

DBE PROGRAM FOR COUNTY AIRPORTS
Public Works Department
Contra Costa County

Section 26.1, 26.23 Objectives/Policy Statement

Contra Costa County (County), owner of Buchanan Field and Byron Airports, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26 ("Part 26". All references to "Section" refer to sections in Part 26). The County has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the County has signed an assurance that it will comply with 49 CFR Part 26. The County's DBE Program for County Airports applies to County airport projects that receive Federal Aviation Administration (FAA) funding. It supersedes the County DBE Program adopted by the Board of Supervisors on June 9, 2009, as applied to County airports. The County DBE Program adopted by the Board of Supervisors on June 9, 2009, will continue to apply to County projects that receive Federal Highway Administration (FHWA) funds, unless it is superseded by a revised program adopted by the Board of Supervisors.

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 County 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 promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The Public Works Department Director ("Director") has been designated as the DBE Liaison Officer (DBELO). In that capacity, the Director 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 Department has disseminated this policy statement to the Contra Costa County Board of Supervisors and made it available to all components of our organization. The Department will post this policy statement on the publicly viewed Public Works and Airport web pages and make it available to both DBE and non-DBE businesses that perform work for us on DOT-assisted contracts.

Julia R. Bueren, Public Works Director

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The County is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, et seq.

Section 26.5 Definitions

The County will use terms in this program that have the meaning defined in Section 26.5. See Attachment 1 for more details on 49 CFR Part 26 and links to related websites.

Section 26.7 Non-discrimination Requirements

The County will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the County will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

1. Reporting to DOT: 26.11(b)

The County will report DBE participation to DOT/FAA as follows:

The County will transmit to FAA annually on December 1, the “Uniform Report of DBE Awards or Commitments and Payments” form, found in Appendix B to Part 26. The County will also report the DBE contractor firm information either on the FAA DBE Contractor’s Form or other similar format. The County will begin using the revised Uniform Report of DBE Awards or Commitments and Payments for reporting FY 2015 reports due December 1, 2015.

2. Bidders List: 26.11(c)

The County will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on County DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

The County will collect this information in the following ways:

A copy of the data collection form is included as Attachment 3 "Bidders List Application." This form is posted and downloadable on the Public Works and Airport websites. Lists are maintained and updated by the individual divisions using them.

Section 26.13 Federal Financial Assistance Agreement

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

1. Assurance: 26.13(a) Each financial assistance agreement the County signs with a DOT operating administration (or a primary recipient) will include the following assurance:

"Assurance: 26.13(a) The County shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The County shall take all necessary and reasonable steps 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 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 of Transportation may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)."

[Note: This language is to be used verbatim, as it is stated in 26.13(a).]

2. Contract Assurance: 26.13(b) The County will ensure that the following clause is included in each contract the County signs with a contractor and each subcontract the prime contractor signs with a subcontractor:

"Contract Assurance (26.13) The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County deems appropriate."

[Note: This language is used verbatim, as it is stated in 26.13(b) in the Special Conditions of each contract/agreement.]

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The County is required to have a DBE program meeting the requirements of Part 26 as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The County is not eligible to receive DOT financial assistance unless DOT has approved the County's DBE program and the County is in compliance with it and Part 26. The County will continue to carry out its program until all funds from DOT financial assistance have been expended. The County does not have to submit regular updates of our program, as long as the County remains in compliance. However, the County will submit significant changes in the program for approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The Department has designated the following individual as our DBE Liaison Officer:

*Julia R. Bueren
Public Works Director
255 Glacier Drive
Martinez, CA 94553
(925) 313-2000*

JULIE.BUEREN@PW.CCCOUNTY.US

In that capacity and in coordination with other appropriate officials, the DBELO is ultimately responsible for developing, implementing and monitoring the DBE program and ensuring that the County complies with all provisions of 49 CFR Part 26. The DBELO relies on Department staff from several divisions including the Airports, Design/Construction, Transportation, Contracts Administration and County Counsel to assist in the administration of the program. DBELO has direct, independent access to the Public Works Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this Program.

Department staff fulfills the following duties and responsibilities of the DBELO:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all Department divisions to set overall annual goals.

4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes Department's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the County Administrative Officer\Board of Supervisors on DBE matters and achievement.
9. Determines contractor compliance with good faith efforts.
10. Plans and participates in DBE training seminars.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

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.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer. The California Department of Transportation (Caltrans) Disadvantaged Business Enterprise Program may offer assistance to the DBE Liaison Officer.

Section 26.29 Prompt Payment Mechanisms

The County has established, as part of its DBE Program, a contract clause requiring prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 days from receipt of each payment made by the County to the prime contractor.

