

ATTACHMENT F

SMALL BUSINESS ENTERPRISE REQUIREMENTS

Engineering and Construction Management Services for the Phase 2
Exposition Light Rail Project
XP8902-006

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SECTION I – OBJECTIVE, POLICY, MISSION AND GOAL

1.0 OBJECTIVES AND POLICY STATEMENT

It is the Policy of the Authority to ensure that Small Business Enterprises have every opportunity to participate on Phase 2 of the Exposition Light Rail Transit Project. The SBE Program is race and gender neutral and is further designed to:

- a. Ensure non-discrimination in the award and administration of the Authority's Contracts;
- b. Ensure timely dissemination of information relative to contracting and procurement opportunities available to SBEs in support of the Phase 2 Design-Build Contract;
- c. Create a level playing field by which SBEs can fairly compete for contracting opportunities;
- d. Help remove barriers to the participation of SBEs;
- e. Ensure that only firms who have been certified as eligible SBEs are permitted to participate as SBEs in the Authority's SBE Program; and
- f. Ensure the implementation of an SBE Program which clearly delineates the Authority's oversight role and the Prime Consultant's responsibilities and requirements as they pertain to the SBE Program effort.

The Prime Consultant and vendors at any tier (SBEs and non-SBEs) of the Contract shall comply with all provisions of the Authority's SBE Policy and Program. Implementation of the SBE Program is given the same priority as compliance with all other Authority obligations.

2.0 MISSION

It is the mission of the Authority to contribute to the economic development of the community through an effective Small Business Program that meets the spirit and intent of the SBE Policy goals and objectives and affords Small Business Enterprises every opportunity to participate and perform work under the Authority's Phase 2 Project.

3.0 SBE GOAL

The Authority has established a Small Business Overall SBE Goal of **18 %** for this Contract.

SECTION 2 – COMMERCIALY USEFUL FUNCTION AND SBE CREDITING PROVISIONS

1.0 COMMERCIALY USEFUL FUNCTION

Work performed by an SBE in a particular transaction that, consistent with industry practices and other relevant considerations, has a necessary and useful role in the transaction (i.e., the firm's role is not a superfluous step added in an attempt to obtain credit towards goals). An SBE performs a commercially useful function when the SBE firm is responsible for the execution of the professional or technical service or work of the contract and is carrying out its responsibility by actually performing, managing and supervising the professional or technical services or work involved. To perform a commercially useful function, the SBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials and installing (where applicable) and paying for the material itself. If, in the Authority's judgment, the SBE (even though an eligible SBE) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded.

2.0 SBE VENDOR PARTICIPATION (CREDITING)

Participation of certified SBE subconsultants that provide professional or technical services is credited at 100% for services performed.

Participation of certified SBE vendors of materials and supplies is credited as follows:

- a. Sixty percent (60%) of expenditure(s) for equipment, materials and supplies obtained from a regular dealer.
- b. One-hundred percent (100%) of expenditure(s) for materials and supplies obtained from a SBE supplier who substantially alters the materials before resale.

3.0 SBE BROKERS PARTICIPATION (CREDITING)

Participation of certified SBE Brokers of materials and supplies and/or services is credited as follows:

- a. The fees or commission paid to SBE consultants, brokers, and packagers may be counted toward the goal, provided that the fee or commission is reasonable (consistent with industry standards). Proposer's are required to submit documentation to justify fees and commissions customarily allowed for similar services with proposals on the proposal due date. Post-award the Selected Prime Consultant will need to provide such documentation to the Authority with their request to add an SBE.
- b. The fees or commission charged for providing bona fide services such as professional and technical, or procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract.
- c. The fees or commissions charged for delivery of materials and supplies required on a Work site (but not the cost of the materials or supplies themselves) when the hauler, trucker or delivery service is licensed and is not also the manufacturers of, or a regular dealer, in the materials and supplies.

