

**BYD MOTORS, INC.**  
**DBE PROGRAM**

**SUBPART A—GENERAL REQUIREMENTS**

**Section 26.1 Objectives**

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

**Section 26.3 Applicability**

BYD Motors, Inc. is the recipient of federal transit funds authorized by Titles I, III, V, and VI of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. No. 102-240, 105 Stat. 1914; by federal transit laws in Title 49, United States Code; and/or Titles I, II, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. No. 105-178, 112 Stat. 107.

**Section 26.5 Definitions**

BYD Motors, Inc. will adopt the definitions at 49 C.F.R. § 26.5 for this program.

**Section 26.7 Non-discrimination Requirements**

BYD Motors, Inc. 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 C.F.R. part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, BYD Motors, Inc. 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 26.11 Record Keeping Requirements**

**Reporting to DOT: 26.11(b)**

We will report DBE participation to DOT as follows:

We will report DBE participation on a quarterly basis, using DOT Form 4630, or upon FTA approval, the DBE Office Online Reporting System (DOORS). These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

**Bidders List: 26.11(c)**

BYD Motors, Inc. will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

We will collect this information in the following ways:

When responding to federally-funded transit RFPs, we identify opportunities to engage DBEs. Our dedicated RFP team articulates to our purchasing team both the technical and commercial requirements for each component that needs to be sourced to fulfill the desired specifications of the requested proposal. Depending on the requirements set forth in the RFP, BYD Motors, Inc. will utilize one or more options to involve DBEs.

When the RFP requirement(s) does not identify a specific supplier, but only a certain specification, there is an opportunity to introduce a DBE that provides a product that meets the specification requested by the potential customer.

When the RFP requirement(s) does identify a specific supplier, we directly ask the customer's procurement team if they would be willing to accept an approved equivalent product available from a DBE. During the formal question submittal process of a RFP, participating proposers are allowed to directly ask questions regarding specifications and suppliers. As all of the questions and answers become public information to any other bidder, this represents an ideal opportunity to educate not only the potential customer but also other participating bidders of the existence of equivalent products available from a DBE in the market place.

When the RFP requirement(s) identifies a new supplier, we research the supplier and gather the necessary information to send out a Request for Quote (RFQ) as well as check to find out whether the new supplier may qualify as a DBE. As this new supplier was provided by the customer's specification, we can attempt to find an equivalent DBE offered product and ask for if the customer would be open to an equivalent solution during the formal question submittal period. As the use of the new supplier is customer dictated we may or may not be able to introduce an alternative equivalent, but we can let the customer know that we are attempting to find an opportunity for a DBE to compete.

We document all received quotes for each federally funded RFP in which we participate.

#### **Section 26.13 Federal Financial Assistance Agreement**

BYD Motors, Inc. has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

##### Assurance: 26.13(a)

BYD Motors, Inc. 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 C.F.R. part 26. The recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 C.F.R. 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 BYD Motors, Inc. of its failure to carry out its approved program, the Department may impose sanction as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801 *et seq.*).

This language will appear in financial assistance agreements with sub-recipients.

##### Contract Assurance: 26.13(b)

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 C.F.R. 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 BYD Motors, Inc. has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, we 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:

Lance Guerrero  
1800 South Figueroa Street  
Los Angeles, CA 90015  
Telephone: (310) 798-3980 extension 58870  
E-mail: lance.guerrero@byd.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that BYD Motors, Inc. complies with all provision of 49 C.F.R. part 26. The DBELO has direct, independent access to the president of BYD Motors, Inc. concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of two to assist in the administration of the program. 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 BYD Motors, Inc.'s progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO and board of directors on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Participates in pre-bid meetings.
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 BYD Motors, Inc.'s updated directory on certified DBEs.

### **Section 26.27 DBE Financial Institutions**

It is the policy of BYD Motors, Inc. 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. We have made the following efforts to identify and use such institutions: exploring sources such as the Federal Reserve and local chamber of commerce websites. We will also re-evaluate the availability of DBE financial institutions every two to three years.

