



COMMUNITY DEVELOPMENT AGENCY

ADMINISTRATION AND FINANCE DIVISION

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NOTICE OF AVAILABILITY

**County of El Dorado
Community Development Agency**

**Disadvantaged Business Enterprise (DBE) Program
DBE Overall Goal and
Goal Setting Methodology
for Federal Fiscal Years 2016 – 2018**

The County of El Dorado, through its Community Development Agency (Department), prepared a DBE Overall Goal and Goal Setting Methodology for U.S. Federal Aviation Administration-assisted contracts pursuant to Title 49 of the Code of Federal Regulations Part 26 (49CFR Part 26). The Department set an overall DBE Overall Goal for Federal Fiscal Years 2015/2016, 2016/2017, and 2017/2018 of twenty-four percent (24%) for disadvantaged business enterprise participation, comprised of a Race-Conscious component of 14% and a Race-Neutral component of 10%. The Race-Conscious portion applies to the following Underutilized Disadvantaged Business Groups: African American, Asian-Pacific American, Women, and Native American.

At this time, the DBE Overall Goal and Goal Setting Methodology are being made available for public review for thirty (30) days in accordance with 49CFR Part 26 requirements. The review period for the DBE Overall Goal and Goal Setting Methodology will run from September, 15, 2015 through October, 14, 2015. The Department will accept written comments on the DBE Overall Goal and Goal Setting Methodology for a period of forty-five (45) days from the date of this notice, or until October, 30, 2015. All written comments must be received by that date and should be directed to: County of El Dorado Community Development Agency, Attention: Kady Leitner, 2850 Fairlane Court, Placerville, California 95667.

Copies of the DBE Overall Goal and Goal Setting Methodology, are available for review at the County of El Dorado Community Development Agency, Transportation Division, located at 2850 Fairlane Court, Placerville, California and on the website at edcgov.us/dot. Copies can also be obtained via email. Email request to kady.leitner@edcgov.us.

County of El Dorado
Community Development Agency

September 15, 2015

County of El Dorado

Disadvantaged Business Enterprise (DBE) Program Proposed Methodology and Calculations Used to Determine Overall Goal for Federal Fiscal Year 2015-2016 through 2017-2018 for Federal Aviation Administration-Assisted Projects

I. Executive Summary

The County of El Dorado (County), through its Community Development Agency (CDA), submits its three-year goal to the Federal Aviation Administration (FAA) pursuant to 49 Code of Federal Regulation (CFR) Section 26.45, for federally assisted airport contracts. For Federal Fiscal Year (FFY) 2016-2017 and 2017-2018, County proposes an overall goal of **24% (rounded)** comprised of a Race-Conscious component of **14%** and a Race-Neutral component of **10%** with no Step Two adjustments. County anticipates awarding less than \$250,000 in FAA-funded prime contracts for FFY 2015-2016; therefore, no goal is being developed for that year in accordance with 49 CFR 26.45(a)(1); however, the DBE program will remain in effect.

II. Goal-Setting Methodology – Section 49 CFR 26.45

County followed a two-step process for setting its overall DBE goal:

- Step One determines the calculation of a base figure for the relative availability of DBEs.
- Step Two is the examination of all the evidence available to determine if an adjustment to the base figure is needed to arrive at the overall goal.

III. Step One - Determining the Base Figure Section 49 CFR 26.45 (c)

A. County created a list of the projects that it anticipates awarding in FFYs 2016-2017 and 2017-2018. Next, County determined the various work types and amounts of work that will be involved, using the Estimate of Cost and the work categories and codes that can be found on the California Unified Certification Program (CUCP) website <http://www.dot.ca.gov/ucp/GetLicenseForm.do>. For each Work Category, the percentage (Weight) of the total contract work to be performed was calculated. Table 1 provides this information.