4.0 SBE TRUCKERS PARTICIPATION (CREDITING)

Participation of certified SBE Truckers who perform a Commercially Useful Function will be credited in accordance with the following provisions:

- a. The SBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
- b. The SBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures and operates using drivers it employs.
- c. The SBE may lease trucks from another SBE firm, including an owner-operator who is certified as a SBE. The SBE who leases trucks from another SBE receives credit for the total value of the transportation services the lessee SBE provides on the contract.
- d. 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 the transportation services provided by SBE-owned trucks on the contract. Additional participation by non-SBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

SECTION 3 – GOOD FAITH EFFORTS (INCLUDING POST-AWARD GOOD FAITH EFFORTS)

1.0 PROPOSER GOOD FAITH EFFORTS

The Proposer and subsequently selected Prime Consultant shall exercise good faith efforts sufficient to achieve the overall SBE project goal and other requirements of the SBE Program which, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the SBE goal. The Good Faith Efforts identified below include those that shall be undertaken by the Proposer's prior to their proposal submission to the Authority and by the selected Prime Contractor throughout the life of the Project.

- a. Requesting SBE Referrals from the Authority via the corresponding Appendix 1 to Attachment E, "Small Business Prime Contractor Referral Form."
- b. Researching databases of certified SBE firms.
- c. Conducting Outreach to SBEs, including contacting SBE firms provided by the Authority via the Referral Listing or located by the Proposer and/or the Prime Consultant on the DGS, CUCP DBE and Metro SBE Certified firm directories.
- d. Negotiating in Good Faith with Small Business Enterprises.
- e. Providing certification assistance to non-certified Small Business firms.
- f. Advertising in general circulation, small business and trade papers and other media to solicit SBEs for specific subcontracting/vendor opportunities.

- g. Selecting portions of the work to be performed by SBEs in order to increase the likelihood that the SBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate SBE participation, even when the Prime Contractor might otherwise prefer to perform these work items with its own forces.
- h. Making efforts to assist interested SBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Prime Consultant.
- i. Other Good Faith Efforts performed by the Prime Consultant to facilitate the participation of and successful performance of Small Business Certified firms.

2.0 PRIME CONSULTANT GOOD FAITH EFFORTS

The selected Prime Consultant shall ensure that the SBEs it has committed to in its proposal have maximum opportunity to successfully perform their contract responsibilities. The selected Prime Consultant must also continue to meet the Authority's Small Business goals and objectives by performing on-going Good Faith Efforts. These efforts shall include, but are not limited to the following:

- a. Negotiate in good faith to attempt to finalize subcontract/subconsultant agreements with SBEs listed in the proposal. The Prime Consultant proposing to utilize additional SBEs after award, in addition to fulfilling all other requirements for adding firms to the Agreement, shall notify the Authority in writing for verification of SBE certification and crediting provisions. Notification must include proposed SBE firm's name(s), scope of work and proof of certification.
- b. Continue to provide assistance to SBE Subcontractors/Subconsultants or suppliers in obtaining insurance, lines of credit, other capital financing and other technical assistance areas.
- c. Make additional documented good faith efforts through the duration of the Agreement to seek out and utilize additional first-tier and lower-tier SBE Subcontractors/Subconsultants and suppliers to increase its SBE participation.
- d. Immediately inform the Authority of any problems anticipated in attaining the SBE commitment agreed to at the time of award, including the Prime Consultant's Plan to remedy any projected shortfalls.
- e. Make timely payments of all monies due and owing to SBE firms as per the contract and Prompt Payment Provisions of the Public Contract Code.

SECTION 4 – NON-DISCRIMINATION

The Prime consultant 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 governed by Expo's SB Program on the basis of race, color, sex, or national origin. In administering its SBE Program, the Prime Consultant 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, sex or national origin.

SECTION 5 – PRE-AWARD REQUIREMENTS / BID SUBMITTALS

For a Proposer to be deemed responsive to the SBE requirements of the solicitation, the Proposer must:

- a. Commit to meet and/or exceed the SBE goal set forth in the solicitation and submit the corresponding “SBE Goal Declaration” Form (refer to Attachment D).
- b. Submit a “Summary of Proposed SBE Participation” Form (refer to Attachment D).
- c. Submit evidence of applicable SBE certification for each proposed SBE.

