines that DBE participation is so over-concentrated in certain types of work or contracting opportunities that it unduly burdens the participation of nonDBEs in that type of work, the CRA will develop appropriate measures to address the over-concentration. The CRA will seek approval of these corrective measures from FTA and, once approved, they will become part of this *DBE Program*. Currently, CCCTA is unaware of any types of work that have a burdensome over-concentration of DBE participation.

J. Small Business Element

One method of providing race-neutral efforts for DBE participation will be through CCCTA's small business element, which is incorporated into this *DBE Program*. The small business element is intended to facilitate compliance with the two objectives in 49 CFR 26.51: (1) To meet the maximum feasible portion of the overall goal by using race-neutral means of obtaining DBE participation and (2) to establish DBE contract goals to meet any portion of the overall goal CCCTA is unable to meet using race-neutral methods alone. CCCTA will implement the small business element within nine (9) months of receiving approval from FTA.

The small business element applies to sub-recipients in the same way as CCCTA's *DBE Program*. CCCTA will ensure that any sub-recipients implement CCCTA's approved small business element. If a sub-recipient has its own DBE Program separate from CCCTA's *DBE Program*, the sub-recipient is responsible for creating and implementing its own small business element.

An important part of CCCTA's small business element is its outreach activities. These outreach efforts include active, effective steps to increase small business participation, such as soliciting bids/proposals from DBEs and SBEs, responding to requests for information, participating at prebid and preproposal meetings, and participating at outreach and training events for DBEs and small businesses. CCCTA will collaborate with regional resources by pooling resources and/or creating joint programs for review and approval by FTA.

As time and resources allow, the CRA will help plan and/or participate in outreach and informational events for DBEs and small businesses that may be coordinated with other U.S. DOT recipients, federal agencies, or local organizations. Discussed during these outreach events will be procedures on how to do business with CCCTA, how to become certified as a DBE or SBE, CCCTA's *DBE Program* requirements, and other topics of interest to DBEs and small businesses.

Other strategies that CCCTA will consider as a part of its small business element include unbundling contracts and setting SBE contract-specific goals when subcontracting opportunities are available.

For purposes of this DBE Program, a small business enterprise (SBE) is defined as a Small Business Concern that does not exceed the Business Size Standard. CCCTA's small business element includes a verification process to ensure eligibility of small business firms to participate in its *DBE Program*. To avoid fraud, a firm's small business status will be verified when CCCTA utilizes SBE contract goals on a project. CCCTA will rely on the certification/verification process used by other agencies, providing their process is to confirm eligibility consistent with those of Part 26, including the requirement that the SBE firm may not exceed the Business Size Standard. CCCTA will not accept certifications/verifications by agencies that allow companies to self-certify as small businesses. A currently certified DBE is presumed eligible to participate in the small business element of CCCTA's *DBE Program*. CCCTA will require that all SBEs and any DBEs not certified by the CUCP provide documentation to verify their certification status. CCCTA may require SBEs to submit additional documents, as necessary, to verify their eligibility.

CCCTA will track and report any race-neutral participation by currently certified DBEs achieved through the small business element in the same way it reports race-neutral DBE participation obtained through other methods. To the extent feasible, data on small business participation will be collected and maintained in order to respond to any future questions regarding the results of CCCTA's *DBE Program*.

K. Business Development and Mentor/Protégé Program

CCCTA may establish a DBE business development program to assist firms in gaining the ability to compete successfully in the marketplace outside the *DBE Program*. As a part of the business development program or separately, CCCTA may establish a mentor/protégé program in which another DBE or nonDBE firm is the principal source of business development assistance. If CCCTA determines such a program is beneficial, a proposed program will be written and submitted to FTA's regional office for approval, after which it will become part of this *DBE Program*. Guidelines outlined in Appendices C and D of 49 CFR Part 26 will be utilized in setting up the formal agreements and programs. CCCTA may participate in a business development program and/or mentor/protégé program established by other U.S. DOT recipients.

L. Issuance of Supplementary Procedures

The General Manager, upon recommendation of the CRA and in consultation with Legal Counsel, may issue supplementary written procedures for the implementation of the *DBE Program*, consistent with the Regulations.

V. DETERMINING AND ACHIEVING OVERALL GOAL AND COUNTING DBE PARTICIPATION

Pursuant to 49 CFR § 26.45, the CCCTA Board of Directors shall establish overall DBE goals on a fiscal-year basis every three years for the participation of DBEs in all budgeted contracts utilizing U.S. DOT financial assistance. The overall DBE goal shall be expressed as a percentage of the total amount of U.S. DOT funds CCCTA anticipates expending during those three fiscal years.

CCCTA's overall DBE goal represents the amount of ready, willing and able DBEs that are available to participate in U.S. DOT-assisted contracting opportunities. The overall DBE goal is reflective of the amount of DBE participation CCCTA would expect absent the effects of discrimination. CCCTA intends to meet its goal to the maximum extent feasible through race-neutral measures. Where race-neutral measures are inadequate to meet the overall DBE goal, CCCTA will establish specific contract goals for particular projects with subcontracting opportunities.

A. Methodology for Setting Overall DBE Goal

1. Projecting U.S. DOT-Assisted Contract Expenditures

In conjunction with the preparation and adoption of the budget for each fiscal year, the CRA, in consultation with the appropriate CCCTA department managers responsible for contracting activities, will conduct an analysis of the projected numbers, types of work, and dollar amounts of contracting opportunities that will be funded, in whole or in part, by U.S. DOT financial assistance for each fiscal year during that three-year period. This analysis will exclude projected contract expenditures with transit vehicle manufacturers, which are exempt from the *DBE Program*.

If required by FTA, CCCTA will express its overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects. A project goal may be adjusted to reflect changed circumstances with the concurrence of FTA. A project goal is an overall goal and meets all of the substantive and procedural requirements pertaining to overall goals. A project goal covers the entire length of the project to which it applies. A project goal includes a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which CCCTA's regular overall goal applicable to contracts not part of the project covered by a project goal is calculated.

