A DBE PROGRAM THAT WORKS

MODERNIZING THE CALIFORNIA DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

A Post-Reevaluation Framework for Verified Eligibility, Verified Availability, Verified Performance, Program Integrity, and Opportunity

Policy White Paper

Prepared and submitted by members of United Contractors (UCON) for industry discussion and evaluation by the California Department of Transportation (Caltrans), the California Unified Certification Program (CUCP), and the Federal Highway Administration (FHWA).

The policy, proposals and recommendations in this White Paper reflect the collective experiences, ideas, and judgment of the UCON members identified herein. Pursuant to UCON's commitment to serving the needs of its members while building the next generation of industry leaders, the following assisted in the preparation of this White Paper by memorializing UCON members' thoughts and suggestions in written form.

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Working policy proposal incorporating Caltrans' March 2, 2026 DBE/ACDBE Eligibility Reevaluation Notification Letter and Guide for Demonstrating Social and Economic Disadvantage. Federal implementation recommendations should be reviewed with Caltrans and FHWA counsel before adoption.

Introduction

United Contractors (UCON) is California's premier construction trade association, representing union signatory heavy civil engineering contractors across the state who build and maintain the state's most critical infrastructure. A member-driven organization, UCON protects, educates, and empowers California's union contractors through labor relations and political advocacy, human resources support, safety and regulatory services, professional and leadership development, and industry networking. On the specific question of whether California should maintain a DBE program — or whether such a program benefits its members — UCON takes no position, and by design cannot. Its membership includes general contractors and subcontractors alike throughout the state of California, some of which are DBE-certified and others of which are not. Thus, for purposes of this White Paper, UCON is serving as a conduit of our members' thoughts, opinions and suggestions. In short, UCON speaks here solely as a voice for its members.

The UCON members identified below submit this White Paper for the evaluation and consideration of Caltrans. The comments and suggestions included herein are a compilation of the members' experiences and proposed resolutions to the challenges each faced in dealing with the program enforced by Caltrans prior to the U.S. Department of Transportation's October 3, 2025 Interim Final Rule. Collectively, the below members advance ten targeted policy reforms grounded in a shared conviction: that a credible DBE program depends on a properly maintained Bidders List, a meaningful Opt-in program, and consistent verification of both DBE eligibility and the provision of a Commercially Useful Function (CUF). These are not peripheral improvements — they are paramount to the program's integrity and long-term success.

Respectfully submitted,

Name	Company	General Contractor or Subcontractor	DBE Certified
Bryn Burke	Dees Burke Engineering Constructors, LLC	Subcontractor	Yes
Denise Cooper	Cooper Engineering, Inc.	Subcontractor	Formerly
Rita Ferguson	G&F Concrete Cutting, Inc.	Subcontractor	Yes
Brent Fogg	Granite Construction Company	General Contractor	No
Garrett Francis	Pavement Recycling Systems	Subcontractor	No
Miguel A. Galarza	Yerba Buena Engineering and Construction Inc.	General Contractor	Yes
Mike Ghilotti	Ghilotti Bros., Inc.	General Contractor	No
Marlo Manqueros	Bay Cities Paving & Grading	General Contractor	Formerly
Ramzi Nassoura	DeSilva Gates Construction	General Contractor	No
Brandon Pensick	Ferreira Construction Co., Inc.	Subcontractor	No
Bob Purdy	FBD Vanguard Construction, Inc.	Subcontractor	No
Daniel Rodriguez	Bay Cities Paving & Grading	General Contractor	No
Tom Smith	Ghilotti Construction Company	General Contractor	No
Tanya Stukes	Kiewit Corporation	General Contractor	No

Summary Statement

> **DBE reform should not aim to maximize or minimize DBE participation as an end in itself. It should ensure that every firm counted is eligible, every opportunity reported is real, every dollar credited represents commercially useful work actually performed, every availability calculation reflects the relevant marketplace, and every qualified disadvantaged business has a fair opportunity to compete.**

The March 2, 2026, reevaluation should serve as the eligibility foundation for a broader post-reevaluation system. A successful certification determination establishes eligibility under 49 CFR Part 26; however, it does not, by itself, establish that the firm is active, ready, willing, able, geographically available, properly classified for every listed scope, or performing a commercially useful function on a particular contract. [20]

Proposed Outcomes

If Caltrans accepts and implements the ten policy reforms set out in Section 4, the post-reevaluation program should produce the following outcomes:

- A voluntary layer of current market-readiness information — service area, bonding capacity, bidding interests — that supplements certification without changing who is DBE-certified. (Reform 4.1)
- A bidders list that shows the actual universe of firms pursuing federal-aid work by scope, geography, and contract type. (Reform 4.2)
- A recurring, industry-facing report — the post-reevaluation transition report followed by an annual DBE Program Integrity and Market Report — showing what Caltrans studied, what it found, what changed, and whether reforms improved competition. (Reform 4.3)
- A directory that identifies firms accurately by certification status and specific work capability, clearly distinguishing eligibility from capacity. (Reform 4.4)
- A documented, due-process path to remove ineligible or noncompliant firms, replacing both unchecked participation and summary removal. (Reform 4.5)
- Reduced reliance on paper-based good faith effort compliance, with Caltrans actively pressing USDOT/FHWA to replace it with verified market evidence. (Reform 4.6)
- Commercially useful function monitoring that happens in real time while a DBE is actively performing, not only at contract closeout or after a protest. (Reform 4.7)
- Firms counted as available only for the specific scopes they actually seek and control, rather than under overly broad work classifications. (Reform 4.8)
- Less administrative friction for legitimate specialty contractors, through right-sized contract packaging and risk requirements. (Reform 4.9)
- Future overall goals grounded in actual, demonstrated relative availability rather than legacy assumptions or inflated directory counts. (Reform 4.10)

Supplemental Information

Attached as Appendices A-E respectively is information and proposed protocols to supplement the factors discussed herein including Definitions and Guardrails (Appendix A); Governing Legal Framework (Appendix B); a Model Field CUF Verification Checklist (Appendix C); Real-World Case Studies and Precedents (Appendix D); and a Legal Alignment and Implementation Authority Matrix (Appendix E).

1. Background: The 2025-2026 Reevaluation Reset

1.1 Caltrans Reevaluation Update

Caltrans announced a statewide reevaluation of certified DBE and ACDBE firms following the U.S. Department of Transportation's October 3, 2025 Interim Final Rule, which removed race- and sex-based presumptions of social and economic disadvantage and required individualized proof. Caltrans' March 2, 2026 notification letter moved the reevaluation from policy announcement to an operational certification process: previously certified firms wishing to maintain eligibility were directed to submit a Personal Narrative and updated Personal Net Worth statement through B2Gnow within 45 days, by April 16, 2026. [1][20]

The March 2, 2026 guide states that the owner claiming disadvantage must prove social and economic disadvantage (SED) by a preponderance of the evidence, based on individualized experiences within American society and without regard to race or sex. The Personal Narrative should identify specific instances of economic hardship, systemic barriers, or denied opportunities in education, employment, or business; explain how those impediments caused economic harm; and show economic disadvantage relative to similarly situated non-disadvantaged individuals. The owner must provide a current PNW statement and sign the submission under penalty of perjury. [20]

For this white paper, reevaluation matters beyond certification itself: the process creates a new, time-specific body of eligibility data that Caltrans can use as the starting point for a broader integrity and market review. But the reevaluation should not be mischaracterized. A firm that fails to establish SED under the new standard, or that does not submit the new documentation, is not thereby proven to have been fraudulent or illegitimate under prior rules. Certification eligibility, market capability, and contract-level performance remain separate inquiries.

