Foothill Gold Line

Metro Gold Line Foothill Extension Construction Authority

406 East Huntington Drive, Suite 202
Monrovia, CA 91016-3640

p 626.471.9050 f 626.471.9049
www.foothillgoldline.org

Board Members:

Doug Tessitor
Chair
Appointee,
City of Pasadena

Sam Pedroza
Vice Chair
Council Member,
City of Claremont
Appointee, SGVCOG

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South Pasadena

Alan D. Wapner
Member, Non- Voting
Council Member,
City of Ontario
Appointee, SBCTA

Executive Officer:

Habib F. Balian
Chief Executive Officer

Agenda Item: 4

TO: Chair and Members of the Construction Committee

FROM: Habib F. Balian, Chief Executive Officer

DATE: May 16, 2017

SUBJECT: Adoption of Foothill Gold Line Fiscal Year 2018 Operating Budget

RECOMMENDATION:

That the Construction Committee recommend to the Board of Directors adoption of Foothill Gold Line Fiscal Year 2018 Operating Budget.

SUMMARY:

In January 2017, the Board approved the Foothill Gold Line Financial Plan Revision 13 of $2,155,300. The Operating Budget has been developed consistent with the Foothill Gold Line Financial Plan Revision 13.

It is projected that $31.0 million will be expended in fiscal year 2018 which includes Authority Administration, Program Management, Phase 2B work, 2A Closeout/Carryforward or approximately 2.3% of the Project Financial Plan for this fiscal year.

BUDGET IMPLICATIONS:

The Foothill Gold Line FY18 Operating Budget of $31.0 million represents an increase of $3.0 million from the Foothill Gold Line FY17 Operating Budget of $28.0 million reflecting the current level of activity for the project.

BACKGROUND:

FY18 Revenues - $31,000,000

During fiscal year 2018, the Authority will have sufficient revenues to complete Foothill Gold Line activities. The current operating plan assumes $31.0 million of revenue will be received during fiscal year 2018.

These revenues consist of the following:

- $ 100,000 in Interest Income
- $18,000,000 in Measure R Revenue – Phase 2B
- $12,900,000 in Revenue Carry Forward from PY – Phase 2A

Revenue Sources for Fiscal Year 2018	FY17	FY18	FY18	FY18
(in millions of $)	Budget	Budget 2A+2B	Budget 2A	Budget 2B
SCAG	0.0	0.0	0.0	0.0
Interest Income	0.1	0.1	0.1	0.0
Bridge Replacement	0.0	0.0	0.0	0.0
Phase I Carryover	0.0	0.0	0.0	0.0
MTA Maintenance Facility	0.0	0.0	0.0	0.0
Cities	0.0	0.0	0.0	0.0
Real Estate	0.0	0.0	0.0	0.0
State SHA	0.0	0.0	0.0	0.0
Measure R	25.0	18.0	0.0	18.0
SANBAG	0.0	0.0	0.0	0.0
Federal TCSP	0.0	0.0	0.0	0.0
Federal Intermodal	1.4	0.0	0.0	0.0
Federal New Starts 2004 (5309)	0.0	0.0	0.0	0.0
Federal New Starts 2005 (5309)	0.0	0.0	0.0	0.0
Federal and State Corridor Study Grant	0.0	0.0	0.0	0.0
Revenue Carry Forward from PY	1.5	12.9	12.9	0.0
Total Foothill Gold Line Revenues FY18	28.0	31.0	13.0	18.0

- $100,000 in interest on Foothill Gold Line, which is the same as the previous fiscal year operating budget of $100,000. Principal balance and interest rates have stayed consistently low.

- $18,000,000 in Measure R funds for Phase 2B which are dispersed through LACMTA on a reimbursement basis. This amount is consistent with the Funding Agreement Attachment C.

- $12,900,000 in Revenue Carry Forward from PY, which is attributable to Phase 2A Closeout.

FY18 Expenditures - $31,000,000

In the previous fiscal year, the Authority continued work for 2B work and 2A closeout funded by Measure R. Plans for FY18 include the continued work on Phase 2B including design and procurement and Phase 2A closeout.