2. Establishing a Base Figure

Pursuant to 49 CFR § 26.45(c), CCCTA will develop a base figure, based upon the projected fiscal year budgets for the three-year term of the goal to express the availability of DBEs as a percentage of all contractors, subcontractors, manufacturers and suppliers in the relevant contracting markets. CCCTA will follow one of the methodologies provided in the Regulations or develop an alternative methodology and provide the appropriate documentation in the *DBE Overall Goal and Goal Setting Methodology (DBE Report)*.

a. Analyzing Available Businesses in the Relevant Contracting Markets

The CRA will conduct an analysis of the relevant contracting markets in which CCCTA will solicit participation from contractors, subcontractors, manufacturers and suppliers for each fiscal year. This analysis will include a description of geographical boundaries of the solicitations, the applicable North American Industry Classification System (NAICS) Codes for the types of work to be contracted and any other indicators that CCCTA determines to be relevant to defining its contracting markets. The CRA will then determine the available businesses according to the relevant contracting markets. The CRA will consult a variety of sources including, but not limited to, the U.S. Census Bureau, CCCTA's Bidders List and any relevant disparity studies.

b. Analyzing Available DBEs in the Relevant Contracting Markets

The CRA will conduct a similar analysis to determine the number of ready, willing and able DBEs that are available to participate as contractors, subcontractors, manufacturers and suppliers in the projected contracts for each fiscal year. This analysis will include a description of the available DBEs relative to the geographical boundaries of the solicitations, the NAICS Codes for the types of work to be contracted, and any other pertinent factors. The CRA will consult a variety of sources including, but not limited to, CUCP DBE Database, U.S. Census Bureau, CCCTA's Bidders List and any relevant disparity studies.

c. Calculating the Base Figure

The CRA will compare the available DBEs to the available businesses in the relevant contracting markets for each fiscal year. The calculation will include a weighting factor according to the U.S. DOT-assisted contracting expenditure patterns.

d. Adjusting the Base Figure

Pursuant to 49 CFR § 26.45(d), the CRA will adjust the base figure based on demonstrable evidence indicating that the availability of DBEs for U.S. DOT-assisted contracts for each fiscal year may be higher or lower than the base figure indicates. At a minimum, the CRA will analyze:

- (1) The results of CCCTA's efforts to contract with DBEs for the current and recent years;
- (2) Any available and relevant disparity studies (to the extent that they are not accounted for in the base figure);
- (3) Any available and relevant results of other, similar U.S. DOT recipients' efforts to contract with DBEs;

- (4) Any relevant feedback or projections from DBE firms, minority and women professional and resource organizations, the U.S. Small Business Administration, general contractor organizations, community groups, or others; and
 - (5) Any other available evidence from related areas that affects the opportunities for DBEs to form, grow and compete.
- e. Projection of Percentage of Overall DBE Goal to be Achieved Through Race-Neutral and Race-Conscious Measures

Once the overall DBE goal is calculated, the CRA will analyze and project the maximum feasible portion of the goal that can be achieved by using race-neutral methods. Where the projected portion of the goal using race-neutral methods is less than the overall DBE goal, the remaining portion may be achieved by establishing contract goals for particular projects that have subcontracting opportunities.

The CRA shall monitor and adjust the use of contract-specific goals in accordance with 49 CFR 26.51(f). When projecting the percentage of the overall goal to be achieved through establishing contract-specific goals, the CRA shall analyze the actual achievement of the overall goal through race-neutral methods in the current and recent years. When establishing contract-specific goals during the current fiscal year, the CRA shall analyze the progress toward achieving the overall goal and increase, reduce or eliminate the use of contract-specific goals accordingly. Contract goals will provide for participation by certified DBEs or SBEs and will not be subdivided into group-specific goals.

B. Public Participation and Adoption of the Overall DBE Goal

1. Consultation with Various Groups, Organizations and Officials

In a joint effort, members of the CUCP and BOC will continue to hold public participation sessions to obtain input in the goal-setting process, specifically on the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and efforts to establish a level playing field for the participation of DBEs. Members from the public invited to attend the public participation sessions will include, but not be limited to, minority, women and general contractor groups, community organizations, and other U.S. DOT recipients.

2. DBE Report

Upon completion of the analysis described above and after consultation with various groups, organizations and officials, the CRA will prepare the *DBE Report* for a three-year period for review and approval by the General Manager. The report shall document the analysis and methodology as well as the proposed goal and estimated percentages to be achieved through race-neutral and race-conscious measures. Upon the General Manager's approval and recommendation, the Administration & Finance (A&F) Committee will consider authorizing publication of the proposed goal for public comment and adoption of the goal thereafter.

3. Publication of the Proposed Overall DBE Goal

Pursuant to 49 CFR § 26.45(g), CCCTA will publish the proposed overall goal in general circulation and DBE-oriented media. The notice shall include a statement that the methodology and proposed goal are available for inspection by the public for thirty (30) days from the date of publication. The notice shall also include a statement that CCCTA and U.S. DOT will accept public comments regarding the proposed goal and methodology for a period of forty-five (45) days from the date of publication, and it will provide instructions for the submission of comments.

Concurrently, the CRA shall notify DBE resource and community organizations of the availability of the *DBE Report* for review and comment. Upon receipt of any public comments, the CRA will prepare a summary report analyzing the public comments and recommending any modifications to the overall DBE goal or methodology and will furnish it to the General Manager for review and concurrence. If no comments are received that would change substantially the goal analysis, the results of the public comment period may be presented as an informational matter to the Board of Directors with no further action required.

4. Adoption of the Overall DBE Goal

The A&F Committee will consider making a recommendation to the Board of Directors to adopt the overall goal. The Board of Directors shall adopt the overall DBE goal for DBE participation in U.S. DOT-assisted contracts. Unless otherwise directed, the *DBE Report* will be submitted every three years by August 1st, to FTA for review and approval.

The overall goal applies to each fiscal year during that three-year period. CCCTA may adjust the overall goal during that three-year period to which it applies in order to reflect changed circumstances. Such an adjustment shall be submitted to FTA for review and approval.

C. **Transit Vehicle Manufacturers Participation and Certification**

CCCTA will require transit vehicle manufacturers to certify that they have established an overall DBE participation goal that has been approved by FTA (or the goal has been submitted but not disapproved) as a condition of being authorized to bid on any FTA-assisted transit vehicle procurements. Expenditures for FTA-assisted transit vehicle procurements are not included in establishing the CCCTA overall DBE goal for U.S. DOT-assisted contract expenditures.

D. **DBE Quotas or Set-Asides**

CCCTA will not use quotas for DBEs and will not set-aside contracts for DBEs on U.S. DOT-assisted contracts. CCCTA will make every effort to achieve its DBE goals by utilizing other means as outlined in the *DBE Program*.

E. Achieving the Overall DBE Goal

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

If an overall DBE goal is not achieved by the end of its fiscal year, CCCTA will analyze the reason(s) for the shortfall and establish specific steps and milestones to correct the problems identified in the analysis that will enable CCCTA to meet its goal for the new fiscal year. This analysis and corrective action will be retained in the record for three years and made available to FTA, upon request, for its review.

1. Race-Neutral Methods

CCCTA will use race-neutral methods to the maximum extent feasible to achieve its overall DBE goal. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, a DBE is awarded a subcontract on a prime contract that does not carry a DBE goal, or a DBE wins a subcontract, even if there is a DBE goal, from a prime contractor that did not consider its DBE status in making the award. In addition, CCCTA will use the following race-neutral measures, as appropriate, to facilitate DBE participation.