1.2 Operational Requirements Established by the March 2, 2026 Notice

The reevaluation notice establishes several facts that should anchor Caltrans' transition planning: (1) continued DBE/ACDBE eligibility now requires an affirmative submission of individualized SED evidence; (2) the required submission includes a PN and current PNW statement; (3) Caltrans is using B2Gnow as the submission platform; (4) firms that do not submit remain ineligible until they provide the required documentation; (5) firms denied under the new standard have appeal rights under 49 CFR § 26.89; and (6) confidential personal and financial information generated through this process must be kept separate from public-facing accountability reporting. [20]

The notice also draws a useful program-integrity distinction: certification review asks whether an owner qualifies under Part 26, not whether the firm is active in the relevant market, capable of every listed scope, or performing a CUF on a particular contract. Those questions require separate market and contract evidence.

1.3 The Policy Opportunity

The reevaluation period temporarily removes the pressure to administer contract goals and creates space to validate the program's underlying data. Caltrans should use the transition to connect four evidence layers, rather than returning to a static directory model: eligibility, capability/availability, contract performance, and accountability/enforcement.

- Certification eligibility: whether the firm satisfies ownership, control, size, and individualized SED standards in 49 CFR Part 26, including the new PN/PNW reevaluation requirements where applicable. [20]
- Capability and scope accuracy: the specific work the firm actually performs and controls, reflected through the most specific NAICS code, supplemental work descriptions, licenses where relevant, and other objective capability information.

- Market availability: whether the reevaluated firm is actually ready, willing, and able to bid or quote on the relevant type of Caltrans work in the relevant geographic and contracting market.
- Contract performance and counting: whether the firm performs a commercially useful function on the specific contract and whether the amount counted is consistent with its actual role.

Why this distinction matters
A firm can be legitimately eligible under Part 26 yet not be available for a particular contract. A firm can be available and properly certified but fail to perform a CUF on a specific job. A firm can also fail the revised individualized SED standard without having engaged in fraud under prior rules. Eligibility, capability, and performance must therefore be tested with different evidence.

2. The Problem Statement

Industry criticism of the DBE program is often framed as a debate over participation percentages. The March 2026 reevaluation materials make clear that a more fundamental distinction is necessary: certification eligibility is an individualized legal determination, while market availability and CUF are separate empirical questions. The policy problem is therefore not how many firms are certified, but whether Caltrans can reliably connect eligibility, actual market capability, actual bidding behavior, and actual contract performance.

2.1 Directory Presence Is Not the Same as Market Availability

The federal DBE directory is an eligibility directory, not a guarantee that every listed firm is ready, willing, able, geographically available, properly insured, bondable at the necessary level, interested in the project, or capable of performing every task within a broad industrial classification. Federal regulations now require directories to disclaim that listing does not guarantee a firm's capacity and ability to perform work. [14]

If goal setting relies heavily on directory counts without testing actual market behavior, the numerator can overstate effective availability. Conversely, a weak bidders list can understate availability if subcontract quotations are not captured. Caltrans should treat bidder-list completeness as a core data-quality obligation, not a clerical reporting task.

2.2 CUF Monitoring Can Fail When Verification Occurs Too Late

CUF is inherently factual and contract-specific: it requires observations about who negotiated, ordered, paid, supervised, supplied, hauled, installed, or otherwise performed the credited scope. Those facts are easiest to verify while work is active. A closeout-only review may discover discrepancies after the practical opportunity for correction has passed. Federal guidance specifically recommends early-stage, signed field monitoring. [9]

2.3 Broad Work Classifications Can Distort Both Certification and Goal Setting

A broad NAICS code may encompass activities that a particular firm does not actually perform. Federal rules therefore require specific coding and permit supplemental work descriptions. The policy challenge is to operationalize that precision in bid documents, directories, bidders lists, and goal-setting datasets, so a firm is counted as available only for the scopes it actually seeks and controls. [7]

2.4 GFE Can Become a Paper Process Rather Than a Participation Mechanism

Industry stakeholders report that GFE documentation can reward process activity — emails, solicitation lists, notices, and outreach records — without necessarily proving that the procurement was structured to produce meaningful competition. Federal law, however, currently requires GFE when a recipient establishes a contract goal. Caltrans may therefore advocate for replacement but cannot unilaterally eliminate the mechanism while using federal contract goals. [15]

2.5 Enforcement Must Be Faster Without Becoming Arbitrary

A program that cannot remove ineligible firms or respond to pass-through arrangements loses legitimacy. But summary removal without due process creates a different failure. The solution is an evidence-based escalation system: documented field facts, certification review where appropriate, notice and response, corrective action where curable, and referral for decertification, suspension/debarment, or fraud investigation where warranted. [11][12]

2.6 Certification Counts Cannot Serve as the Availability Denominator

The reevaluation will produce a new population of firms that satisfy the revised federal certification standard. That population is essential, but it is not synonymous with the population of firms available for a particular procurement. Caltrans should distinguish three populations — Population A (Certified), Population B (Market Active), and Population C (Contract Available) — only the third of which is tailored to the federal relative-availability inquiry for a defined market and scope. [4][5][20]

- Population A – Certified: firms that hold current post-reevaluation DBE certification.
- Population B – Market Active: certified firms that appear in bidder-list, quote, subcontract, procurement, or comparable current market data for relevant work.
- Population C – Contract Available: firms demonstrably ready, willing, and able to perform the relevant scope in the relevant geographic and contracting market, considering appropriate work classification and objective market evidence.

Policy rule: certification establishes eligibility. It should be the starting population for availability research, not the automatic denominator for future goal setting.

3. Five-Pillar DBE Integrity and Market Verification Model

The proposed model organizes DBE administration around a continuous integrity cycle. Certification is the starting point, not the end point: market activity and field performance feed back into future verification and goal setting.

Figure 1. Five-Pillar Post-Reevaluation DBE Administration Framework

Pillar	Primary Question	Core Evidence
I. Verified Eligibility	Does the firm currently qualify under Part 26?	Reevaluation determination; ownership/control; individualized SED; current certification status
II. Verified Availability	Is the firm actually active and available for this type of work and market?	NAICS + granular work description; VMPP; bidders list; licenses/capacity; geography; scope fit
III. Verified Performance	Did the firm perform the commercially useful work being credited?	Contemporaneous field observation; supervision; personnel/equipment; materials role; invoices/payments
IV. Program Integrity	Are representations and records accurate, and are violations addressed fairly?	Data reconciliation; risk flags; investigation; corrective action; due-process decertification/referral
V. Opportunity & Participation	Are unnecessary barriers preventing qualified firms from competing?	Right-sized bonding/insurance; supportive services; accessible packaging; specialty protocol; procurement transparency

3.1 Five-Pillar Architecture

The post-reevaluation system should connect five layers of evidence rather than treating certification, market availability, and performance as interchangeable. Accountability is the cross-cutting control that measures whether each pillar produces reliable results.

3.2 Design Principles

- Eligibility before counting: participation should not be represented as DBE participation unless certification status is current, and current status should then be paired with scope accuracy and contract-level CUF evidence rather than treated as proof of capability or performance.
- Work-scope precision: each claimed scope should map to a specific NAICS code and, where needed, a supplemental work description or equivalent work code.
- Real-time monitoring: CUF should be verified while work is observable, with signed documentation.
- Market evidence over assumptions: bidders-list data and actual quotation behavior should be central to availability estimates.
- Due process with consequences: suspected bad actors should be investigated promptly, but removals must follow federal certification and enforcement procedures.
- Public accountability with confidentiality: Caltrans should publish aggregate, non-confidential program performance data while protecting personal narratives, personal net worth data, tax information, and other protected certification records.

3.3 Post-Reevaluation Baseline Sequence

Caltrans should complete a defined baseline sequence before relying on post-reevaluation data for restored goal-based administration: Reevaluation → Directory Reconciliation → Work-Code Validation → Bidders-List Reconciliation → Relative-Availability Analysis → Goal Methodology. Each stage should have documented data-quality thresholds and a public explanation of material assumptions.

This sequencing avoids a circular result in which legacy directory counts are treated as proof of current availability simply because those counts existed before the regulatory reset.

