

**PLACER COUNTY
DEPARTMENT OF PUBLIC WORKS
DBE PROGRAM**

**POLICY STATEMENT
Objectives and Policy Statement
(Sections §26.1 and 26.23)**

Placer County Department of Public Works (County) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The County has received federal financial assistance from the DOT, and as a condition of receiving this assistance, the County has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the County to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

A Staff Services Analyst from the Roadway and Bridge Engineering Division has been designated as the DBE Liaison Officer. In that capacity, this person is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the County in its financial assistance agreements with the Department of Transportation.

The County will disseminate this policy statement to the County Board of Supervisors and all the components of the organization. This policy statement is accessible to DBE and non-DBE businesses that perform on DOT-assisted contracts.



Ken Grehm, Director



Date



Placer County
Department of Public Works

Disadvantaged Business
Enterprise Program (DBE)
(Updated)
September 2019

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

Subpart A – General Requirements

In April of 2009, Placer County Department of Public Works (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 (RN) goal program. Contract goals for federally funded projects authorized on or after July 1, 2012, must include ALL DBE groups (African Americans, Asian Pacific Americans, Native Americans, Women, Hispanic Americans and Subcontinent Asian Americans and any other groups whose members are certified as socially and economically disadvantaged).

Objectives (§26.1)

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

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, or 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 TEA-21, Pub. L. 105-178.

Terms and Definitions (§26.5)

The County adopts the terms and definitions contained in Section 26.5 for this program.

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, national origin, religion, age or disability.

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, national origin, religion, age or disability.

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 an approved 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 (compiled from collected Exhibit 12-Bs). The bidders list will include the following information:

1. The firm (subcontractor) name
2. The firm (subcontractor) location
3. The firm's status as a DBE or non-DBE
4. Age of the firm
5. The annual gross receipts of the firm

The County will report DBE participation semi-annually 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 regulations, CFR Part 26.

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

The County has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

(a) Assurance: The following language appears in agreements with consultants and contractors as follows: The County shall not discriminate on the basis of race, color, sex, national origin, religion, age or disability 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 under 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 sanctions 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.*).

The County will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

(b) Contract Assurance: 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, sex, national origin, religion, age or disability 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.

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.

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.

Policy Statement (§26.23)

The Policy Statement is elaborated on the first page of this program.

DBE Liaison Officer (DBELO) (§26.25)

The County DBE Liaison Officer has direct independent access to the Director of Public Works concerning DBE program matters (see organization chart on Attachment 1). The DBELO is responsible for developing, implementing and monitoring all aspects of the DBE Program. On a daily basis the DBELO is assigned to the program to help ensure that all components and regulations of the program are followed. The DBELO works 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 and language are included in solicitations (both race-neutral and contract specific goals).
- Participates in pre-bid, pre-proposal and after contract award meetings.
- Advises the Public Works Director on all 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 and workshops.
- Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

DBE Liaison Officer:

Lori Perron – Staff Services Analyst II

(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.

For a list of minority-owned banks in the general area, please contact the DBELO.

Prompt Payment Mechanisms (§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 County 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 Website. The website maintains the available and certified DBEs in the appropriate work categories for use on County projects.

<https://dot.ca.gov/programs/business-and-economic-opportunity/dbe-search>

Overconcentration (§26.33)

The County has not identified that overconcentration exists in the types of work that DBEs perform.

Business Development Programs (§26.35)

The County has not established a business development program.

Monitoring DBE Participation and Enforcement Mechanisms (§26.37)

DBE program compliance requires regular monitoring of DBE participation on DOT-assisted projects. The County DBELO 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 15 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 15th 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.

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.

Failure to Comply:

If the contractor or consultant does not comply with the requirements of 49 CFR Part 26, the County may 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.