- a. Ensuring contracting barriers do not exist by using contracting arrangements (such as, arranging solicitations, times for the presentation of bids, quantities, specifications and delivery schedules) that facilitate participation by DBEs and other small businesses and make contracts more accessible to them.
- b. Configuring large contracts into smaller contracts to make contracts more accessible to small businesses, when feasible, providing it would not impose significant additional cost, delay or risk to CCCTA.
- c. Identifying components of the work that represent subcontracting opportunities and identifying the availability of DBE subcontractors. Contractors will be encouraged to consider DBE subcontractors for components of the work for which there is a known supply of ready, willing and able DBE subcontractors, as well as non-DBE subcontractors, in preparing their bids and proposals.
- d. Assisting in overcoming limitations in bonding and financing, when requested and as appropriate.
- e. Providing technical assistance and other business related services, as requested and as appropriate.
- f. Providing outreach and communications programs related to contracting opportunities and procedures to ensure the inclusion of DBEs and other small businesses on mailing lists soliciting bids and proposals.

- g. Requiring prime bidders on multi-year design-build contracts or other large contracts to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- h. Requiring prime contractors on contracts not having a DBE goal to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform rather than self-performing all the work involved.
- i. Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform them.
- j. Providing information about the availability of the CUCP DBE Database, through print and electronic means, to potential prime contractors, DBEs, public agencies and the general public. Encouraging prime contractors to use the DBE Database to solicit DBE firms. Encouraging eligible DBEs to become certified, and to remain certified, so they will be listed in the DBE Database.

2. Contract Goals

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

The General Manager shall establish the contract goal based on a recommendation from the CRA. The contract-specific goal shall apply to the percentage participation of DBEs or SBEs in the total contract work and shall be set forth in the contract specifications. CCCTA is not required to establish a contract-specific goal for every prime contract with subcontracting opportunities. For each U.S. DOT-assisted contract involving subcontracting opportunities, the factors outlined below will be considered to determine whether a contract-specific goal should be established for the particular contract and, if so, what the percentage goal shall be.

- a. The projected amount of the contract and the full range of activities in the proposed contract.
- b. CCCTA's progress toward achieving its overall DBE goal.
- c. The projected portion of the overall goal that will be met by establishing a contract-specific goal.
- d. The availability of DBEs or SBEs as prime contractors, subcontractors or suppliers in the types of work involved in the performance of the proposed contract.

- e. The unique conditions of the project that might affect the ability of the prime contractor to coordinate utilize or incorporate subcontractors or suppliers into the project.
- f. Any other relevant criteria.

3. Awarding Contracts with Contract-Specific Goals

CCCTA shall award contracts to the lowest responsible bidder for construction contracts and other procurements as required under applicable procurement law, U.S. DOT procurement guidelines, and CCCTA policies.

For such contracts, as well as for contracts awarded pursuant to a request for proposal procedure where the lowest responsible bidder standard does not apply, a bidder/proposer that fails to demonstrate that it achieved the contract-specific DBE or SBE participation goal, and fails to demonstrate that it made sufficient good faith efforts to do so, shall not be deemed “responsive” and, therefore, shall be ineligible for award of the contract.

a. Evaluation of Bids and Proposals

After the bid opening, or submission deadline for proposals, the CRA shall evaluate all bids/proposals with regard to the DBE or SBE requirements to determine whether the bidders/proposers submitted all the information required by 49 CFR § 26.53. Prior to making a recommendation to the CCCTA Board of Directors for award of contract, bidders/proposers will be required to meet the requirements of 49 CFR § 26.53.

The responsible bidder with the lowest apparent bid price, or the most highly ranked proposer, who also meets the contract-specific DBE or SBE goal or demonstrates sufficient good faith efforts, shall be recommended for award of contract. In the event that the bidder with the lowest monetary bid price (or the proposer ranked first), fails to meet the contract-specific goal or fails to demonstrate sufficient good faith efforts, or is otherwise nonresponsive or not responsible, the CRA shall evaluate the bidder with the next lowest bid price (or the proposer ranked second).

Bidders/proposers will be required to submit with their bids/proposals (or at a later date specified in the contract documents) the completed List of Prime Contractor and Subcontractors/Suppliers form. This form requests the following information about DBE and non-DBE firms that will participate in the contract: name and address of firm, phone number, owner’s name, DBE or SBE, age of firm, annual gross receipts, description of work and type of materials/supplies to be furnished for the contract, and dollar amount of the work or supplies. By submitting the List of Prime Contractor and Subcontractors/Suppliers form, a bidder/proposer certifies that it is committed to using the identified DBEs or SBEs in the performance of the contract.

CCCTA shall require written documentation from the DBEs and/or SBEs that they are participating in the contract as provided in the prime contractor's commitment. In addition, DBEs not currently certified by the CUCP and SBEs will be required to submit information verifying their current certification status. CCCTA may require that SBEs submit additional documentation, as necessary, to verify their eligibility.

If the CRA determines additional information is needed to evaluate a bidder's or proposer's submission regarding the DBE or SBE requirements, the CRA shall request the bidder/proposer to submit the required information. The CRA may contact, also, the listed DBEs and SBEs directly to obtain the information.

b. Evaluation of DBE and SBE Certification Status

CCCTA shall require that only firms currently certified as eligible DBEs and SBEs can participate and be counted as DBEs or SBEs on its contacts. Any DBEs or SBEs listed by bidders or proposers for participation in the contract must be certified as eligible DBEs or SBEs when the bids/proposals are due (or at a later date specified in the contract documents).

The CRA shall review the List of Prime Contractor and Subcontractors/Suppliers form and other pertinent information to confirm the certification status of each DBE or SBE. For DBE firms, CCCTA will accept current certifications by the CUCP, other UCPs and other U.S. DOT recipients acceptable to CCCTA in accordance with 49 CRF Part 26. For SBE firms, CCCTA will accept certifications and verifications by the California Department of General Services, the U.S. Small Business Administration, and other public agencies, providing the firm's Business Size Standard does not exceed the SBA size standard and the U.S. DOT cap of \$22.41 million, whichever is lower. CCCTA will not accept SBE certifications from agencies that allow firms to self-certify as small businesses.

If a change in DBE or SBE participation is proposed by the prime contractor after the contract is fully executed (such as a contract amendment or replacement of a defaulting DBE or SBE subcontractor), and the subcontractor is not currently certified as an eligible DBE or SBE, the firm's certification must be final before CCCTA approves the change in DBE or SBE participation on the contract.

c. Determination of Amount of DBE or SBE Participation

The CRA shall review for accuracy the total dollar value of the work to be performed and supplies to be furnished by DBEs or SBEs with the total contract amount reported on the List of Prime Contractor and Subcontractors/Suppliers form. The CRA shall then determine the percentage of total DBE or SBE participation and compare it to the contract-specific goal established for the contract.

d. Determination of Good Faith Efforts

If the amount of DBE or SBE participation does not meet the contract-specific goal, the CRA shall review the report of good faith efforts submitted by the bidder/proposer. The CRA shall determine whether the bidder/proposer performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the contract-specific goal in accordance with 49 CFR Part 26, Appendix A.

