



## CONTRA COSTA COUNTY AIRPORTS DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

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### I. POLICY STATEMENT AND PROGRAM OBJECTIVES

#### A. Policy Statement (§26.3; §26.7; §26.21; §26.23)

The Contra Costa County Airports (hereinafter referred to as “County”) is a recipient of U.S. Department of Transportation (DOT) Federal Assistance funds through the Federal Aviation Administration and as a condition of receiving such assistance has developed this Policy and DBE Program in conformance with the federal Disadvantaged Business Enterprise (DBE) Program and its regulations published under U.S. DOT 49 CFR Part 26. The County will continue carrying out this Program until all funds from DOT have been expended. The County is committed to fulfilling the spirit and intent of the federal DBE Program and its regulations, by ensuring that DBEs have equitable access to participate in all federally funded County contracting opportunities.

In accordance with these regulations the County’s policy is to ensure that minority-owned, women-owned, and other disadvantaged small businesses can fairly compete for and perform on contracts and subcontracts financed in whole, or in part with DOT funds.

#### B. Program Objectives (§26.1; §26.23)

It is the policy of the County to ensure that DBEs, as defined in Title 49 CFR, Part 26, have an equitable opportunity to compete for and participate in the County’s U.S. DOT-assisted contracts and subcontracts. The County is firmly committed to its DBE Program and the following policy objectives, which are designed to:

- Ensure non-discrimination in the award and administration of all the County's DOT-assisted contracts and subcontracts;
- Create a level playing field by which DBEs can compete fairly for and perform on the County 's DOT-assisted contracts;
- Ensure the County’s DBE Program is narrowly tailored in accordance with applicable laws;
- Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- Assist in the removal, where feasible, of procurement and contracting barriers in DOT-assisted contracts which may inadvertently impede DBE participation;

- Offer assistance to firms to enable them to compete successfully in the market place outside of the DBE Program;
- Comply with federal regulations and financial assistance agreements;
- Disseminate timely and accurate information regarding the County's contracting opportunities to DBE Program participants and potential participants; and
- Monitor and enforce contractor compliance with meeting established DBE goals and/or exercising Good Faith Efforts to do so as defined in 49 CFR 26.

The County further ensures that implementation of its DBE Program is afforded the same priority as compliance with all other legal obligations incurred by the County in its financial assistance agreements with the U.S. DOT. It is the expectation of the County that all County personnel shall adhere to the full spirit and intent of the DBE Program, and carry out all DBE requirements and procedures accordingly.

To oversee the Program, the County has designated the Public Works Director to serve as the County's DBE Liaison Officer (DBELO). However, all of the County's executives, management and staff share in the responsibility for making the County's DBE Program success and shall give their full cooperation to the DBELO in the implementation of this Policy. Implementation of the DBE Program has the same priority as all other legal obligations incurred by the County as contained within its financial assistance agreement with the U.S. DOT.

The County's policy statement has been signed and dated by County's Public Works Director as authorized by the Board of Supervisors and is to be disseminated throughout its organization and to the DBE and non-DBE business communities that perform work on the County's U.S. DOT-assisted contracts through the County's procurement solicitation process. Furthermore, this DBE Policy Statement is posted on the County's website and made available to the general business community and the general public.

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Brian Balbas  
 Public Works Director  
 Contra Costa County

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Date

**C. Non-Discrimination (§26.7)**

The County 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 governed by Title 49 CFR, Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE Program, the County 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.

## **II. DBE PROGRAM RACE AND GENDER NEUTRAL AND RACE CONSCIOUS IMPLEMENTATION MEASURES**

The County will utilize both race and gender neutral and race and gender conscious measures to meet its DBE Program goals and objectives. The County will implement these measures on their Federal Aviation Administration (FAA)-assisted contracting program based on results received from the County's analysis of its past utilization data and an examination of similar market area Disparity Studies.

### **Race Neutral Measures**

Pursuant to U.S. DOT, the County will work diligently to achieve the maximum feasible DBE participation through the implementation of race-neutral measures. These may include unbundling of contracts, providing contractor technical assistance, mentoring and establishing other business development programs, including training.

In conjunction with these race neutral measures, the County will monitor contractor compliance, prompt payment, and retainage provisions in accordance with Title 49 CFR, Part 26. The County will also collect Bidders information and maintain a Bidder's List Database to assist in accessing information about DBE availability for future goal setting purposes.

The County will collect, and report race neutral DBE participation in accordance with the Uniform Report of DBE Commitments/Awards and Payments Form (refer to § 26.11).

### **Race-Conscious Measures**

In accordance with the race conscious application, the County will conduct Pre-Award DBE Compliance Responsiveness Reviews of all FAA-assisted contracts with a contract-specific DBE goal to assess Bidders/Proposers compliance with the DBE good faith effort requirements and all other applicable DBE requirements of the solicitation prior to the award of the contract.

Subsequent to the award, the County will continue to monitor and enforce contractor's post award DBE compliance in accordance with the County's DBE Program, including monitoring the respective contractor's DBE commitments to ensure the commitments are attained by contract completion and that the DBE(s) committed are performing consistent with Commercially Useful Function standards.

### III. General Requirements

#### A. Applicability (§26.3)

The County, as a direct recipient of federal funds from the U.S. DOT, and as a condition of Federal financial assistance, is required to submit for approval, to the U.S. DOT Operating Administration from which it receives the majority of its funding, a DBE Program developed in accordance with federal regulations published under Title 49 CFR, Part 26 and subsequent Guidance. This Program sets forth the policies and procedures to be implemented by the County to ensure that DBEs have an equitable opportunity to participate in the County's U.S. DOT-assisted contracting opportunities.

In direct response to these regulatory requirements, the County hereby establishes a DBE Program, which will:

1. Ensure non-discrimination in the award and administration of County's DOT-assisted contracts
2. Reaffirm the County's commitment to fairness and the principles of equal opportunity.
3. Fulfill the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have equitable access to participate in all of County's DOT-assisted contracting opportunities.
4. Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.
5. Meet legal standards for unique and narrow-tailoring requirements;
6. Ensure only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
7. Help remove barriers to the participation of DBEs in DOT-assisted contracts.
8. Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Any terms used in this section that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations. In the

event of any conflicts or inconsistencies between the Regulations and the County's DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail. In conformance with 49 CFR 26, the County will continue to carry out its DBE Program until all funds from U.S. DOT financial assistance have been expended.

#### **B. DBE Program Updates (§26.21)**

As a recipient of more than \$250,000 of U.S. DOT financial assistance over a Federal Fiscal Year and pursuant to 49 CFR §26.21, the County shall continue to implement the DBE Program unless and until all funds from DOT financial assistance have been expended.

The County will regularly review directives issued by DOT update its DBE Program as necessary to fully comply with the intent of the US DOT's DBE Program.

#### **C. Definition of Terms (§26.5)**

Any terms used in this Program that are defined in 49 CFR Part 26 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. Some of the most common terms are defined below:

**Affirmative Action:** Positive activities undertaken by the County and its contractors to eliminate discrimination and effects of past discrimination and to ensure non-discriminatory practices in the future.

**Appeal:** A formal filing by which a business entity challenges a legal decision made by a lower City and brings it to a higher City for review.

**Affiliation:** has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

**Alaska Native:** A citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

**Alaska Native Corporation (ANC):** Any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

**Assets:** All the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

**Bidders List:** A list of all contractors that have expressed an interest in bidding on prime and subcontracts on the County's U.S. DOT-assisted projects.

**Business, business concern or business enterprise:** An entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

**California Unified Certification Program (CUCP):** California's one-stop certification clearinghouse which standardizes DBE certification criteria across all certifying members of the CUCP and enables applicants to apply once for DBE certification, which will be honored by all DOT recipients within California.

**Code of Federal Regulations (CFR):** Codification of the general and permanent rules and regulations of the executive departments and agencies of the U.S. federal government.

**Commercially Useful Function:** Work performed by a DBE that has a necessary and useful role in the contract scope of work and on which the firm's role is not a superfluous step added in an attempt to obtain credit toward goals. If, in the County's judgement, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, the firm will not receive DBE credit.

**Compliance:** Correct and accurate implementation of U.S. DOT DBE Program requirements.

**Contingent Liability:** A liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

**Contract:** A legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

**Contracting Opportunity:** Any decision by the County or its contractors to institute a procurement action to obtain a product or service commercially (as opposed to inter-governmental actions).

**Contractor:** One who participates, through a prime or subcontract (at any tier), in a County contract.

**County Business Patterns (CBP):** Statistical data authorized by United States Code Titles 13 and 26 and compiled by the U.S. Census Bureau, which provides annual details of geographic, industry, and other information for U.S. business establishments.

