



# Placer County Department of Public Works & Facilities

## Disadvantaged Business Enterprise Program (DBE) (Updated) August 2015

PLACER COUNTY DEPARTMENT OF PUBLIC WORKS & FACILITIES  
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM  
(Defined by Title 49 CFR Part 26)

**Subpart A – General Objectives and Policy Statements: (§26.1 - §26.15)**

In April of 2009 Placer County (herein referred to as County) adopted the California Department of Transportation (Caltrans) Implementation Agreement as a requirement to receive federal funding for projects. This established the County's DBE Goal and Methodology providing for a Race-Conscious (RC) and Race-Neutral goal program. On June 22, 2012 the Department of Transportation announced a change to the Caltrans Disadvantaged Business Enterprise (DBE) Program. Contract goals for federally funded projects authorized on or after July 1, 2012, must include ALL DBE groups (African Americans, Asian Pacific American, Native American, Women, Hispanic American and Subcontinent Asian American and any other groups whose members are certified as socially and economically disadvantaged).

**Applicability (§26.3)**

The County is the recipient of federal –aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107.

The County is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

**Non-discrimination Requirements (§26.7)**

As recipients of Federal Highway Funds and Federal Transit Funds, the County must comply with all federal regulations, and make every effort to encourage and assist in the outreach and participation of DBE firms. The goal of the program is to insure non-discrimination and create a level playing field in which DBEs can compete fairly for Department of Transportation (DOT) assisted contracts and Federal Transit Administration (FTA) contracts. 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 covered by 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.

The current DBE Program includes a Race-conscious component that will require race-conscious contract specific goals to be incorporated into all DOT-assisted consultant and construction contracts. For FTA-funded projects a predetermined triennial (3-year) overall DBE goal will be used unless the County is directed by FTA to establish a project-specific goal.

The County strives to ensure only firms that fully meet the eligibility standards set forth in 49 CFR Part 26 are permitted to participate as DBEs and to help remove barriers to the participation of DBEs in DOT-funded contracts. The DBE Program is narrowly tailored in accordance with applicable laws.

### **Record Keeping Requirements (§26.11)**

The County will provide the required records and data about our DBE program to the various departments as directed by the DOT operating administrations. A bidders list will be created and maintained that encompasses ALL bidders, both DBE and non-DBE. The list may be used by the county for overall goals. The County will report DBE participation to the relevant operating administration for FTA, using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

### **Assurances Made by the County and Contractors (§26.13 (a) (b))**

- (a) The following language appears in agreements with consultants and contractors as follows: The County shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The County shall take all necessary and reasonable steps of 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The County's DBE Program, as required by 49 CFR Part 26 and as approved by the DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the County of its failure to carry out its approved program, the Department may impose sanction as provided for under 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.*).
- (b) Each contract the County signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following language assurance: The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County deems appropriate.

## **Subpart B – Administrative Requirements for DBE Program: (§26.21 - §26.39)**

### **DBE Program Updates (§26.21)**

Since the County has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

### **DBE Liaison Officer (DBELO) (§26.25)**

The County DBE Liaison Officer has direct access to the CEO of the Department and is responsible for developing, implementing and monitoring all aspects of the DBE Program. On a daily basis a DBE coordinator is assigned to the program to help ensure that all components and regulations of the program are followed. The DBELO and DBE coordinator work closely with various Department engineers, managers, resident engineers and consultants who assist in the daily delivery of the County DBE Program requirements. The duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by DOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Works with all departments to set overall annual goals and project specific goals.
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- Management identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral and contract specific goals).
- Participates in pre-bid meetings.
- Advises the CEO/governing body on DBE matters and achievements.
- Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
- Plans and participates in DBE training seminars.
- Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

DBE Liaison Officer:

Cynthia Taylor – Senior Administrative Service Officer  
(530) 745-3599  
Ctaylor@placer.ca.gov

DBE Coordinator:

Lori Perron – Staff Services Analyst  
(530) 745-7598  
laperron@placer.ca.gov

## **DBE Financial Institutions (§26.27)**

It is the policy of the County to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

The County has determined that no such institutions are available within 100 miles of the County area.