The proposed expenditures for work during fiscal year 2018 include:

- $ 6,500,000 in Authority Administration
- $ 9,500,000 in Program Management
- $ 1,000,000 in Phase 2B NEPA/CEQA Engineering
- $ 1,000,000 in Master Cooperative Agreements

- $10,000,000 in Phase 2A closeout
- $ 3,000,000 in Contingency Miscellaneous Other

Expenditures FY18	Approved FY17	Proposed FY18 2A+2B	Proposed FY18 - 2A	Proposed FY18 - 2B
Authority Administration	5.6	6.5	2.0	4.5
Program Management	7.0	9.5	0.0	9.5
Phase 2B Engineering Work NEPA/CEQA	1.0	1.0	0.0	1.0
Intermodal Study	1.4	0.0	0.0	0.0
Master Cooperative Agreements	1.0	1.0	0.0	1.0
Real Estate	0.0	0.0	0.0	0.0
Special Programs	0.0	0.0	0.0	0.0
Construction - 2A - Closeout	10.0	10.0	10.0	0.0
Contingency/Misc Other	2.0	3.0	0.0	3.0
Project Reserve	0.0	0.0	0.0	0.0
Total Foothill Gold Line Expenditures FY17	28.0	31.0	12.0	19.0

Illustrated below, is the recommended fiscal year 2018 administration budget that reflects current expectations for next year.

- $6,500,000 for Authority administration salaries and expenses which is the $900,000 more than the previous fiscal year operating budget of $5,600,000. The Authority staff members will be dedicating all their time to the Foothill Gold Line. This amount is consistent with the Authority's annual historical costs for the Metro Gold Line Phase I and Phase 2A. The budget for wages and benefits of $4,200,000 provides for staff (12 authorized FTE's) for FY18. The amount includes a pro-rata 10% combined allowance for potential Cost-of-Living adjustment (COLA) and merit increases. The actual COLA will be set by future Board action and has historically been based on the June consumer price index. In addition, accrued vacation and employee severance is being carried in FY18.

- $9,500,000 for program management, which is $2,500,000 more than the previous fiscal year operating budget of $7,000,000. The scope of work for the Program Management Team is based on support costs necessary to supplement Authority staff and the technical consultants work. Similar to the Authority administration, the end of construction and the increased work load for Phase 2B design are consistent with this increase. The program management team assists the Authority throughout Design and Construction.

- $1,000,000 for technical consultants to prepare the Azusa to Montclair CEQA/NEPA compliance, preliminary engineering and other planning activities.

- $1,000,000 for Master Cooperative Agreements. This $1,000,000 includes work budgeted for Caltrans, Metrolink and Others for FY18 for Phase 2B. This amount of $1,000,000 is the same as the previous fiscal year operating budget of $1,000,000.

- $10,000,000 for Construction 2A / Closeout. This is the amount estimated to be performed in FY18 and is consistent with the work plan for the current fiscal year for the close out construction for Phase 2A.

- $3,000,000 for Contingency /Miscellaneous Other work such as Utility work which will begin in FY18.

The following Table provides a detailed breakdown of Authority Administration costs relative to the Foothill Gold Line project.

Fiscal Year 2018 Administrative Budget	FY 2017	FY 2018	FY 2018	FY 2018
		Total 2A+2B	2A	2B
Wages and Benefits	3,875,000	4,200,000	1,500,000	2,700,000
				0
Benefits - Calpers per GASB 68	0	0	0	0
Office Supplies	50,000	80,000	20,000	60,000
Printing, Reproductions	25,000	25,000	10,000	15,000
Postage and Courier	25,000	25,000	10,000	15,000
Office Equipment	30,000	100,000	30,000	70,000
Telephone	70,000	70,000	20,000	50,000
Subscriptions	40,000	40,000	10,000	30,000
Advertising/Graphics/Signs/Web Site	25,000	30,000	10,000	20,000
Community Events	200,000	300,000	0	300,000
Transportation, Meals and Lodging	25,000	25,000	10,000	15,000
Auto Expenses / Vehicle Leases	20,000	20,000	10,000	10,000
Training/Conferences/Professional Mem	10,000	10,000	0	10,000
Equipment Rental and Services	40,000	40,000	10,000	30,000
Repairs and Maintenance	30,000	30,000	10,000	20,000
Office Rent and Storage	300,000	360,000	120,000	240,000
ROW Maintenance	20,000	100,000	0	100,000
Computer Equipment	25,000	100,000	20,000	80,000
Insurance	200,000	250,000	100,000	150,000
Board Member Expenses	40,000	40,000	10,000	30,000
Bank, Payroll and Administrative Fees	15,000	15,000		15,000
Legal Services	200,000	200,000	50,000	150,000
Audit and Accounting Services	40,000	40,000	10,000	30,000
Network Services	75,000	180,000	40,000	140,000
Government Relations	220,000	220,000	0	220,000
Total Foothill Gold Line Authority Admi	5,600,000	6,500,000	2,000,000	4,500,000