**Days:** In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

**DBE Directory:** The California Unified Certification Program's (CUCP's) list of certified DBEs, which is used by the County and its contractors to identify potential DBE prime and subcontractors, suppliers, etc.

**DBE Liaison Officer (DBELO):** A staff member of a public agency that receives U.S. DOT financial assistance, who is responsible for implementing all aspects of the agency's DBE Program.

**De-certification:** The result of the process initiated to remove a firm's DBE eligibility.

**Disadvantaged Business Enterprise (DBE):** A for-profit small business concern—

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;

2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
3. Has been certified as Disadvantaged in accordance with Title 49 CFR, Part 26 by a certifying member agency of the CUCP.

**Disparity Study:** Fact-based technique and methodology used to establish whether or not underutilization of certain groups, i.e., minorities and women, exists in the purchasing and contracting practices of an entity. A disparity study must be conducted in order to establish the legal validity of any affirmative action program in public contracting.

**Department or DOT:** The U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

**DOT-Assisted Contract:** A contract between a recipient and a contractor (at any tier) funded in whole or in part with U.S. DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land or improved real property.

**Federal Fiscal Year (FFY):** The annual period beginning October 1<sup>st</sup> and ending September 30<sup>th</sup> of any given year. The FFY is different than the County's fiscal year, which runs from July 1<sup>st</sup> through June 30<sup>th</sup>.

**Goal:** A numerically expressed objective, which the County or its contractors are required to make good faith efforts to achieve.

**Good Cause:** An acceptable reason for terminating a DBE subcontractor on a County contract. "Good cause" is defined as a situation where the DBE subcontractor has failed or refused to perform the work of its subcontract in accordance with normal industry standards.

**Good Faith Efforts (GFE):** Efforts to achieve a DBE goal or other requirement of this Part, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

**Home State:** The state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

**Indian tribe:** means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

**Joint Venture:** An association between a DBE firm and one or more other firms to carry out a single, for profit business enterprise, for which the parties combine property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interest.

**Liabilities:** Financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

**Manufacturer:** A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by specifications.

**Memorandum of Agreement (MOA):** A cooperative agreement written between parties to cooperatively work together on an agreed-upon project or meet an agreed-upon objective. An MOA can take the form of a legal document that is binding and holds the parties responsible to their commitment, or just a partnership agreement.

**Memorandum of Understanding (MOU):** A document describing a bilateral agreement between parties. It expresses a convergence of will between the parties, indicating an intended common line of action, rather than a legal commitment. It is a more formal alternative to a gentlemen's agreement, but generally lacks the binding power of a contract.

**Native Hawaiian:** Any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

**Native Hawaiian Organization:** Any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

**Non-compliance:** Failure, either willful or inadvertent, to correctly and accurately implement DBE Program requirements.

**Operating Administration:** Any of the following agencies of the U.S. Department of Transportation (DOT): Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and Federal Aviation Administration (FAA).

**Personal Net Worth:** The net values of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participative DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets, jointly or as community property, with the individual's spouse.

**Primary industry classification:** means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

**Primary recipient:** means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

**Principal place of business:** means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

**Program:** Any undertaking on the County's part to use U.S. DOT financial assistance as authorized by laws to which the DBE Program applies.

**Race-Conscious Measure or Program:** A program or measure that focuses specifically on assisting DBEs, i.e., by the development and inclusion of participation goals or Good Faith Effort activities.

**Race-Neutral:** A program or measure that focuses on assisting all small businesses equally, regardless of gender, ethnicity, or social/economic disadvantage, i.e., community outreach and awareness programs. For the purposes of this part, *race-neutral* includes gender-neutrality.

**Recipient:** An entity, public or private, that receives U.S. DOT financial assistance (through the programs of the FAA, FHWA, or FTA), including primary recipient (an entity that passes some or all of the financial assistance to another recipient) and subrecipient (an entity that receives U.S. DOT financial assistance through a primary recipient).

**Regular Dealer/Supplier:** A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad-hoc or contract by contract basis.

**Set-Aside:** A contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms or on some other basis not related to qualifications or pricing.

**Small Business Administration or SBA:** The federal United States Small Business Administration.

**SBA certified:** A firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

**Small Business Concern:** A business that meets the definition contained in 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).

**Socially and Economically Disadvantaged Individual:** Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

1. Found by the CUCP certifying member agency to be socially and economically disadvantaged on a case-by-case basis.
2. A member of any one or more of the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) **“Black Americans”** which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) **“Hispanic Americans”** which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (iii) **“Native Americans”** which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (iv) **“Subcontinent Asian Americans”** which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - (v) **“Asian Pacific Americans”** which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong.
  - (vi) **Women; and**
  - (vii) Any additional group whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

3. Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

**Transit Vehicle Manufacturer (TVM):** A manufacturer of vehicles used by the County for the primary purpose of public mass transportation (e.g. railcars, buses, and vans). The term does not apply to firms that rehabilitate old vehicles or to manufacturers or dealers of transit vehicles with respect to requirement of paragraph 26.49 of the regulation.

**Tribally-owned Concern:** Any concern at least 51 percent owned by an Indian tribe as defined in this section.

**Unified Certification Program (UCP):** A one-stop certification clearinghouse which standardizes DBE certification criteria across all certifying members of the UCP and enables applicants to apply once for DBE certification, which will be honored by all DOT recipients within the state.

**U.S. Census Bureau:** The U.S. government agency responsible for the U.S. Census, as well as other national demographic and economic data.

**U.S. Department of Transportation (DOT):** Department of the U.S. federal government that is actively involved with U.S. transportation at the national, state, and local levels. The DOT includes the Office of the Secretary, Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA).

## IV. RESPONSIBILITIES FOR DBE PROGRAM IMPLEMENTATION

### A. DBE Liaison Officer (§26.25)

The County has designated the following individual as the Disadvantaged Business Enterprise Liaison Officer (DBELO):

**Brian Balbas**  
**Public Works Director**  
**DBE Liaison Officer**  
**Contra Costa County Airports**  
**255 Glacier Drive**  
**Martinez, CA 94553**  
**Telephone: (925) 313-2000**  
**Email: [brian.balbas@pw.cccounty.us](mailto:brian.balbas@pw.cccounty.us)**

In this capacity, the DBELO is responsible for implementing all aspects of the County's DBE Program and ensuring that the County complies with all provisions of Title 49 CFR, Part 26 and subsequent U.S. DOT-issued guidance. The DBELO has direct, independent access to the County Administrator

concerning DBE Program matters (Refer to Exhibit B, “DBE Program Organizational Chart”).

The DBELO’s and/or designee’s duties include, but are not limited to, the following activities:

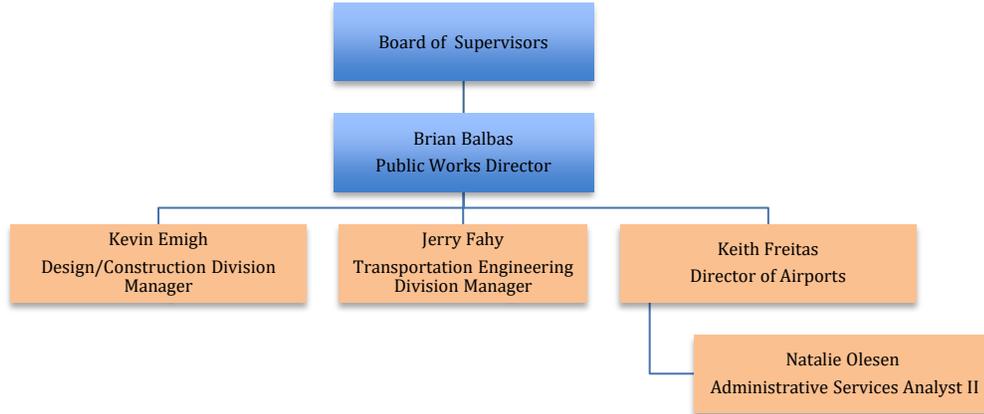
1. Analyze and revise DBE program policies and procedures as necessary.
2. Submit updates to the DOT, regarding any significant changes to the County’s DBE Program.
3. Works with the County’s departments and DBE consultant to perform goal-setting analysis, establish methodology, and calculate overall triennial DBE goals.
4. Facilitate public participation in the overall goal-setting process.
5. Conduct an annual review of the County’s overall DBE goal; adjust and/or re-calculate the goal as necessary and submit to the FAA.
6. Review triennial/overall DBE goal commitments at the end of each Federal Fiscal Year (FFY); analyze any goal shortfall(s); provide to the FAA (under the DBELO’s signature and within 90 days after FFY end), a written analysis of why the overall goal was not achieved, as well as a written plan for corrective actions that the County will take, to remedy the goal shortfall.
7. Analyze contract scope of work and subcontracting opportunities; assist in the calculation of DBE contract goals as applicable.
8. Conduct and coordinate outreach efforts to DBEs and small businesses to provide information regarding contracting opportunities with the County; utilize the assistance of minority and women business associations, small business development centers, industry/trade organizations, vendor fairs, workshops and minority-focused publications to assist with outreach efforts.
9. Coordinate public information and communication programs regarding contracting opportunities ensuring bid notices and requests for proposals are made available to DBEs in a timely manner.
10. Ensure that all solicitation documents and contract templates include all relevant DBE Program elements, contractor documentation submittal requirements and required contract provisions.
11. Work with the County’s contracting/procurement staff to arrange solicitations, present bid/ proposal requirements, and determine required quantities, specifications, and proposal delivery schedules to facilitate a level playing field for DBEs.
12. Work with the County’s contracting/procurement staff to remove, where feasible, barriers which may limit DBE participation,
13. Maintain a Bidders List of firms that submit a bid, quote or proposal for participation on a County contract; ensure that the Bidder List contains all information required by 49 CFR §26.11.
14. Evaluate Good Faith Efforts when bids/proposals do not meet DBE contract goals as applicable.