TABLE 1

Projects	NAICS Code Description	NAICS Code	Estimated Contracts FFYs 16/17 and 17/18	% of Federal Funding by NAICS Code (Weight)
Georgetown Airport Construction of AWOS	Engineering Services	541330	\$248,490	.26%
Georgetown Airport Crack Seal, Joint Seal & Mark Runway, Taxiways, Aprons & Tee Hangar Taxilanes; Change Runway End ID				
Placerville Airport Layout Plan Update and Obstruction Survey				
Placerville Airport Taxiway Edge Lights				
Placerville Airport Crack Seal and Remark Runway 5-23, Taxiways, Aprons and Tee Hangar Taxilanes-2019				
	Environmental Consulting Services	541620	\$13,860	.01%
Georgetown Airport Construction of AWOS				
Georgetown Airport Obstruction Removal				
Placerville Airport Crack Seal and Remark Runway 5-23, Taxiways, Aprons and Tee Hangar Taxilanes-2019				

Georgetown Airport Crack Seal, Joint Seal & Mark Runway, Taxiways, Aprons & Tee Hangar Taxilanes; Change Runway End ID				
Placerville Airport Taxiway Edge Lights	Highway, Street, and Bridge Construction	237310	\$546,741	.57%
Georgetown Airport Crack Seal, Joint Seal & Mark Runway, Taxiways, Aprons & Tee Hangar Taxilanes; Change Runway End ID	Brick, Stone, and Related Construction Material Merchant Wholesalers	423320	\$21,438	.02%
Georgetown Airport Crack Seal, Joint Seal & Mark Runway, Taxiways, Aprons & Tee Hangar Taxilanes; Change Runway End ID	Petroleum Bulk Stations and Terminals	424710	\$21,438	.02%
Placerville Airport Layout Plan Update and Obstruction Survey	Geophysical Surveying and Mapping Services	541360	\$60,750	.06%
Placerville Airport Taxiway Edge Lights	Electrical Contractors and Other Wiring Installation Contractors	238210	\$33,588	.04%
Placerville Airport Taxiway Edge Lights	Site Preparation Contractors	238910	\$13,995	.02%
TOTAL:			\$960,300	100%

County then determined the Market Area by using the bidders' list containing all contractors that bid on County airport construction projects from 2008 to 2015. This approach resulted in the Market Area being comprised of five (5) counties: Placer, Sacramento, El Dorado, Butte, and Shasta, with the exception of asphalt suppliers under NAICS codes 423320 and 424710. The market area for those asphalt suppliers is Placer, Sacramento, and El Dorado due to the proximity of those counties to the airports. For Engineering and Environmental Consulting services, County determined the Market Area by compiling a list of consultant contracts within the CDA and sorting the list by type of service. The Market Areas of past DBE subconsultant participants were also considered. The Market Area for Engineering Services is Sacramento and Placer counties. The Market Area for Environmental Consulting Services is Placer, Sacramento, El Dorado, and Yolo counties.

B. In order to determine the overall goal, County first computed the following formula for each Work Category:

$$\text{Overall Goal (per Work Category)} = \left[\sum \frac{\text{No. of DBEs in a Work Category}}{\text{No. of All Firms in same Work Category}} \times \text{Weight} \right] \times 100$$

Each Work Category Overall Goal was multiplied by its percentage (Weight) of the total work to be performed. The resulting numbers were then added up to obtain the overall goal Base Figure:

FORMULA Overall Goal (Base Figure) =

$$\left[\frac{\# \text{ of DBEs in } 541330}{\# \text{ of all firms in } 541330} \times 0.26 + \frac{\# \text{ of DBEs in } 541620}{\# \text{ of all firms in } 541620} \times 0.01 + \frac{\# \text{ of DBEs in } 237310}{\# \text{ of all firms in } 237310} \times 0.57 + \right] \times 100 +$$

$$\left[\frac{\# \text{ of DBEs in } 423320}{\# \text{ of all firms in } 423320} \times 0.02 + \frac{\# \text{ of DBEs in } 424710}{\# \text{ of all firms in } 424710} \times 0.02 + \frac{\# \text{ of DBEs in } 541360}{\# \text{ of all firms in } 541360} \times 0.06 + \right] \times 100 +$$

$$\left[\frac{\# \text{ of DBEs in } 238210}{\# \text{ of all firms in } 238210} \times 0.04 + \frac{\# \text{ of DBEs in } 238910}{\# \text{ of all firms in } 238910} \times 0.02 \right] \times 100$$

To determine the number of DBE firms (for the *numerator* in the calculation):

For each NAICS Work Category listed above, the total number of DBEs in County's Market Area that are willing to perform that type of work was determined. To do this, the CUCP website was used, which was accessed by going to:

<http://www.dot.ca.gov/ucp/GetLicenseForm.do>

To determine the total number of firms (for the denominator in the calculation):

