

Potrero Yard Modernization Project: Bus Yard Infrastructure Facility*

DRAFT

Small Business Enterprise/Disadvantaged Business
Enterprise (“SBE/DBE”) Plan
November XX, 2024

*A separate Inclusionary Plan for the Potrero Yard Modernization Project Housing and Commercial Component will be developed at a later date.



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1 SBE/DBE Plan

1.1 Introduction

In 2017, the San Francisco Municipal Transportation Agency (“**SFMTA**”) launched the Building Progress Program, a \$1.2 billion multi-year effort, to repair, renovate, and modernize the SFMTA aging facilities to keep the City moving and transition Muni to an all-electric bus fleet. Potrero Yard, with entrances on Mariposa Street (between Bryant and Hampshire streets), is the first site scheduled under the Building Progress Program that the SFMTA will modernize and renovate. Potrero Neighborhood Collective (“**PNC**”), as Lead Developer (“**LD**”), was selected to enter into a Predevelopment Agreement (“**PDA**”) to enhance the Project design and obtain entitlements. Following Board of Supervisor approval, the Project will be delivered under the Public-Private Partnership (“**P3**”) structure in which PNC will be responsible for finalizing design, building, financing, operating, and maintaining the Project over a 30-year term for the Bus Yard and a 75-year term for housing.

The Potrero Yard Modernization Project (“**Project**”) is the first of its kind both nationally and for the City and County of San Francisco. The Project is to construct a state-of-the-art bus facility that will serve as an operational and maintenance home to battery-electric buses and enable the SFMTA to expand the capacity for the bus fleet at the yard by over 50%, which will improve efficiency for ground transportation citywide. It is believed that the Project would be the nation’s first joint development of a bus maintenance facility with housing integrated on-site. Combining the bus yard improvements with affordable housing units will create opportunities for generations to come.

This SBE/DBE Plan (“**Plan**”) applies only to the Bus Yard Infrastructure Facility. Additionally, the Code of Federal Regulations 49 CFR Part 26 and SFMTA’s SBE/DBE Program also apply to the Bus Yard Infrastructure Facility. A separate inclusionary plan will be developed for the Housing and Commercial Component (“**HCC**”) of the Project.

PNC is committed to maintaining a small disadvantaged business supplier base throughout the entirety of the Project while also providing SFMTA optimal design, construction, ongoing asset management. The SFMTA’s goal is to create a level playing field on which SBEs/DBEs can compete fairly for contracts and subcontracts relating to its construction, procurement and professional services activities in accordance with the federal regulations in 49 CFR Part 26. Further, this SBE/DBE Plan is intended to guide the buying decisions of LD, Infrastructure Facility Design-Builder (“**Design-Builder**”)¹, and lower tier subcontractors/suppliers in support of SBE/DBE utilization.

At time of SBE/DBE Plan development, the LD is procuring for a Design-Builder for the Bus Yard Infrastructure Facility. The procurement includes a 2-step process with a Request for Qualifications (“**RFQ**”) and Request for Proposals (“**RFP**”). The LD has further identified a contractual structure that includes the PDA Lead Architect (Arcadis/IBI Group) to continue in this role as the Lead Architect during the Project Agreement phase. The successful bidder will be responsible to implement this SBE/DBE Plan and accept obligations of any Project Labor Agreement(s) that may apply.²

¹ At time of issuance of the SBE/DBE Plan, the LD has not identified a Design-Builder.

² At time of issuance of the SBE/DBE Plan, the LD has not entered into any Project Labor Agreement with any union.

Any changes to the SBE/DBE Plan must have SFMTA’s Contract Compliance Office (“**SFMTA CCO**”) approval.

1.2 Purpose and Scope

This Plan only governs the SBE/DBE obligations for the Bus Yard Component (“**BYC**”) also known as the Infrastructure Facility of the Potrero Yard Modernization Project and satisfies the obligations of the Lead Developer. There will be a separate inclusionary plan(s) for the HCC that will be developed at a later date.

Capitalized terms not defined herein shall have the meanings ascribed to them in the Pre-Development Agreement, Project Agreement, SFMTA’s SBE/DBE Program (“SBE/DBE Program”) or federal regulations (49 CFR 26) issued March 4, 1999, as amended from time to time (“Regulations”) as applicable. The SBE/DBE Program and the Regulations are incorporated into this Plan as though fully set forth herein. In the event of any conflict between the applicable portions of the Regulations, SBE/DBE Program and this Plan, the Regulations shall govern.

This Plan provides a vision on how LD will maximize SBE/DBE participation and include the expectations that LD and its Design-Builders will need to adhere to for compliance purposes. LD is ultimately responsible for meeting this SBE/DBE Plan. LD and its Design-Builders must perform outreach in an effort to obtain SBE/DBE participation.

