



REPORT TO COUNCIL

City of Sacramento

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915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

CONSENT
June 13, 2006

Honorable Mayor and
Members of the City Council

Subject: APPROVAL OF DISADVANTAGED BUSINESS ENTERPRISE RACE-
NEUTRALPROGRAM AND GOAL FOR FY 2006-2007

Location/Council District: City-wide

Recommendation:

This report recommends that the City Council 1) adopt the attached resolution, which reaffirms the minimum Disadvantaged Business Enterprise (DBE) race-neutral participation goal at twenty-five percent (25%) for Federal-Aid Transportation projects for the 2006-2007 Federal fiscal year; and 2) authorize the City Manager to execute the attached "DBE Race-Neutral Program Implementation Agreement" (aka: CalTrans "Exhibit 9A") and Annual Submittal Form (aka: CalTrans "Exhibit 9B").

Contact: Charlotte A. Broussard, Program Analyst, Procurement Services, 808-8174

Presenters: Chris Stewart, Procurement Services Manager

Department: Finance

Division: Procurement Services

Organization No: 1181

Summary:

The Federal Highway Administration (FHWA), through the State of California Department of Transportation (Caltrans), requires all agencies to adopt a Disadvantaged Business Enterprise (DBE) Program and an annual goal for DBE participation in all program activities funded wholly, or in part, by any Federal-Aid transportation monies. Caltrans has recently implemented a race-neutral DBE program, effective May 1, 2006, and requires local public agencies to submit for approval, by June 1, 2006 1) Exhibit 9A: "Disadvantaged Business Enterprise Race-Neutral Implementation Agreement" and 2) Exhibit 9B: Local Agency DBE Annual Submittal Form, which provides DBE projected goal, methodology, and compensation plan. Adoption of this resolution will maintain the City's eligibility for reimbursements through the State of California Department of Transportation, and will allow the City to address the transition from a race-conscious to a race-neutral DBE program, as proposed by Caltrans.

Committee/Commission Action: None.

Background Information:

A recent Federal Ninth Circuit Court of Appeals decision, involving the Washington State Department of Transportation (WSHDOT) held that WSHDOT lacked sufficient evidence to support the use of race conscious measures for awarding transportation contracts funded with federal-aid. The Ninth Circuit Court's decision is the controlling authority for California and other western states within its jurisdiction. The federally mandated DBE Program itself was not declared unconstitutional. As a result of this decision, Caltrans has determined its program may not meet the new evidentiary standards established by the Ninth Circuit decision. On May 1, 2006, Caltrans implemented a race-neutral DBE program, which included the following changes:

- Local agencies will no longer have separate DBE programs, unless such programs have been approved directly by a federal agency.
- Local agencies cannot advertise or award transportation contracts that utilize race-conscious DBE goals of evaluation criteria.
- All DBE procurements shall contain race-neutral contract language provided by Caltrans.
- The State's DBE goal is 10.5%; and, as such, all California local agencies shall support this unified State goal.

To comply with the June 1, 2006 submittal date, City staff is working with Caltrans, in the interim of Council's approval of staff recommendation, to ensure continued flow of Department of Transportation funds to the City and compliance with Caltrans requirements.

The current City's DBE goal of 25%, as recommended by staff, is supported by the City's disparity study, and has been approved by Caltrans for the previous five years.

Caltrans is currently conducting a state-wide disparity study, at State expense, that may ultimately affect the City's current goal of 25%.

Financial Considerations:

Adoption of a race-neutral DBE Program is required so that the City retains its eligibility to receive Federal Aid Transportation reimbursements through the State of California Department of Transportation.

Environmental Considerations:

Pursuant to Section 15378 (b) (2) this type of general policy and procedure making is not a project under the California Environment Quality Act.

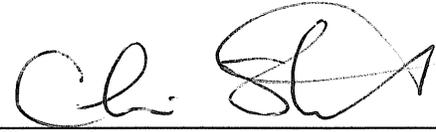
Policy Considerations:

This report is consistent with the Council's policy to utilize DBE's in all aspects of contracting to the maximum extent possible and to substantially increase DBE participation in all activities funded wholly, or in part, by any Federal-Aid Transportation monies.

Emerging Small Business Development (ESBD):

The Emerging and Small Business Development Program does not apply to contracts with federal Disadvantaged Business Enterprise (DBE) Program requirements, as defined in Code of Federal Regulations 49 Part 26.