For each NAICS Work Category, the total number of firms in County's Market Area that are willing to perform that type of work was determined. To do this, the following website was used:

<http://censtats.census.gov/cbpnaic/cbpnaic.shtml>

FORMULA Overall Goal (Base Figure) =

$$\left[\frac{18}{369} \times 0.26 + \frac{31}{157} \times 0.01 + \frac{22}{79} \times 0.57 + \right] \times 100$$
$$= (0.013 + 0.003 + 0.159) \times 100 +$$
$$\left[\frac{1}{12} \times 0.02 + \frac{0}{14} \times 0.02 + \frac{3}{3} \times 0.06 + \right] \times 100$$
$$= (0.002 + 0.00 + 0.063) \times 100$$
$$\left[\frac{3}{515} \times 0.04 + \frac{22}{199} \times 0.02 \right] \times 100$$
$$= (0.00 + 0.002) \times 100$$
$$= 0.2375 \times 100$$
$$= 24\%$$

Entering the values shown above into the Formula Overall Goal (Base Figure) yields an **Overall Goal (Base Figure) of 23.75% (24% rounded).**

1. Race-Conscious (RC) Portion of Overall Goal (Using UDBEs):

To obtain the **RC** portion, County used the same method shown above, except substituted UDBEs¹ for DBEs in the formula.

The following formula shows the number of UDBE firms, number of total firms, and Work Category Weights results.

¹ See Step Two, Item B for definition of and rationale for use of UDBE.

FORMULA Race Conscious (Base Figure) =

$$\left[\frac{13}{369} \times 0.26 + \frac{29}{157} \times 0.01 + \frac{15}{79} \times 0.57 + \right] \times 100$$
$$= (0.009 + 0.002 + 0.108) \times 100 +$$
$$\left[\frac{1}{12} \times 0.02 + \frac{0}{14} \times 0.02 + \frac{1}{3} \times 0.06 + \right] \times 100$$
$$= (0.002 + 0.00 + 0.02) \times 100$$
$$\left[\frac{2}{515} \times 0.04 + \frac{16}{199} \times 0.02 \right] \times 100$$
$$= (0.00 + 0.002) \times 100$$

$$= 0.1427 \times 100$$
$$= 14\%$$

Inserting the Table values as appropriate in the formula

$$\text{RC Portion} = \left[\sum \frac{\text{No. of UDBEs in a Work Category}}{\text{No. of All Firms in same Work Category}} \times \text{Weight} \right] \times 100$$

results in a **RC Portion = 14.27% (rounded to 14%).**

2. Race-Neutral (RN) Portion of Overall Goal:

The Race-Neutral portion of the Overall Goal is the Overall Goal minus the Race-Conscious portion.

$$\text{RN Portion} = \text{Overall Goal} - \text{RC Portion} = 23.75 - 14.27 = 9.48\% \text{ (rounded to 10\%)}$$

IV. Step Two - Adjusting the Base Figure – Section 49 CFR 26.45 (d)

According to the guidelines, Step Two is to examine all of the evidence available in the jurisdiction to determine what adjustment, if any, is needed to the Base Figure to arrive at the overall goal. Factors to consider include:

- Past participation (the volume of work DBEs have performed in recent years) or other measure of demonstrated capacity;
- Evidence from disparity studies conducted anywhere within our jurisdiction, to the extent that it is not already accounted for in the base figure;
- Statistical disparities in the ability of DBEs to get financing, bonding, and insurance required to participate in our program; and
- Data on employment, self-employment, education, training and union apprenticeship programs, to the extent that these factors can be related to the opportunities for DBEs to perform in our program.

A. Adjustments Based on Past Participation

Table 2 contains the list of past FAA-funded airport projects, the level of DBE participation, whether the DBE was a prime contractor or a subcontractor, and the DBE’s classification.