1.0 ACCURACY OF SUBMITTALS

The Proposers shall ensure all information provided to the Authority in response to the SBE Program requirements is current, complete and accurate. The Authority will perform an independent review and assessment of the data and information provided.

Any error, omission, ambiguity or conflict that may arise between these Small Business Enterprise requirements and California Law shall be resolved first in favor of California law and then in favor of the Authority’s Small Business Enterprise requirements. Failure by a Proposer or its subcontractors, consultants or other vendors to carry out these requirements may be grounds for a finding of non-responsiveness or for the Authority to resort to such other remedies as the Authority deems appropriate.

2.0 SUBMITTAL OF SBE CERTIFICATIONS

Participation SBE firms must be properly certified in order for their participation to count toward the contract’s SBE commitment. SBE firms listed by the Prime Consultant with its proposal submittal must be certified prior to award of the Prime Contract to be eligible to be credited toward the SBE goal. SBE firms added after award of the Prime Contract must be certified prior to execution of their subcontract/purchase order/agreement in order to be eligible for crediting. In order to obtain credit towards meeting the goal, Proposers must verify that each business it represents to be a certified SBE, does hold up-to-date and current SBE certification as defined in these requirements. Proposers are to include evidence of corresponding certification for each SBE firm proposed to perform on the contract.

Proposers are cautioned against knowingly and willfully using “front” to meet the SBE goal. Only legitimate certified SBEs are eligible to be credited towards the SBE goal. The use of “fronts” and “pass-through” subcontracts to non-SBE firms may constitute criminal violations. Any indication of fraud, waste, abuse or mismanagement of these funds shall be immediately reported to the appropriate entities.

SECTION 6 – OVERSIGHT AND MONITORING

1.0 DUTIES AND RESPONSIBILITIES OF THE EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

- a. Monitor the Compliance of the Prime Consultant with the Authority's SBE Program, goals and other related requirements to ensure full compliance is effectuated at all times.
- b. Validate that only firms who have been certified as eligible SBE firms are permitted to participate for SBE credit towards the goals on this Contract.
- c. Review Proposer SBE proposal submittals to determine responsiveness to the SBE requirements.
- d. Perform SBE Good Faith Effort Reviews (Pre and Post-Award).
- e. Provided reports to the Expo Board of Directors on compliance with this SBE Program.
- f. Perform Prompt Payment and other SBE Audits to confirm SBE Program compliance.
- g. Recordkeeping and Monitoring
 - (1) The Authority will utilize a detailed recordkeeping system as a mechanism for monitoring and tracking SBE contract awards and Prime Consultant's progress towards attaining SBE goals throughout the performance of the contract.
 - (2) The Authority will also develop and maintain hard-copy of a contract-specific project management file which includes all SBE-related compliance monitoring and enforcement activities.
- h. Monitoring Payments to SBEs

The Authority will monitor Prime Contractor's performance towards meeting the overall SBE project goal commitments to ensure that work committed to SBEs is actually performed by SBEs. Such monitoring and tracking mechanisms will provide a running tally of actual SBE attainments (based on payments actually made to SBE firms) in contrast to their commitments.

The Authority, may, at its discretion, perform interim audits of the Prime Consultant's payments to SBEs, including prompt payment compliance audits in accordance with the public contract code. The audit will review payments to SBE subcontractors to ensure that the actual amount paid to SBE subcontractors equals or exceeds the dollar amounts committed and that payments are made within regulatory required timelines.

- i. Review Prime Consultant's request to add SBE Subcontractors and/or SBE substitution requests.

j. The Authority will provide Prime Consultant with a canvassed list of certified SBEs within the Authority's market area by impacted industry (Refer to Appendix 1 "Small Business Prime Contractor Referral Form) to facilitate the utilization of SBEs by the Prime Consultant and its subcontractors at all tiers.

