



**CITY OF ELK GROVE**  
**DEPARTMENT OF PUBLIC WORKS**  
**E-TRAN**  
**DISADVANTAGED BUSINESS ENTERPRISE**  
**PROGRAM PLAN**  
September 2016

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CITY OF ELK GROVE  
DEPARTMENT OF PUBLIC WORKS  
E-TRAN  
DBE PROGRAM  
49 CFR PART 26

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## I. INTRODUCTION

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United States Department of Transportation (DOT) Disadvantaged Business Enterprise (DBE) regulations require recipients and sub-recipients of DOT Federal financial assistance to establish goals for the participation of disadvantaged businesses and to verify the eligibility of DBE firms to participate in their DOT-assisted contracts. The City is a recipient of USDOT funds through the Federal Transit Administration (FTA). The City has developed this program per the requirements of the USDOT DBE regulations (49 CFR Part 26). A copy of the Federal Code of Regulations can be viewed electronically at [www.ecfr.gov](http://www.ecfr.gov).

In addition to this program, all firms wishing to participate in City contracts must comply with all provisions of the rules and regulations adopted by the USDOT for DBE participation in Federal financially assisted contracts (49 CFR Part 26).

This DBE Program addresses the City's compliance with all applicable Federal requirements pertaining to the FTA funding that the City receives. For Federal funds received through the Federal Highway Administration (FHWA), compliance is enforced by the California Department of Transportation (Caltrans). As part of every FHWA-funded project, the City submits separate DBE documentation to Caltrans directly in order to address all Federal DBE requirements pertaining to the FHWA funds being used on the project.

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## II. OBJECTIVES/POLICY STATEMENT (§26.1, §26.23)

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The City of Elk Grove (City) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City to ensure that the DBEs defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the City's policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field in 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 conducted by the City;
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Mr. Bob Murdoch, Public Works Director, Elk Grove City Hall, 8401 Laguna Palms Way, Elk Grove, CA 95758, (916) 478-2287, [bmurdoch@elkgrovecity.org](mailto:bmurdoch@elkgrovecity.org), has been delegated as the DBE Liaison Officer (DBELO). In that capacity the Public Works 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 City in its financial assistance agreements with the Department of Transportation.

The City will disseminate this policy statement to the City Council and all of the components of the organization. This statement will be distributed to DBE and non-DBE business communities that perform work for the City on DOT-assisted contracts. The City has provided information on the availability of the City's DBE Program Plan and 3-Year Goal:

- to potential available DBE's in the greater Sacramento region through a workshop conducted by the City,
- to chamber of commerce and other regional business agencies located within the Sacramento region including, but not limited to, the Sacramento Services Foundation, the Sacramento Hispanic Chamber of Commerce, the Sacramento Black Chamber of Commerce, the Sacramento Asian Pacific Chamber of Commerce, and the Greater Sacramento Urban League,
- by placing a notice on the City website, and
- by placing a statement on where a copy of the DBE Program Plan can be viewed or obtained during normal business hours.



Laura S. Gill, City Manager



Date

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### III. DEFINITIONS OF TERMS (§26.5)

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The terms used in this program are defined in 49 CFR §26.5. Some of the most common terms are defined below:

- **Compliance** means that a recipient has correctly implemented the requirements of this part.
- **Contract** means 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.
- **Contractor** means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.
- **Department or DOT** means 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).
- **Disadvantaged Business Enterprise or DBE** means a for-profit small business concern:
  - 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; and
  - Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own the business.
    - **DOT-assisted contract** means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.
    - **Good faith efforts** means 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.

- **NAICS** the North American Industry Classification System (NAICS) is used by business and government to classify business establishments according to type of economic activity (process of production) in Canada, Mexico and the United States. Within the official NAICS classification system, U.S. industries are defined at the 6-digit level. The next revised NAICS Manual will be released in 2012.
- **Noncompliance** means that a recipient has not correctly implemented the requirements of this part.
- **Program** means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.
- **Race-neutral** measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.
- **Recipient** is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

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## IV. GENERAL PROVISIONS

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### APPLICABILITY (§26.6)

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

The City currently anticipates the only DBE participation through possible subcontracting opportunities within the City's transit operations and maintenance contract with MV Transportation, Inc. (MV). The operations and maintenance contract with MV lasts through June 2019, with three, one-year extension options. Due to the nature of the operations and maintenance contract, there are limited opportunities for DBE participation during three-year DBE goal period (FY 2017 through 2019). This DBE Program reflects the realistic efforts that the City can implement to solicit DBE participation through the current transit operations and maintenance contract. Should other opportunities be presented outside of this contract for DBE participation, the City's DBE Program will be updated accordingly at that time.

### NONDISCRIMINATION (§26.7)

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The City 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 City will not, directly 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.

### DBE PROGRAM UPDATES (§26.21)

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The City will continue to carry out this program until all funds from the Federal financial assistance have been expended. The City will provide updates to FTA representing significant changes in the program.

### QUOTAS (§26.43)

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

## DBE LIAISON OFFICER (§26.25)

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The City Manager has designated the Public Works Director as the DBE Liaison Officer (DBELO) for the City. The DBELO will serve as the responsible contact for the DBE Program, and will oversee the implementation of all aspects of the DBE program to ensure that the City complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager concerning DBE Program matters. An organization chart displaying the DBELO's position in the organization is found in Appendix A to this document.

The DBELO oversees two technical staff members, the City's Transit System Manager and Senior Transit Planner, which both assist the DBELO with developing, implementing, and monitoring the DBE Program. Duties and responsibilities of the technical staff members include, but are not limited to, the following:

- Gather and report statistical data and other information as required by DOT;
- Review third party contracts and purchase requisitions for compliance with this program. This review can involve the following tasks:
  - Ensure that bid notices and requests for proposals are available to DBEs in a timely manner,
  - Review FTA-assisted contracts and procurements so that DBE goals are included in solicitations, as applicable (both race-neutral methods and contract specific goals, as applicable) and monitor results,
  - Analyze the City's progress toward goal attainment and identifies ways to improve progress,
  - At the direction of the DBELO, advise the City's Executive Management Staff and/or elected City Council Members on DBE matters and achievement.
  - If contract goals are established, coordinate with the City's legal counsel, and/or any other applicable staff members that are responsible for administering Civil Rights compliance, to determine contractor compliance with good faith efforts,
  - Plan, coordinate and participate in DBE training seminars,
  - Ensures that DBEs are identified as certified according to the CUCP directory, and
  - Provides outreach to DBEs and community organizations to advise them of contract opportunities.

- Provide technical assistance during the City’s bidding process to any DBE firm desiring to do work with the City:
- Monitor the work performed on the various City FTA-assisted projects, in particular the payments made to DBE firms,
  - Ensure that any prime contractor that is receiving FTA funds submits proof of payments to DBE and all other non-DBE subcontractor firms and suppliers on a monthly basis.
- Provide information and direction to potential DBE firms regarding the DBE certification process administered by the California Unified Certification Program (CUCP).

FEDERAL FINANCIAL ASSISTANCE AGREEMENT ASSURANCE (§26.13)

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For each financial assistance agreement that the City, as a recipient or a subrecipient of FTA funds, has signed with a USDOT operating administration (such as FTA), the following assurance shall be included:

“The City shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The City shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT assisted contracts. The City’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 City of its failure to carry out its approved program, the Department 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.).”

For each FTA-assisted contract that the City signs with a prime contractor, or subcontractor, the following assurance will be included:

“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 City deems appropriate, which may include, but is not limited to:

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

#### DBE FINANCIAL INSTITUTIONS (§26.27)

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It is the policy of the City 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. To date, the City has not identified any such institutions in the greater Sacramento region. On an annual basis, the City will reach out to local and regional chambers of commerce, and other small business associations, and other local transit agencies to solicit input in identifying whether or not these institutions have started within the region over the last year.

