

THE AUTHORITY SMALL BUSINESS PROGRAM Efforts To Achieve Participation

GUIDANCE FOR DOCUMENTING EFFORTS TOWARD THE AUTHORITY SB PARTICIPATION GOALS

This guidance document is provided as a resource to contractors and consultants regarding all California High-Speed Rail Authority's (Authority) Small Business Program Plan's (SB Program Plan) requirements for Efforts to Achieve Participation.

The Authority established a "Small and Disadvantaged Business Enterprise Program" on August 2, 2012 (2012 SB Program). The 2012 SB Program and the contracts that fall under this program are available on the [Authority's website](#). On November 2, 2023, the Authority updated its SB Program Plan goals. Now titled "HSR Business Program – Revised," (2023 SB Program Plan). The Authority's 2023 SB Program Plan is also available on the [Authority's website](#). Contractors and consultants contracting with the Authority are responsible for complying with the Authority's Program Plans including its Efforts to Achieve Participation.

All contractors and consultants (herein known as Primes) are required to take all practical actions necessary to meet or exceed applicable Small Business (SB), Disabled Veteran Business Enterprise (DVBE) and Disadvantaged Business Enterprises (DBE) goals. These goals can be met or exceeded by regularly working and subcontracting with certified SB/DVBE/DBE firms (herein known as Certified Firms). As such, all goal efforts must be constantly and consistently practiced and documented.

Efforts Toward Goal Achievement for DBEs

For contracts subject to the 2012 SB Program Plan, there is an overall 30 percent goal, which is inclusive of a 10 percent DBE goal.

For contracts subject to the 2023 SB Program Plan, the goals are determined based on the funding source. For contracts with blended state and federal funds, the 2023 SB Program Plan establishes a 10 percent DBE goal, which will be applied across the total contract value.

For 100% federal funded (includes any grant funds) contracts, the 2023 SB Program Plan establishes a 17 percent DBE goal.

For 100% state funded contracts, no DBE goal is established.

Please review your contract to find your determined goal.

Primes are required to produce demonstrable efforts toward meeting applicable DBE goals. This is known as Good Faith Efforts (GFE). Based on the Code of Federal Regulations, the Authority defines GFE as "those efforts that, given all relevant circumstances, a Prime actively and aggressively seeking to meet the goals would make. Efforts that are merely pro forma are not GFE to meet the goals, even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of participation sufficient to meet the goals."

GFE for DBE participation is referenced in accordance with [49 CFR part 26](#), § 26.53 (a) which states:

"When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

- (1) Documents that it has obtained enough DBE participation to meet the goal; or
- (2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so."

Efforts Toward Goal Achievement for SB/DVBEs

The CA Department of General Services (DGS) does not recognize GFEs, however, as part of the Authority's ongoing commitment to support the California SB community, the Authority requires all Primes to produce demonstrable efforts toward increasing SB and DVBE participation and meeting their SB/DVBE goals.

Efforts toward increasing SB and DVBE participation are herein known as Efforts Toward Achievement (ETA).

Efforts to Achieve Participation

As GFEs and ETAs hold similar requirements, based on the respective legal requirements, programs, and policies, throughout the remainder of this document, these efforts will be collectively known as Efforts to Achieve Participation (EAPs).

All Primes must submit EAP documentation, in tandem with additional SB Compliance reporting documents, including but not limited to Monthly Small Business Sub Contractors Paid Report Summary and Payment Verification Form (Form 103), Prompt Payment Retainage Report, and Monthly Narrative Reporting. Any exceptions to this requirement must be approved by the Authority's Small Business Compliance Unit (SBCU) in writing and documented by a formal letter outlining the guidelines of said exceptions, which will be determined at the sole discretion of the Authority.

EAP criteria are graded on a pass/fail basis, based on the overall documentation of efforts for the EAP Type, and is subject to public record requests and may be posted online.

Nothing set forth in this guidance supersedes the information stated in procurement documents, including the Request for Proposal (RFP), Invitation for Bid (IFB), or Request for Qualifications (RFQ), or federal regulations under 49 CFR Part 26.

