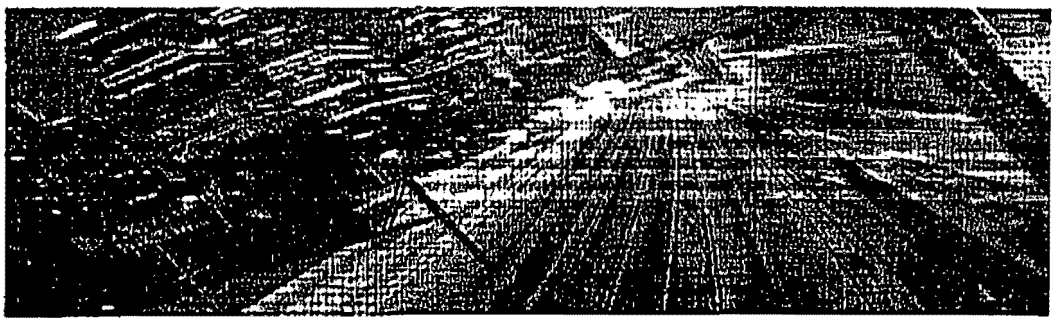

California State Department of Transportation

Disadvantaged Business Enterprise Program Plan

"Caltrans improves mobility across California"

October 2007

ACKNOWLEDGEMENTS

The California Department of Transportation, Office of Civil Rights gratefully acknowledges the cooperation and contribution of staff of the Division of Construction, the Division of Engineering Services-Office Engineer, the Division of Procurement and Contracts, the Division of Mass Transportation, the Division of Transportation Planning, and the Division of Local Assistance.

For individuals with sensory disabilities, this document is available in Braille, large print, on audiocassette or computer disk. To obtain a copy of this document in one of these alternate formats, please contact:

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TABLE OF CONTENTS

STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PLAN

PAGE

Commitment to the DBE Program *49 CFR Part 26.1* 1
Policy Statement *§26.1* 1
Responsibilities 2
Dissemination of Policy Statement *§26.23* 2

I. DBE LIAISON OFFICER *§26.25*

A. Deputy Director of the Office of Civil Rights 3

II. ADMINISTRATIVE REQUIREMENTS 49 CFR Part 26 Subpart B

A. Nondiscrimination DBE *§26.7* 5
B. Record Keeping and Reporting *§26.11* 5
C. Federal Financial Assistance Agreement Assurance *§26.13 (a)* and Federal Nondiscrimination Assurance *§26.13 (b)* 6
D. DBE Program Exemptions or Waivers *§26.15* 7
E. DBE Program Updates *§26.21* 7
F. Prompt Payment *§26.29* 7
G. DBE Database Directory *§26.31* 8
H. Over-Concentration *§26.33* 8
I. Business Development and Mentor Protégé Programs *§26.35* 8
J. Set-Asides or Quotas *§26.43* 10
K. Monitoring DBE Participation *§26.37* 10
L. Establishing Overall Goals *§26.45* 10
M. Failure to Meet Overall Goals *§26.47* 12
N. Method of Meeting Overall Goals *§26.51* 12

III. RACE-NEUTRAL MEASURES DESIGNED TO ASSIST ALL SMALL BUSINESSES MEETING THE REQUISITE SIZE STANDARDS

A. Examples of Race-Neutral Activities that the Department Will Perform 12

TABLE OF CONTENTS

IV. GOOD FAITH EFFORTS *§26.53*

A. Counting DBE Participation Toward Goals *§26.55* 14

V. DBE CERTIFICATION STANDARDS AND PROCEDURES *§26.61, §26.63, §26.65, §26.67, §26.69, §26.71, §26.73, §26.84, §26.85*

A. Certification Eligibility Requirements 15
B. California Unified Certification Program (CUCP) *§26.81* 17
C. Certification of Out-of-State Firms *§26.81(f), §26.83(e)* 18
D. On-Site Reviews *§26.83(c)* 18
E. Eligibility Determinations *§26.83* 19
F. Records and Files *§26.83(g), §26.109* 19
G. Renewal Requirements 20
H. Denial Procedure *§26.85, §26.86* 20
I. Intent to Remove DBE Certification Status *§26.87* 21
J. DBE Ineligibility Complaints *§26.87* 22
K. Certification Appeal Process *§26.89* 24
L. Compliance Procedures *§26.101* 25
M. Enforcement Actions *§26.103* 25
N. Enforcement of DBE Firms Participating *§26.107* 26
O. Information, Confidentiality, Cooperation *§26.109* 26

VI. DIVISION OF ENGINEERING SERVICES-OFFICE ENGINEER (DES-OE), CONTRACT ADVERTISEMENT AND AWARD

A. DES-OE Outreach Activities and Internet Page 27
B. Project Goal Setting 27
C. Advertisement of Projects 28
D. Project Specifications 28
E. Bid Opening 29
F. Submittal of Caltrans Bidder DBE Information Form without Goals 30
G. Submittal of DBE Information and Good Faith Efforts 30
H. The Office of Civil Rights Evaluation of DBE Information 31
I. Administrative Reconsideration 32

TABLE OF CONTENTS

VII. DIVISION OF CONSTRUCTION, CONTRACT ADMINISTRATION

A. Contract Award Information 33
B. Pre-Construction Conference 33
C. Monitoring Activities During Contract Performance 34
D. Monitoring for DBE Commercially Useful Function (CUF) 34
E. Substitutions – Race-Neutral 35
F. Substitutions – Race-Conscious 35
G. Reporting and Recording Participation 36
H. Notification of DBE Decertification During the Course of a Contract 37

VIII. THE DIVISION OF PROCUREMENT AND CONTRACTS (DPAC), SERVICE CONTRACTS, ARCHITECTURAL AND ENGINEERING CONTRACTS AND MINOR B CONTRACTS

A. DBE Contract Administration Responsibilities 37
B. Contract Award and Advertisement 39
C. Bids and Bid Openings 40
D. Contract Award 40
E. Submittal of DBE Information 40
F. Reporting Requirements 40
G. Outreach Activities 41

IX. SUBRECIPIENT MONITORING PROCESSES AND PROCEDURES

A. Division of Mass Transportation DBE Implementation 41
B. Division of Local Assistance 43
C. Division of Transportation Planning 45

X. OFFICE OF CIVIL RIGHTS, DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PROCESS REVIEWS 49

TABLE OF CONTENTS

ATTACHMENTS

A Civil Rights Organizational Chart

B Glossary and Definition of Terms

C List of Internet and Website Addresses

D Sample of DBE Race-Neutral "Boilerplate" Bid Specifications from the Division of Engineering Services-Office Engineer

D1 Sample of DBE Race-Neutral "Boilerplate" Bid Specifications from the Division of Engineering Services-Office Engineer

E Sample of DBE Race-Neutral "Boilerplate" Bid Specifications from the Division of Procurement and Contracts

E1 Sample of DBE Race-Neutral "Boilerplate" Bid Specifications from the Division of Procurement and Contracts

F Sample of DBE Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients

G Sample of DBE Race-Neutral Implementation Agreement for Local Agencies

STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PLAN

Commitment to the DBE Program *§26.3*

The California Department of Transportation (Department) receives federal financial assistance from the United States Department of Transportation (U.S. DOT). As required by federal law, the Department implements a Disadvantaged Business Enterprise (DBE) Program. The Department is committed to implementing its DBE Program in accord with the applicable requirements of 49 Code of Federal Regulations (CFR) Part 26, and has signed an assurance to that effect with U.S. DOT as a condition of continued eligibility for federal financial assistance.

Policy Statement *§26.1*

It is the Department's policy to ensure nondiscrimination in the award and administration of U.S. DOT federally-assisted contracts in accord with applicable requirements of 49 CFR Part 26. The Department's objectives are to:

- Promote and maintain a level playing field on which all small businesses meeting the requisite size standards, including DBEs, can compete fairly for U.S. DOT federally-assisted contracts awarded and administered by the Department;
- Ensure only firms meeting the eligibility standards set forth in 49 CFR Part 26 are permitted to participate as DBEs;
- Ensure the DBE Program is narrowly tailored in accordance with applicable law;
- Identify and remove barriers to the participation of all small businesses meeting the requisite size standards, including DBEs, in bidding, awarding, and administration of U.S. DOT federally-assisted contracts;
- Assist the development of DBEs so they may compete successfully outside of the DBE Program;
- Increase the participation of all small businesses meeting the requisite size standards, including DBEs, in the Department's procurement of materials, equipment and supplies, and
- Facilitate the implementation of the DBE Program using race-neutral measures to the maximum feasible extent.

Responsibilities

Overall responsibility for implementation of the Department's policy of non-discrimination rests with the Department Director, Will Kempton. The Director has delegated responsibility for developing, implementing and monitoring the daily operations of the DBE Program to the DBE Liaison Officer, Olivia Fonseca, Deputy Director, Office of Civil Rights (OCR). The Director expects all the Department's personnel will adhere to the provisions and the spirit of the DBE Program.

Dissemination of Policy Statement *§26.23*

A copy of the Department's Policy Statement describing the Department's commitment to, and objectives for, its DBE Program is circulated throughout the Department. Included in the Policy Statement is an outline of responsibilities for implementation of the program. This document is also being circulated to Local Agencies and to the DBE and non-DBE businesses that perform work on U. S. DOT federally-assisted contracts.

The Office of Civil Rights, DBE Program, publishes and distributes the Policy Statement on the Office of Civil Rights Web site, through Department, Industry and Trade publications and through the Department's Statewide Small Business Council. Copies of the Policy Statement and Department's DBE Program Plan can be obtained by contacting:

California State Department of Transportation
Office of Civil Rights
Disadvantaged Business Enterprise Program
1823 14th Street
Sacramento, CA 95811
(916) 324-0449
Toll free (866) 810-6346
Web site: http://www.dot.ca.gov/hq/bep/

For further information regarding the DBE Program, contact Olivia Fonseca, Deputy Director of the Office of Civil Rights, and the Department's DBE Liaison Officer, at (916) 324-0449.

As a note to readers of the DBE Program Plan, an organizational chart is included as Attachment A and identifies the Office of Civil Rights activities by program area.

A glossary and definitions of terms used in the DBE Program Plan is included as Attachment B.

A list of internet and website addresses referenced in the DBE Program Plan is included as Attachment C.

I. DBE Liaison Officer *§26.25*

The Deputy Director of the Office of Civil Rights has direct access to the Director of the Department and is responsible for developing, implementing and monitoring all aspects of the DBE Program on a daily basis. The Deputy Director works closely with various Department managers and consultants and has over 29 full-time staff in the Office of Civil Rights who assists in the daily delivery of DBE Program requirements. The Deputy Director may be contacted as follows:

Olivia Fonseca, Deputy Director
California Department of Transportation
Office of Civil Rights
1823 14th Street
Sacramento, CA 95811
Phone (916) 324-0449
Facsimile (916) 324-1949
Email: olivia_fonseca@dot.ca.gov

A. Deputy Director of the Office of Civil Rights:

1. Develops and implements DBE Program policy;

2. Advises the Director and governing bodies on DBE Program matters and achievements;

3. Provides guidance and oversight to the administrators on all functional DBE Program elements in the Department;

4. Promotes the DBE Program through business communication and public outreach;

5. Serves as the Small Business Advocate for the Department;

6. Assists all small businesses meeting the requisite size standards, including DBEs, in obtaining the necessary resources to compete fairly and successfully in the California transportation marketplace by providing resources in management, technical assistance, surety bonding, access to capital, and other supportive services;

7. Oversees gathering and reporting of statistical data and other information as required by U.S. DOT;

8. Administers review of third party contracts and purchase requisitions for compliance with the DBE Program;

9. Establishes and maintains good working relationships with local agencies, industry associations, and community-based organizations;

10. Plans and participates in small business training seminars;

11. Oversees the training provided to State officials having line responsibilities for the DBE Program;

12. Implements and monitors the DBE certification process according to 49 CFR Part 26;

13. Represents the Department in the California Unified Certification Program (CUCP);

14. Oversees the certification appeals process as the final decision maker;

15. Delegates authority to the Deputy Division Chief of the Division of Engineering Services-Office Engineer (DES-OE) and the Chief, Division of Procurement and Contracts (DPAC), for the maintenance of the Department's Bidder's List and DBE records and reports, pursuant to 49 CFR, Part 26, Section 26.11;

16. Provides guidance in establishing the overall annual DBE goal and methodology;

17. Participates in the maintenance of a statewide directory of certified DBEs through the CUCP;

18. Ensures timely preparation and submittal of semi-annual and annual reports to the Federal Highway Administrations (FHWA) and Federal Transit Administration (FTA); and

19. Ensures that the Department analyzes subrecipient progress toward statewide overall DBE goal attainment and helps identify ways to improve progress.

In addition to the Deputy Director of the Office of Civil Rights, staffs in other Divisions within the Department also have important DBE Program responsibilities.

The Divisions are listed in the DBE Program Plan, SECTION VI. Division of Engineering Services – Office Engineer, Contract Advertisement and Award; SECTION VII. Division of Construction, Contract Administration; SECTION VIII. Division of Procurement and Contracts, Service Contracts, Architectural and Engineering Consultant Contracts and Minor B Contracts; and SECTION IX. Subrecipient Monitoring Processes and Procedures, Sub Section A., Division of Mass Transportation, Sub Section B., Division of Local Assistance, and Subsection C., Division of Transportation Planning.

II. Administrative Requirements 49 CFR Part 26 Subpart B

A. Nondiscrimination DBE *§26.7*

The Department does not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

The Department does not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

B. Record Keeping and Reporting *§26.11*

1. Scheduled Reporting

   The Department provides semi-annual and annual DBE achievement reports to the U.S. DOT, FHWA, and FTA.

2. Bidder's List

   Pursuant to the California Department of Transportation Delegation of Authority 04-04, dated January 8, 2004, the Deputy Director for the Office of Civil Rights has delegated the responsibility for maintaining the Bidder's List to the Division of Engineering Services – Office Engineer. The Department created an initial Bidder's List through a mass mailing to firms identified from a variety of Department databases related to contracting. In 2005, the Department created an Internet survey form to enhance the Department's Bidder's List. The survey form is located on the DES-OE webpage at http://www.dot.ca.gov/hq/esc/oe/. Bidders may click on the Bidder's List Survey to complete and submit the information required by Section 26.11.

   Bidders are informed that their information needs to be updated annually. Bidders will receive an e-mail requesting an update, and bidders will be provided a unique web identification to facilitate the annual update of their information.

   For DPAC, each Contract Manager establishes and maintains a Bidder's List to submit with their contract requests. In addition, DPAC has a vendor database of all contractors awarded executed contracts for reference.

   Completed June 30, 2007, the Disparity Study established Minority- and Women-owned Business Enterprises (M/WBE) availability for transportation construction and engineering work by conducting a telephone survey of 18,675

business establishments in California identified by Dun & Bradstreet. After screening for qualification and interest in future transportation construction and design work, analysis of M/WBE availability was based on 3,398 firms.

A telephone survey of California firms or "custom census" was a preferable approach to analyzing availability than relying on a) firm counts from the DBE directory and U.S. Census data; b) pre-qualification lists, which is not a Department practice; or c) a bidder's list, which has not yet been successfully implemented by the Department. The "custom census" approaches to availability have been reviewed positively by federal courts and represents the largest survey to date of potentially available firms conducted in any state of local government disparity study.

The database of 3,398 M/WBE firms available for transportation construction and engineering will be used to expand and improve upon the existing bidder's list used by the Department.

3. DBE Program Annual Element Update

   The DBE Program Annual Element Update is submitted annually to FHWA and FTA on or before October 15th. It supplements the Department's DBE Program Plan, provides information about the Department's achievements during the previous year, and discusses planned activities for the next federal fiscal year.