The City encourages small businesses and potential DBEs to refer to the following agencies that offer assistance and resources to small businesses and potential DBEs, and can further be used by potential prime contractors to find DBEs for DOT-assisted contracts:

US Small Business Administration  
Sacramento District Office  
6501 Sylvan Road Suite 100  
Citrus Heights, CA  
Phone: 916-735-1700

State of California Small Business Development Center  
Sacramento Local Office  
1400 Ethan Way  
Sacramento, CA 95815

USDOT Office of Small and Disadvantaged Utilization (OSDBU),  
1200 New Jersey Avenue,  
SE, W56-485, Washington, DC 20590,  
(202) 366-1930.

Information on the OSDBU Regional Center, (whose geographic area includes California) including the services provided, can be viewed at:

<https://www.transportation.gov/regional/southwest.cfm>

Additionally, small businesses in the Sacramento region are encouraged to visit the Sacramento Business Services Center Foundation website: <http://www.sacbcs.org/> for more information regarding regional and financial resources offered to assist with business development.

### DBE DIRECTORY (§26.31)

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The California Department of Transportation (Caltrans) maintains a directory of certified DBE firms, which identifies all firms eligible to participate as DBEs on contracts funded by the Federal Transit Administration. This directory is available to provide a reference source to assist bidders/proposers in meeting DBE contract goals. The directory alphabetically lists the firm's name, address, and telephone number, date of certification, the firm's specialty area of work, and corresponding NAICS code(s). It is the responsibility of the Prime Contractor/Consultant to make his/her own determination regarding the capability of a DBE firm. In addition, the City uses this database to determine if a DBE, either identified as the Prime Contractor/Consultant or as a subcontractor/consultant to the prime, is currently certified. Only those firms certified as of the letting date/bid opening may be utilized in meeting a DBE contract goal.

The California Directory of Certified DBE Firms is available in paper and electronic format. The California Directory of Certified DBE Firms is updated daily and available on the Caltrans website at [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).

For assistance with the Caltrans Directory please contact:

California Department of Transportation,  
Office of Business and Economic Opportunity –certification unit,  
Phone: (916) 324-1700.

Or Email: [DBE\\_Certification@dot.ca.gov](mailto:DBE_Certification@dot.ca.gov)

The City does not certify DBEs. All potential DBEs are directed to Caltrans for certification.

### OVERCONCENTRATION (§26.33)

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Currently, the only areas that the City has available for FTA-assistance and potential DBE participation is through subcontracting opportunities within the City's existing operations and preventive maintenance contract. At this time the City has not identified an overconcentration in operations or preventive maintenance. Every three years, as part of the DBE goal setting process, the City will re-evaluate whether or not an overconcentration exists within these areas, and in any new areas that involve FTA-assistance and potential DBE participation. If an overconcentration exists, the City will develop a strategy to resolve the issue in its submitted goals for the ensuing three year period.

### BUSINESS DEVELOPMENT PROGRAMS (§26.35) – MENTOR-PROTÉGÉ

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The City does not currently offer a mentor-protégé program. However, Caltrans District 3, which covers the greater Sacramento and Northern California regions, provides a mentor-protégé program through its district offices. Information regarding this program can be found on Caltrans' website: <http://www.dot.ca.gov/dist3/calmentoring/calmentor.htm>.

### SMALL BUSINESS PROGRAM (26.39)

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The City will take all reasonable steps to structure contracting requirements in order to facilitate competition by small business concerns, 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 City will implement this small business program within six months following the FTA's approval of the City's new DBE Program. The small business program's effectiveness will be evaluated continually between each 3-year goal setting process. If necessary, the program will be revised to include additional measures, or the removal of ineffective strategies, following this evaluation.

The City will continually collaborate with its transit operations and maintenance contractor to take all reasonable steps that encourage small businesses and minority individuals to participate in available subcontracting opportunities afforded through the operations and maintenance of the City's transit system.

In order to encourage small businesses and potential DBEs to consider available subcontracting opportunities, the City will provide the following services and support:

- On a monthly basis, as part of the invoice review process, review and discuss strategies with the City's transit operations and maintenance contractor that

would help create subcontracting opportunities within the current operations and maintenance contract;

- Develop and manage an effective small business outreach program with the City's transit operations and maintenance contractor, which includes the development of an annual workshop and distribution of marketing materials designed to inform small businesses and minority individuals about any potential subcontracting opportunities available through the operations and maintenance contract. These annual workshops and marketing materials will further provide education and technical assistance for small businesses and minority individuals wishing to become a DBE;
- Provide pre-bid support for any prime contractors bidding on FTA-assisted contract opportunities. This will include review and clarification of proposals and bids, and any other assistance as requested by contractors considering participation in FTA-assisted contracts. As applicable, Transit staff will also work with the transit operations and maintenance contractor to identify subcontracting opportunities where this support can be provided;
- Review annual utilization of small business, minority-owned businesses, women-owned businesses and disabled veteran businesses in order to facilitate tracking progress towards meeting DBE Project goals;
- Apart from consulting with the Caltrans Directory for DBEs as part of the 3-year DBE goal setting process, the City will develop and maintain a separate database of small and disadvantaged businesses that the City, and its transit operations and maintenance contractor, have used since the previous 3-year DBE goal was set. This database will help the City to better understand DBE availability in the region, and participation opportunities within the FTA-assisted projects and contract. This database will further be used to help the City with developing new DBE implementation strategies during future 3-year goal setting processes; and
- Conduct debriefings with small and minority business contractors and subcontractors working on FTA-assisted projects in order to develop more efficient and effective policies and procedures that will help the City to further solicit DBE participation.

The City will maintain an electronic folder for all DBE-related matters, which will include, but not be limited to, the following materials:

- Documentation of DBE's that have either bid, or been awarded, prime or subcontracting opportunities on FTA-assisted projects for the City or its

transit operations and maintenance contract. This documentation will identify what types of DBEs are being used (i.e. minority owned, women-owned, etc.);

- Meeting notes and information pertaining to efforts that are made between the City and its transit operations and maintenance contractor to identify subcontracting opportunities for DBE participation; and
- Evaluation records of DBE small business program strategies.

## V. MONITORING, ENFORCEMENT AND SANCTIONS

### NON-COMPLIANCE COMPLAINT PROCESS (§26.103)

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Should any person believe this recipient has failed to comply with its obligations under 49 CFR Part 26, they may file a written non-compliance complaint with USDOT Office of Civil Rights within 180 days after the date of alleged violation in accordance with the provisions of 49 CFR Section 26.103.

### PROMPT PAYMENT (§26.29)

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The City will include the following clause in all FTA-assisted prime contracts:

“The Prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the Prime Contract receives from the City. The Prime Contractor/Consultant receiving payments shall, on the 15<sup>th</sup> of each month, file a statement with the City on a form to be determined by the City that all subcontractors furnishing labor or material have been paid the full sum due them at the stage of the Contract, except any funds withheld under the terms of the Contract. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.”

### *RETAINAGE*

The City will include the following clause in all FTA-assisted prime contracts:

“The Prime Contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractors 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 City.”

This clause applies to both DBE and non-DBE subcontracts.

### *ADMINISTRATIVE RESOLUTION FOR PROMPT PAYMENT ISSUES*

In order to ensure compliance with Prompt Payment, the DBELO, and assisting staff, will closely monitor the monthly statement and payment activities reported by Prime Contractor/Consultant. This monitoring process consists of the following process:

- The City will provide Prime Contractors/Consultants with a Subcontractor/Vendor Payment Tracking Form (see Appendix B), which will be submitted as part of the monthly invoice process;
- Monthly invoices from the Prime Contractor/Consultant will be reviewed by the DBELO's technical staff to identify the DBE and non-DBE subcontractors paid during the invoice cycle;
- On-site inspections may be conducted, at the City's discretion, to review the payment records from the Prime Contractor/Consultant to their subcontractors;
- If a Prime Contractor/Consultant is identified as having potentially violated this section, an investigation will be conducted, which may include follow-up e-mails, letters, or phone calls to the Prime Contractor/Consultant to solicit additional information.

If it is found that the Prime Contractor/Consultant violated the requirements of this section, the following enforcement actions will occur.

