

Potrero Yard Modernization Project: Bus Yard Infrastructure Facility*

Local Business Enterprise (LBE) Plan
March 2024

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



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1 Local Business Enterprise Plan (“LBE 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 LBE Plan applies only to the Bus Yard Infrastructure Facility. A separate LBE Plan will be developed for the Housing and Commercial Component (“**HCC**”) of the Project.

PNC is committed to maintaining a local supplier base throughout the entirety of the Project while also providing SFMTA optimal design, construction, ongoing asset management. This LBE Plan is developed in recognition that San Francisco’s small businesses are a significant sector of the local economy and form the backbone of its neighborhoods, including the Potrero Hill and Mission District neighborhoods where the Project is located. Further, this LBE 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 LBE utilization. As such, the LD has performed robust outreach to a number of LBE organizations to best understand how to maximize LBE participation including but not limited to the African American Construction Coalition, BuildOUT, Hyper Hyper Local Business Group, LBE Advisory Committee, Renaissance Center, San Francisco African American Chamber of Commerce, San Francisco Latino & Black Builders Association, and Women Business Enterprise Council (“**WBEC**”) Pacific.

At time of LBE 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

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

responsible to implement this LBE Plan and accept obligations of any Project Labor Agreement(s) that may apply.²

This LBE Plan is a living document and will be updated at minimum annually; however, any changes to the LBE Plan must have SFMTA's Contract Compliance Office ("**SFMTA CCO**") approval.

1.2 Purpose and Scope

This LBE Plan only governs the LBE 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 LBE 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, or Chapter 14B of the San Francisco Administrative Code as applicable. In the event of any conflict between the applicable portions of Administrative Code Chapter 14B and this LBE Plan, this LBE Plan shall govern.

This plan provides a vision on how LD will maximize LBE participation Citywide 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 LBE Plan. LD and its Design-Builder should strive for a team that reflects the diversity of the City. LD and its Design-Builders must perform targeted outreach in an effort to obtain Micro-LBE participation, LBEs from the surrounding areas of the Project (including those located in Zip Codes 94110, 94124, 94134, and 94107), and LBEs from the City's most disadvantaged communities as defined by the Muni Service Equity Strategy.

1.3 LBE Participation Requirements

This LBE Plan is a San Francisco-specific economic opportunity strategy and outlines the LD's approach to meeting LBE Requirements for each stage of the Bus Yard Infrastructure Facility of the Project. Lead Developer shall make Good Faith Efforts as defined below in Section 1.6 to achieve the below LBE Participation Requirements. The LBE Participation Requirements include all awards made to LBE Contractors, Subcontractors, Consultants, Subconsultants, or Suppliers that are certified by the Contract Monitoring Division ("**CMD**") as San Francisco Micro-LBEs, Small-LBEs, SBA-LBEs, and Nonprofit ("**NPE**")-LBEs at any tier (See Sections 1.3.1 & 1.3.2 for additional information).

Table 1: LBE Requirements

Bus Yard Infrastructure Facility Project	LBE Requirement	Micro-LBE Set Aside(s)
Design and Professional Services	25%	8%
Construction	20%	12%
Maintenance	20%	TBD

LBE Participation Requirements identified during the Bus Yard Infrastructure Facility are inclusive of all types of LBE participation including traditional construction trades,

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

architectural/engineering design services, other professional services, goods and supplies, trucking, and other project-related costs.

The LD has readily engaged LBEs, including micro-LBEs, to provide professional services during the PDA Term and will submit an LBE report at the end of the PDA period to the City to apply applicable LBE utilization credit to the Bus Yard LBE Participation Requirement(s). Likewise, if the LD conducts Early Works, any LBE participation will be reported to the City to apply applicable LBE utilization credit to the Bus Yard LBE Participation Requirement(s).