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Executive Officer:

Habib F. Balian
Chief Executive Officer

Agenda Item: 5

TO: Chair and Members of the Construction Committee

FROM: Habib F. Balian, Chief Executive Officer

DATE: May 16, 2017

SUBJECT: Adopt the Small Business (SB) Aspirational Goal and Updated Small Business Enterprise (SBE) Program

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RECOMMENDATION:

The Construction Committee adopt the Small Business (SB) Aspirational Goal and Updated Small Business Enterprise (SBE) Program.

SUMMARY:

The Metro Gold Line Foothill Extension Construction Authority contracted GCAP Services to conduct a Small Business (SB) Goal analysis for Phase 2B and update the Small Business Enterprise (SBE) Program. The last update for the Small Business (SBE) Program was October 27, 2010.

The Authority will develop and establish a Small Business Aspirational goal based on the demonstrable evidence of Small Businesses availability in performing work.

A thorough review of the scope of work received was conducted to identify areas for potential subcontracting opportunities in accordance with applicable regulations. GCAP Services performed the necessary searches of ready, willing and able small businesses, which were directly polled within each identified subcontracting area to determine interest, availability, current certification status and capacity to perform these designated scopes of work within the Metro Gold Line Foothill Extension Authority's market area identified as Los Angeles, Orange, Riverside and San Bernardino Counties.

Based upon the factors identified above, the Authority recommends the Board of Directors adopt a **16.6%** Small Business (SB) Overall Project Aspirational Goal. This Overall Project Aspirational Goal encompasses Phase 2B Alignment (Package 2B)

This goal is an Overall Project Aspirational Goal and is not restricted to the Federal Fiscal Year.

BUDGET IMPLICATIONS:

None at this time.

SMALL BUSINESS ENTERPRISE (SBE) PROGRAM

Foothill Gold Line Extension Phase 2B

METRO GOLD LINE FOOTHILL EXTENSION CONSTRUCTION AUTHORITY

March 21, 2017

Statement of Objectives/Policy

The Metro Gold Line Foothill Extension Construction Authority ("Authority") shall provide an equal opportunity for all small business firms to participate on its non-federally funded or assisted (i.e. state and locally funded) design-build contracts ("Eligible Contracts") by support, commitment, and implementation of its Small Business Enterprise ("SBE") Program.

The objectives of the SBE Program include:

1. To ensure nondiscrimination in the award and administration of Eligible Contracts;

2. To encourage greater availability, capacity development, and contract participation by Small Business Enterprises in Authority contracts;

3. To create a more level playing field on which SBEs can compete fairly for Eligible Contracts;

4. To ensure that only firms that fully meet SBE certification eligibility standards are permitted to participate as SBEs;

5. To help remove barriers to the participation of SBEs in Eligible Contracts;

6. To assist the development of firms that can compete successfully in the marketplace outside the SBE Program.

This policy is, in part, intended to further the Authority's compelling interest to ensure that it is neither an active nor passive participant in marketplace discrimination; promote equal opportunity for all segments of the contracting community; and further the public interest to foster effective broad-based competition from all segments of the contractor, consultant and vendor community, including, but not limited to, disadvantaged business enterprises, emerging business enterprises, minority business enterprises, woman business enterprises, small business enterprises, microbusiness enterprises, disabled veteran business enterprises and local business enterprises.