DBE and SBE bidders/proposers on prime contracts will be expected to make the same outreach efforts as other bidders/proposers and to document good faith efforts in situations where they do not fully meet the contract goals.

e. DBE or SBE Replacement

Prime contractors may not terminate a DBE or SBE subcontractor listed on the contractor's bid/proposal documents, or an approved substantives firm, without CCCTA's 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 or SBE subcontractor with its own workforce or those of an affiliate, a nonDBE firm or another DBE firm. CCCTA may provide such written consent if it determines that the prime contractor has good cause, as described in 49 CFR Part 26.53, to terminate the DBE or SBE subcontractor.

Before transmitting to CCCTA its request to terminate and/or substitute a DBE or SBE subcontractor, the prime contractor must give notice in writing to the DBE or SBE subcontractor, with a copy to CCCTA, of its intent to request to terminate and/or substitute and the reason for the request. The prime contractor must give the DBE or SBE five days to respond to the prime contractor's notice and advise CCCTA and the prime contractor of the reasons, if any, of why it objects to the proposed termination of the subcontract and why CCCTA should not approve the prime contractor's action.

In addition to post-award terminations, these provisions apply to preaward deletions of or substitutions for DBE or SBE firms put forward by offerers in negotiated procurements.

Prime contractors will be required to replace a defaulting DBE or SBE subcontractor (or to demonstrate that it made good faith efforts toward that end) only to the extent needed to ensure that the prime contractor is able to achieve the contract goal. A prime contractor may not terminate a DBE or SBE firm for convenience and then perform the work with its own workforce without CCCTA's prior written consent.

The prime contractor must immediately notify the project manager and the CRA of the inability of the DBE or SBE to perform the work and must provide reasonable documentation. The prime contractor must provide copies of new or amended subcontracts for each new DBE or SBE or any applicable good faith efforts. If replacement of the DBE or SBE is acceptable to CCCTA, it will issue written notification to the prime contractor. If the contractor fails or refuses to comply in the timeframe specified in the contract documents, CCCTA will pursue administrative remedies available under the contract or laws of California.

f. Right to Administrative Reconsideration

In the event the CRA determines that the apparent successful bidder/proposer has not met the contract-specific goal and has not demonstrated sufficient good faith efforts, the CRA will notify the bidder/proposer in writing. The notification shall include the reasons for the determination and advise that the bidder/proposer has the right to submit additional written documentation or appear at a hearing for reconsideration prior to the time that a recommendation for award of contract is presented to the Board of Directors.

Following a reconsideration hearing and/or review of any additional information received, the General Manager, or his/her designee, shall provide the bidder/proposer with a written decision on reconsideration, explaining the basis for the determination. In the event the reconsideration official finds a bidder/proposer did not meet the contract goal or demonstrate sufficient good faith efforts, the determination shall stand and such bidder/proposer will be deemed not responsive. The result of the reconsideration process cannot be appealed administratively to U.S. DOT.

g. Recommendation for Award

Following the determination of the responsiveness with a contract-specific DBE or SBE requirement, the CRA shall prepare a report on compliance with the DBE/SBE requirements of all bidders/proposers for review by the General Manager and project manager for presentation to the Board of Directors at the time the contract award is considered. If the Board disagrees with the staff recommendation for award of contract, it shall reject all bids/proposals or refer the matter back to the General Manager for further evaluation and recommendation. The decision of the CCCTA Board of Directors on the award of contract, if such a decision is made, shall be final and binding on all parties, subject to compliance with CCCTA's protest procedures.

F. Counting and Tracking DBE and SBE Participation

Following award of contract for all DOT-assisted contracts, the CRA will monitor and track the types of work and dollar amounts actually paid by the prime contractor to DBE or SBE subcontractors. For this purpose, the CRA will require the prime contractor to submit periodic reports of payments made to DBEs or SBEs. DBEs and SBEs will be required to verify the work they performed and the dollar amounts they received from the prime contractor.

The prime contractor will notify the project manager and CRA in writing of any proposed contract changes or amendments, and it will submit a statement regarding how that change may affect DBE or SBE subcontracting opportunities. Following CCCTA's approval of that contract change or amendment, the project manager and CRA will assure that work is actually done by the DBE or SBE firms, as verified through job site visits and other contract compliance mechanisms.

Only the work actually performed by a DBE or SBE will be counted toward the contract goal. The cost of supplies and materials obtained by the DBE or SBE or equipment leased may also be counted. However, the DBE or SBE subcontractor and its prime contractor may not count toward the goal items that the DBE or SBE purchases or leases from its own contractor.

DBE and SBE prime contractors may count toward goals the work they perform with their own workforce as well as the work performed by DBE or SBE subcontractors. Work that a DBE or SBE subcontracts to a nonDBE or nonSBE firm does not count toward contract goals.

The CRA will not count a DBE's participation toward DBE or SBE goals if the firm is not currently certified, in accordance with the eligibility standards in the Regulations. An SBE firm will be counted toward an SBE goal if the firm is currently certified and it does not exceed the Business Size Standard. Additionally, the CRA will not count toward the overall goal that portion of a DBE's participation achieved after the certification of the DBE has been removed during the performance of a contract. Participation of a DBE subcontractor will not be counted toward the prime contractor's DBE achievement or CCCTA's overall goal until the DBE has been paid. The CRA will track the participation of DBEs in contracts with goals separately from DBE participation considered to be race neutral.

Expenditures may only be counted if the DBE or SBE is performing a commercially useful function. According to the Regulations, 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. If a DBE or SBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own workforce, or the DBE or SBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practices for the type of work involved, the firm is not performing a commercially useful function. CCCTA will use factors outlined in 49 CFR § 26.55(d) to determine if a DBE or SBE trucking company is performing a commercially useful purpose. Decisions on commercially useful function are subject to review by the FTA, but cannot be appealed administratively to U.S. DOT.

The CRA will count DBE and SBE participation on the contract in the following manner:

- Count at 100% the entire amount of that portion of a contract for construction, professional services, or other services that is performed by the firm's own workforce, including the cost of supplies and materials purchased or equipment leased by the DBE or SBE for the contract work (except supplies and equipment the DBE or SBE subcontractor purchased or leased from the prime contractor or its affiliate).