1.3 SBE/DBE Goals

This Plan outlines the LD’s approach to meeting SBE/DBE Goals for the design and construction phase of the Bus Yard Infrastructure Facility of the Project. Lead Developer shall achieve the below SBE/DBE Goals. The SBE/DBE Goals include all awards made to SBE/DBE Contractors, Subcontractors, Consultants, Subconsultants, Vendors or Suppliers.

Table 1: LBE Requirements

Bus Yard Infrastructure Facility Project Phase	SBE Goal	DBE Goal
Design and Professional Services	20%	Woman-Owned DBE: 5%
Construction	15%	Black & Woman-Owned DBE: 5%
Maintenance	TBD	TBD

In order to meet the **20% and 15% SBE Goals for Design and Professional Services and Construction**, Small business firms must be certified in one of the following programs:

- California Unified Certification Program (DBEs) – Federal Program
<https://californiaucp.dbesystem.com>
- California Department of General Services (SBEs) – State Program
<https://www.caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>
- San Francisco Contract Monitoring Division (LBEs) – City Program
sfcitypartner.sfgov.org/pages/LBESearch/supplier-search.aspx

OR

- Have its Small Business Verification Form approved by SFMTA CCO

In order to meet the **5% Woman-Owned DBE Goal** for the Design and Professional Services Phase of this project, the Woman-Owned DBE firm(s) must be certified by the:

- California Unified Certification Program (DBEs) – Federal Program

In order to meet the **5% Black & Woman-Owned DBE Goal** for the Construction Phase of this project, the Black and/or Woman-Owned DBE firm(s) must be certified by the:

- California Unified Certification Program (DBEs) – Federal Program

The total average gross revenue thresholds for the past five years must not exceed the current SBA business size standard appropriate to the type(s) of work the firm seeks to perform as set forth below. Even if it meets the appropriate SBA size standard, a firm is not eligible if it (including its affiliates) has had average annual gross receipts over the firm's previous three fiscal years, in excess of \$30.72 million. These figures may be updated periodically by the DBE/SBE program - see SBA's webpage for updates:

<https://www.ecfr.gov/current/title-13/chapter-I/part-121#121.201>

SBE/DBE Goals identified during the Bus Yard Infrastructure Facility are inclusive of all types of SBE/DBE participation including traditional construction trades, architectural/engineering design services, other professional services, goods and supplies, trucking, and other project-related costs.

The LD will submit an SBE/DBE report at the end of the PDA period to the City to apply applicable SBE/DBE utilization credit to the SBE/DBE Goals. Likewise, if the LD conducts Early Works, any SBE/DBE participation will be reported to the City to apply applicable utilization credit to the SBE/DBE Goals.

1.3.1 SBE/DBE Open Ended Performance Plan³ (“OEPP”)

At the time of Proposal, D&C Proposers must submit a complete SBE/DBE Open-Ended Performance Plan (OEPP) with its proposal. The OEPP verifies the D&C Proposer's commitment to meet the SBE and DBE Goals with details of anticipated subcontracting opportunities. In the OEPP, D&C Proposers must submit a narrative detailing how the OEPP was formulated and how it will be successfully implemented with respect to all 4 SBE/DBE Goals referenced below. The OEPP must show enough work opportunities for SBEs & DBEs to achieve the SBE and DBE Goals.

The OEPP must include a commitment to use good faith efforts to meet the Goals and provide details of the types of subcontracting work or services with projected dollar amounts and percentages that the D&C Proposer will solicit SBEs & DBEs to perform. The OEPP must include an estimated time frame in which actual SBE and DBE subcontracts would be executed.

³ Pursuant to USDOT's Final Rule 2024 and 49 CFR Part 26, Section 26.53

The OEPP must at a minimum add up to the dollar value of the SBE and DBE goal percentages when it is submitted at time of proposal. An example of the datasets required is included in the SBE/DBE Plan. D&C Proposers will be required to include 4 separate tables (with the required datasets included in each table) in the OEPP:

- **Table 1 for the 20% SBE Goal for the Design and Professional Services portion**
- **Table 2 for the 5% DBE Woman-Owned Goal for the Design and Professional Services portion**
- **Table 3 for the 15% SBE Goal for the Construction portion**
- **Table 4 for the 5% Black & Woman-Owned DBE Goal for the Construction portion**

A complete OEPP includes:

The 4 separate tables described above which details the following:

- Anticipated Work Type
- Anticipated Timeframe of that Work
- Anticipated Time frame in which actual subcontracts would be executed
- Anticipated Dollar Value & Percentage of the Work Opportunities
- Adds up to the Dollar Value & Percentage of the specific SBE/DBE Goal
- Narrative detailing how the OEPP was formulated and how it will be successfully implemented with respect to all 4 SBE/DBE Goals
- Statement of Commitment from the D&C Proposer that it will use Good Faith Efforts to meet the SBE/DBE Goals throughout the life of the project.

D&C Proposer must submit a complete OEPP **at time of proposal** in order to be considered responsive for purposes of SBE/DBE.

Required Columns for each of the 4 tables is provided in detail below. Please note that D&C Proposer will need to create their own tables to add rows accordingly.