The County will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. The County will use the following method to comply with this requirement:

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

County will consider a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the County. When County has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Prompt Payment

The County will include the following clause in each DOT-assisted prime contract:

“Prompt Payment (26.29) - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 7 days from the receipt of each payment the prime contractor receives from Agency. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Agency. This clause applies to both DBE and non-DBE subcontractors.”

Monitoring Payments to DBEs

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

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

Section 26.31 Directory

The County will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's website at www.dot.ca.gov/hq/bep. See Attachment 4 for additional information.

Section 26.33 Over-concentration

The County has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The County has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The County will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The County will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. The County will implement similar action under its own legal authorities, including responsibility determinations in future contracts. Attachment 7 lists the regulations, provisions, and contract remedies available in the events of non-compliance with the DBE regulation by a participant in its DBE Program.
3. The County will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
4. The Department will assign a Resident Engineer (RE) or Contract Administrator to monitor and track actual DBE participation through contractor and subcontractor reports of payments in accordance with the following:

A. After Contract Award

After the contract award the County will review the award documents for the portion of items each DBE and first tier subcontractor will be performing and the dollar value of that work. With these documents the RE/Contract Administrator will be able to determine the work to be performed by the DBEs or subcontractors listed.

B. Preconstruction Conference

A preconstruction conference will be scheduled between the RE/Contract Administrator and the contractor or their representative to discuss the work each DBE subcontractor will perform.

Before work can begin on a subcontract, the local agency will require the contractor to submit a completed "Subcontracting Request," Exhibit 16-B of the Caltrans Local Assistance Program Manual (LAPM) or equivalent. When the RE/Contract Administrator receives the completed form it will be checked for agreement of the first tier subcontractors and DBEs. The RE/Contract Administrator will not approve the request when it identifies someone other than the DBE or first tier subcontractor listed in the previously completed "List of Subcontractors and DBEs" form in the Proposal and the "Local Agency-Bidder DBE Information (Construction Contracts)," Exhibit 15-G of the LAPM or

equivalent. The “Subcontracting Request” will not be approved until any discrepancies are resolved. If an issue cannot be resolved at that time, or there is some other concern, the RE/Contract Administrator will require the contractor to eliminate the subcontractor in question before signing the subcontracting request. A change in the DBE or first tier subcontractor may be addressed during a substitution process at a later date.

Suppliers, vendors, or manufacturers listed on the “Local Agency-Bidder DBE Information (Construction Contracts),” Exhibit 15-G of the LAPM or equivalent will be compared by the RE/Contract Administrator to those listed in the completed “Notice of Materials to be Used”, Exhibit 16-I of the LAPM or equivalent. Differences must be resolved by either making corrections or requesting a substitution.

Substitutions will be subject to the Subletting and Subcontracting Fair Practices Act (FPA). Local agencies will require contractors to adhere to the provisions within Subletting and Subcontracting Fair Practices Act (State Law) Sections 4100-4144. FPA requires the contractor to list all subcontractors in excess of one half of one percent (0.5%) of the contractor’s total bid or \$10,000, whichever is greater. The statute is designed to prevent bid shopping by contractors. The FPA explains that a contractor may not substitute a subcontractor listed in the original bid except with the approval of the awarding authority.

The RE/Contract Administrator will give the contractor a blank Exhibit 17-F of the LAPM, “Final Report Utilization of Disadvantaged Business Enterprises, First Tier Subcontractors” and will explain to them that the document will be required at the end of the project, for which payment can be withheld, in conformance with the contract.

C. Construction Contract Monitoring

The RE will ensure that the RE’s staff (inspectors) knows what items of work each DBE is responsible for performing. Inspectors will notify the RE immediately of apparent violations.

When a firm other than the listed DBE subcontractor is found performing the work, the RE will notify the contractor of the apparent discrepancy and potential loss of payment. Based on the contractor’s response, the RE will take appropriate action: The DBE Liaison Officer will perform a preliminary investigation to identify any potential issues related to the DBE subcontractor performing a commercially useful function. Any substantive issues will be forwarded to the Caltrans Disadvantaged Business Enterprise Program. If the contractor fails to adequately explain why there is a discrepancy, payment for the work will be withheld and a letter will be sent to the contractor referencing the applicable specification violation and the required withholding of payment.

If the contract requires the submittal of a monthly truck document, the contractor will be required to submit “Monthly DBE Trucking Verification,” Exhibit 16-Z of the LAPM, or equivalent, to the RE showing the owner’s name; California Highway

Patrol CA number; and the DBE certification number of the owner of the truck for each truck used during that month for which DBE participation will be claimed. The trucks will be listed by California Highway Patrol CA number in the daily diary or on a separate piece of paper for documentation. The numbers are checked by inspectors regularly to confirm compliance.