Recommended Caltrans commitment

After substantial completion of reevaluation and before restoring full goal-based administration, publish a Post-Reevaluation DBE Program Integrity Transition Report showing: firms notified and dispositions; aggregate recertification outcomes; appeal status; directory cleanup; bidder-list quality; work-code methodology; CUF readiness; and the method Caltrans will use to convert the post-reevaluation eligible population into defensible scope-specific relative-availability estimates.

4. Ten Policy Reforms and Post-Reevaluation Controls

This White Paper advances ten reforms requested by industry stakeholders:

1. **Opt-in program**: Create a voluntary Verified Participation Program for recertified firms and participating primes that rewards transparency, readiness, fast payment, and verified performance without creating unlawful demographic preferences.
2. **Bidders List**: Make the federally required bidders list the primary empirical tool for measuring who actually seeks Caltrans work and for validating relative availability and create an "Active Regional Bidders" List which identifies certified firms that are active, ready, willing, able, geographically available, and properly classified for the listed scope.
3. **Accountability**: require Caltrans to report publicly on DBE research, data collection, reevaluation results, and program performance, while independently verifying certification status before participation is represented as eligible.
4. **Legitimacy**: revisit the accuracy and legitimacy of firms listed in the DBE directory through disciplined reevaluation, current work-code validation, and risk-based compliance checks.
5. **Elimination of bad actors**: create an escalation pathway from field discrepancy to investigation, corrective action, decertification, suspension/debarment referral, or fraud referral, with due process.

6. **Good Faith Effort (GFE)**: seek federal reform to eliminate or substantially replace GFE as a contract-goal compliance mechanism; until federal law changes, use it only where 49 CFR Part 26 requires it.
7. **Commercially Useful Function (CUF)**: when DBE counting resumes, require Resident Engineers or trained designees to make timely on-site observations and signed written verification while the DBE is actually performing.
8. **NAICS/work-code usage**: move away from overly broad single-code descriptions by pairing the most specific NAICS code with granular work descriptions or equivalent work codes for each scope.
9. **Special allowance for specialty contractors**: recognize small, specialized scopes and atypical sub-contracting structures when evaluating market availability, bonding, insurance, and work packaging.
10. **Clarity on disparity studies and goal setting**: ensure future goals are tied to current, verified, scope-specific availability data and do not treat the directory as proof that every certified firm is ready, willing, and able for every advertised scope.

4.1 Opt-In Program: Verified Market Participation Program (VMPP)

Recommendation. Treat the 2026 reevaluation as the first affirmative opt-in decision — firms wishing to maintain DBE/ACDBE eligibility must submit the new documentation — and build a separate voluntary Verified Market Participation Program (VMPP) on top of certification. VMPP should not change who is DBE-certified. Instead, recertified firms may opt in to maintain enhanced market-readiness information, such as specific work descriptions, service area, bidding interests, bonding/insurance ranges, and contact responsiveness, while participating primes may opt in to enhanced transparency, fast-payment, and mentor/procurement practices. [20]

Possible participant commitments include maintaining current work descriptions, responding to project-interest surveys, providing bonding/insurance capacity ranges, agreeing to electronic prompt-payment tracking, participating in early CUF orientation, and updating bidder-list information. Prime contractors could opt in by agreeing to fast-pay practices, standardized scope solicitations, subcontractor feedback, and transparent quote reporting.

Possible benefits should remain legally neutral and could include earlier project forecasting, matchmaking, technical assistance, bonding/insurance support, training priority, pre-bid scope clinics, and streamlined administrative handling. Any bid preference or monetary advantage should be separately reviewed for federal and state procurement authority before implementation.

Federal alignment. Section 26.39 affirmatively requires small-business participation measures and allows multiple strategies to remove obstacles. Caltrans also already operates supportive-services and business-development programs that assist firms with bidding, capital, bonding, insurance, and project management. [13][16]

The VMPP should be expressly separate from certification. Participation should be voluntary, and failure to enroll should not affect DBE eligibility. A recertified firm that elects to participate could provide current information on scopes actively sought, geographic service area, project-size range, bonding and insurance capacity, equipment, workforce, licenses, willingness to receive solicitations, and interest in prime or subcontract opportunities. The program should function as a market-information and barrier-reduction tool, not an additional certification requirement.

No Adverse Inference

A firm's decision not to enroll in the VMPP, a lack of recent bids or quotes, infrequent appearance in bidders-list data, or temporary inactivity should not by itself support decertification, an integrity finding, non-responsibility, or another adverse determination. VMPP and market-activity data are tools for measuring availability and designing outreach; they do not replace the federal certification process or contract-specific evidence. Where inactivity matters to an availability analysis, Caltrans should document the inference, test alternative explanations, and apply comparable standards to DBE and non-DBE firms.

4.2 Bidders List: Make It the Market Truth Set

Recommendation. Caltrans should treat the bidders list as the primary bridge between reevaluated certification status and actual market availability. Post-reevaluation directory data should be reconciled with prime bids and subcontractor quotes so Caltrans can distinguish firms that are certified from firms that actually pursue particular scopes, in particular geographic markets, at relevant contract sizes.

Federal alignment. Section 26.11(c) expressly requires this data and states that its purpose is to compile accurate information about the universe of firms seeking federally assisted contracts and to support goal setting. Federal goal-setting guidance also recognizes bidders lists as a focused measure of ready, willing, and able firms because they reflect actual market participation. [4][5]

Caltrans should establish a recurring reconciliation across the DBE Directory, VMPP, Bidders List, award data, and payment data. This comparison can identify certified firms that do not bid, firms that quote but are rarely awarded work, scopes with persistent shortages of available DBEs, firms whose claimed participation is not reflected in payment or performance records, and firms progressing from subcontractor to prime. The bidders list should function as the primary reality check on claimed market availability, not merely as a reporting requirement. [4]

4.3 Accountability: A Mandatory Industry Report-Back

Recommendation. Caltrans should publish a post-reevaluation transition report, followed by an annual DBE Program Integrity and Market Report, and present the findings in a recurring public industry forum. The first report should disclose — in aggregate, without publishing protected PN/PNW information — the number of firms contacted for reevaluation; submissions received; recertifications; denials; non-submissions/ineligible records; voluntary withdrawals; appeals and outcomes; processing times; and distribution by certifying agency, geography, NAICS/work description, and major industry sector. The annual report should then disclose bidders-list completeness, directory changes, CUF review results, enforcement activity, payment performance, and how those findings affected availability and goal-setting methodology. [20]

Federal alignment. Section 26.11 already requires recipients to maintain and submit extensive DBE program data, including bidder-list data and certification records. The March 2, 2026 reevaluation process creates additional certification-stage information, but the PN, PNW statement, tax/financial material, and other protected personal information should not be published. The proposed public report is an additional transparency measure built around aggregated or otherwise non-confidential results, not a substitute for federal reporting. [4][20]

Implementation standard. Every major research project, disparity study, availability analysis, or pilot should have a publication deadline, methodology statement, responsible office, and response-to-industry section explaining what action Caltrans will take, or why it declines a recommendation.