Required Columns for Table 1 for the 20% SBE Goal for the Design and Professional Services portion:

Anticipated SBE Work Activity/ Scope of Work*	Anticipated Time Frame of when subcontract will be executed	Anticipated Time Frame of work	Estimated Dollar Value for SBE Participation	Anticipated SBE %
		Total:	\$	%

Required Columns for Table 2 for the 5% DBE Woman-Owned Goal for the Design and Professional Services portion:

For Each Anticipated DBE Work Activity/ Scope or Work, Proposer Must Acknowledge that it will be Performed by a Woman-Owned DBE firm by Notating "CONFIRM"*	Anticipated DBE Woman-Owned DBE Work Activity/Scope of Work*	Anticipated Time Frame of when subcontract will be executed	Anticipated Time Frame of work	Estimated Dollar Value for DBE Participation	Anticipated DBE Woman-Owned %
				Total:	%

Required Columns for Table 4 for the 15% SBE Goal for the Construction portion:

Anticipated SBE Work Activity/Scope of Work*	Anticipated Time Frame of when subcontract will be executed	Anticipated Time Frame of work	Estimated Dollar Value for SBE Participation	Anticipated SBE %
		Total:	\$	%

Required Columns for Table 4 for the 5% Combined Black & Woman-Owned DBE Goal for the Construction portion:

For Each Anticipated DBE Work Activity/Scope of Work, Proposer Must Acknowledge that it will be Performed by a Black-Owned DBE and/or Woman-Owned DBE firm by Notating "CONFIRM"*	Anticipated DBE Work Activity/Scope of Work	Anticipated Time Frame of when subcontract will be executed	Anticipated Time Frame of work	Estimated Dollar Value for DBE Participation	Anticipated DBE %
			Total:	\$	%

*Please note that the selected Design-Builder will be required to update the above tables as required in Sections 1.5.1, 1.5.2, 1.5.3 and as requested by CCO. Additionally, the selected Design-Builder will be required to identify the above DBE NAICS Work Codes for the SBE/DBE work activity/scope of work/certification categories for the aforementioned updates.

1.3.2 SBE Set-Aside(s)

SBE set-asides requirements apply to this project.

Design and Professional Services:

Design-Builder must include at least one SBE designer for the Project Agreement phase. This participation will count towards the 20% Design and Professional Services SBE Goal.

Construction:

Proposer must set-aside the following scopes of work based on the below percentages:

CATEGORIES	SET-ASIDE PERCENTAGE (%) <i>At a minimum</i>
Concrete Contractor	10%
Earthwork & Paving	100%
Drywall	30%
Electrical	10%
Insulation/Acoustical	100%
Landscape	100%
Traffic Control	100%
Trucking and Hauling	75%
Construction Clean-up	100%

The above SBE set-aside participation will count towards the 15% Construction SBE Goal.

1.3.3 SBE/DBE Goals during Maintenance Period

Terms defining SBE/DBE utilization for the Maintenance Period (see above table) are to be determined and will be updated at least six (6) months prior to substantial construction completion is reached.

1.4 Liaisons

To meet the complexity and long-term nature of this Project, PNC will identify a Lead Developer Small Disadvantaged Business Liaison (“**LD Liaison**”) and will also require Design-Builder to specify an SBE/DBE Liaison (“**DB SBE/DBE Liaison**”, which together with the LD Liaison are referred to as “**Liaisons**” in this document). This structure is intended to maintain accountability and transparency of buyers throughout both the PDA Term and Project Agreement Term.

Each Liaison will be required to be knowledgeable of supplier inclusion principles and have experience in compliance and in utilizing small businesses via a disadvantaged business program.

As determined by the SFMTA CCO, the LD Liaison and DB SBE/DBE Liaison must meet with the City at a mutually agreed upon time regarding this SBE/DBE Plan and/or on any SBE/DBE issues.

1.4.1 Lead Developer Liaison

To administer the small disadvantaged business program for the Bus Yard Infrastructure Facility, LD has identified Rosales Business Partners LLC and Yerba Buena Advisors LLC as the Lead Developer Liaison. The LD Liaison will have direct, independent access to LD executive officer concerning SBE/DBE program matters and will be the City’s point of contact for items related to SBE/DBE participation.

Additionally, the LD Liaison (or their designee), will be responsible for implementing the following aspects of the Bus Yard Infrastructure Facility SBE/DBE Program including:

- During PDA Term
 - Conducting SBE/DBE outreach efforts to notify the SBE/DBE community of the Project during the PDA Term. Outreach efforts shall include holding a public workshop for applicable contractor communities to publicize anticipated contracting opportunities for the Project. The workshop may be held independently or in conjunction with other SBE/DBE outreach efforts;
 - Monitoring SBE/DBE participation and performance of a Commercially Useful Function (CUF) and ensuring that SBEs/DBEs have the correct SBE/DBE certification for work performed, including for any Early Work activities;
 - Reporting SBE/DBE participation to the City; and
 - Confirming that all Design-Builder solicitation documents include information about SBE/DBE participation including specific requirements to be responsive.