2.0 DUTIES AND RESPONSIBILITIES OF THE PRIME CONSULTANT

a. The Prime Consultant shall undertake on-going good faith efforts to meet the goals and objectives of the Authority's SBE Program.

b. The Prime Consultant shall submit "Monthly SBE Commitment and Utilization" reports to the Authority (by the 15th of the month for the previous month's activity) beginning with the first month after work commences. The form for the reports is entitled "Monthly Report – Utilization of Small Business Enterprises (refer to Appendix 2). The Narrative Summary must state whether the Prime Consultant is on target with meeting the overall SBE goal and their respective comments, including whether the goal has been exceeded (stating the amount of the excess), or whether the Prime Consultant is behind target (stating the amount of the deficit).

If any progress report shows that the Prime Consultant is behind target, or if it anticipates being behind target, the report include satisfactory evidence of past good faith efforts undertaken and must specify additional good faith efforts planned to be taken to remedy deficiencies towards meeting the approved SBE Goal, changes to planned SBE participation and any other efforts to attain the contract SBE goal in accordance with the Authority's SBE Program.

The Prime Consultant shall not credit the participation of SBE Subcontractors towards the Prime Contractor's SBE attainment until the amount being credited towards the goal has been paid to the SBE. The final report submittal shall be clearly marked "Final." The Authority, at its discretion, may designate an alternate Monthly reporting schedule and format.

c. Board of Directors Small Business Participation Report

The Prime Consultant may be requested to compile and submit to the Authority a "Small Business Participation Monthly Report" for issuance to the Authority's Board of Directors on a submittal schedule designated by the Authority which will also include utilization of local business enterprises. The Authority will review the Prime Consultant's initial report submittal(s) and may request modifications, as necessary, including modifications to the reporting format.

d. The Prime Consultant shall submit ad-hoc reports, at the request of the Authority.

e. When a SBE Subcontractor/Subconsultant is terminated or fails to complete its designated scope of work on the contract for any reason, the Prime Consultant must make Good Faith Efforts to identify another certified SBE Subcontractor/Subconsultant to substitute for the original SBE. These Good Faith Efforts shall be directed at finding another SBE to perform at least the same amount of work under the contract as the SBE that was terminated, to the extent needed to meet the contract goal established for the procurement/contract.

f. Request for Additional SBE Subcontractor

If the Prime Consultant requests to award additional work to an SBE firm beyond the original list of SBEs provided with their respective bid or proposal, the Prime Consultant must complete and submit to the Authority the corresponding Appendix 3, "Request for Additional SBE Subcontractor/Supplier," for review and approval by the Authority.

3.0 SBE SUBSTITUTION PROVISIONS

In addition to all other Subconsultant/Subcontractor substitution provisions required by law and the Authority, the Prime Consultant electing to substitute a certified SBE must comply with the SBE Program substitution provisions set forth below and submit a "Request for SBE Subcontractor/Supplier Substitution" form, Appendix 4, and documented evidence that it undertook sufficient good faith efforts to replace the SBE with another SBE firm to the Authority for approval prior to effectuating the substitution.

The Authority will consider authorizing the substitution of a SBE Subcontractor/Subconsultant for the below listed reasons:

- a. The listed SBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract is based upon the general terms, conditions, plans and specifications for the Project, or on the terms of such Subcontractor's or suppliers written bid, is presented by the Prime Consultant.
- b. The listed SBE becomes bankrupt or insolvent.
- c. The listed SBE fails or refuses to perform his subcontract or furnish the listed materials.
- d. The listed SBE Subcontractor fails or refuses to meet the insurance requirements of the contract.
- e. The listed Subcontractor is not duly licensed as required by California law, as applicable.
- f. The Authority determines that the work performed by the listed SBE Subcontractor/Subconsultant is substantially unsatisfactory and is not in accordance with the plans and specifications or the contractual scope of services, or that the Subcontractor/Subconsultant is substantially delaying or disrupting the progress of the work.