- The DBELO will provide written notification to the Prime Contractor/Consultant requesting that a Corrective Action Plan be submitted to the City that demonstrates compliance with this section's requirements.
- The DBELO and assisting staff will monitor that the Corrective Action Plan is implemented, and that the Prime Contractor/Consultant continues on-going compliance with this section.
- If additional violations occur, the DBELO will notify the City Manager, at which point the City may consider suspending the Prime Contractor/Consultant project until the violation can be feasibly resolved.
- If the Prime Contractor/Consultant cannot remain in compliance with this section, contract termination may be considered.

#### MONITORING AND ENFORCEMENT MECHANISMS (§26.37, §26.107)

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The following monitoring and enforcement mechanisms have been established by the City to ensure compliance with 49 CFR Part 26.

- The City may bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the City's DBE 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 26.109.
- The City may consider similar action under our own legal authorities, including responsibility determinations in future contracts.
- The City shall provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by tracking subcontracts and DBE utilization for each prime contract on a monthly basis consistent with progress payment requests from the Prime Contractor (see Appendix B). Prime Contractors/Consultants will be required to maintain records and documents of payments to both DBE and non-DBE subcontractors for at least three (3) years following the performance of the contract. These records will be made available upon request by the City.
- The technical staff assisting the DBELO will compare actual DBE participation to the scopes included in the DBE subcontracts. In addition, monthly payments to the DBEs will be monitored to ensure that work committed to the DBEs at contract award, or subsequently (e.g. as the result of modification to the contract), is actually performed by the DBEs to which the work was committed. This review and monitoring may be conducted through random on-site inspections of work performed, interviewing DBEs on-site, and/or review of DBE subcontractor documents provided by the City's operations and maintenance contractor.
- Through the monthly payment tracking process, the City will keep a running tally of all payments to both DBE and non-DBE subcontractors in order to ensure prompt payment to DBE firms for work committed to them at the time of contract award. This information will further assist the DBELO's technical staff with completing the DBE semi-annual reports due to the FTA in June and December of each year.

*ALLOWABLE SANCTIONS AS A RESULT OF NON-COMPLIANCE*

If the City determines any willful non-compliance by a prime or DBE subcontractor/consultant as it applies to the requirements of this program, the City may initiate the following sanctions:

- **Sanctions against DBE:** If a DBE is found to be willfully non-compliant, the City will notify Caltrans of the issue and Caltrans will determine sanctions to be imposed, which may include suspension, decertification or debarment; and
- **Sanctions against Prime Contractor/Consultant:** Prime Contractors and Consultants are advised that failure to meet the City's DBE Program requirements due to circumstances within their control will subject them to sanctions which may include financial assessments, probation, suspension, disqualification, debarment and criminal prosecution, or a combination thereof. It is within the City's discretion to determine the appropriate level of enforcement based on the level of violation. Some of the City's administrative remedies to address willful violators of the DBE Program include the following actions:
  - Withholding progress payments,
  - Cancel the subject contract,
  - Removal of the Prime Contractor or Consultant from the pre-qualified list for a specified period of time, as determined by the City,
  - Suspension and debarment of the Prime Contractor or Consultant for egregious or repeated violations of the DBE regulations, falsifications, or misrepresentations, and
  - Referral for criminal prosecution to either the State or USDOT.

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## VI. DBE GOALS OVERALL GOALS (§26.45)

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The City uses the requirements of 49 CFR Part 26.45 to develop and establish the 3-year DBE goal. The City's DBE goal calculation and methodology can be found in Appendix C. The City will use the following process triennially to determine its overall goals.

- In April of the year prior to the first triennial year, the DBE technical staff will begin consultation with minority, women's, and contractor groups, community organizations, and other organizations or officials to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City's efforts to establish a level playing field for the participation of DBEs. Concerns and comments will be considered in developing the goals.
- Concurrently with the outreach in April, DBE technical staff will review and analyze the following data as part of establishing a new DBE goal:
  - Subcontracting opportunities available through the City's operations and preventive maintenance contract,
  - Ready and reasonably available DBEs on Caltrans' DBE directory that are located within the greater Sacramento region,
  - The City's maintained record of past DBE participation, including those that have submitted bids for past prime or subcontracting opportunities,
  - The U.S. Census bureau for information regarding all available contractors within the applicable fields determined for the new DBE goal as opportunities for DBE participation.
- By no later than July 1<sup>st</sup> of the year prior to the first triennial year, the City will publish a notice on the City website advising the public of the proposed overall 3-year goal. The rationale for goal development will be available for inspection during normal business hours in City Hall and on the City's website, for at least 15 calendar days following its publication. Public comments regarding the proposed overall goal will be received for 15 days from the date of publication.
- Within the public comment period, the City will coordinate a workshop for potential small businesses and minority individuals to participate and learn about subcontracting opportunities within the City's operations and

maintenance contract. This workshop will be used to gain input on DBE goal development and DBE program implementation. Additionally, during this public comment period, the City will reach out to various regional Chambers of Commerce and small business associations (via e-mail, telephone calls, and/or on-site visits) to solicit their input in the DBE goal development and provide information regarding any prime or subcontracting opportunities for DBE participation.

- The City will submit proposed goals and a summary of public comments to the FTA by August 1<sup>st</sup> of the year prior to the first triennial year. Included with the goals are descriptions of the methodologies used, the base figures, and the evidence relied on for adjustments.
- Unless otherwise directed by FTA, the new goals take effect on October 1<sup>st</sup> of the first triennial year. The goals provide for participation by all certified DBEs and are not subdivided into group-specific goals.
- The City does not currently have race-conscious goals and anticipates achieving the current DBE goals through race-neutral means.
- The City will track and report DBE participation for meeting the established DBE goals by establishing a tracking log/form, which will be completed by a prime contractor on a monthly basis to document their use of DBE subcontractors used during their DOT-assisted contract term (see Appendix B).

#### TRANSIT VEHICLE MANUFACTURERS GOALS (§26.49)

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The City will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section.

#### MEETING DBE GOALS (§26.51)

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The City will meet the maximum feasible portion of the overall DBE goal through race-neutral means. A significant portion of meeting the overall goal effort will be made through the implementation of the Small Business Program contained within the City's DBE Program. In addition, the City will work with its transit operation and maintenance contractor to implement the following measures that will help identify and potentially create subcontracting opportunities for DBE participation.

- Monthly meetings with the operations and maintenance contractor will be used to identify all potential subcontracting opportunities that are available and can be advertised to small business associations, regional chambers of commerce, and other potential bidders.
- An annual workshop, which will include outreach to small business organizations, chambers of commerce, and other regional transit agencies, will be held to solicit input on measures the City can take to foster DBE participation in any available prime or subcontracting opportunity.
- Through the creation of a bidder's list, and the continual tracking of past and present subcontractors/vendors participated in Federally-assisted contracts, the City will be able to identify subcontracting opportunities for DBE and non-DBE contractors to participate in. With this information, the City can conduct outreach those subcontractor/vendors as opportunities arise.

The City does not currently have enough reliable data to determine whether or not race-conscious DBE goals can be considered. However, should additional data or information become available as part of the City's annual DBE outreach efforts, the City may consider establishing contract-specific DBE goals on those FTA-assisted contracts that have unique subcontracting possibilities. This goal would be set based on the circumstances of each such contract.

#### GOOD FAITH EFFORTS (§26.53)

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If any FTA-assisted contract has contract specific goals, the City will consider, on a case-by-case basis, what constitutes a good faith effort in the context of each individual contract, and use the guidance provided in the (49 CFR part 26) to determine Good Faith Efforts on each individual contract.

#### *INFORMATION TO BE SUBMITTED AT TIME OF BID*

When a DBE Goal has been established for a proposed contract, the bidding Prime Contractor or Consultant shall demonstrate a good faith effort to meet the DBE goal before the City will accept their bid or proposal. Evidence of a good faith effort must be submitted by a bidding Prime Contractor at or before the time of the bid opening. Evidence of a good faith effort must be submitted by a proposing consultant upon submission of their Expression of Interest or Proposal.