The Chief Executive Officer of the Authority will delegate this responsibility to an SBE Compliance Auditor. In that capacity, the SBE Compliance Auditor is responsible for implementing all aspects of the SBE program.

The Authority will disseminate this policy statement to all components of the organization. In addition, the Authority will distribute this statement to SBE and non-SBE communities and business organizations. Distribution will be accomplished through posting on the Authority website, and publication in vendor and small business newsletters as Authority determines is necessary or advisable.

Date

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Chief Executive Officer

TABLE OF CONTENTS

I. GENERAL REQUIREMENTS 1

A. Objectives 1
B. Applicability 1
C. Non-discrimination Requirements 1
D. Record Keeping Requirements 1
E. Contract Assurance 1

II. RESPONSIBILITY FOR SBE PROGRAM IMPLEMENTATION 5

A. SBE Compliance Auditor ("Compliance Auditor") 5
B. Other Support Personnel 5

III. ADMINISTRATIVE AND PERFORMANCE REQUIREMENTS 4

A. SBE Program Updates 4
B. Policy Statement 4
C. Prompt Payment Mechanisms and Enforcement 4
D. Directory 4
E. Monitoring and Enforcement Mechanisms 4
F. Good Faith Efforts when Replacing SBEs 6

IV. GOALS, GOOD FAITH EFFORTS, PROPOSALS AND COUNTING 6

A. No Set-Asides or Quotas 6
B. Contract Goals 7
C. Change Orders 7
D. Proposer Subcontractor Listing and SBE Subcontractor Documentation Requirements 8
E. Good Faith Efforts Procedures 10
F. Administrative Reconsideration 10
G. Counting SBE Participation 11

V. CERTIFICATION STANDARDS AND PROCEDURES 15

A. Certification Standards 15
B. Updates and Changes 16

I. GENERAL REQUIREMENTS

A. Objectives

The objectives are found in the policy statement on the first page of this Program.

B. Applicability

The Authority is the recipient of funds from a variety of sources, including non-federal funds from state, county, and local sources.

This Program sets forth the policies and procedures to be implemented by the Authority to ensure that small businesses shall have the opportunity to participate in the Authority's Eligible Contracts.

C. Non-discrimination Requirements

The Authority shall not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin.

In administering its SBE Program, the Authority will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the SBE Program with respect to individuals of a particular race, color, religion, sex, sexual orientation, gender identity, or national origin.

D. Record Keeping Requirements

Each Prime Contractor under an Eligible Contract ("Design-Builder") will generate reports on SBE participation to Authority executive management in the manner and at the times called for by this Program and the Contract. These reports and other available information germane to the Program will be maintained by the Compliance Auditor.

E. Contract Assurance

The Authority, and Design-Builders, will ensure that language designed to effectuate the Program and ensure compliance therewith shall be placed in Eligible Contracts and their subcontracts.

II. RESPONSIBILITY FOR SBE PROGRAM IMPLEMENTATION

A. SBE Compliance Auditor ("Compliance Auditor")

The Chief Executive Officer shall designate an individual as SBE Compliance Auditor:

The Compliance Auditor is responsible for developing, implementing and monitoring the SBE program, in coordination with other appropriate officials. The duties and responsibilities of the Compliance Auditor may include as directed the following:

1. Develops, implements and monitors, with participation by legal counsel, the SBE Program document, keeping it up-to-date with the current business environment and the latest revisions to the applicable governmental law and regulations;

2. Gathers and reports statistical data and other information for Authority Board;

3. Reviews Eligible Contracts for compliance with this Program;

4. Ensures that bid notices and requests for proposals for Eligible Contracts are available to SBEs in a timely manner;

5. Analyzes the Authority's progress toward attainment and identifies ways to improve progress;

6. Participates in any pre-bid meetings for Eligible Contracts;

7. Advises the CEO and the Authority Board of Directors on SBE matters and achievement;

8. Monitors that SBEs benefited by the program are certified according to the criteria set by the Authority;

9. Provides outreach to SBEs and community organizations to advise them of opportunities.

B. Other Support Personnel

The Chief Executive Officer ("CEO"), and as he may designate, the General Counsel, chief contracting officer, chief financial officer and other support personnel shall assist the Compliance Auditor in implementing the program. The CEO in any

particular set of procurement documents may make changes to this Program language, consistent with its intent, where he deems it reasonably necessary to facilitate the Program and the procurement.