To date we have identified the following such institutions:

American Plus Bank, N.A. Arcadia, Calif.	Metropolitan Bank, Oakland, Calif.
Americas United Bank, Glendale, Calif.	Mission National Bank, San Francisco, Calif.
Asian Pacific National Bank, San Gabriel, Calif.	New Omni Bank, N.A., Alhambra, Calif.
Bank of the Orient, San Francisco, Calif.	Pacific Alli Bank, Rosemead, Calif.
Bank of Whittier N.A., Whittier, Calif.	Pan American Bank, Los Angeles, Calif.
Community Commercial Bank, Claremont, Calif.	Premier Business Bank, Los Angeles, Calif.
Eastern International Bank, Los Angeles, Calif.	ProAmerica Bank, Los Angeles, Calif.
First Choice Bank, Cerritos, Calif.	Saehan Bank, Los Angeles, Calif.
First General Bank, Rowland Heights, Calif.	Saigon National Bank, Westminster, Calif.
Metro United Bank, San Diego, Calif.	

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

### **Section 26.29 Prompt Payment Mechanisms**

BYD Motors, Inc. 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 30 days from the receipt of each payment the prime contract receives from BYD Motors, Inc. 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 BYD Motors, Inc. This clause applies to both DBE and non-DBE subcontracts.

BYD Motors, Inc. has established random contractor reviews to monitor that prompt payment and return of retainage is in fact occurring. BYD Motors, Inc. may give written notice to the prime contractor and the prime contractor's surety that, if the default is not remedied within 30 days, the contract may be terminated, to enforce that prompt payment and return of retainage is in fact occurring.

### **Section 26.31 Directory**

California 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. The California Unified Certification Program directory is available at [www.californiaucp.org](http://www.californiaucp.org).

### **Section 26.33 Overconcentration**

BYD Motors, Inc. has not identified that overconcentration exists in the types of work that DBEs perform.

If overconcentration of DBEs on any type of work is determined as to unduly burden the opportunity of non-DBE participants, BYD Motors, Inc. will take necessary measures to address the issue overconcentration. We shall contact the FTA and submit a plan of action to alleviate overconcentration. This plan shall include, but not limited to, incentive programs, technical assistance, contractual consultation, marketing, or any other appropriate steps to aid in promoting DBE work will be highly considered.

Based on a recent overconcentration analysis, BYD Motors, Inc. cross-referenced DBE and non-DBE awarded contracts under the NAICS codes 327215 and 332912. These two codes were chosen at random. We first identified DBEs who've submitted bids, determined the number of DBEs who were actually awarded contracted, and compared the number of DBEs awarded contracts in said NAICS codes to the number of contracted awarded to non-DBEs with those NAICS codes.

### **Section 26.35 Business Development Programs**

BYD Motors, Inc. has not established a business development program.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

BYD Motors, Inc. will take the following monitoring and enforcement mechanisms to ensure compliance with 49 C.F.R. 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 49 C.F.R. § 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 2 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 direct observation, interviews, and review of submitted documents.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

### **Section 26.39 Small Business Participation.**

BYD Motors, Inc. has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses):

#### Supplier/Subcontractor Selection

BYD Motors, Inc. ensures that its final products will be supported in operation for a minimum of 12 years; therefore, it is critical to establish and maintain mutually beneficial long-term relationships with our suppliers and sub-contractors. Our supplier and subcontractor process includes parameters beyond simply price and availability. We also take into account factors such as: product quality, adherence to detailed specs, future supportability, meeting delivery schedules and end user satisfaction.

BYD Motors, Inc. manufactures a truly unique product. Most of our major components and systems are proprietary and manufactured internally (inverters, in-wheel traction motors, converters, etc.). This also means that we have fewer supplier-based products to procure and we can thoroughly vet our suppliers to ensure we can meet our DBE goal. We have a dedicated team to source and identify new suppliers.