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):

- Updating webpage information with the latest activities and announcements pertaining to Small Business organizations in the local district and project areas.
- Current bid and proposer information and contacts are available to all prospective bidders and proposers provided on the County website through the County Procurement Division listed under Business – Bidding Opportunities.
- Pre-Bid/Proposer meetings introducing and instructing prospective bidders and proposers on reaching out and utilizing Small Business organizations as well as DBEs.

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

Set-asides or Quotas (§26.43)

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

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 California Department of Transportation (Caltrans) website under Business and Economic Opportunity to determine the availability of certified DBEs in the appropriate work categories. The goal is listed as a percentage of funds for a specific project or grant. If applicable, the 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 for a project. 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/proposers to submit the appropriate DOT (Caltrans) forms with their bid or proposal by 4:00 p.m. on the (5th) Fifth calendar day after bid opening. If the last day for submitting the bid/proposal forms falls on a Saturday, Sunday or Federal holiday, it may be submitted on the next business day with the same effect as if it had been submitted on the day specified.

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 (see Attachment 2 for current year goal setting).

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.

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 goal 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.
- Prepare a Shortfall Plan for FTA at the end of the affected fiscal year and make it available to FTA if requested.

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 this section. The County will submit to FTA within 30 days of making an award, the name of the successful bidder and the total dollar value of the contract in the manner prescribed in the grant agreement. With FTA approval, the County may establish project-specific goals for DBE participation in the procurement of transit vehicles.

Meeting the Overall Goals/Contract Goals (§ 26.51)

The County will use contract goals on DOT-assisted contracts that have subcontracting possibilities. The County is not required to set a contract goal on every such contract, but will look at the specifics of each contract, depending on such factors as the project type, the size, location of the work, the availability of DBEs to perform the specific work for that particular contract.

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

Race-neutral 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). The following list shows all the race-neutral methods listed in this CFR section, but does not necessarily mean the County participates in all of them.

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 participation by DBEs and other small businesses. 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)

If the County establishes a DBE contract-specific goal, then it 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.

The County includes in all solicitations for DOT-assisted contracts the following required information:

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform. The DBE firm must be certified in the applicable Work Codes or NAICS Codes appropriate to the kind of work the firm will perform on the contract.
- The dollar amount of the participation of each DBE firm that participates.

- Written commitment of the bidder to use the DBE subcontractor(s) identified at the time of the bid award to meet a contract goal; and
- Written documentation or confirmation from each DBE listed on the commitment from the prime contractor as participating in the contract.

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 good faith efforts were 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 County no later than 4:00 p.m. on the fifth calendar 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 so. 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 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 materials 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 DBE 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.

Counting DBE Participation (§26.55)

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

Subpart D & E – Certification Standards and Procedures: (§26.61 - §26.91)

Certification (§26.83(a))

The County does not certify a business as a DBE, the certification process is performed by the California Department of Transportation (Caltrans). However, 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, Confidentiality, Cooperation (§ 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.