- During Project Agreement Term
 - Implementing small business assistance training and educational activities to support SBE/DBE growth and development;

- Confirming Good Faith Efforts for SBE/DBE participation conducted by Design-Builder to meet their respective SBE/DBE Goals stated in this Plan;
- Providing confirmation of the results of SBE/DBE responsiveness of bids/proposals to SFMTA CCO (including all SBE/DBE certification verifications, completed Good Faith Efforts taken by Design-Builder);
- Receiving concerns from SBEs/DBEs (e.g., non utilization, etc.) and guiding SBEs/DBEs to address concerns with Design-Builder;
- Ensuring retainage payments are returned to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of CCO. If the Contractor does not pay its subcontractor as required, it shall pay interest to the subcontractor at the legal rate set forth in California Code of Civil Procedure Section 685.010(a). This information is to be submitted to CCO upon request.;
- Confirming nondiscrimination in subcontracting; and
- Requiring clear selection procedures and criteria when the LD or Design-Builder decide to have a competitive procurement. The LD Liaison will certify any competitive procurement selection process for the Bus Yard Infrastructure Facility. Unless there is a rebid, the selection criteria/weights cannot be changed post bid.

During both the PDA and Project Agreement Term

- Utilizing good faith efforts to hire SBEs/DBEs for ongoing service contracts.

1.4.2 Design-Builder SBE/DBE Liaison

All Design-Build bidders will be required to identify an SBE/DBE Liaison.

The DB SBE/DBE Liaison will be responsible for implementing the SBE/DBE Program for the Bus Yard Infrastructure Facility, including:

- Holding a public workshop at least once annually for applicable contractor communities to publicize anticipated contracting opportunities for the Project. The workshop may be held independently or in conjunction with other SBE/DBE outreach efforts;
- Monitoring SBE/DBE participation and performance of a Commercially Useful Function (CUF) and ensuring SBEs/DBEs are certified under the appropriate SBE/DBE certification category and providing confirmation of such to LD Liaison;
- Confirming nondiscrimination/Contracts Assurances language is in all subcontract agreements and send to CCO;
- Maintaining all subcontracts agreements and provide to SFMTA upon request;
- Conducting Good Faith Efforts for SBE/DBE participation that meets the SBE/DBE Goals stated in this SBE/DBE Plan;
- Documentation of Good Faith Efforts outreach conducted. Design-Builder will provide results to LD Liaison for its review;
- Reporting SBE/DBE participation to the SFMTA CCO following LD review and approval;
- Updating, on a quarterly basis, the overall SBE/DBE OEPP to indicate completed, present and forecasted scopes of work to be performed by SBEs/DBEs. These updates should identify changes that impact SBE/DBE participation or confirm the overall OEPP remains the same because there are no changes that would impact SBE/DBE participation.

- Developing, in conjunction with the LD, a Mentor-Protégé Program and providing other small business assistance as appropriate; and
- Other duties as identified in this SBE/DBE Plan.

1.5 Subcontracted Goods and Services – SBE/DBE Goals

The established Goals for Design and Professional Services and Construction, respectively, will be applied to subcontracted goods and services. Selected Design-Builder will be responsible for obtaining a valid copy of SBE/DBE certifications issued by the applicable certifying agency from subtier bidders at time of subtier bid opportunity.

1.5.1 Design and Professional Services Subcontracting

At the time of bid submission, bidding Design-Builders for the Bus Yard Infrastructure Facility must provide an OEPP to be responsive (see Section 1.3.1). Due to the contractual structure of this Project, the OEPP must include the PDA Lead Architect (Arcadis/IBI Group) to continue in its role as the Lead Architect during the Project Agreement phase. Additionally, the proposing Design-Builders must commit in its OEPP to include at least one SBE designer for the Project Agreement phase.

To allow for adequate time for selected Design-Builder to bid out all Design and Professional Services scopes of work, within sixty (60) days of contract award, the successful Design-Builder shall identify all SBE/DBE subconsultants, vendors, and lower tier subconsultants that the Design-Builder will rely on to meet the SBE/DBE Goals. New subconsultants may be added at this time at the Design-Builder’s discretion; however, no SBEs/DBE listed at time of proposal submission can be substituted, removed from the Contract or have its Contract, purchase order or other form of agreement reduced without LD/SFMTA CCO’s prior approval. SBE/DBE agreements may be modified to increase contract amount without LD/SFMTA CCO’s prior approval.

The Forms listed below will need to be submitted by the successful Design-Builder within 60 days of contract award.