Providing evidence of DBE payment is the responsibility of the contractor.

D. Substitution

When a DBE substitution is requested, the RE/Contract Administrator will request a letter from the contractor explaining why substitution is needed. The RE/Contract Administrator must review the letter to be sure names and addresses are shown, dollar values are included, and reason for the request is explained. If the RE/Contract Administrator agrees to the substitution, the RE/Contract Administrator will notify, in writing, the DBE subcontractor regarding the proposed substitution and procedure for written objection from the DBE subcontractor in accordance with the Subletting and Subcontracting Fair Practices Act. If the contractor is not meeting the contract goal with this substitution, the contractor must provide the required good faith effort to the RE/Contract Administrator for local agency consideration.

If there is any doubt in the RE/Contract Administrator's mind regarding the requested substitution, the RE/Contract Administrator may contact the DLAE for assistance and direction.

E. Record Keeping and Final Report Utilization of Disadvantaged Business Enterprises

The contractor shall maintain records showing the name and address of each first-tier subcontractor. The records shall also show:

- 1) The name and business address, regardless of tier, of every DBE subcontractor, DBE vendor of materials and DBE trucking company.
- 2) The date of payment and the total dollar figure paid to each of the firms.
- 3) The DBE prime contractor shall also show the date of work performed by their own forces along with the corresponding dollar value of the work claimed toward DBE contract goal, if applicable.

When a contract has been completed the contractor will provide a summary of the records stated above. The DBE utilization information will be documented on "Final Report Utilization of Disadvantaged Business Enterprises, First Tier Subcontractors," Exhibit 17-F of the LAPM or equivalent. The RE will compare the completed Exhibit 17-F to the contractor's completed "Local Agency Bidder DBE Information (Construction Contracts)," Exhibit 15-G of the LAPM or equivalent, and, if applicable, to the completed "Subcontracting Request," Exhibit 16-B of the LAPM. The DBEs shown on the completed Exhibit 17-F should be the same as those originally listed

unless an authorized substitution was allowed, or the contractor used more DBEs and they were added. The dollar amount should reflect any changes made in planned work done by the DBE. The contractor will be required to explain in writing why the names of the subcontractors, the work items or dollar figures are different from what was originally shown on the completed Exhibit 15-G when:

- a. There have been no changes made by the RE.
- b. The contractor has not provided a sufficient explanation in the comments section of the completed Exhibit 17-F.

The explanation will be attached to the completed Exhibit 17-F for submittal to the RE. The RE will file this in the project records.

The RE/Contract Administrator will keep track of the DBE certification status on the Internet at www.dot.ca.gov/hq/bep and keep the RE informed of changes that affect the contract. The RE will require the contractor to act in accordance with existing contractual commitments regardless of decertification.

Attachment 6 includes examples of Exhibits 15-G, 17-F

Section 26.39 Fostering small business participation.

The County has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The County's small business element is incorporated as Attachment 10 to this DBE Program. The County will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of our DBE program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The County does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The County will establish an overall DBE goal covering a three-year federal fiscal year period if the County anticipates awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the County will submit its Overall Three-year DBE Goal to FAA by August 1st as required by the established schedule below.

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Non-Hub Primary	All Regions	August 1, 2015 (2016/2017/2018)	August 1, 2018 (2019/2010/2021)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the County does not anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any of the years within the three-year reporting period, the County will not develop an overall goal; however, this DBE Program will remain in effect and the County will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine the relative availability of DBEs in the market area, “base figure”. We will use DBE Directories and Census Bureau Data for specified counties. The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on Contracts.

Any methodology the County chooses will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in our market. The County understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this section (above), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. Once the County has calculated a base figure, the County will examine all of the evidence available in our jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at our overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

26.45 (g)(1) In establishing the overall goal, the County will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the County's efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the County's goal setting process, and it will occur before the County is required to submit our goal methodology to the operating administration for review pursuant to paragraph (f) of this section. The County will document in our goal submission the consultation process that the County engaged in. Notwithstanding paragraph (f)(4) of this section, the County will not implement our proposed goal until the County has complied with this requirement.

In addition, the County will publish a notice announcing our proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on our official internet web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal will be posted on our official internet web site. The County will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at our principal office and that the County and DOT/FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. **The public comment period will not extend the August 1st deadline.**

Our Overall Three-Year DBE Goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

The County will begin using our overall goal on October 1 of the reporting period, unless the County has received other instructions from DOT.