Post-Reevaluation Outcomes Dashboard. Caltrans should publish a non-confidential dashboard after substantial completion of reevaluation and update it on a predictable schedule. At minimum, it should report firms notified; PN/PNW submissions; recertifications; denials; non-submissions; voluntary withdrawals; pending cases; appeals and outcomes; median processing time; work-category distribution; bidder-list activity; and material changes in estimated availability. Personal narratives, PNW statements, tax information, and other protected certification records should not be published. [20]

4.4 Legitimacy: Revalidate the Directory, Not Just the Owner

Recommendation. The reevaluation should be paired with a directory-quality and market-capability review confirming each firm's current certification status, active business operations, specific NAICS codes, supplemental work descriptions, required licensing where relevant, basic contact accuracy, and evidence of actual market activity. Caltrans should expressly distinguish a reevaluation outcome from an integrity finding: failure to prove SED under the new individualized standard, or failure to submit the new materials, should not by itself be labeled fraud or proof that a firm was previously illegitimate. [20]

Federal alignment. Section 26.31 requires UCP directories to list the types of work a firm is certified to perform using the most specific NAICS code and allows supplemental information such as licenses, prequalification, and bonding capacity. Section 26.73 requires codes to remain current and accurately reflect the work the firm's disadvantaged owners control. [7][14]

Important legal distinction
Caltrans should not use subjective impressions of whether a firm looks "legitimate" as a substitute for federal certification standards. The March 2026 reevaluation determines current eligibility under individualized SED criteria. Separate objective evidence is required to assess work capability, availability, CUF performance, or misconduct. A denial or non-submission in reevaluation should not be described as fraud absent independent evidence.

The legitimacy review should therefore focus on record accuracy and market truth: current certification status, precise work classification, active contact information, objective evidence of market participation, and consistency between directory representations and actual contract activity. It should not impose a second, extra-regulatory certification test after Caltrans has already determined eligibility under Part 26.

4.5 Program Integrity, Enforcement, and Removal of Ineligible or Noncompliant Participants

Recommendation. Establish a DBE Integrity Review Protocol, separate from routine SED reevaluation, using five escalation levels: (1) field or data discrepancy; (2) immediate documentation and cure request; (3) program compliance review; (4) certification, responsibility, or enforcement referral; and (5) decertification, suspension/debarment, False Claims Act, or law-enforcement referral where evidence supports it. A repeat-risk database should flag patterns across contracts while preserving due process. A firm should enter this enforcement track because of evidence of misrepresentation, pass-through activity, noncooperation, CUF failure, or another program violation — not merely because it does not satisfy the revised SED standard.

Federal alignment. Section 26.87 governs decertification and generally requires notice and an opportunity to respond. Section 26.109 recognizes suspension/debarment and non-responsibility consequences for noncooperation and program violations. Caltrans should use these tools aggressively where evidence supports action, but should not create a summary blacklisting process outside the governing rules. [11][12]

Caltrans should administer two distinct tracks. Track A — Eligibility addresses whether a firm currently qualifies under Part 26, including reevaluation, certification appeals, and decertification procedures. Track B — Integrity addresses whether a participant engaged in misrepresentation, pass-through activity, false CUF representations, improper control arrangements, fraud, or other prohibited conduct. Failure to establish SED under the revised standard, a decision not to submit reevaluation materials, or an unsuccessful appeal does not by itself establish misconduct. [11][12][20]

Integrity cases should move through a documented escalation pathway: discrepancy identification → evidence preservation → notice and opportunity to respond → corrective action where appropriate → formal investigation → decertification or other administrative action when authorized → suspension/debarment or fraud referral where warranted.

Table 1. Graduated Program-Integrity Response Matrix

Trigger / Evidence	Initial Response	Escalation Standard	Potential Outcome
Clerical, stale, or inconsistent record	Request correction or supporting documentation	Unresolved material discrepancy	Correct record; close with audit trail
Potential CUF or scope-performance deficiency	Contemporaneous field review; preserve records; allow explanation/cure where appropriate	Evidence of material or repeated noncompliance	Corrective action; credit adjustment where authorized; compliance review
Repeated or material program noncompliance	Formal compliance or integrity investigation with notice	Substantiated violation under applicable rules or contract	Administrative action; certification or responsibility referral
Evidence of intentional misrepresentation, pass-through, fraud, or knowing false claim	Preserve evidence and refer to appropriate compliance/counsel authorities	Evidence satisfies governing referral/enforcement threshold	Decertification process, suspension/debarment referral, False Claims Act or law-enforcement referral as applicable

Due Process and False-Positive Safeguards

A data or field flag should trigger proportionate review, not a presumption of wrongdoing. Caltrans should distinguish clerical errors, stale records, business inactivity, good-faith performance disputes, certification ineligibility, and intentional misrepresentation.

Before a material adverse integrity determination, the affected firm should receive notice of the concern, a reasonable opportunity to provide records or explanation, a documented written determination identifying the evidence relied upon, and access to any review or appeal procedures required by 49 CFR Part 26, other applicable law, or the contract.

The March 2, 2026 reevaluation notice confirms that firms denied certification under the revised eligibility standard have appeal rights under 49 CFR § 26.89. The same principle of documented process should inform integrity administration, recognizing that different enforcement actions may be governed by different authorities.

No Penalty to General Contractors

In the event a DBE is unable to perform or defaults on its performance and is on the critical path of the project, Caltrans should provide the General Contractors with appropriate time extensions for its performance commensurate with the delay caused by the non-performing or defaulted DBE.

4.6 Good Faith Effort (GFE): Replace Process Compliance with Market Evidence

Recommendation. Caltrans should formally request that USDOT/FHWA evaluate eliminating or replacing GFE as a contract-goal mechanism, and support a pilot model relying on verified availability, procurement design, actual quotes, and post-award performance rather than outreach paperwork. During the present reevaluation pause, Caltrans should study whether prior GFE determinations correlated with actual DBE awards and payments.

Federal alignment. Under existing 49 CFR § 26.53 and Appendix A, GFE is mandatory when a contract goal is used, so Caltrans cannot simply eliminate GFE on federally assisted contracts that again use contract goals. The lawful pathways are a federal rule change; an approved federal waiver or demonstration authority if available; or a race-neutral program design that does not use contract goals where federal law permits. [15]

Policy position

The white paper recommends elimination of GFE as a long-term federal policy objective, not unilateral Caltrans noncompliance. In the interim, Caltrans should reduce avoidable reliance on contract goals by strengthening race-neutral small-business measures under § 26.39 and by using verified market data.

4.7 Commercially Useful Function (CUF): Put Verification in the Field

Recommendation. When DBE participation counting resumes, the Resident Engineer (RE) — or a specifically designated and trained field representative accountable to the RE — should complete the required on-site CUF monitoring while each DBE is actively performing its principal scope. The verification should identify the personnel, equipment, materials, supervision, trucking, ordering/payment responsibility, and subcontracting actually observed. Any inconsistency should trigger same-week review.

Federal alignment. Section 26.37(b) requires written verification that records were reviewed and the work site monitored; USDOT guidance requires monitoring on every contract where DBE participation is claimed and recommends early-stage field observation. Caltrans already uses CEM-2410 and related monitoring forms — the recommendation assigns clear responsibility and timing to an existing federal requirement. [6][9][10]

Current reevaluation caveat. Caltrans has stated that CUF reviews are suspended during the reevaluation period because participation is not being counted toward DBE goals. The RE requirement proposed here should take effect when counting resumes, or whenever Caltrans otherwise represents participation as DBE-creditable. [3]

CUF verification should be contemporaneous. For material or higher-risk scopes, the recommended protocol is: (1) initial observation shortly after the DBE begins active performance; (2) mid-performance observation where duration or risk warrants; and (3) closeout reconciliation of observed work, subcontract records, invoices, payments, substitutions, and final credit. A retrospective desk review should supplement, not replace, observation while the DBE is actually performing. [6][8][9][10]

4.8 NAICS Code Usage: Require Scope-Level Precision

Recommendation. Caltrans should require each relevant scope to be identified with the most specific available NAICS code and a plain-language work description. Where a single NAICS code is broader than the actual certified capability, Caltrans should use a supplemental work code or narrative descriptor. Bid forms should allow multiple scope entries rather than forcing all work into one broad classification.