Respectfully Submitted by:



Christopher Stewart
Procurement Services Manager

Approved by:



Russell Fehr
Director of Finance

Recommendation Approved:


for RAY KERRIDGE
City Manager

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RESOLUTION NO. 2006-

Adopted by the Sacramento City Council

June 13, 2006

**RESOLUTION ADOPTING
A RACE-NEUTRAL DISADVANTAGED BUSINESS ENTERPRISE
PROGRAM AND GOAL AND AUTHORIZING THE CITY MANAGER TO
EXECUTE THE IMPLEMENTATION AGREEMENT WITH CALIFORNIA
DEPARTMENT OF TRANSPORTATION, FOR FY 2006-2007.**

BACKGROUND

- A. The City of Sacramento has received and expects to continue to receive federal financial assistance through the California Department of Transportation (Caltrans).
- B. As a condition of receiving this assistance, the City of Sacramento must adopt a race-neutral Disadvantaged Business Enterprise program and submit a "Disadvantaged Business Enterprise Race-Neutral Implementation Agreement" and a "Local Agency DBE Annual Submittal Form", for the Federal Fiscal year beginning on October 1, 2006.
- C. This action is in compliance with Caltrans DBE program requirements as promulgated by the Federal Highway Administration.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

- Section 1. The City of Sacramento hereby adopts the State of California Race-Neutral Disadvantaged Business Enterprise Program for the purpose of receiving federal financial assistance from Caltrans for transportation projects;
- Section 2. The minimum participation goal is established at 25% for DBE's on transportation projects receiving federal financial assistance from Caltrans; and
- Section 3. The City Manager is hereby authorized to execute the Disadvantaged Business Enterprise Race-Neutral Implementation Agreement and other documents required for the Federal Fiscal year beginning October 1, 2006, effective for the period 10/1/06 through 9/30/07.

ATTACHMENT 1
Disadvantaged Business
Enterprise Race-Neutral
Implementation
Agreement
Exhibit 9A

**DISADVANTAGE BUSINESS ENTERPRISE
RACE-NEUTRAL
IMPLEMENTATION AGREEMENT
FOR
CITY OF SACRAMENTO**

ADOPTED: JUNE 13, 2006

DISADVANTAGED BUSINESS ENTERPRISE RACE-NEUTRAL IMPLEMENTATION AGREEMENT

For the City of Sacramento, California, hereinafter referred to as "RECIPIENT."

I. Definition of Terms

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

II. OBJECTIVE/POLICY STATEMENT (§26/1.26/23)

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

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

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

III. Nondiscrimination (§26.7)

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

IV. Annual DBE Submittal Form (§26.21)

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

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

RECIPIENT 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. Advertising solicitations, scheduling bidding periods and opening times, and packaging quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation.
2. Providing assistance to DBE and small businesses in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process reducing bonding requirements, and providing services to help DBEs and other small businesses obtain bonding and financing).
3. Providing technical assistance and other services to DBE and small businesses.
4. Providing information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors including DBE's and small businesses; providing the 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 been historically low.

8. Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.
9. Implementing or developing a mentor-protégé program.

VI. Quotas (§26.43)

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

VII. DBE Liaison Officer (DBELO) (§26.25)

RECIPIENT has designated a DBE Liaison Officer:

Charlotte A. Broussard
City of Sacramento, 915 I Street, 2nd Floor, Sacramento, CA 95814
Telephone: (916) 808-8174 Email: CBroussard@cityofsacramento.org

The DBELO is responsible for implementing the DBE Program Plan, as it pertains to the RECIPIENT, and ensures that the RECIPIENT is fully and properly advised concerning DBE Program Plan matters. The DBELO works within the Procurement Services Division, in the Office of Small Business Development. Resources available to the DBELO are the City's Procurement Services Division and City Department of Transportation professional employees, and support personnel who devote a portion of their time to the DBE program. Organization charts displaying the DBELO's position in the organization are found in ATTACHMENTS 9A-1 and 9A-2 to this Agreement. This information will be updated annually and included on the DBE Annual Submittal Form.

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

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

VIII. Federal Financial Assistance Agreement Assurance (§26.13)

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

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

IX DBE Financial Institutions (§26.27)

It is the policy of the RECIPIENT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Information on the availability of such institutions can be obtained from the DBELO. The Caltrans' Disadvantaged Business Enterprise Program may offer assistance to the DBELO.

X Directory (§26.31)

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

XI Required Contract Clauses (§§26.13, 26.29)

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

A. CONTRACT ASSURANCE

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

[Note – This language is to be used verbatim, as is stated in §26.13(b). See Caltrans Sample Boiler Plate Contract Documents on the Internet at www.dot.ca.gov/hq/LocalPrograms under "Publications."]

