



**ORANGE COUNTY PUBLIC WORKS
DISADVANTAGED BUSINESS ENTERPRISE
(DBE) PROGRAM MANUAL**

I. Objectives and Implementation

A. Objectives (§26.21 and §26.3)

The Orange County Public Works (hereinafter referred to as "County") receives Federal Highway Administration (FHWA) federal-aid from the California Department of Transportation (Caltrans) and as a condition of receiving such assistance has developed a Disadvantaged Business Enterprise (DBE) Program in accordance with federal regulations published under Title 49 CFR, Part 26, Caltrans Local Assistance Procedures Manual (LAPM) and subsequent Guidance.

This Program Manual 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 federal-aid highway-assisted contracting opportunities.

Furthermore this DBE Program Manual will describe the processes, procedures, documents, authorizations, approvals and certifications, necessary to maintain compliance with DBE requirements and ensure the County's continued receipt of federal-aid and/or state funds for local transportation projects.

B. DBE Implementation Agreement

The County has provided a DBE Implementation Agreement, Exhibit 9-A "DBE Implementation Agreement for Local Agencies" to the District 12 Local Assistance Engineer (DLAE).

The County's agreement contains a policy statement expressing a commitment to the Caltrans DBE Program, stating its objectives, and outlining responsibilities for its implementation. The County has circulated the statement throughout its organization and to the DBE and non-DBE business communities that perform work on its federal-aid contracts.

The County will provide the DLAE with a completed Local Agency DBE Annual Submittal Form (Exhibit 9-B), by June 30 of each year for the following Federal Fiscal Year. The County will submit this form prior to submitting a "Request for Authorization" to proceed with a federal-aid project.

This form includes the following:

1. The County's Designated DBE Liaison Officer information (name, address, phone number, and e-mail address).
2. Detail of the County's planned race-neutral measures to be implemented as required by 49 CFR 26.51 and as outlined in the local agency's DBE Implementation Agreement for Local Agencies (Exhibit 9-A).
3. The County's choice for method of Prompt Payment of Withheld Funds to Subcontractors, as well as a brief explanation of the monitoring and enforcement mechanisms the County has in place to ensure that all subcontractors, including DBEs, are promptly paid.

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

4. An Organizational Chart of the County's current DBE Program staff will be included as an attachment to the Exhibit 9-B.

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 Manual with respect to federal-aid highway-assisted contracts, the Regulations shall prevail. In conformance with 49 CFR 26, the County will continue to carry out its DBE Program Manual until all funds from federal-aid highway financial assistance have been expended.

C. Implementation of Race-Neutral/ Race-Conscious DBE Program Elements

The County of Orange plans to implement the following race-neutral measures to comply with 49 CFR Part 26.51 and Section V of the California Department of Transportation DBE Program Implementation Agreement for Local Agencies:

- 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); **Planned Race-Neutral Measures:** *The County currently has a minimum solicitation time of four (4) weeks from advertisement date to proposal/bid due date. The County may make adjustments to this minimum should circumstances prove necessary. The County will post all procurements through BidSync to ensure an open, fair and competitive supplier selection process. This system allows firms to register for consideration for future Invitations for Bids (IFB) or Requests for Proposals (RFP) opportunities and receive instant alerts regarding pre-proposals/bids, addendums, contract documents and planholder activities. Additionally, the County will review possibilities for unbundling as new projects are created.*
- 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); **Planned Race-Neutral Measures:** *The County will, through its website refer the DBE and Small Business Contracting Community to several bonding assistance resources available within the Orange and Los Angeles County to assist small and disadvantaged businesses who might seek or benefit from this type of assistance.*
- Providing technical assistance and other services. **Planned Race-Neutral Measures:** *The County developed a page specifically dedicated to their DBE program to enable DBEs access to valuable tools an insight through electronic media.*
- Carrying out information and communication programs on contracting procedures and specific contract opportunities (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); **Planned Race-Neutral Measures:** *The County provides the DBE and Small Business Contracting Community the ability to utilize and review bid/procurement plans at no cost through BidSync to provide an equal opportunity for*

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

all business enterprises to participate in their purchasing and contracting activities at no cost. The County has informed the procurement community and small business firms that this resource has been made available via the County's website. The County is confident that providing online access to crucial plans at no additional cost will aid in leveling the playing field and enable them to submit quality proposals and bids.

- 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; **Planned Race-Neutral Measures:** *The County will actively promote the U.S. Small Business Program (SBA) and California Department of General Services (DGS) to its market place contractors, consultants and vendors through the County's website by directing them to: www.sba.gov/contracting/resources-small-businesses*

and

www.dgs.ca.gov/pd/Programs/OSDS/CommunicationsOutreach.aspx.

Additionally, the County has compiled a list of valuable resources to assist DBE firms with development, long-term business management, record keeping, and financial and accounting capabilities and has posted a list of these resources on the County's website.