BYD Motors, Inc. shall utilize the following sources when identifying new suppliers and subcontractors: State DBE registries, local or state business registries, NAICS codes, transit trade shows, customers, industry publications, business news, our current supply base and various search engines on the internet. These sources are extremely valuable when seeking new supply partners. As a new transit vehicle manufacturer in the United States, we frequently receive direct inquiries from potential suppliers.

When identifying potential qualified DBEs, BYD Motors, Inc. reaches out through various means including attending APTA-sponsored events, attending pre-bid meetings, providing willing DBEs and small businesses with adequate information and time to reply to bid requests, negotiating with responsive DBEs, following up with qualified DBEs that contact BYD Motors, Inc., and searching for DBE suppliers within defined geographic areas. Additionally, our DBE goal will be posted on our website once approved.

The BYD Motors, Inc. purchasing team has an established process for selecting and approving suppliers. We vet all candidates, both DBEs and non DBEs, with the aforementioned information and then parse the list based on our established criteria. Beyond our purchasing criteria, we also involve our engineering and quality assurance departments to weigh in on all supplier-sourced products. Whenever possible we attempt to visit our vendors to further qualify their capabilities. This process is applied to all candidates to ensure that we are establishing level playing fields for DBE companies to compete for our business. We will retain all electronic and physical correspondence from potential suppliers and sub-contractors for internal review. We will make sure that we are appropriately monitoring our efforts pursuant to our overall DBE program and goal.

#### Continuous DBE Education with Existing Suppliers and Subcontractors

BYD Motors, Inc. recognizes an important opportunity to work with our existing vendors to help educate them about the federal DBE program. We will assist them in implementing their own DBE programs within their business model. We will work with our vendors in order to help them identify opportunities to source sub-components of their products from DBE organizations. We will not only track the efforts and measures that we are taking internally to ensure that we are supporting the criteria spelled out in 49 CFR Part 26 but will also track our external communication and its effectiveness.

#### RFP Technical Specification Equivalent

When responding to federally funded transit RFPs, we identify opportunities to partner with DBEs. Our RFP team communicates to our purchasing team both the technical and commercial requirements for each component that requires sourcing. Depending on the specifications enumerated in the RFP, there are different options BYD Motors, Inc. utilizes to involve DBEs.

- When the RFP requirement(s) does not identify a specific supplier, but only a certain specification, there is an opportunity to introduce a DBE that provides a product that meets the specification requested by the potential customer.
- When the RFP requirement(s) does identify a specific supplier, we directly ask the customer's procurement team if they would be willing to accept an approved equal available from a DBE. During the formal question submittal process of an RFP, participating proposers are allowed to directly ask questions regarding specifications and suppliers. As all of the questions and answers become public information to any other bidder, this represents an ideal opportunity to educate not only the potential customer but also other participating bidders of the existence of equivalent products available from a DBE in the market place.

- When the RFP requirement(s) identifies a new supplier, we research the supplier and gather the necessary information to send out a Request for Quote (RFQ). We also verify whether the new supplier may qualify as a DBE. As this new supplier was provided by the customer's specification, we will attempt to find an equivalent DBE offered product and ask for if the customer would be open to an equivalent solution during the formal question submittal period. As the use of the new supplier is customer dictated we may or may not be able to introduce an alternative equivalent, but we can let the customer know that we are attempting to find an opportunity for a DBE to compete.

As part of BYD's DBE program, BYD will contact national minority and small business advocacy organizations, as well as with DBE registries to identify new DBE suppliers as part of our effort to meet our goal.