## **Prompt Payment (§26.29)**

The County uses *Prompt Payment Method One* as selected on the annual Exhibit 9-B for the local DOT which states that NO retainage will be held by the County due to the prime. In turn, the prime contractors and subcontractors are prohibited from holding retainage from subcontractors. All federal-aid and U.S. DOT-assisted projects also include a specification that the Department will not withhold retention from the prime contractor, and that the prime contractor and any of its subcontractors may not withhold retention from any subcontractor. The prime contractor or consultant must pay the subcontractors for satisfactory performance of their contracts within the time specified in the California Business and Professions Code, Section 7108.5 or 30 days, whichever is shorter.

Any delay or postponement of prompt payment may take place only for good cause and with the County's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

## **Directory for DBE Participation (§26.31)**

The County utilizes and directs interested persons to the California Unified Certification Program (UCP) found on the Caltrans Local Assistance Civil Rights Website. The website maintains the available and certified DBEs in the appropriate work categories for use on County projects. [www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

## **Monitoring DBE Participation (§26.37)**

DBE program compliance requires regular monitoring of DBE participation on DOT-assisted projects. The County DBE Coordinator and/or staff conducts monitoring and tracking of contract payments and certified payroll records through construction management consultants and in-house personnel to validate prime contractors or consultants proof of prompt payment to DBE firms participating on current contracts. Prompt payment to DBE subcontractor is considered timely if it is paid within the time specified in the California Business and Professions Code, Section 7108.5 or 30 days, whichever is shorter.

### **County Monitoring:**

- Monthly requests are sent to all prime contractors or consultants for their payment information along with copies of the payment records to match.
- Follow-up emails, letters and/or phone calls are made to all contractors and consultants who have not responded within 30 days of the letter date from the County.
- County maintains this information in a worksheet designated by the individual projects with cumulative payment records to allow reconciliation to the original DBE commitment.

For continued monitoring, site interviews and visits are conducted by County staff and/or the on-site Resident Engineer. The monitoring may also be conducted in conjunction with monitoring of other contract performance items such as a contract close-out.

The prime contractor or consultant will be required to provide the County the DBE forms as applicable to the project and any additional ones as requested by the County.

The prime contractor or consultant is required to maintain records of the name, business address, and phone number of each first-tier subcontractor as well as any DBE subcontractor, DBE vendor of materials and DBE trucking company regardless of tier. These records must be maintained for three (3) years following the performance and close of the contract.

The Final Report-Utilization of Disadvantaged Business Enterprises (Exhibit 17-F or form CEM-2402F) will be completed at the end of the contract and must include a list of all subcontractors, not just DBEs. It must list work performed, materials or supplies obtained from DBEs and/or DBE manufacturer; list materials or supplies purchased from a DBE regular dealer and include the date work was completed and the date of final payment. The Resident Engineer or County Engineer will retain up to \$10,000 from the prime contractor's payment until the form is received by the County. The County will file a copy of the completed form in the project file and the project engineer will submit a copy to Caltrans Local Assistance.

If the prime contractor has listed DBE trucking companies on its DBE forms, then the contractor will be required to submit a monthly trucking form (Exhibit 16-Z or CP-CEM-2404F) to the County by the 15<sup>th</sup> of each month – for prior month's work. It must show the dollar amount paid to the DBE trucking company and any fees or commissions paid for a non-DBE truck utilized on the project.

## Failure to Comply:

If the contractor or consultant does not comply with the requirements of 49 CFR Part 26, the County will take the following steps to assure compliance by the contractor or consultant:

1. The County will give written notice stating the non-compliance.
2. The contractor will be required to reply to the County within 10 business days of receipt of the non-compliance letter with an explanation and any supporting documentation along with a corrective action plan.
3. Upon receipt of the contractor's response, the County will give a written response within 15 business days to give the contractor the final decision whether to disregard or take other action.