Federal alignment. This proposal follows 49 CFR § 26.73 directly. Federal rules permit multiple NAICS codes and allow supplemental work codes of equivalent detail, but the work code cannot replace or override the NAICS classification. [7]

Goal-setting implication. Bidder-list records should capture the NAICS code applicable to each scope the firm sought to perform, as required by § 26.11(c). This creates a cleaner link between certification scope, bid activity, and future relative-availability calculations. [4]

Every DBE participation record should distinguish three fields: (1) Federal NAICS Classification — the most specific applicable NAICS code; (2) Caltrans Granular Work Code/Description — a supplemental description identifying the actual type of work the firm is certified to perform; and (3) Actual Contract Scope Being Credited — the specific work for which DBE participation is claimed on the contract. These fields should be capable of reconciliation, not collapsed into one broad code. [7]

4.9 Special Allowance for Specialty Contractors

Recommendation. Caltrans should adopt a specialty-contractor protocol for scopes where the number of qualified firms is naturally small, equipment is highly specialized, work is intermittent, or industry practice involves unusual teaming or supplier structures. The protocol should affect contract packaging and risk requirements, not weaken CUF or certification standards.

The protocol should allow scope-specific procurement planning, smaller work packages where feasible, realistic mobilization assumptions, recognition of limited regional markets, and consideration of whether standard insurance/bonding thresholds are disproportionate to the specialty scope. For availability studies, specialty trades should be analyzed at the level of work actually procured, not buried in a broad category.

Federal alignment. Section 26.39 encourages recipients to eliminate unnecessary bundling and create work packages small businesses can reasonably perform. Section 26.45 requires goals to reflect the actual relevant market. [5][13]

Specialty Contractor Availability Protocol. For narrow or atypical scopes, availability should be assessed using the intersection of work scope, required license or qualification, geography, contract size, market structure, bonding/insurance needs, and historical bidding or quoting activity. This protocol should prevent statewide or overly broad directory counts from overstating the number of firms realistically available for a specialized subcontract.

4.10 Clarity on Disparity Studies and Goal Setting

Recommendation. Before Caltrans restores or revises overall or contract goals, it should publish a methodology paper explaining how the post-reevaluation population was converted into a measure of actual relative availability. The analysis should use reevaluated certification status as a starting point, then apply scope-specific NAICS/work descriptions, bidders-list activity, relevant market geography, and other defensible measures of readiness and capacity. A raw statewide count of recertified firms should not be treated as proof that those firms are available for every anticipated procurement. [20]

Federal alignment. Section 26.45 requires demonstrable evidence of relative availability and a two-step methodology. Federal guidance explains that disparity-study data should be as recent and transportation-focused as possible, and that proven capacity and other evidence may inform Step 2 adjustments. [5]

Policy standard. Every published goal should be traceable to a dataset that lets industry and FHWA understand: which firms were actually eligible after reevaluation; what scopes are being bought; how many DBEs and non-DBEs actually bid or quote on those scopes; which geographic market is relevant; how specialty trades are handled; what capacity assumptions are used; and what adjustments were made after the base figure was calculated.

Post-Reevaluation Baseline Rule. Before restoring or materially recalibrating goal-based administration, Caltrans should publish the methodology used to move from Population A (Certified) to Population B (Market Active) to Population C (Contract Available). The methodology should disclose the relevant geographic and product market, data sources, work-code filters, bidder-list treatment, specialty-contractor assumptions, and any adjustments applied under 49 CFR § 26.45. [4][5]

The central methodological proposition is that goal setting should reflect demonstrated relative availability. The number of firms appearing in a directory is evidence of certification status; it is not, standing alone, proof that every listed firm is ready, willing, and able to perform every advertised scope.

Model Decision Rule

Where the number of certified firms materially exceeds the number of firms demonstrated through current market evidence to be ready, willing, and able to perform the relevant work, Caltrans should document the discrepancy, investigate its causes, and base relative-availability estimates on the most probative current market evidence rather than directory count alone.

Conversely, where bidders-list or procurement data appear incomplete, Caltrans should not mechanically reduce measured availability. It should first test data completeness, outreach coverage, work-code accuracy, geographic assumptions, contract-size effects, and specialty-market conditions. The methodology should explain how missing or conflicting evidence was treated.

This rule should be applied consistently to DBE and non-DBE firms within the relevant market, so the numerator and denominator are constructed using comparable standards of market participation and capability.

Data-Quality Hierarchy for Availability Evidence

Caltrans should not treat any single dataset as dispositive. For relative-availability analysis, evidence should be weighted according to recency, scope specificity, verification, and comparability across DBE and non-DBE firms. The following hierarchy should guide — not mechanically dictate — the analysis:

- Highest probative value: verified recent bids, subcontract quotes, awards, and documented pursuit of the same or closely comparable work.
- High probative value: validated VMPP information, current licenses, geographic service area, bonding/insurance capacity, staffing/equipment, and verified work history relevant to the scope.
- Corroborating value: multi-period bidders-list history, prior Caltrans or comparable agency participation, and other objective evidence of market activity.
- Baseline value: current certification-directory presence and approved classifications, which establish eligibility/classification but not, standing alone, contract-specific availability.

When sources conflict, Caltrans should document which evidence was given greater weight and why. Data gaps should trigger validation or sensitivity analysis, not an automatic assumption that a firm is either available or unavailable.

5. Implementation Roadmap and Pilot

5.1 Phase 1 – Reevaluation and Data Stabilization (0–6 Months)

- Complete the statewide reevaluation and publish aggregate outcomes, including firms contacted, submissions, recertifications, denials, non-submissions/ineligible records, voluntary withdrawals, appeals, and processing times, segmented where appropriate by certifying agency, geography, and work classification, subject to confidentiality rules. [20]
- After reevaluation decisions, clean the CUCP directory — current status, contacts, NAICS, supplemental work descriptions, licenses where relevant, and other public capability fields — without exposing PN, PNW, or protected financial material.
- Audit bidder-list completeness for the prior two federal fiscal years and identify missing subcontractor quote data.
- Create a cross-functional DBE Integrity Working Group including Caltrans OCR, Construction, Local Assistance, Legal, Procurement, and FHWA representatives.
- Publish a Post-Reevaluation DBE Transition and Data Methodology Memorandum explaining the new certification population, what the reevaluation results do and do not establish, and how Caltrans will connect certification status to work-code accuracy, bidders-list activity, CUF monitoring, and future relative-availability calculations.

5.2 Phase 2 – Pilot Verification and Opt-In Program (6–12 Months)

- Launch VMPP in two or three districts and at least one local-assistance cohort.
- Require scope-level NAICS/work descriptions in pilot solicitations and bidder-list reporting.

- Train REs and field staff on CUF monitoring, supplier/broker distinctions, and escalation protocols before counting resumes.
- Pilot right-sized bonding/insurance tiers on selected specialty scopes after legal and risk review.
- Create a public dashboard showing aggregate bidder activity, payment timeliness, CUF completion rates, and data completeness.

Pilot Design. Phase 2 should operate as a 12-month controlled pilot across multiple districts and contract types, including at least one heavy-civil contract family and one specialty-intensive contract family. Caltrans should define a baseline period and measure DBE bids/quotes, active-firm count, CUF review timeliness, CUF findings, substitutions, prompt-payment performance, bonding/insurance barriers, administrative burden, committed versus paid DBE dollars, and participant feedback.

An independent or functionally separate evaluation team should report pilot findings to Caltrans leadership and industry before statewide expansion. The pilot report should identify which reforms improved market data or integrity, which created disproportionate burden, and which require FHWA or USDOT approval before broader implementation.

5.3 Phase 3 – Goal-Setting Integration (12–18 Months)

- Use refreshed bidder-list and disparity-study evidence to calculate relative availability under § 26.45.
- Publish the proposed methodology and allow industry comment before submission to FHWA where practicable.
- Explain how specialty contractors, work-code specificity, geographic markets, and capacity evidence were handled.
- If contract goals resume, implement required GFE procedures while continuing to advocate for federal replacement or reform.
- Begin DPIS monitoring on contracts where DBE participation is counted.