III. ADMINISTRATIVE AND PERFORMANCE REQUIREMENTS

A. SBE Program Updates

The Authority will update the SBE Program when substantial changes are warranted to comply with governmental law and regulation or the Authority Board of Directors directives. Any updates or changes of any nature made by the Authority to this Program from time-to-time shall be deemed contemporaneously incorporated by reference into any existing Eligible Contracts which are subject to this Program.

B. Policy Statement

The Policy Statement is elaborated on the first page of this program.

C. Prompt Payment Mechanisms and Enforcement

Authority Contracts subject to this Program shall include provisions for prompt payment mechanisms and monitoring and enforcement mechanisms related thereto.

D. Directory

While the Authority does not itself certify SBEs, the Compliance Auditor will endeavor to maintain a record that can be provided to prospective bidders of contact information for the designated entities set forth in sec. V.A. hereto that do perform SBE certifications.

E. Monitoring and Enforcement Mechanisms

The Authority monitoring and enforcement mechanisms to ensure compliance with SBE requirements may include:

1. Taking action with respect to any false, fraudulent, or dishonest conduct in connection with the Program under its own legal authority, including responsibility determinations in future contracts, or by referral to other governmental bodies.

2. Applying the full range of contract remedies available to the Authority in the event of breach or default to acts of noncompliance with the SBE program.

3. The Authority, in conjunction with the Prime Contractor on design-build procurements (also referred to herein as "Design- Builder") will also provide a monitoring and enforcement mechanism to verify that work committed to SBEs at contract award and subsequently are actually performed by the SBEs. This will be accomplished by the following:

   a) <u>Pre-Construction (Kick-off) Meeting</u>

      Both the Design-Builder and any identified SBE Subcontractor(s) or a representative of each firm shall attend

any 'kick-off' meeting as designated by the Compliance Auditor concerning SBE requirements and other matters, prior to or soon after Notice to Proceed is issued.

b) Monthly Expenditure Plan

The Design-Builder shall submit to Authority a monthly expenditure plan in calendar form for each of its approved SBE Subcontractors (which term includes suppliers) within 30 days of Notice to Proceed. As the work proceeds and new or additional SBEs are anticipated to commence performance of work in a succeeding month, those SBEs shall be reflected in the prior month's plan. The plan shall be updated to incorporate any schedule changes, change notices and other authorized changes to the Design-Build contract affecting each SBE's work. A revised plan shall be submitted within 30 days from the incorporation of the change. The plan shall include the identification of the particular SBE, its general work assignment, and the planned expenditures over the life of the particular subcontract (which should equal the dollars committed to each SBE Subcontractor) and shall be developed according to the approved project schedule.

c) Executed SBE Subcontract Agreements

The Design-Builder shall submit to the Authority copies of all executed SBE subcontract agreements and/or SBE purchase orders (PO) within ten (10) days after full execution of the subcontract or purchase order. The Design-Builder shall be responsible for informing the Subcontractors of all relevant SBE Program requirements and as specified by the Authority.

4. So that the Authority will be timely apprised of actual payments to SBE firms for work committed to them at the time of contract award, Design-Builder shall submit on a monthly basis the Summary of Subcontractors Paid Report in a form approved by Authority.

Failure to timely submit the reports may result in, among other things, the imposition of a penalty of $100 per day for each report overdue.

The SUMMARY OF SUBCONTRACTORS PAID REPORT, includes the following information:

a. Name of each SBE Subcontractor.

b. General work assignment of each SBE Subcontractor.

c. The specific portion of work executed by each SBE Subcontractor during the reporting period.

d. The dollars committed to each SBE Subcontractor.

e. The dollars paid to each SBE Subcontractor during the reporting period.

f. The dollars paid to date for each SBE Subcontractor.

g. The dollars paid to the SBE Subcontractor because of a change order or other cost modification.

h. The dollars paid to date as a percentage of the total commitment to each SBE Subcontractor.

i. Date of last progress payment.

j. Invoice amount and invoice date.

k. Invoice number corresponding to last payment to subcontractor.