4. Ad-Hoc Reports

   Information regarding the program is submitted to the U.S. DOT/FHWA as directed or requested.

C. Federal Financial Assistance Agreement Assurance *§26.13(a)(b)*

The Department has signed the following assurance, applicable to all U.S. DOT-assisted contracts and their administration. Furthermore, the same language appears in financial assistance agreements with all subrecipients of U.S. DOT-assisted contracts:

> "The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE Program or the requirements of *49 CFR Part 26.* The recipient shall take all necessary and reasonable steps of *49 CFR Part 26* to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. The recipient's DBE Program, as required by *49 CFR Part 26* and as approved by U.S. DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement."

Upon notification to the recipient of its failure to carry out its approved program, and the U.S. DOT informs the Department or its subrecipients of their failure to carry out their approved program, U.S. DOT may impose sanctions as provided for under *49 CFR Part 26*. They may also, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The bid documents for all federal-aid projects include the following assurance:

> "The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate." The bid documents also state, "Each subcontract signed by the bidder must include this assurance."

D. DBE Program Exemptions or Waivers *§26.15*

The Department understands that to request an exemption from any portion of the provision, it must be done in writing and requested of the Office of the Secretary of Transportation, FHWA, FTA, or the Federal Aviation Administration (FAA).

E. DBE Program Updates *§26.21*

In addition to the DBE Annual Element Update, the Department provides U.S. DOT with updates representing significant changes in the program as they occur. The Department understands that all changes must be approved by FHWA and FTA prior to implementation.

F. Prompt Payment *§26.29*

All federal-aid and U.S. DOT-assisted projects include a specification that directs bidders' attention to California Public Contract Code (CPCC) Sections 10262 and 10262.5. These CPCC sections direct prime contractors to pay all subcontractors for work within 10 days of the prime contractor's receipt of progress payment for the subcontractor's work.

All federal-aid and U.S. DOT-assisted projects also include a specification that the Department will not withhold retention from the prime contractor, and that the prime contractor and any of its subcontractors may not withhold retention from any subcontractor.

G. DBE Database Directory *§26.31*

The DBE Database Directory is provided pursuant to 49 CFR §*26.31* and is accessible electronically and as a printed copy. It provides a list of DBE firms that are certified by the CUCP to be counted on U.S. DOT-assisted contracts in the State of California. The following information is provided for each DBE firm: name, contact person, address, telephone number, e-mail address, web-site address, and geographic location of where the firm is willing to work. In addition, the North American Industry Classification System (NAICS) codes, work category codes and licenses are listed. Confidential information concerning DBEs is not distributed.

A published printed copy of the directory is available at a cost of $20. The directory may be ordered by contacting Publications at (916) 445-3520, or sending a request to the address below:

California Department of Transportation
Publications Unit
1900 Royal Oaks Drive
Sacramento, CA 95815

A copy of the directory can be downloaded and printed at the following website: http://caltransopac.ca.gov/publicat.htm.

H. Over-Concentration *§26.33*

The Department has determined no over-concentration of DBE firms on major construction.

Should the Department determine that there is an over-concentration of DBEs, appropriate measures to address the over-concentration would be employed, such as the use of:

1. Technical assistance programs;
2. Business development programs;
3. Mentor Protégé programs; or
4. Varied contract goals.

I. Business Development and Mentor Protégé Programs *§26.35*

In accordance with DBE regulations contained in 49 CFR Part 26, the Department established the Small Business Program to assist small businesses, including DBEs, to compete fairly and successfully in the marketplace.

The Department signed a Memorandum of Understanding (MOU) with the California Community College Chancellor's Office to provide training and technical assistance

in the area of construction and transportation-related activities to small businesses, including DBEs. The DBE Supportive Services MOU provides statewide services that are designed to increase the success of DBEs and other small businesses bidding on federal-aid construction projects.

The Department also implemented a Mentor-Protégé Program. Prime Contractors were approached to participate as mentors, and forums held to discuss the program and solicit participation of potential subcontractors as protégés. The program is intended to develop protégé business acumen that increases their potential to be awarded State and federal contracts.

The program encourages mentors and protégés to enter into a MOU with one another for one or two years. The MOU establishes the objectives and expectations for each party involved. Details are left to the parties, although a MOU template is available from the District Offices.

1. Small Business Program

   The Department's Small Business Advocate is responsible for identifying and implementing innovative acquisition operating processes, such as payment processes and strategies to encourage and assist small business enterprises participating in State-funded contracts.

   The Department's small business activities are directed through the Business Enterprise Unit of the Office of Civil Rights. Activities of the program include, but are not limited to, assisting small businesses in learning how to do business with the Department; participating in forums to hear about and address small business issues; developing and implementing methods for outreach and promotion of small businesses to the public and Department districts, and developing brochures and other written material and marketing tools that promote small businesses and DBE participation in contracts.

   Additionally, the Business Enterprise Unit coordinates and facilitates Small Business District Liaison training sessions, and maintains the Department's Small Business Advocate e-mail posted on the Office of Civil Rights Web site whose main purpose is assisting small business with information regarding certification, doing business with the Department, outreach events, etc.

   The Business Enterprise Unit also creates a calendar of outreach events statewide and posts them on the Office of Civil Rights Web site for disseminating information on networking opportunities for all small businesses, including DBEs, provides expertise and advocacy for Department efforts to comply with federal requirements for statewide participation of all qualified small businesses, including DBE's in contracting opportunities within the Department.

2. Statewide Small Business Council

The Department established a statewide Small Business Council comprised of representatives of approximately 40 statewide DBE organizations, which assist all small businesses to compete fairly and successfully in the marketplace. The statewide Small Business Council has five committees: Construction, Commodities, Professional Services, Legislative, and Supportive Services.

The purpose of the Council is to:

a. Promote the effective implementation of federal and state requirements;

b. Assist with issues relating to small business participation in the Department's contracts; and

c. Provide a forum where small businesses, in an advisory capacity and from their unique perspective, can offer suggestions to the Department regarding its practices and procedures.

J. Set-Asides or Quotas *§26.43*

Federal regulations prohibit the use of set-asides or quotas and the Department does not use them in the administration of the DBE Program.

K. Monitoring DBE Participation *§26.37*

The Department monitors and tracks actual DBE participation through contractor and subcontractor reports of payments and other appropriate monitoring methods (see the following Sections of this Program Plan for further details: SECTION VI. Division of Engineering-Office Engineer; SECTION VII. Division of Construction; SECTION VIII. Division of Procurement and Contracts; and SECTION IX. Subrecipient Monitoring Processes and Procedures, which includes the Division of Local Assistance). On a semi-annual basis, the Department receives data from the program areas identified above and also receives data semi-annually from the Uniform Report of DBE Awards or Commitments and Payments which are sent to FHWA and FTA. DBE participation is counted toward the statewide overall annual DBE goal, in accordance with the Federal regulations.

L. Establishing Overall Goals *§26.45*

The Department establishes the annual overall DBE goal by the following steps:

1. Establish a base figure on evidence of availability of ready, willing and able DBE firms who participate on DOT-assisted contracts.

2. Consider the use of:

    a. The DBE Directories and Census Bureau Data;
    b. The Bidder's Lists;
    c. Data from an Availability/Disparity Study;
    d. The DBE Goals of another DOT recipient; and
    e. Alternative statistical methods.

3. Rely on the Department's Availability/Disparity Study, which was completed on June 30, 2007.

4. Evaluate evidence available in the marketplace to determine if an adjustment to the base figure is needed.

5. Submit to the applicable DOT operating administration for review and approval on August 1 of each year, unless the Administrator establishes a different submission date.

6. Submit the Goal and Methodology used to establish the goal, along with base figures and evidence with which the goal was calculated and methods it will employ to achieve the goal. Also include the Step Two adjustments, if necessary, that are made to the base figure and evidence used to substantiate the adjustments.

7. Documentation of public participation, which includes:

    a. Consultation with minority, women and general contractor groups, community organizations, industry associations and other public officials, which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Department's efforts to establish a level playing field for DBE participation.

    b. A public notice that announces the Department's proposal for an overall annual goal, informing the public that the proposed goal and its methodology are available for inspection during normal business hours at the Department's Office of Civil Rights for 30 days following the date of the notice. Additionally, the Department informs the public of the 45 day public comment period from the date of the notice. The notice includes the address for comments to be sent and is published in general circulation media and available minority-focused media and trade association publications and the Department's Web site.

M. Failure to Meet Overall Goals *§26.47*

The Department understands that failure to meet the overall goal is not grounds for penalty if the DBE Program was administered in good faith.

N. Method of Meeting Overall Goals *§26.51*

The Department makes every effort to meet the overall annual DBE goal by using race-neutral measures to the maximum feasible extent.

III. Race-Neutral Measures Designed to Assist All Small Businesses Meeting the Requisite Size Standards

A. Examples of race-neutral activities that the Department will perform include:

1. Host monthly statewide Small Business Council and committee meetings.

2. Provide technical assistance and training on construction-related topics through a Supportive Services contract to assist all small businesses, including DBEs.

3. Conduct business communication and outreach activities to increase small business participation.

4. Provide copies of the CUCP Directory by U.S. mail and the Internet.

5. Market the CUCP database of certified DBEs that are also small businesses that meet the requisite federal size standards and emphasize the user-friendly format.

6. Periodically, update the Office of Civil Rights' web site information on small business activities so that anyone interested may obtain practical advice on how to market their business, find contracting opportunities with the Department and other state agencies, and other useful information.

7. Partner with other Divisions to generate ideas for enhancing the overall success of small businesses, including DBEs that meet the requisite size standards and reach out to local agencies for ideas that can be tailored to their jurisdictions.

8. Post "Best Practices" on the Department's web site.

9. Work with organizations such as the Associated General Contractor's (AGC) and the Consulting Engineers and Land Surveyors of California (CELSOC), to identify ways to assist small businesses that meet the requisite size standards,

including DBEs, to increase their opportunities to participate as contractors or subcontractors on Department projects.

10. Expand technical assistance and supportive services statewide level to provide small businesses that meet the requisite size standards, including DBEs, with assistance on bidding and contract administration.

11. Partner with the Small Business Administration, Small Business Development Centers and other government agencies.

12. Ensure compliance to prompt payment specifications, which helps all contractors and subcontractors.

13. Track all DBE participation on federally-assisted contracts, including monitoring the Commercially Useful Function of DBEs.

14. Host construction pre-bid and outreach meetings, encourage all businesses to attend and facilitate networking among potential bidders.

15. Maintain weekly "Ads for Bid" on the Internet describing projects advertised for bid.

16. Disseminate the brochure, "Caltrans Quick Reference Information for Contractors". The brochure is updated annually or on an "as needed" basis and contains useful Web site addresses and information for contractors, such as where to order bid documents, bidder assistance providers, where to get bid opening results and contractor's license information.

17. Disseminate the "How to do Business with Caltrans," booklet which provides information on procurement topics, especially to contractors new to doing business with the State of California. The booklet includes helpful tips on how to market their commodities or services to the Department, as well as how to market their commodities or services to other State Departments and Agencies, through the California State Department of General Services.

18. Provide information on where to obtain assistance with surety bonding and liability insurance.

19. Implement a Mentor Protégé Program in each District.

20. Encourage each District to establish a District Small Business Council.

21. Improve access to bid openings by making them available via teleconference, web-based video, and the Internet.

22. Unbundle large A&E contracts into smaller contracts.

23. Host District Procurement Fairs and increase the number of Districts in which the fairs are held.

IV. Good Faith Efforts *§26.53*

The Department establishes a DBE contract goal and can only awards the contract to the lowest bidder who meets the goal or makes a good faith effort to meet the goal. To determine a bidder's good faith effort, the Department reviews:

- Documents provided by the low bidder indicating that sufficient DBE participation was obtained to meet the goal; or
- If the goal is not met, documents must be provided by the lowest bidder that demonstrates that a good faith effort was made to meet the goal.

The Department provides specifications which outline the steps the low bidder must take to demonstrate that a good faith effort was made.

A. Counting DBE Participation Toward Goals §26.55

When counting the DBE participation toward goals, the Department counts only the value of the work actually performed by the DBE. To determine the value of the work that is performed that can be counted toward participation goals, the Department considers:

1. The entire amount of the construction contract that is performed using the DBE's own forces;
2. The entire amount of fees or commissions charged by a DBE for providing a genuine service, provided the fee is not excessive;
3. The portion of the work that a DBE subcontracts to another DBE; and
4. Items of work the DBE performs that fulfill a Commercially Useful Function.

V. DBE Certification Standards and Procedures §26.61, §26.63, §26.65, §26.67, §26.69, §26.71, §26.73, §26.84, and §26.85

The DBE certification process allows small businesses, which are independently owned and controlled by one or more socially and economically disadvantaged individuals, admittance into the DBE Program. The Program's goal is to remove barriers to DBE participation in federally-assisted highway and transit projects. DBE certification standards and procedures include collecting information, applying the

criteria for eligibility, providing a DBE eligibility determination, and implementing an appeal process for denials and decertifications.

In accordance with 49 CFR Part 26:

- The Department makes certification determinations based on all of the requirements of Part 26 Subpart D - Certification Standards and Subpart E-Certification Procedures;

- The Department provides eligibility determinations for new candidates within 90 days of receipt of a *complete* application;

- The Department safeguards applicant information and documents in accordance with *§26.109, §26.67(a)(2)(ii)*; the California Government Code Section 6250 et seq.; and California Civil Code Section 1798 et seq., Information Practices Act (See Part J. "Records and Files"); and

- The Department cooperates fully with other U.S. DOT recipients regarding all DBE issues.

A. Certification Eligibility Requirements

There is no fee for applying for, or renewing, DBE certification. All applications for certification or renewal must be accompanied by a sworn affidavit attesting to the accuracy and truthfulness of the information provided.

The California Unified Certification Program (CUCP) certification application, a modified version of the U.S. DOT Schedule A, must be submitted by each firm seeking DBE certification including Small Business Administration (SBA) 8(a) and Small Disadvantaged Businesses (SDB).

The firm will comply with the requirements of this section, in accordance with 49 CFR 26, and 13 CFR 121 (size standards), as follows:

1. The firm has the burden of demonstrating by a preponderance of evidence that it meets the eligibility requirements pursuant to *§26.61*.

2. The firm must be a *"small business"* as defined by the SBA, 13 CFR Part 121 and the North American Industry Classification System (NAICS) codes outlined specifically in 13 CFR Part 121.201 as paralleled with the DBEs assigned work category codes. Even when these requirements are met, the average gross receipts for the firm and its affiliates for the previous three fiscal years must not exceed $20.41 million as defined in *§26.65 (b)*.

3. The owners of the firm must be *"socially and economically disadvantaged"*, as detailed in *§26.67*. To verify economic disadvantage, each person whose

ownership in the firm contributes to DBE status, must submit a signed statement of Personal Net Worth (PNW) with sufficient supporting documentation.

The PNW reveals the net value of an individual's total assets, excluding the value of the primary residence and capital interest in the DBE firm seeking certification, remaining after total liabilities and adjustments are deducted. A net worth over $750,000 rebuts an individual's presumption of economic disadvantage.

4. The firm must be at least 51 percent owned by *"socially and economically disadvantaged individuals"*, as described in *§26.69*, and not owned by other businesses, except as detailed in *§26.73 (e)(1)* and *(2)* and *§26.73 (h)*. Some stipulations of ownership are:

   a. Disadvantaged owners must own at least 51 percent of the business or publicly held stock; and

   b. Ownership must be obtained with real and substantial contributions of expertise, capital or other tangible personal assets, as described in *§26.69*.