5.4 Phase 4 – Institutionalize Accountability (18–24 Months)

- Issue the first annual DBE Program Integrity and Market Report.
- Publish response-to-industry actions and unresolved issues.
- Review enforcement outcomes and adjust risk indicators.
- Update the Caltrans DBE Program Plan and CUCP procedures as required, with FHWA approval for significant changes.
- Conduct an independent program audit every three years, focused on data quality, CUF execution, directory accuracy, and goal-setting traceability.

5.5 Implementation Accountability Scorecard

Caltrans should publish a time-bound implementation scorecard so reform commitments can be measured against specific deliverables rather than general statements of intent. The milestones below are illustrative and should be synchronized with the actual date of substantial completion of statewide reevaluation.

Table 2. Model 90-Day / 1-Year / 2-Year Implementation Scorecard

Milestone	Required Deliverables	Public Evidence
Within 90 days	Publish definitions, data-governance plan, responsible offices, bidders-list quality plan, CUF field-verification protocol, and methodology workplan.	Implementation memorandum; public project tracker; data dictionary.
Within 1 year	Publish post-reevaluation outcomes, reconcile directory and bidders-list data, launch or report VMPP pilot, report	Annual DBE Program Integrity and Market Report; dashboard; pilot findings.

Milestone	Required Deliverables	Public Evidence
	CUF timeliness/results when counting resumes, and report bonding/insurance pilot outcomes.	
Within 2 years	Publish revised relative-availability methodology, explain treatment of specialty markets, report adoption status of each white-paper recommendation, and identify any requested federal changes.	Methodology paper; recommendation disposition matrix; updated DBE Program Plan where applicable.

6. Post-Reevaluation Baseline, Data, and Accountability Architecture

6.1 Post-Reevaluation Baseline and Outcomes Dashboard

Following substantial completion of reevaluation, Caltrans should publish an anonymized baseline report before relying on the refreshed directory as a proxy for market availability. The report should reconcile certification outcomes with work classifications, bidder-list activity, award/payment records, and other defensible availability evidence, and should clearly identify what the reevaluation establishes — eligibility — and what additional data are needed to establish active market availability and contract-specific capability.

6.2 Annual Public Report

Caltrans should commit to a predictable annual publication date. The first publication after substantial completion of reevaluation should include a dedicated transition chapter using anonymized, aggregate results from the March 2026 process. The report should give industry enough detail to understand whether the program is working, without disclosing Personal Narratives, PNW statements, tax information, or other protected certification records. At minimum, it should report:

- Reevaluation: firms notified; submissions received; recertifications; denials; non-submissions/ineligible records; voluntary withdrawals; pending matters; appeals and outcomes; and processing times.
- Directory quality: number of post-reevaluation firms with updated NAICS/work descriptions; inactive contacts corrected; duplicate or stale records resolved; and percentage of records linked to current capability information.
- Bidders list: number of prime bids and subcontract quotes captured; missing-data rate; scope-level NAICS completeness; district/subrecipient compliance.
- Participation: commitments, actual payments, first-tier/sub-tier distribution, substitutions, and terminations when counting resumes.
- CUF: reviews required, completed on time, deficiencies found, corrective actions, and unresolved cases.
- Enforcement: complaints received, investigations opened, decertification proceedings, suspensions/debarment referrals, fraud referrals, and final dispositions where public.
- Market analysis: relative-availability calculations by major work category and geography; explicit reconciliation of reevaluated certification counts with bidders-list activity; methodology changes from prior year.
- Barrier reduction: bonding/insurance assistance, supportive-services outcomes, VMPP participation, and specialty-scope pilots.
- Industry feedback: recurring issues raised, Caltrans response, action owner, and status.

6.3 Unique-Firm Master Record and Data Governance

Caltrans should maintain an authoritative unique-firm master record linking, through stable identifiers, the CUCP directory, reevaluation status, approved NAICS and supplemental work descriptions, bidders-list activity, contract awards, subcontract commitments, payment records, CUF reviews, substitutions/terminations, and public enforcement dispositions where legally appropriate.

The master record should distinguish source-of-truth fields from analytical fields. Certification status and certified work classifications should come from the responsible certifier/CUCP record; project staff should verify current status against that authoritative record at relevant procurement and counting points, rather than independently re-adjudicating certification eligibility.

Access controls should separate certification-sensitive information from contract-administration analytics. Personal Narratives, Personal Net Worth statements, tax records, and other protected materials collected through reevaluation should not be replicated into market-analysis datasets or public dashboards. Public reporting should use aggregated results and non-confidential fields.

Caltrans should publish a data dictionary identifying each field, source system, update frequency, responsible office, retention rule, quality-control process, and whether the field may be used for certification, market-availability analysis, CUF monitoring, enforcement, or public reporting.

6.4 Verification Points

Current DBE certification status should be verified against the authoritative CUCP directory or certifier record at four control points: (1) when a bidder claims or proposes DBE participation; (2) before award or notice to proceed where the claim affects procurement administration; (3) when a substitution, termination, or material scope change occurs; and (4) before final DBE credit is reported. Project staff should verify status, not independently re-adjudicate the owner’s certification eligibility. Capability and CUF are separate questions requiring their own evidence.

6.5 Confidentiality

Transparency does not justify publishing personal narratives, personal net worth statements, tax returns, or confidential business information. Public reporting should use aggregated data, public directory fields, final public enforcement outcomes, and de-identified trend information where appropriate. Caltrans should publish a data dictionary identifying which fields are public, restricted, or confidential.

6.6 Caltrans Response Required

To convert consultation into accountability, Caltrans should publish a formal disposition for each material recommendation raised by industry, this white paper, subsequent research, and pilot evaluations. A response should not be limited to acknowledgment — it should identify the decision, rationale, responsible office, next action, and expected date.

Table 3. Required Caltrans Recommendation Dispositions

Disposition	Meaning	Minimum Public Response
Accept	Caltrans agrees and will implement under existing authority.	Action owner, implementation date, metric, and reporting location.
Pilot	Caltrans agrees the concept warrants controlled testing before statewide adoption.	Pilot scope, duration, evaluation criteria, and decision date.
Refer to USDOT/FHWA	The recommendation cannot be fully implemented by Caltrans alone or requires federal concurrence/change.	Specific federal issue, referral/request made, status, and interim state action if any.
Decline	Caltrans will not implement the recommendation.	Specific legal, factual, operational, or policy rationale supported by available data.

Caltrans should include the disposition matrix in the annual public report and carry unresolved items forward until closed. For recommendations referred to USDOT/FHWA, Caltrans should report the date of referral, federal response if received, and any interim steps available under existing authority.

6.7 Independent Validation

At least once every two to three years, Caltrans should commission an independent validation of the principal methodologies and controls used to administer the post-reevaluation program. The review should test the integrity of relative-availability calculations, bidders-list completeness and comparability, a sample of CUF monitoring records, implementation of the data-quality hierarchy, and the accuracy of published performance metrics.

The independent reviewer should be organizationally separate from the offices responsible for producing the data being validated, and should have access to sufficient non-public information to test methodology without publicly disclosing protected certification or business records. Caltrans should publish the reviewer’s methodology, material findings, management response, corrective-action commitments, and closure status, subject to lawful confidentiality restrictions.

7. Expected Benefits and Risks

7.1 Expected Benefits

- Greater confidence that certified firms listed for a scope are accurately described and currently eligible.
- Better overall-goal methodology, because bidders-list data captures actual participation attempts, not only directory presence.
- Earlier detection of pass-through, broker, supplier, or scope problems before they harden into payment disputes or bid protests.
- Less administrative friction for legitimate specialty firms through right-sized packaging and risk requirements.
- Stronger public and industry confidence through annual reporting and visible follow-through on research and complaints.
- More defensible Caltrans/FHWA decisions, because key determinations are tied to documented evidence and federal regulatory standards.