Each solicitation for which a contract goal has been established will require the bidder or proposer to submit the name, address, work description and contract amount of each DBE that the bidder or proposer plans to subcontract.

*PRE AWARD DEMONSTRATION OF GOOD FAITH EFFORTS*

The obligation of the Bidder/Proposer is to make a good faith effort to meet the Contract goal. The Bidder/Proposer can demonstrate that it has done so by providing documentation that all necessary and reasonable steps were taken to employ DBEs to meet the goal.

The City will ensure that all good faith effort information supplied by each bidder/proposer is complete, accurate and adequately documented before the award of any contract.

The DBELO and supporting Transit staff are responsible for determining whether a bidder/proposer who has indicated that they will be unable to meet the Contract goal has made sufficient good faith efforts.

*REQUIREMENTS FOR PRE AWARD GOOD FAITH EFFORT*

The Bidder/Proposer is expected to demonstrate good faith efforts by actively and aggressively seeking out DBE project participation to the maximum extent, given all relevant circumstances. The City will consider all factors and types of efforts that may be relevant. Following are examples of the kinds of efforts that may be taken:

- Efforts made to select portions of work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal. Selection of portions of work is required to at least equal the goal for DBE utilization specified in the Contract.
- Written notification to DBE firms at least fourteen calendar days prior to the opening of a bid soliciting DBE interest in participating in the contract as a subcontractor or supplier and for specific items of work.
- Efforts made to obtain and negotiate with DBE firms for specific items of work:
  - Description of the means by which firms were solicited (i.e., by telephone, e-mail, written notice, advertisement).
  - The names, addresses, telephone numbers of DBEs contacted; the dates of initial contact; and whether initial solicitations of interest were followed-

up by contacting the DBEs to determine with certainty whether the DBEs were interested.

- A description of the information provided to DBE firms regarding the plans, specifications, and estimated quantities for portions of the work to be performed.
- A statement of why additional agreements with DBEs were not reached in order to meet the project goal.
- Listing of each DBE contacted but not contracted and the reasons for not entering a contract.
  - Efforts made to assist DBEs that need assistance in obtaining bonding, insurance, or lines of credit required by the contractor.
  - Efforts to effectively use the services of available disadvantaged community organizations, disadvantaged contractor's groups, local, state, and federal DBE assistance offices, and other organizations that provide assistance in recruitment and placement of DBEs.

The following are examples of actions that may not be used as justification by the contractor/consultant for failure to meet DBE contract goals:

- Failure to contract with a DBE solely because the DBE was unable to provide performance and/or payment bonds.
- Rejection of a DBE bid or quotation based on price alone.
- Rejection of a DBE because of its union or non-union status.
- Failure to contract with a DBE because the contractor normally would perform all or most of the work in the Contract.

#### *ADMINISTRATIVE RECONSIDERATION*

Within five (5) days of being informed by the City that it has not documented sufficient good faith efforts, a Bidder/Proposer may request administrative reconsideration. The Bidder/Proposer should make this request in writing to the Purchasing Manager at Elk Grove City Hall. The reconsideration official must not have played any role in the original good faith effort review or determination.

As part of this reconsideration, the Bidder/Proposer will have the opportunity to meet in person with their respective reconsideration official, and be allowed the time to explain why their firm did or did not meet the goal or make adequate good faith efforts to do so. The final decision made by the reconsideration official will be communicated to the bidder/proposer in writing. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

### *POST AWARD DEMONSTRATION OF GOOD FAITH EFFORTS*

The post-award good faith efforts requirements of section 26.53(f) apply only to contracts in which a contract DBE goal has been set. These requirements (1) prohibit prime contractors from terminating a DBE for convenience and then substituting the prime contractor's own forces, and (2) require the prime contractor to make good faith efforts to replace a DBE firm that could not complete its contract with another DBE firm, to the extent needed to meet the Contract goal.

These provisions are based on the premise that the Prime Contractor has committed itself to make good faith efforts to meet a contract goal. When there is a contract goal, the provisions of section 26.53(f) are necessary to prevent a prime contractor from circumventing its good faith efforts obligation after the Contract has been awarded.

### *PRE-AWARD OR POST-AWARD TERMINATION OF A DBE SUBCONTRACTOR*

In addition to post-award terminations, the provisions of the following section apply to pre-award deletions of or substitutions for DBE firms put forward by bidders/proposers in negotiated procurements. In the event that a DBE is proposed to meet a required contract goal, the City will require the Prime Contractor/Consultant 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/ Consultant will be required to notify the DBELO for FTA assisted projects immediately upon learning of the DBE's inability or unwillingness to perform.

The Prime Contractor/Consultant may not remove any DBE subcontractor (or an approved substitute DBE firm) that was submitted toward the DBE goal without prior written consent from the City. This includes, but is not limited to, instances in which a Prime Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. Before making a request to terminate and/or substitute a DBE subcontractor, the Prime Contractor must give notice in writing to the City's Project Manager, the DBE subcontractor, and the DBELO of its intent to request to terminate and/or substitute, and the reason for the request. The Prime Contractor must give the DBELO at least five (5) days to respond to the Prime Contractor's notice. During this time, the DBE subcontractor must advise the City and the Prime Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract. If required in a particular case as a matter of public necessity (e.g., safety), the City may allow for a response period less than five days. After the five days have passed, the DBELO will provide written consent only if it is agreed that the Prime Contractor has good cause to terminate the DBE firm.

The City will consider the following circumstances as good cause to terminate a DBE firm:

- The listed DBE subcontractor fails or refuses to execute a written contract;
- The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Prime Contractor;
- The listed DBE subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements.
- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 or applicable state law;
- It has been determined that the listed DBE subcontractor is not a responsible contractor;
- The listed DBE subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal;
- The listed DBE is ineligible to receive DBE credit for the type of work required;
- A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- Other documented good cause that the City determines compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the Prime Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Prime Contractor can self-perform the work for which the DBE subcontractor was engaged, or so that the Prime Contractor can substitute another DBE or non-DBE contractor after Contract award.

In the event that a substitute DBE subcontractor cannot be found, the Prime will be asked to submit evidence that a Good Faith Effort was made to substitute a DBE subcontractor for the item(s) of work.

In the event that a substitute DBE subcontractor is found, the prime will be asked to furnish the City with a copy of the new subcontract agreement for approval by the DBE Program.

### GOOD FAITH EFFORTS AND CHANGE ORDERS (§26.53)

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As a condition of the privilege to bid, the City requires adequately documented Good Faith Efforts to be made by all bidding prime contractors/consultants for an FTA-assisted contract that has an established contract goal. As a condition of the privilege of award, the City requires the apparent lowest bidder to submit contractual commitment to its use of the DBEs named, at the dollar amount quoted, and for the work identified at bid. If there is any change during the life of the contract resulting in less or more work, the Prime Contractor, in consultation with and subject to the consent of the City, must undertake a Good Faith Effort to meet its commitment. If a Federally-funded change order is made to a contract on which there is a DBE goal, then the goal (as a percentage) applies to the sum of the change order amount and the original contract. This is true regardless of who initiates the change order. If the change order causes a reduction in the original contract on which there is a DBE goal, then the goal (as a percentage) applies to the revised contract amount. This is true regardless of the work items reduced or who initiated the change order. Prime contractors are required to use all means necessary to meet the DBE goal by securing DBE contracts for the remaining subcontracting elements of a project in order to show a good faith effort was made. The DBE contract goal itself will not change, regardless of a change order.

The City will consider, on a case-by-case basis, what constitutes a good faith effort in the context of each individual change order for an FTA-assisted contract that has a contract-specific goal.

### COUNTING DBE PARTICIPATION (§26.55)

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The rules under §26.55 apply when calculating the participation of a DBE firm for credit towards meeting a contract goal. In order to be eligible to participate in meeting any DBE goals, a firm must be certified as a DBE in accordance with the standards of 49 CFR Part 26 before the contract is executed. DBE participation is counted only when the DBE firm actually performs the work themselves. A DBE may subcontract part of the work of its contract to another firm; however, the value of the subcontracted work will be counted toward DBE goals only if the DBE's

subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

The City will count DBE participation toward overall goal and contract goals as provided in the 49 CFR §26.55.