- 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; **Planned Race-Neutral Measures:** *The County will post a look ahead schedule within the Capital Improvement Program (CIP) Report to inform the public of upcoming projects and due dates so they will have ample time to reach out to primes and build solid partnerships to team on upcoming opportunities.*
- Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low; **Planned Race-Neutral Measures:** *The County currently attends and will continue to attend local Small Business and DBE outreach events to connect with interested firms and provide them instrumental insight to working with the County and growing their business.*
- Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; **Planned Race-Neutral Measures:** *The County will advise its Contracting Community of the availability of the California Unified Certification Program (CUCP) database (directory of Certified DBEs) website at www.dot.ca.gov/hq/bep/find_certified.htm. Additionally, a link to the California Unified Certification Program (CUCP) DBE Directory will be posted on the County's DBE Program website.*
- Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media. **Planned Race-Neutral Measures:** *The County will advise the DBE and Small Business community to participate and attend DGS's courses specifically offered through the DGS website via <http://www.dgs.ca.gov/pd/Programs/CalPCA.aspx>. Additionally, the*

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

County's utilization of BidSync allows firms to register for consideration for future Invitations for Bids (IFB) or Requests for Proposals (RFP) opportunities electronically. By registering on the online system, DBEs and small businesses will be notified via email of upcoming bidding and proposal opportunities in the areas of work they have registered interest in performing. This electronic medium has been made available to assist DBEs and small businesses to engage with emerging technologies and provide them valuable tools for accessing opportunities and applicable data in a real-time environment. Additionally, the County has developed a page specifically dedicated to their DBE program to enable DBEs with access to valuable tools an insight through electronic media.

Race-Conscious Component

The County will establish contract goals on each federal-aid contract where there are subcontractable opportunities for DBEs.

II. 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 County and brings it to a higher County 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.

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.

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

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 Department of Transportation (CalTrans): The State of California's government department that manages the state highway system and is actively involved with public transportation systems throughout California. CalTrans is the largest recipient of U.S. DOT funds within California.

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.

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.

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

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 1st and ending September 30th of any given year. The FFY is different than the County's fiscal year, which runs from July 1st through June 30th.

Federal Transit Administration (FTA): An operating administration of the U.S. DOT, which provides stewardship of programs to support a variety of locally planned, constructed, and operated public transportation systems throughout the United States.

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 an 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.

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

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

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.

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).

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

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, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong.
 - (vi) Women; and

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

- (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: A vehicle used by the County, e.g. railcar, bus or van, for the primary purpose of public mass transportation; this definition does not include locomotives or ferry boats.

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

Under-Utilized DBE (UDBE): A Disadvantaged Business Enterprise (DBE) defined as under-utilized pursuant to the results of a disparity study.

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).

Work Category Code: The Office of Small Business Certification and Resources (OSBCR) issues industry codes to DBE(s). These industry codes are listed in the Work Category Code section of the [Disadvantaged Quarterly Directory](#) or the [Work Category Code Extract](#) file on the CUCP website.

III. RECORD KEEPING REQUIREMENTS

The County maintains a recordkeeping system which identifies FHWA-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;

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

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;and
14. 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. Bidders List: 26.11(c)

49 CFR §26.11 requires the County to develop and maintain a Bidders List. All DOT-assisted contracts shall include a contract clause requiring all prime bidders/proposers to submit a completed Bidders List to the County, for their firm and for all firms (DBE and non-DBE) that submitted a bid, quote or proposal to the prime bidder/proposer on DOT-assisted contracts. The Bidders List shall, at a minimum, contain the following information for each firm:

1. Firm name
2. DBE certification status
3. Address
4. Phone #
5. Age
6. Contact name and title
7. Type of product/service provided
8. Range of annual gross receipts

The County will use this information to assist in establishing the County's market area.

IV. ASSURANCES AND REQUIRED CONTRACT PROVISIONS

The County shall ensure that the following language and/or procedures are included in all BID/RFP specifications and/or contract documents:

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

A. Non-Discrimination Assurances (§26.13(a))

The County shall not discriminate on the basis of race, color, national origin or gender in the award and performance of any U.S. 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 Part 26 to ensure non-discrimination in the award and administration of U.S. DOT assisted contracts. The County's DBE Program, as required by Part 26 and as approved by the U.S. 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 shall ensure that the following language and/or procedures are included in all financial assistance agreements with sub-recipients:

B. Contractor's Assurance Clause (49 CFR §26.13b)

The County shall require that the prime contractor include the following clause in every U.S. DOT assisted contract and subcontract:

"The contractor 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 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."

Please note the language in Section A and B above is to be used verbatim.

C. Use of Set Asides or Quotas (§26.43 and §26.47)

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

V. ADMINISTRATIVE REQUIREMENTS AND STAFFING

A. DBE Liaison Officer (DBELO) (§26.25)

The Director, while maintaining ultimate responsibility for the County's DBE Program, has designated the Procurement Manager to serve as DBE Liaison Officer (DBELO). The Procurement Manager has responsibility for the implementation all aspects of the County's DBE Program and ensuring that the County complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the County's Director concerning DBE Program matters. Contact information for the County's DBELO is as follows:

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

Maria Pirona
DBELO
Procurement Manager
County of Orange - OC Public Works
300 N Flower St
Santa Ana, CA 92703
714-667-9718
E-mail: Maria.Pirona@ocpw.ocgov.com

The DBELO's duties include, but are not limited to, the following activities:

- Analyze and revise DBE program manual policies and procedures as necessary.
- Submit updates to Caltrans, regarding any significant changes to the County's DBE Program.
- Works with County departments and DBE consultant to monitor federally-aided contracts for DBE responsiveness through project completion.
- Facilitate public participation.
- Analyze contract scope of work and subcontracting opportunities; assist in the calculation of DBE contract goals as applicable.
- 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.
- 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.
- Ensure that all solicitation documents and contract templates include all relevant DBE Program elements, contractor documentation submittal requirements and required contract provisions.
- 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.
- Work with the County's contracting/procurement staff to remove barriers which may limit DBE participation, by ensuring that Invitations for Bids (IFBs) and Requests for Proposals (RFPs) do not contain unduly restrictive requirements; ensure that sufficient time is allowed during the pre-bid phase, for DBEs to schedule attendance at pre-bid/pre-proposal meetings and for non-DBEs to perform adequate Good Faith Efforts to meet established DBE contract goals.
- Maintain a Bidders List of firms that submit a bid, quote or proposal for participation on an County contract; ensure that the Bidder List contains all information required by 49 CFR §26.11.