F. Good Faith Efforts when Replacing SBEs

The Authority will require a Design-Builder to make good faith efforts to replace a SBE Subcontractor that is terminated or has otherwise failed to complete its work on a subcontract with another certified SBE.

In such a situation, prior approval by the Authority is required of any contractor proposed to replace the SBE. The Design-Builder is required to provide copies of the proposed new or amended subcontracts. If the proposed replacement contractor is not a SBE, the Authority also requires the Design-Builder to submit documentation of their good faith efforts to have obtained an SBE replacement.

IV. GOALS, GOOD FAITH EFFORTS, PROPOSALS AND COUNTING

A. No Set-Asides or Quotas

The Authority does not use set-asides, quotas or local preference, in any way in the administration of this SBE program.

B. Contract Goals

The Authority may establish contract goals only on those Eligible Contracts that have subcontracting possibilities. The contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of SBEs to perform the particular type of work.)

The Authority will express the Authority's contract goals as a percentage of the total amount of an Eligible Contract.

Compliance Auditor will review all Eligible Contracts to determine the extent of subcontracting opportunities and SBE availability for determining reasonable SBE contract goals.

C. Change Orders

The Authority's SBE program applies to all its contracting, including change orders to an existing contract which have more than a minimal impact on the contract amount. If there is a change order to a contract on which there is a SBE contract goal, then that contract goal applies to the change order as well as to the original contract. This is true regardless of whether the Authority or the contractor initiates the change order.

For example, suppose that the Authority awards a $1 million contract to Firm X. The contract goal is 15 percent. Firm X meets the contract goal by obtaining SBE participation from subcontractors or suppliers amounting to $150,000. Part way through performance of the contract, the Authority determines that additional work is necessary, and issues a change order that will add $500,000 to the total contract price. The 15 percent contract goal applies to this additional $500,000. To meet the contract goal as applied to the change order, Firm X would have to make good faith efforts to obtain an additional $75,000 in SBE participation. It could meet this obligation either by obtaining the additional $75,000 in work by SBE subcontractors or suppliers or by documenting good faith efforts.

The Authority would determine, on a case-by-case basis, what would constitute good faith efforts in the context of a particular change order. This could include modifying the contract goal amount applicable to the change order if circumstances warrant.

There may be situations in which a change order has such a minimal effect on the overall contract amount or the expected SBE participation on a contract that it would not be sensible to alter SBE requirements affecting the contract. If the Authority believes that a change order has such a minimal effect, the Authority may make that determination.

D. Proposer Subcontractor Listing and SBE Subcontractor Documentation Requirements

For design-build project procurements, primarily because the contractor selection process occurs prior to completion of the design, it is impractical to require proposers ("Proposers") to list all SBE Subcontractors for the entirety of the Work at the time of the proposal, when the contractors are unable to assess the true cost of the work and risks inherent in the Project due to the incomplete design. Proposers will not be required to list all Subcontractors prior to the award of the contract except as otherwise provided by a Request for Proposal.

in design-build projects, in addition to listing any identified major Subcontractors as may be required by the RFP, each Proposal shall include the comprehensive SBE Subcontracting Plan, in accordance with the requirements set forth below.

SBE Subcontracting Plan Requirements

Among the purposes of the SBE Subcontracting Plan are to set forth Proposer's plan for achievement of the anticipated participation levels set forth in the Requests for Proposals, to ensure an effective method to achieve those levels and for reporting to Authority regarding SBE participation.

1. Participation Levels

The SBE Subcontracting Plan shall include:

a. The estimated percentage participation levels of SBE subcontracts, to be awarded during each fiscal year of the contract;

b. The areas of Work, with reference to discrete items if feasible, anticipated to be subcontracted to SBE firms during each fiscal year;

c. In narrative form, the efforts made by the Proposer, and efforts it would undertake if awarded the Contract, to break down contract opportunities into economically feasible units, where appropriate, to facilitate SBE participation;

d. A commitment to negotiate in good faith with interested SBEs, and not rejecting SBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.