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

Prompt Payment of Withheld Funds to Subcontractors

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

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

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30-days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business 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. (ATTACHMENT 9B-1 }

XIV Local Assistance Procedures Manual

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

XV Bidders List (§26.11)

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

XVI Reporting to the DLAE

RECIPIENT will promptly submit a copy of the Local Agency Bidder-DBE Information (Exhibit 15-G or Exhibit 10-O of the LAPM) to the DLAE at the time of execution of consultant or construction contract award.

RECIPIENT will promptly submit a copy of the Final Utilization of DBE participation to the DLAE using Exhibit 17-F of the LAPM immediately upon completion of the contract for each consultant or construction contract.

XVII Certification (§26.83(a))

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

**EXHIBIT 9-1
Disadvantaged Business Enterprise Race-Neutral
Implementation Agreement for Local Agencies**

XVIII Confidentiality

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

_____ Date: _____
[Signature of Local Agency Recipient's Chief Executive Officer]

Ray Kerridge, City Manager Phone Number: (916) 808-5704
[Local Agency Recipient's Chief Executive Officer]

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

_____ Date: _____
[Signature of DLAE]

[Print Name of DLAE]

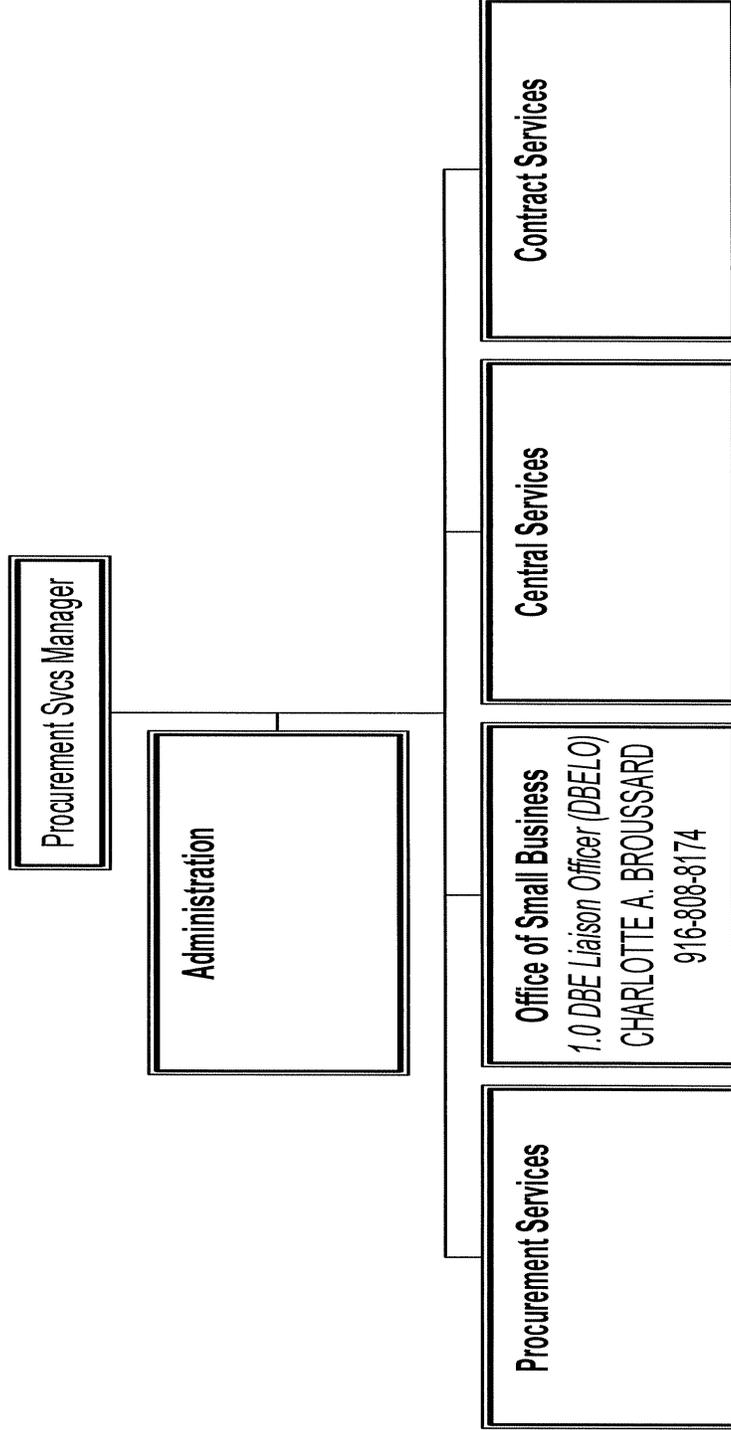
Distribution: (1) Original –DLAE
(2) Copy-local agency after signing by DLAE