1.3.1 Micro-LBE Set-Aside(s)

Prior to the LD selection of Design-Builder for the Bus Yard Infrastructure Facility, LD has performed robust outreach and data analysis to determine the availability of Micro-LBEs. Accordingly, the LD has determined that at time of bid, the bidding Design-Builders must identify lower tier bidding opportunities that will be set aside for Micro-LBE participation that meets at minimum 8% of the Design and Professional Services LBE Requirement and at minimum 12% of the Construction LBE Requirement. For avoidance of confusion, the Design and Professional Services LBE Participation Requirement of 25% includes 8% for a Micro-LBE Set Aside(s) and 17% that can be met with participation of Micro-LBEs, Small-LBEs, and/or NPE-LBEs. Similarly, the Construction LBE participation Requirement of 20% includes 12% for Micro-LBE Set Aside(s) and 8% that can be met with participation of Micro-LBEs, Small-LBEs, SBA-LBEs, and/or NPE-LBEs. For SBA-LBE participation, refer to Section 1.3.2 for additional information.

Bidding Design-Builders must identify how each Micro-LBE set aside will be procured to maximize Micro-LBE (particularly those Micro-LBEs located in the surrounding areas of the Project and in the City's most disadvantaged communities, as defined in Section 1.2) responsiveness.

1.3.2 SBA-LBE Participation

SBA-LBEs are an important part of the LBE community and are eligible to participate in satisfying the Construction LBE Requirement. As part of LD outreach to LBEs, particularly the Micro-LBEs, LD has received feedback that SBA-LBEs often are dedicated to bidding lower-tier work opportunities to Small-LBEs and Micro-LBEs and thus play an important role in the local supply chain and economy.

In order to support maximizing Micro-LBE and Small-LBE participation while also allowing for SBA-LBE participation, LD will cap SBA-LBE participation at 3% for purposes of meeting the Construction LBE Requirement. Any SBA-LBE participation above this 3% cap will be considered non-LBE participation.

1.3.3 LBE Requirements during Maintenance Period

Terms defining LBE 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 LBE Liaisons

To meet the complexity and long-term nature of this Project, PNC will identify a Lead Developer LBE Liaison ("**LD LBE Liaison**") and will also require Design-Builder to specify an LBE Liaison ("**DB LBE Liaison**", which together with the LD LBE Liaison are referred to as "**LBE 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 LBE 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. Additionally, it is preferred that each LBE Liaison to have experience applying supplier inclusion principles to capital improvement projects within the City and County of San Francisco that have an LBE program.

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

1.4.1 Lead Developer LBE Liaison

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

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

- During PDA Term
 - Conducting LBE outreach efforts to notify the LBE 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 LBE outreach efforts;
 - Monitoring LBE participation and performance of a Commercially Useful Function (CUF) and ensuring that LBEs have the correct LBE certification for work performed, including for any Early Work activities;
 - Reporting LBE participation to the City; and
 - Confirming that all Design-Builder solicitation documents include information about LBE participation including specific requirements to be responsive and evaluation approach.

- During Project Agreement Term
 - Implementing small business assistance training and educational activities to support LBE growth and development;
 - Confirming Good Faith Efforts for LBE participation conducted by Design-Builder to meet or exceed their respective LBE Requirements stated in this Plan;
 - Providing confirmation of the results of LBE responsiveness of bids/proposals to SFMTA CCO (including all LBE certification verifications, LBE Certificate of Commitment Forms, completed Good Faith Efforts Requirements taken by Design-Builder);
 - Receiving concerns from LBEs (ex. prompt payment) and guiding LBEs to address concerns with Design-Builder; and
 - Confirming nondiscrimination in subcontracting.
 - Requiring clear selection procedures and criteria when the LD or Design-Builder decide to have a competitive procurement. The LD LBE 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 Micro-LBEs, Small-LBEs and/or NPE LBEs for ongoing service contracts.

1.4.2 Design-Builder LBE Liaison

All Design-Build bidders will be required to identify an LBE Liaison.

The DB LBE Liaison will be responsible for implementing the LBE 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 LBE outreach efforts;
- Monitoring LBE participation and performance of a Commercially Useful Function (CUF) and ensuring LBEs are certified under the appropriate LBE certification category and providing confirmation of such to LD LBE Liaison;
- Confirming nondiscrimination in subcontracting;
- Conducting Good Faith Efforts for LBE participation that meets or exceeds the LBE Requirements stated in this LBE Plan;
- Documentation of Good Faith Efforts outreach conducted. Design-Builder will provide results to LD for LD LBE Liaison review;
- Reporting LBE participation to the SFMTA CCO following LD review and approval;
- Updating the overall LBE Plan to indicate completed, present and forecasted scopes of work to be completed/performed by LBEs on a quarterly basis. These updates should identify if there is an LBE shortfall and/or other changes that impact LBE participation or confirm the overall LBE participation plan remains the same because there is no current LBE shortfall or other changes that would impact LBE participation.
- Implementing a Mentor-Protégé Program and providing other small business assistance as appropriate; and
- Other duties as identified in this LBE Plan.