BYD Motors, Inc. recognizes an opportunity to increase the good faith efforts and utilize tracking mechanisms that will support the guidelines and principles as set out in 49 CFR Part 26 for fostering small business participation with our sub-contractors. We work with our major suppliers on improving this process and tracking its effectiveness. BYD Motors, Inc. makes it a point to encourage small business' participation and attempts to incorporate their products and services whenever possible. BYD Motors, Inc. tracks the participation of small businesses the following ways:

- Eligibility is limited to small business concerns as that term is defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).
- Where federally-funded contracts require specific products or specifications, BYD Motors, Inc. will identify potential qualifying small businesses via the methodology presented above as well as through using the Small Business Administration website, [www.sba.gov](http://www.sba.gov).
- BYD Motors, Inc. will track and record opportunities available to utilize small businesses.
- BYD Motors, Inc. will unbundle contract requirements when possible to encourage small business participation.
- BYD Motors, Inc. will provide technical assistance to all small businesses and DBEs when requested.

## **SUBPART C—GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

BYD Motors, Inc. 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 3 to this program. This section of the program will be updated annually.

In accordance with Section 26.45 BYD Motors, Inc. will submit its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, BYD Motors, Inc. will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and BYD Motors, Inc.'s 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 rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice. The media used for the publication of the notice will include BYD's website,

the industry trade journal *Passenger Transport*, one or more newspapers of general circulation, online newsletters, and available minority focused media. Normally, BYD Motors, Inc. will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed. Normally, we will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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 1 of each year, 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 26.51 Contract Goals**

BYD Motors, Inc. will use contract goals to meet any portion of the overall goal BYD Motors, Inc. does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of total amount of a DOT-assisted contract.

### **Section 26.53 Good Faith Efforts Procedures**

#### Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to 49 C.F.R. part 26.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

#### Information to be submitted (26.53(b))

BYD Motors, Inc. treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors 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 3 days of being informed by BYD Motors, Inc. that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Stella Li  
1800 South Figueroa Street  
Los Angeles, CA 90015  
Telephone: (310) 798-3980  
E-mail: stella.li@byd.com

The reconsideration official will not have played any role in the original determination that the bidder/offeror 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))

BYD Motors, Inc. 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 C.F.R. part 26, regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of BYD Motors, Inc. 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. A DBE contract goal of \_\_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 C.F.R. part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

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; (4) written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

**Section 26.55 Counting DBE Participation**

We will count DBE participation toward overall and contract goals as provided in 49 C.F.R. § 26.55.

**SUBPART E—CERTIFICATION PROCEDURES**

**Section 26.81 Unified Certification Programs**

BYD Motors, Inc. is the member of a Unified Certification Program (UCP) administered by the state of California. The UPC will meet all of the requirements of this section. The following is a description of the UCP: the California Unified Certification Program is managed by the state of California, and may be contacted through [www.californiaucp.org](http://www.californiaucp.org).

**SUBPART F—COMPLIANCE AND ENFORCEMENT**

**Section 26.109 Information, Confidentiality, Cooperation**

We 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**

We 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 make available for inspection upon request by any authorized representative of BYD Motors, Inc. or DOT. This reporting requirement also extends to any certified DBE subcontractor.

