Golden Empire Transit District
49 CFR Part 26 Disadvantaged Business Enterprise Program

Policy Statement

Section 26.1, 26.23 Objectives / Policy Statement

The Golden Empire Transit District has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Golden Empire Transit District has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Golden Empire Transit District has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Golden Empire Transit District to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

Finance Administrator has been delegated as the DBE Liaison Officer. In that capacity, the Finance Administrator is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Golden Empire Transit District in its financial assistance agreements with the Department of Transportation.

Golden Empire Transit District has disseminated this policy statement to the Board of Directors of the Golden Empire Transit District and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts (listed on GET website and distributed with RFP's).

Karen H. King, Chief Executive Officer

Date: 3/4/19
Section 26.1 Objectives

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

Section 26.3 Applicability


Section 26.5 Definitions

The Golden Empire Transit District will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

The Golden Empire Transit District will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the Golden Empire Transit District 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 DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.13 Federal Financial Assistance Agreement

Golden Empire Transit District has signed the following assurances, applicable to all DOT-assisted contracts and their administration: (If Golden Empire Transit District has sub recipients, this language will appear in financial assistance agreements with sub recipients).

Assurance: 26.13(a)

Golden Empire Transit District shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Golden Empire Transit District of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases,
Contract Assurance: 26.13b

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:
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.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the Golden Empire Transit District has received a grant of $250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, Golden Empire Transit District will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer:

Denise Sailes, 1830 Golden State Avenue Bakersfield, CA 93301, (661)869-6322,
dsailes@getbus.org.

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Golden Empire Transit District complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Chief Executive Officer of Golden Empire Transit District concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO administers the program solely. The duties and responsibilities include the following:
1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyzes Golden Empire Transit District's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO\'s governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in California.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the Golden Empire Transit District's updated directory on certified DBEs.
Section 26.27 DBE Financial Institutions
It is the policy of the Golden Empire Transit District to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions.

Section 26.29 Prompt Payment Mechanisms
The Golden Empire Transit District will include the following clause in each DOT-assisted prime contract:
The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty-day days from the receipt of each payment the prime contract receives from Golden Empire Transit District. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors 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 the Golden Empire Transit District. This clause applies to both DBE and non-DBE subcontracts.

Section 26.31 Directory
The Golden Empire Transit District maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. We revise the Directory annually. We make the Directory available as follows: list address, phone number, which interested persons can obtain access to the Directory. The Directory may be found in Attachment 2 to this program document.

Section 26.33 Overconcentration
Golden Empire Transit District has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.37 Monitoring and Enforcement Mechanisms
The Golden Empire Transit District will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation 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) provided in 26.109.

2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and
contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.

3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by (certified payroll).

4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.
SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The Golden Empire Transit District does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program. Before establishing the overall goal, Golden Empire Transit District will identify the persons or groups with whom this consultation normally occurs, without limiting consultation to these persons or groups. To obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Golden Empire Transit District efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals. Informing the public that the proposed goal and its rational are available for inspection during normal business hours at 1830 Golden State Ave. Bakersfield, CA office for 30 days following the date of the notice, and informing the public that Golden Empire Transit will accept comments on the goals for 30 days from the date of the notice.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses. We will begin using our overall goal on October 1st unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.
Section 26.49 Transit Vehicle Manufacturers Goals
Golden Empire Transit District will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, Golden Empire Transit District may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment in the 2019-2021 Goal Methodology. This section of the program will be updated every three years when the goal calculation is updated.

Section 26.53 Good Faith Efforts Procedures
Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offereor is to make good faith efforts. The bidder/offereor can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Such justification will include, but not limited to, the following documentation:

Information to be submitted (26.53(b))

Golden Empire Transit District treats bidder/offereor's compliance with good faith efforts' requirements as a matter of responsibility. Each solicitation for which a contract goal has been established will require the bidders/offereors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 10 days of being informed by Golden Empire Transit District that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offereor may request administrative reconsideration. Bidder/offereors should make this request in writing to the following reconsideration official: Karen H. King, Chief Executive Officer, Golden Empire Transit District, 1830 Golden State Avenue, Bakersfield, CA 93301-1012, (661) 324-9874. The reconsideration official will not have played any role in the original determination that the bidder/offereor did not document sufficient good faith efforts.
As part of this reconsideration, the bidder/offeror 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 bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

**Good Faith Efforts when a DBE is replace on a contract (26.53(f))**

Golden Empire Transit District will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE’s inability or unwillingness to perform and provide reasonable documentation. In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

**Sample Bid Specification:**

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Golden Empire Transit District to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal. The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating;

**Section 26.55 Counting DBE Participation**

We will count DBE participation toward overall and goals as provided in 49 CFR 26.55.
"No Change" Affidavits and Notices of Change (26.83(j))

We require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with Golden Empire Transit District application for certification.
We also require all owners of all DBEs we have certified to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The test of this affidavit is the following:
I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have provided written notice to the Golden Empire Transit District under 26.83(j). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed $16.6 million.
We require DBEs to submit with this affidavit documentation of the firm's size and gross receipts.
We will notify all currently certified DBE firms of these obligations. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.85 Denials of Initial Requests for Certification

If we deny a firm's application or decertify it, it may not reapply until twelve months have passed from our action.

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87.

Section 26.89 Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:
U.S. Department of Transportation Departmental Office of Civil Rights External Civil Rights Programs Division (S-33) 1200 New Jersey Ave., S.E. Washington, DC 20590 Phone: (202) 366-4754 TTY: (202) 366-9696 Fax: (202) 366-5575
We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).
SUBPART F - COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

Golden Empire Transit District will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

Golden Empire Transit District will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be available for inspection upon request by any authorized representative of the Golden Empire Transit District or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.