1.5 Subcontracted Goods and Services – LBE Requirements

The established 25% and 20% LBE participation 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 LBE certifications issued by the City of San Francisco’s Contract Monitoring Division from subtier bidders at time of subtier bid opportunity.

1.5.1 Non-Opportunity Deductions and Non-Purchase Opportunities

Upon award, Design-Builder will be required to conduct a trade analysis and identify if any scopes of work would be considered Non-Opportunity Deductions (“**NOD**”) due to lack of LBE availability or capacity in the market prior to bidding out subcontracts. The results of these trade analyses including potential values will be provided to SFMTA CCO. In addition to the anticipated NODs, Design-Builder will be required to estimate contractor costs that will not have purchasing opportunities (“**Non-Purchase Opportunities**”). LD and SFMTA CCO must mutually agree to NODs and Non-Purchase Opportunities.

LBE utilization requirement will be applied to the Contract Value less Non-Purchase Opportunities and NOD. The Design-Builder will also provide an itemized breakdown of the NOD and Non-Purchase Opportunities and provide the actual NOD and Non-Purchase Opportunities cost for all contracts/subcontracts on a quarterly basis so that the City can verify there is a lack of LBE availability as well as determine that the LD is meeting its LBE Requirements.

1.5.2 Design and Professional Services Subcontracting

At the time of bid submission, bidding Design-Builders for the Bus Yard Infrastructure Facility must provide an LBE narrative participation plan to meet the Design and Professional Services LBE Requirement and identify specific Design and Professional Services scopes that will be set aside for Micro-LBE(s) for the Bus Yard Infrastructure Facility. The proposed Design and Professional Services scopes set aside for Micro-LBE participation must meet the 8% Micro-LBE Requirements as described in Section 1.3.1. This plan must also include 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 and to include one micro-LBE designer for the Project Agreement phase.

Additionally, at time of proposal submission, bidding Design-Builders will be required to sign and submit an LBE Commitment Certification Form, which states that if awarded the Contract, the Design-Builder will conduct all Good Faith Efforts Requirements (as identified in Section 1.6.14) to meet the 25% Design and Professional Services LBE participation Requirement during the course of the Project. The LBE Commitment Certification Form shall also state that the Design-Builder Bidder will list on Form 2A of the LBE Attachment all Design and Professional Services LBEs identified as part of the proposing team at the time of proposal submission and the specific dollar amount to be awarded to each LBE.

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 LBE subconsultants, vendors, and lower tier subconsultants that the Design-Builder will rely on to meet the LBE Participation Requirement. New subconsultants may be added at this time at the Design-Builder's discretion; however, no LBEs listed on Form 2A 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. LBE agreements may be modified to increase contract amount without LD/SFMTA CCO's prior approval.

1.5.3 Construction Subcontracting

At the time of bid submission, bidding Design-Builders for the Bus Yard Infrastructure Facility must provide an LBE narrative participation plan describing how they anticipate meeting the Construction LBE Requirement and identify specific Construction scopes that will be set aside for Micro-LBE for the Bus Yard Infrastructure Facility. The proposed Construction scopes set aside for Micro-LBE participation must meet the 12% Micro-LBE Requirements as described in Section 1.3.1.

Additionally, at time of proposal submission, all bidding Design-Builders will be required to sign and submit an LBE Commitment Certification Form, which states that if awarded the Contract, the Design-Builder will conduct all Good Faith Efforts (as identified in Section 1.6.14) to meet the 20% Construction LBE Participation Requirement during the course of the Project. The LBE Commitment Certification Form shall also state that the Design-Builder Bidder will be required to list on Form 2A all Construction LBEs identified, if any, as part of

the proposing team at the time of proposal submission and the specific dollar amount to be awarded to each LBE.

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 LBE subcontractors, vendors, and lower tier subcontractors that the Design-Builder relies on to meet the LBE Participation Requirement. New subcontractors may be added at the Design-Builder's discretion; however, no LBEs listed at time of proposal submission as part of the LBE Commitment Certification Form 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. LBE agreements may be modified to increase contract amount without LD/SFMTA CCO prior approval.