7.2 Risks and Mitigations

Risk	Why It Matters	Mitigation
Over-enforcement	Legitimate firms may be chilled by subjective legitimacy screens.	Use objective criteria, written evidence, trained reviewers, and § 26.87 due process.
Data burden	Small firms may struggle with repeated reporting.	Collect once, reuse across systems, prepopulate fields, and limit requests to required/decision-useful data.
False precision	A numeric integrity score may be mistaken for proof.	Use DPIS only for monitoring triage; require factual findings for enforcement.
Privacy	Reevaluation records contain sensitive financial and personal data.	Publish aggregated metrics and enforce a clear data-classification policy.
Federal conflict	State innovation could conflict with Part 26.	Create a legal review gate; submit significant program changes to FHWA/OA for approval.
Barrier shifting	Reduced bonding or insurance could move risk to primes or public owners.	Use actuarial/risk-based tiers, not blanket waivers; pair with surety and insurance assistance.

8. Conclusion

The March 2, 2026 notice creates an affirmative, individualized re-certification process based on PN and PNW submissions, preponderance-of-the-evidence review, and appeal rights. That process can establish who is eligible under the revised rule; it does not by itself establish who is active in the market, capable of a particular scope, or performing a CUF on a particular contract. [20]

A modernized DBE program should be judged by the quality of evidence that support verified eligibility, demonstrated market capability/availability, and verified contract performance. Accountability should connect those layers through transparent aggregate reporting, complete bidders-list data, real-time CUF monitoring, and due-process enforcement.

Success should be measured not by whether a numerical goal was met, but by whether the program created fair competition among eligible and demonstrably available firms and credited only commercially useful participation.

The practical standard should be simple: every firm counted is eligible; every availability claim is supported by current market evidence; every credited dollar corresponds to commercially useful work actually performed; every enforcement decision rests on objective facts and due process; and every avoidable barrier to legitimate competition is identified and addressed. The foregoing will result in a DBE Program that works.

Appendix A. Definitions and Guardrails

For purposes of this white paper, the following terms are used narrowly, to preserve the distinction between federal certification eligibility, market availability, and contract-level performance.

Definitions:

- Eligible / Certified DBE: a firm currently certified by the responsible California Unified Certification Program (CUCP) certifier under 49 CFR Part 26. Certification status is determined by the certifier, not by project staff, prime contractors, or market-participation analytics.
- Legitimacy / Program Integrity: whether directory information is accurate and whether a participant complies with applicable program and contract requirements. A reevaluation denial, non-submission, market inactivity, or data discrepancy is not, by itself, evidence of fraud or misconduct.
- Market Active: a certified firm for which current, objective evidence shows bidding, quoting, subcontracting, prime-contract pursuit, or other participation in the relevant transportation market.
- Available: a firm that is eligible where certification is required and is demonstrably ready, willing, and able to perform the relevant scope in the relevant geographic and product market at the contemplated contract size.
- Specialty Contractor: a firm performing a narrow, technically specialized, licensed, equipment-intensive, intermittent, or otherwise atypical scope for which statewide directory counts may not reflect the actual competitive market.
- Verified Market Participant: a firm voluntarily providing current market-capability information through the proposed VMPP. VMPP participation does not create, renew, suspend, or revoke DBE certification.

Guardrails:

- Data-derived flags, bidders-list anomalies, CUF concerns, inactivity, or mismatches among records should be treated as indicators for review. They should not automatically result in decertification, a finding of nonresponsibility, a withholding of credit, suspension, or other adverse action without the process required by applicable law and contract terms.

Appendix B. Governing Legal Framework

B.1 October 3, 2025 Interim Final Rule

The 2025 IFR amended 49 CFR Parts 23 and 26 to require nondiscriminatory administration of the DBE and ACDBE programs and eliminated race- and sex-based presumptions of disadvantage. It also revised provisions affecting certification, goal setting, counting, monitoring, and small-business participation. Caltrans and FHWA-funded subrecipients are bound by those federal requirements as a condition of federal assistance. [2][3]

B.2 Bidders List and Market Data – 49 CFR § 26.11(c)

The bidders list is not optional. Section 26.11(c) requires recipients to obtain bidder-list information for DBE and non-DBE prime contractors and subcontractors that bid or quote on federally assisted contracts. The required data include firm name, address, DBE status, the NAICS code applicable to each scope sought, firm age, and annual gross receipts. The stated purpose is to compile accurate information about the universe of firms seeking federally assisted work and to support overall goal setting. [4]

B.3 Goal Setting – 49 CFR § 26.45

When overall goal setting resumes, the federal rule requires demonstrable evidence of the relative availability of ready, willing, and able DBEs compared with all ready, willing, and able firms in the relevant market. A recipient may not simply reuse a prior goal, the national 10 percent aspirational figure, or past participation without measuring current market availability. The federal framework expressly recognizes bidders lists, DBE directories paired with Census data, disparity studies, and other approved methods as potential evidence. [5]

B.4 Monitoring and CUF – 49 CFR §§ 26.37(b) and 26.55

Federal law requires a monitoring and enforcement mechanism to ensure that work committed or subcontracted to DBEs is actually performed by those firms and counted consistently with § 26.55. The recipient's mechanism must include written verification that contracting records were reviewed and the work site was monitored. USDOT guidance further states that monitoring must occur on every contract on which DBE participation is claimed and should occur while the DBE is active, not only at contract closeout. [6][9]

Caltrans already maintains CUF forms for contractors, manufacturers, regular dealers, brokers, and professional services. The proposed reform does not require inventing a new compliance concept; it requires making field ownership unmistakable and ensuring that the Resident Engineer or trained designee completes the observation at the time the work can actually be seen. [10]

B.5 NAICS and Work Descriptions – 49 CFR § 26.73

Federal regulations require the most specific NAICS code available to describe each type of work. If a NAICS code does not sufficiently describe the work, the certifier must supplement or limit the code with a clear, specific narrative description. The rule also allows an equivalent classification descriptor, such as a work code, but that descriptor does not supersede the controlling NAICS classification. Multiple NAICS codes may be assigned where appropriate. [7]

B.6 Decertification and Enforcement – 49 CFR §§ 26.87 and 26.109

Program integrity requires an effective removal process, but removal must be lawful. Under § 26.87, a certifier generally bears the burden of proving by a preponderance of the evidence that a DBE no longer meets certification standards; the rule provides notice and due-process procedures for decertification. Section

26.109 authorizes consequences for failure to cooperate and recognizes suspension, debarment, non-responsibility findings, and other enforcement tools where appropriate. [11][12]

B.7 Small-Business Participation – 49 CFR § 26.39

Part 26 already requires recipients to structure contracting requirements to facilitate small-business competition and to take reasonable steps to eliminate unnecessary obstacles, including unjustified bundling. Permissible strategies include small-business set-asides in appropriate circumstances, right-sized subcontracting opportunities, alternative acquisition structures, and contract packaging that allows small firms to compete as primes or subcontractors. [13]

Appendix C. Model Field CUF Verification Checklist

The following checklist is a field-administration aid, not a substitute for Caltrans CEM forms or 49 CFR Part 26. It should be integrated with existing Caltrans procedures when DBE counting resumes.

1. Confirm the firm's current DBE status and the specific NAICS/work description applicable to the contracted scope.
2. Review the executed subcontract, purchase order, or other agreement defining the DBE's scope and value.
3. Observe the firm while active on the job, and record date, location, personnel, supervision, equipment, and work being performed.
4. For material or supplier participation, identify who negotiated price, selected source, ordered materials, took delivery responsibility, paid the supplier, and provided distribution equipment where relevant.
5. Confirm that the DBE is performing, managing, and supervising the distinct element of work claimed and is not an unnecessary extra participant.
6. Compare the percentage subcontracted to others with industry practice and the federal 30-percent own-work presumption where applicable.
7. Check for shared personnel, equipment, or facilities that may affect the contract-specific CUF determination; refer separate certification concerns to OCR rather than deciding eligibility in the field.
8. Record prompt-payment status and any unexplained flow-of-funds anomaly.
9. Identify substitutions, reductions, scope transfers, or unexplained inactivity, and escalate immediately.
10. Sign and date the monitoring record, and retain photographs or supporting documents when permitted by Caltrans policy.