TABLE 2

	Year	Project Name	DBE % Attainment	DBE Prime or Sub/Classification
1	2008	Placerville Airport – Runway 5-23 Lighting Rehabilitation (Phase II) Replacement of VASI with new 2-Box Papi on Runway 23 (<i>electrical</i>)	84%	Prime/Female
2	2008	Placerville Airport – Installation of Automatic Weather Observation System (<i>electrical</i>)	100%	Prime/Female
3	2009	No FAA-Funded Projects	Not applicable	Not Applicable
4	2010	Georgetown Airport – Fill Hole at Edge of Runway	3.5%	Sub/Female
5	2010	Placerville Airport – Crack Repair and Slurry Seal, Remark Runway Blast Pads, Construct Runway Exit Taxiway	0%	None
6	2011	No FAA-Funded Projects	Not applicable	Not applicable
7	2012	Placerville Airport – Habitat/Security Fence and Gates	100%	Prime/Female
8	2013/2014	No FAA – Funded Projects	Not Applicable	Not Applicable

DBE firms were the prime contractors for projects 1, 2, and 7 which cannot be presumed to apply to future projects. No adjustment to the base figure due to past participation is recommended.

B. Evidence Based Disparity Studies within County's Jurisdiction

In order to comply with the DBE requirements of 49 Code of Federal Regulations (CFR) 26, County has implemented the California Department of Transportation's (Caltrans) DBE Program through the joint execution of a DBE Implementation Agreement. The current DBE Implementation Agreement requires the implementation of both race-conscious and race-neutral measures. The decision to use both race-conscious and race-neutral measures is the result of a 2005 Ninth Circuit Court of Appeals decision. Following this decision, Caltrans commissioned a Disparity Study² (Study) to determine whether discrimination exists in the conduct of the State transportation program.

Caltrans retained BBC Research & Consulting (BBC) to conduct the Study to assist Caltrans in its implementation of the Federal DBE Program. BBC examined the transportation construction and engineering industry in California and related contracts awarded by Caltrans or awarded by local agencies with Federal Highway Administration (FHWA) funds administered through Caltrans. BBC examined more than 10,000 construction and engineering contracts and subcontracts from 2002 through 2006 for both Caltrans and local agencies. To examine relative availability of minority- and women-owned firms for this work, more than 18,000 California business establishments were interviewed. The Study included in-depth interviews with nearly 100 firm owners and trade association representatives and testimony from public hearings held across the state.

Caltrans accepted the Study and its findings in July 2007. In March 2009 Caltrans instructed local agencies that follow Caltrans' DBE program to begin implementation of the newly-approved Race-Conscious/Race-Neutral program, which limits the application of the Race-Conscious goal to four (4) identified groups: African American, Asian Pacific American, Women, and Native American businesses, known as Underutilized DBEs or UDBEs.

The Study focuses on FHWA-and state-funded contracts. Although the Study did not include FAA-assisted contracts, the bidder history for County airport projects indicates that the same contractors that bid on County's FHWA-assisted contracts administered through Caltrans, bid on the airport contracts. County airports are located in the rural portion of County. Consequently, unlike airport projects in large urban areas, County airport projects typically do not attract contractors that specialize in performing only airport work. Based on this fact, County has concluded that the Study applies to its FAA-assisted projects.

County is relying on the Caltrans disparity Study and has not performed its own study. The results of the Caltrans Study and the use of Race-Conscious goals for the four (4) underutilized DBE groups have been incorporated into County's base figure.

² http://www.dot.ca.gov/hq/bep/study/Avail_Disparity_Study_Final_Rpt.pdf

Overall DBE Goal for FFYs 2016/2017 and 2017/2018 and Race/Gender- Neutral/Conscious Measures —Section 26.45(e)

Race-Neutral/Conscious Division

Based on the information collected and data reviewed by Caltrans, and the methodology for calculation of the overall goal described in Step One, County sets an overall goal of 24% with 14% race-conscious and 10% race-neutral.

V. Public Participation – Section 49 CFR 26.45 (g)

Published Notice

Public noticing of the goals and methodology has been posted on County’s website.

VI. Race-Conscious and Race Neutral Measures – Section 49 CFR 26.51 (f) (3)

A. Race Conscious Measures

The Race-Conscious goal will be achieved by:

- Setting a DBE goal on individual contracts based upon the type of work included in each contract, opportunities for subcontracting, and on the availability of the four (4) targeted groups capable of performing such work.
- Using Appendix A of 49 CFR 26, “Guidance Concerning Good Faith Efforts” to determine if the award should be made if the goal is not met.