1.5.4 Discounting

The Bus Yard Infrastructure Facility will be bid on a best value basis with a Fixed Budget Limit (FBL). To meet the FBL, the Design-Builder is not required to apply a discount through a downward adjustment in price or upward adjustment in rating of a proposal to bids received from LBEs. Although there is no requirement to implement a discount provision, proposing Design-Builders may - at their own discretion – select to apply discounts to bids received from Micro-LBEs, Small-LBEs, and/or LBEs located in the Project area or the City's most disadvantaged communities as defined by the Muni Service Equity Strategy. Such bid discounts may be applied to all scopes that are bid out by Design-Builder or to select scopes only.

1.5.5 LBE Narrative Participation Plan Updates

The selected Design-Builder must update its LBE Narrative Participation Plan at least quarterly (January 15, April 15, July 15 and October 15) to:

1. Demonstrate how the Design-Builder is meeting and forecasting to meet its LBE Requirements (reference Section 1.3 and 1.5 above).
2. Identify the CMD LBE certification categories that will be used to pursue LBE Subcontractors and any anticipated products and services to be made available for LBE subcontracting opportunities as Micro-LBE set-asides.

1.6 Good Faith Efforts Requirements

City acknowledges and agrees that the LD and its Contractors, Subcontractors, Consultants, Subconsultants, and Suppliers shall have the sole discretion to qualify, hire or not hire LBEs provided it does so in a nondiscriminatory manner and is in good faith trying to achieve the listed LBE Requirement(s). Further, to meet listed LBE Requirement(s), Design-Builders must make good faith efforts to enter into contracts with LBEs and give good faith consideration to bids and proposals submitted by LBEs.

As part of LD's Good Faith Efforts Requirements ("**Good Faith Efforts**") to reach the LBE Requirements 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 CMD LBE 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 LBE participation including through joint venturing or set-aside for Micro-LBE participation only. 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 LBE 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 businesses including through the City's Controller's Office (<https://sfcitypartner.sfgov.org/pages/Events-BS3/event-search.aspx>) and other local and trade publications.

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 LBEs 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 LBE Requirement and answer any LBE related questions.

1.6.6 Follow-up with Interested LBE Bidders

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

1.6.7 Outreach

The Design-Builder will a) provide LBEs 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 LBE Liaison will conduct outreach to LBEs for all buying opportunities in the applicable trades, professional services, and material (supplies, equipment) needs in order to encourage LBEs to participate on the Project.

Additionally, Design-Builder must perform targeted outreach in an effort to obtain Micro-LBE participation, LBEs from the surrounding areas of the Project (including those located in Zip Codes 94110, 94124, 94134, and 94107) and LBEs from the City's most disadvantaged communities as defined by the Muni Service Equity Strategy. Such targeted outreach shall be documented in regular reports to the LD.

The LD requires Design-Builder to implement the following when outreaching to LBEs:

- Communicate subcontracting opportunities early, consistently, and through multiple channels. This outreach should communicate anticipated buying needs, solicit LBEs' interest in specific contracting opportunities, and encourage LBEs to attend future pre-bid meetings. Outreach efforts may include engaging local chambers of commerce, other business or trade associations, and LBEs located in the Project neighborhood to reflect the diversity of the Project area.
- Develop a Micro-LBE set-aside program for work categories with larger numbers of Micro-LBE firms (in addition to any Micro-LBE set-aside program established by LD).

- 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 LBEs, 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

Use nondiscriminatory selection criteria to award bids, including not discriminating in its selection of Subcontractors against any person on the basis of race, gender, or any other basis prohibited by law. 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).

1.6.10 Incorporation into Contract Provisions

For each Contract that the LD and Design-Builder enter 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 this LBE Plan and setting forth the applicable LBE Participation Requirement as appropriate for such Contract. LD reserves the right to inspect records to confirm that Design-Builder is indeed including appropriate clauses. Additionally, if complaint arises, LD would investigate and inform the City as per Section 1.6.13.

1.6.11 Maintain Records and Cooperation

LD and Design-Builder shall maintain records of LBEs 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 1.6.13 to identify a strategy to meet the LBE Requirement(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 this LBE Plan.

