REPORT TO COUNCIL
City of Sacramento

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

PUBLIC HEARING
October 11, 2005

Honorable Mayor and
Members of the City Council

Subject: Approval of Annual Disadvantaged Business Enterprise (DBE) Program Goal for FY 2005-2006

Location/Council District: Citywide

Recommendation: Staff recommends: 1) Open Public Hearing to receive testimony; 2) Close Public Hearing; 3) Upon conclusion of public hearing, adopt the resolution establishing the recommended DBE utilization goal of twenty-five percent (25%) for City transportation projects funded with Federal Highway Administration funds for the 2005-2006 federal fiscal year; and 4) Adopt the resolution authorizing the City Manager to execute documents that establish a City DBE Program in accordance with the Code of Federal Regulations (CFR), Title 49, Volume 1, Part 26.

Contact: Charlotte Broussard, Program Analyst, Procurement Division (916) 808-6240, Marty Hanneman, Director of Transportation (916) 808-7508

Presenters: Trevor Walton, OSBD Program Specialist and DBE Liaison Officer and, Christopher Stewart, Procurement Services Manager, Procurement Services Division

Department: Transportation

Division: Office of the Director

Organization No: 3411

Summary: In accordance with 49 CFR Part 26, the Federal Highway Administration (FHWA), through the State of California Department of Transportation (Caltrans), requires the annual review and adoption of a Disadvantaged Business Enterprise (DBE) utilization goal for all City transportation projects funded wholly, or in part, with funding provided by the U. S. Department of Transportation. To meet program requirements, the City is required to post a public notice, hold a public forum to solicit the business communities' comments, and make an official proclamation to establish and adopt a DBE program and goal before submitting its annual commitments to FHWA. City staff proposes the adoption of an annual DBE policy and utilization goal of 25% for the 2006 federal fiscal year, which commences on October 1, 2005. This report provides the background information and recommendations for continuation of the City's DBE Program.

Committee/Commission Action: None.

Background Information: The City's current DBE program, which was originally adopted in January 1989, and revised in September 2000, meets FHWA requirements, is in a form approved by Caltrans, and includes all necessary references and terms, required by the Federal-Aid Highway Act of 1987.

In accordance with federal regulations, local agencies are required to adopt the Caltrans approved program, or develop a local program methodology and goal subject to Caltrans approval. The City has elected to adopt the primary elements of the Caltrans approved Disadvantaged Business Enterprise (DBE) Program for federal aid transportation projects. The City's program incorporates the methodology of the revised business utilization study, conducted by MGT of America, Inc. for the Sacramento Multi-Regional Public Agencies (MRPA) in September 2000. The MRPA consisted of the City of Sacramento, the County of Sacramento, Sacramento Employment and Training Agency (SETA), Sacramento Housing and Redevelopment Agency (SHRA), and Sacramento Regional Transit District (RT). The MRPA business utilization and disparity study analyzed the amount of participation of DBE in procurement of goods and services in each of the agencies. The result of this study concluded under utilization of DBEs in the City's procurement of those goods and services and assisted the City with the establishment of current DBE program and utilization goals.

As a condition to receive federal financial assistance for transportation projects, the City Council must adopt an annual DBE program and a minimum utilization goal for projects that use federal funding. The City has published the proposed program goal in its official publication and local newspapers, as required by federal guidelines, and conducts this requisite public hearing to inform and solicit the business communities' feedback during this City Council meeting conducted for the approval of this recommended policy and goal. The City's Overall Annual DBE Goal and Methodology conforms to the current DBE regulations that require the overall annual DBE goal to be established using a two-component process. Based on our overall goal of 25%, the first component of the process consists of race-gender neutral methods utilized to meet 60% of the annual goal. The second component consists of race-conscious measures to accomplish the remaining 40% of the goal which includes establishing contract specific goals when needed to meet the City of Sacramento's overall annual DBE goal of 25%.

The City achieved an overall 3.70% utilization for DBEs. This is based on actual participation of DBEs on Federal projects, including the Good Faith Effort (GFE) approved by U.S. DOT. Staff is currently working to develop a strategy to address the issues surrounding the GFE standard and to increase the utilization of DBEs.

To encourage increased participation, Procurement Services plans to:

1. Ensure DBE subcontractor participation on projects is fully and accurately recorded to capture actual DBE participation, including materials and supplies procured from DBE businesses.

2. Track DBE utilization by type of service (professional services, procurement of materials and supplies, and construction contracts) to determine in which areas goals are achieved and where additional outreach and training is needed.

3. Work with prime contractors to ensure good faith efforts are made to utilize DBE subcontractors and suppliers in accordance with the City's DBE goals.