2. Other SBE Subcontracting Plan Elements

The SBE Subcontracting Plan shall:

a. Describe the competitive procedures and methods planned to procure SBE subcontracts for services, materials and products not yet listed in the proposals;

b. indicate the basis of proposal evaluation and selection of said unlisted subcontractors and suppliers;

c. Describe any other affirmative steps taken or to be taken to ensure nondiscriminatory results and practices in the letting of subcontracts;

d. Describe contemplated efforts to advertise in various media potential SBE subcontracting opportunities;

e. Describe contemplated means of notifying potential SBEs to determine their interest in subcontract opportunities and plans for follow-up on initial solicitations of interest;

f. Describe plans for effectively using the services of available business enterprise and SBE organizations; contractor groups; local, state and federal business assistance offices; or other organizations that provide assistance in the recruitment and

placement of SBE subcontractors;

g. Describe the procedures anticipated to make available to prospective SBEs adequate information about the plans, specifications and requirements of the contract;

h. Identify efforts the Proposer would make to assist interested SBEs in obtaining bonding, lines of credit, or insurance required by the Authority or Proposer;

i. Describe how major Subcontractors will participate in a successful Proposer's efforts to achieve the contract SBE goal, and how the Proposer will monitor their effective participation;

j. Set forth specific corrective steps to be taken if actual SBE utilization were to lag behind Proposer's SBE commitment;

k. Describe any efforts for reporting to Authority as to SBE solicitation and participation, beyond those reporting requirements called for by the Contract and this Program;

l. A Proposer may, to the extent known, identify specific SBE subcontractors it will commit to utilize (written documentation thereof to be provided if requested by Authority).

The successful Proposer may be required by the Authority to update the Plan from time to time, to reflect changed circumstances and new information or otherwise as directed by Authority.

E. Good Faith Efforts Procedures

As an element of responsiveness, the obligation of the Proposer is to make good faith efforts with respect to SBE participation and the Authority's contract goal. The Proposer can demonstrate that it has done so (i) by committing to meet or exceed the contract goal, or (ii) if its proposed SBE participation level is below the goal, by documenting good faith efforts it has made and would make to reach the goal.

The Compliance Auditor and any contract compliance officers are responsible for determining whether a Proposer who has not met the contract goal has documented sufficient good faith efforts, whether in its SBE Subcontracting Plan or otherwise, to be regarded as responsive.

Failure to satisfy the documentation requirements described in this Subpart shall render a Proposal non-responsive.

F. Administrative Reconsideration

Within three (3) working days of being informed by Authority that it is not

responsive because it has not documented sufficient good faith efforts, a Proposer may in writing request administrative reconsideration, following a process to be set by the CEO that is similar to reconsideration with respect to other responsiveness criteria.

As part of this reconsideration, the Proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Proposer will have the opportunity to meet in person with the Authority's designated reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The Authority will send the Proposer a written decision on reconsideration, explaining the basis for finding that the Proposer did or did not meet the goal or make adequate good faith efforts to do so.

G. Counting SBE Participation

The Authority will count the SBE participation in a proposal and on the contract, expressed as an estimated dollar value of the SBE work, and will require the Design-Builder to provide reporting information to allow Authority to verify its achieved participation levels.

SBE participation levels shall be calculated as follows:

a) Eligible SBE

Once a firm is determined to be an eligible SBE, the total dollar value of the contract awarded to the SBE is counted toward the applicable participation level.

b) SBE as a Joint Venture Participant

When an SBE is a participant in a joint venture that proposes for or is awarded a contract, the portion of the total dollar value of the contract equal to the percentage of the ownership and control of the SBE partner in the joint venture is counted toward SBE participation levels.

c) Performing Commercially Useful Function

(1) Only expenditures to SBEs that perform a commercially useful function in the work of a contract will count toward SBE participation levels. An SBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an SBE is performing a commercially useful function, the Authority shall evaluate the amount of work subcontracted, industry practices and other relevant factors.

(2) Consistent with normal industry practices, an SBE may enter

into subcontracts. If an SBE subcontracts a significantly greater portion of the work of the contract than would be expected based on normal industry practices, the SBE shall be presumed not to be performing a commercially useful function. The Prime Contractor may present evidence to rebut this presumption to the Authority, such evidence may include information presented by the SBE.