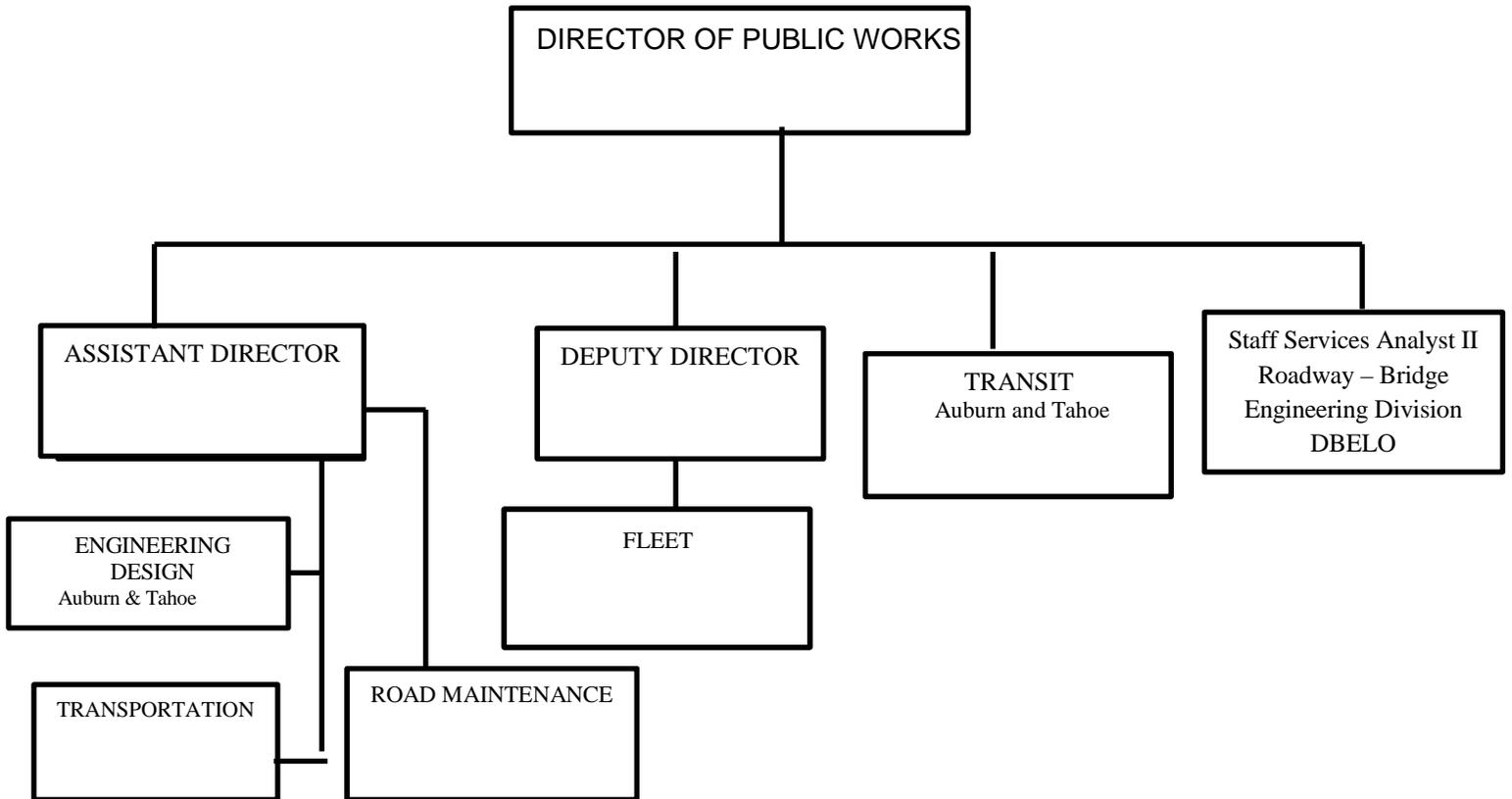
Failure by the contractor or consultant to comply with ANY of the requirements of 49 CFR Part 26 is a material breach of the contract, which may result in the termination of the contract or such other remedy as the County deems appropriate, which may include, but is not limited to:

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

ATTACHMENT 1

ORGANIZATIONAL FLOW CHART

(As of 09/01/19)



ATTACHMENT 2

The process to establish the overall Federal Transit DBE goal: **(§26.45)**

Goal Setting and Methodology for the 2019 – 2021 Triennial Period:

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 3.28% 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 only been one fiscal year in the prior Triennial period that had any DBE participation. This was due to only having one FTA contract issued in the past triennial goal period.

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.

The County posted a notice of the proposed overall goal on the County website including the full details of the goal setting, informing the public that the proposed goal and its rationale were available for inspection and comment for 30 days following the date of the notice, it further informed the public that the County would accept comments on the goal for 30 days from the date of the notice. The notice included addresses, email addresses and phone numbers to which comments could be sent.

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 an FTA assisted contract for the project. The County goal will remain effective for the duration of the three-year period established and approved by FTA.