It is the responsibility of the Primes to verify that the SB/DVBE/DBE certification of their selected firm is valid and current using one of the websites below:

- Small Business/Small Business Public Works/ Micro Business /Disabled Veteran Business Enterprise
 - Cal eProcure website:
<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>
- Disadvantaged Business Enterprises:
 - California Unified Certification Program (CUCP) website:
<https://californiaucp.dbesystem.com/>

CERTIFICATION

The Authority is not a certifying agency. As such, questions regarding certification or the certification process should be addressed to those recognized certifying agencies, which are as follows:

- Small Business (SB/SB-PW/MB/DVBE)
 - CALIFORNIA DEPARTMENT OF GENERAL SERVICES
Office of Small Business and DVBE Services
Department of General Services
Procurement Division
707 Third Street
West Sacramento, CA 95605
Phone: (916) 375-4940
Email: OSDSHelp@dgs.ca.gov
Website: <https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Certify-or-Re-apply-as-Small-Business-Disabled-Veteran-Business-Enterprise>
- Disadvantages Business Enterprise (DBE)
 - CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS)
Civil Rights MS 79 1823 14th Street
Sacramento, CA 95814
Phone: (916) 324-1700 or (866) 810-6346

Email: DBEcertification@dot.ca.gov

Website: www.caltrans.ca.gov

Website: <https://caltrans.dbesystem.com/>

- CITY OF LOS ANGELES
Office of Contract Compliance Centralized Certification
1149 South Broadway Street, Suite 300, Los Angeles, CA 90015
Phone: (213) 847-6480
Fax: (213) 847-5566
Website: <https://bca.lacity.org/>
- LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (METRO)
Diversity and Economic Opportunity Department One Gateway Plaza
Los Angeles, CA 90012
Phone: (213) 922-2600
Fax: (213) 922-7660
Website: <https://business.metro.net>

EAP TYPES

The following EAP types have been developed to assist Primes in meeting the established contract goals. Following this list are descriptions of the type of efforts a Prime may submit and the criteria required for each item.

1. Work identified for Certified Firms
 - a. Demonstrate that sufficient work was identified for Certified Firms
2. Attendance at pre-bid, pre-proposal or pre-SOQ meeting
 - a. Copy of attendance sheet from host
3. Advertisement of Opportunity
 - a. Names and dates of all advertisements
 - b. Copies or proofs of publication
 - c. Evidence that opportunity was solicited with sufficient time to allow response to IFB/RFP/RFQ/ Solicitation and or Task Order request
4. Written Notices to Certified Firms
 - a. List of all Certified Firms solicited
 - b. Copies of letters sent
 - c. Documentation of follow-up performed
5. List of assistance efforts made to current active subcontractors/subconsultants and interested Certified Firms:

- a. Financial and Operational Assistance: Assisting with obtaining bonds, lines of credit, insurance, and information about the scope of work, plans, and specifications
 - b. Assisting with obtaining necessary equipment, supplies, materials, or related assistance or services
 - c. Question & Answer Correspondence
6. Organization Outreach
 - a. Letters sent to outreach agencies for SB/DVBE/DBE recruitment
 - b. Copies or proofs of outreach letters
 - c. Evidence that opportunity was solicited with sufficient time to allow response to IFB/RFP/Solicitation and or Task Order request
 7. Outreach Events
 - a. Attend Outreach Events
 - b. Host Outreach Specific events
 8. Good Faith Negotiation

ESSENTIAL EAP DOCUMENTATION

Each EAP Type has specific criteria that must be demonstrated to be counted toward a Prime's EAP submission. The information below outlines the criteria of each type and examples of how it may be completed.

No. 1 – WORK IDENTIFIED FOR CERTIFIED FIRMS

Work Identified for Certified Firms (herein known as WICs) are specific items of work that the Prime will make available to Certified Firms. WICs should be broken down into economically feasible units that would increase the likelihood of achieving the participation goal.