1.6.12 Quarterly and Annual Reports

During the Project Agreement Term the LBE 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 LBE Requirements attainment and submit to SFMTA CCO. Details of reporting requirements are found in Section 1.12.

1.6.13 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 LBE Requirements and, in such cases, execute plans to increase LBE participation.

1.6.14 Documenting Good Faith Efforts Outreach

Design-Builder is required to document its Good Faith Efforts outreach conducted to select CMD Certified LBEs to meet the LBE Requirement(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 Micro-LBE, Small-LBE, NPE-LBE, SBA-LBE, or Non-LBE and identify if the firm is from 94110, 94124, 94134, 94107;
- Provide copies of all of the Subcontractor Bids submitted (including bids that were not accepted). The information should include the name of the firm, bid amount, scope of work, and the LBE/Non-LBE status as noted in the second bullet above; and
- In cases where both LBEs and Non-LBEs submitted bids for the same scope of work and where the Non-LBE was selected, provide a full and complete statement of the reason(s) for selection of each non-LBE Subcontractor. If the reason for selection is based on relative qualifications, the statement must address the particular qualifications at issue. If the reason is the Bid's respective dollar amounts, the statement must state the amounts and describe the similarities and/or dissimilarities in the scope of work covered by the Bids.
- In cases where only Non-LBEs submitted bids for a particular scope of work and where a Non-LBE was selected, the bidder shall note that this is the case, provide the scope of work, and state efforts made to outreach to LBEs for stated scope of work.

LD will not allow Design-Builders 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 LBE participation:

- Meet with Tier 1 Subcontractors bi-weekly, or more often as appropriate, to confirm compliance with this LBE Plan.
- Develop a pre-qualification process that reviews lower tier partners from a best-value perspective that weighs LBE narrative participation plan, LBE status of bidder, or experience with meeting LBE Participation Requirements in the overall selection criteria, and/or plans to hire local residents.
- Recognize lower tier contractors successful in meeting LBE Requirements through formal awards programs, team lunch for onsite labor, or other methods.
- Identify non-traditional opportunities for LBE 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 requirement for LBE participation.
- Require Subcontractors that are not compliant with this LBE 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 Local Businesses

The LD in coordination with its selected Design-Builder, will provide a capacity building initiative that is multi-pronged and designed to support certified LBE growth and development, including those businesses identified as small and micro local businesses. Our program is designed to enhance the capabilities and technical development of LBEs, 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 LBEs with technical assistance and capacity building services by partnering with existing small business advocacy organizations; support LBE-eligible companies navigate the LBE certification process; and/or sponsor LBE executive(s) to attend a select business training programs (such as Dartmouth University's Tuck Diversity Business Program or other similar program providing multi-day executive level capability building).
- **Mentor-Protégé Program** – The Design-Builder will be required to implement a Mentor-Protégé Program or similar program with the goal to improve LBE participants' ability to compete effectively for contracts. The Mentor-Protégé program must identify Mentor(s) (project personnel with financial decisionmaking responsibilities) providing training, networking, and general mentorship to Protégé(s) (LBE). The intent is for the proteges to be LBE subcontractors on the BYC. Additionally, the Mentor-Protégé program must 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. Bidding Design-Builders must identify a Mentor-Protégé framework that meets these minimum elements. Design-Builder's established corporate Mentor-Protégé Program may be sufficient to implement for the Project.

This section will be updated with selected Design-Builder's specific approaches to assisting small local businesses. LD will expect bidding Design-Builders to provide a credible plan to meet or exceed above identified approach to providing assistance to small businesses and LBEs.

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 CMD LBE categories so that the LD and/or Design-Builder can send such notification to LBEs to alert them to upcoming contracting opportunities as performance of Good Faith Efforts outreach efforts. 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. Once SFMTA CCO has this necessary information (including any clarifications that SFMTA CCO may need), it shall respond within 3 business days.
- 1.9.1.2 Provide assistance to LD/Design-Builders or their lower tier Subcontractors or Subconsultants on how to navigate through the LBE Directory in order to obtain contact information to perform Good Faith Efforts outreach to LBEs.
 - 1.9.1.3 Review quarterly and annual reports of LBE Requirements. When necessary, in a timely manner give suggestions as to how best to maximize LBEs 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 LBE Requirement(s) and/or satisfying Good Faith Effort Requirements.
 - 1.9.1.5 Assist LD and Design-Builders in implementing its LBE Trucking program.
 - 1.9.1.6 Meet as needed with City and LD, Design-Builders and/or Subcontractors regarding LBE participation questions or concerns.