(3) If an SBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the SBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) The SBE may also lease trucks from a non-SBE firm, including from an owner-operator. The SBE who leases trucks from a non-SBE is entitled to credit for the total value of transportation services provided by non-SBE lessees not to exceed the value of transportation services provided by SBE-owned trucks on the contract. Additional participation by non-SBE lessees receives only credit for the fee or commission it receives as a result of the lease agreement. If a recipient chooses this approach, it must obtain written consent from the Authority.

Example to this paragraph: SBE Firm X uses two of its own trucks on a contract. It leases two trucks from SBE Firm Y and six trucks from non-SBE Firm Z. SBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, SBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

d) <u>Expenditures for Materials and Supplies</u>

(1) 60% of the expenditures for materials and supplies required under a contract and obtained from an SBE regular dealer, and 100% of such expenditures to an SBE manufacturer will count toward SBE participation levels.

(2) For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment

obtained by the contractor.

(3) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone or petroleum products need not keep such products in stock, if it both owns and operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

(4) With respect to materials or supplies purchased from an SBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward the SBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward SBE goals, however.

e) Eligible Expenditures

The following expenditures to SBE firms that are not manufacturers or regular dealers will count toward SBE participation levels:

(1) The entire amount of that portion of a construction contract that is performed by the SBE's own forces. Include the cost of supplies and materials obtained by the SBE for the work of the contact, including supplies purchased or equipment leased by the SBE (except supplies and equipment the SBE subcontractor purchases or leases from the prime contractor or its affiliate.)

(2) The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(4) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services.

V. CERTIFICATION STANDARDS AND PROCEDURES

A. Certification Standards

Eligible firms for participation under this program as an SBE must be a firm that is certified as an SBE i.) by the State of California Department of General Services ("DGS"), or the Los Angeles County Metropolitan Transportation Authority ("Metro"), or the City of Los Angeles; or ii.) by another recognized body acceptable to the Authority whose certification processes generally provide for the following:

An SBE is a for-profit business that has demonstrated, by a preponderance of the evidence, that it satisfies the following SBE program certification standards:

1. Business Size

   A. An SBE is a small business as defined using the Small Business Administration size standards at 13 CFR Part 121.

   B. Other elements of business size of a technical nature may be relevant and will be taken into account, as needed, on a case-by-case basis.

2. <u>Quality of Ownership</u>

   A. The ownership enjoyed by each of these individuals must be real, substantial and continuing, going beyond pro forma ownership, as represented in merely the ownership documents.

   B. Owner(s) contributions of capital or expense must be real and substantial.

   C. Other elements of quality of ownership of a technical nature may be relevant and will be taken into account, as needed, on a case- by-case basis.

3, <u>Ownership Discretion and Control</u>

   A. The business must be independent. Its viability must not depend on a relationship with another firm or firms.

   B. The business must not be subject to any formal or informal restrictions that limit the customary discretion of the owner(s).

   C. The owner(s) must possess the power to direct or change 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.

D. The owner(s) may delegate authority, but such delegations must be revocable and the owners must retain a managerial role and the power to hire and fire the person to whom they delegate.

E. The owner(s) must have an overall understanding of (and managerial, technical competence & experience directly related to) the type of work in which the business is engaged and the firm's operations.

F. Owners must possess all state or locally required licenses or credentials.

G. Differences in remuneration between the owner(s) and other participants in the firm may be considered in determining the owner(s)' level of control.

H. Owner(s) must work in the business in order to be considered as controlling the firm. They cannot engage in outside employment or other business interests that conflict with managing the firm, unless the firm is itself a part-time business.

I. Other elements of ownership discretion and control of a technical nature may be relevant and will be taken into account, as needed, on a case-by-case basis.

B. Updates and Changes

SBEs whose participation on the work of the contract is counted toward the SBE participation goals shall inform the Authority promptly upon any change in its certification status. Any Design-Builder who becomes aware of such a change in certification status must promptly notify the Authority. The Authority may require periodic updates via affidavits, copies of certification letters or other evidence of the continuing status of contractors and subcontractors as certified SBEs.