- WICs must be listed in the documentation, with estimated dollar value and percentage of the total contract or task order identified for that work area.
- WICs must be listed either in advertisements or letters to potential Certified Firms.
- Any work that Primes cannot complete should be listed as WIC.
- If the Prime is able to complete all work itself and is not itself a Certified Firm, it will have the option to:
 - Identify WICs that have the potential to subcontract even though it is capable of carrying out the work itself.
 - Perform an outreach to recruit subcontractors to the project.

- All WICs for which the Prime proposes utilizing a Certified Firm are required to be represented in the EAP documentation.
 - Even if the Prime has had a previous relationship with a Certified Firm, Prime should still list their relevant work area.

No. 2 – PRE-BID SMALL BUSINESS WORKSHOP, PRE-PROPOSAL or PRE-SOQ MEETING

- Be on time and attend the entire meeting.
- Sign the attendance sheet (please ensure name is legible), providing the name and title of person(s) representing the Prime.
- Provide the hosting department/agency/contractor name and event contact email.
- Describe the type of service(s) outlined in the bidding event
- Include a copy of the attendance sheet, obtained from host, in EAP documentation.

No. 3 – ADVERTISEMENT

The Prime's advertisement must be PUBLISHED no less than ten calendar days prior to the proposal or bid due date, and a proof of publication must be submitted with the EAP documentation. Consideration will be given to the wording of the advertisement, which MUST mention the Certified Firm opportunity.

- Timeliness of Publication
 - It is the Prime's responsibility to ensure that the advertisement is published on time and that the wording is correct.
 - It is recommended that multiple publications be used with a minimum of a one-day advertisement placed in each.
- Text of Advertisement
 - Authority's project name
 - Prime's name
 - WICs to be subcontracted/supplied
 - Contact person's name, address, telephone and fax number, and email address
 - Detailed information on the availability of the scope of work, plans, and specifications

- Prime's policy concerning assistance in obtaining bonds, lines of credit, and insurance
- Must be addressed to Certified Firms with California SB/DVBE or Federal DBE certification
- Bid/proposal due date
- Proof of Publication
 - Submit the proof of publication, which must include a legible copy of the advertisement (see below for a sample). This document is supplied by the publisher and usually accompanies the invoice. For physical advertisements, a cutout of the header along with the advertisement is not acceptable.
 - If using an online publication, please include information regarding the site, along with a direct hyperlink to the advertisement or dated PDF screenshot showing it was posted within the required time frame.
- Location of Advertisements
 - For newspaper publishing, the advertisement should be in the Bids Wanted, Legal Notices section of the Classified Ads, Subcontracting Opportunities, or Business Opportunities sections, not the Employment Opportunities section.
 - For publishing online, the advertisement should be in the Outreach Ads, Bids Wanted, Legal Notices section of the Classified Ads, Subcontracting Opportunities, or Business Opportunities sections, not the Employment Opportunities section.

SAMPLE OF ADVERTISEMENT

Requesting Sub-bids, Sub-proposals from firms with California SB/SB-PW/MB/DVBE or Federal DBE certification wanted for: *(List specific work items that you are interested in subcontracting. It is important to break out as much detail as possible)*

Project Name:

Owner: CA High-Speed Rail Authority

Bid/Proposal Due Date & Time:

For information on the availability of scope of work, plans, and specifications, please contact our office.

Prime's Name

Address

Email, Telephone, and Fax Number

Prime's policy concerning assistance to subcontractors in obtaining bonds, lines of credit, and/or insurance is...

No. 4 – WRITTEN NOTICES TO CERTIFIED FIRMS

Letters must be sent and/or emailed to available Certified Firms for WICs listed, no less than ten calendar days prior to the bid/proposal due date.