SBE/DBE Form No. 1	Consultant/Joint Venture Partner and Subconsultant Participation Report
SBE/DBE Form No. 2A	Bidders List
SBE/DBE Form No. 2B	SBE/DBE Consultant/Joint Venture Partner/Subconsultant Gross Revenue Declaration
SBE/DBE Form No. 3	Questionnaire on Recruitment, Hiring, and Training Practices for Consultants
SBE/DBE Form No. 4	Subconsultant Participation Declaration
SBE/DBE Form No. 5	Small Business Enterprise/Disadvantaged Business Enterprise Acknowledgment Declaration

1.5.2 Construction Subcontracting

At the time of bid submission, bidding Design-Builders for the Bus Yard Infrastructure Facility must provide an OEPP. All SBE Set-Asides identified in Section 1.3.2 above must be included in the OEPP.

To allow for adequate time for selected Design-Builder to bid out all Construction scopes of work, within 90 days after Notice To Proceed (NTP), the successful Design-Builder will identify all SBE/DBE subcontractors, vendors, and lower tier subcontractors that the Design-Builder relies on to meet the SBE/DBE Goals. New subcontractors may be added at the Design-Builder’s discretion; however, no SBEs/DBEs listed at time of proposal submission can be substituted, removed from the Contract or have its Contract, purchase order or other form of agreement reduced without LD/SFMTA CCO prior approval. SBE/DBE agreements may be modified to increase contract amount without LD/SFMTA CCO prior approval.

The Forms listed below will need to be submitted by the successful Design-Builder within 90 days after NTP.

SBE/DBE Form No. 1	Contractor/Joint Venture Partner and Subcontractor Participation Report
SBE/DBE Form No. 2A	Bidders List
SBE/DBE Form No. 2B	SBE/DBE Contractor/Joint Venture Partner/Subcontractor Gross Revenue Declaration
SBE/DBE Form No. 3	Construction Employment Information
SBE/DBE Form No. 4	Subcontractor Participation Declaration
SBE/DBE Form No. 5	Small Business Enterprise/Disadvantaged Business Enterprise Acknowledgment Declaration

1.5.3 OEPP Updates

The selected Design-Builder must update its SBE/DBE OEPP at least quarterly (January 15, April 15, July 15 and October 15) to:

1. Demonstrate how the LD/Design-Builder is meeting and forecasting to meet its SBE/DBE Goals (reference Section 1.3 and 1.5 above).
2. Identify DBE NAICS Work Codes for the SBE/DBE work activity/scope of work/certification categories that will be used to pursue SBE/DBE Subcontractors
3. SFMTA CCO will provide ongoing monitoring in order to evaluate whether the LD/Design-Builder is using good faith efforts to comply with the OEPP and schedule. SFMTA CCO must approve all changes to OEPP.
4. SFMTA and LD/Design-Builder may agree to make written revisions to the OEPP throughout the life of the project as long as the LD/Design-Builder continue to use good faith efforts to meet the Goals.

1.6 Good Faith Efforts

LD & Design-Builder must make good faith efforts to enter into contracts with SBEs/DBEs and give good faith consideration to bids and proposals submitted by SBEs/DBEs.

As part of LD’s Good Faith Efforts (“**Good Faith Efforts**”) to reach the SBE/DBE Goals identified, the LD will cause the following to be performed:

1.6.1 Advance Notice

During the Project Agreement Term, notify SFMTA CCO in writing of all upcoming solicitations of proposals for work under a Contract at least fifteen (15) business days before issuing such

solicitations to allow opportunity for LD/SFMTA CCO to help identify the possible SBE/DBE categories that the Design-Builder should outreach to for the Contract scope of work.

1.6.2 Contract Size

Where practicable, the Design-Builder in their sole discretion, may divide the work in order to encourage maximum SBE/DBE participation. The Design-Builder will identify specific items of each Contract that may be performed by Subcontractors.

1.6.3 Advertise

LD and Design-Builder will advertise all upcoming proposals/solicitations for at least 30 days where an SBE/DBE opportunity has been identified. This will ensure an adequate amount of time is given to all bidders to prepare and submit their bids/proposals. Advertise for professional services and contracting opportunities in media focused on small disadvantaged businesses.

1.6.4 Pre-Bid Meetings

As Design-Builder deems necessary, convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposal to provide opportunity for SBEs/DBEs to ask questions about the selection process and/or technical specifications or requirements.

1.6.5 SFMTA CCO Invitation

If a pre-bid meeting or other similar meeting is held with proposed bidders, Design-Builder must invite the SFMTA CCO to the meeting to allow SFMTA CCO along with the Design-Builder to address the SBE/DBE Goal(s) and answer any SBE/DBE related questions.

1.6.6 Follow-up with Interested SBE/DBE Bidders

Design-Builder will follow-up on initial solicitations of interest by contacting SBEs/DBEs to determine with certainty whether they are interested in performing specific scopes of work. Each attempt to contact SBEs/DBEs, including by phone or email, shall be documented.

1.6.7 Outreach

The Design-Builder will a) provide SBEs/DBEs with applicable and necessary plans, specifications, and requirements for all or part of the Project; and b) notify organizations that disseminate bid and contract information. The DB SBE/DBE Liaison will conduct outreach to SBEs/DBEs for all buying opportunities in the applicable trades, professional services, and material (supplies, equipment) needs in order to encourage SBEs/DBEs to participate on the Project.