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

- Evaluate Good Faith Efforts when bids/proposals do not meet DBE contract goals as applicable.
- Develop and implement technical assistance programs for DBEs, including resources and referrals to supportive services.
- Investigate services and resources offered by banks and/or financial institutions owned and controlled by socially and economically disadvantaged individuals.
- Ensure that, prior to approval of the substitution of any DBE subcontractor, prime contractors evidence Good Faith Efforts to replace the original DBE with another eligible DBE.
- 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.
- 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.
- 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.
- Maintain all necessary documentation to verify performance of activities included in the DBE Program.
- Actively support and participate in the implementation of the California Unified Certification Program (CUCP).

C. DBE Program Staffing (\$26.25)

As support staff to the DBELO, the DBELO has a procurement staff of 38 with 3 individuals specifically designated to assist and provide direct support related to DBE matters. The DBELO and her procurement staff work closely with the Programming (Capital Improvements) and Construction Departments to ensure opportunities for unbundling are reviewed, DBE goals and pre-award reviews are conducted accurately, DBE commercially useful function is verified through interviews, prompt payment is enforced and ensure that DBE compliance requirements are implemented at all stages of the project through close-out.

Additionally, a consulting firm, Padilla & Associates, Inc. provides additional well-qualified and seasoned staff to assist in managing the County's DBE Program. Padilla & Associates, Inc., is well positioned to readily assist the County in this regard, as their team of exceptionally experienced DBE Compliance professionals will ensure that the County is in full compliance with current governing regulations and timely kept abreast of proposed legislation in the area to further ensure it is proactive in implementing policies and practices that advance the goals and objectives of this important regulation.

E. DBE Reconsideration Official (\$26.53 (d)(2))

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

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

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. The administrative reconsideration process will be facilitated by the County's DBE Reconsideration Official. To ensure integrity in the process, the DBE Reconsideration Official will act as an independent, impartial party and will not have played any role in the initial GFE evaluation process or initial determination of non-responsiveness. The County has designated the following individual to serve as DBE Reconsideration Official:

Virginia Abadessa
Director
Contracts Administration and Materials Management
Orange County Transportation Authority
(714) 560-5623
vabadessa@octa.net

As a part of the reconsideration process, the bidder/proposer will have the opportunity to provide written evidence/documentation or argument concerning the issue of whether the bidder/proposer met the established contract goal or made an adequate GFE to do so as set forth in the solicitation.

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.

Oversight of the reconsideration process shall be performed jointly by the County's Director and/or designee and the DBE Reconsideration Official, who shall:

1. Ensure that all DBE administrative reconsideration procedural actions are consistent with 49 CFR §26.53 and §26.87 and that program integrity is maintained at all times.
2. Maintain verbatim records of hearings conducted.
3. Provide determinations in writing to the County's DBELO.

F. 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 within the County's jurisdiction and make the greatest feasible use of these institutions. The County will encourage prime bidders/ contractors on DOT-assisted contracts and procurements, to utilize such institutions as well.

The County has made efforts to identify these institutions and has provided a list of them on their website. The County will re-evaluate the availability of DBE financial institutions every 24 months. Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

G. DBE Directory (§26.31 and §26.81)

The County utilizes the California Unified Certification Program (CUCP) online state-wide DBE Directory, which contains the following information for each certified DBE, as applicable:

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

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 internet) and in print. 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, and includes DBEs listed in the directory in the County's outreach efforts.

I. County Written Certification (§26.37)

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.

VI. GOALS, GOOD FAITH EFFORTS AND COUNTING

A. Contract-Specific DBE Goals

A DBE contract goal is a percentage of the total contract amount that is expected to be performed by certified DBE firms. The County will establish DBE contract goals only on those federal-aid contracts that have subcontracting opportunities. The DBE contract goal will vary depending on the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. In some cases, the contract goal may be zero due to the extremely limited subcontracting opportunities for DBEs, the lack of interested DBEs in the geographic area in which work is to be performed, or other reasons.

In some cases the County will not set a DBE contract goal (which is different from zero percent goal) as, for Emergency Relief, Sole-source, Nonprofit, or Force Account contracts. The County will determine the DBE contract goal based on the work performed and the availability of certified DBEs. DBE contract goals must be consistent with the following policies:

- DBE contract goals are established in order to achieve fair DBE participation.
- All contract bidders or proposers are required to meet the DBE contract goal, or document that they made adequate Good Faith Efforts (GFE) to meet the goal if they did not succeed in obtaining the DBE participation specified in the contract specifications.