15. Develop and implement technical assistance programs for DBEs, including resources and referrals to supportive services.
16. Investigate services and resources offered by banks and/or financial institutions owned and controlled by socially and economically disadvantaged individuals.
17. Ensure that, prior to approval of the substitution of any DBE subcontractor, prime contractor's evidence Good Faith Efforts to replace the original DBE with another eligible DBE.
18. Ensure that any DBE subcontractor terminations by the prime Contractor are for "good cause" only, and that any such terminations receive prior written approval by the County.
19. Monitor and enforce contractor compliance with all DBE Program provisions including goal commitments, documentation submittal requirements, reporting requirements, prompt payment to subcontractors, and DBE utilization requirements; impose administrative sanctions and/or monetary penalties for willful non-compliance.
20. Upon completion of each contract on which DBEs were utilized, prepare and file a written affidavit attesting to monitoring and verification of contractor compliance with all DBE Program provisions.
21. Maintain all necessary documentation to verify performance of activities included in the DBE Program.
22. Provide timely DBE reports to the FAA, including the annual Uniform Report of DBE Awards or Commitments and Payments.
23. Actively support and participate in the implementation of the California Unified Certification Program (CUCP).
24. Implement provisions to facilitate participation of small businesses on FAA-assisted contracts.

## **B. DBE Program Staffing**

As support staff to the DBELO, Jerry Fahy, Transportation Engineering Division Manager, Kevin Emigh, Design/Construction Division Manager, and Keith Freitas, Director of Airports have been designated to provide direct support related to DBE matters. The support staff provides assistance to the County in administering its approved Disadvantaged Business Enterprise (DBE) Program in accordance with U.S. Department of Transportation (DOT) DBE Program set forth under Title 49 Code of Federal Regulations (CFR) Part 26.

### C. DBE Organizational Chart



### D. Reconsideration Official (§26.53 (d))

In instances where contract goals are established and the bidder/proposer either fails to satisfy the requirements for meeting the contract goal or fails to document a sufficient Good Faith Effort (GFE) to do so, the County will afford the bidder/proposer, prior to award of the contract, an opportunity for administrative reconsideration of the County's determination of non-responsiveness.

Unless otherwise specified, the bidder/proposer may, within five (5) business days of being informed by the County of its non-responsiveness due to its failure to document and provide sufficient and adequate Good Faith Efforts in the subject procurement, request administrative reconsideration. Bidders/Proposers must make this request in writing to the Reconsideration Official as designated herein.

To ensure integrity in the process, the Reconsideration Official will not have played any role in the original determination that the bidder/proposer did not meet the established contract-specific DBE goal, or adequately document Good Faith Efforts as specified in the subject procurement. The County has designated the following individuals to serve as DBE Reconsideration Officials:

**Adelina Huerta  
Samantha Fithian  
Public Works Department  
Reconsideration Official  
Contra Costa County Airports  
255 Glacier Drive  
Martinez, CA 94553  
Telephone: (925) 313-2000**

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written evidence/documentation or argument concerning the issue of whether it met the goal or made adequate Good Faith Efforts to do so. Further, the bidder/ proposer will have the opportunity to meet with the Reconsideration Official in person to discuss the issue of whether it met the goal or made adequate Good Faith Efforts to do so. The County will document the basis for the reconsideration determination and forward the final determination to the bidder/proposer within seven (7) working days of the hearing date. All parties shall be advised that reconsideration final decisions are NOT administratively appealable to U.S. DOT.

Further, the County's Reconsideration Official and/or designee shall also perform oversight of the reconsideration process. The Reconsideration Official and/or designee's duties include, but are not limited to, the following activities:

1. Ensures that all DBE administrative reconsideration procedural actions are consistent with the requirements and standards specified in Title 49 CFR, Sections 26.53 and 26.87, and that the Program's integrity is maintained at all times.
2. Reviews bidder/proposer written documentation or argument concerning the issue of whether it met the goal or made adequate Good Faith Efforts to do so.
3. Upon review of the bidder's/proposer's request for consideration, the Reconsideration Official sends the bidder/proposer a written decision on reconsideration, explaining the basis for finding that the bidder/proposer did or did not meet the goal or make adequate Good Faith Efforts to do so.
4. Maintains records of conducted hearings.
5. Provides determinations in writing to the City's DBELO.

## **V. ASSURANCES**

### **A. Federal Financial Assistance Agreement Assurance (§26.13 (a))**

Pursuant to the requirements of this Part, the County will sign the following assurance as a condition of financial assistance agreements with the U.S. DOT, and which is hereby made applicable to all of the County's U.S. DOT-assisted contracts:

"The County shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE Program or the requirements of Title 49 CFR, Part 26. The County shall take all necessary and reasonable steps under Title 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of

U.S. DOT-assisted contracts. The County's DBE Program, as required by Title 49 CFR, Part 26 and as approved by U.S. DOT Operating Administrations, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the County of its failure to carry out its approved Program, the Department may impose sanctions as provided under Title 49 CFR, 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. This language is to be used verbatim, as it is stated in 26.13(a).

**B. Contract Assurance Clause (§26.13 (b))**

The County will ensure that the following clause is placed in all U.S. DOT-assisted contracts and subcontracts:

"The contractor 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 Title 49 CFR, Part 26 in the award and administration of the County's U.S. 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 County deems appropriate."

This language is to be used verbatim, as it is stated in 26.13(b).

**VI. ADMINISTRATIVE REQUIREMENTS**

**A. DBE Financial Institutions (§26.27)**

The County shall thoroughly investigate the full extent of services offered by banks and/or financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to utilize these institutions, as available, and to encourage prime contractors on the County's U.S. DOT-assisted contracts to make use of these institutions. We have made the following efforts to identify and use such institutions. The County will also re-evaluate the availability of DBE financial institutions every 24 months.

To date the County identified such institutions within an Attachment to this DBE Program. Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

## **B. DBE Directory (§26.31)**

The County is a non-certifying member of the California Unified Certification Program (CUCP). 49 CFR §26.81 requires each state's UCP to maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by §26.31.

The County utilizes the CUCP online state-wide DBE Directory, which contains the following information for each certified DBE, as applicable:

1. DBE name
2. Contact name
3. Business address
4. County(ies) of performance
5. Telephone number
6. Fax number
7. Email address
8. NAICS code(s) under which the firm is certified
9. Work category code(s) (optional)
10. Contractor's license classification
11. Gender
12. Ethnicity
13. Certification status (DBE or ACDBE)
14. Certifying agency

This directory is made available to the public electronically on the California Department of Transportation's (Caltrans) "Civil Rights" website, which can be accessed at [www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep). The electronic version is downloadable into a searchable and sortable Excel spreadsheet. The County refers prime bidders and proposers to the directory to locate available DBEs at their pre-proposal/bid conferences.

## **C. Overconcentration (§26.33)**

The County will develop policies and procedures to address overconcentration of DBE utilization by work classification. This is to be accomplished through regular tracking of contract awards and through compliance monitoring efforts. The County will identify and directly respond to identified overconcentration of DBEs within specific trades or specialty areas and modify and/or exempt such areas from the Overall DBE Goal and contract-specific goal-setting process as necessary to ensure compliance with regulatory overconcentration provisions. Currently, the County has not identified any types of work that have a burdensome overconcentration of DBE participation. However, should the County determine that overconcentration exists in a work classification, the County will obtain the approval of the concerned U.S. DOT Operating

Administration of the identified overconcentration determination and the measures devised to address it. Once these measures are approved, they will become part of the County's DBE Program.