Failure by the contractor or consultant to comply with ANY of the requirements of 49 CFR Part 26 is a material breach of the contract, which may result in the termination of the contract or such other remedy as the County deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible.

If information to verify payments and timing of those payments is not provided by the contractor or consultant, the County will respond in writing requesting the information and the potential ramifications of non-compliance.

## **Small Business Participation (§26.39)**

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

- “Un-bundling” contract requirements (breaking down the contracts) making it more available for small businesses to bid and participate as prime contractors and subcontractors.
- Updating webpage information with the latest activities and announcements pertaining to Small Business organizations in the local district and project areas.
- Contact information and directories available to all prospective bidders and proposers provided on the County website through the Procurement Division.
- Pre-Bid Meetings introducing and instructing prospective bidders and proposers on reaching out and utilizing Small Business organizations as well as DBEs.
- Coordinating with the County Procurement Division to actively participate in the outreach efforts by providing small business organizations with notifications and bid assistance on current County projects.

## Subpart C – Goals, Good Faith Efforts, and Counting: (§26.41 - §26.55)

### **Quotas (§26.43)**

The County will not use quotas or set-asides in any way in the administration of the local agency component of the DBE Program Plan.

### **Overall Goals (§26.45)**

#### DOT-assisted Projects:

In calculating the project specific DOT-assisted contract goals the County utilizes the California Unified Certification Program (UCP) found on the Caltrans Local Assistance Civil Rights Website to determine the availability of certified DBEs in the appropriate work categories. The overall goal is listed as a percentage of funds for a specific project or grant. The overall goal and a description of the methodology used to establish the goal is sent to Caltrans Local Assistance for their review and approval prior to posting the goal at the County. Upon approval by Caltrans the goal is included in the contract advertisement, requests for proposal and the contract documents.

Each solicitation for which a contract goal has been established will require the bidders to submit the appropriate DOT (Caltrans) forms with their bid or by 4:00 p.m. on the (4th) Fourth business day after the bid closes.

#### DOT-assisted Consultant Contracts:

- 10-O1 – Consultant Proposal DBE Commitment
- 10-O2 – Consultant Contract DBE Commitment
- 15-H – DBE Information – Good Faith Efforts

#### DOT-assisted Construction Contracts:

- 15-G – Construction Contract DBE Commitment
- 15-H – DBE Information – Good Faith Efforts
- 12-B – Bidders List of Subcontractors - Part I and II (DBE and Non-DBE)

#### FTA-assisted Projects:

For FTA project goals the County will submit its triennial overall DBE goal to the FTA on August 1 of the year specified by FTA.

The County will also request use of project-specific DBE goals as appropriate, and/or will establish project- specific DBE goals as directed by FTA.

The process generally used by the County to establish overall DBE goals is as follows:

***Goal for the 2016 – 2018 Triennial Review:***

Step 1: The County has calculated the Overall DBE goal by first determining the total dollar amount of anticipated projects to be awarded in the next three years including both construction and consultant contracts. The Base Figure of 2.70% was determined using Census Bureau data, County Business Patterns (CBP), California Unified Certification Program (CUCP) database, and the North American Industry Classification System (NAICS) Codes; total number of establishments under the specific NAICS codes was obtained; using the DBE database Directory the total number of DBEs businesses available under the specific NAICS codes was obtained and calculated as per the Methodology in 'Step 1: 26.45(c)'.

Resulting data was 'Weighted' on a project-by project basis considering the DBE availability relative to our anticipated contracting opportunities = Projects % of total budget (x) Relative Availability.

Step 2: After calculating a base figure of the relative availability of DBEs and in order to reflect as accurately as possible the DBE participation we would expect in the absence of discrimination we have adjusted our Overall Goal by 0%. It was determined that no adjustment should be made since there has been no DBE participation in the past triennial goal period due to no contracts being issued.