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

B. Contract-Specific Goal Setting Methodology

The County utilizes the goal setting methodology delineated within Exhibit 9-D "DBE Contract Goal Methodology" to Caltrans Local Assistance Procedure Manual.

Procedure for Calculating DBE Contract Goal:

1. The cost estimate for the project must be finalized.
For a construction project: the approximate, lump sum, final pay quantities and associated costs for each item of work must be completed.
For a professional services/consultant project: the scope of work along with the cost estimate for the various professional disciplines necessary to complete the scope of work must be completed.
2. Determine from the final cost estimate what work items will be (typically) done by the prime contractor what work items can be subcontracted out. This does not mean that if the prime contractor is capable of performing all the work items, then no work can or will be subcontracted out. The Agency should make Good Faith Efforts to identify work items that can be subcontracted to DBEs. This can be done by reviewing past projects or from past experience to assess what work can be done by the prime and For example, in an AC overlay project, traffic control, striping, pavement marking, and storm water preparation are typically subcontracted out, and in a bridge sign project, geotechnical, computer aided drafting (CAD), and surveying can be subcontracted out. Since each project can be unique, care should be exercised in properly identifying work items that can be subcontracted out.
3. Determine the "DBE Work Factor" for each item of work. The Work Factor is the percentage of work that can be performed by a DBE subcontractor for each item of work:

Work Factor %	Description
100.00%	DBE performs, manages and supervises the work item
12.00%	DBE provides the material or supplies for work item
10.00%	DBE provides the trucking operation for a work item

4. For the work items that can be subcontracted, identify the Work Category Codes from the California Unified Certification Program (CUCP) DBE database.
5. For each Work Category Code, determine the number of available (able and willing) DBE subcontractors or subconsultants by carrying out a search in the CUCP DBE database by District. If the number of available DBE subcontractors or subconsultants is 10 or higher, a 100 percent DBE Work Factor shall be applied to the Work Category (item of work) and the item will then be considered for determining the DBE contract goal.
6. Calculate the "DBE Work Dollar Amount" by multiplying the estimated cost of the work item by the "DBE Work Factor" established in Step 3.

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

7. Sum up the "DBE Work Dollar Amount" for each work item to arrive at the "Total DBE Work Dollar Amount".
8. Determine the "Percentage DBE Work" by dividing the "Total DBE Work Dollar Amount" by the estimated total cost of the project.
9. Calculate "DBE Contract Goal" by multiplying the "Percentage DBE Work" by "60%". The "60%" reflects the realistic representation of the available DBE participation as established using the CUCP DBE database.

C. Evaluation and Award of Contracts with DBE Contract Goals (§26.53(a))

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 (RFP or RFQ) 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.

1. Evaluation of Bids and Proposals

After the bid opening or proposal due date, the DBELO shall evaluate all bids/proposals to determine whether the bidders/proposers submitted all information required by 49 CFR §26.53(b). On contracts with established DBE contract goals, the lowest successful bidder or highest ranked proposer who demonstrates its commitment to meet the DBE contract goal or demonstrates an adequate Good Faith Effort (GFE) shall be recommended for contract award. In the event that the lowest bidder or highest ranked proposer fails to either meet the contract goal or demonstrate an adequate GFE, or is otherwise unresponsive or not responsible, the DBELO shall evaluate the second lowest bidder or second highest ranked proposer. Should the DBELO determine that additional information is needed to evaluate a bid or proposal with regard to DBE requirements, the DBELO shall request the bidder/proposer to submit the required information, or may contact the listed DBE(s) directly.

2. Evaluation of DBE Certification Status and DBE Eligibility

The DBELO shall require that all DBEs listed by bidders/proposers for participation in contracts with goals, be certified as such before bids/proposals are due, in order for the DBE participation to be counted towards meeting the DBE contract goal.

The County accepts DBE certifications from all certifying members of the California UCP, and any other U.S. DOT recipients, which certify DBEs in accordance with 49 CFR Part 26. It is the bidder's/proposer's responsibility to verify certification status of all proposed DBEs, prior to listing them on the DBE Participation Listing which is due with the bid or proposal.

When evaluating DBE certification status, the County ensures that the DBE: 1) is certified before bids/proposals are due (§26.81(c)) and 2) is certified in the NAICS code that represents the scope of work to be performed by the DBE on the contract (§26.71).

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

After award of the contract, it is the prime contractor's responsibility to monitor the DBE certification expiration dates of its DBEs, and to ensure that credit for DBE participation is only granted to DBEs with current DBE certification status.

D. Meeting Established Goals or Demonstrating Good Faith Efforts (§26.53; Appendix A)

If a bidder's/proposer's value of DBE participation does not meet the established DBE contract goal, the DBELO shall review the bidder's/proposer's Good Faith Effort (GFE) documentation to determine responsiveness and shall determine whether the bidder/proposer has performed the quality, quantity, and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the DBE contract goal.

The following sections outline the requirements of firms competing for County contracts to comply with either meeting the DBE contract goal by committing to utilizing sufficient DBEs or by documenting an adequate GFE. Failure for a bidder/proposer to meet a DBE goal or demonstrate that an adequate GFE was made, will deem the bid/proposal non-responsive.

1. Meeting Established Goals

For each solicitation on which a DBE contract goal has been established, the County shall require bidders/proposers to submit the following information to the County at the time of bid/proposal submission, or within 48 hours after bids/proposals are due.