B. Race Neutral Measures

- Arrange 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); Through the Good Faith Effort requirements included in County’s contracts, provide 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);
- Ensure compliance with prompt payment specifications by requiring prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes, and by enforcing the provisions of Section 7108.5 of the Business and Professions Code;
- Track all DBE participation on federally-assisted contracts, including monitoring the Commercially Useful Function of DBEs;
- Host construction pre-bid meetings, encourage all businesses to attend, and facilitate networking among potential bidders;
- Maintain County website describing projects advertised for bids; and
- Unbundle large consultant contracts into smaller contracts.

CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE
PROGRAM
IMPLEMENTATION AGREEMENT
FOR
LOCAL AGENCIES

CALIFORNIA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE IMPLEMENTATION AGREEMENT

For the County of El Dorado, hereinafter referred to as “RECIPIENT.”

I Definition of Terms

The terms used in this agreement have the meanings defined in 49 CFR § 26.5.

II OBJECTIVE/POLICY STATEMENT (§26/1. 26/23)

The RECIPIENT intends to receive federal financial assistance from the U. S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans), and as a condition of receiving this assistance, the RECIPIENT will sign the California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement (hereinafter referred to as Agreement). The RECIPIENT agrees to implement the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan (hereinafter referred to as the DBE Program Plan) as it pertains to local agencies. The DBE Program Plan is based on U.S. Department of Transportation (DOT), 49 CFR, Part 26 requirements.

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

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- To create a level playing field on which DBE’s can compete fairly for DOT-assisted contracts.
- To ensure that their annual overall DBE participation percentage is narrowly tailored, in accordance with applicable law.
- To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
- To help remove barriers to the participation of DBEs in DOT-assisted contracts.
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

III Nondiscrimination (§26.7)

RECIPIENT 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 the local agency components of the DBE Program Plan, the RECIPIENT 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 Plan with respect to individuals of a particular race, color, sex, or national origin.

IV Annual DBE Submittal Form (§26.21)

The RECIPIENT will provide to the Caltrans District Local Assistance Engineer (DLAE) a completed *Local Agency DBE Annual Submittal Form* (Exhibit 9-B) by June 1 of each year for the following Federal Fiscal Year (FFY). This form includes an Annual Anticipated DBE Participation Level (AADPL), methodology for establishing the AADPL, the name, phone number, and electronic mailing address of the designated DBELO, and the choice of Prompt Pay Provision to be used by the RECIPIENT for the following FFY.

V Race-Neutral Means of Meeting the Overall Statewide Annual DBE Goal (§26.51)

RECIPIENT must meet the maximum feasible portion of its AADPL by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

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

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of types of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

VI Race Conscious Means of Meeting the Overall Statewide Annual DBE Goal (§26.51(d))

RECIPIENT must establish contract goals for Underutilized Disadvantaged Business Enterprises (UDBEs) to meet any portion of your AADPL you do not project being able to meet using race-neutral means. UDBEs are limited to these certified DBEs that are owned and controlled by African Americans, Native Americans, Women, and Asian Pacific Americans.

VII Quotas (§26.43)

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

VIII DBE Liaison Officer (DBELO) (§26.25)

RECIPIENT has designated a DBE Liaison Officer. The DBELO is responsible for implementing the DBE Program Plan, as it pertains to the RECIPIENT, and ensures that the RECIPIENT is fully and properly advised concerning DBE Program Plan matters. RECIPIENT initially designates the following position as the DBE Liaison Officer: **The Supervising Civil Engineer of the Office Engineer Unit of the Construction Division of the El Dorado County Department of Transportation.** The designated DBELO, acting through the Deputy Director of Engineering, Construction Division, has direct, independent access to the El Dorado County Chief Administrative Officer (CAO), concerning DBE program matters. As Office Engineer the DBELO is responsible for Quality Assurance (QA) relative to the Department's Engineering Design staff of 31 people. The Office Engineer coordinates with the construction staff to ensure that the Quality Assurance measures can be practically implemented. The Office Engineer is responsible for overseeing the bid, award, and contract execution for capital improvement projects. As DBELO, the Office Engineer assures that the DBE Program is implemented from design through construction. The DBELO also works with the Contract Services Unit to ensure that the DBE program is implemented in other third party contracts. The DBELO works with this staff of professionals and support personnel each of whom devote a portion of their time to the program. The name, address, telephone number, electronic mail address, and an organization chart displaying the DBELO's position in the organization are found in Attachment A to this Agreement. This information will be updated annually and included on the DBE Annual Submittal Form.