5. The firm must be at least 51 percent controlled by the disadvantaged owners and must operate independently from other firms. Control by disadvantaged individuals may be demonstrated through managerial and operational control as identified in *§26.71*.

   a. To have managerial control the disadvantaged owner must demonstrate: authority to control, sufficient expertise in the firm's field of operation, responsibility for critical areas of the firm's operations and the sole authority to make independent and unilateral business decisions which guide the destiny of the business.

   b. To have operational control the disadvantaged owner must demonstrate that they make independent basic decisions concerning daily operations.

      Some factors that will be considered in determining control are:

      1) The relative experience, qualifications, and number of years each owner, manager and principal employee has dedicated to the firm's field of business;

      2) The daily duties and responsibilities of each owner, manager, and principal employee;

      3) The amount of time each owner, manager and principal employee dedicates to business operations;

4) Identification of the Responsible Managing Officers or employees for contractors' licenses, majority owners for professional licenses necessary to perform the services of the firm;

5) Shared space, employees, equipment, or financing between firms;

6) The timing of any changes in ownership and control to meet DBE requirements; and

7) The salary received by owners.

6. Other rules of certification as defined in *§26.73:*

   a. The firm must not exhibit patterns of conduct that indicate attempts to evade or subvert the intent or requirements of the DBE program.

   b. The firm will be evaluated based on current, not past, circumstances.

   c. The firm must cooperate fully with the Department; failure to do so will result in the denial of certification or intent to remove.

   d. As a condition of eligibility, a DBE firm must notify the Department's Division of Civil Rights, Office of Certification, regarding modifications in major business operations and any changes in ownership or control, within 30 days of the occurrence, as indicated in *§26.83 (i)(3)*. Supporting documentation and details of modifications or changes must also be provided.

7. The Department is also responsible for administering the Airport Concessionaire DBE Certification Program. An Airport Concession is defined as:

   a. A business located on an Airport that is engaged in the sale of consumer goods or services to the public under an agreement with an Airport, another concessionaire, or the owner or lessee of a terminal.

   b. A business conducting one or more of the following activities, even if it does not maintain an office, store, or other business location on an Airport, as long as the activities take place on the Airport: management contracts and subcontracts, a web based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business providing advertising displays or messages to the public on the Airport, or a business providing goods and services to concessionaires.

B. California Unified Certification Program (CUCP) *§26.81*

The Department participates in an active DBE directory. As mandated by the U.S. DOT, CFR Part 26, all U.S. DOT recipients of federal financial assistance must

participate in the CUCP. In compliance with the regulations, the Department was the driving force in establishing the CUCP to lessen the burden of paperwork and time for firms seeking DBE certification from multiple agencies, as well as lessening the burden of paperwork on the participating agencies themselves.
The certification of a firm that is provided by one of the 11 participant certifying member agencies of the CUCP is accepted by all other California agencies that participate in the program. There are currently more than 4,000 certified DBE firms listed in the CUCP database. This process was established in accordance with the latest applicable federal regulations; therefore, the Department does not accept any reciprocal DBE certification agreements from non-CUCP members.

C. Certification of Out-of-State Firms *§26.81(f), §26.83(e)*

Out-of-state firms seeking the Department's DBE certification are required to:

1. File a CUCP DBE Certification Application;

2. Submit documents verifying certification with the U.S. DOT federal-aid recipient of their home state; and

The Department will contact the certifying agency in the home State to request a copy of the on-site review. The Department may confirm the existence of an office operated by the firm within California and may perform an on-site review at the California business location.

D. On-site Reviews §*26.83(c)*

The Department conducts on-site reviews of firms applying for certification prior to an eligibility determination and performs the following:

1. The applicant is contacted and an on-site is scheduled.

2. A letter is sent to the applicant, by certified mail with return receipt, to confirm the names of the individuals who are being interviewed and to verify the date, time and location of the on-site.

3. The applicant owner(s), having majority interest in the firm, are interviewed at the firm's primary business location and at job sites. If the applicant is unable to attend the scheduled interview, the on-site will be rescheduled and a second notification will be sent, by certified mail, with return receipt requested. When the applicant fails to participate in the second scheduled interview they will be considered "non-cooperative" and the Department will send a letter to the firm to close the file.

4. A standard set of questions will be asked of all firms and every concern will be addressed.

E. Eligibility Determinations *§26.83*

Based on the criteria in 49 CFR Part 26, one of the following three determinations will be made:

1. The firm is certified and/or renewed as a DBE.

2. The firm meets the eligibility criteria. Information regarding the firm is entered in the CUCP Directory, and the firm is mailed a computer generated CUCP DBE certificate identifying the firm name, address, phone number, contact person, NAICS Codes and work category codes. The NAICS codes accurately reflect the primary source of the firm's income, *§26.71 (n)*. The work category codes define the work the disadvantaged owner has the ability and expertise to perform. The certificate is stamped with the signature of the Chief, Office of Certification. The DBE certification/renewal is granted for a period of five years.

3. As a condition of eligibility, a firm is required to notify the Office of Certification in writing, within 30 days of any changes in the firm, such as size, ownership, control and location, telephone/fax numbers, licenses and work category, etc. *[§26.83 (i)]*.

F. Records and Files *§26.83(g) and §26.109*

In accordance with 49 CFR §*26.83 (g) and §26.109*; California Government Code Section 6250 et seq.; California Civil Code Section 1798 et seq., and the Information Practices Act, certification documents are safeguarded and held according to the following criteria:

1. DBE files are maintained in a locked and enclosed area that is accessible only to authorized personnel.

2. All documents submitted by the applicant as part of the initial certification process becomes a permanent part of the file and are not purged from the file.

3. Duplicate documents and tax forms over three years old are purged from the file during the renewal process. However, if the firm has changed structure, at least one tax year is retained for each structural change of the business.

4. Active files are held in the Department's office for an indefinite period of time. Active is defined to mean any firm that has filed annual renewals and recertification.

5. Inactive files are retained for a total of five years. DBE files having no file activity for at least two years go to the California State Archives where they are

held for three years and are accessible to the Department pursuant to archive policies and procedures.

G. Renewal Requirements

Firms desiring to continue certification for an additional five years must submit a Renewal Application, accompanied by a sworn affidavit attesting to the accuracy and truthfulness of the information provided. Applicants are also required to submit statements of Personal Net Worth for each applicant owner, copies of applicable federal income tax forms, copies of current licenses and current minutes of board meetings if the firm is a corporation.

H. Denial Procedure *§ 26.85, §26.86*

When the firm fails to meet eligibility criteria, they are notified in writing, by certified mail with a return receipt requested. The correspondence explains the reasons for the determination and provides evidence to support the decision. The letter also informs the business of their right to due process in the form of an appeal.

Any firm that is not currently a certified DBE and is denied certification receives a written explanation for the denial. The explanation references evidence cited in the file that supports the Department's decision.

1. The Department is responsible for the burden of proof in all decisions of denying a firm's certification status and must support its decision with evidence in the record.

2. The Department sends written notification to the firm by certified mail explaining the reasons for the denial.

3. The firm is informed of its right to appeal the decision within 90 days by contacting the:

   Secretary
   U.S. Department of Transportation
   Office of Civil Rights
   1200 New Jersey Ave., S.E.
   Washington, DC 20590

4. The Department's decision to remove a firm's certification goes into effect immediately after a final decision is rendered. The Department's determination will remain in effect unless U.S. DOT makes a determination reversing the Department's action.

5. The firm may reapply in 12 months from the date of denial.

I. Intent to Remove DBE Certification Status *§26.87*

Any firm that receives written notice of intent to remove DBE certification status by the Department is allowed due process to appeal the determination. The firm is informed of its right to appeal a determination in the Intent to Remove notification letter.

1. The Department is responsible for the burden of proof in all decisions of "Intent to Remove" a firm's DBE certification status and must support its decision with evidence recorded in the Intent to Remove letter.

2. The Department sends written notification to the firm, by certified mail, explaining the reason the Department proposes to remove the firm's DBE status. The correspondence informs the firm of its right to appeal to the Department within 30 days of the date of the notification letter. The firm may request an informal appeal hearing or present information and arguments in writing, without requesting a hearing. The firm must contact the Department's representative within 30 days at:

   Reconsideration Official
   California Department of Transportation
   Office of Civil Rights
   1823 14th Street
   Sacramento, CA 95811

3. If the firm chooses not to appeal, the firm will be found ineligible to participate in the DBE Program effective 30 days after the date of the notification letter.

4. Following an evaluation, the firm will be notified in writing of the Department's administrative final decision. The Department's Reconsideration Official may uphold or overturn the Intent to Remove determination based on the information presented by the firm.

5. If the final decision is to remove the firm's certification status, the firm's name is removed from the CUCP DBE Directory effective the date of the notification letter.

6. The firm is informed of its right to file an appeal with the U.S. DOT within 90 days of the Department's final determination *§26.89*.

   Secretary
   U.S. Department of Transportation
   Office of Civil Rights
   1200 New Jersey Ave., S.E.
   Washington, DC 20590

J. DBE Ineligibility Complaints §26.87

1. Types of DBE Ineligibility Complaints

   a. Complaints by participating agencies.

      Pursuant to California Government Code Section 2055 (a), all complaints filed by participating agencies must be processed within 30 days from the date the complaint was "properly filed." Therefore, all participating agency complaints are given a priority status.

   b. When the Department disputes the certification of a firm currently certified by a participating agency, the Office of Certification will notify the agency in writing informing them of the issues.

   c. SBA 8(a) firms.

   d. In the event the Department does not concur with the status of a 8(a) firm, the Office of Certification will present all pertinent information to the Small Business Administration.

   e. Rebuttable Presumption of social/economic disadvantaged status.

      A firm that is admitted to the DBE program based on presumptive social and economic disadvantage status may become the subject of a complaint based on individual situations. Admission to the program based on group membership is, according to the federal regulations, a "rebuttable presumption." Complaints regarding the presumed disadvantaged status of an individual member of a group will be dealt with on a case-by-case basis using the criteria set forth in 49 CFR Part 26.

2. DBE Ineligibility Complaint Procedures

   a. Proper filing.

      A written communiqué identifying both parties (identified DBE and complainant), including the complainant's name, address and a summary of the issues (lack of ownership and/or control, inextricable ties, etc.) constitutes proper filing of a challenge. This summary must contain relevant information supporting the complainant's contention that the identified DBE firm does not meet the eligibility standards set forth under 49 CFR Part 26.

   b. Database entry and tracking.

      Complaints will be date stamped and directed to the Support Unit for database entry and assignment.

c. DBE status of an identified firm.

After receiving a complaint, and prior to determining the validity of the complaint, the status of the identified firm will be determined. If the firm is no longer certified, has never been certified, or is currently in removal proceedings, the complaint need not be reviewed further. The complainant will be notified in writing of the current status of the firm. If the firm is in the process of undergoing an onsite review the complaint will be taken into consideration during the on-site review.

d. Sufficient information for processing.

Once it is determined that a DBE complaint has been properly filed and recorded, the complainant will be sent a letter:

1) Verifying the receipt of their complaint;

2) Notifying them of the Department's intent to proceed with an evaluation; and

3) Informing them of their right to withdraw the complaint within 15 days of the date of the Department's correspondence. If a letter of withdrawal is not received from the complainant within 15 days, the complaint will be forwarded to an Associate Analyst for evaluation.

e. Insufficient information to warrant further investigation.

If there is insufficient information to process the complaint, a request for additional information, "Insufficient Information Letter", will be sent to the complainant.

f. Withdrawal of the complaint or failure to respond to the Insufficient Information letter.

If the complainant elects to withdraw the complaint or fails to respond to the "Insufficient Information Letter," all related complaint correspondence will be placed in an envelope that is marked "Confidential" and will be retained in the certification file. The issues mentioned in the complaint will be noted in the file chronology and will be closely evaluated when the firm applies for renewal.

g. Evaluation of a Complaint.

A formal complaint challenging certified DBE status is a sensitive issue. The Department will take all the steps necessary to ensure a sound decision.

Decisions to proceed with a complaint require that an on-site review be performed as part of the investigation. The identified party will be notified in writing and an on-site will be scheduled.

h. Determination.

1) If the Department determines a complaint is unsubstantiated, the case will be closed and no further action will be taken. The identified DBE firm will remain certified and the complainant will be informed of the Department's findings.

2) If the Department determines that the identified firm does not meet DBE eligibility requirements, an Intent to Remove letter will be prepared and sent by certified mail according to Part F, "Intent to Remove DBE Certification Status."

i. Right to Due Process.

When a firm is notified of an "intent to remove" as the result of a complaint, the firm may appeal that decision following the steps outlined in Part F.

K. Certification Appeal Process *§26.89*

The Reconsideration Official performs the activities and functions of that office separate from any functions of the Office of Certification pursuant to *§26.87(e)*.

If the applicant does not submit a written request to appeal the Department's decision within 30 days of the notification letter, the decision will be considered final. If a certified DBE firm is due for renewal during the appeal process, the firm will remain certified until the appeal process is completed. The applicant may reapply for certification 12 months from the date of the Certification denial.

1. Appeal to the Department

All applicants wishing to appeal the Department's decision to remove or deny certification status must notify the Reconsideration Official of their intent to appeal that decision. There are two Department appeal options. An applicant may choose only one of these options:

a. A written appeal should provide documented facts and evidence that support the applicant's belief that they meet all DBE eligibility criteria. A written appeal received within the required time frame will receive an administrative analysis and determination within 60 days. If the Department is unable to respond in that time frame, the firm will be notified in writing explaining the need for additional processing time. The applicant will be notified by certified mail of the Department's final determination and appeal rights to U.S. DOT.

b. An informal hearing, a meeting between the owner(s) of the firm and a Reconsideration Official, will be granted when requested within the required time frame. The hearing will be conducted within two weeks of the request. The proceeding will be taped and transcribed and retained as a permanent part of the file. The applicant will be notified by certified mail of the Department's determination and U. S. DOT appeal rights.

2. Appeal to the U.S. DOT *§26.91*

a. Firms denied certifications have the right to file a written appeal with the U.S. DOT within 90 days of the Department's final decision. U.S. DOT will request a copy of the Department's records to conduct its review. The Department will provide U.S. DOT with a copy of the firm's record and transcript within 20 days of U.S. DOT's request *[§26.89 (d)]*. U.S. DOT will render a final determination based on its review of the records provided and will forward a copy of its findings to the Department's Reconsideration Office and to the applicant.

b. The Department will uphold the decision of the U.S. DOT. The Department's Reconsideration Official will send correspondence, by certified mail, to the applicant advising them that the U.S. DOT determination is administratively final; a copy of the U. S. DOT final determination will be enclosed.

1. If U. S. DOT decides to deny or remove, the firm will be informed of that determination and of its right to reapply for DBE certification in 12 months.

2. If U.S. DOT decides to certify, the firm will be informed by letter and a certificate issued.

3. Records and Correspondence

All records and correspondence regarding the appeal become part of the permanent record in the Department's DBE file for the firm.

L. Compliance Procedures *§26.101*

The Department understands that non-compliance in any part of the federal regulations may result in formal enforcement action or program sanctions by the U.S. DOT.

M. Enforcement Actions §26.103

The Department understands that enforcement actions are applicable when there is an allegation of non-compliance that has been submitted to the U.S. DOT Office of Civil Rights. The written claim must be received no later than 180 days after the date of the alleged violation. The written claim initiates a compliance review.

A reasonable cause notice is sent if the results of the compliance review reflect that the Department is in non-compliance. The Department can request conciliation within 30 days of receipt of the notice and upon determination of good cause by the U.S. DOT Office of Civil Rights, sign a conciliation agreement, which sets forth the measures the Department will take to ensure compliance.