- i. Written and signed documentation of the bidder's/proposer's commitment to utilize DBEs, to be submitted on the County's "DBE Participation Listing" form. Information listed on the form shall include:
 - 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

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

- 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.
- l. Written confirmation from each DBE participating in the contract. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract. If a DBE is participating as a joint venture partner, the bidder or proposer is encouraged to submit a copy of the joint venture agreement.

2. Demonstrating Good Faith Efforts (§26.53(b)(2)(vi))

If a bidder/proposer does not list sufficient DBEs on its "DBE Participation Listing" form, to meet the established DBE contract goal, and/or if the DBELO's evaluation of the "DBE Participation Listing" form reveals that the bidder/proposer did not meet the established DBE contract goal, the bidder/proposer must demonstrate an adequate Good Faith Effort (GFE) to be deemed responsive to the County's DBE requirements. The bidder/proposer must demonstrate that it took all necessary and reasonable steps to meet the DBE goal, even if not fully successful.

The County has established Good Faith Effort methodology in conformance with §26.53; Appendix A to 49 CFR 26 "Guidance Concerning Good Faith Efforts in Meeting Established Contract-Specific DBE Goals" and Exhibit 15-H "DBE Information- Good Faith Efforts" to Local Assistance Procedures Manual.

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.

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 by the time specified, 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.

The factors delineated below represent the types of efforts that the County will consider as part of the Bidder's/Offeror's Good Faith Efforts to obtain DBE participation sufficient to meet the goal. Good Faith Efforts documentation must include the following information and supporting documents, however, the foregoing is not intended to be an exclusive or exhaustive list of all Good Faith Efforts that can be performed to meet the objectives of this part.

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement
_____	_____
_____	_____
_____	_____

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- C. The items of work which the bidder made available to DBE firms including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Items of Work	Bidder Normally Performs Item	Breakdown of Items	Amount (\$)	Percentage	Of Contract
	(Y/N)				

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs: _____

Names, addresses and phone numbers of firms selected for the work above:

E. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs: _____

F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results
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H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

3. Bidder's Right to Administrative Reconsideration

In the event that the DBELO determines that the apparent successful bidder/proposer has not demonstrated its commitment to meet the DBE contract goal AND has not demonstrated an adequate Good Faith Effort, the bidder/proposer will be notified in writing. The notification shall include the reasons for the determination and that the bidder/proposer has, within three business days of notification of non-responsiveness, the right to request administrative reconsideration. The reconsideration process will be facilitated by the County's Reconsideration Official. To ensure integrity in the process, the Reconsideration Official will act as an independent, impartial party and will not have been involved in the initial GFE evaluation process or initial determination of non-responsiveness.

As a part of the reconsideration process, the bidder/proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the established contract goal or made an adequate GFE to do so as set forth in the solicitation.

After the reconsideration hearing, the bidder/proposer will receive the final determination within seven (7) working days of the hearing date. The bidder/proposer will be advised that the result of the reconsideration process is not administratively appealable to U.S. DOT.

E. Counting DBE Participation (§26.55)

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

1. DBE "Frauds" and "Fronts"

Only legitimate DBEs are eligible to participate in federally funded contracts. Therefore, Bidders are cautioned against knowingly and willfully using "fronts" to meet DBE goals. The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of Federal funds should be immediately reported to the Office of Inspector General (OIG), U.S. Department of Transportation, via the toll-free hotline at 800-424-9071, email at hotline@oig.dot.gov, online at <https://www.oig.dot.gov/dot-oig-hotline-complaint-form> or U.S. mail at DOT Inspector General, 1200 New Jersey Avenue SE, West Bldg. 7th Floor, Washington, CA 20590. The hotline is open 24 hours per day, seven days per week. Additional information can be found on www.oig.dot.gov/hotline.

2. Commercially Useful Function (§26.55)

To be considered as performing a commercially useful function (CUF), the DBE shall meet all of the following:

- i. The DBE is responsible for the execution of a distinct element of work in the Contract;
- ii. The DBE carries out its obligation by actually performing, managing, and supervising the work involved;
- iii. The DBE performs work that is normal for its business, services, and function; and

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

- iv. The DBE performs or exercises responsibility for at least 30 percent of the total cost of its Contract with its own work for and is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practice.

The following factors shall be used in determining whether a DBE trucking company is performing a commercially useful function:

- i. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- ii. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- iii. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- iv. The DBE 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.
- v. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees 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 Department 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.

3. DBE Participation Credit

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.

In accordance with 49 CFR §26.55 and §26.71, the following guidelines apply in calculating/counting DBE participation:

- i. Only the participation of firms certified in accordance with 49 CFR Part 26 may be counted as DBE participation.