**D. Business Development Programs (§26.35, Appendix C and Appendix D to 49 CFR 26)**

The County has not established a business development program. The County will re-evaluate the need for such a Program every year. If the County identifies that such a program is necessary to meet the objectives of the federal DOT DBE Program, to assist disadvantaged firms in enhancing their firms' skills and abilities to successfully compete for contracts within their respective industries in the marketplace, it will extend all efforts to develop such a program.

**E. Small Business Element**

The U.S. DOT final rule issued on January 28, 2011 added §26.39 to 49 CFR Part 26. This section required recipients (local agencies) of U.S. DOT financial assistance to include an element in their contracting requirements, to facilitate competition by small businesses.

The County has established a Small Business Element as a supplement to their existing DBE Program, to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors in direct response to regulatory requirements, 49 CFR Part 26.39 "Fostering Small Business Participation" (Federal Register/ Vol. 76, No. 19/ Friday, January 28, 2011/ Rules and Regulations). For purposes of capturing Small Business utilization, the County adheres to the U.S. Department of Transportation's Small Business definition for what constitutes a Small Business Enterprise. This Small Business Element will include, but is not limited to the following assertive strategies:

1. The County will conduct a Pre-Proposal/Bid Conference which will allow Small Business Enterprises the opportunity to network, access resources, and team/partner with the County.
2. The County will advertise on its website with local stakeholders and/or through general/industry publications

The County will actively implement the Small Business elements to foster and promote small business participation in the County's federally-assisted contracting program.

## **VII. DETERMINING, MEETING AND COUNTING DBE PARTICIPATION TOWARDS THE OVERALL DBE GOAL (§26.45; §26.51; §26.55)**

### **A. Methodology for Setting Overall DBE Goals (§26.45; §26.49)**

The County will establish an overall DBE goal covering a three-year federal fiscal year period if the County anticipates awarding DOT/FAA funded prime contracts for a cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period.

In accordance with Section 26.45(f) the County will submit its overall goal to FAA on August 1 of each three-year goal period. The County's current goal covers the goal period of Federal Fiscal Years 2019-21 and the County is projected to submit its next overall goal on August 1, 2021.

A description of the methodology utilized to calculate the overall goal submitted for FFYs 2019/21 and the goal calculations can be found on the County's website.

The following delineates the federally prescribed goal-setting methodology (Step 1 and Step 2) and other required components the County will follow in establishing an Overall DBE goal, as follows:

#### **1. Projecting Federal Assisted Contract Expenditures for Three Fiscal Year Period**

In conjunction with the preparation and adoption of the budget for each fiscal year, the DBELO, in consultation with the appropriate divisions and departments responsible for contracting activities, will conduct a thorough analysis of the projected number, types of work and dollar amounts of contracting opportunities that will be funded, in whole or in part, by U.S. DOT federal financial assistance for the upcoming three year fiscal period.

#### **2. Establishing a Base Figure**

After the County defines its U.S. DOT-assisted contracting program and corresponding market area for a given federal fiscal year, the County will establish a Base Figure (Step 1) of ready, willing, and able DBEs in contrast to all firms available to participate in the County's U.S. DOT-assisted contracts, in accordance with Title 49 CFR, Part 26.45 provisions.

The County may survey the relative availability of DBEs to establish its Base Figure utilizing any one of the following:

- The most readily available data, which may include the California Unified Certification Program (CUCP) DBE Database and other certifying

agencies' databases, to assess the number of ready, willing and able DBEs, and the U.S. Census Bureau's County Business Patterns (CBP) database to determine the corresponding number of all firms available to bid on the County's contracting opportunities by work classification.

- The County's Bidders List (When using this approach, you must establish a mechanism (documented in your goal submission) to directly capture data on DBE and non-DBE prime and sub contractors that submitted bid or quotes on your DOT-assisted contracts).
- Data from disparity studies, as available.
- Another U.S. DOT-recipient's DBE Goal in the same or substantially similar market.
- Alternative methods based on demonstratable evidence of local market conditions designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the County's market area. The exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of subparagraph (2), is not an acceptable alternative means of determining the availability of DBEs.

To determine the relative availability of DBEs, the County will divide the numerator representing the ratio of ready, willing and able DBE firms within its defined market area by the denominator representing all firms (DBEs and non-DBEs) available by each work category within the defined market area. Application of this formula will yield the following baseline information:

$$\frac{\text{Number of Ready, Willing and Able DBEs}}{\text{Number of All Available Firms (Including DBEs and non-DBEs)}} = \text{BASE FIGURE}$$

The Base Figure will be adjusted by weighting the relative availability of DBEs grouped within the major work categories, giving more weight to the work categories in which the County projects to spend more U.S. DOT-assisted dollars.

### 3. Adjusting the Base Figure

Upon establishing the Base Figure, the County will review and assess other known evidence potentially impacting the relative availability of DBEs within the County's market area, in accordance with prescribed narrow tailoring provisions set forth under 49 CFR Part 26.45, which may include, but is not limited to:

- Demonstrated evidence of DBE capacity to perform work in the County's U.S. DOT-assisted contracting program.
- Real market conditions.
- Disparity studies conducted within the County's jurisdiction to the extent that they are not already accounted for in the Step 1 Base Figure; and
- Other relevant factors may include:
  - i. Other recipients' goal results in similar contracting opportunities and markets, and the reasons for the level of those results.
  - ii. The methods used by the County to increase DBE participation in federally assisted contracts.
  - iii. The demographics and business activity of the market area in which the County will solicit bids and/or proposals.
  - iv. The ability of DBEs to obtain financing, bonding, and insurance requirements to participate in the County's DBE Program.
  - v. The data from studies of employment and self-employment, education, training and union apprenticeship programs, to the extent that the County can relate it to the opportunities for DBEs to perform in the County's DBE Program.

In accordance with 49 CFR 26.45, the County's overall DBE goals will be expressed as a percentage of all Federal-aid funds the County will expend in U.S. DOT-assisted contracts in the forthcoming fiscal years. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

#### **4. Public Participation and Outreach Efforts (§26.45; §26.51)**

##### **i. Publication of Proposed Overall Goals**

Pursuant to new DBE Program regulations effective November 3, 2014, the County understands that commercial advertising of the overall DBE goal is now at the County's discretion. The County will post a public notice to the County's website announcing the County's proposed Overall Goal. If the County commercially advertises its proposed triennial goal, the public notice shall include the following:

- i. Proposed triennial goal percentage for DBE participation
- ii. A statement that the proposed goal and methodology are available for public inspection for a period of 30 days from the date of publication.

- iii. A statement that the County will accept public comments on the proposed goal and methodology for a period of 30 days from the date of publication.
- iv. Contact information and instructions for viewing the County's goal/methodology and/or submitting a public comment.

Upon receipt of any public comments, the County's DBELO will analyze the comments, summarize the results, and modify the overall goal, if appropriate. This will occur prior to final adoption of the triennial goal by County's Board of Directors and submission to FAA for review.

**ii. Expressing Overall Goal 26.45(e)**

Once the County has determined a percentage figure in accordance with Step One and Step Two of the federally prescribed goal-setting methodology, the overall goal should be expressed as a percentage of all FAA funds (exclusive of FAVA funds to be used for the purchase of transit vehicles) that you will expend in FAA-assisted contracts in the three forthcoming fiscal years.

**iii. Outreach and DBE Program Public Consultation 26.45(g)**

Prior to publication of the County's proposed overall DBE goal, the County will consult with, and solicit input from, a variety of constituent groups representing minority- and women-owned business organizations, contractor organizations, and other industry, ethnic and community-based organizations reasonably expected to possess information regarding the availability of disadvantaged businesses, their capability to perform on County contracts, and the impacts and effects of contracting discrimination on DBEs.

Upon receipt of any comments, the County's DBELO will analyze the comments, summarize the results, and modify the proposed overall goal, if appropriate.

**iv. Annual Review and Remedy Reports (49 CFR §26.47)**

Pursuant to 49 CFR §26.47(c), the County is required to analyze, on an annual basis, the DBE awards and commitments reported to the FAA. If the County's DBE awards/commitments are less than the County's overall DBE goal for that Federal Fiscal Year (FFY), the County is required to develop a written analysis of the

shortfall, as well as establish specific steps and milestones to correct the problems identified in the analysis. The County will submit their written analysis to their FAA Civil Rights Regional Office within 90 days of the FFY end, or by the end of the calendar year.

