

# ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



## STAFF REPORT

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**MEETING DATE:** 10/9/2019

**Staff Report No. 19-198**

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**TO:** AC Transit Board of Directors  
**FROM:** Michael A. Hursh, General Manager  
**SUBJECT:** Amendments to Board Policies 460 and 466

### ACTION ITEM

#### RECOMMENDED ACTION(S):

Consider approving amendments to Board Policies 460 and 466; Disadvantaged Business Enterprise (DBE) Policy and Small and Small Local Business Enterprise (SBE/SLBE) Policy, respectively.

#### BUDGETARY/FISCAL IMPACT:

There is no budgetary or fiscal impact associated with this report.

#### BACKGROUND/RATIONALE:

Staff is required to periodically review and bring forth suggested amendments to Board Policies to the District's Board of Directors. In the continuous effort toward inclusion and diversity, staff has been monitoring the progress of District programs that are designed to increase small, small-local, and DBE participation as well as industry trends and recommends changes to both the DBE and SBE/SLBE policies as follows:

- Add language clarifying criteria considered when evaluating Good Faith Efforts (GFE) toward meeting disadvantaged, small, or local business utilization contracting goals.
- Revise and re-organize policy language such that certain elements are clearly identified policy requirements and where applicable are independent components within their respective program(s).

Over the past few years, the District has received multiple inquiries on how to measure whether or not a contractor has demonstrated GFE in attempting to meet a specified small business utilization contracting goal. While the Federal Transit Administration (FTA) maintains that GFE consideration is a subjective process, the FTA also recommends specific criteria be considered for GFE evaluation within their Best Practices Procurement & Lessons Learned Manual (October 2016). In order to best serve potential bidders or proposers, GFE evaluation criteria and a GFE procurement form have been developed and added to both the DBE and the SBE/SLBE Policies. It should be noted that the outlined GFE criteria was developed such that it must not be used as a way of circumventing or in lieu of meeting a specific small business utilization contracting goal. The GFE process should only be utilized by contractors when all efforts to meet the contracting goal have been unsuccessful.

Additionally, staff has thoroughly reviewed both policies and is recommending minor edits and reorganization of the Policy Objectives sections.

**ADVANTAGES/DISADVANTAGES:**

Advantages to these proposed changes include clarity in reading and understanding the required elements of both the DBE and SBE/SLBE programs, specifically ensuring that individual program elements are considered independently. In addition, adding the GFE evaluation criteria language will provide potential bidders or proposers with a better sense of what minimal efforts need to be accomplished in order to be considered as having established a good faith effort in meeting a specified small business utilization contracting goal.

Staff does not see any disadvantages to the proposed changes.

**ALTERNATIVES ANALYSIS:**

There are no practical alternatives to the course of action recommended in this report. Leaving the policies in their current form would leave a gap in the understanding of what constitutes sufficient good faith effort (GFE) in meeting a small business utilization contracting goal.

**PRIOR RELEVANT BOARD ACTION/POLICIES:**

Staff Report 17-176: Board Policies 460 and 466 Amendments (corrected title)

**ATTACHMENTS:**

1. Board Policy 460 - Disadvantaged Business Enterprise Policy (with redline edits)
2. Board Policy 466 - Small and Small Local Business Enterprise Policy (with redline edits)
3. Good Faith Efforts Bid Form
4. GFE Examples

**Approved by:**

Michael A. Hursh, General Manager

**Reviewed by:**

Denise C. Standridge, General Counsel

Claudia L. Allen, Chief Financial Officer

Gene Clark, Director of Procurement and Materials

Linda A. Nemeroff, District Secretary

**Prepared by:**

Phillip Halley, Contracts Compliance Administrator