The LD requires Design-Builder to implement the following when outreaching to SBEs/DBEs:

- Communicate subcontracting opportunities early, consistently, and through multiple channels. This outreach should communicate anticipated buying needs, solicit SBEs'/DBEs' interest in specific contracting opportunities, and encourage SBEs/DBEs to attend future pre-bid meetings.
- Provide an interactive web link to bidding opportunities or a list of bidding opportunities on the Design-Builder's webpage, bidding software, or similar web-based platform.
- Post award results on the Design-Builder's webpage, bidding software, or similar web-based platform.

1.6.8 Contacts

Make contacts with SBEs/DBEs, associations, development centers, or any agencies which disseminate bid and contract information. These contacts will be used to advertise bidding opportunities and general project updates.

1.6.9 Nondiscrimination & Incorporation into Contract Provisions

For each Contract that the LD and Design-Builder enters into with a Contractor or Consultant, the LD and Design-Builder will include a Contract provision requiring the Contractor or Consultant to comply with the terms of SFMTA's SBE/DBE Program and this Plan and setting forth the applicable SBE/DBE Goal(s) as appropriate for such Contract.

LD and its Design-Builder shall not discriminate in its selection of Contractors and Consultants, and such Contractors and Consultants shall not discriminate in their selection of Subcontractors, Subconsultants, and Suppliers against any person on the basis of race, color, sex or national origin in the award and administration of DOT-assisted contracts. The City and County of San Francisco also prohibits discrimination on the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

For the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory.

LD/Design-Builder will submit copies of all subcontracts to CCO as they are executed. It is the responsibility of the prime contractor to ensure that every executed subcontract on this project includes the exact non-discrimination language contained in the Contract Assurances section of the SBE/DBE Program, which is as follows:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of [49 CFR part 26](#) in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

1.6.10 Maintain Records and Cooperation

LD and Design-Builder shall maintain records of SBEs/DBEs that are awarded Contracts for five years following the expiration of the Design-Builder contract. If requested, LD and Design-Builder will meet and confer with SFMTA CCO as reasonably required in addition to the meet and confer sessions described below in Section 1.6.12 to identify a strategy to meet the SBE/DBE Goal(s). At the SFMTA CCO request, LD shall provide or cause Design-Builder to provide information to SFMTA CCO within 21 calendar days so SFMTA CCO can monitor compliance with the SBE/DBE Plan.

1.6.11 Quarterly and Annual Reports

During the Project Agreement Term the SBE/DBE Liaison(s) shall prepare a quarterly (due January 15, April 15, July 15 and October 15) and annual report (due January 31 for the prior year) of SBE/DBE Goals attainment and submit to SFMTA CCO. Details of reporting requirements are found in Section 1.11.

1.6.12 Meet and Confer

Commencing with the Contract that is executed for a Design-Builder and every six (6) months thereafter, or more frequently if requested by any of the parties listed in this section, the LD, Design-Builder, and SFMTA CCO shall meet in order to ascertain whether there are deficiencies to any of the SBE/DBE Goals and, in such cases, execute plans to perform good faith efforts and adjust the SBE/DBE OEPP. For any concerns raised by SFMTA CCO, the LD, Contractor, Consultant, and/or Subcontractor shall be required to meet with SFMTA CCO within 21 days of SFMTA CCO's meeting request.

1.6.13 Documenting Good Faith Efforts Outreach

Design-Builder may be asked to provide documentation of its outreach efforts that were conducted to select SBEs/DBEs to meet the SBE/DBE Goal(s). This documentation shall be provided to LD within 5 business days of request. At minimum, Design-Builder must maintain the following documentation:

- The name of each listed subcontractor, the dollar amount of each subcontract and the scope of work to be performed under the subcontract;
- For each subcontractor listed, identify whether the firm is a
 - SBE,
 - Woman-Owned DBE construction, professional services, and/or goods and other services firm ,
 - Black-Owned DBE construction firm; or
 - Non-SBE/DBE;
- Provide copies of all of the Subcontractor Bids submitted (including bids that were not accepted), if applicable. The information should include the name of the firm, bid amount, scope of work, and the SBE/DBE/Non-SBE/DBE status as noted in the second bullet above.
- In cases where both SBEs/DBEs and Non-SBEs/DBEs submitted bids for the same scope of work and where the Non-SBE/DBE was selected, provide a full and complete statement of the reason(s) for selection of each non-SBE/DBE Subcontractor, if applicable.
- In cases where only Non-SBEs/DBEs submitted bids for a particular scope of work and where a Non-SBE/DBE was selected, the bidder shall note that this is the case, provide the scope of work, and state efforts made to outreach to SBEs/DBEs for stated scope of work, if applicable.

LD will not allow D&C Proposers to accept unwritten (verbal) bids except in the case of an applicable State of Emergency proclaimed by City, State, or Federal agency. In the unlikely event that the Design-Builder accepts an unwritten bid, then they will be required to submit a written statement containing the information: 1) the amount of each oral Bid; 2) separately, for

each subcontract, a full and complete statement of the reason(s) for selection of the Subcontractor.