**v. Transit Vehicle Manufacturers (§26.49)**

The County shall require all Transit Vehicle Manufacturers (TVMs) to certify that they have complied with 49 CFR §26.49 and have established an overall DBE participation goal that has been approved (or not disapproved) by the FAA before they can bid on any County transit vehicle procurement.

**B. Race-Neutral Measures (§26.51)**

The County intends to use race and gender-neutral methods to the maximum extent feasible to achieve its overall DBE goal. DBE participation that is obtained on contracts that have no established DBE contract goal, or where prime contractors use a strictly competitive bidding process and do not consider the DBE's status as a factor in awarding a subcontract shall be considered race and gender-neutral DBE participation.

In addition, the County will include small and disadvantaged businesses in their outreach, public information, and communications programs, to ensure that DBEs are made aware of Contra Costa's contracting opportunities

**C. Race-Conscious Measures**

In accordance with 49 CFR Part 26, the County will project how much of the overall DBE goal can be achieved through race and gender-neutral measures, and will use race-conscious measures, such as contract-specific DBE goals, only to meet that portion of the overall goal which is not likely to be met utilizing race-neutral measures.

Further, the County shall monitor and adjust the estimated utilization of race-neutral and race-conscious methods as required in accordance with 49 CFR 26.51(f).

**D. Methodology for Setting Contract-Specific Goals (§26.51)**

The DBELO shall establish a contract-specific DBE participation goal to meet any portion of the overall goal the County does not project being able to meet by utilizing race-neutral means, as applicable based on funding directives. The DBELO will receive from the Public Works department an advance notification form from each upcoming contract, with cost estimates, scope of work, and

possible subcontracting opportunities from the Public Works Department. Contract goals are established over the period to which the overall goal applies and will cumulatively result in meeting any portion of the County's overall goal that is not projected to be met through the use of race-neutral means.

The County will establish contract-specific goals only on those DOT-assisted contracts for which subcontracting possibilities have been identified with corresponding availability of DBEs. The County will not establish a contract-specific goal on every DOT-assisted contract; consideration and individual assessment will be conducted specific to the County's overall goal attainment status to determine if warranted. Further, contract-specific goals may be adapted to the circumstances of each contract (e.g. type and location of work, subcontracting opportunities, and availability of DBEs to perform) and will be expressed as a percentage of the total contract value.

#### **E. Evaluation and Award of Contracts with DBE Contract Goals (§26.53(a))**

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The County shall award contracts to the lowest responsive and responsible bidder as required by California Public Contract Code, where applicable. However, for such contracts, as well as for contracts awarded pursuant to a competitive negotiation procedure, a bidder/proposer that 1) fails to demonstrate its commitment to meet the established DBE contract goal by listing sufficient DBEs on its "DBE Participation Listing" form due with the bid/proposal or within 48 hours after bids/proposals are due AND/OR 2) fails to demonstrate that it made an adequate Good Faith Effort to meet the goal, shall be deemed "non-responsive" and shall be ineligible for contract award.

##### **i. Evaluation of Bids or Proposals for Contracts with Established Contract-Specific Goals (§26.53 (b))**

The DBELO or designee shall review all related DBE information for completeness and accuracy, and the DBELO shall evaluate the three (3) apparent lowest bids and/or the highest three (3) ranked proposals to determine whether the Bidders/Offerors submitted all of the DBE-related information required by the solicitation, including evaluating their respective DBE goal commitments and Good Faith Efforts documentation as necessary to determine responsiveness in meeting the DBE requirements of the solicitation. Additionally, the Bidder's/Offeror's DBE goal commitments and/or Good Faith Efforts documentation shall be evaluated by the DBELO to determine responsiveness to the DBE requirements set forth in the solicitation and/or contract.

**ii. Evaluation of DBE Eligibility Status for Contracts with Established Contract-Specific Goals**

The County requires that the DBEs listed by Bidders/Offerors for participation in a contract with goals be certified as an eligible DBE at the time of bid/proposal submission in order for their participation to be counted towards meeting the established contract-specific DBE goal. The DBELO will assess eligibility for crediting as a part of the evaluation process utilizing the CUCP DBE Database and/or other valid proof of DBE certification.

**iii. Pre-Award DBE Responsiveness Evaluation for Contracts with Established Contract-Specific Goals**

Following the determination of the Bidder's/Offeror's responsiveness and responsibility to DBE requirements set forth in the solicitation, the DBELO shall prepare a report relative to contract-specific DBE requirements, to be submitted for presentation to the Board of Directors at the time the contract award is considered.

**iv. Bidder's/Offeror's Right to Administrative Reconsideration**

In the event the DBELO determines that the apparent successful Bidder/Offeror has not met the contract-specific goal and has not demonstrated adequate Good Faith Efforts to do so, the DBELO will notify the bidder/offeror in writing. The notification shall include the reasons for the determination and that the bidder/offeror has the right to submit written documentation or appear before the Reconsideration Official or designee for reconsideration prior to the time that a recommendation for award of contract is presented to the Board of Directors. The Reconsideration Official or designee shall provide the bidder/offeror with a written decision on reconsideration, including the basis for the determination.

In the event that the Reconsideration Official or designee determines that the said bidder/offeror has not met the contract-specific DBE goal nor demonstrated adequate Good Faith Efforts to do so, the bidder/offeror will no longer be eligible to be considered for that particular contract award.

The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation (Refer to Section V.B: "Reconsideration Official").

**1. Guidance Concerning Good Faith Efforts in Meeting Established Contract-Specific DBE Goals (§26.53; Appendix A to 49 CFR 26)**

If a contract-specific DBE goal has been established by the County for a given DOT-assisted contract, a Bidder/Offeror must, in order to be responsible and/or responsive to the solicitation and/or contract requirements, make good faith efforts to meet the goal. A Bidder/Offeror can meet this requirement in either of two ways. First, a Bidder/Offeror can meet the goal by documenting commitments for participation by DBE firms sufficient to meet the established contract-specific DBE goal. Second, if a Bidder/Offeror does not meet the contract-specific DBE goal, the Bidder/Offeror can document adequate good faith efforts undertaken to do so to demonstrate that the Bidder/Offeror took all necessary and reasonable steps to achieve the DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if the Bidder/Offeror was not fully successful in obtaining such.

The following sections outline the requirements firms competing for County contracts shall comply with to demonstrate responsiveness in either meeting the goal, documenting commitments for participation by DBE firms sufficient for this purpose, or documenting adequate Good Faith Efforts to do so. Failure of a Bidder/Offeror to meet the established contract-specific DBE goal, or failure to demonstrate that sufficient Good Faith Efforts were undertaken, will deem the respective Bidder/Offeror as non-responsive.

**i. Meeting Established Contract-Specific DBE Goals**

If the County establishes a contract-specific DBE goal for a given contract, the County must only award such contract to a Bidder/Offeror that meets the goal or makes good faith efforts to meet it. As such, a Bidder/Offeror is required to submit the following DBE information to the County within the prescribed timeline ( with the bid or proposal or within 48 hours after bids/proposals are due) set forth in each solicitation to enable the County to assess a Bidder's/Offeror's responsiveness to contract-specific DBE participation goal requirements:

- a. Name, address and contact information for each DBE listed on the contract;
- b. Description of the work that each DBE will perform;
- c. Dollar amount of participation of each DBE;
- d. Percentage of total contract value allocated to each DBE;

- e. Prime bidder's/proposer's name, title and contact information;
- f. The County's contract number;
- g. Total dollar amount of participation of all DBEs;
- h. Percentage of total contract value allocated to all DBEs;
- i. DBE commitment percentage;
- j. Prime bidder's/proposer's signature and date
- k. For each listed DBE, proof of valid and current DBE certification in the NAICS code directly applicable to the work the DBE will perform on the contract.

If partial or no DBE participation has been attained, evidence of Good Faith Efforts must be submitted (Refer to Section VII. D. 2: "Guidance Concerning Good Faith Efforts in Meeting Established Contract-Specific DBE Goals" and Appendix A to Title 49 CFR, Part 26). The documentation of Good Faith Efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract. Any DBE participation in excess of the established contract-specific DBE goal shall be monitored and tracked as race-neutral DBE participation.

**ii. Documenting Adequate Good Faith Efforts to Meet Contract-Specific DBE Goals (§26.53)**

The County will require Bidders/Offerors to comply with Good Faith Efforts requirements, as a matter of responsiveness. The obligation of the bidder/offeror is to undertake and document Good Faith Efforts towards meeting the established contract-specific DBE goal.

In the event the Bidder's/Offeror's efforts to meet the established goal result in partial or no DBE participation, all Bidders/Offerors must document adequate Good Faith Efforts documentation (which were undertaken prior to bid submittal or proposal submission due date and timeline) and submit such, unless otherwise specified, in the solicitation to the County with their bid or proposal or within 48 hours after bids/proposals are due.