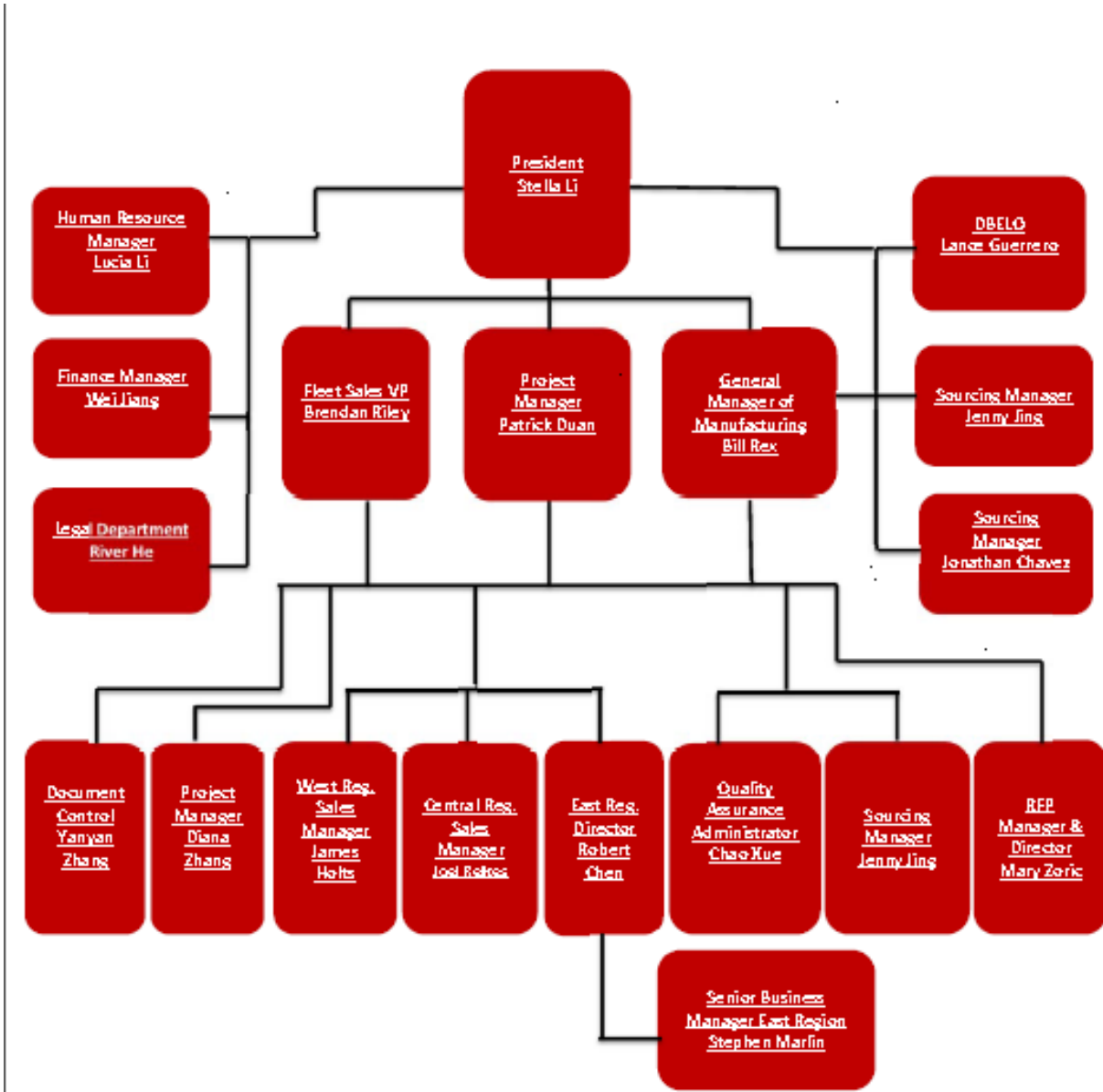
We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

**ATTACHMENTS**

- Attachment 1    Organizational Chart
- Attachment 2    Monitoring and Enforcement Mechanisms
- Attachment 3    Overall Goal Calculation
- Attachment 4    Enhanced DBE Outreach Program

Attachment 1

Organizational Chart



## Attachment 2

### Monitoring and Enforcement Mechanisms

BYD Motors, Inc. has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract.
2. Breach of contract action, pursuant to state law.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 C.F.R. part 26
2. Enforcement action pursuant to 49 C.F.R. pt. 31
3. Prosecution pursuant to 18 U.S.C. § 1001.

Attachment 3

Section 26.45: Overall Goal Calculation

**Amount of Goal**

1. BYD Motors, Inc.'s overall goal for FY 2014 is the following: 2.0 percent of the federal financial assistance we will expend in DOT-assisted contracts
2. \$5,046,000 is the dollar amount of DOT-assisted contracts that BYD Motors, Inc. expects to award during FFY2014. This means that BYD Motors, Inc. has set a goal of expending \$100,920 with DBEs during this fiscal year/project.