The DBELO is responsible for developing, implementing, and monitoring the RECIPIENT's requirements of the DBE Program Plan in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to determine projected Annual Anticipated DBE Participation Level.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and DBE race-neutral issues.
8. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

IX Federal Financial Assistance Agreement Assurance (§26.13)

RECIPIENT will sign the following assurance, applicable to and to be included in all DOT-assisted contracts and their administration, as part of the program supplement agreement for each project.

The recipient 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 recipient 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 recipient'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 recipient 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.).

X DBE Financial Institutions (§26.27)

It is the policy of the RECIPIENT 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 DBELO. The Caltrans' Disadvantaged Business Enterprise Program may offer assistance to the DBELO.

XI Directory (§26.31)

RECIPIENT 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.

XII Required Contract Clauses (§§26.13, 26.29)

RECIPIENT ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

A. CONTRACT ASSURANCE

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 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 recipient deems appropriate.

B. PROMPT PAYMENT

Prompt Progress Payment to Subcontractors

The local agency shall require contractors and subcontractors to be timely paid as set forth in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days are applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Prompt Payment of Withheld Funds to Subcontractors

The local agency shall ensure prompt and full payment of retainage from the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed and accepted. This shall be accompanied by including either (1), (2), or (3) of the following provisions [local agency equivalent will need Caltrans approval] in their federal-aid contracts to ensure prompt and full payment of retainage [withheld funds] to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
2. No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

XIII Local Assistance Procedures Manual

The RECIPIENT will advertise, award and administer DOT-assisted contracts in accordance with the most current published Local Assistance Procedures Manual (LAPM).

XIV Transit Vehicle Manufacturers (§ 26.49)

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

XV Bidders List (§26.11(c))

The RECIPIENT will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted contracts. The bidders list will include the name, address, DBE/nonDBE status, age, and annual gross receipts of the firm.

XVI Reporting to the DLAE

RECIPIENT will promptly submit a copy of the Local Agency Bidder/Proposer-UDBE Commitment (Consultant Contract), (Exhibit 10-O(1) “Local Agency Bidder/Proposer-DBE Commitment (Consultant Contract)”) or Exhibit 15-G(1) “Local Agency Bidder-UDBE Commitment (Construction Contract) to the DLAE at the time of award of the consultant or construction contracts.

RECIPIENT will promptly submit a copy of the Local Agency Bidder-DBE Information (Exhibit 15-G(2) “Local Agency Bidder-DBE (Construction Contracts) – Information” or Exhibit 10-O(2) “Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information” of the LAPM) to the DLAE at the time of execution of consultant or construction contract.

RECIPIENT will promptly submit a copy of the Final Utilization of DBE participation to the DLAE using Exhibit 17-F “Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors” of the LAPM immediately upon completion of the contract for each consultant or construction contract.

XVII Certification (§26.83(a))

RECIPIENT ensures that only DBE firms currently certified by the California Unified Certification Program will participate as DBEs on DOT-assisted contracts.

XVIII Confidentiality

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

XIX RECIPIENT’S Contract Administrator

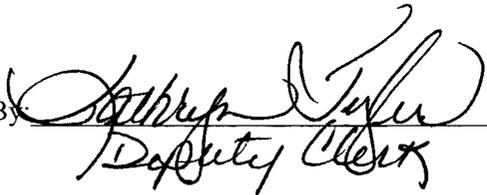
The County Officer or employee with responsibility for administering this Agreement is Janel Gifford, Supervising Civil Engineer, Office Engineer Unit, Construction Division, Department of Transportation, or successor.

COUNTY OF EL DORADO

By: 
RON BRIGGS
Board of Supervisors
"RECIPIENT"

Date: 5/5/09

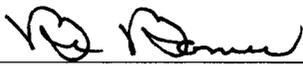
Attest:
Suzanne Allen De Sanchez
Clerk of the Board of Supervisors

By: 
Deputy Clerk

Date: 5/5/09

This California Department of Transportation's Disadvantaged Business Enterprise Program Implementation Agreement is accepted by:

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: 
Ben Bramer
Chief, DLAE

Date: 5/08/09

Distribution: (1) Original - DLAE
(2) Signed copy by the DLAE - Local Agency

(Updated: March 4, 2009)