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## VII. CERTIFICATION (§26.81)

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The City ensures that only DBE firms currently certified by the CUCP will participate as DBEs on FTA-assisted contract. If a Prime Contractor/Consultant submits documentation that they are a certified DBE, or using a DBE subcontractor to meet a contract goal, the DBE technical staff assisting the DBELO will review the Caltrans directory to confirm that the DBE is certified as part of the CUCP. The CUCP can be reviewed at: <http://www.dot.ca.gov/hq/bep/ucp.htm>

Firms interested in participating as a DBE on the City's FTA-assisted contracts must apply for and receive certification as a DBE using the CUCP process through the link provided, above.

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## VIII. BIDDER'S LIST AND REPORTING (§26.11)

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### BIDDERS LIST

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The City will create and maintain a Bidders List of all successful and unsuccessful prime and subcontractors bidding on FTA-assisted contracts. This Bidder's List shall contain the following information:

- Firm Name
- Firm Address
- Firm's Status as a DBE or Non-DBE
- Age of the Firm
- Annual Gross Receipt Bracket of the Firm
  - Less than \$500,000
  - \$500,000-\$1 million
  - \$1-2 million
  - \$2-5 million
  - Greater than \$5 million

All records pertaining to a firm's compliance with this section shall be maintained for a minimum of three (3) years. This information will be retained and managed by the DBELO's technical staff.

### REPORTING TO FTA

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DBE participation reports will be submitted to the FTA on a semi-annual basis, in June and December, as required. The City will use the DBE report forms established on the FTA's TrAMS electronic database for reporting DBE participation. A summary record of all FTA-assisted contracts will be maintained in order to support the information required on the semi-annual reports. This record will include:

- The grant number and Federal award amount for each FTA-assisted contract;
- Identification of whether or not a DBE subcontract was awarded as part of the contract. If a DBE is used in the contract, information regarding ethnicity and gender will be identified as part of this record as well;
- A summary total of all monthly prime and subcontractor expenses accrued in the contract during the applicable reporting period. Payments made to both DBE and non-DBE subcontractors will be identified, as applicable (see Appendix B); and
- Race neutral and race conscious approaches will be identified and tracked accordingly for each FTA-assisted contract.

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## IX. CONFIDENTIALITY (§26.109)

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The City 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 contrary provisions of state or local law, the City will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the applicant.

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## X. APPENDICES

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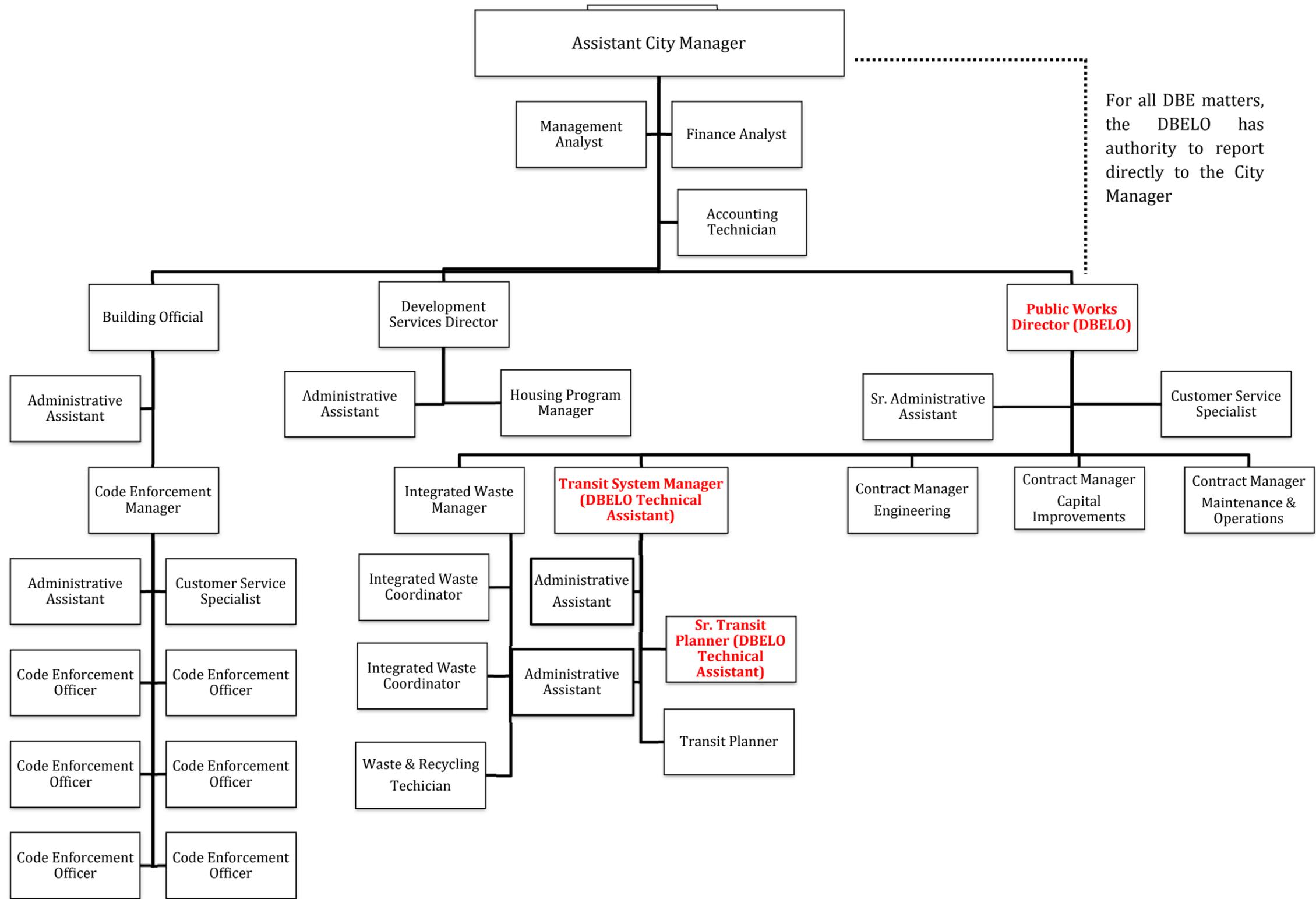
Appendix A: Organizational Chart

Appendix B: Payment Tracking Form

Appendix C: DBE Goal Calculation and Methodology

Appendix D: DBE Regulations

**APPENDIX A: ORGANIZATIONAL CHART**





## **APPENDIX C: DBE GOAL CALCULATION AND METHODOLOGY**

The following appendix document is the City's proposed 3-Year DBE Goal and Goal Calculation Methodology/Assumptions for Federal Fiscal Years 2017 through 2019. This 3-year goal will be updated no less than every three years, or as applicable within the 3-year goal period.



## **CITY OF ELK GROVE – TRANSIT DIVISION**

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) Goal Setting Calculations and Methodology**

Federal Fiscal Years 2017, 2018, 2019  
September 2016

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#### **I. GOAL OVERVIEW**

Pursuant to the rules and regulations provided in 49 CFR Part 26 (DBE Regulations), the City of Elk Grove's Transit Division (the City) proposes a DBE goal of **1.78%** for Federal Fiscal Years (FFY) 2017 through 2019. During these fiscal years, the City anticipates the expenditure of approximately \$1 million of FTA funds per year on an on-going, FTA-assisted contract with MV Transportation (MV) for fixed-route (local and commuter service) operations and preventive maintenance. The City has no capital projects planned with FTA funds (excluding bus purchases through registered transit vehicle manufacturers) during the DBE goal time period.

The City's DBE program was not fully implemented in prior years, so adjustment based on past participation was not possible. The disparity studies reviewed were found to not be relevant to the City contracting opportunities.