**Methodology used to Calculate Overall Goal**

Step 1: 26.45(c)

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs}}{\text{All firms ready, willing and able}}$$

328  
22,052

The data sources or demonstrable evidence used to derive the numerator were the California Department of Transportation, Office of Business and Economic Opportunity, Los Angeles County Metropolitan Transportation Authority, and Washington State Office of Minority and Women's Business Enterprises.

The data sources or demonstrable evidence used to derive the denominator were the foregoing and NAICS industry counts.

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was 1.5 percent.

Step 2: 26.45(d)

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the DBE participation we would expect in the absence of discrimination we have adjusted our base figure by 1.33 percent.

The data used to determine the adjustment to the base figure were: consultation with, and surveying of, businesses, advocacy groups, and DBEs to determine if the BYD Motors, Inc. DBE goal is an accurate reflection of the market and/or to receive general feedback, and consideration by BYD Motors, Inc. of the continuing effects of past discrimination. Following is a list of all groups and organizations contacted.

- |   |                              |
|---|------------------------------|
| A to Z Glass & Mirror, Inc.             | Media X Communication Design |
| Air Management Industries, Inc.         | Royal Construction           |
| Central City Association of Los Angeles | Thermo King                  |
| Douglas Auto Tech Corp.                 | 3V Signs & Graphics          |
| Imaging Products International, Inc.    | The Transit Coalition        |
| I/O Controls                            | USSC Group                   |
| Luminator/Twin Vision                   | VIP Steering Wheel Co.       |

The businesses and DBEs in the foregoing list were selected because they represented providers of goods or services that BYD would purchase in the process of manufacturing and maintaining quiet, clean, and efficient battery-powered electric buses in the City of Lancaster for sale around the United States. The Central City Association of Los Angeles advocates on behalf of Los Angeles business. The Transit Coalition is a broad based group of concerned citizens mobilized to passionately demonstrate community support for the economic development and continuing operation of improved transportation. Altogether, these businesses, advocacy groups, and DBEs are part of the minority, women's, and general contractor groups; community organizations; and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and BYD Motors, Inc's efforts to establish a level playing field for the participation of DBEs as required by 49 C.F.R. § 26.45.

The comments received from consulting with these groups and organizations were as follows.

- “For overhaul contracts getting new suppliers or trying to get our existing suppliers approved to a specific geographical area is always a problem.” Luminator/Twin Vision.
- “We are a certified WBE specializing in marketing materials, graphic design and printing, with a history of government projects, federal, state, and local, we can assist you with your needs.” Media X Communication Design.
- “There is a DBE organization associated with APTA. I suggest you reach out to it and let the organization know that you exist and have a DBE policy.” Thermo King.
- “We have nothing to add. The BYD policy appears to be straightforward As a small non-DBE business, Vehicle Improvement Products is pleased to participate with BYD on this project.” VIP Steering Wheel Co.

The reason we chose to adjust our figure using this data was because of the continuing effects of past discrimination.

From these data, we have adjusted our base figure to 2.0 percent (*i.e.*, 1.5 percent  $\times$  1.33 percent adjustment = 2.0 percent).

### **Public Participation**

We published our goal information in these publications: *Passenger Transport*, an industry trade newspaper; the City of Lancaster, California, eNews online newsletter, a periodic online publication of general circulation; and the BYD Motors, Inc. corporate website. The goal information will also be published in the *Los Angeles Times*, other newspapers of general circulation, as well as in publications and periodicals of recognized DBE organizations, throughout southern California.

We received comments from these individuals or organizations: None.

Summaries of these comments are as follows: Not applicable.

Our responses to these comments are: Not applicable.

## Attachment 4

### Enhanced DBE Outreach Program

The purpose of this attachment is to lay out the BYD Motors, Inc. ("BYD") performance criteria and outreach efforts looking forward.

BYD, Build Your Dreams, is a company that is committed to entering the United States market not only as a manufacturing entity but as a member of the community. To that end, the last few months has seen the development of BYD's DBE outreach program devised to educate, nurture and expand DBE awareness in BYD's geographical locales. While BYD will seek out firms that are registered as DBEs, its focus is on fostering relationships with potential candidates that can become registered DBE firms.