Recommended timing checkpoints: initial observation when active performance begins; mid-performance observation for longer-duration or higher-risk scopes; and closeout reconciliation before final DBE credit. Deviations should be documented.

Appendix D. Real-World Case Studies and Precedents

D.1 Caltrans March 2, 2026 Reevaluation Notice: From Policy Reset to Operational Re-Certification

The current Caltrans reevaluation is itself a precedent for large-scale verification. The March 2, 2026 notice directed previously certified firms seeking continued eligibility to submit a Personal Narrative and updated PNW statement through B2Gnow and requested submission by April 16, 2026. The accompanying guide requires individualized evidence of disadvantage, explanation of resulting economic harm, comparison to similarly situated non-disadvantaged individuals, and a certification under penalty of perjury. Firms denied under the new requirements have appeal rights under 49 CFR § 26.89; firms that do not submit remain ineligible until they do. [20]

Policy lesson. The reevaluation should be treated as the eligibility layer of a larger verification system, not as proof of market capability or contract performance. Caltrans should preserve anonymized aggregate results and link post-reevaluation directory records to work-code validation and bidders-list activity, while keeping PN/PNW material confidential. A firm's failure to satisfy the new SED standard should remain analytically separate from misconduct findings.

D.2 CATCO / American Indian Builders: Pass-Through Materials Supplier

In 2016, DOT OIG reported that Concrete Applied Technologies Corp. and its owner agreed to pay approximately $1.75 million to resolve allegations involving the use of a DBE as a pass-through materials supplier on at least ten FHWA-funded projects. The parties admitted that the DBE did not perform a commercially useful function. CATCO also entered a three-year FHWA administrative settlement and compliance agreement that included a corporate compliance officer and independent monitor. [17]

Policy lesson. CUF enforcement should not depend solely on paper invoices. Procurement responsibility, ordering, delivery, supervision, payment, and the DBE's actual role need to be verified. The case also shows that monitoring and independent compliance measures can accompany financial enforcement.

D.3 MV Contracting: False DBE Status

In September 2024, the U.S. Attorney's Office for the District of New Jersey announced a $950,000 civil settlement resolving allegations that a highway contractor improperly represented itself as a DBE while obtaining FHWA-funded contracts. The settlement underscores that certification status itself can be the subject of fraud allegations, and that federal funds can create False Claims Act exposure when eligibility representations are false. The settlement was not an admission or adjudication of liability. [18]

Policy lesson. Caltrans should verify current DBE status at the points that matter operationally — bid/commitment, award, substitution, and final reporting — rather than rely on a stale screenshot or prior-year status.

D.4 WSDOT CUF Field Review Form: Operational Field Verification

Washington State DOT has used an on-site CUF review form for regular dealers and manufacturers that requires project-level observations, payment information, and documentation of the DBE's actual role, consistent with USDOT's national sample CUF forms. [19]

Policy lesson. California does not need a new legal standard; it needs disciplined execution of the same field-verification principle through its RE structure and existing CEM forms.

D.5 Caltrans Business Development Program: Bonding and Insurance Support

Caltrans' existing Business Development Program is already a practical precedent for reducing participation barriers without weakening eligibility standards. The program advertises assistance with successful bidding, business plans, capital, bonding and insurance, technical training, bid matching, and financial software. [16]

Policy lesson. Insurance and bonding reform should combine proportional requirements with capacity-building, not simply waive protections. This approach is more defensible and more sustainable.

Appendix E. Legal Alignment and Implementation Authority Matrix

#	Recommendation	Proposed Caltrans Action	Federal Alignment
1	Opt-in VPP	Recognize reevaluation as eligibility opt-in; add separate voluntary readiness/transparency VPP.	VPP must not alter federal certification criteria; neutral supportive-service features may be feasible under § 26.39 and existing authorities.
2	Bidders List	Reconcile post-reevaluation directory records with complete prime/sub quote data.	Required by § 26.11(c); useful for relative-availability analysis under § 26.45.
3	Accountability / report-back	Publish post-reevaluation transition report + annual non-confidential report; verify status at key control points.	Generally implementable under existing authority; protect PN/PNW and confidential certification data; reevaluation denials remain subject to federal appeal rights.
4	Legitimacy review	Reevaluation + directory/work-code/capability-data quality review; distinguish SED outcome from misconduct.	Consistent with §§ 26.31, 26.67, 26.73, 26.87 and § 26.89 appeal rights; avoid extra-statutory eligibility tests.
5	Remove bad actors	Escalation, corrective action, decertification/referral.	Must follow § 26.87 due process; use § 26.109 and applicable suspension/debarment/fraud authorities.
6	Eliminate GFE	Advocate replacement; study alternatives; minimize reliance on contract goals where lawful.	Cannot be unilaterally eliminated when contract goals are used; § 26.53 requires GFE.
7	RE verifies CUF	RE/trained designee observes and signs field verification.	Strongly aligned with § 26.37(b), § 26.55 and USDOT monitoring guidance once counting applies.
8	NAICS + work codes	Use most specific NAICS plus supplemental work code/description.	Directly aligned with § 26.73; work code cannot supersede NAICS.
9	Specialty allowance	Right-size packaging and recognize specialty market conditions.	Aligned with §§ 26.39 and 26.45 if neutral and evidence-based; cannot waive CUF.
10	Disparity / goal clarity	Tie future goals to reevaluated eligibility plus verified scope-specific market availability.	Required conceptually by § 26.45; FHWA/OA approval governs goal methodology.

E.1 What Caltrans Can Do Now and What Requires Federal Action

The recommendations should not be treated as having the same implementation path. Separating current administrative authority from program-plan changes and federal regulatory reform makes the proposal actionable, and avoids using federal constraints as a reason to defer reforms Caltrans can implement now.

Table 4. Implementation Authority Matrix

Implementation Category	Illustrative Actions	Governance Path
Caltrans can generally implement administratively	Public reporting; data-quality controls; directory/work-description review; bidder-list improvements; contemporaneous CUF procedures; payment/data reconciliation; supportive-services improvements; pilot research	Caltrans policy/procedure, procurement administration, data governance, and existing program authorities, subject to legal review
Likely requires DBE Program Plan change and/or FHWA coordination	Material changes to participation administration, monitoring frameworks, goal-methodology practices, or recipient procedures governed by the approved DBE Program Plan	Caltrans legal/program review; FHWA Operating Administration coordination/approval as applicable
Requires federal regulatory or policy change	Elimination of GFE when a federal contract goal is used; changes that conflict with mandatory provisions of 49 CFR Part 26	USDOT rulemaking, federal guidance, or other federal action; Caltrans may advocate but should not unilaterally disregard controlling requirements

References

[1] California Department of Transportation, "DBE Reevaluation," current 2026 update. https://dot.ca.gov/programs/civil-rights/dbe-reevaluation

[2] U.S. Department of Transportation, Interim Final Rule, DBE and ACDBE Program Implementation Modifications, 90 Fed. Reg. 47969 (Oct. 3, 2025). https://www.transportation.gov/regulations/federal-register-documents/2025-19460

[3] Caltrans Local Assistance, "Disadvantaged Business Enterprise (DBE)" - IFR implementation and temporary suspension provisions. https://dot.ca.gov/programs/local-assistance/local-civil-compliance/disadvantaged-business-enterprise-dbe

[4] 49 CFR § 26.11, bidder-list and recordkeeping requirements. https://www.law.cornell.edu/cfr/text/49/26.11

[5] 49 CFR § 26.45 and USDOT discussion of overall goal setting and relative availability. https://www.law.cornell.edu/cfr/text/49/26.45

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