1.7 Best Faith Outreach

In addition to the above identified Good Faith Efforts, Design-Builder is encouraged to take on the following best faith efforts to maximize SBE/DBE participation:

- Meet with Tier 1 Subcontractors bi-weekly, or more often as appropriate, to confirm compliance with this Plan.
- Develop a pre-qualification process that reviews lower tier partners from a best-value perspective that weighs SBE/DBE status of bidder, or experience with meeting SBE/DBE Goals in the overall selection criteria, and/or plans to hire local residents.
- Recognize lower tier contractors successful in meeting SBE/DBE Goals through formal awards programs, team lunch for onsite labor, or other methods.
- Identify non-traditional opportunities for SBE/DBE participation such as insurance, safety, equipment, technology, signage, translation services and services for construction office facilities.
- Require lower-tier Subcontractors and Subconsultants to establish a contract-specific goal for SBE/DBE participation.
- Require Subcontractors that are not compliant with this SBE/DBE Plan to prepare a Subcontracting/Vendor Plan indicating how it plans to improve upon its Good Faith Efforts as identified in Section 1.6 within 30 days of notice.
- Provide tracking of the above listed activities in a monthly report to LD.

1.8 Assistance to Small Businesses

As part of the LD's technical assistance and capacity building proposal, the Design-Builder will need to cooperate with the LD in developing a capacity building initiative that is multi-pronged and designed to support certified SBE/DBE growth and development. The objective of the program is to enhance the capabilities and technical development of SBEs/DBEs, improve their ability to successfully grow and compete on this Project, and assist in building relationships with LD, Design-Builder, and City or corporate buyers for future teaming opportunities. The success of the program depends on the level of commitment by all parties involved.

Below outlines capacity building initiatives that LD anticipates to be offered throughout the Bus Yard Infrastructure Facility:

- **Education and Training Program** provide lower tier SBEs/DBEs with technical assistance and capacity building services by partnering with existing small business advocacy organizations; support SBE/DBE eligible companies in navigating the certification process; and/or sponsor SBE/DBE executive(s) in attending business training programs (such as Dartmouth University's Tuck Diversity Business Program or other similar program providing multi-day executive level capacity building).
- **Mentor-Protégé Program** – As part of the LD's mentoring/coaching proposal, the Design-Builder will need to cooperate with the LD in developing a Mentor-Protégé Program or similar program with the goal to improve SBE/DBE participants' ability to compete effectively for contracts. The Mentor-Protégé program should identify Mentor(s) (project personnel with financial decisionmaking responsibilities) providing training,

networking, and general mentorship to Protégé(s). The intent is for the proteges to be SBE/DBE subcontractors on the BYC. Additionally, the Mentor-Protégé program should provide a framework that identifies the number of mentor-protégé teams, specific activities to be conducted, tracking and reporting plan, and how success will be measured.

1.9 SFMTA CCO Obligations

The following are obligations of SFMTA CCO:

- 1.9.1.1 During the fifteen (15) business day notification period for upcoming Contracts (as required by Section 1.6.1), SFMTA CCO will help assist the LD and/or Design-Builder in identifying the possible applicable SBE/DBE categories/NAICS Work Codes so that the LD and/or Design-Builder can send such notification to SBEs/DBEs to alert them to upcoming contracting opportunities as performance of Good Faith Efforts outreach. LD and/or Design-Builder must provide SFMTA CCO an Engineer's Estimate and/or breakdown of the scope of work at the earliest practicable time so SFMTA CCO can provide its assistance. The Liaisons will submit a list of the possible SBE/DBE categories/NAICS Work Codes for SFMTA CCO to review. Once SFMTA CCO has this necessary information (including any clarifications that SFMTA CCO may need), it shall respond within 5 business days to determine if there are additional categories/NAICS Work Codes that should be outreached to.
- 1.9.1.2 Provide assistance to LD/Design-Builders or their lower tier Subcontractors or Subconsultants on how to navigate through the SBE/DBE Directories in order to obtain contact information to perform Good Faith Efforts outreach to SBEs/DBEs.
- 1.9.1.3 Review quarterly and annual reports of SBE/DBE Goals. When necessary, in a timely manner give suggestions as to how best to maximize SBEs/DBEs ability to compete and win procurement opportunities.
- 1.9.1.4 Provide guidance to the LD and its Design-Builders when there are challenges in meeting SBE/DBE Goal(s).
- 1.9.1.5 Assist LD and Design-Builders in implementing its SBE Trucking program.
- 1.9.1.6 Meet as needed with City and LD, Design-Builders and/or Subcontractors regarding SBE/DBE participation questions or concerns.

1.10 SBE Trucking Program

The Design-Builder must set aside at least 75% of eligible trucking work to SBE Trucking Firms. The Design-Builder must coordinate with its Subtiers to determine and manage the trucking needs for the Project.