Before establishing the overall goal, the County consulted with various local organizations, DBE and NON-DBE firms, trade papers, and focus papers, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the County's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, the County published a notice of the proposed overall goal, informing the public that the proposed goal and its rationale were available for inspection during normal business hours at our office for 30 days following the date of the notice and was available for review on the County website, it further informed the public that the County and FTA would accept comments on the goal for 45 days from the date of the notice. The notice included addresses to which comments could be sent and addresses (including offices and websites) where the proposal could be reviewed.

The County will begin using the overall goal on October 1 of the specified year, unless we have received other instructions from FTA. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project. The County goal will remain effective for the duration of the three-year period established and approved by FTA.

## **Goal Setting and Accountability (§26.47)**

If the awards and commitments shown on the FTA *Uniform Report of Awards or Commitments and Payments* at the end of any fiscal year are less than the overall applicable to that fiscal year, the County will:

- Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments.
- Establish specific steps and milestones to correct the problems identified in the analysis.
- Submit the shortfall plan to FTA at the end of the affected fiscal year.

## **Transit Vehicle Manufacturers (§ 26.49)**

If FTA-assisted contracts will include transit vehicle procurements, the County will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26, Section 49.

## **Meeting the Overall Goals/Contract Goals (§ 26.51)**

DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

Race-neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities with pre-bid and pre-proposal meetings with prime contractors both DBEs and Non-DBEs to review the requirements of the program and

assist with the bidding process. (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of types of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of the UCP DBE directory, through print or electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

### **Good Faith Efforts Procedures (§26.53)**

The County establishes a DBE contract-specific goal and can only award the DOT-assisted contract to the lowest responsive bidder who meets the goal or makes a good faith effort to meet the goal. To determine a bidder's good faith effort, the County reviews the documents provided by the low bidder indicating that sufficient DBE participation was obtained to meet the goal or if the goal is not met, documents must be provided by the lowest bidder that demonstrates that a good faith effort was made.

The County uses Appendix A to Part 26 (49 CFR Part 26) – Guidance Concerning Good Faith Efforts as the basis for determining the GFE:

If it is necessary to make a “Good Faith Effort” submission, the County requires that every step is documented. The low bidder and/or the second and third low-bidders must be able to demonstrate in writing all the efforts taken such as:

- Solicit through all reasonable and available means.
- Solicit in a reasonable timeframe to allow the DBEs to respond to the solicitation.
- Follow up on initial solicitations – show copies of phone logs, fax records, and email records. The names, addresses, and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, and the actual firms selected for that work. The bidder should attach copies of quotes from ALL the firms involved.

- Select portions of the work to be performed by DBEs in order to increase the likelihood that the contract goal will be achieved. Where appropriate break down contract work items into economically feasible units to facilitate DBE participation, including those items normally performed by the bidder with its own forces.
- Provide DBE firms with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract goal, as long as such costs are reasonable.
- Prime contractors are not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. Provide copies of DBE quote and the Non-DBE quote that was accepted to show the difference in price.
- Bidders cannot reject a DBE firm as being unqualified without sound reasons based on thorough investigation – i.e. union vs. non-union is not a legitimate cause for rejection.
- Bidders are encouraged to make an effort to assist interested DBEs in obtaining bonding (if required), lines of credit, insurance, equipment, supplies and materials and make this offer of assistance part of the solicitations.
- Advertisements and solicitations should state clearly which items or portions of work are being made available. The more advertising the better.
- Bidders should keep and provide documentation showing any contact with organizations or groups that provided assistance in recruiting and using DBE firms.

This information must be received by the Department no later than 4:00 p.m. on the fourth working day following the bid opening. If the DBE information is not submitted within the time limits specified, the bidder is considered unresponsive and not eligible for the project award.

If the County determines that a bidder did not meet the goal and/or the bidder did not make adequate good faith efforts to meet the goal, within five days of being informed by the County the bidder may request administrative reconsideration of its good faith efforts. The bidder should make this request in writing to the Public Purchase Contact person designated in the original bidding information through the County Procurement Division. The reconsideration official will not have played any role in the original determination that the bidder did not document sufficient good faith efforts.