Mere pro forma efforts are not Good Faith efforts to meet DBE goal requirements. The County will make a fair and reasonable judgment whether a Bidder/Offeror that did not meet the established contract-specific DBE goal made adequate Good Faith Efforts to do so.

Only those efforts made prior to the bid/proposal submittal due date will be considered in the evaluation of the Bidder's/Offeror's Good Faith Efforts. If a firm does not propose to meet a contract-specific goal and fails to submit the required Good Faith Efforts documentation with the bid/proposal or within 48 hours after bids/proposals are due, that will be grounds for finding the bid/proposal to be non-responsive.

The DBELO or designee will be responsible for determining whether a Bidder/Offeror who has not met the established contract DBE goal has documented sufficient Good Faith Efforts to be deemed responsive.

Bidder/Offeror must demonstrate real and substantive good faith efforts. The Bidder/Offeror must have undertaken all necessary and reasonable steps to achieve a DBE goal that by their scope, intensity, and appropriateness to the objective could reasonably be expected to obtain sufficient DBE participation. The County will consider the quality, quantity, and intensity of the different kinds of efforts.

#### **F. Use of Set-Asides or Quotas (§26.43)**

The County shall not permit the use of quotas for DBEs on U.S. DOT-assisted contracts in accordance with Title 49 CFR, Part 26.43. Further, the County shall not set aside contracts for DBEs on U.S. DOT-assisted contracts subject to the regulatory provisions, except in limited and extreme circumstances where no other method could be reasonably expected to redress egregious instances of discrimination.

#### **G. Counting DBE Participation (§26.55)**

The County will count DBE participation toward overall and contract-specific goals as provided in the solicitation and contract specifications for the prime contractor, subcontractor, joint venture partner, or vendor of material or supplies. The County requires that all DBEs listed by bidders/proposers for participation in contracts with goals, be certified as eligible DBEs at the time of bid/proposal submission, in order for their participation to be counted towards meeting the established DBE contract goal and/or the County's overall DBE goal.

The following guidelines apply in calculating eligible DBE participation toward meeting established contract-specific DBE goals and the County's overall DBE goal in accordance with Title 49 CFR, Part 26.55:

1. Only work proposed to be performed by a DBE's own work forces (including cost of supplies, materials, and equipment leases) obtained by the DBE for the work of the contract, except supplies and equipment the subcontractor purchases and/or leases from the prime contractor or its affiliate, can be counted toward DBE goals.
2. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted towards DBE goals only if the lower tier subcontractor is itself a certified DBE and performs the work with their own work force. Work that a DBE subcontracts to a non-DBE firm does not count towards DBE goals.
3. In instances of a joint venture, a bidder/offeror may only count, toward the DBE goal, the portion of the work proposed to be performed by the certified DBE partnering firm that meets certification, ownership, and control standards.
4. A bidder/offeror may count, towards its DBE goal, only expenditures to firms that are proposed to perform a commercially useful function on that contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. If a DBE does not perform or exercise responsibility for at least 30 percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE is presumed not to be performing a commercially useful function. When a DBE is presumed to not be performing a commercially useful function, the DBE may present evidence to rebut this presumption. The County's decisions on commercially useful function matters are subject to review by the concerned Operating Administration but are not administratively appealable to the U.S. DOT.
5. A bidder/offeror may count, toward its DBE goal, 60 percent (60%) of its expenditures for materials and supplies required under the contract and obtained from a DBE Regular Dealer and, a bidder/offeror may count 100 percent (100%) of such expenditures obtained from a DBE Manufacturer. For purposes of this section, a Manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials and supplies obtained by the contractor. A Regular Dealer is a firm that owns, operates, or maintains a store, warehouse, or other

establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.

6. A bidder/offeror may count, toward its DBE goal, fees and commissions paid to DBE firms performing in the capacity of a Broker, provided that the fees or commissions are determined by the County to be reasonable and not excessive when compared with fees customarily allowed for similar services.
7. Special Provisions for DBE Trucking Firms - A bidder/offeror may count, toward the DBE goal, all transportation services provided by DBE trucking firms who can demonstrate control of trucking operations for which it seeks credit and which it owns, insures, and operates, using drivers it employs, in the performance of the contract. The DBE must itself own and operate at least one, fully licensed, insured, and operational truck used on the contract.
8. The DBE trucking firm may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate DOT operating administration.
9. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
10. In cases where DBE certification has lapsed or has been terminated during the performance period of the contract, the prime contractor is eligible to continue to report the dollar value of the work performed by the affected DBE firm to the County on the "Monthly DBE Subcontractors Paid Report Summary and Payment Verification" (Form 103). The County will not credit the DBE participation towards its overall agency DBE goal.

11. The County will not credit the participation of DBE subcontractors toward a contractor's DBE goal obligation until the amount has actually been paid to the DBE.

The County will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

- (1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.
  - (ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- (2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.
  - (ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
    - (A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
    - (B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
    - (C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

- (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.
- (4) You must determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expeditor) on a contract-by-contract basis.

#### **H. Commercially Useful Function Standards (§26.55)**

The County will count expenditures to a DBE contractor/consultant toward the DBE goals only if the DBE is performing a commercially useful function on that contract:

1. A DBE performs a commercially useful function when it is responsible for execution of the work of its contract and when it is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing the material (where applicable), and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the County will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract commensurates with the work it is actually performing, the DBE credit claimed for its performance of the work, and other relevant factors.
2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the County may examine similar transactions, particularly those in which DBEs do not participate.
3. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force or, if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, one must presume that it is not performing a commercially useful function.

4. When a DBE is presumed not to be performing a commercially useful function as provided in the previous bullet, the DBE may present evidence to rebut this presumption. The County will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
5. The County's decisions on commercially useful function matters are subject to review by the U.S. DOT Operating Administration.

During the course of the contract containing a DBE goal, the County or an agent of the County may conduct on-site monitoring interview/observation to ensure that work committed to DBEs is actually being performed by DBEs in the same capacity as the DBE participation being reported. This monitoring effort is fully incorporated into the County's DBE On-site Compliance field observation process. This observed work will be reconciled against the DBE subcontractor agreement(s) and Prime Contractor Form 103.

## **VIII. REQUIRED CONTRACT PROVISIONS AND ENFORCEMENT**

### **A. Prompt Payment Provisions (§26.29)**

#### **1. Prompt Progress Payments to Subcontractors**

The County requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law. This provision requires a contractor to issue payment to all subcontractors (DBEs and non-DBEs), for satisfactory performance of their contracts, no later than seven (7) calendar days from receipt of each payment made to the contractor by the County.

#### **2. Payment of Retention Withheld from Subcontractor**

In addition to the prompt progress payment requirement set forth above, the County ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the County, at its discretion, may elect to utilize one of the following methods to comply with the prompt payment of retainage requirement:

1. Decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.
2. Decline to hold retainage from the prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any

retainage kept by the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed.

3. Hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within thirty (30) days after payment to the prime contractor.

Any delay or postponement of payment from the above-referenced timeframes may occur only for good cause following written approval from the County. Failure to comply with this provision without prior approval from the County will constitute noncompliance, which may result in the application of appropriate administrative sanctions, including, but not limited to, a penalty of two percent (2%) of the invoice amount due per month, for every month that full payment is not made.

These prompt payment provisions must be incorporated in all subcontract agreements issued by the contractor.

## **B. Post-Award Contractor Reporting Requirements (\$26.55)**

### **1. Notification of Reporting Responsibilities**

Prior to execution of all U.S. DOT-assisted contracts, which are subject to DBE Program provisions, the prime contractor shall be directed to the contract specification for the County's specific DBE reporting and recordkeeping requirements.

### **2. Copies of DBE Subcontracts**

In accordance with 49 CFR 26.53 (j) contractors and subcontractors of all tiers must make copies of all DBE subcontracts available to the County. If the DBE subcontract is not received, the County will not process the contractor's and subcontractor's invoice for payment. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

### **3. DBE Activity Reporting Forms**

All prime contractors/consultants shall submit monthly progress reports on DBE utilization to the County on Form 103: "Monthly DBE Subcontractors Paid Report Summary and Payment Verification" (Refer to Exhibits G and H) when each invoice is submitted. The County will keep a running tally of actual payments to DBE firms for work committed to DBEs at the time of

contract award and subsequent to award. The County's Summary of Subcontractors Paid Report (Form 103) is used to keep a running tally.