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

- ii. Only work (represented by Work Category code(s)) for which the firm is certified as a DBE may be counted as DBE participation.
- iii. Only work 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), may be counted as DBE participation.
- iv. When a DBE subcontracts part of its work of its contract to another firm, the value of the subcontracted work may be counted as DBE participation only if the DBE subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count as DBE participation. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce.
- v. When a DBE performs as a participant in a joint venture with a non-DBE, only the portion of the total contract dollar value equal to the distinct, clearly defined portion of the work to be performed by the DBE's own forces may be counted as DBE participation.
- vi. Only work considered to perform a commercially useful function may be counted as DBE participation.
- vii. For transportation services that are required under the contract and provided by a DBE trucking company, DBE participation is counted on the total value of the transportation services the DBE trucking company provides using trucks it owns, insures, and operates and using drivers it employs.
- viii. For materials and supplies that are required under the contract and obtained from a DBE manufacturer, one hundred percent (100%) of the materials/supplies may be counted as DBE participation. 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.
- ix. For materials and supplies that are required under the contract and obtained from a DBE supplier/regular dealer, sixty percent (60%) of the materials/supplies may be counted as DBE participation. For purposes of this section, a supplier/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.
- x. A bidder/proposer may count as DBE participation, fees and commissions paid to DBE firms that are not manufacturers or regular dealers, provided that the fees or commissions are determined to be reasonable and not excessive, as compared with fees customarily allowed for similar services.
- xi. A bidder/proposer may count as DBE participation, all transportation services provided by a DBE trucking firm that can demonstrate control of trucking operations for which it seeks credit and 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 operation truck

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

used on the contract. The DBE trucking firm may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. The DBE who leases trucks from a non-DBE is entitled to credit only for the fees or commissions it receives as a result of the lease arrangement.

- xii. Prime contractors are advised to not count participation of DBE subcontractors towards DBE attainment until the amount being counted has been paid to the DBE.
- xiii. In cases where a DBE's certification has ceased during the performance period of the contract, although the prime contractor will continue to report to the County, the dollar value of the work performed by the firm, any work performed after the DBE ceases to be certified will not count towards DBE participation credit or contract goal fulfillment.

VII. DBE CERTIFICATION AND ELIGIBILITY

Certification is the process by which all businesses seeking to participate in the County's DBE Program are determined to be legitimate DBEs as defined by U.S. DOT at 49 CFR Part 26.61-26.91, Subpart D and Appendix E, as amended and as defined by SBA at 13 CFR Part 121.

A. California Unified Certification Program (§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 Unified Certification Program (UCP) is 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.

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

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

Agency	Business Address	Telephone No.	Fax No.
City of Los Angeles Office of Contract Compliance <i>www.lacity.org/bca</i>	1149 South Broadway Street, Room 300 Los Angeles, CA 90015	(213) 847-2684	(213) 847-2777
Los Angeles County Metropolitan Transportation Authority (METRO) Diversity and Economic Opportunity Department <i>www.metro.net</i>	One Gateway Plaza Los Angeles, CA 90012	(213) 922-2600	(213) 922-7660
S. F. Bay Area Rapid Transit District (BART) Office of Civil Rights <i>www.bart.gov</i>	300 Lakeside Drive, 18 th Floor Oakland, CA 94612	(510) 464-7580	(510) 464-7587
City of Fresno DBE Program <i>www.ci.fresno.ca.us</i>	2101 G Street, Building A Fresno, CA 93706	(559) 621-1182	(559) 488-1069
Santa Clara Valley Transportation Authority (VTA) Small & Disadvantaged Businesses <i>www.vta.org</i>	3331 North First Street San Jose, CA 95134	(408) 321-5962	(408) 955-9729
Central Contra Costa Transit Authority (CCCTA) Office of Civil Rights <i>www.cccta.org</i>	2477 Arnold Industrial Way Concord, CA 94520	(925) 676-1976	(925) 686-2630
San Francisco Municipal Transportation Agency (SFMTA) Contract Compliance Office San Francisco Municipal Railway <i>www.sfmuni.org</i>	1 South Van Ness Avenue, 3 rd Floor San Francisco, CA 94103	(415) 701-4443	(415) 701-4347
San Mateo County Transit District (SAMTRANS) / Peninsula Corridor Joint Powers Board (CALTRAIN) DBE Office <i>www.samtrans.com</i>	1250 San Carlos Avenue San Carlos, CA 94070	(650) 508-7939	(650) 508-7738
California Department of Transportation (CALTRANS) Office of Business & Economic Opportunity – MS #79 <i>www.dot.ca.gov</i>	1823 14 th Street Sacramento, CA 95814	(916) 324-1700 (866) 810-6346	(916) 324-1862

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

Yolo County Transportation District (YOLOBUS) DBE Program www.yctd.org	350 Industrial Way Woodland, CA 95776	(530) 661-0816	(530) 661-1732
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B. Scope of Work Covered by Certification (§26.71(n))

Firms must be DBE certified in the scope of work (represented by Work Category Code(s)) directly applicable to their performance on a contract. If a firm wishes to participate on a contract under a scope of work for which the firm is not currently certified (i.e., if the firm wishes to add one or more Work Category Codes to its certification), the firm must contact its certifying agency and submit all required documentation to demonstrate DBE ownership and control of the specific type(s) of work the firm wishes to add to its DBE certification. The firm shall then submit proof of DBE certification in the applicable scope(s) of work to the County, in order to receive DBE credit for performing that scope of work. For a firm's DBE participation to be counted towards a bidder's/proposer's initial DBE commitment, the firm must be DBE certified in the applicable scope of work prior to the bid/proposal due date.

C. Notification of Change in Circumstances

If a DBE's circumstances affecting the firm's DBE eligibility change at any time after the firm has been identified as a DBE participant on a County contract, the DBE must provide written notification of such change(s) to its certifying agency, the County and the prime contractor, if applicable. Such changes include, but are not limited to, business size, gross receipts, disadvantaged status, ownership, and/or control requirements. The written notification shall be provided by the DBE within thirty (30) days of occurrence of the change(s). If the DBE fails to make timely notification of such changes, it will be deemed to have failed to cooperate with 49 CFR Part 26.