The City's 3-year DBE goal is set as entirely race-neutral. The City has a plan of defined race neutral activities and will work with its operating contractor to define more opportunities for DBE participation ongoing. Further details regarding the City's goal calculations and race-neutral determination are outlined below.

#### **II. CONTRACTING OPPORTUNITIES**

During FFY 2017-2019, the City anticipates the expenditure of approximately \$1 million of FTA funds per year on an on-going, FTA-assisted contract with MV Transportation (MV) for fixed-route operations and preventive maintenance. This represents around 20% of the total contract for fixed-route service, which is approximately \$5 million annually. State and local funding sources provide the balance of funding spent for fixed-route operating and preventive maintenance expenses. The City's base contract term with MV is July 1, 2014-June 30, 2019, with three (3) one-year extension options. One (1) of these extension options will occur during the 2017-2019 goal period, and so is included within the contracting opportunities table below, and within this goal analysis.

The City has no capital projects planned with FTA funds (excluding bus purchases through registered transit vehicle manufacturers) during the DBE goal time period.

In determining the number of available subcontracting opportunities for DBE participation, the City considered several areas of work relevant to fixed-route operations and preventive maintenance activities contained within the MV Contract. Table 1, below, lists the subcontracting opportunities identified and their corresponding NAICS codes.

The budget estimates, below, are either projections of funds spent based on 2015 actuals or are the budgeted costs listed in MV's contract, which have been adjusted to account for Federal funds only paying for 20% of the costs. All these costs are currently rolled into the overall fixed monthly administrative and maintenance cost flat fee that the City pays MV for fixed-route service.

**Table 1: Contracting Opportunities**

<b>NAICS Code</b>	<b>NAICS Description</b>	<b>Items</b>	<b>Estimated Contracting Opportunities FFY 2017-2019</b>	<b>Adjustment to Consider Federal Participation Only</b>
485210	Interurban and Rural Bus Transportation	Transit Operations	\$5,060,736	\$1,012,147
488410	Motor Vehicle Towing	Towing Services	\$9,000	\$1,800
812331	Linen Supply	Uniforms	\$46,756	\$9,351
441310	Automotive Parts and Accessories Stores	Vehicle Equipment and Parts	\$42,517	\$8,503
424720	Petroleum and petroleum products merchant wholesalers (except bulk stations and terminals)	Oil/Lubricants	\$143,403	\$28,681
453210	Office Supplies and Stationary Stores	Office Equipment and Supplies	\$82,495	\$16,499
423420	Office Equipment Merchant Wholesalers	Office Equipment and Supplies	\$82,495	\$16,499
423130	Tire and Tube merchant wholesalers	Tires	\$268,093	\$53,619

### **III. GEOGRAPHIC MARKET AREA**

The City has not maintained a bidders list or data on the geographic distribution of contractors and subcontractors in prior years, so there was limited data to determine where the substantial majority of contracts have been awarded. The City instead reviewed each contracting opportunity and estimated the likely geographic market area, as indicated in the table below:

Opportunity	Geographic Market Area
Materials and Services Subcontracting Opportunities	Sacramento, San Joaquin, El Dorado, Yolo, and Placer Counties
Transit Operations Prime Contract	State of California

Due to the unique nature of operations and preventative maintenance, most items and products need to be located within a relative proximity to the City’s Corporation Yard where the daily operations and maintenance work takes place. The City determined the geographic market area, identified above, as the counties within closest proximity to where the operations/maintenance work is conducted. It is anticipated that products/services can be obtained within this geographic market area in an expeditious manner relevant to the nature of operations and preventive maintenance work.

#### IV. GOAL CALCULATION

##### *Step 1: Determination of a Weighted Base Figure*

As shown by the formula below, and calculated in Table 2, the Base Figure is derived by dividing the number of ready, willing and able DBE firms identified for each work category by the number of firms identified for each corresponding work category (Shown in Column C, in Table 2). This value is then weighted by multiplying by the percent weight of each work category relative to the total contract value (shown in Column E, Table 2). The value is then converted to a percentage (Column F, Table2). Each of these work category goal calculations is then added together to create the total Weighted DBE Goal (Summed at the base of Table 2).

$$Base\ Figure = \sum \frac{Nuber\ of\ Ready,\ Willing,\ and\ Able\ DBEs}{Number\ of\ All\ Ready,\ Willing\ and\ Able\ Firms} \times weight$$

The City utilized the California Unified Certification Program (UCP) database to determine the number of ready, willing and able DBE’s within its identified geographic market area for each identified NAICS code (Column A). Using the U.S. Census Bureau’s 2014 County Business Patterns data, the City determined the number of all firms, including DBEs, within the determined geographic market area that were ready and able perform the identified NAICS codes (Column B). The results from Column A were divided by Column B to provide the percentage of DBE firms available compared to all firms available to calculate Column C. At this time, the City does not have any established bidders list or other vendor databases to consult for this establishing the data in Columns A and B. However, as indicated in the City’s proposed DBE Program, this list and vendor database will be established, and subsequently utilized during the next 3-year goal setting process. Prior to weighting the DBE goal was calculated to be 4.20%.

For Column D, the City examined present and anticipated future subcontracting opportunities within the MV Contract. This data was based on prior year actuals or

budgeted estimates included in the MV contract, which further considered that Federal funds only account for 20% of these estimates. Column E identifies the weighted percentage of contracting opportunities. This weighted calculation from Column E is applied to the Column C calculations, to establish the City's weighted Step 1 base DBE goal: **1.78%**.

**Table 2: DBE Base Goal Calculation**

NAICS CODE	WORK CATEGORY	A	B	C	D	E	F
		# OF DBE FIRMS	# OF OVERALL FIRMS	# DBE FIRM / # ALL FIRM (A/B)	BUDGET AMOUNT (Adjusted to Reflect FTA-Funded Portion Only)	WEIGHTED % CONTRACT (D / Total Contract Value)	WEIGHTED % DBE GOAL (C x E)
485210	Interurban and Rural Bus Transportation	0	55	0.00%	\$1,012,147	88.24%	0.00%
488410	Towing Services	3	94	3.19%	\$1,800	0.16%	0.00%
812331	Linen Supply: Uniforms	3	8	37.50%	\$9,351	0.82%	0.31%
441310	Automotive Parts and Accessories Stores	3	309	0.97%	\$8,503	0.74%	0.01%
424720	Petroleum and petroleum products merchant wholesalers	5	13	38.46%	\$28,681	2.50%	0.96%
453210	Office supplies and stationary stores	5	54	9.26%	\$16,499	1.44%	0.13%
423420	Office equipment merchant wholesalers	6	66	9.09%	\$16,499	1.44%	0.13%
423130	Tire and tube merchant wholesalers	1	20	5.00%	\$53,619	4.67%	0.23%
<b>WEIGHTED DBE GOAL</b>							<b>1.78%</b>

## ***Step 2: Goal Adjustment***

Pursuant to the DBE goal-setting regulations, the City is required to consider all evidence available to determine whether or not an adjustment is necessary to the DBE base goal determined in Step 1 of the goal-setting process. The following identifies why the City did not conduct a Step 2 Goal Adjustment for this 3-year goal calculation.

### **Past Participation**

The City is unable to consider adjusting the FFY 2017-2019 DBE Goal based on past participation. The FTA's Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program indicates that if in the past the DBE program was implemented in noncompliance with the DBE regulations in place at the time, it is inappropriate to make adjustments for past participation. The City has not been able to implement or comply with the DBE Program and Goal that was established in FFY 2013. The City is in the process of correcting this issue by establishing a new 3-year DBE goal, as well as a new DBE Program, which considers the current subcontracting limitations within the MV Contract and DBE participation opportunities for FFY 2017-2019. In addition, the City has no available local bidder's list or other vendor database to utilize for weighting past participation of subcontractors and DBEs in the calculation of the FFY 2017-2019 DBE goal.