If the Department fails to fulfill the terms of the conciliation agreement, it is non-compliant and binding enforcement proceedings may begin.

N. Enforcement of DBE Firms Participating *§26.107*

The Department understands that it may initiate suspension or debarment proceedings as well as pursue prosecution against any firm that does not meet DBE eligibility criteria and attempts to participate in a DOT-assisted program on the basis of false, fraudulent, or deceitful statements that reflect a lack of business integrity.

O. Information, Confidentiality, Cooperation *§26.109*

The Department complies with the Federal Freedom of Information and Privacy Acts (U.S.C. 552 and 552a) and makes available to the public any information concerning the DBE Program that is permissible.

1. The Department does not release business information to third parties without express written consent from the firm.

2. The Department keeps the identity of complainants confidential.

3. The Department cooperates fully and promptly with any request for information, investigation, or review from the U.S. DOT and understands that failure to do so could result in enforcement action.

4. The Department understands that intimidation and retaliation of contractors or program participants is strictly prohibited and results in non-compliance.

VI. Division of Engineering Services – Office Engineer, Contract Advertisement and Award

The Division of Engineering Services - Office Engineer (DES-OE) is responsible for all activities related to advertising, bid opening, award and approval for all of the Department's public works projects over a dollar threshold established by the California Department of Finance, currently $131,000. These projects fall into two categories: projects with $1 or more of federal funding, i.e., federal-aid projects, and projects solely funded with State monies. All federal-aid projects are subject 49 CFR Part 26.

A. DES-OE Outreach Activities and Internet Page

1. DES-OE publishes a brochure called the "Caltrans Quick Reference Information for Contractors." The brochure is designed to provide the business community with a quick reference on how to do business with the Department, and where to get information on the Department's contracting opportunities. The brochure is updated semi-annually or on an "as needed" basis.

2. The DES-OE participates in Department-sponsored workshops and outreach meetings to help guide the business community through the State contracting process. Topics covered include contracting information available on Department Internet sites, how businesses can identify contracting opportunities with the Department, and how businesses can become certified as DBEs, which also includes meeting the requisite Federal small business size standards.

3. The DES-OE Internet page provides a variety of information related to DES-OE contracting opportunities. Potential bidders can view projects that are advertised, and addenda (changes) to those projects. In addition, bidders can view and print project plans, download a list of bid items, specifications, and lists of firms that have purchased bid documents for advertised projects.

4. Following bid opening, the DES-OE Internet page includes summaries of all bids received, the subcontractors listed by each bidder, and the unit prices bid by each company.

   The DES-OE Internet page is at the following address: http://www.dot.ca.gov/hq/esc/oe/.

B. Project Goal Setting

The contract goal on each contract is established by electronically comparing the total contract work items with eligible DBEs willing to work in the project location, which creates a "match list". The goal is a percentage of the total contract dollars. DES-OE staff identifies work items most likely to be performed by the prime contractor and those most likely to be performed by a subcontractor.

DES-OE calculates the individual project goals based on:

1. The project location;

2. The type of work;

3. The result of the "match list";

4. The availability of DBEs; and

5. The dollar value of the individual contract item.

The Office of Civil Rights reviews the proposed DBE goal and either concurs or makes recommendations for adjustments. The goal is included in the contract advertisement and the contract documents.

C. Advertisement of Projects

1. All DES-OE projects, except emergency work, are advertised in *"The California State Contracts Register,"* (Register) published by the Department of General Services. The Register advertises contracting opportunities for all State agencies, and projects must be advertised in the Register before bid documents can be released to the public. The Register is only available on the Internet and is updated daily. Internet advertisements are published for 14 calendar days and can be viewed at https://www.cscr.dgs.ca.gov/cscr/.

2. All DES-OE projects are also advertised on the DES-OE Internet page at http://www.dot.ca.gov/hq/esc/oe/. Bidders click on Advertised Projects (Projects for Bid) to view the listing of newly advertised major highway construction projects, projects that have already advertised, and a tentative list of projects to be advertised. Each advertisement identifies the geographic location of the project; the type of work; the number of working days; the estimated dollar value of the project; and the bid opening date and location. In addition to the advertisement, bidders can view a list of bid items and the Special Provisions for each advertised project.

3. The DES-OE provides the weekly advertisement information to major construction trade papers and purchases legal advertisements in general circulation newspapers when possible.

4. The DES-OE also posts a 12-Month Tentative Advertisement list (list) on the DES-OE Internet page at http://www.dot.ca.gov/hq/esc/oe/. Bidders click on Advertised Projects (Projects for Bid) to view the list of projects greater than $1 million that are tentatively scheduled for advertising in the next twelve months. The list includes the contract number, project location, type of work, and the estimated dollar value of the project. The list is updated each quarter.

D. Project Specifications

1. Bid documents for all federal-aid projects advise bidders that, as required by federal law, the State has established a statewide overall DBE goal, and that the Department is required to report its DBE participation to FHWA each year. The bid documents further state that the Department tracks DBE participation on all Federal-aid projects to ascertain whether the Department is meeting the statewide overall annual DBE goal.

2. The bid documents also include Federal Form PR-1273, "Required Contract Provisions for Federal-Aid Construction Contracts," and specifications related to how the DBE Program will be administered during construction.

   A sample of the DBE Race-Neutral "Boilerplate" Bid Specifications from the Division of Engineering Services-Office Engineer is included as Attachment D.

   A sample of the DBE Race-Conscious "Boilerplate" Bid Specifications from the Division of Engineering Services-Office Engineer is included as Attachment D1.

E. Bid Opening

1. All bids are opened publicly and read at the time specified in the contract documents. DES-OE may make an immediate determination that a bid is non-responsive, e.g., the bidder failed to post a bidder's security, posted an invalid security, failed to complete all bid items or failed to sign the bid proposal. Responsive bids are verified mathematically.

2. California Public Contract Code Section 4100-4114, the Subletting and Subcontracting Fair Practices Act (Act), requires that bidders must list, in their sealed proposals, the names of subcontractors who are performing work in excess of 0.5 percent of the total bid, or $10,000, whichever is greater. The Act also requires that the bidders identify the portion of work being performed by subcontractor(s). There is no provision under the law for the addition of a subcontractor over the listing law threshold after bid opening. Further, the Act provides that in the event the prime fails to list a subcontractor or lists two subcontractors for the same work (subject to the thresholds of the Act), the prime contractor agrees to self-perform the work.

3. No later than one working day following bid verification, the names of the three lowest bidders, their total bid, and the subcontractors identified by the low bidder in its bid proposal are:

   a. Posted on a telephone "Bids Results Hotline" at (916) 654-5500, and

   b. Furnished to the construction trade papers.

   Complete bid summaries, list of all bidders, their subcontractors and their itemized bids, are posted on the DES-OE Internet site within two working days after bid opening.

F. Submittal of Caltrans Bidder DBE Information Form for Contracts without a Goal

1. Section 3 of the Special Provisions for federal-aid projects without a goal will require that the successful bidder execute and return a Caltrans Bidder DBE Information form.

2. The DBE information will include the names, addresses and telephone numbers of DBE firms that will participate with a complete description of work or supplies to be provided by each, and the dollar value of each DBE transaction. Certified DBE prime contractors will identify the work they are performing with their own forces and the dollar value of that work, as well as any other work to be performed by DBE subcontractors, suppliers and trucking companies. The successful bidder will be requested to provide written confirmation from the DBE that it is participating in the contract, as well as copies of joint venture agreements if a DBE is participating as a joint venture partner.

3. For non-emergency projects, this information must be submitted to the Department within 10 working days after the successful bidder has received the contract for execution. For emergency projects, the information must be submitted within five working days after the successful bidder has received the contract for execution.

G. Submittal of DBE Information and Good Faith Efforts

In the event the Department administers a race conscious component, Section 2-1.02B of the Special Provisions for federal-aid projects with goals directs the three lowest bidders to submit the following DBE information:

1. The names, addresses and telephone numbers of DBE firms that will participate with a complete description of work or supplies to be provided by each, the dollar value of each DBE transaction, and a written confirmation from the DBE that is participating in the contract. DBE prime contractors are required to identify the work performed by their own forces, and the corresponding dollar value of that work. Bidders are cautioned that their submittal should include information necessary to establish adequate good faith efforts in the event the Department finds that the goal has not been met.

2. The names and dates of each publication in which a request for DBE participation for this project was placed. The bidder is asked to attach copies of advertisements or proof of publication.

3. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested in bidding. The

bidder is asked to attach copies of solicitations, telephone records, fax confirmations, etc.

4. The items of work which the bidder made available to DBE firms, including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

5. The names, addresses, and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, and the actual firms selected for that work. The bidder is asked to attach copies of quotes from the firms involved.

6. Efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, and any technical assistance or information related to the plans, specifications and requirements for the work that was provided to DBEs.

7. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, material, and related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate.

8. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms. The bidder is asked to attach copies of requests to agencies and any responses received, i.e., list, printed Internet page downloaded, etc.

9. Any additional data to support a demonstration of good faith efforts.

This information must be received by the Department no later than 4:00 p.m. on the fourth working day following the bid opening. If the DBE information is not submitted within the time limits specified, the bidder is considered ineligible for the project award.

DES-OE submits the "List of Subcontractors" to Civil Rights with the bidder's "DBE Submittal" to ensure consistency between the two documents.

H. The Office of Civil Rights Evaluation of DBE Information

All "DBE Submittals", as well as related documents, will be delivered to DES-OE for verification of timely receipt, as described in the contract. The low bidder's "DBE Submittal" and "List of Subcontractors" will then be forwarded to the Office of Contract Evaluation for evaluation.

One of three following determinations will be made:

1. The low bidder met the project goal;

2. The low bidder did not meet the goal, but made adequate good faith efforts to meet the goal; or

3. The low bidder did not meet the goal and did not make adequate good faith efforts to meet the goal.

The Contract Evaluation Manager signs the finding and it is returned to DES-OE along with the good faith documents.

If the Contract Evaluation Unit determines that a bidder did not meet the goal and/or the bidder has not made adequate good faith efforts to meet the goal, the bidder is offered an administrative reconsideration of its good faith efforts as outlined in the "Administrative Reconsideration".

I. Administrative Reconsideration

An administrative reconsideration meeting is informal and is not considered a public meeting because a bidder may present proprietary and confidential information, such as bid spreadsheets or estimates to address the issues raised in the contract evaluation.

The meeting allows the bidder an opportunity to provide written documentation and/or arguments concerning whether the goal was met or adequate good faith efforts were made. The bidder is also allowed to present information substantiating or clarifying its DBE submittal. The Committee will only consider information pertaining to efforts made prior to bid opening.

1. The DES-OE notifies the bidder in writing of the initial determination that the bidder did not meet the goal or made an adequate good faith effort to meet the goal; the notification includes a copy of the contract evaluation. The bidder has five working days to request administrative reconsideration. If the bidder does not request reconsideration, the original determination stands and the award will proceed to the next lowest responsible bidder.

2. If the bidder requests administrative reconsideration, a meeting of the Good Faith Effort Reconsideration Committee is scheduled within one week of the bidder's request. The Good Faith Effort Reconsideration Committee consists of a representative from the Office Civil Rights (not a manager involved in the initial determination), DES-OE and the Division of Local Assistance. The Reconsideration Committee has a Department attorney to act as legal advisor.

After the bidder has presented its documentation and/or arguments, the Committee prepares its decision. The Committee's decision is final for the Department. The

bidder is cautioned that there is no other administrative appeal within the Department or to the FHWA. The bidder is notified of the results in writing (usually within five working days of the reconsideration meeting date).

VII. Division of Construction, Contract Administration

A. Contract Award Information

The DES-OE delivers an executed award contract to the District approximately one week after the award of a contract. The award package includes:

1. Contract Award Summary
2. Detailed Estimate of Cost
3. Bid Summary
4. The Contractor's "List of Subcontractors"

Approximately three weeks after contract approval the District office receives the prime contractor's "Caltrans Bidder- DBE - Information". This information documents what amount of DBE participation the contractor has committed to using.

B. Pre-Construction Conference

1. During the pre-construction conference the Resident Engineer (RE) and the prime contractor discuss the work that each subcontractor and each DBE listed is to perform. The RE gives the prime contractor a copy of the "DBE Information" to ensure that everyone understands what work the DBEs are to perform. This discussion is documented and entered into the RE's pre-construction notes.

2. During the conference, the prime contractor is directed to "Performance of Subcontractors," in the special provisions, which specifies the conditions under which a prime contractor may request a subcontractor substitution and any consequences for disapproval of a substitution request.

3. If the contractor has committed to use the DBE and the contract has an assigned DBE goal, it is considered race conscious and the RE will explain that the prime contractor is not entitled to any payment for work unless it is performed by the original listed DBE, and that payment will be withheld until the applicable substitution procedure is completed.

C. Monitoring Activities during Contract Performance

1. The Department requires that prime contractors submit Form CEM-1201, "Subcontracting Request" before work can be started on a subcontract. Once the RE receives the completed form, they verify it for conformity with the original "DBE Information" and "List of Subcontractors." Inconsistencies will be addressed prior to the RE's approval of the "Subcontracting Request."

2. The RE compares the suppliers, vendors, or manufacturers listed on the original DBE Information form to those listed on Form CEM-3101, "Notice of Materials to be Used." If the firms listed are inconsistent, the prime contractor is required to make corrections and report in writing any changes to its DBE participation.

3. When the prime contractor has listed DBE trucking companies in its DBE Information, the RE will inform the prime contractor of the requirement to submit monthly documentation showing the amount paid to the trucking companies used. The trucking documentation includes the truck number, the owner's name, the California Highway Patrol CA number, if applicable, and the DBE certification number of the owner of each truck used during that month in accordance with "Subcontractor and DBE Records" of the Special Provisions.

D. Monitoring for DBE Commercially Useful Function (CUF)

1. The RE ensures that Inspectors know items of work each DBE is responsible for. Inspectors will notify the RE of apparent changes in DBE participation.

2. A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

3. Contractors are directed to the DBE special provisions for an explanation of the CUF requirements.

4. When a firm other than the listed DBE is found performing the work, the RE contacts the prime contractor immediately.

5. Payment for the item or items performed by the firm, which was not listed, will be withheld from the prime contractor's next progress payment. Payment will not be made for this work until the RE approves a request for a substitution. A letter will be sent to the prime contractor explaining the reasons for the deduction, and directing the prime contractor to pursue the appropriate substitution process.

E. Substitutions – Race-Neutral

1. The Subletting and Subcontracting Fair Practices Act (FPA), Sections 4100 - 4114 of the California Public Contract Code, outlines all of the conditions, including those prior to contract award, under which a prime contractor may request substitution of subcontractors. A contractor who violates any of the provisions of the FPA violates the contract, and the awarding authority may at its discretion: (1) cancel the contract or (2) assess a penalty of not more than 10 percent of the amount of the subcontract involved.

2. When the prime contractor requests that a listed subcontractor is removed from the project, the prime contractor notifies the RE of the substitution according to Section 5-1.086, "Performance of Subcontractors," of the special provisions and submits a new Form CEM-1201, "Subcontracting Request."

3. If the RE denies approval of a substitution, the prime contractor is entitled to a public hearing and a five-day notice. The Department schedules a hearing, if requested.

F. Substitutions – Race-Conscious

1. When a prime contractor requests a subcontractor substitution, the RE requests a letter from the prime contractor explaining why the prime contractor is requesting the substitution.