Failure to submit these reports in a timely manner shall result in the delay of processing the prime contractors'/consultants' invoice for payment. The FORM 103, "Monthly DBE Subcontractors Paid Report Summary and Payment Verification", includes the following information:

- a. Name of each DBE Subcontractor.
- b. General work assignment of each DBE Subcontractor.
- c. The specific portion of work executed by each DBE Subcontractor during the reporting period.
- d. The dollars committed to each DBE Subcontractor.
- e. The dollars paid to each DBE Subcontractor during the reporting period.
- f. The dollars paid to date for each DBE Subcontractor.
- g. The dollars paid to the DBE as a result of a change order or other cost modification.
- h. The dollars paid to date as a percentage of the total commitment to each DBE.
- i. Date of last progress payment
- j. Invoice amount & Invoice Date
- k. Invoice number corresponding to last payment to subcontractor
- l. Prime Contractor Signature under penalty of perjury that it has complied with all requirements of 49 CFR, Part 26 and prompt payment requirements of the California Public Contract Code.

**4. Contractor Good Faith Efforts and Reporting Obligations for Contracts with DBE Participation Goals**

During the term of the contract, the contractor shall continue to make Good Faith Efforts to ensure that DBEs have an opportunity to successfully perform in the contract, and to ensure that the contractor meets its DBE goal. These efforts shall include, but shall not be limited to, the following:

- Negotiating in good faith to attempt to finalize and execute a subcontract agreement with the DBEs committed to in the bid or proposal.
- Documenting efforts to seek out and utilize additional DBEs when additional subcontractors and/or subconsultants are necessary and are authorized by the County.
- Continuing to provide assistance to DBEs in obtaining bonding, lines of credit, etc., if required by the contractor.
- Notifying a DBE, in writing, of any potential problem and making concerted efforts (efforts must be documented) to resolve the problem

prior to formally requesting the County's written approval to substitute the DBE for cause.

- As with all subcontractors and/or subconsultants, timely payment of all monies due and owing to DBEs.
- Notifying the County in a timely manner, in writing, of any problems anticipated in attaining the DBE participation goal committed to in the bid/proposal.
- The prime contractor/consultant may not count the participation of DBE subcontractors towards that prime contractor's/consultant's DBE achievements until and unless that amount which is being credited toward the goal has been paid to the DBE.

#### **5. Termination of DBE Subcontractor for Good Cause (§26.53 (f))**

The County requires that a Contractor/Consultant not terminate a DBE subcontractor without the County's prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The County will provide such written consent only if it agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this section, good cause includes the following circumstances:

- The listed DBE subcontractor fails or refuses to execute a written contract;
- The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- The Prime contractor has determined that the listed DBE subcontractor is not a responsible contractor;
- The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

- The listed DBE is ineligible to receive DBE credit for the type of work required;
- A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the County its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the County, of its intent to request to terminate and/or substitute, and the reason for the request.

The Contractor/Consultant must give the DBE five (5) days to respond to the Contractor's/Consultant's notice and advise the County and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the County should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), you may provide a response period shorter than five (5) days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of/or substitutions of DBE firms put forward by Offerors in negotiated procurements.

Good Faith Efforts when a DBE is replaced on a contract for Good Cause (26.53(g))

Pursuant to 49 CFR, Part 26(g) the County will require a Contractor/Consultant 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 same extent needed to meet the contract goal established. The County will require the Contractor/Consultant to notify the DBELO immediately of the DBEs inability or unwillingness to perform and provide reasonable documentation.

Substitutions of an approved DBE subcontractor/subconsultant, or changes in any scope of work to be performed by any approved DBE subcontractors/subconsultants must be requested, in writing, by the contractor and must be approved by the County. The contractor shall complete and submit to the County the corresponding "Request for DBE Subcontractor/Supplier Substitution" form (Refer to Exhibit K). The

contractor/consultant must also submit a biography of the new DBE firm and the reason for the substitution. The County requires that the Contractor/Consultant provide the County with copies of the new or amended subcontracts. If the candidate contractor to be substituted is not a DBE, the County also requires the prime contractor to submit documentation of their good faith efforts.

The prime contractor must submit good faith efforts documentation for DBE substitutions within 7 days of notice to the County; the timeline may be extended an additional 7 days at the contractor's request. The County shall then provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated. A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding of good faith efforts to replace the original DBE.

A substitute DBE, at the time of substitution, must possess the appropriate NAICS or work category code(s) applicable to the type of work the substitute DBE will perform on the contract.

#### Failure to Secure Prior Approval

If the Contractor/Consultant fails or refuses to comply in the time specified the County may take appropriate actions, including but not limited to those set forth in its Monitoring and Enforcement Mechanisms.

### **6. Replacing DBEs 26.53(g)**

When a DBE subcontractor is terminated as provided in paragraph (f) of this section or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement. The good faith efforts shall be documented by the contractor. If the recipient requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary, at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

### **7. Prime Contract Provisions 26.53(h)**

County must include in each prime contract the contract clause required by §26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section

you deem appropriate if the prime contractor fails to comply with the requirements of this section.

#### **8. Copies of DBE Subcontracts**

County must require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

#### **9. Request for Additional DBE Subcontractor**

If the contractor requests to award additional work to a DBE firm beyond the original list of DBEs provided with their respective bid or proposal, the contractor must complete and submit to the County the "Request for Additional DBE Subcontractor/Supplier" form (Refer to Exhibit L). The contractor must also submit a biography of the DBE firm he/she is adding and the reason for the request to add.

#### **10. Change in Contract Amount**

Change orders, or any other contract modifications that impact DBE scopes of work, must be reviewed by the County prior to the Contractor/Consultant effectuating any modifications. The County will determine impact on the Contractor's/Consultant's goal commitments and resultant goal attainments.

### **C. Administrative Remedies and Enforcement for DBE Non-Compliance**

CONTRACTOR must fully comply with the DBE contract requirements, including County's DBE Program and Title 49 CFR, Part 26 "Participation of Disadvantaged Businesses in Department of Transportation Financial Assistance Programs," and ensure that all Subcontractors, regardless of tier, are also fully compliant. Failure by CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement, or such other remedy as the County deems appropriate, which may include, but is not limited to suspension of progress payments

In instances of identified non-compliance, a Cure Notice will be issued to CONTRACTOR identifying the DBE non-compliance matter(s) and specifying the required course of action for remedy.

A non-compliant contractor may be notified by the DBELO or designee, that administrative remedies shall be imposed for failure to: (a) meet the contractor's DBE commitment by contract end, (b) submit documentation of

adequate good faith efforts, (c) submit required DBE utilization reports, (d) submit verification of prompt payment to subcontractors/subconsultants, and/or (e) comply with proper DBE add/substitution/termination procedures. The notice shall state the administrative remedy(ies) to be imposed.

The Contractor/Consultant shall be given ten (10) working days from the date of the Cure Notice to file a written appeal to the County's DBELO. Failure to respond within the ten (10) day period shall constitute a waiver of appeal.

The DBELO or his designee may schedule a hearing to gather additional facts and evidence and shall issue a final written determination on the matter within thirty (30) working days following receipt of the written appeal. The written decision of the County's DBELO or designee is final and there is no further appeal.

Administrative Remedies shall be determined by the DBELO, and may include, but not be limited to:

- Suspension of progress payments to the contractor or of any monies held by the County as retention on the contract until the contractor is brought into compliance; and/or

Failure to comply with the Cure Notice and/or to remedy the identified DBE non-compliance matter(s) is a material breach of contract and is subject to administrative remedies including withholding at a minimum of two percent (2%) of the invoice amount due per month for every month that the identified non-compliance matter(s) is not remedied. Upon satisfactory compliance, the County will release all withholdings.

In addition to administrative remedies defined in this section, the County is not precluded from invoking other contractual and/or legal remedies available under federal, state or local laws.

**D. Administrative Remedies for Non-Compliance by Contractors for Contracts with DBE Participation Goals**

In the event that the contractor is unable to meet the DBE goal, the County reserves the right to initiate Administrative Remedies, which shall include, but shall not be limited to, the following:

- a) Withholding of payments due equivalent to the difference between the actual DBE attainment and the contract DBE goal;
- b) Suspension of payment to the Contractor of any other monies held by the County;

c) Termination of the Contract, in part or in whole.

The Administrative Remedies shall not apply if the Contractor is able to demonstrate, to the satisfaction of the County, that it exercised Good Faith Efforts in an attempt to meet the contract DBE goal.

The Reconsideration Official (RO), at his/her sole discretion, may schedule a hearing to gather additional facts and evidence and shall issue a final determination on the matter within five (5) working days of receipt of the written appeal. The written decision of the RO or designee is final and cannot be further appealed.