Moving forward, the BYD DBE outreach program as developed will facilitate consultation with community groups aimed at reaching minority and women groups. At minimum the groups BYD will engage with are listed below:

- Community advocacy groups
- Economic developmental organizations
- Military/veterans' groups
- Women's councils for business expansion and development
- Minority groups such as Hispanic, Black, Asian Pacific, Native American
- Organizations representing impaired individuals

Implementation of the above plan will be through face-to-face meetings with various organizations, planned DBE fairs, and extensive newspaper articles/advertisements targeting Los Angeles County as well as states in the western portion of the United States, all as part of BYD's effort to solicit minority- and women-owned businesses as suppliers. Initially the primary focus will be in California, home base for BYD.

Stage one of BYD's DBE outreach program will be advertised in the following publications:

Asbarez	The Korea Times
The Beach Reporter	LA CityBeat
The Beverly Hills Courier	La Opinión
Burbank Leader	LA Weekly
CaribPress	LA Youth
The Century City News	Larchmont Chronicle
City News Los Angeles	Los Angeles Business Journal
Cultural News	Los Angeles Daily News
Daily Breeze	Los Angeles Downtown News
Daily Bruin	Los Angeles Express
Daily Pilot	Los Angeles Free Press
Daily Trojan	Los Angeles Herald-Examiner
Easy Reader	The Los Angeles Herald-Express
Entertainment Today	Los Angeles Newspaper Group
Glendale News-Press	Los Angeles Post-Examiner
Huntington Beach Independent	Los Angeles Sentinel
Illustrated Daily News	Los Angeles Times
Inland Valley Daily Bulletin	Los Angeles Times in the 21st century
Investor's Business Daily	Mountain Views News

Neon Tommy  
New Times LA  
OC Post  
OC Weekly  
The Orange County Register  
Pacific Citizen  
Palisadian-Post  
Pasadena Star-News  
The Poly Post  
Press-Telegram

Rafu Shimpo  
Redlands Daily Facts  
San Gabriel Valley Tribune  
Santa Monica College Corsair  
Santa Monica Daily Press  
Santa Monica Mirror  
Santa Monica Observer  
Tuesday's Child  
The Toluca Times  
Whittier Daily News

As stated above, BYD's DBE Outreach Program has been under development and is at the stage of initial launch currently slated for the week of January 20, 2014. With the maturation of its ever evolving DBE Program, BYD is gearing itself for attaining its annual DBE goal. However, BYD is committed to exceeding this goal through the fostering of community level participation in the manufacture of the BYD bus product. The program developed focuses on every possible vendor/supplier relating to direct and indirect service, including manufacturing and administrative/office services.

#### **Minority and Women Owned Business Enterprises**

BYD's aggressive DBE program is the first step in its efforts to provide significant and important contracting opportunities to local, small, disadvantaged and women owned businesses. The DBE program will be the cornerstone of BYD's work in this space, as required by federal contracting requirements, however BYD in parallel is also developing a voluntary Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) programs. The BYD MBE and WBE programs will actively promote contracting opportunities to minority- and women-owned businesses. BYD will pre-certify eligible firms using recognized standards and promote this program through a targeted outreach effort including, but not limited to:

- Local community media outlets
- Minority- and women-oriented publications
- Construction trade association publications and journals
- Certifying organizations
- Block clubs
- Religious organizations
- Outreach fairs

This voluntary program is intended to expand BYD's footprint in the contracting community and will result in real jobs and business opportunities for qualified MBE and WBE firms.

BYD is committed to the spirit of the DBE program leveling the playing field while fostering community level participation in the manufacture of the BYD electric bus product and will be reviewing every possible vendor/supplier opportunity.

The BYD team will attempt to hold meetings with leaders of the community and other groups representing the above categories of DBEs. BYD will host several "job fairs" in the urban/inner city neighborhoods of Los Angeles and Lancaster, California, as well as neighborhoods of other ethnic and minority groups if possible through community organizations.