- Letters must be sent to an adequate number of Certified Firms to reasonably expect to meet the contract, task order, job order, or supplement participation goal. Determination of an adequate number of Certified Firms to be contacted will depend on the number of Certified Firms in the market area for each work category. The following table includes the recommended number of Certified Firm contacts based on the availability of said firms:

Available Certified Firms	Recommended Certified Contacts
5 or less	All
6 to 10	5
11 to 50	50%
51+	25

- Use the [California eProcure \(Cal eProcure\) website](#) or the [California Unified Certification Program \(CUCP\) website](#) to identify and contact their respective Certified Firms.

- Letters should also be sent to those Certified Firms with whom Primes have had a previous working relationship and believes may want to use on the contract.
- Letters should contain at a minimum:
 - The Authority's project name
 - Bid, proposal, or SOQ due date/time
 - Specified work areas
 - Prime's name
 - Contact person's name, address, telephone and fax number, and email address
 - Detailed information on the availability of the scope of work, plans, and specifications
 - Prime's policy concerning assistance in obtaining bonds, lines of credit, insurance, supplies, etc. (see No. 5 re: Assistance Efforts)

To meet the EAP requirements, you must:

- Send the letters on time (no less than ten calendar days before proposals/bids are due)
- Include all required information in the language of the letter
- Submit copies of each of the letters sent or one master notification, including a listing of each firm that was sent the letter, AND
 - If emailed: copies of the sent letter with the date and time shown
 - If faxed: copies of the fax transmittal confirmation sheet(s). No credit for error messages, busy, cancelled, etc.
 - If mailed: copies of the metered envelopes or certified mail receipts

All items should be scanned (where applicable) and submitted in PDF format unless otherwise agreed by the SBCU. A cover page must be included that documents the name of the WIC, a ratio of available Certified Contacts to available Certified Firms, which certification databases were used and what search parameters were used to determine the number of available firms.

MARCH 2024
WRITTEN NOTICES TO CERTIFIED FIRMS
COVER PAGE

WIC

- I-80 Pavement Repair

Contact Ratio

- 14 contacted: 28 available

Database Used

- Cal eProcure

Parameters

- Certification Type: SB, DVBE
- UNSPAC Classifications: 22101603, 22101607, 22101624
- Service Area: 020 (Madera County)

Note - The above is a sample. Your own document may have more or less information depending on the need.

FOLLOW UP DOCUMENTATION

Primes must document all efforts to follow up on the initial solicitations made by contacting Certified Firms to whom it sent letters. The follow-up documentation to be submitted includes copies of letters, telephone logs, fax confirmations, emails, etc.

If Certified Firms have not responded to letter/faxes/emails, telephone calls should be made after the letters have been sent and before the deadline. The Prime must develop a telephone log that includes the following information:

- WIC name
- Name of person placing call
- Name of firm called
- Contact person's name
- Date of call
- Time of call
- Results of conversation

A sample log can be found at the end of this document.

Follow-up contact must be made at least once with all Certified Firms with whom Prime left messages.

Criteria that will be considered:

- Were the calls made during the lunch hour or too late in the workday?

- Did the Prime make a second follow -up call with all Certified Firms with whom messages were left?
- Review of the result of the conversation. If a Certified Firms had offered to provide a quote but does not, an additional follow-up is required.
- Did the Prime Contractor attempt other forms of contact as follow-up to the initial contact?

No. 5 – LIST OF ASSISTANCE EFFORTS

- List any efforts to assist to Certified Firms with obtaining bonds, lines of credit, or insurance.
- List any efforts to assist Certified Firms with other technical assistance or information related to the scope of work, plans, specifications, and requirements for the work that was provided to Certified Firms.
- List any efforts to assist Certified Firms with obtaining necessary equipment, supplies, materials, or related assistance or services.
- List any efforts to assist non-certified firms in obtaining State SB/DVBE or Federal DBE certification.
- Assistance Efforts must be included in advertisements and/or written notices/letters to Certified Firms.