The County will bring to the attention of the U.S. DOT Operating Administration, in writing, any false, fraudulent, or dishonest conduct in connection with the County's DBE program, to enable the U.S. DOT Operating Administration to take the necessary and appropriate steps (e.g. referral to the Department of Justice for criminal prosecution, referral to the U.S. DOT Inspector General, or action under suspension and debarment or Program Fraud and Civil Penalties rules) as provided in Title 49 CFR, Part 26, Section 26.109. The County also will consider similar action under its own legal authorities, including, but not limited to, responsibility determinations in future contracts.

## **IX. DBE CERTIFICATION STANDARDS (§26.81)**

### **A. California Unified Certification Program (UCP) (§ 26.81)**

49 CFR §26.81 requires all public agencies that receive U.S. DOT financial assistance to participate in a statewide Unified Certification Program (UCP). A UCP is a "one-stop shopping" certification program that standardizes DBE eligibility criteria and the application process and eliminates the need for a DBE to certify with multiple agencies within the state.

The County is a non-certifying member of a Unified Certification Program (UCP) administered by the California Unified Certification Program (CUCP). The UCP will meet all of the requirements of this section. The County will use and count for DBE credit only those DBE firms certified by the CUCP.

CUCP agencies are classified as certifying and non-certifying members. CUCP certifying members perform DBE certifications which apply to all U.S. DOT funded contracts. Certification activities include processing applications, reviewing financial and company ownership information, performing site visit and employee interviews, making certification decisions, investigating certification complaints and appeals, and maintaining a single statewide directory of certified

DBEs. A business certified as a DBE by any CUCP certifying member is automatically accepted by all U.S. DOT recipients in California.

Effective August 1, 2013, the California UCP (including Caltrans) is no longer issuing DBE Certificates as evidence of certification. A copy of a printout from the DBE Database should be sufficient proof of a firm's certification. Prime contractors and awarding agencies should not impose on DBE firms the burden of providing a DBE certificate in their bid packages - it is not required.

A non-certifying member agency adheres to all aspects of the U.S. DOT DBE program, except that it does not perform DBE certification activities. The County is a NON-certifying member of the CUCP; therefore, The County accepts DBE certifications from all CUCP certifying members. The County maintains a copy of the latest CUCP Memorandum of Agreement (MOA) on file, as well as a Declaration of Status Letter signed by the County's DBELO and the CUCP Secretary and Chair.

**For certification inquiries, contact one of the agencies listed below:**

Agency	Business Address	Telephone No.	Fax No.
<b>City of Los Angeles</b> Office of Contract Compliance <i>www.lacity.org/bca</i>	1149 South Broadway Street, Room 300 Los Angeles, CA 90015	(213) 847-1922	(213) 847-2777
<b>Los Angeles County Metropolitan Transportation Authority (METRO)</b> Diversity and Economic Opportunity Department <i>www.metro.net</i>	One Gateway Plaza Los Angeles, CA 90012	(213) 922-2600	(213) 922-7660
<b>S. F. Bay Area Rapid Transit District (BART)</b> Office of Civil Rights <i>www.bart.gov</i>	300 Lakeside Drive, 18 <sup>th</sup> Floor Oakland, CA 94612	(510) 464-7580	(510) 464-7587
<b>City of Fresno</b> DBE Program <i>www.ci.fresno.ca.us</i>	2101 G Street, Building A Fresno, CA 93706	(559) 621-1182	(559) 488-1069
<b>Santa Clara Valley Transportation Authority (VTA)</b> Small & Disadvantaged Businesses <i>www.vta.org</i>	3331 North First Street San Jose, CA 95134	(408) 321-5962	(408) 955-9729

<b>Central Contra Costa Transit Authority (CCCTA)</b> Office of Civil Rights www.cccta.org	2477 Arnold Industrial Way Concord, CA 94520	(925) 676-1976	(925) 686-2630
<b>San Francisco Municipal Transportation Agency (SFMTA)</b> Contract Compliance Office San Francisco Municipal Railway www.sfmuni.org	1 South Van Ness Avenue, 3 <sup>rd</sup> Floor San Francisco, CA 94103	(415) 701-4443	(415) 701-4347
<b>San Mateo County Transit District (SAMTRANS) / Peninsula Corridor Joint Powers Board (CALTRAIN)</b> DBE Office www.samtrans.com	1250 San Carlos Avenue San Carlos, CA 94070	(650) 508-7939	(650) 508-7738
<b>California Department of Transportation (CALTRANS)</b> Office of Business & Economic Opportunity – MS #79 www.dot.ca.gov	1823 14 <sup>th</sup> Street Sacramento, CA 95814	(916) 324-1700 (866) 810-6346	(916) 324-1862

## **X. RECORDKEEPING AND MONITORING (§26.11, §26.37)**

The County maintains a recordkeeping system which identifies U.S. DOT-assisted contract awards and tracks prime contractors' progress in achieving DBE goals. The County verifies payments made to DBEs and keeps record of actual DBE attainments. Any areas of identified non-compliance are subject to administrative sanctions as outlined in this manual.

The County's records serve to document all information, for each U.S. DOT-assisted contract, needed to comply with U.S. DOT regulations. Records will include, but will not be limited to, the following information:

1. Contract funding source(s);
2. Contract title and number;
3. DBE contract goal, if applicable, and methodology used in establishing the goal;
4. Prime contractor/consultant name, address and primary contact;
5. DBE commitment (percentage and dollar value of contract allocated to DBEs);
6. Good Faith Effort (GFE) scoring sheet and evaluation results, if applicable;
7. Name, certification status (DBE or non-DBE) and subcontract dollar value for each listed subcontractor;

8. DBE status, gender, ethnicity, and dollar value of participation for each listed DBE;
9. Type of work performed by each listed DBE (i.e., subcontractor, regular dealer/supplier, broker, manufacturer, trucking company, etc.);
10. Copy of current certification for each listed DBE or CUCP website printout;
11. Tally of DBE utilization throughout the life of the contract, including final DBE utilization reported at contract close-out;
12. Field observation/on-site interview forms;
13. Report measuring DBE commitment percentage and dollar amount vs. actual attainment;
14. Certification by the County, attesting to having monitored contractor compliance, documentation submittal requirements, and on-site performance; and
15. Outreach efforts made by the County to inform DBEs of the contracting opportunity and inform prime bidders/proposers of DBE availability and interest in the contract.

**A. Monitoring Payments to DBEs (§ 26.37)**

The County will implement appropriate mechanisms to ensure compliance with 49 CFR Part 26 requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law).

Additionally, the County's DBE Program will include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. Such mechanism will provide a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. The County will display both DBE commitments and attainments (race-neutral and race-conscious) in its reports of DBE participation to the U.S. DOT.

The County may 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 committed.

**B. On-Site Performance Monitoring**

During the course of the contract containing a DBE goal, the County or an agent of the County may conduct on-site monitoring to ensure that work committed to DBEs is actually being performed by DBEs. This monitoring effort is fully

incorporated into the County's DBE On-site Compliance field observation process. This observed work will be reconciled against the DBE subcontractor agreement(s) and Prime Contractor Form 103. During an on-site visit to the firm's principal place of business, The County will interview the principal officers and review their resumés and/or work histories. The County may also interview key personnel of the firm if necessary.

The County must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification.

After an on-site visit, the County will analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual, and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing. The County will also analyze the bonding and financial capacity of the firm; lease and loan agreements; and bank account signature cards.

The County will determine the work history of the firm, including contracts it has received, work it has completed, and payroll records. The County will obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any. The County will also obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program. The County will further obtain complete Federal income tax (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service and the applicable State taxing County.

### **C. Written Certification**

At contract close-out, the County's DBELO or designee will complete and file, a written certification attesting to having reviewed and monitored contractor documentation, on-site performance when applicable, and payments to DBEs to verify compliance with DBE requirements.

### **D. Bidders List (§ 26.11)**

All prime bidders/proposers are required to complete and submit to the County, a Bidders List for their firm and for all firms (DBEs and non-DBEs) that submitted a bid, quote or proposal to the prime bidder/proposer.

**E. Retention of Records (§ 26.11(d))**

The County will maintain records documenting its compliance with the requirements of this part. The County will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever is longer.

**F. Reporting to the U.S. DOT (§ 26.11)**

Annual Reports of DBE Awards/Commitments and Payments (49 CFR 26, Appendix B)

The County's DBELO or designee shall submit for FAA review and approval, the annual Uniform Report of DBE Awards or Commitments and Payments. In conformance with FAA direction the County will submit reports through FAA's Civil Rights Connect System by December 1 of each federal fiscal year. The reports shall list the dollar value of contracts and subcontracts awarded and completed within the reporting period and shall demonstrate the County's progress toward attaining commitments made by providing on-going payment data.