   The FPA outlines all of the conditions, including those prior to contract award, under which a prime contractor may request the substitution of subcontractors. A contractor who violates any of the provisions of the FPA violates the contract, and the awarding authority may at its discretion cancel the contract or assess a penalty of not more than 10 percent of the amount of the subcontract involved.

   Section 5-1.X "Performance of DBE Subcontractors and Suppliers" identifies the following conditions under which a prime may request a substitution of subcontractors during contract performance:

   a. The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project, or on the terms of such subcontractor's or supplier's written bid, is presented by the prime contractor.

   b. The listed DBE becomes bankrupt or insolvent.

   c. The listed DBE fails or refuses to perform the subcontract or furnish the listed materials.

d. The prime contractor stipulated that a bond was a condition of executing a subcontract and the listed DBE subcontractor fails or refuses to meet the bond requirements of the contractor.

e. The work performed by the listed subcontractor is substantially unsatisfactory and is not in substantial conformance with the plans and specifications, or the subcontractor is substantially delaying or disrupting the progress of the work.

f. It would be in the best interest of the State.

Prime contractors are entitled to a public hearing and a five-day notice. The RE gives written notice to the prime contractor directing them to suspend the work of the items in question and informing them that a penalty of 10 percent of the amount of the subcontract involved will be assessed.

Caltrans schedules a hearing on the matter and if the prime contractor is found in violation of the FPA or Special Provisions, the prime contractor's request for substitution will be denied and a penalty up to 10 percent of the subcontract will be imposed.

2. The RE will complete Form CEM-2401, "Substitution Report". If the prime contractor is replacing one DBE firm with another, the RE can sign the Form CEM-2401. If the substitution is based on good faith efforts, then the District Division Chief of Construction or a delegated representative must sign it. The RE will review the good faith documentation and make a recommendation to the District Division Chief. Once a substitution is approved, the prime contractor must provide the RE with a new Form CEM-1201, "Subcontracting Request".

G. Reporting and Recording Participation

1. The prime contractor is required to maintain records of the name, business address, and phone number of each first-tier subcontractor as well as any DBE subcontractor, DBE vendor of materials and DBE trucking company regardless of tier.

2. When a contract is completed, the prime contractor provides a summary of the above records on Form CEM-2402 (F) "Final Report - Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" which must be submitted to the resident engineer within 90 days of the date of contract acceptance.

   a. The RE compares the Form CEM-2402 (F) to the contractor's original "DBE Information" and Form CEM-1201, "Subcontracting Request," if applicable.

b. The DBEs shown on the Form CEM-2402 (F) should be the same as those originally listed unless a change has been authorized, if applicable.

c. If the prime contractor fails to submit the Form CEM 2402(F), the RE will retain $10,000 from the prime contractor's payment to cover any outstanding Form CEM-2402 (F), in conformance with the contract.

d. The RE files a copy of Form CEM-2402 (F) in the project records, and submits the original to the Division of Construction. The Division of Construction forwards all original CEM-2402 (F) Forms to the Office of Civil Rights, Contract Evaluation Unit for federal reporting.

H. Notification of DBE Decertification During Course of a Contract

The Office of Civil Rights, Certification Unit, notifies the Division of Construction DBE liaison officer of the decertification of a DBE contractor or subcontractor. The Certification Unit provides the DBE certification number, date of decertification and appropriate information. The construction DBE Liaison officer notifies the District Labor Compliance Officer of the change in the firm's status. The District Labor Compliance Officer forwards the information to the RE. The RE requires the contractor to act in accordance with existing contractual commitments regardless of the decertification. The firm's participation is not counted toward the statewide overall DBE goal from the date of the decertification notice.

VIII. The Division of Procurement and Contracts (DPAC), Service Contracts, Architectural and Engineering Consultant Contracts and Minor B Contracts

A. DBE Contract Administration Responsibilities

The DPAC is responsible for processing and awarding several types of federal aid contracts, including, but not limited to, Service contracts, Architectural and Engineering (A&E) Consultant contracts, Public Works contracts, Emergency Force Account contracts, and contracts for the acquisition of commodities and goods.

A sample of DBE Race-Neutral "Boilerplate" Bid Specifications from Division of Procurement and Contracts is included as Attachment E.

A sample of DBE Race-Conscious "Boilerplate" Bid Specifications from Division of Procurement and Contracts is included as Attachment E1.

Service contracts consist of:

- Commercial;
- Personnel; and
- Consulting services.

Public Works contracts consist of:

- Minor B Highway Construction projects between $1,000 and $131,000 per State Contracting Manual, Section 10.15.

Emergency Force Account contracts are time and materials for the immediate restoration of services.

1. The Chief of DPAC is responsible for ensuring inclusion of DBE federally-funded contract requirements in solicitation and contract documents. Any contract with a minimum of one-cent of federal money is considered a federal contract.

   The Chief of DPAC is responsible for overseeing processing, advertising, awarding and executing service contracts, Minor B and Emergency Force Account, construction, and commodity and goods acquisition contracts.

   - Ensuring that new and revised policy and procedures are implemented.

   - Participating in the Statewide Small Business Council meetings.

   - Participating in meetings with the Department of General Services, such as the Small Business Certification and Resources Small Business Advocate Program, the Business Expansion Council and the State Contracting Advisory Network; and

   - Developing and submitting the Uniform Report of DBE Awards or Commitments and Payments, Title VI Annual Element and DBE Annual Element to the Office of Civil Rights.

2. Administrative Activities and Updates:

   The DPAC is responsible for the development of policies and procedures that ensure contracts comply with state and federal laws. The DPAC also provides on-going training to DPAC staff and is responsible for the *Caltrans Service Contracts Manual*, the *Contract Manager's Handbook*, the *How to Do Business with Caltrans* pamphlet and Web site, and DBE Consultant forms and instructions to comply with 49 CFR Part 26 regulations.

3. Provisions in A&E and Service Contracts:

   The Department's federal contract provisions are implemented in accordance with 49 CFR Part 26. Such provisions are as follows:

   a. The prime contractor shall maintain records of all subcontracts entered into with certified DBE subconsultants and records of materials purchased from certified DBE suppliers. The records shall include:

1) Name and business address of each DBE subconsultant or vendor.

2) Total dollar amount actually paid to each DBE subconsultant or vendor, regardless of tier.

3) Date of payment and total dollar amount paid to all firms.

4) The date of work performed by their own work forces and the corresponding dollar amount of the work.

b. Upon completion of the contract, the prime consultant/contractor provides a summary of records, as stated above, in a final report, certified correct by the consultant/contractor or an authorized representative, and furnished to the State's contract manager with the final invoice. Should the prime consultant/ contractor fail to provide the final report showing a summary of the DBE payments with the final invoice, 25 percent of the dollar value of the final invoice is withheld from payment until the final report and invoice is submitted.

c. Minor B contractors report a summary of the DBE utilization on the Construction Program Form CEM-2402 (F), Final Report – Utilization of Disadvantaged Business Enterprises (DBE) to the RE. The RE files the CEM-2402 (F) in the project records and submits the original to the Office of Civil Rights for federal reporting purposes.

B. Contract Award and Advertisement

All contracts of $5,000 or more are advertised in the California State Contracts Register (CSCR) unless otherwise exempted. The Contract Manager provides the scope of work and bid solicitation requirements for the solicitation. The DPAC posts the Invitation for Bid (IFB), Request for Proposal (RFP), and Request for Qualification (RFQ) on its Web site. Builder exchanges, clearinghouses, and others may download the Department's contract information for use in their publications.

The following information is available to all contractors and subcontractors, including DBE prime consultant/contractors and DBE subcontractors from DPAC's Web site at http://caltrans-opac.ca.gov/index.htm:

1. Contracts Currently Out for Bid

2. Bid Opening Results

3. Notice of Intent to Award

A phone "bid-line" at (916) 227-6075 is also maintained to provide access to those consultant/contractors without Internet access.

C. Bids and Bid Openings

Bids are opened at a public bid opening conducted by DPAC staff. Public bid openings are conducted each week. All bids are date- and time-stamped upon receipt. Only sealed bids are accepted and all bids must be received by the date and time stated in the bid solicitation. Late and/or altered bids are not accepted. Bid opening procedures comply with all applicable state and federal statutes, regulations, and policies.

D. Contract Award

When all applicable solicitation requirements have been met, DPAC awards the contract. The DPAC sends the awardee the DBE Participation form (ADM 0227F) along with instructions for the consultant/contractor to complete the form. The purpose of the form is to collect data required pursuant to 49 CFR Part 26. The bidder completes and returns the DBE Participation Form even if no DBE participation is reported. The DPAC encourages consultants/contractors to utilize DBE subconsultants/subcontractors and suppliers.

A&E contracts require qualifications-based selection in accordance with Government Code Section 4525. The RFQs are published in the CSCR and publications of professional societies as required by Government Code Section 4525.

E. Submittal of DBE Information

In conformance with 49 CFR Part 26, DBE firms must be certified by the Office of Civil Rights (OCR) or by the solicitation due date.

For race-conscious contracts, bidders must also submit the DBE Participation Form ADM 0227F) and/or the DBE Good Faith Effort Information (form ADM 0312F). DPAC then sends the DBE information from the apparent lowest responsible bidder to OCR for review and approval. Upon OCR's approval, DPAC continues to administer the contract through execution. If OCR determines that the bidder did not meet the goal or make an adequate Good Faith Effort, the bidder is informed and given an opportunity to request administrative reconsideration. If no request for reconsideration is made, DPAC will award the contract to the next apparent lowest responsible bidder and the process repeats itself.

F. Reporting Requirements

The DPAC submits a Federal DBE Report (semi-annual and annually) to the OCR for inclusion in the FHWA Report. The DPAC reports DBE statistical data utilizing the Uniform Report of DBE Awards or Commitments and Payments.

G. Outreach Activities

The DPAC participates in State- and Department-sponsored procurement fairs and small business outreach programs to assist contractors learn about the state contracting process. Topics covered include contracting information available on Departmental Internet sites, identifying contracting opportunities, and becoming DBE certified.

IX. Subrecipient Monitoring Processes and Procedures

A sample of DBE Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients in included as Attachment F.

A. Division of Mass Transportation DBE Implementation

The Division of Mass Transportation (DMT) is responsible for the administration of state and federal grant programs that provide funding for operating assistance and capital projects. Currently, there are four Federal Transit Administration (FTA) grant programs administered by DMT: Elderly and Persons with Disabilities Program, Section 5310, and Non-urbanized Area Formula Program, Section 5311; Job Access and Reverse Commute Program, Section 5316 and New Freedom, Section 5317.

Consistent with federal guidance, a small percentage of funds are retained for DMT's administrative costs, with the majority of the funds being passed through to subrecipients for their transit projects.

1. DMT Contracts

   The DMT lets FTA-assisted contracts for consultant services. The solicitation and contract documents are prepared with assistance from the DPAC, in accordance with §26.49. The DMT provides DPAC with the names and address of potential bidders from the Department's directory of DBE certified firms and other small businesses.

2. Subrecipient Contracts

   For subrecipients, the DMT has established procedures to take necessary and reasonable steps to ensure that all small businesses that meet the requisite federal size standards, including DBEs, have the maximum opportunity to compete for and perform contracts. Subrecipients of Sections 5310, 5311, 5316, and 5317 funds are subject to the regulations in 49 CFR Part 26. The DBE program is discussed at the DMT-sponsored training sessions for its federal grant programs.

In the Section 5310 program, funds are available for capital projects only. In the remaining three Sections, funds are available for capital, planning, and operating assistance projects. In addition, Section 5316 is available for planning. Capital projects include both vehicle and non-vehicle projects. Typical non-vehicle projects include transit studies, mobile radios, computer hardware and software, bus shelters, and intermodal facilities.

For transit vehicles, the manufacturer works directly with FTA to satisfy the race-neutral DBE Program requirements. The DMT is responsible for acquiring a certification of DBE compliance from each manufacturer receiving FTA funds through one of its FTA programs during the solicitation process. For other project categories (non-vehicle capital, operating assistance, planning), subrecipients satisfy race-neutral DBE Program requirements by following the procedures below.

The Department has established a "one plan" philosophy. That is, subrecipients must adhere to the Department's DBE Program Plan. On DMT approved projects with contracting opportunities, subrecipients must submit a DBE Implementation Agreement with their signed project contract (Standard Agreement). The model language and instructions are available on the DMT Web site at: http://www.dot.ca.gov/hq/MassTrans/index.html.

Subrecipients letting FTA-assisted contracts must use the DBE procurement language provided by DMT (also found at the Web site above). Prior to advertising request for proposals, invitations to bid, or other solicitation methods, subrecipients must submit procurement documents to DMT for review and approval. Once the solicitation process is complete and a successful bidder is identified, the subrecipient notifies DMT of the successful bidder and whether the bidder is a DBE firm.

Subrecipients must create and maintain a Bidders List of DBE and non-DBE firms that bid or quote on its FTA-assisted contracts and subcontracts. The Bidder's List must include the following: firm name, firm address, DBE/non-DBE status, the firm's number of years in business and the firm's annual gross receipts. Subrecipient's approved purchases are made with local money, and then billing documents are submitted to DMT for reimbursement with FTA funds.

3. DMT's Report Requirements

Semi-annually, DMT submits data regarding awards or commitments and payments on all FTA-assisted contracts (both DMT's and subrecipient's) to the OCR for reporting to FTA. The DMT also submits its DBE Annual Element update to OCR for reporting to FTA.

B. Division of Local Assistance

1. Local Agency Requirements

The following are requirements of local agency recipients who let U. S. DOT-assisted contracts:

a. Local Assistance Procedures Manual (LAPM)

Submittal of a DBE Program Implementation Agreement as outlined in LAPM. This Agreement formally acknowledges the local agencies agreement to implement the State of California, Department of Transportation DBE Program Plan and their commitment to comply with all the prescribed responsibilities explained in the regulations and as outlined in the Local Assistance Procedures Manual (See LAPM Chapter 9 – Section 9.6 and Exhibit 9-A).

A sample of the DBE Race-Neutral Implementation Agreement for Local Agencies is included as Attachment G.

b. DBE Annual Submittal Form

Submittal of a "DBE Annual Submittal Form", as outlined in the Local Assistance Procedures Manual. (See LAPM Chapter 9 – Section 9.6 and Exhibit 9-B.)

The DBE Annual Submittal Form for Local Agencies is currently under development and not available at this time.

c. Contract Provisions

1) The "Sample Boilerplate" contract documents on the Local Assistance Web site include the revised construction contract provisions containing the race-neutral DBE contract language. Although these provisions apply to contracts using the Caltrans *Standard Specifications*, they may be modified for contracts using the "Greenbook" or some other standard specifications. However, all contract provisions will use the race-neutral contract language.

2) The sample "Contract Provisions" included as Exhibits "10-I and 10-J" in Chapter 10 "Consultant Selection" of the LAPM have been revised and now contain the race-neutral DBE contract language for federal-aid consultant contracts.

3) Contractual language specifying prompt payment clauses that benefit all subcontractors equally are required and included in the foregoing provisions.

d. Bidder's List

Create and maintain a Bidder's List, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted contracts. The Bidder's List includes the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

e. Scheduled Report

Timely reporting of DBE commitments at contract award and utilization at completion of contract.

2. Local Assistance Responsibilities

a. Monitoring Local Agencies

Local agencies are monitored primarily by the District local assistance staff. The Division of Local Assistance (DLA) may also monitor local agencies by conducting a Process Review for DBE compliance.

Each District is responsible for DBE oversight of local agencies pursuant to the regulations outlined in the LAPM. The District Local Assistance Engineers (DLAEs) will:

1) Ensure that the Final DBE Utilization Report (for consultant and construction contractors) is reported to DLA for inclusion in California Department of Transportation Semi-annual DBE report to FHWA.