No. 6 – ORGANIZATION OUTREACH

- Letters must be sent to outreach agencies, no less than ten calendar days prior to the bid/proposal due date, requesting assistance in recruiting Certified Firms
- Letters should be sent to all the listed organizations and must contain
 - Specified work areas (WICs)
 - Authority project name
 - Bid due date/time
 - The Prime Contractor's name
 - Contact person's name
 - Contact person's address
 - Contact person's telephone number, fax number, email address

To meet EAP requirements, Prime must:

- Include language stating a recruitment of Certified Firms

- Include the specified WICs
- Send letters within adequate time
- Submit copies of the letters sent or one master notification
 - If emailed: copies of the sent letter with the date and time shown
 - If faxed: copies of the fax transmittal confirmation sheet(s). No credit for error messages, busy, cancelled, etc.
 - If mailed: copies of the metered envelopes or certified mail receipts
- Submit copies of responses received (i.e., email, lists, internet page download, etc.)

All items should be scanned (where applicable) and submitted in PDF format.

No. 7 – OUTREACH EVENTS

Primes must attend or host outreach events. To meet EAP requirements, Primes must:

- Attending Outreach Event:
 - Be time and attend the entire event
 - Sign the attendance sheet, providing the name and title of person(s) representing the Prime
 - When using Business Advisory Council (BAC) Meetings as a EAP, attendance sheet is not required. Prime attendance will be verified by the SBCU.
 - Provide hosting department/agency/contractor name and email
 - If tabling at an event, an “Interest signup” sheet is required, and a copy must be submitted
- Hosting an Outreach Event
 - Communicate Event to the SBCU no later than ten business days prior to the event
 - Send a copy of flyer, “save the date”, or equivalent
 - Send a copy of final registration of attendees

No. 8 – GOOD FAITH NEGOTIATING

- All quotes received must be submitted with the EAP documentation:
 - Include all bids/proposals for areas of work not indicated in the outreach.
 - Must include quotes from both certified and non-certified firms.

- All dollar amounts and scopes of work on the potential firm bid must not be altered by the Prime. A revised quote from the potential firm must be obtained, if a revision is necessary.
- All verbal quotes received are required to be substantiated by a corresponding hard quote from the potential firm and submitted with the EAP documentation to be considered.
- All bid-listed firms must be represented in the EAP documentation.
 - If they were not sent a letter, please detail in the comments section of the summary sheet how these potential firm came to submit a bid.

To document EAP, Primes must:

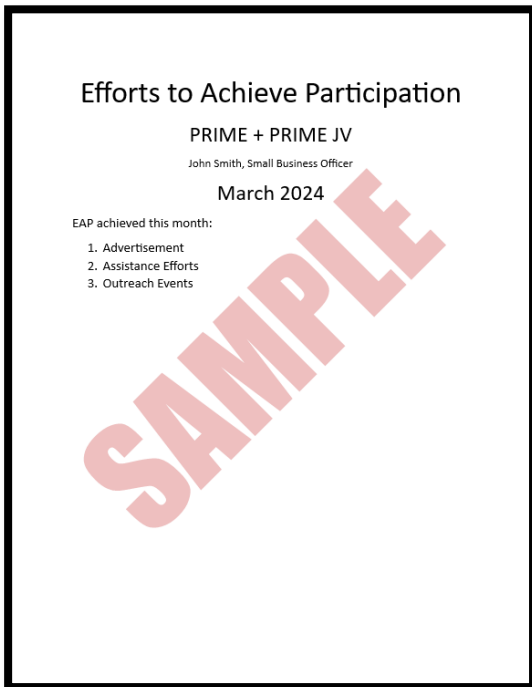
- Submit all quotes received and any revised and/or follow-up hard quotes where necessary.
- Submit a List of Rejected Firms that includes a breakdown of the firms who responded, their corresponding work areas, the quoted amounts, and the reasons for the selection and non-selection.

Some considerations:

- Self-Performing Work: Should Primes be unable to find a qualified Certified Firm and determine work will be self-performed, Primes must show that its price is competitive to that of the certified firms who responded to the outreach.
- Primes are not required to select any firm based *solely* on their certification status. Your decision to select a firm should also be based on the firm's bid/proposal amount and/or qualifications.