- Count the entire amount of fees or commissions charged by a DBE or SBE for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the contract if the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.
- Count one-hundred percent (100%) of the cost of materials or supplies obtained from a DBE or SBE manufacturer. Count sixty percent (60%) of the cost if the materials and supplies are purchased from a DBE or SBE 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, from a DBE or SBE that is neither a manufacturer nor a regular dealer, providing the fees/commissions are reasonable and not excessive as compared with those customarily allowed for similar services.
- When a DBE or SBE 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 or SBE performs with its own workforce.

VI. CONTRACT PROVISIONS

Each financial assistance agreement CCCTA signs with U.S. DOT will include a nondiscrimination assurance from CCCTA. U.S. DOT-assisted contracts that CCCTA solicits and awards will include, as appropriate, the model contract provisions that are set forth in the current edition of CCCTA's *Procurement Manual*, which is available from the CRA. The CRA shall have discretion to modify the contracting provisions for particular contracts as needed, in consultation with Legal Counsel. These required contract provisions consist of:

- CCCTA's *DBE Program* policy statement.
- A nondiscrimination assurance from the contractor (and each subcontract the prime contractor signs with a subcontractor).
- A clause requiring the prime bidder or proposer to submit the List of Prime Contractor and Subcontractors/Suppliers form.
- A clause that requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than thirty (30) days from receipt of each payment CCCTA makes to the prime contractor.
- A clause that requires the prompt return of retainage payments from the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed.
- The website address for the CUCP DBE Database identifying DBE firms eligible to participate in the *DBE Program*.
- Statements describing the amount of the DBE or SBE goal, if established, DBE or SBE certification standards, required documents for verification of certification status, how DBE or SBE participation is counted toward the goal, and required good faith efforts if the DBE or SBE goal is not achieved.
- A section on recordkeeping and reporting requirements, including a provision ensuring that DBE participation is credited toward the overall DBE goal and DBE or SBE participation is counted on contract goals only when payments are actually made to DBE or SBE firms.
- A section on administrative remedies to ensure compliance with the *DBE Program*.

VII. DBE CERTIFICATION STANDARDS

CCCTA is a participant of the CUCP, which follows U.S. DOT directives and guidance concerning certification matters. In conjunction with certifying members of the CUCP, CCCTA makes DBE certification decisions on behalf of all U.S. DOT recipients in California. CCCTA relies upon the CUCP for the certification of DBE firms and assurance that only firms certified as eligible DBEs participate in the *DBE Program*. The CUCP MOA provides U.S. DOT recipients the option to be either a certifying member or a non-certifying member. CCCTA has elected to be a certifying member. As such, CCCTA will apply the standards of Subpart D and Appendix E of the Regulations, which are briefly discussed in this Section, when making certification decisions. If CCCTA elects to be a non-certifying agency of the CUCP, it will accept those DBEs certified by the CUCP, pursuant to the CUCP MOA and its adherence to 49 CFR Part 26.

A. Burdens of Proof

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

B. Group Membership Determinations

Individuals who are United States citizens (or lawfully admitted permanent residents) who are also members of the following designated groups will be presumed to be socially and economically disadvantaged: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, women, and other groups found to be socially and economically disadvantaged by the U.S. Small Business Administration.

When reviewing applicant files, CCCTA will presume that members of the groups identified herein are socially and economically disadvantaged unless the presumption is rebutted. This means these individuals do not have the burden to prove they are socially and economically disadvantaged. However, all applicants have the obligation to provide information concerning their economic disadvantage.

If CCCTA has reason to question whether an individual is a member of a disadvantaged group, the individual will be required to produce appropriate documentation of group membership. When making a group membership determination, factors considered will be whether the person has held himself/herself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. If an individual is determined not to be a member of a designated group, the individual must demonstrate social and economic disadvantage on an individual basis. The decision by CCCTA concerning membership in a designated group will be subject to the certification appeals procedure described in 49 CFR § 26.89.

C. 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.

Individual determinations will be made on a case-by-case basis 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, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. However, an individual whose personal net worth exceeds \$1.32 million, or as adjusted for inflation by U.S. DOT, shall not be deemed economically disadvantaged. In making these determinations, guidance found in 49 CFR Part 26, Appendix E, will be used.

1. Social Disadvantage

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include at least one objective distinguishing feature that has contributed to social disadvantage, personal experiences of substantial and chronic social disadvantage in American society, and negative impact on entry into or advancement in the business world because of the disadvantage. CCCTA will consider any relevant evidence in assessing these elements, including education, employment and business history, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

2. Economic Disadvantage

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

D. Business Size Determinations

To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by the U.S. Small Business Administration (SBA) standards. CCCTA will apply current SBA business size standards found in 23 CFR Part 121 appropriate to the types of work the firm seeks to perform in U.S. DOT-assisted contracts. Even if the firm meets the SBA requirements, a firm is not an eligible DBE in any federal fiscal year if the firm (including its affiliates) has had average annual gross receipts as defined in SBA regulations over the firm's previous three fiscal years in excess of \$22.41 million, as adjusted for inflation from time to time by U. S. DOT.

E. Statement of Personal Net Worth

Each socially and economically disadvantaged individual owner, whose ownership and control are relied upon for DBE certification, must demonstrate that s/he does not have a personal net worth exceeding \$1.32 million (except owners of a firm applying to participate as a DBE airport concessionaire).

When determining net worth, CCCTA will exclude an individual's ownership interest in the applicant firm and the individual's equity in his/her personal, primary residence, will not use contingent liabilities to reduce an individual's net worth, and will include only the present value of assets held in vested pension plans or accounts less the tax and interest penalties that would accrue if the asset were distributed at the present time.

If the individual's personal net worth exceeds \$1.32 million, or as adjusted for inflation by U.S. DOT, the individual's presumption of economic disadvantage based on group membership or the individual's demonstration of economic disadvantage will be rebutted conclusively without any further formal proceedings.

When an individual's presumption of social and/or economic disadvantage has been rebutted, his/her ownership and control of the firm cannot be used for purposes of DBE eligibility unless and until s/he makes an individual showing of social and/or economic disadvantage in the future. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the *DBE Program* and cannot regain eligibility by making an individual showing of disadvantage.

Notwithstanding any provision of federal or state law, CCCTA will not release information regarding any individual's personal net worth statement nor any documentation supporting it to any third party without the written consent of the submitter. However, CCCTA will transmit this information to U.S. DOT in any certification appeal proceeding in which the disadvantaged status of the individual is in question or to any other state UCP to which the individual's firm has applied for certification.

F. Ownership Determinations

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

The firm's ownership by socially and economically disadvantaged individuals must be real, substantial and continuing, going beyond pro forma ownership of the firm, as reflected in the ownership documents. The disadvantaged owners must enjoy the customary incidence of ownership and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of the arrangements.

Factors that will be considered are how the ownership securities are held and how they were acquired and whether the disadvantaged individual made contributions of capital and/or expertise that were real and substantial to acquire their ownership interest.