4.0 SUBMIT COPIES OF SBE SUBCONTRACTS/PURCHASE ORDERS/AGREEMENTS

The Prime Consultant shall submit to the Authority copies of all executed SBE subcontracts within fourteen (14) working days after the Prime Consultant executes the contract with the SBE Firm.

The Prime Consultant shall incorporate these Small Business Enterprise provisions into each Agreement, Purchase/Task Order (P/TO) or subcontract, issued under this

contract, and each Subcontractor/Subconsultant, vendor, consultant dealer, broker or other source (at all tiers) shall agree to the terms and conditions thereof.

Listed first-tier Subcontractors/Subconsultants shall enter into subcontract agreements with the Prime Consultant within fourteen (14) days of the date the Prime Consultant executed the Agreement with the Authority. Failure to execute subcontract agreements in a timely manner shall be considered a violation of the SBE Provisions.

SECTION VII – ENFORCEMENT

Failure of the Prime Consultant to comply with the requirements of the SBE Program constitutes a material breach of the Contract. The provisions of this Section are not exclusive, and shall not preclude the Authority from any remedy authorized by law, including without limitation the recovery of any and all damages suffered by the Authority as a result of the Prime Consultant's failure to comply.

In the event that (1) the Prime Consultant fails to submit any required report (including all required supporting documents) or other required information in a timely manner, (2) the Prime Consultant provides information to the Authority, whether in a report or otherwise, indicating that the Prime Consultant is not on target to meet the overall SBE goal or is not making sufficient/satisfactory progress towards meeting the SBE goal or (3) the Prime Consultant is failing to engage in Good Faith Efforts or other circumstances exist which indicate that the Prime Consultant may not meet the overall SBE goal, then the Authority may, in its sole discretion, issue to the Prime Consultant a Notice of Non-Compliance, which shall specify the respects in which the Prime Consultant is failing to comply with the requirements of the SBE Program, and may include any of the following measures:

- a. A requirement that the Prime Consultant submit to the Authority, for the Authority's review and approval, a Small Business Work Plan/Corrective Action Plan, clearly delineating actions that will be taken to remedy any deficiencies in the meeting the SBE Participation goals, and the schedule for all such actions;
- b. A requirement that the Prime Consultant participate in meetings with Authority designated representatives to discuss the Small Business Work Plan/Corrective Action Plan and other SBE Requirements;
- c. A requirement that the Prime Consultant participate in a mandatory SBE Program training session;
- d. In the event the Prime Consultant is not in compliance with any requirements of the SBE Program, a withholding or assessment by the Authority in an amount up to \$500 per day for each failure to comply, commencing on the 30th day following the date of the Notice and continuing until the date compliance is achieved;
- e. The issuance of a Cure Notice under the provisions of the Contract; and/or
- f. Any other remedy or measure authorized by law.

The Notice of Non-Compliance shall specify the deadline for the performance of any actions to be taken the Prime Contractor, and shall advise the Prime Contractor of its right to appeal any withholding or assessment by submitting to Authority a notice of appeal within 5

days following the date of the Notice of Non-Compliance. Any such appeal shall be considered by the Chief Executive officer of the Authority, and a decision communicated to the Prime Consultant within 10 days following submission of the appeal. The decision of the Chief Executive Officer shall be final and binding.

The Prime Consultant shall ensure full compliance of its Subcontractors/Subconsultants at all tiers with the Small business provisions governing record keeping and reporting requirements.

The Authority reserves the right to audit the records and inspect the facilities of the Prime Consultant, its contractors and any Subcontractors/Subconsultants of any tier for the purpose of verifying SBE participation and/or adherence to SBE provisions. The Prime Consultant and Subcontractors/Subconsultants/Vendors shall permit access to their records at the request of the Authority.

APPENDICES

Appendix 1 to Attachment E, "Small Business Prime Contractor Referral Form."

Appendix 2 to Attachment E, "Monthly Report – Utilization of Small Business Enterprises"

Appendix 3 to Attachment E, "Request for Additional SBE Subcontractor/Supplier"

Appendix 4 to Attachment E, "Request for SBE Subcontractor/Supplier Substitution"