2) Require that the Districts review at least one complete Plans, Specifications & Estimates (PS&E) package per local agency for Federal provisions (including DBE requirements) per year, or, if an agency has a DOT-assisted contract only occasionally, the PS&E package will be reviewed at that time. If deficiencies are discovered, more frequent PS&E reviews of that local agency are required. Upon review and finding of DBE deficiencies, a corrective action plan is submitted by the local agency to district staff for approval.

3) Review the local agencies' "DBE Program Implementation Agreement" and "DBE Annual Submittal Form."

4) Provide guidance to local agencies in developing their Annual Anticipated DBE Participation Level (AADPL) and methodology for establishing the AADPL.

5) Maintain a file with an index of all local agency DBE Program Implementation Agreements and DBE Annual Submittal Forms provided by local agencies.

6) Maintain a list of each local agency's designated DBE Liaison Officer provided by local agencies. This list is updated annually with the local agency's submittal of their annual form.

b. Monitoring Districts

The DLA conducts DBE Process Reviews of the districts. The Process Review Teams are comprised of representation from FHWA, District staff, the Office of Civil Rights and DLA. Districts are monitored for evidence of:

1) Oversight compliance, e.g., review and monitoring of local agency requirements of DBE Final Utilization Reports;

2) PS&E package and checklist for DBE requirements;

3) DBE Race-neutral Implementation Agreements; and

4) DBE Annual Submittal Form.

c. Training

The DLA plans and participates in DBE training seminars provided to District and local agency staff.

d. Reporting

The DLA ensures the timely preparation and submittal of DBE reports.

C. Division of Transportation Planning

1. Planning Grant Programs

a. The Division of Transportation Planning (DOTP) is responsible for the administration of FTA and FHWA grant programs that provide funding for planning projects falling into a series of national Planning Emphasis Areas (PEAs). The PEAs represent topics in Statewide and metropolitan planning that are of strategic national importance and are proposed for consideration by State and local officials as they prepare Overall Work Programs (OWPs)

and State Planning and Research (SPR) programs during the annual planning program cycle.

b. FHWA – Metropolitan Planning (PL) Funds are pass-through funds that go directly to the Metropolitan Planning Organizations. (MPOs) Metropolitan Planning Funds are for the purpose of carrying out Section 134 of Title 23, United States Code (U.S.C.), among the States and the District of Columbia in the manner provided by the law in accordance with the formula in Section 104(f)(2) of Title 23, U.S.C.

c. FHWA Grants – These funds are also pass-through funds based on an application basis. The MPOs submit applications and based on certain criteria, are awarded on a competitive basis.

d. FTA 5303 Program is a pass-through of funds based on population.

e. FTA 5304 Grant Program, like the FHWA Grants, is passed through on a competitive application process.

f. Regional Blueprint Plans - The Department will distribute $5 million in federal funds as grants to MPOs to produce regional "blueprint" planning documents. These plans will guide future development and land use decisions to promote economic development, while protecting the environment, promoting healthy cities, and reducing unnecessary travel demand.

2. State Planning and Research (SPR) Part 1

The SPR Part 1 is a federal funding program designed to assist states in statewide planning activities of national or statewide significance.

General Eligibility

The following are eligibility criteria for SPR funds for the two program components:

Part 1 Planning:

a. Support planning activities of national or statewide significance.

b. Engineering and economic surveys and investigations.

c. Planning of future highway programs and local public transportation systems, including statewide planning.

d. Development and implementation of management systems.

e. Studies of the economy, safety, and convenience of highway usage and the desirable regulation and equitable taxation thereof.

3. Section. 420.113 Eligibility of Costs

a. Costs are eligible for FHWA participation provided the costs:

1) Are for work performed for activities eligible under the section of Title 23, U.S.C., applicable to the class of funds used for the activities;

2) Are verifiable from the STA or the subrecipient's records;

3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR 18.22;

4) Are included in the approved budget, or amendment thereto; and

5) Were not incurred prior to FHWA authorization.

b. Except as specified in paragraph (b) (2) of this section, indirect costs of an STA are not eligible for reimbursement with FHWA planning and research funds.

Salaries for services rendered by STA employees who are generally classified as administrative are eligible for reimbursement for a transportation planning unit, Research, Development, and Training unit, or other unit performing eligible work with FHWA planning and research funds (including development, establishment, and implementation of the management and monitoring systems required by 23 U.S.C. 303 and 23 CFR part 500) in the ratio of time spent on the participating portion of work in the unit to the total unit's working hours.

c. Indirect costs of MPOs and local governments are allowable if supported by a cost allocation plan and indirect cost proposal approved in accordance with the provisions of the Office of Management and Budget (OMB) Circular A-87.

An initial plan and proposal must be submitted to the Federal cognizant or oversight agency for negotiation and approval prior to recovering any indirect costs.

The cost allocation plan and indirect cost proposal is updated annually and retained by the MPO or local government, unless requested to be resubmitted by the Federal cognizant or oversight agency, for review at the time of the audit required in accordance with 49 CFR Part 90. If the MPO or

local government's indirect cost rate varies significantly from the rate approved for the previous year, or if the MPO or local government changes its accounting system and affects the previously approved indirect cost allocation plan and proposal or rate and its basis of application, the indirect cost allocation plan and proposal is resubmitted for negotiation and approval. In either case, a rate is negotiated and approved for billing purposes, until a new plan and proposal are approved.

d. Indirect costs of other STA subrecipients, including other State agencies, are allowable if supported by a cost allocation plan and indirect cost proposal prepared, submitted, and approved by the cognizant or oversight agency in accordance with the OMB requirements applicable to the subrecipient.

4. DBE Race-Neutral and Race-Conscious Measures

The following are requirements of MPO and Regional Transportation Planning Agencies (RTPA) and other recipients who get U.S. DOT assisted contracts:

a. Submittal of an annual OWP with a "Memorandum of Understanding (MOU)/Master Fund Transfer Agreement (MFTA)" outlining legal foundations of the MPO, the planning process, the obligations and responsibilities, the organizational makeup and the funding process. The MOU/MFTA also establishes the responsibilities of all parties regarding Civil Rights and the DBE Program.

b. All program participants must have approved DBE programs following the Department's DBE Program Plan. This Plan formally acknowledges the statutory and/or regulatory requirements with its race-neutral and race-conscious measures, and their commitment to comply with all the prescribed responsibilities explained in the Regional Planning Handbook available on DOTP's Web site at http://www.dot.ca.gov/hq/tpp/index.htm.

c. Create and maintain a Bidder's List, consisting of information about all DBE and non-DBE firms that bid or quote on its U.S. DOT assisted contracts. The Bidder's List includes the name, address, DBE/non-DBE status, age and annual gross receipts of firms.

d. Timely reporting of DBE commitments at contract award and utilization at completion.

e. Contractual language specifying prompt payment clauses are required and included in the foregoing provisions. These prompt payment clauses benefit all subcontractors equally:

5. Prompt Payment

a. Prompt Progress Payment to Subcontractors

A prime contractor or subcontractor shall pay to any subcontractor no later than 10-days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-day rule is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30-days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

b. Prompt Payment of Withheld Funds to Subcontractors

The MPO, RTPA or local government entity shall include provisions in their U.S. DOT-assisted contracts to ensure prompt and full payment of retainage (withheld funds) to subcontractors in compliance with 49 CFR 26.29.

c. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

X. Office of Civil Rights, Disadvantaged Business Enterprise (DBE) Program Process Reviews

A. The DBE Program conducts structured evaluation process reviews of the following DBE functional program areas:

1. DBE Certification Unit;
2. DBE Supportive Services;
3. Division of Engineering Services – Office Engineer;
4. Construction Division, including Resident Engineers and Labor Compliance Officers;
5. Division of Local Assistance;
6. Division of Transportation Planning;
7. Division of Mass Transportation;
8. Division of Procurement and Contracts;
9. Local Agency samplings of approximately 600 subrecipients; and
10. Metropolitan Planning Organizations.

Collected data is analyzed and used to monitor compliance with 49 CFR Part 26 and to define and project future training needs.

At a minimum, findings are reported to FHWA in the Annual Element Update.

Schedule of Attachments

Attachment A – Civil Rights Organizational Cart

Attachment B – Glossary and Definition of Terms

Attachment C – List of Internet and Website Addresses

Attachment D – Sample of DBE Race-Neutral "Boilerplate" Bid Specifications from the Division of Engineering Services-Office Engineer

Attachment D 1– Sample of DBE Race-Neutral "Boilerplate" Bid Specifications from the Division of Engineering Services-Office Engineer

Attachment E – Sample of DBE Race-Neutral "Boilerplate" Bid Specifications from the Division of Procurement and Contracts

Attachment E 1– Sample of DBE Race-Neutral "Boilerplate" Bid Specifications from the Division of Procurement and Contracts

Attachment F – Sample of DBE Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients

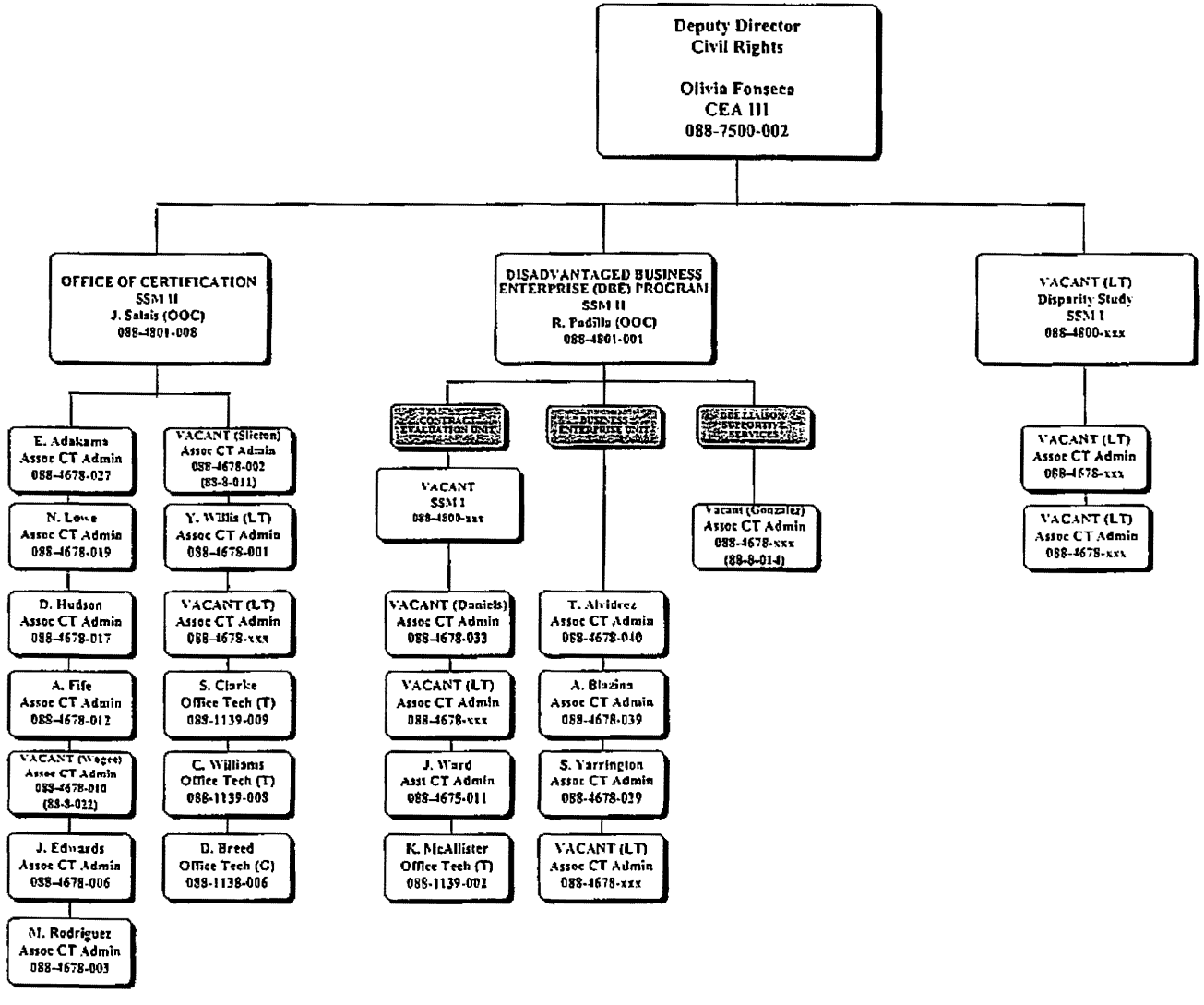
Attachment G – Sample of DBE Race-Neutral Implementation Agreement for Local Agencies

ATTACHMENT A

Civil Rights Organizational Chart

DEPARTMENT OF TRANSPORTATION CIVIL RIGHTS DBE Program

October 2007



10/11/2007

ATTACHMENT B

Glossary and Definition of Terms

Glossary

California State Department of Transportation (Department), also commonly know as "Caltrans", the State's primary recipient of **United States Department of Transportation (U.S. DOT)-assisted Federal financing** for highway and transit related projects and contracts. The term **"U.S. DOT-assisted"** includes the term "**Federal-aid**" when the funds come from the Federal Highway Administration.

California Unified Certification Program (CUCP) is a statewide Unified Certification Program mandated by 49 CFR Part 26. The CUCP is a "One-Stop-Shopping" certification procedure that eliminates the need for DBE firms to obtain certifications from multiple agencies within the State.

Compliance means that a recipient has correctly implemented the requirements of 49 Code of Federal Regulations (CFR) Part 26.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor means one who participates, through a contract or subcontract (any tier), in a Federal aid or in a DOT-assisted highway, transit, or airport program.

Disadvantaged Business Enterprise (DBE) means a for-profit small business concern that meets the following general guidelines:

1. The firm must be at least 51% owned by one or more socially and economically disadvantaged individuals.
2. The firm must be an independent business, and one or more of the socially and economically disadvantaged owners must control its management and daily operations.
3. Only existing for-profit "Small Business Concerns," as defined by the Small Business Act and Small Business Administration (SBA) may be certified. DBE applicants are first subject to the applicable small business standards of the SBA. Second, the average annual gross receipts for the firm (including its affiliates) over the previous three fiscal years must not exceed U.S. DOT's current cap of $20.41 million.
4. The Personal Net Worth (PNW) of each socially and economically disadvantaged owner must not exceed $750,000, excluding the individual's ownership interest in the applicant firm and the equity in his/her primary residence.

Socially and economically disadvantaged individual means any individual who is a citizen of the United States (or lawfully admitted permanent resident) and who is a member of the following groups: Black American, Hispanic American, Native American, Asian-Pacific American, Subcontinent Asian American, or Women, or Any individual found to be socially and economically disadvantaged on a case-by-case- basis by a certifying agency pursuant to the standards of the U.S. DOT 49 CFR Part 26.

Federal aid or U.S. DOT-assisted contract or project means any contract or project between a recipient and a contractor (at any tier) funded in whole or in part with United States Department of Transportation (U.S. DOT) financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Personal Net Worth means the net value of the assets of an individual remaining after total liabilities are deducted; refer to 49 CFR Part 26.67 (a) (2) for DBE specific information.

Primary recipient means a recipient, which receives US DOT financial assistance and passes some, or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most of their working hours and where top management's records are kept.

Program means any undertaking of a recipient's part to use U.S. DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure of program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure of program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient is any entity, public or private, to which U.S. DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FHWA, or who has applied for such assistance.

Subrecipient is an agency receiving U.S. DOT financial assistance directly from the State.