### **Disparity Studies**

The City reviewed two disparity studies, one published by the California Department of Transportation (Caltrans) and the other published by San Francisco Municipal Transportation Agency (SFMTA), when considering whether or not a step 2 adjustment was required. The Caltrans disparity study focused on state-wide disparities in capital construction opportunities for DBE participation, while the SFMTA focused on Bay Area disparities in capital construction and professional service opportunities for DBE and small business participation. Since the City's DBE goal is established based on subcontracting opportunities within the MV operations and preventive maintenance contract, neither of these disparity studies were determined to be relevant to impacting the City's DBE goal.

## **V. RACE NEUTRAL / RACE CONCIOUS DETERMINATION**

The City will meet the maximum feasible portion of the overall DBE goal through race-neutral means. The City had a race-neutral and race-conscious goal during FFY 2014-16. However, neither the race-neutral or race-conscious goals were met because of inaccuracies in the previous DBE goal setting process and lack of implementation of the DBE program during this time.

The City reviewed two disparity studies, one published by the California Department of Transportation (Caltrans) and the other published by San Francisco Municipal Transportation Agency (SFMTA), when considering whether or not a race-conscious goal

component was appropriate for the City's DBE goal. However, as previously mentioned these disparity studies were focused on construction or professional service opportunities which are not relevant for the City's FFY 2017-19 contracting opportunities. Neither of these disparity studies were determined to be relevant to impacting the City's DBE goal.

The City has redesigned its DBE program, including the race neutral and small business activities the City will undertake. This new focus will provide greater opportunities for meeting a race neutral goal going forward. This includes the following:

- Work with the City's transit operations and maintenance contractor to identify possible subcontracting opportunities for DBE participation. On a quarterly basis review and discuss strategies with the transit operations and maintenance contractor that would help create subcontracting opportunities within the current operations and maintenance contract;
- Conduct an annual workshop including outreach to small business organizations, chambers of commerce and other regional agencies in order to solicit input on measures the City can take to assist with fostering DBE participation;
- Develop materials designed to inform DBEs and small businesses of potential subcontracting opportunities and provide education and technical assistance for companies wishing to certify as a DBE; and
- Take reasonable steps to structure contracting requirements to facilitate competition by DBEs and small businesses and eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements.

These DBE Program activities will provide greater opportunities to meet the goal through race neutral mechanisms than have previously been the case. Therefore, the City's goal has been established as race-neutral for the FFY 2017-2019 period.

The City will continually monitor its goal achievement and the impact of its race neutral activities, and will take steps to amend its DBE goal or the proportion of race neutral/race conscious activity if required.

## **VI. SOURCES OF DATA**

The City has used a range of data sources in this FFY 2017-19 goal calculation

- California UCP [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)
- Census Bureau's 2014 County Business Patterns data  
<http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>
- California Department of Transportation (Caltrans) Disparity Study 2012  
[http://www.dot.ca.gov/hq/bep/disparity\\_study.htm](http://www.dot.ca.gov/hq/bep/disparity_study.htm)

- San Francisco Municipal Transportation Agency (SFMTA) Disparity Study 2015  
<https://www.sfmta.com/sites/default/files/agendaitems/2016/4-19-16%20Item%2014%20Disparity%20Study%20-%20report.pdf>
- MV Transportation Contract with City of Elk Grove (C-14-233), Page 92, Fixed Route (Local and Commuter and Maintenance Pricing Schedule, Option Year 1 data (contract executed on 7-1-2014)

## VII. CONSULTATION

The City released a Draft 2016 DBE Program and 3-Year DBE Goal on its website on August 22, 2016, with a notice to provide comments regarding the DBE Program and 3-Year Goal to staff by September 14, 2016. In addition to making these documents available for public review, the following actions were taken as part of the City's consultative process:

- Staff solicited feedback from the City's transit operations and maintenance contractor regarding the Draft 2016 DBE Program and 3-Year Goal.
- An e-mail, which included a notice to provide comments on both the 2016 Draft DBE Program and 3-Year Goal (a link was provided to the City's website containing the Program and Goal) was sent on August 24, 2016, and August 25, 2016, as well as re-sent on September 8, 2016, to the following agencies:
  - Sacramento Black Chamber of Commerce,
  - Sacramento Asian Pacific Chamber of Commerce,
  - Sacramento Hispanic Chamber of Commerce,
  - Lodi Chamber of Commerce,
  - Slavic American Chambers of Commerce,
  - Sacramento Rainbow Chamber of Commerce,
  - Elk Grove Chamber of Commerce,
  - National Association of Women Business Owners – Sacramento,
  - Sacramento Metro Chamber of Commerce,
  - Greater Sacramento Urban League, and
  - Sacramento Business Services Center
- City Transit staff called each of the agencies, identified above, on September 8<sup>th</sup> and 9<sup>th</sup>, to solicit feedback on the DBE Program and 3-Year Goal, as well as notify them of a DBE Workshop being held on September 13<sup>th</sup>.
- A DBE Workshop was held on September 13, 2016, in order to solicit comments on both the 2016 Draft DBE Program and 3-Year Goal. Notice of this workshop was identified on the City's DBE website, as well as identified in the e-mail notices sent to the agencies, listed above, on August 24<sup>th</sup>, August 25<sup>th</sup>, and September 9<sup>th</sup>.
- DBELO technical staff attended a Small Business Procurement Panel and Workshop, hosted by the Sacramento Black Chamber of Commerce, on August 24, 2016. Staff

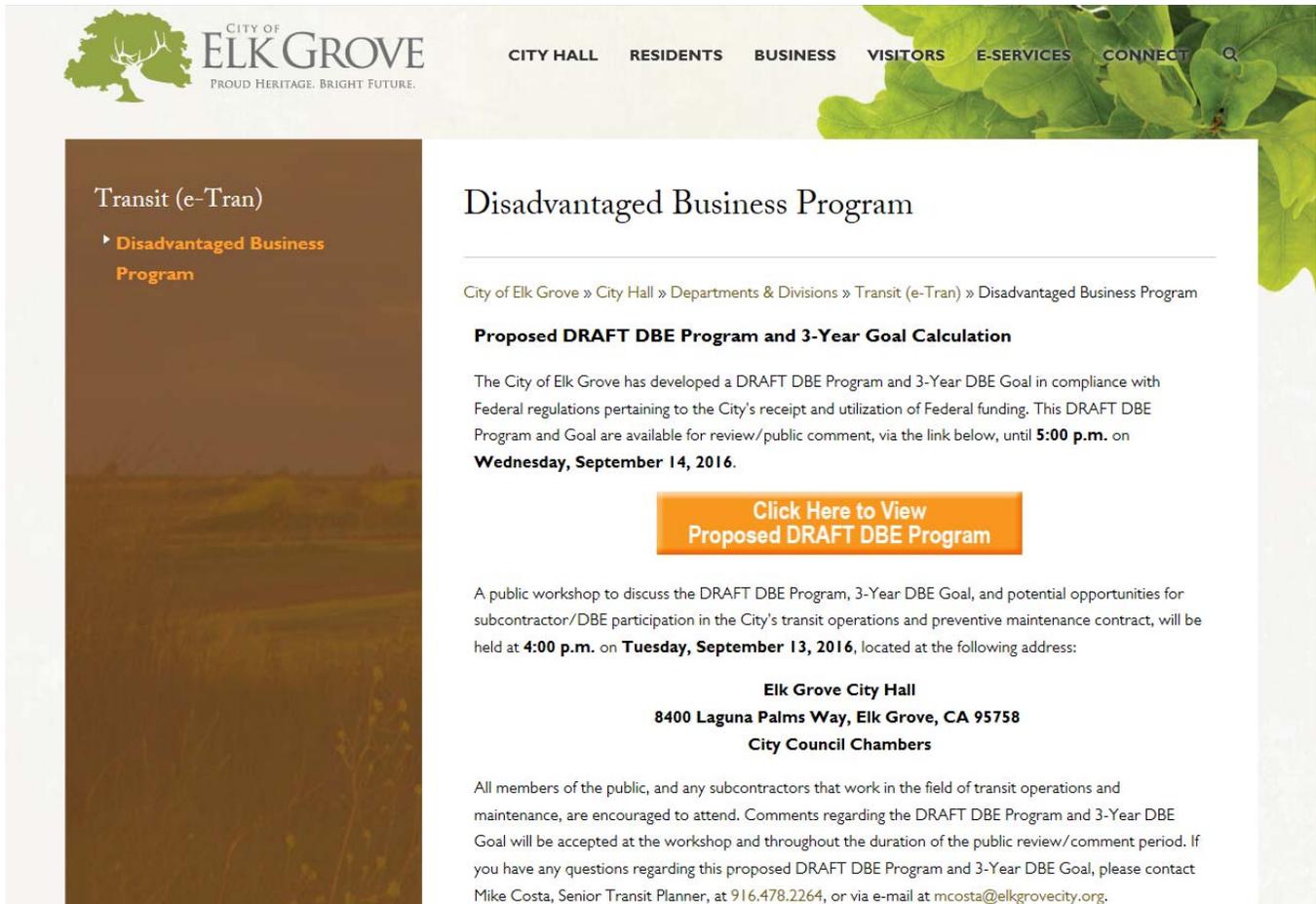
discussed the City of Elk Grove's Purchasing Process, as well as identified that the City's 2016 Draft DBE Program and 3-Year Goal were available on the City's webpage for public review/comment, as well as announce the date/time/location of the DBE Workshop.