1.10 LBE Trucking Program

The Design-Builder must set aside at least 75% of eligible trucking work to Micro-LBE 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 Micro-LBE certified trucking firms to the maximum extent possible to participate on the Bus Yard Infrastructure Facility. When the 75% Micro-LBE requirement is not being met in a given month, the Design-Builder shall perform outreach to LBEs in the following order: 1) Small LBEs, 2) SBA-LBEs, and 3) non-LBE trucking firms.

Additionally, if it is determined that there is specialized trucking that would impact the ability of trucking LBEs to perform such work, the Design-Builder must communicate this immediately to the LD, SFMTA CCO, and LBE 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 all the 75% Micro-LBE Set-Aside trucking requirement is being met or provide the Good Faith Efforts documentation performed for all trucking work as prescribed in 1.6.10, 1.6.14 and this section above

1.11 Prohibition on Discrimination

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, gender, or any other basis prohibited by law. As part of its efforts to avoid unlawful discrimination in the selection of Subconsultants and Subcontractors, Contractors and Consultants will undertake the Good Faith Efforts and participate in the meet and confer processes as set forth above.

1.12 Reporting and Monitoring

Each Contractor, Consultant, and its Subcontractors and Subconsultants, as applicable, shall maintain accurate records demonstrating compliance with the LBE Requirements. LD shall create a reporting method for tracking LBE participation. Data tracked shall include information identified in the City's Form 7 (Progress Payment Form), including:

- Name/Type of Contract(s) let (e.g. civil engineering contract, environmental consulting, etc.)
- Name of Contractors (including identifying which are Micro-LBEs, Small-LBEs, NPE-LBEs, SBA-LBEs and non-LBEs)
- Name of Subcontractors (including identifying which are Micro-LBEs, Small-LBEs, NPE-LBEs, and non-LBEs)
- LBE designations (including MBE, WBE, and OBE)
- Identify the Micro, Small and SBA-LBEs firms from 94110, 94124, 94134, and 94107
- Scope of work performed by LBEs (e.g. under an architect, an LBE could be procured to provide renderings)
- Dollar amounts (invoiced and paid) associated with both LBE and non-LBE Contractors at both Design-Builder and Subcontractor levels
- Dollar amounts of NOD and Non-Purchase Opportunities
- Total LBE participation as defined as a percentage of total Contract dollars minus NOD and Non-Purchase Opportunities

SFMTA CCO will review LD data tracking methods to confirm compliance with Form 7.

Additionally, Design-Builder will submit Form 8 (Exit Report and Affidavit) for each sub-tier LBE at time of each LBE's final progress payment.

1.13 Written Notice of Deficiencies

If based on a complaint, failure to report, or other cause, then the SFMTA CCO has reason to question the Good Faith Efforts 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. 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 this LBE Plan. When deficiencies are noted SFMTA CCO will work with the appropriate LBE Liaison(s) to address such deficiencies.

1.14 Remedies/Penalties

In order to be consistent with the policy goals and purpose of Chapter 14B and to ensure participation by LBEs and non-discrimination, the following shall apply for any non-compliance of this LBE Plan in the design, construction, and ongoing asset management of the Bus Yard Infrastructure Facility:

Conference and conciliation shall be the administrative procedure of first resort for any, and all, compliance disputes arising under this LBE Plan that both the DB LBE Liaison and LD LBE Liaison are not able to resolve. SFMTA CCO shall have power to oversee and to conduct the conference and conciliation.

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.

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In situations where conference and conciliation are not successful and the LD, Contractor, Consultant, or Subcontractor is found by the SFMTA CCO to be noncompliant with the following sections: Good Faith Efforts; LBE Narrative Participation Plan; LBE 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 LBE and failed to provide a justifiable reason(s) for not meeting said commitment; and/or
- 2) has not met its LBE Requirement(s) and failed to demonstrate substantial Good Faith Efforts to meet the LBE Requirement(s) as referenced in Section 1.6 of the LBE Plan.

Notice of non-compliance determinations will be sent to the SFMTA Board of Directors, Board of Supervisors and the Mayor.