The Design-Builder shall actively engage SBE certified trucking firms to the maximum extent possible to participate on the Bus Yard Infrastructure Facility. When the 75% SBE requirement is not being met in a given month, the Design-Builder shall immediately inform the SFMTA CCO.

Additionally, if it is determined that there is specialized trucking that would impact the ability of trucking SBEs to perform such work, the Design-Builder must communicate this immediately to the LD, SFMTA CCO, and SBE trucking firm(s).

The Design-Builder must notify the LD/SFMTA CCO 21 days prior to the start of any trucking work. For months where there is trucking, the Design-Builder shall submit a monthly report to

LD/SFMTA CCO (by the last day of each month) certifying that the 75% SBE Set-Aside trucking requirement is being met or provide the Good Faith Efforts documentation performed for all trucking work as prescribed in Section 1.6 and this section above.

1.11 Reporting and Monitoring

Each Contractor, Consultant, and its Subcontractors and Subconsultants, as applicable, shall maintain accurate records demonstrating compliance with the SBE/DBE Goals. LD shall create a reporting method for tracking SBE/DBE participation. Data tracked shall include information identified on SBE/DBE Form No. 6 (Progress Payment Report), including:

- Name/Type of Contract(s) let (e.g. civil engineering contract, environmental consulting, etc.)
- Name of Prime Contractors, including identifying which are
 - SBEs,
 - Woman-Owned DBEs (construction, professional services, and/or goods and other services),
 - Black-Owned DBEs (construction), and
 - Non-SBEs/DBEs
- Name of Subcontractors, including identifying which are
 - SBEs,
 - Woman-Owned DBEs (construction, professional services, and/or goods and other services),
 - Black-Owned DBEs (construction), and
 - Non-SBEs/DBEs
- Scope of work performed by SBEs/DBEs (e.g., under an architect, an SBE/DBE could be procured to provide renderings)
- Dollar amounts (invoiced and paid) associated with both SBE/DBE and non-SBE/DBE Contractors at both Design-Builder and Subcontractor levels
- Total SBE/DBE participation as defined as a percentage of total Contract dollars

SFMTA CCO will review LD data tracking methods to confirm compliance with SBE/DBE Form 6.

Additionally, Design-Builder will submit SBE/DBE Form 9 (Contractor Exit Report and Declaration) for each SBE/DBE at time of each SBE/DBE's final progress payment.

1.12 Written Notice of Deficiencies or Other Causes

If based on a complaint, failure to report, or other cause, then the SFMTA CCO has reason to question the SBE/DBE participation of LD, Contractor, Subcontractor, Consultant or Subconsultant. The SFMTA CCO shall provide written notice to the LD, each affected Contractor or Consultant and, if applicable, also to its Subcontractor or Subconsultant of such alleged deficiency or other causes. The LD, Contractor or Consultant and, if applicable, the Subcontractor or Subconsultant, shall have up to 30 days to demonstrate to the reasonable satisfaction of the SFMTA CCO that it has exercised good faith to satisfy its obligations under the SFMTA's SBE/DBE Program and this Plan. When deficiencies or other causes are noted, SFMTA CCO will work with the appropriate SBE/DBE Liaison(s) to address such deficiencies or other causes.

1.13 Remedies/Penalties/Enforcement Mechanisms

The following shall apply for any non-compliance of this Plan in the design, construction, and ongoing asset management of the Bus Yard Infrastructure Facility:

For any noncompliance concerns, the LD, Contractor, Consultant, and/or Subcontractor shall be required to meet with SFMTA within 21 days of SFMTA's meeting request.

In situations where the noncompliance concerns/issues cannot be successfully resolved and the LD, Contractor, Consultant, or Subcontractor is found by the SFMTA CCO to be noncompliant with the following sections: Good Faith Efforts/OEPP; SBE Trucking Program; Meet and Confer; Quarterly and Annual Reports, the LD, Contractor, Consultant, or Subcontractor shall be subject to the Noncompliance Regime outlined in the Project Agreement.

The LD, Contractor, Consultant, or Subcontractor shall be subject to the Noncompliance Regime outlined in the Project Agreement in the following cases where the SFMTA CCO has determined that the LD, Contractor, Consultant, or Subcontractor:

- 1) has not met its written commitment to an individual SBE/DBE and failed to provide a justifiable reason(s) for not meeting said commitment; and/or
- 2) has not met its SBE/DBE Goals(s) and failed to demonstrate substantial Good Faith Efforts/OEPP to meet the SBE/DBE Goal(s) of the Plan.

Reporting to DOT/Penalties/Debarment

SFMTA will bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with the Program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules).

Contractor may also be subject to penalties and/or a debarment action under the San Francisco Administrative Code. Failure to comply with the requirements of the SBE/DBE Program constitutes a material breach of Contract and may be grounds for termination of the Contract. Funds may also be withheld under the Contract pending investigation of a complaint of violation of the SBE/DBE Program.-

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