DBE Race-neutral Implementation Agreement for Local Agencies (05/01/06)

ATTACHMENT 2
Organization Charts
Exhibits 9A-1 and 9A-2

**CITY OF SACRAMENTO
PROCUREMENT SERVICES DIVISION
2006**

Exhibit 9A-2



ATTACHMENT 3
Local Agency DBE Annual
Submittal Form
Exhibit 9B

Exhibit 9-B Local Agency DBE Annual Summittal Form

TO: CALTRANS DISTRICT 3
Ben J. Bramer, District 03 Local Assistance Engineer

The amount of the Annual Anticipated DBE Participation Level (AADPL) and methodology are presented herein, in accordance with Title 49 of the Code of Federal Regulations Part 26, and the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan.

The City of Sacramento submits our AADPL information. We have established an AADPL of 25% for the Federal Fiscal Year 2006/2007, beginning on October 1, 2006, and ending on September 30, 2007.

Methodology

The approach to methodology for the City of Sacramento Disadvantaged Business Enterprise (DBE) Program was to incorporate the business utilization study, conducted by MGT of America in establishing the City's base figure and relative ability of DBEs that are ready, willing and able to participate in the federal-aid contracting program. Objectives of the methodology applied here analyzed the amount of participation of Disadvantaged Business Enterprises (DBE) in procurement of goods and services and determined whether DBE's had been under or over utilized in the procurement of those goods and services. In addition to the data collected by MGT for the previous years' adoption of the City's DBE program and overall annual goal, the City of Sacramento, for establishment of this current year's goal, captured DBE utilization for federal fiscal years 2001 through 2006 and projections of DBE utilization for federal fiscal year 2006-2007. The analysis of data included:

- Number of DBE firms in the relevant business categories, with the City's relevant market areas.
- Utilization of DBE firms according to dollar thresholds;
- Utilization of DBE subcontractors according to dollar thresholds
- Analysis of Bid Data.

In compliance with the State of California Department of Transportation (CalTrans) mandates for transition to a race-neutral program, the overall goal of 25% is supported by the City's disparity study and has been approved by Caltrans in the current and previous fiscal years. Considerations of options to modify this current goal and methodology will be given after additional information becomes available, from a state-wide disparity study and other potential avenues of relevant supporting data, to ascertain a goal appropriate for the City of Sacramento new DBE Program.

Prompt Payment

Federal regulation (49 CFR 26.29) requires one of three methods to be used in federal-aid contracts to ensure prompt and full payment of any retainage, kept by the prime contractor or subcontractor, to a subcontractor. The City selects the method of retainage that is consistent with City's payment methods and policies for all DBE and non-DBE projects. In brief, the thrust of City's prompt payment policies contains course of actions in regards to City, Prime Contractor, and Subcontractor:

- Payment by a prime contractor shall be paid to any subcontractor not later than 10-days of receipt of each progress payment, in accordance with the provision in Sections 10262 and 10262.5 of the
-

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SUBJECT: City of Sacramento Local Agency DBE Annual Sumittal Form
DATE: June 1, 2006
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- Public Contract Code and Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors;
- The prime contractor shall return all monies withheld in retention from the subcontractor within 30 days after receiving payment for work satisfactorily completed; and
- In accordance with Public Contract Code §20104.50, the City shall pay Contractor interest on any progress payment which is made by City more than 30 days after City receives an undisputed and properly submitted written payment request. Any written request for a progress payment which City determines to be disputed, improper or not suitable for payment for any reason shall be returned to Contractor within 7 days after receipt by City, along with a written statement of the reason or reasons why such a request is disputed, improper or not suitable for payment.

The City indicates its selection of retainage on the attached "Prompt Payment of Withheld Funds To Subcontractors."

Submitted by:

Signature, Ray Kerridge, City Manager
Local Agency Recipient's Chief Executive Officer

Date

Print Name of Local Agency Recipient's Chief Executive Officer

Phone Number

Reviewed by Caltrans:

Signature, Ben J. Bramer,
Caltrans District 3 Local Assistance Engineer (DLAE)

Date

Distribution: (1) Original – DLAE
(2) Copy-local agency after signing by DLAE

DBE Annual Submittal Form (05/01/06)

ATTACHMENT 4
Prompt Payment of
Withheld Funds to
Subcontractors
Exhibit 9B-1

(ATTACHMENT 9B-1)

Prompt Payment of Withheld Funds to Subcontractors

Federal regulation (49 CFR 26.29) requires one of the following three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

Please check the box of the method chosen by the local agency to ensure prompt and full payment of any retainage.

- 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.
- 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.
- The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptance 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 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.