EAP SUBMISSIONS

All Primes must submit EAP documentation, in tandem with additional SB Compliance reporting documents, including but not limited to Monthly Small Business Sub Contractors Paid Report Summary and Payment Verification Form (Form 103), Prompt Payment Retainage Report, and Monthly Narrative Reporting. EAP submissions must be its own document in PDF format. The document must have a title page with Prime's Name, SBO's Name, reporting month and list of EAPs achieved in the reporting month. Following the title page should be all supporting documentation, with the EAP type clearly labeled on each corresponding support document.



Note – The above is a sample of the EAP title page. Your own document may have more or less information depending on the need.

EAP DETERMINATIONS

Primes will be determined to have made EAP on a pass/fail basis.

Passing EAPs

To ensure EAPs are being maximized, **Primes are required to submit at least 2 unique EAP types per month and may only repeat any EAP type once in a quarter. Primes must also utilize all 8 EAP types before the end of each fiscal year. Additionally, when determining a passing EAP, the SBCU will review quantity and intensity of these efforts.**

Failing EAPs

In determining a Prime may have failed EAP, the SBCU may determine that:

1. The prime has failed to meet the EAP requirement (“**at least 2 unique EAP types per month and may only repeat any EAP type once in a quarter. Primes must also utilize all 8 EAP types before the end of each fiscal year.**”)
2. When applicable, in a reasonable comparison of Primes who perform similar work (where similar work is determined by reviewing contracted scopes of work) it can be determined with additional reasonable efforts, the Prime should have accomplished required EAP.

Resolution Actions for Non-Compliance

The SBCU may implement the following 3 step Resolution Action for Non-Compliance to any Prime determined to have failed in their EAPs:

1. A warning email addressed to the Prime Small Business Officer outlining why EAP failed and what actions need to be completed by the Prime to reestablish EAP compliance.
2. A collaborative meeting with the Authority’s Small Business Advocate, Small Business Chief, SBCU Manager and the Prime Small Business Officer and CEO. Meeting will discuss importance of meeting EAP and how Prime can work to meet EAP standards.
3. Prime will be required to prepare a Corrective Action Agreement (CAA). As part of the CAA, the Prime will be required to make a presentation to the Authority’s Board of Directors (Board) at the next regularly scheduled Board meeting to explain reasons for EAP Non-Compliance and present the Corrective Action Agreement. Additionally, the Prime shall also present to the Business Advisory Council (BAC) at the next regularly scheduled BAC meeting to explain reasons for EAP Non-Compliance. Thereafter, until such time as compliance is achieved and the Board and BAC determines that future presentations are not needed, the Prime is to provide written reports to the BAC and make presentations to the Board on a quarterly basis, or more often as required by the Board and/or BAC.

Exemptions

Should a Prime be unable to complete EAP, Primes may request for EAP exemption with the SBCU. Exemptions will only be approved for reasonable circumstances which prevent the Prime with no opportunity to subcontract work. For example, if an approved task order’s scope of work cannot be performed by a small business, such as utility installation or land or real estate procurement. Exemptions must be requested each

month with an updated justification on why the EAP is still unable to be demonstrated. Any exemptions will be considered at the sole discretion of the SBCU.

Finally, should a Prime fail to meet the EAP but meets or exceeds their contracted SB Utilization goal based on Total Contract Value, this may be evidence of the Prime having made EAP. However, if at any time, the Prime's Small Business Utilization drops below the contracted participation goal, Prime will again be subject to submit EAP as required.

SAMPLE TELEPHONE LOG
 (INSERT PRIME CONTRACTOR'S COMPANY NAME)

Telephone Log										
Work Identified for Certified Firms:										
Name of Person Placing the Calls:										
Work Area:										
Date	Time	Firm Name	Phone #	Contact Person	Certification Types					Result(s) of Conversation
					<u>SB</u>	<u>SB-PW</u>	<u>MB</u>	<u>DVBE</u>	<u>DBE</u>	

ATTACH ADDITIONAL SHEETS AS NECESSARY