When an individual's expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership, the owner's expertise must be in a specialized field, of outstanding quality, in areas critical to the firm's operations, indispensable to the firm's potential success, specific to the type of work the firm performs, and documented in the firm's records that clearly show the contribution of expertise and its value to the firm.

The specific considerations for determining ownership by socially and economically disadvantaged individuals are outlined in the Regulations, as may be supplemented by written interpretations, guidance and/or procedures issued by U.S. DOT or the CUCP from time to time.

G. Control Determinations

In determining whether socially and economically disadvantaged owners control a firm, the CRA will consider all the facts in the record, viewed as a whole. Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms. In determining whether a potential DBE is an independent business, CCCTA will scrutinize relationships with nonDBE firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. Present or recent employer/employee relationships will be considered, as well as the firm's relationships with prime contractors and factors related to the independence of a potential DBE firm. Further, CCCTA will consider the consistency of relationships between the potential DBE and nonDBE firms with normal industry practice.

A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

To determine a socially and economically disadvantaged individual's control of a firm, CCCTA will consider factors such as the owner's position, managerial role and control, technical and managerial competence and experience in the firm's operations, remuneration compared to what is received by other participants in the firm, delegation of authority to non-disadvantaged individuals, licensing and professional credentials, and time commitments in the firm. Also considered will be factors such as the ownership, control and participation of other individuals in the firm, whether the firm owns or leases equipment, any franchise or license agreement, and use of an employee leasing company.

CCCTA will 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 another type of work, the firm must demonstrate that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. The types of work that firms can perform must be expressed in the most specific NAICS codes, and multiple NAICS codes may be assigned where appropriate. In addition to the NAICS codes, the CUCP DBE Database includes work codes that provide equivalent detail and specificity. The firm has the burden of providing detailed company information needed by the CRA to make an appropriate NAICS code designation. The specific considerations for determining control by socially and economically disadvantaged individuals are outlined in the Regulations, as may be supplemented by written interpretations, guidance and/or procedures issued by U.S. DOT or the CUCP from time to time.

H. Other Considerations

1. Commercially Useful Function

Commercially useful function issues will not be considered in any way in making decisions about whether to certify a firm as a DBE. Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs.

2. Pattern of Conduct

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

3. Present Circumstances

CCCTA will evaluate the eligibility of a firm on the basis of present circumstances and will not refuse to certify a firm based solely on historical information indicating lack of ownership or control by socially and economically disadvantaged individuals. If the firm currently meets ownership and control standards, CCCTA will not refuse to certify a firm solely on the basis that it is a newly formed business, 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.

4. DBE Cooperation

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

5. For-Profit Firms

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

6. Subsidiaries and Affiliates

An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in the Regulations, a firm that is not owned by such individuals, but instead is owned by another firm (even a DBE firm), cannot be an eligible DBE.

7. Prequalification

CCCTA will not require a DBE firm to be prequalified as a condition for certification unless it requires all firms that participate in its contracts and subcontracts to be prequalified.

8. Native American Tribal Organizations

CCCTA recognizes that a firm owned by an American Indian tribe or Native Hawaiian organization as an entity, rather than by American Indians or Native Hawaiians as individuals, may be eligible for certification as long as such firm meets the size standards and is controlled by socially and economically disadvantaged individuals. Likewise, an Alaska Native corporation may be certified as a DBE providing it meets the criteria outlined in 49 CFR § 26.73(i).

9. Interstate Certification

When a firm currently certified in its home state applies to CCCTA for certification, or a firm currently certified by CCCTA applies to another state UCP for certification, the firm will provide information required by that UCP. The CUCP adopted an Out-of-State Certification Declaration form for completion by applicant firms certified in their home state. In addition to this form, the firm must provide CCCTA with the information outlined in 49 CFR Part 26.85 and any other information required by CCCTA to make a decision.

Upon receipt of all required information from the applicant firm, CCCTA will contact the firm's home state within seven days requesting a copy of the site review report and relevant updates and/or analysis of this information. If CCCTA receives a request from another UCP for a site review report, it will forward the report to that UCP within seven days of receipt of the request

CCCTA will evaluate information submitted by the applicant firm and the firm's home state UCP to determine if the firm is eligible for certification in California or if there is good cause to believe that the decision made by the home state is erroneous. Eligible firms will be certified and placed in the CUCP DBE Database. If CCCTA determines there is good cause to believe the applicant firm is not eligible for certification in California, it will notify the firm of the reasons for that decision. In both cases a notice will be sent to the firm within sixty (60) days of the date when all required certification information was received.

The firm may elect to reply in writing or request an in-person hearing with the CCCTA's reconsideration official to discuss the CRA's objections to the firm's eligibility. If an in-person hearing is requested by the firm, it will be scheduled within thirty (30) days of receiving the firm's request. CCCTA will issue a written decision within thirty (30) days of receipt of the written response or the date of the in-person hearing, whichever is later.

The firm's application for certification is stayed pending the outcome of this process. The final decision by CCCTA may be appealed to the U.S. DOT Departmental Office of Civil Rights.

Specific considerations for determining these other considerations are outlined in the Regulations, as may be supplemented by written interpretations, guidance and/or procedures issued by U.S. DOT or the CUCP from time to time.

VIII. DBE CERTIFICATION PROCEDURES

A. Unified Certification Program

CCCTA is a participant in the California Unified Certification Program (CUCP), which is a reciprocal statewide DBE certification program. It is the intent of CCCTA to cooperate and participate fully in the facilitation and implementation of the CUCP.

B. Initial Certification

CCCTA will ensure that only firms certified as eligible DBEs participate as DBEs in its *DBE Program*. CCCTA will determine the eligibility of firms as DBEs consistent with standards in the Regulations. CCCTA will take the following steps in determining whether a DBE firm meets the certification standards of the Regulations.

1. Application

CCCTA will require potential DBEs to complete and submit the DBE Uniform Certification Application form approved by U.S. DOT as well as all supporting documents, including, but not limited to, the personal financial statement. CCCTA will ensure that the owner(s) of the applicant firm 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 owner(s) before a person authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States. CCCTA will review all information on the application form and supporting documentation, as well as information gleaned during the on-site review, before making a decision about the DBE eligibility of the firm.

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

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

2. Review of Eligibility

The CRA will take information and eligibility circumstances of the applicant firm:

- a. Determine if at least fifty-one percent (51%) of the owners are socially and economically disadvantaged.