Staff did not receive any additional input from the City's transit operations and maintenance contractor, or the agencies identified above, regarding the Draft DBE Program and 3-Year Goal. No revisions were made to either the Draft DBE Program or 3-Year Goal as a result of the consultative process described above.

## VIII. PROOF OF PUBLICATION

### Publication of Draft 2016 DBE Program and 3-Year Goal Notice on City's Website on August 22, 2016

The Draft DBE Program and 3-Year Goal were posted on the City's website on August 22, 2016. Information regarding the September 13<sup>th</sup> DBE Workshop was also identified on the website containing the Program and 3-Year Goal. The following image is a screenshot of the City's webpage with the DBE Program/3-Year Goal and DBE Workshop information.



## Agency E-mail Notice Sent on August 24<sup>th</sup>

From: Zara Carter  
To: Michael Costa  
Cc: Kimberley Edington; 'mnguyen@slvaciancc.org'; 'cathy@sachcc.org'; 'hvalvarez@lodichamber.com'; 'sergeyt@slvaciancc.org'; 'pvesubee@gmail.com'; 'angip@elkgroveca.com'; 'president@nawbo-sac.org'  
Bcc: Kimberley Edington; 'mnguyen@slvaciancc.org'; 'cathy@sachcc.org'; 'hvalvarez@lodichamber.com'; 'sergeyt@slvaciancc.org'; 'pvesubee@gmail.com'; 'angip@elkgroveca.com'; 'president@nawbo-sac.org'  
Subject: City of Elk Grove Proposed DRAFT DBE Program and 3-Year Goal Needs Your Input

Sent: Wed 8/24/2016 12:52 PM

Greetings,

The City of Elk Grove has developed a DRAFT Disadvantaged Business Enterprise (DBE) Program and 3-Year DBE Goal in compliance with Federal regulations pertaining to the City's receipt and utilization of Federal funding. This DRAFT DBE Program and Goal are available for review/public comment, via the link below, until 5:00 p.m. on **Wednesday, September 14, 2016**.

[http://www.elkgrovecity.org/city\\_hall/departments\\_divisions/transit\\_e-tran/disadvantaged\\_business\\_program/](http://www.elkgrovecity.org/city_hall/departments_divisions/transit_e-tran/disadvantaged_business_program/)

A public workshop to discuss the DRAFT DBE Program, 3-Year DBE Goal, and potential opportunities for subcontractor/DBE participation in the City's transit operations and preventive maintenance contract, will be held at 4:00 p.m. on **Tuesday, September 13, 2016**, located at the following address:

**Elk Grove City Hall**  
8401 Laguna Palms Way, Elk Grove, CA 95758  
City Council Chambers  
RSVP Today By Calling 916.627.3339

All members of the public, and any subcontractors that work in the field of transit operations and maintenance, are encouraged to attend. Comments regarding the DRAFT DBE Program and 3-Year DBE Goal will be accepted at the workshop and throughout the duration of the public review/comment period. If you have any questions regarding this proposed DRAFT DBE Program and 3-Year DBE Goal, please contact Mike Costa, Senior Transit Planner, at 916.478.2264, or via e-mail at [mcosta@elkgrovecity.org](mailto:mcosta@elkgrovecity.org).

We appreciate your input in this process and want to hear back from you!

Sincerest regards,  
**City of Elk Grove**  
8401 Laguna Palms Way  
Elk Grove, CA 95758  
916.627-3339 (office)  
916.691-3173 (fax)

[www.elkgrovecity.org](http://www.elkgrovecity.org)

Connect to social networks to show profile photos and activity updates of your colleagues in Outlook. Click here to add networks.

									
Zara Carter Customer Service Specialist	Michael Costa Transit Planner	Kimberley Edington	mnguyen@slvaciancc.org	cathy@sachcc.org	hvalvarez@lodichamber.com	sergeyt@slvaciancc.org	pvesubee@gmail.com	angip@elkgroveca.com	president@nawbo-sac.org

## Agency E-mail Notice Sent on August 25<sup>th</sup>

From: Zara Carter  
To: Michael Costa  
Cc: 'mcosta@elkgrovecity.org'; 'cathy@sachcc.org'; 'ca@sachcc.org'  
Bcc: 'mcosta@elkgrovecity.org'; 'cathy@sachcc.org'; 'ca@sachcc.org'  
Subject: City of Elk Grove Proposed DRAFT DBE Program and 3-Year Goal Needs Your Input

Sent: Thu 8/25/2016 11:22 AM

Greetings,

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[http://www.elkgrovecity.org/city\\_hall/departments\\_divisions/transit\\_e-tran/disadvantaged\\_business\\_program/](http://www.elkgrovecity.org/city_hall/departments_divisions/transit_e-tran/disadvantaged_business_program/)

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Zara Carter Customer Service Specialist	Michael Costa Transit Planner	mcosta@elkgrovecity.org	cathy@sachcc.org	ca@sachcc.org

# Agency E-mail Notice Sent on September 8<sup>th</sup>

From: Zera Carter  
To: Michael Costa  
Cc: 'president@nawbo-sac.org'; 'dsurger@metrochamber.org'; 'angip@elkgrovecity.com'; 'sergey@slavicamerican.org'; 'kalvarez@lodichamber.com'; 'cathy@sachcc.org'; 'mnguyen@sacsianncc.org'; 'agoines@sacblackham.org'  
Subject: City of Elk Grove Proposed DRAFT DBE Program and 3-Year Goal Needs Your Input

Sent: Thu 9/8/2016 1:28 PM

Greetings,

The City of Elk Grove has developed a DRAFT Disadvantaged Business Enterprise (DBE) Program and 3-Year DBE Goal in compliance with Federal regulations pertaining to the City's receipt and utilization of Federal funding. This DRAFT DBE Program and Goal are available for review/public comment, via the link below, until 5:00 p.m. on **Wednesday, September 14, 2016**.

[http://www.elkgrovecity.org/city\\_hall/departments\\_divisions/transit\\_e-tran/disadvantaged\\_business\\_program/](http://www.elkgrovecity.org/city_hall/departments_divisions/transit_e-tran/disadvantaged_business_program/)

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Zera Carter  
Customer Service Specialist



Michael Costa  
Transit Planner



president@nawbo-sac.org



dsurger@metrochamber.org



angip@elkgrovecity.com



sergey@slavicamerican.org



kalvarez@lodichamber.com



cathy@sachcc.org



mnguyen@sacsianncc.org



agoines@sacblackham.org

## **APPENDIX D: DBE REGULATIONS**

The following website provides the current DBE regulations that pertain to all Federally-assisted contracts and recipients of Federal funds.

<http://www.ecfr.gov/cgi-bin/text-idx?SID=53cd5c89e0e9bdcfc93bae3ae3efb10c&mc=true&node=pt49.1.26&rgn=div5>