D. Lapse in Certification Status

If a DBE participant on a County contract ceases to be certified at any time during the life of the contract, any participation by that DBE after the firm ceases to be certified will not count as DBE participation.

E. Procedures for Removal of DBE Eligibility (§26.87)

Pursuant to 49 CFR §26.87, any person may file a written complaint alleging that a currently certified DBE is ineligible to be certified as such, and specifying the alleged reasons why the firm is ineligible. The County will implement the following procedures upon receipt of a written complaint challenging a firm's DBE certification status. The County will also protect the confidentiality of complainants' identities as required by 49 CFR §26.09(b).

1. Obtain the name of the CUCP certifying member agency that issued the DBE's certification;
2. Provide the complainant(s) with contact information for the CUCP certifying member agency;

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

3. Provide the complainant(s) with a copy of 49 CFR §26.87, which outlines the DBE eligibility removal process; and
4. Provide a written notification to the DBE in question, stating that the firm's DBE eligibility has been challenged and that the complainant has been referred to the DBE's certifying agency; include a copy of 49 CFR §26.87. If the DBE in question is a current participant in the County's DBE Program, remind the DBE of its obligation to notify the County of any change in the DBE's certification status within 30 days of the change.

VIII. COMPLIANCE AND ENFORCEMENT OVERSIGHT

A. Information, Confidentiality, Cooperation (§ 26.109)

The County will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, the County will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

B. Monitoring Payments to DBEs (§ 26.37)

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

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 in the DBE Participation Listing or DBE subcontract.

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.

C. Compliance Monitoring (§26.37)

The County shall implement appropriate mechanisms to ensure prime and subcontractor compliance with DBE Program requirements as stated in 49 CFR Part 26, including but not limited to the following activities:

1. Once a DBE begins work, obtain proof of each DBE's participation on the contract, by collecting a copy of a signed subcontractor agreement between the prime contractor/consultant and the DBE. DBE subcontracts must be submitted to the County within 10 days of contract execution;
2. Collecting/reviewing DBE utilization reports (County Form 103);

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

3. Verifying payments made to DBEs;
4. Tracking DBE participation throughout the life of the contract;
5. Conducting site visits, field observations and construction worker interviews on applicable contracts;
6. Imposing administrative sanctions for willful contractor non-compliance with DBE Program requirements;
7. Recording and reporting final DBE participation at contract close-out; and
8. Measuring achieved DBE participation in comparison to committed participation.

In addition, at contract close-out, the County will certify that it has monitored the contract to ensure compliance with DBE Program regulations and requirements.

D. DBE Substitutions and Terminations (§26.53 (f) and (g))

1. DBE Substitutions/Additions

If a contractor wishes to add or substitute a DBE firm during the contract term, the contractor will be required to submit a completed "DBE Addition/Substitution/Termination Form" for the County's approval, along with sufficient information to justify such change(s). When substituting a DBE with another firm, whether DBE or non-DBE, the contractor shall fully comply with DBE subcontractor termination regulations detailed in 49 CFR §26.53 (f) and (g). Requests for DBE substitutions and additions shall be subject to prior written approval by the County.

2. DBE Terminations

Contractors shall be required to comply with 49 CFR §26.53 regarding DBE subcontractor terminations, including the following:

- i. A Contractor shall not terminate a listed DBE subcontractor without the County's prior written consent.
- ii. A Contractor may only terminate a DBE subcontractor for "good cause."
- iii. Prior to the termination request, the prime contractor must notify the DBE, in writing, of the intent to terminate, allowing for five days of response time in opposition of the rejection.
- iv. "Good cause" includes the following circumstances:
 - a. DBE subcontractor fails or refuses to execute a written contract;
 - b. DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards;
 - c. DBE subcontractor fails or refuses to meet the prime Contractor's reasonable, nondiscriminatory bond requirements;

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

- d. DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - e. DBE subcontractor is ineligible to work on public works projects because of suspension or debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
 - f. DBE subcontractor is determined to be not a responsible contractor;
 - g. DBE subcontractor voluntarily withdraws, with written notification, from the project;
 - h. DBE subcontractor is ineligible to receive DBE credit for the type of work required;
 - i. DBE subcontractor's owner dies or becomes disabled, resulting in the DBE's inability to complete the contract work;
 - j. Other documented compelling reason(s), including violating the County's on-site safety rules and requirements.
 - k. The Contractor's reason(s) for terminating the DBE subcontractor must make the termination essential, not merely discretionary or advantageous.
- v. 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 (e.g., failure of the prime contractor to make timely payments or the unnecessary placing of obstacles in the path of the DBE's work). Good cause also does NOT exist if the prime Contractor seeks to terminate a DBE so that it can self-perform the work of the terminated DBE.
- vi. The Contractor must make a Good Faith Effort (GFE) to replace the terminated DBE with another DBE. The contractor's GFE 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 established DBE contract goal and/or the Contractor's DBE participation commitment approved by the County prior to award of the Contract.
- vii. Failure by the Contractor to adhere to these requirements may constitute a material breach of contract, which may result in the termination of the contract or such other remedy as the County deems appropriate.