Section 26.45 (e) - Project Goals

If permitted or required by the FAA Administrator the County will express our overall goals as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which our regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If the County establishes a goal on a project basis, the County will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.45(f) - Prior Operating Administration Concurrent

The County understands that we are not required to obtain prior operating administration concurrence with our overall goal. However, if the operating administration's review suggests that our overall goal has not been correctly calculated or that our method for calculating goals is inadequate, the operating administration may, after consulting with us, adjust our overall goal or require that we do so. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department of Transportation in guidance issued pursuant to § 26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this Program.

Section 26.47 Failure to meet overall goals.

The County will maintain an approved DBE Program and overall DBE goal, if applicable, as well as administer our DBE Program in good faith to be considered to be in compliance with Part 26.

If the County awards and commitments shown on our 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 do the following in order to be regarded by the Department of Transportation as implementing your DBE Program in good faith:

1. Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
2. Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;
3. The County will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years, and will make it available to FAA upon request.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

The County will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

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 and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of Part 26.
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 communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate); and
5. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program.

Section 26.51(d-g) Contract Goals

The County will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39.

If our approved projection under paragraph (c) of this section estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order meet our overall goal.

(Example to paragraph (f) (1): Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year 1, you could begin setting race-conscious DBE contract goals during the remainder of the year as part of your obligation to implement your program in good faith).

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

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

Section 26.53 Good Faith Efforts Procedures

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

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26. See Attachment 6 for forms related to this section.

The County treats bidders'/ offerors' compliance with good faith effort requirements as a matter of responsiveness. A responsive proposal is meeting all the requirements of the advertisement and solicitation.

The Department of Public Works Contract Administrator ("Contract Administrator") is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

Information to be submitted (26.53(b))

In our solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, we will require the following:

1. All bidders or offerors will be required to submit the following information to the Agency, at the time provided in paragraph (b)(3) of this section:
 - (a) The names and addresses of DBE firms that will participate in the contract;

- (b) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (c) The dollar amount of the participation of each DBE firm participating;
 - (d) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (e) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
 - (f) If the contract goal is not met, evidence of good faith efforts (see Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
2. The County will require that the bidder/offeror present the information required by paragraph (b)(2) of this section; under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures.

Administrative Reconsideration (26.53(d))

Within 10 business days of being informed by County that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Contra Costa County
Public Works Department
255 Glacier Drive
Martinez, CA 94553
Attn: DBE Administrative Reconsideration
(925) 313-2000
Admin@pw.cccounty.us

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The County will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to FAA, FHWA, Caltrans, or the Department of Transportation.

Good Faith Efforts when a DBE is Replaced on a Contract (26.53(f)(g))

The County will require the contractor that is awarded the contract to make available a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with Part 26's provisions.

In this situation, the prime contractor will be required to obtain the Director's, or designee's, prior written approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

The County will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The prime contractor is required to notify the Contract Administrator immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. The County will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without the Director's, or designee's, prior written consent.

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

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. 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;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
6. The County has determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to Director written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. Other documented good cause that the County determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the

prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the Director its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the Director, 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 and advise the Department and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Director should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the Director, or designee, may provide a response period shorter than five days.

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

The County will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. 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 that the County established for the procurement. The good faith efforts shall be documented by the contractor. If we request documentation from the contractor under this provision, the contractor shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

The County will include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of Part 26 is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that the County deems appropriate if the prime contractor fails to comply with the requirements of this section.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Section 26.55 Counting DBE Participation

The County will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. The County will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

If the firm is not currently certified as a DBE in accordance with the standards of subpart D of Part 26 at the time of the execution of the contract, the County will not count the firm's participation toward any DBE goals, except as provided for in 26.87(j).

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

Only certified DBE firms as shown on the Unified Certification Program DBE Directory (available from the Caltrans Disadvantaged Business Enterprise Program's website at www.dot.ca.gov/hq/bep) will participate as DBEs in this DBE Program. See Attachment 8 and 9 for DBE Certification Application Form and related links.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation and Intimidation or Retaliation

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 law.

Notwithstanding any provision of Federal or state law, the County will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, the County will transmit this information to DOT in any certification appeal proceeding under § 26.89 of Part 26 or to any other state to which the individual's firm has applied for certification under § 26.85 of Part 26.


All participants in the Department of Transportation's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

The County, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Part 26. If the County violates this prohibition, the County is in noncompliance with Part 26.

The Disadvantaged Business Enterprise Program for County Airports is approved by:

CONTRA COSTA COUNTY APPROVALS

FORM APPROVED BY COUNTY COUNSEL

By: 

APPROVED BY COUNTY ADMINISTRATOR

By: _____
Designee

Date: _____

The Disadvantaged Business Enterprise Program for County Airports is accepted by:

FEDERAL AVIATION ADMINISTRATION

By: _____

Date: _____

By: _____

Date: _____