United States Department of Transportation (U.S. DOT) mean the U.S. Department of Transportation, including the Office of the Secretary of the Federal Highway Administration. The Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA) are also agencies within the U.S. DOT.

ATTACHMENT C

List of Internet and Website Addresses

Internal and External Internet Addresses

I. California State Department of Transportation:

Main Web Page http://www.dot.ca.gov

Office of Civil Rights http://www.dot.ca.gov/hq/bep

Division of Engineering Services – Office Engineer
http://www.dot.ca.gov/hq/esc/oe/

Division of Procurement and Contracts
http://caltrans-opac.ca.gov/index.htm

Division of Construction
http://www.dot.ca.gov/hq/construc/

Division of Transportation Planning
http://www.dot.ca.gov/hq/tpp/index.htm

Division of Local Assistance
http://www.dot.ca.gov/hq/LocalPrograms/

Division of Mass Transportation
http://www.dot.ca.gov/hq/MassTrans/index.html

II. Other Internet Addresses of Importance:

Department of General Services, State Contracts Register (Advertisement of Contracts and Projects)
https://www.cscr.dgs.ca.gov/cscr/

Contractor's Sate License Board
http://www.cslb.ca.gov/

United States Department of Transportation DBE Program
http://osdbu.dot.gov/index.cfm

ATTACHMENT D

Sample of DBE Race-Neutral "Boilerplate" Bid Specifications from the Division of Engineering Services-Office Engineer

DEPARTMENT OF TRANSPORTATION

NOTICE TO CONTRACTORS

CONTRACT NO. 05-0N8404

05-SB-101-50.8/54.0

Sealed proposals for the work shown on the plans entitled:

STATE OF CALIFORNIA; DEPARTMENT OF TRANSPORTATION; PROJECT PLANS FOR CONSTRUCTION ON STATE HIGHWAY IN SANTA BARBARA COUNTY NEAR BUELLTON FROM 1.9 MILES NORTH OF ROUTE 1/101 SEPARATION TO 2.5 MILES SOUTH OF SANTA ROSA ROAD OVERCROSSING

will be received at the Department of Transportation, 1120 N Street, Room 0200, MS #26, Sacramento, CA 95814, until 2 o'clock p.m. on November 6, 2007, at which time they will be publicly opened and read in Room 0100 at the same address.

Proposal forms for this work are included in a separate book entitled:

STATE OF CALIFORNIA; DEPARTMENT OF TRANSPORTATION; PROPOSAL AND CONTRACT FOR CONSTRUCTION ON STATE HIGHWAY IN SANTA BARBARA COUNTY NEAR BUELLTON FROM 1.9 MILES NORTH OF ROUTE 1/101 SEPARATION TO 2.5 MILES SOUTH OF SANTA ROSA ROAD OVERCROSSING

General work description: Construct Concrete and Thrie Beam Median Barrier

Bidders are advised that, as required by federal law, the Department has established a statewide overall DBE goal. The Department is required to report to FHWA on DBE participation for all Federal-aid contracts each year so that attainment efforts may be evaluated. In order to ascertain whether the statewide overall DBE goal is being achieved, the Department is tracking DBE participation on all Federal-aid contracts.

No prebid meeting is scheduled for this project.

THIS PROJECT IS SUBJECT TO THE "BUY AMERICA" PROVISIONS OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 AS AMENDED BY THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991.

Bids are required for the entire work described herein.

At the time this contract is awarded, the Contractor shall possess either a Class A license or a combination of Class C licenses which constitutes a majority of the work.

This contract is subject to state contract nondiscrimination and compliance requirements pursuant to Government Code, Section 12990.

Inquiries or questions based on alleged patent ambiguity of the plans, specifications or estimate must be communicated as a bidder inquiry prior to bid opening. Any such inquiries or questions, submitted after bid opening, will not be treated as a bid protest.

The Caltrans Central Region Construction Office is located at 855 M Street, Suite 200, Fresno, CA 93721. The District Duty Senior for this project can be reached at (805) 549-3116, or by fax at (805) 549-3523. The Department will consider bidder inquiries only when a completed "Bidder Inquiry" form is submitted. The "Bidder Inquiry" form is available on the Internet at:

http://www.dot.ca.gov/dist6/construction

To the extent feasible and at the discretion of the Department, completed "Bidder Inquiry" forms submitted for consideration will be investigated, and responses will be posted on the Internet at:

http://www.dot.ca.gov/dist6/construction

Project plans, special provisions, and proposal forms for bidding this project can only be obtained at the Department of Transportation, Plans and Bid Documents, Room 0200, MS #26, Transportation Building, 1120 N Street, Sacramento, California 95814, FAX No. (916) 654-7028, Telephone No. (916) 654-4490. Use FAX orders to expedite orders for project plans, special provisions and proposal forms. FAX orders must include credit card charge number, card expiration date and authorizing signature. Project plans, special provisions, and proposal forms may be seen at the above Department of Transportation office and at the offices of the District Directors of Transportation at Irvine, Oakland, and the district in which the work is situated. Standard Specifications and Standard Plans are available through the State of California, Department of Transportation, Publications Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone No. (916) 445-3520.

The successful bidder shall furnish a payment bond and a performance bond.

The Department of Transportation affirms that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation.

The U.S. Department of Transportation (USDOT) provides a toll-free "hotline" service to report bid rigging activities. Bid rigging activities can be reported Mondays through Fridays, between 8:00 a.m. and 5:00 p.m., eastern time, Telephone No. 1-800-424-9071. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report these activities. The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. These wages are set forth in the General Prevailing Wage Rates for this project, available at the Labor Compliance Office at the offices of the District Director of Transportation for the district in which the work is situated, and available from the California Department of Industrial Relations' internet web site at: http://www.dir.ca.gov. The Federal minimum wage rates for this project as predetermined by the United States Secretary of Labor are available on the internet at http://www.dot.ca.gov/hq/esc/oe/federal-wages/. Addenda to modify the Federal minimum wage rates, if necessary, will be issued to holders of "Proposal and Contract" books. Future effective general prevailing wage rates which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

If there is a difference between the minimum wage rates predetermined by the United States Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the Contractor and subcontractors shall pay not less than the higher wage rate. The Department will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the Contractor and subcontractors, the Contractor and subcontractors shall pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question.

DEPARTMENT OF TRANSPORTATION

Deputy Director Transportation Engineering

Dated October 9, 2007

RWR

SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS

2-1.01 GENERAL

The bidder's attention is directed to the provisions in Section 2, "Proposal Requirements and Conditions," of the Standard Specifications and these special provisions for the requirements and conditions which the bidder must observe in the preparation of the Proposal form and the submission of the bid.

The Bidder's Bond form mentioned in the last paragraph in Section 2-1.07, "Proposal Guaranty," of the Standard Specifications will be found following the signature page of the Proposal.

Submit request for substitution of an "or equal" item, and the data substantiating the request to the Department of Transportation, Central Region Construction, P.O. Box 12616, Fresno, CA 93778, so that the request is received by the Department by close of business on the fourth business day following bid opening.

In conformance with Public Contract Code Section 7106, a Noncollusion Affidavit is included in the Proposal. Signing the Proposal shall also constitute signature of the Noncollusion Affidavit.

The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of title 49, part 26, Code of Federal Regulations (49 CFR 26) in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. Each subcontract signed by the bidder must include this assurance.

Failure of the bidder to fulfill the requirements of the Special Provisions for submittals required to be furnished after bid opening, including but not limited to escrowed bid documents, where applicable, may subject the bidder to a determination of the bidder's responsibility in the event it is the apparent low bidder on a future public works contracts.

2-1.015 FEDERAL LOBBYING RESTRICTIONS

Section 1352, Title 31, United States Code prohibits Federal funds from being expended by the recipient or any lower tier subrecipient of a Federal-aid contract to pay for any person for influencing or attempting to influence a Federal agency or Congress in connection with the awarding of any Federal-aid contract, the making of any Federal grant or loan, or the entering into of any cooperative agreement.

If any funds other than Federal funds have been paid for the same purposes in connection with this Federal-aid contract, the recipient shall submit an executed certification and, if required, submit a completed disclosure form as part of the bid documents.

A certification for Federal-aid contracts regarding payment of funds to lobby Congress or a Federal agency is included in the Proposal. Standard Form - LLL, "Disclosure of Lobbying Activities," with instructions for completion of the Standard Form is also included in the Proposal. Signing the Proposal shall constitute signature of the Certification.

The above-referenced certification and disclosure of lobbying activities shall be included in each subcontract and any lower-tier contracts exceeding $100,000. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Engineer.

The Contractor, subcontractors and any lower-tier contractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by the Contractor, subcontractors and any lower-tier contractors. An event that materially affects the accuracy of the information reported includes:

A. A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
B. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
C. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

2-1.02 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

This project is subject to title 49, part 26, Code of Federal Regulations (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." In order to ensure the Department achieves its federally mandated statewide overall DBE goal, the Department encourages the participation of Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with Federal Funds. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Bidders shall be fully informed respecting the requirements of the Regulations. The Regulations in their entirety are incorporated herein by this reference Attention is directed to the following matters:

A. A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto.

B. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company.

C. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

D. A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

E. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:

1. The Department's web site at http://www.dot.ca.gov/hq/bep.
2. The Department's DBE Directory. This Directory may be obtained from the Department of Transportation, Materiel Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520.

F. When reporting DBE participation, bidders may count the cost of materials or supplies purchased from DBEs as follows:

1. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph F.2. if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph F.2.
3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

G. When reporting DBE participation, bidders may count the participation of DBE trucking companies as follows:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks its owns, insures, and operates using drivers it employs.
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
5. The DBE may also lease trucks from a Non-DBE firm, including an owner-operator. The DBE who leases trucks from a Non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

6. For the purposes of this paragraph G, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

H. Bidders are encouraged to use services offered by financial institutions owned and controlled by DBEs.

SECTION 3. AWARD AND EXECUTION OF CONTRACT

The bidder's attention is directed to the provisions in Section 3, "Award and Execution of Contract," of the Standard Specifications and these special provisions for the requirements and conditions concerning award and execution of contract.

Requests for relief of bid and bid protests are to be delivered to the following address: Department of Transportation, MS 43, Attn: Office Engineer, 1727 30th Street, Sacramento, CA 95816 or by facsimile to the Office Engineer at (916) 227-6282.

The award of the contract, if it be awarded, will be to the lowest responsible bidder whose proposal complies with all the requirements prescribed.

The contract shall be executed by the successful bidder and shall be returned, together with the contract bonds and the documents identified in Section 3-1.025, "Insurance Policies," of the Standard Specifications, to the Department so that it is received within 10 business days after the bidder has received the contract for execution. Failure to do so shall be just cause for forfeiture of the proposal guaranty. The executed contract documents shall be delivered to the following address: Department of Transportation MS 43, Attn: Office Engineer, 1727 30th Street, Sacramento, CA 95816.

A "CALTRANS BIDDER - DBE INFORMATION" form will be included in the contract documents to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

The bidder's "CALTRANS BIDDER - DBE INFORMATION" form should include the names, addresses and phone numbers of DBE firms that will participate, with a complete description of work or supplies to be provided by each, and the dollar value of each DBE transaction. When 100 percent of a contract item of work is not to be performed or furnished by a DBE, a description of the exact portion of that work to be performed or furnished by that DBE should be included in the DBE information, including the planned location of that work. A bidder certified as a DBE should describe the work it has committed to performing with its own forces as well as any other work that it has committed to be performed by DBE subcontractors, suppliers and trucking companies.

The bidder is encouraged to provide written confirmation from each DBE that the DBE is participating in the contract. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract. If a DBE is participating as a joint venture partner, the bidder is encouraged to submit a copy of the joint venture agreement.

The "CALTRANS BIDDER - DBE INFORMATION" form should be returned to the Department by the successful bidder with the executed contract, contract bonds and the documents identified in Section 3-1.025, "Insurance Policies," of the Standard Specifications.

A "Payee Data Record" form will be included in the contract documents to be executed by the successful bidder. The purpose of the form is to facilitate the collection of taxpayer identification data. The form shall be completed and returned to the Department by the successful bidder with the executed contract, contract bonds and the documents identified in Section 3-1.025, "Insurance Policies," of the Standard Specifications. For the purposes of the form, payee shall be deemed to mean the successful bidder. The form is not to be completed for subcontractors or suppliers. Failure to complete and return the "Payee Data Record" form to the Department as provided herein will result in the retention of 31 percent of payments due the Contractor and penalties of up to $20,000. This retention of payments for failure to complete the "Payee Data Record" form is in addition to any other retention of payments due the Contractor.

SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES

The first working day is the fifteenth day after contract approval.

The work shall be diligently prosecuted to completion before the expiration of **130 WORKING DAYS.**

The Contractor shall pay to the State of California the sum of $5000 per day for each day's delay in finishing the work.

5-1.05 TESTING

Testing of materials and work shall conform to the provisions in Section 6-3, "Testing," of the Standard Specifications and these special provisions.

Whenever the provisions of Section 6-3.01, "General," of the Standard Specifications refer to tests or testing, it shall mean tests to assure the quality and to determine the acceptability of the materials and work.

The Engineer will deduct the costs for testing of materials and work found to be unacceptable, as determined by the tests performed by the Department, and the costs for testing of material sources identified by the Contractor which are not used for the work, from moneys due or to become due to the Contractor. The amount deducted will be determined by the Engineer.

5-1.06 REMOVAL OF ASBESTOS AND HAZARDOUS SUBSTANCES

When the presence of asbestos or hazardous substances are not shown on the plans or indicated in the specifications and the Contractor encounters materials which the Contractor reasonably believes to be asbestos or a hazardous substance as defined in Section 25914.1 of the Health and Safety Code, and the asbestos or hazardous substance has not been rendered harmless, the Contractor may continue work in unaffected areas reasonably believed to be safe. The Contractor shall immediately cease work in the affected area and report the condition to the Engineer in writing.

In conformance with Section 25914.1 of the Health and Safety Code, removal of asbestos or hazardous substances including exploratory work to identify and determine the extent of the asbestos or hazardous substance will be performed by separate contract.

If delay of work in the area delays the current controlling operation, the delay will be considered a right of way delay and the Contractor will be compensated for the delay in conformance with the provisions in Section 8-1.09, "Right of Way Delays," of the Standard Specifications.

5-1.065 SOLID WASTE DISPOSAL AND RECYCLING REPORT

This work shall consist of reporting disposal and recycling of construction solid waste, as specified in these special provisions. For the purposes of this section, solid waste includes construction and demolition waste debris, but not hazardous waste.

Annually by the fifteenth day of January, the Contractor shall complete and certify Form CEM-4401, "Solid Waste Disposal and Recycling Report," which quantifies solid waste generated by the work performed and disposed of in landfills or recycled during the previous calendar year. The amount and type of solid waste disposed of or recycled shall be reported in tons. The Contractor shall also complete and certify Form CEM-4401 within 5 days following contract acceptance.

Form CEM-4401, "Solid Waste Disposal and Recycling Report" can be downloaded at:

http://www.dot.ca.gov/hq/construc/manual2001

If the Contractor has not submitted Form CEM-4401, by the dates specified above, the Department will withhold the amount of $10,000 for each missing or incomplete report. The moneys withheld will be released for payment on the next monthly estimate for partial payment following the date that a complete and acceptable Form CEM-4401 is submitted to the Engineer. Upon completion of all contract work and submittal of the final Form CEM-4401, remaining withheld funds associated with this section, "Solid Waste Disposal and Recycling Report," will be released for payment. Withheld funds in conformance with this section shall be in addition to other moneys withheld provided for in the contract. No interest will be due the Contractor on withheld amounts.