- b. Analyze ownership and control aspects of the firm, including owner's contributions to acquire stock or ownership percentage, structure of the firm including corporate documents and partnership agreements, working relationships, delegation of major functions, bonding and financial capacity, business size standard, third-party agreements, contract and work history, preferred types of work and locations, equipment owned or available for the firm's use, licenses/permits of the firm and key personnel, and independence.
- c. Conduct an on-site visit at the firm's principal place of business, interview the principal(s) of the firm, and review their resumes and work histories. The CRA also may visit job sites in CCCTA's service area, if any, at the time of the eligibility investigation. CCCTA may rely upon the site visit reports of other U.S. DOT recipients with respect to a firm applying for certification.

The CRA will notify the applicant firm within thirty (30) days of receipt of the application whether the application form and supporting documents are complete and suitable for evaluation. If not complete and suitable, the CRA will advise what further information or action is required. If the applicant firm withdraws its application before a decision is made, the firm may resubmit the application at any time.

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

C. Reciprocal Certifications

When a U.S. DOT recipient in California has certified a firm pursuant to the CUCP MOA and the Regulations, CCCTA will accept that firm as an eligible DBE on its contracts. When another U.S. DOT recipient or UCP outside of California has certified a DBE firm, CCCTA has the discretion to take any of the following actions.

1. Accept the DBE certification of another recipient or UCP on a reciprocal basis.
2. Make an independent certification analysis based on documentation provided by the other recipient or UCP, augmented by any additional information CCCTA requires the applicant firm to provide.
3. Require the applicant firm to go through the CUCP's certification process without regard to the action of the other recipient or UCP.

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

D. Certification Period

Once CCCTA certifies a firm as an eligible DBE, it shall remain certified unless and until its certification is removed. CCCTA will not require DBEs to reapply for certification as a condition of continuing to participate in its *DBE Program*, unless there is a material change in the factual basis on which the certification was made. DBEs will be required to reapply and be certified if their certification is removed. CCCTA may conduct a comprehensive review of a certified firm, including a new onsite review, five years from the date of the firm's most recent certification or sooner, if appropriate, due to changed circumstances.

1. Notification of Change in Circumstances

A DBE firm will be required to inform CCCTA in writing of any changes in circumstances affecting the firm's ability to meet disadvantaged status, business size, management responsibilities, ownership or control requirements, or any material change in the information provided in the certification application process. Further, the firm will be required to provide supporting documentation describing in detail the nature of such changes.

Such notice of change from the DBE firm must take the form of (a) an affidavit sworn to before a person authorized by state law to administer oaths or (b) an unsworn declaration executed under penalty of perjury of the laws of the United States. The written notification shall be provided by the DBE within thirty (30) days of occurrence of the change(s). If the DBE fails to make timely notification of such changes, it will be deemed to have failed to cooperate under the Regulations.

2. Annual Affidavit of Continuing Eligibility

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

E. U.S. Small Business Administration Certifications

If a firm applying for certification has a current, valid certification from or is recognized by the SBA under its 8(a) program or small and disadvantaged business (SDB) program, CCCTA will make an eligibility decision based on the firm's SBA application package in lieu of requiring the firm to complete another application. To expedite the DBE certification process, the applicant firm may complete the DBE application form and submit it with the required supporting documentation.

The applicant firm must satisfy the U.S. DOT size standards and the socially and economically disadvantaged owners must demonstrate that their personal net worth does not exceed \$1.32 million. CCCTA may ask the applicant firm for additional, relevant information. CCCTA will conduct an on-site review or may rely on the SBA's report of its on-site review.

If a CCCTA-certified firm applies to SBA, CCCTA will forward the firm's application package to SBA within thirty (30) days of receipt of a signed, written request from the DBE firm. If additional information is requested by SBA, it will be transmitted within forty-five (45) days after receipt of a written request.

F. Denials and Reapplication Procedures

When CCCTA determines an applicant firm is not eligible for certification, the CRA will provide the firm a written explanation of the reason(s) for the denial, specifically referencing evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based will be made available to the applicant firm upon request. When an SBA certified firm is denied DBE certification, CCCTA will notify SBA in writing of the reasons for denial.

When a firm is denied certification because it does not meet the eligibility standards, it is required to wait twelve (12) months before it may reapply for certification, or as provided by the CUCP MOA. An applicant firm denied certification due to failure to respond to request (lack of cooperation) may reapply for certification at any time. The time period for reapplication begins to run on the date the letter of explanation is received by the firm. A firm denied certification due to failure to meet eligibility requirements may appeal this decision to U.S. DOT.

G. Removal (Decertification) Procedures

A DBE firm that no longer meets the eligibility standards, or a firm that concealed or misrepresented information during the certification process, will have its certification removed. A firm shall remain certified during the removal process.

1. Initiating Removal of Certification

a. Ineligibility Complaints

Any person may file a written complaint that alleges a currently certified firm is ineligible for certification. A written complaint must specify reasons for the allegation and include any information or arguments supporting the allegation. A general allegation or anonymous complaint will not be accepted.

As deemed necessary, the CRA will (a) review the complaint, certification records and other available information, (b) request additional information from the complainant and/or the DBE firm and (c) conduct any other investigation in order to determine whether there is reasonable cause to believe the firm is ineligible. The CRA will ensure confidentiality of complainant's identity, as specified in the Regulations.

b. CCCTA-Initiated Proceedings

The CRA will review all notifications of changes in circumstances or other information that comes to CCCTA's attention, including notification of removal actions of other U.S. DOT recipients or UCPs, to determine whether there is reasonable cause to believe a currently certified DBE firm is ineligible.

c. U.S. DOT Directive to Initiate Proceeding

A U.S. DOT agency may direct CCCTA to initiate a proceeding to remove the firm's certification because it has determined that information in the certification records or other information available provides reasonable cause to believe that a firm is ineligible. The U.S. DOT agency will provide CCCTA and the firm a notice setting forth reasons for the directive, including relevant documentation or other information.

2. Reasonable Cause to Believe a Firm is Ineligible

If the CRA determines there is no reasonable cause to believe the firm is ineligible for certification, the CRA will provide written notice to the firm and the complainant (when a complaint was filed with CCCTA), stating the reasons and referencing the evidence in the record on which each reason is based. If the CRA determines that there is reasonable cause to believe the firm is ineligible, the following steps shall be taken to remove the firm's certification.

a. Written Notice

The CRA will provide written notice to the firm that it proposes to find the firm ineligible for further participation in the *DBE Program*.