As part of this reconsideration, the bidder will have an opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do. An administrative reconsideration meeting is informal and is not considered a public meeting because a bidder may present proprietary and confidential information, such as bid spreadsheets or estimates to address the issues raised in the contract evaluation. The bidder is also allowed to present information substantiating or clarifying its

DBE submittal. No new information can be brought and the County will only consider information pertaining to efforts made prior to bid opening. The bidder will be notified in writing of the final determination.

**Substitutions of DBE Contractor/Subcontractors or Consultant: (§26.53 (f))**

If the contractor or consultant has committed to use a DBE(s) and the contract has an assigned DBE goal, it is considered race conscious. The prime contractor/consultant is not entitled to any payment for work unless it is performed by the original listed DBE(s). If the original DBE(s) cannot be used then the applicable substitution procedure must be completed as follows:

When a prime contractor requests a subcontractor substitution, the Resident Engineer or County Engineer requests a letter from the prime contractor explaining why the prime contractor is requesting the substitution. The Fair Practices Act (FPA), sections 4100-4114 of the California Public Contract Code, outlines all of the conditions, including those prior to contract award, under which a prime contractor may request the substitution of subcontractors. A contractor who violates any of the provisions of the FPA violates the contract, and the County may at its discretion cancel the contract or assess a penalty of not more than 10 percent of the amount of the subcontract involved.

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the County's written consent to substitute the original DBE listed. If consent is not given by the County then the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. The County will provide such written consent only if they agree to the reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm.

Before the prime contractor transmits its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give written notice 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 prime contractor must give the DBE five days to respond to the prime contractor's notice. The prime contractor must advise the County of the subcontractor's 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.

Good cause includes the following circumstances:

- The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project, or on the terms of such subcontractor's or supplier's written bid, is presented by the prime contractor.
- 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 prime contractor stipulated that a bond was a condition of executing a subcontract and the listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
- The listed DBE 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 to 2CFR Parts 180, 215 and 1,200 or applicable state law.
- The work performed by the listed subcontractor is substantially unsatisfactory and is not in substantial conformance with the plans and specifications, or the subcontractor is substantially delaying or disrupting the progress of the work.
- The listed DBE subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal.
- A DBE owner dies or becomes disabled and is unable to complete its work on the contract.
- Other documented good cause that the County determines 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 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 the contract award.

When a DBE subcontractor is terminated as provided in the paragraph above (for good cause with approval), or fails to complete its work on the contract for any reason, the County will require the prime contractor to secure another DBE subcontractor or make a good faith effort 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 the County established for the contract. The contractor must document the good faith efforts and submit it to the County within 7 days, which may be extended an additional 7 days if

necessary, at the request of the contractor. If the substitution is based on good faith efforts, then the County will review the good faith effort documentation and make a determination. The County shall provide a written copy of the determination to the contractor stating whether or not good faith efforts were demonstrated.

The County will include in each prime contract the contract clause which states that failure by the contractor or consultant to comply with ANY of the requirements of 49 CFR Part 26 is a material breach of the contract, which may result in the termination of the contract or such other remedies as the County deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible.

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

The County will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

#### **Subpart E – Certification Procedures: (§26.81 - §26.91)**

##### **Certification (§26.83(a))**

The County ensures that only DBE firms currently certified by the California Unified Certification Program (UCP) will participate as DBEs on DOT-assisted contracts.

#### **Subpart F – Compliance and Enforcement: (§26.101 - §26.109)**

##### **Information and Confidentiality (§ 26.109)**

The County will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information consistent with federal, state, and local laws.

The County will require prime contractors to maintain records and documents of payments to DBEs for Three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the County or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The County has disseminated this policy statement to the Placer County Board of Supervisors and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.

  
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Ken Grehm, Director of Public Works & Facilities

09-01-15  
Date