Full compensation for preparing and submitting Form CEM-4401, "Solid Waste Disposal and Recycling Report," shall be considered as included in the contract price for the various items of work involved and no additional compensation will be allowed therefor.

5-1.07 (BLANK)

5-1.08 SUBCONTRACTOR AND DBE RECORDS

The Contractor shall maintain records showing the name and business address of each first-tier subcontractor. The records shall also show the name and business address of every DBE subcontractor, DBE vendor of materials and DBE trucking company, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all of these firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the contract, a summary of these records shall be prepared on Form CEM-2402 (F) and certified correct by the Contractor or the Contractor's authorized representative, and shall be furnished to the Engineer. The form shall be furnished to the Engineer within 90 days from the date of contract acceptance. $10,000 will be withheld from payment

until the Form CEM-2402 (F) is submitted. The amount will be returned to the Contractor when a satisfactory Form CEM-2402 (F) is submitted.

Prior to the fifteenth of each month, the Contractor shall submit documentation to the Engineer showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Engineer showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

The Contractor shall also obtain and submit documentation to the Engineer showing the truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month. This documentation shall be submitted on Form CEM-2404 (F).

5-1.083 DBE CERTIFICATION STATUS

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

Upon completion of the contract, Form CEM-2403 (F) indicating the DBE's existing certification status shall be signed and certified correct by the Contractor. The certified form shall be furnished to the Engineer within 90 days from the date of contract acceptance.

5-1.086 PERFORMANCE OF SUBCONTRACTORS

The subcontractors listed by the Contractor in conformance with Section 2-1.054, "Required Listing of Proposed Subcontractors," of the Standard Specifications, shall perform the work and supply the materials for which they are listed, unless the Contractor has received prior written authorization to perform the work with other forces or to obtain the materials from other sources.

The Contractor should notify the Engineer in writing of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

5-1.09 SUBCONTRACTING

Attention is directed to the provisions in Section 8-1.01, "Subcontracting," of the Standard Specifications, and these special provisions.

The provisions in the third paragraph of Section 8-1.01, "Subcontracting," of the Standard Specifications, that the Contractor shall perform with the Contractor's own organization contract work amounting to not less than 50 percent of the original contract price, is not changed by the Federal Aid requirement specified under "Required Contract Provisions Federal-Aid Construction Contracts" in Section 14 of these special provisions that the Contractor perform not less than 30 percent of the original contract work with the Contractor's own organization.

Each subcontract and lower tier subcontracts that may in turn be made shall include the "Required Contract Provisions Federal-Aid Construction Contracts" in Section 14 of these special provisions. Noncompliance shall be corrected. Payment for subcontracted work involved will be withheld from progress payments due, or to become due, until correction is made. Failure to comply may result in termination of the contract.

Pursuant to the provisions of Section 1777.1 of the Labor Code, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a subcontractor on a public works project. This list of debarred contractors is available from the Department of Industrial Relations web site at:

http://www.dir.ca.gov/DLSE/Debar.html.

5-1.10 PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS

Attention is directed to the provisions in Sections 10262 and 10262.5 of the Public Contract Code concerning prompt payment to subcontractors.

5-1.103 RECORDS

The Contractor shall maintain cost accounting records for the contract pertaining to, and in such a manner as to provide a clear distinction between, the following 6 categories of costs of work during the life of the contract:

A. Direct costs of contract item work.
B. Direct costs of changes in character in conformance with Section 4-1.03C, "Changes in Character of Work," of the Standard Specifications.

ATTACHMENT D 1

The DBE Race-Neutral "Boilerplate" Bid Specifications from the Division of Engineering Services-Office Engineer are currently under development and not available at this time.

ATTACHMENT E

Sample of DBE Race-Neutral "Boilerplate" Bid Specifications from the Division of Procurement and Contracts

DBE Contract Language (for all federally funded contracts):

October 3, 2006

1. **Disadvantaged Business Enterprise (DBE) Participation**

   A. This Agreement is subject to Title 49, Part 26 of the Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Contractors who obtain DBE participation on this contract will assist the state in meeting its federally mandated statewide overall DBE goal.

   B. DBE and other small businesses (SB), as defined in Title 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with Federal funds. The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of US DOT- assisted agreements. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

   C. As required by federal law, the Department has established a statewide overall DBE goal. In order to ascertain whether that statewide overall DBE goal is being achieved, the Department is tracking DBE participation on all Federal-aid contracts.

   D. The ADM-0227f, DBE Participation form is attached as Attachment and incorporated as part of this Agreement.

   E. The Contractor should notify the Contract Manager, in writing, of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

   F. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

2. **Performance of DBE Contractors, and other DBE Subcontractors/Suppliers**

   A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

   B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed

in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

C. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, presume that it is not performing a commercially useful function.

3. Exclusion of Retention

A. In conformance with 49 CFR, Part 26, Subpart B, Section 26.29 (b)(1), the retention of proceeds required by Public Contract Code (PCC), Section 10261 shall not apply. In conformance with PCC, Section 7200 (b), in subcontracts between the Contractor and a subcontractor and in subcontracts between a subcontractor and any subcontractor thereunder, retention proceeds shall not be withheld, and the exceptions provided in PCC 7200 (c), shall not apply. At the option of the Contractor, subcontractors may be required to furnish payment and performance bonds issued by an admitted surety insurer.

B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

4. DBE Records

A. The Contractor shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime Contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report- Utilization of Disadvantaged Business Enterprises (DBE)," CEM-2402F, and certified correct by the Contractor or the Contractor's authorized representative, and shall be furnished to the Contract Manager. The form shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Contractor when a satisfactory Final Report Utilization of Disadvantaged Business Enterprises (DBE) are submitted to the Contract Manager.

C. Prior to the fifteenth of each month, the Contractor shall submit documentation to the Department's Contract Manager showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Department's Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

D. The Contractor shall also submit to the Department's Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and if

applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Monthly DBE Trucking Verification, CEM-2404(F), form provided to the Contractor by the Department's Contract Manager

5. **DBE Certification and De-certification Status**

   If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the Contractor in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. Any changes should be reported to the Department Contract Manager within 30 days.

6. **When Reporting DBE Participation, Material or Supplies purchased from DBEs may count as follows:**

   A. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

   B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

   C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease-agreement and not an ad hoc or Agreement by Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

   D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

7. **When Reporting DBE Participation, Participation of DBE trucking companies may count as follows:**

   A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.

B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.

C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

8. Contractor's Priority Hiring Considerations

The Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Chapter 2 commencing with Section 11200 of the Welfare and Institutions Code, in accordance with Article 3.9 commencing with Section 11349 of the Welfare and Institutions Code.

Solicitation (IFB, RFP, and A& E) DBE Language:

September 21, 2006

1. Disadvantaged Business Enterprise Program

   A. This solicitation is subject to Title 49, part 26, Code of Federal Regulations (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." In order to ensure the Department achieves its federally mandated statewide overall DBE goal, the Department encourages the participation of Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR 26 in the performance of Agreements financed in whole or in part with Federal Funds. The Bidder shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

   B. As required by federal law, the Department has established a statewide overall DBE goal. In order to ascertain whether that statewide overall DBE goal is being achieved, the Department is tracking DBE participation on all Federal-aid contracts.

DBE Package (The DBE package below goes out with all federally funded contracts):

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION
ADMINISTRATION
DIVISION OF PROCUREMENT AND CONTRACTS MS-67
1727 30th STREET
SACRAMENTO, CA 95816-7006
PHONE (916) 227-6000
FAX (916) 227-6155
INTERNET http://caltrans-opac.ca.gov

Flex your power!
Be energy efficient

(DATE)

NOTICE TO BIDDERS/PROPOSERS

DISADVANTAGED BUSINESS ENTERPRISE INFORMATION

Bidders are advised that, as required by federal law, the State has established a statewide overall DBE goal. The Department is required to report to FHWA on DBE participation for all Federal-aid contracts each year so that attainment efforts may be evaluated.

TERMS AS USED IN THIS DOCUMENT

- The term 'Disadvantaged Business Enterprise' or 'DBE' means a for-profit small business concern as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term 'bidder' also means 'proposer' or 'offerer'.
- The term 'Agreement' also means 'Contract'.
- Department also means 'Department of Transportation' or 'Caltrans'.
- The term 'Small Business' or 'SB' is as defined in 49 CFR 26.65.

AUTHORITY AND RESPONSIBILITY

A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49CFR26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Contractor should ensure that DBEs and other SBs have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The bidder/proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

B. Bidders/Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

SUBMISSION OF DBE INFORMATION

A Disadvantaged Business Enterprise (DBE) (ADM-0227f) form will be included in the Agreement documents to be executed by the successful bidder. The purpose of the form is to collect data

required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

DBE PARTICIPATION GENERAL INFORMATION

It is the bidder's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

A. A DBE must be a small business firm defined pursuant to 13CFR121 and be certified through the California Unified Certification Program (CUCP).

B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies or as a trucking company.

C. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

D. A DBE must perform a commercially useful function, pursuant to Section 26.55, 49 CFR, Part 26, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

E. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.

F. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the Department's assessed percent of work availability for DBEs except that portion of the work to be performed by non-DBE subcontractors.

RESOURCES

A. The California Unified Certification Program (CUCP) database includes the DBEs certified from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance. Bidder/Proposer may call (916) 440-0539 for web or download assistance.

B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program web site at: **http://www.dot.ca.gov/hq/bep/**.

- Click on the link in the left menu titled Find a Certified Firm
- Click on Query Form link, located in the first sentence
- Click on Certified DBE's (UCP) located on the first line in the center of the page
- Click on Click To Access DBE Query Form
- Searches can be performed by one or more criteria
- Follow instructions on the screen
- "Start Search", "Requery", "Civil Rights Home", and "Caltrans Home" links are located at the bottom of the query form

C. How to Obtain a List of Certified DBEs without Internet Access

DBE Directory: If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the on-line database. A copy of the directory of certified DBEs may be ordered from the Caltrans' Division of Procurement and Contracts/Material and Distribution Branch/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

WHEN REPORTING DBE PARTICIPATION, MATERIAL OR SUPPLIES PURCHASED FROM DBES MAY COUNT AS FOLLOWS:

A. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease-agreement and not an ad hoc or Agreement by Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

WHEN REPORTING DBE PARTICIPATION, PARTICIPATION OF DBE TRUCKING COMPANIES MAY COUNT AS FOLLOWS:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.

B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.

C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

ATTACHMENT E 1

The DBE Race-Neutral "Boilerplate" Bid Specifications from the Division of Procurement and Contracts are currently under development and not available at this time.

ATTACHMENT F

Sample of DBE Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients

INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE RACE-NEUTRAL IMPLEMENATION AGREEMENT FOR FEDERAL TRANSIT ADMINISTRATION SUBRECIPIENTS

Division of Mass Transportation (DMT) subrecipients of Federal Transit Administration (FTA) funds no longer need to prepare their own Disadvantaged Business Enterprise (DBE) program plan. Instead, subrecipients with contracting opportunities must adhere to the *California State Disadvantaged Business Enterprise Program Plan* as it applies to local agencies. Go to http://www.dot.ca.gov/hq/bep/dbe_program.htm for a copy.

Additionally, subrecipients must submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients* (Implementation Agreement) by December 31, 2006 to their District Transit Representative (DTR). Read the entire Implementation Agreement before completing. Subrecipients are responsible for complying with the requirements contained therein.

Enter the agency name (Page 1 of 6), DBE Liaison Officer and staffing information (Page 2 of 6), and signature information (Page 6 of 6). These areas are highlighted in grey. Otherwise, do not change or add to the wording of the Implementation Agreement.

Subrecipients need only resubmit the Implementation Agreement should the DBE Liaison Officer change, significant staff changes occur, or the Implementation Agreement is reissued by DMT.

City and County subrecipients complete a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement For Local Agencies* for Federal Highway Administration funds administered through California Department of Transportation Division of Local Assistance. A copy of the *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement For Local Agencies* may be submitted to your DTR in lieu of the Implementation Agreement; however, references to the *Local Assistance Procedures Manual* and reporting to the District Local Assistance Engineer do not apply to FTA funding. Instead, subrecipients report FTA goal commitment and payment data to their local DTR.

If you have any questions, please contact La Keda Johnson at (916) 657.4373 or Lakeda_Johnson@dot.ca.gov.

DISADVANTAGED BUSINESS ENTERPRISE

RACE-NEUTRAL

IMPLEMENTATION AGREEMENT

FOR

FEDERAL TRANSIT ADMINISTRATION

SUBRECIPIENTS

DISADVANTAGED BUSINESS ENTERPRISE RACE-NEUTRAL IMPLEMENTATION AGREEMENT for the [redacted]; hereinafter referred to as "SUBRECIPIENT".

I Definition of Terms (§26.5)

The terms used in this agreement have the meanings defined in U. S. Department of Transportation (DOT) Title 49 Part 26 of the Code of Federal Regulations (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs."

II Objective/Policy Statement (§26.1, 26.23)

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

The SUBRECIPIENT must implement a policy to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It must also be their policy:

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

III Nondiscrimination (§26.7)

SUBRECIPIENT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. In administering the local agency components of the DBE Program Plan, the SUBRECIPIENT will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

IV Race-Neutral Means of Meeting the Annual DBE Goal (§26.51)

SUBRECIPIENT will assist Caltrans to achieve its Overall Statewide DBE Goal by race neutral means that may include, but are not limited to the following:

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

V Quotas (§26.43)

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

VI DBE Liaison Officer (DBELO) (§26.25)

SUBRECIPIENT must designate a DBE Liaison Officer. The DBELO is responsible for implementing the DBE Program Plan, as it pertains to the SUBRECIPIENT and ensures that the SUBRECIPIENT is fully and properly advised concerning DBE Program Plan matters.
[Specify resources available to the DBELO; e.g., the DBELO has a staff of two professional employees assigned to the DBE program on a full-time basis and two support personnel who devote a portion of their time to the program.] The name, address, telephone number, electronic mail address, and an organization chart displaying the DBELO's position in the organization are found in Attachment _____ to this agreement.

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

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

VII DBE Financial Institutions (§26.27)

The SUBRECIPIENT must implement a policy to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.
Information on the availability of such institutions can be obtained from the DBELO. The Caltrans' Disadvantaged Business Enterprise Program may offer assistance to the DBELO.

VIII Directory (§26.31)

SUBRECIPIENT will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's website at www.dot.ca.gov/hq/bep.

IX Required Contract Clauses (§26.13, 26.29)

SUBRECIPIENT ensures that the following clause will be included in each DOT-assisted prime contract:

Contract Assurance

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate.
[Note – This language is to be used verbatim.]

Prompt Payment

Prompt Progress Payment to Subcontractors

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

Prompt Payment of Withheld Funds to Subcontractors

The SUBRECIPIENT shall include either (1), (2), or (3) of the following provisions [local agency equivalent will need Caltrans approval] in their DOT-assisted contracts to ensure prompt and full payment of retainage (withheld funds) to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial

remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

2. No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30-days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or

subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30-days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

X Bidders List (§26.11)

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

XI Reporting

SUBRECIPIENT will report bidder DBE information to the Division of Mass Transportation (DMT) Procurement Management office prior to execution of contract award.

SUBRECIPIENT will report awards/commitments and actual payment information biannually as requested by DMT.

XII Certification (§26.83(a))

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

XIII Confidentiality

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

[Signature of Agency's Chief Executive Officer]	Date:	
[Print Name of Agency's Chief Executive Officer]	Phone Number:	

ATTACHMENT G

The DBE Race-Neutral Implementation Agreement for Local Agencies is currently under development and not available at this time.