The notice shall include the reasons for the proposed removal and reference evidence in the record that supports the determination. The notice shall also include notification that the firm has the right to an informal hearing.

b. Informal Hearing

The CRA will notify the firm of the opportunity for an informal hearing so the firm may respond in person to the reasons for the proposed removal of eligibility and provide any information and arguments concerning why it should remain certified. The firm also may provide written arguments and information in lieu of a hearing. During the removal procedure, the CRA's determination must demonstrate, by a preponderance of the evidence, that the firm does not meet the certification standards. CCCTA will maintain a complete record of the hearing. If the firm appeals the final determination to U.S. DOT, CCCTA will provide a transcript of the hearing to U.S. DOT and, on request, to the firm.

c. Removal Decision

After the hearing, the CCCTA reconsideration official will make a final determination to remove or maintain the firm's certification. The reconsideration official will not base any decision to remove eligibility on a reinterpretation or changed opinion regarding information available to CCCTA at the time of its certification of the firm. The reconsideration official will base removal decisions only on one or more of the following reasons: changes in the firm's circumstances since its certification; information or evidence not available to CCCTA at the time of certification; information that was concealed or misrepresented by the firm in previous certification actions; a change in certification standards or requirements of U.S. DOT since the firm was certified; or a documented finding that CCCTA's decision was factually erroneous. When an SBA firm is decertified, CCCTA also will notify the SBA in writing, stating the reasons for removing the firm's DBE certification.

d. Notice of Decision

The CCCTA reconsideration official will provide the firm written notice of the final decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice will inform the firm of the consequences of this decision and of the availability of an appeal to U.S. DOT. CCCTA will send copies of the notice to the complainant in an ineligibility complaint or the U.S. DOT agency that directed CCCTA to initiate the proceeding.

e. Status of Firm During Proceeding

The firm remains an eligible DBE pending a final determination by CCCTA to remove its eligibility. The firm becomes ineligible when CCCTA issues its final notice of decision to remove the firm's DBE certification.

f. Effects of Removal of Eligibility

The CRA will take the following actions upon the removal of a firm's certification eligibility.

- (1) Notify the CUCP of the final determination and update the CUCP DBE Database.
- (2) Determine whether the decertified firm is currently participating in a CCCTA contract or was included in a recent bid or proposal.
- (3) When a CCCTA contract or subcontract has not been executed before issuance of the decertification notice, the ineligible firm does not count toward the contract goal or annual overall goal. CCCTA will direct the prime contractor to meet the CCCTA contract goal with another eligible DBE firm or demonstrate to CCCTA that it has made sufficient good faith effort to do so, except where substitution is prohibited under California Public Contracts Code Section 4107.

- (4) If CCCTA has executed a prime contract or a prime contractor has executed a subcontract with a firm before it is notified of its ineligibility, CCCTA or the prime contractor may continue to use the firm on the contract and may continue to count the firm's participation toward the contract goal. CCCTA will not count toward the overall annual goal that portion of the ineligible firm's performance on the contract or subcontract after the final notice of ineligibility is issued.
- (5) If the DBE's ineligibility is caused solely by its having exceeded the business size standard during the performance of the contract, CCCTA will continue to count its participation on that contract toward the contract and annual overall goals.

g. Certification Appeals to U.S. DOT

A firm that has been denied certification or whose eligibility is removed may make an administrative appeal to the U.S. DOT. A complainant in an ineligibility complaint to CCCTA may appeal to U.S. DOT if CCCTA does not find reasonable cause to propose removing the firm's eligibility. Pending the U.S. DOT appeal decision, CCCTA's decision shall remain in effect. All appeals shall be sent to U.S. DOT at the following address: External Civil Rights Program Division, Departmental Office of Civil Rights, U.S. Department of Transportation, Office of the Secretary of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590.

All requests for an appeal must be sent, in writing, within ninety (90) days of the final decision. The appeal request shall include information and arguments regarding why the decision should be reversed. If the appellant is a firm denied certification or whose certification was removed, its written request should include information regarding applications it has filed with other U.S. DOT recipients and its current certification status with those recipients. If the appeal is from a third party, the party will be requested by U.S. DOT to provide the same type of information. Failure to provide specific information described in the Regulations may be deemed a failure to cooperate.

Within fifteen (15) days upon receipt of a request from U.S. DOT, the CRA shall provide a copy of the complete administrative record, including a hearing transcript. If CCCTA determines it is necessary to extend the time period for submission of the administrative record, it will request an extension from U.S. DOT.

U.S. DOT will make its decision based solely on the entire administrative record, and other relevant information, without conducting a hearing. The firm and complainant shall have access to any information reviewed by U.S. DOT, consistent with federal or applicable state laws concerning freedom of information and privacy.

The U.S. DOT will affirm the decision of CCCTA if it determines, based on the entire administrative record, that the decision is supported by substantial evidence or is consistent with the substantive or procedural provisions concerning certification. U.S. DOT will reverse the decision if it determines that it was unsupported by substantial evidence or was inconsistent with certification provisions. U.S. DOT shall send written notification of its decision, including the reasons therefore, to CCCTA, the firm and any complainant.

If the U.S. DOT affirms the decision of CCCTA, no further action will be taken. If the decision is reversed, the CRA will take all appropriate actions to conform to the U.S. DOT's decision immediately upon receiving the written notice. U.S. DOT decisions are administratively final and are not subject to petitions for reconsideration. The U.S. DOT decision is binding on CCCTA and the CUCP.

IX. PUBLIC PARTICIPATION AND OUTREACH EFFORTS

CCCTA's activities managing public participation and outreach efforts are directed at assisting CCCTA to solicit public input to set its overall annual DBE participation goals and to meet the established overall annual DBE goals. In establishing an overall annual DBE goal, CCCTA will provide for the following public participation.

- Prior to finalizing the annual *DBE Report*, the CRA will consult with other U.S. DOT recipients, minority, women, and general contractor groups, community organizations, and other individuals, officials or organizations that could be expected to have information concerning the availability of disadvantaged and nondisadvantaged businesses, the effects of discrimination on opportunities for DBEs, and CCCTA's own efforts to establish a level playing field for the participation of DBEs.
- CCCTA will publish a notice that (1) announces its proposed overall DBE goals for a three-year period, (2) informs the public that CCCTA's *DBE Report* is available for inspection during normal business hours at the Civil Rights Office for a period of thirty (30) days, and (3) advises comments will be accepted by CCCTA and the U.S. DOT on the proposed goals for forty-five (45) days from the date of the notice. The notice will be distributed in general circulation and local minority-focused media, posted on the CCCTA website and at CCCTA's office in Concord, and mailed to the DBE resource agencies.
- In conjunction with CCCTA's activities to meet its overall DBE goals, CCCTA will implement various public participation and outreach activities designed to broaden awareness of CCCTA's *DBE Program* for contracts. The measures described in 49 CFR Part 26.51, focusing on race-neutral means will be actively pursued, and CCCTA will encourage its contractors to make similar outreach efforts to include DBE participation in subcontracting opportunities. In conjunction with the BOC, CUCP and other U.S. DOT recipients, CCCTA will continue to organize and offer informational programs for meeting DBE certification eligibility requirements, familiarize potential contractors with CCCTA's procurement procedures and requirements, and develop effective programs to further the inclusion of DBEs in CCCTA's contracting activities.