E. Administrative Sanctions for Non-Compliance

Non-compliance with DBE Program requirements may subject the Contractor to administrative sanctions as outlined below:

1. 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 Good Faith Efforts, (c) submit required DBE utilization reports, (d) submit verification of prompt payment to DBE subcontractors, and/or (e) comply with proper DBE termination procedures. The notice shall state the administrative remedy(ies) to be imposed.

2. The contractor shall be given ten (10) working days from the date of the notice to file a written appeal to the County's Director. Failure to respond within the ten (10) day period shall constitute a waiver of appeal.
3. The Director 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 Executive Director 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:

1. 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;
2. A 2% withhold of applicable progress payments until the contractor is brought into compliance; and/or
3. Termination of the contract in part or in whole.

F. Contractor Reporting and Documentation Submittal Requirements

The County shall define all required DBE-related forms to be submitted by the bidder/proposer and/or selected contractor, as applicable, and shall list its contract monitoring mechanisms to ensure contractor compliance with all DBE provisions set forth in the County's DBE Program.

1. Notification of Contractor Reporting Responsibilities

Prior to execution of all contracts containing DBE goals and/or DBE commitments, the prime contractor shall be directed to the contract specifications for the County's specific DBE reporting and recordkeeping requirements. The County will include templates of required reporting forms in the bid/RFP documents and sample contracts.

2. Bidders List

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.

3. Pre-Award: DBE Participation Listing Form

All prime bidders/proposers are required to complete and submit a "DBE Participation Listing" form with their bid/proposal unless otherwise noted in the solicitation documents. Bidders/proposers shall also submit a DBE Commitment Letter from each DBE Firm listed on the Participation Listing to the County, confirming the value and scope the prime bidders/proposer has listed them to perform.

4. Contract Compliance Reporting Responsibilities

If a contractor is a DBE firm and/or has proposed to utilize DBE firms, the contractor will be required to complete and submit to the County, monthly and final DBE utilization reports (County Form 103) by the 15th of each month until completion of their contract or agreement to facilitate reporting of DBE participation, following the first month of contract activity. Failure to submit these reports in a timely manner shall result in a penalty of \$10 per day, per report. Failure to submit required reports may also result in additional administrative sanctions pursuant to the County's DBE Policy and 49 CFR Part 26. The Contractor is advised not to credit the participation of DBEs on the respective reporting form until the amount being credited has been paid to the DBE firm. The County Form 103 Report shall include the following information:

- a) Name of each DBE Subcontractor/consultant.
- b) General work assignment of each DBE Subcontractor/consultant.
- c) The specific portion of work executed by each DBE Subcontractor/consultant during the reporting period.
- d) The dollars committed to each DBE Subcontractor/consultant.
- e) The dollar value committed to lower-tier subcontractors/consultants under each listed DBE.
- f) The dollars paid to each DBE Subcontractor/consultant during the reporting period.
- g) The dollars paid to date for each DBE Subcontractor.
- h) The dollar value paid to date for lower tier subcontractors/consultant under each listed DBE.
- i) The dollars paid to the DBE as a result of a change order or other cost modification.
- j) The dollars paid to date as a percentage of the total commitment to each DBE.
- k) Date of last progress payment
- l) Prime Contractor/Consultant 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.

6. Good Faith Efforts (GFE)

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

- i. Negotiating in good faith to attempt to finalize and execute a subcontract agreement with the DBEs committed to in the bid or proposal;

ORANGE COUNTY PUBLIC WORKS DBE PROGRAM MANUAL

- ii. Documenting efforts to seek out and utilize additional DBE suppliers and subcontractors when necessary and authorized by the County;
- iii. Continuing to provide assistance to DBE subcontractors or suppliers in obtaining bonding, lines of credit, etc.;
- iv. Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting County approval to substitute the DBE.
- v. Paying all subcontractors (DBEs and non-DBEs) in a timely manner, as listed in the contract specifications;
- vi. Alerting the County in a timely manner of any problems anticipated in attaining the DBE participation goal committed to in the bid or proposal;
- vii. If a DBE substitution is necessary, making a Good Faith Effort to replace the DBE with another DBE, subject to the approval of County.

IX. OUTREACH EFFORTS

The County conducts a variety of outreach activities in support of its DBE Program and to facilitate DBE participation on County contracts and procurements.

A. Pre-Bid and Pre-Proposal Meetings

The County may hold pre-bid/pre-proposal meetings for bid and RFP opportunities. These meetings provide a venue for prime and subcontractor teaming and partnering. Sign-in sheets include fields for noting DBE and SBE status and whether the firm is a prime or sub bidder/proposer. These meetings also provide an opportunity for networking scheduled at the end of the meeting.

B. DBE Program Website

The County maintains a DBE section on the County website. The DBE section contains an overview of the County's DBE Program Manual, a link to a copy of the County's DBE Program Policy Statement, contact information for the County's DBE Liaison Officer, a link to the CUCP website and DBE certification information, a link to bonding resources, a link to the CUCP state-wide online DBE directory and a link to detailed instructions for locating DBEs on the online DBE directory.

C. External Outreach Events

The County participates in a variety of outreach events hosted/sponsored by other public agencies, local/ethnic chambers of commerce, community- and business-based organizations, and professional/ trade associations. To attain a current list of upcoming outreach activities please visit the DBE section of the County's website.