4. Assist prime contractors in identifying subcontractors and suppliers that are eligible DBE businesses through the use of the City's Office of Small Business Development's resources.

It is estimated that the City receives reimbursements of 50 to 100 percent of eligible costs through the State for various transportation projects. Thus, it is essential that we comply with current program requirements to maintain eligibility for federal aid for transportation projects and to assure federal funding continues for this year.

Financial Considerations: Adoption of the annual DBE utilization goal is required so that the City retains its eligibility to receive Federal Aid Transportation reimbursements through State of California Department of Transportation.

Environmental Considerations: None

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 utilization in all activities funded wholly, or in part, with Federal Transportation funding.

Emerging Small Business Development (ESBD): The Emerging and Small Business Development Program does not apply to contracts with federal Disadvantaged Business Enterprises (DBE) requirements, as defined in 49 CFR Part 26.

Respectfully Submitted by: Charlotte A. Broussard
Charlotte A. Broussard
Procurement Program Analyst

Procurement Reviewed/Approved by: Chris Stewart
Christopher Stewart
Procurement Services Manager

Approved by: Matt Hanneman
Marty Hanneman
Director of Transportation

Recommendation Approved:

Ron Vanmeter
For ROBERT P. THOMAS
City Manager

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RESOLUTION NO.

Adopted by the Sacramento City Council

APPROVAL OF ANNUAL DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM GOAL FOR FY 2005-2006

BACKGROUND

A. The City's current Disadvantaged Business Enterprise Program, which was originally adopted in January 1989, and revised in September 2000, meets U.S. Department of Transportation Federal Highway Administration (FHWA) requirements, is in a form approved by State of California Department of Transportation (Caltrans), and includes all necessary references and terms required by the Federal Aid Highway Act of 1987.

B. In accordance with federal regulations, local agencies are required to adopt the Caltrans approved program, or develop a local program methodology and goal subject to Caltrans approval. The City has elected to adopt the primary elements of the Caltrans approved Disadvantaged Business Enterprise (DBE) Program for federal aid transportation projects. The City's program incorporates the methodology of the revised business utilization study, conducted by MGT of America, Inc. for the Sacramento Multi-Regional Public Agencies (MRPA) in September 2000. The MRPA consisted of the City of Sacramento, the County of Sacramento, Sacramento Employment and Training Agency (SETA), Sacramento Housing and Redevelopment Agency (SHRA), and Sacramento Regional Transit District (RT). The MRPA business utilization and disparity study analyzed the amount of participation of DBE in procurement of goods and services in each of the agencies. The result of this study concluded under utilization of DBEs in the City's procurement of those goods and services and assisted the City with the establishment of current DBE program and utilization goals.

C. As a condition to receive federal financial assistance for transportation projects, the City Council must adopt an annual DBE program and a minimum utilization goal for projects that use federal aid monies. The City has published the proposed program goal in its official publication and local newspapers as required by federal guidelines and conducts this requisite public hearing to inform and solicit the business communities' feedback during the City Council meeting conducted for the approval of this recommended program and goal. The City's Overall Annual DBE Goal and Methodology conforms to the current DBE regulations that require the overall annual DBE goal to be established, electing to apply a two-component process. Based on our overall goal of 25% the first component of the process consists of race-gender neutral methods utilized to meet 60% of the annual goal.

The second component consists of race-conscious measures to accomplish the remaining 40% of the goal which includes establishing contract specific goals when needed to meet the City of Sacramento's overall annual DBE goal of 25%.

D. It is estimated that the City receives reimbursements of 50 to 100 percent of eligible costs through the State for various transportation projects. Thus, it is essential that we comply with current program requirements to maintain eligibility for federal aid for transportation projects and to assure that federal funding continues for this year.

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

Section 1. The City Council conducts this Public Hearing, this day, October 11, 2005, having issued a thirty-day notice of this hearing and adoption, as published in the Daily Recorder, its official publication, and other local publications.

Section 2. The City Council authorizes the City Manager to execute documents that establish a City DBE Program in accordance Title 49 of the Code of Federal Regulation (CFR) Part 26, and the City's minimum utilization goal of twenty-five percent (25%) for funded Federal-Aid Transportation projects for the 2005-2006 Federal fiscal year.

Section 3. The City Council adopts the attached "Annual Overall Goal Information" and the "Disadvantage Business Enterprise Program for the City of Sacramento" to be submitted to the State of California Department of Transportation for approval.

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EXHIBIT A

ANNUAL OVERALL GOAL INFORMATION

EXHIBIT A

DEPARTMENT OF FINANCE
PROCUREMENT SERVICES DIVISION

CITY OF SACRAMENTO
CALIFORNIA

915 - I STREET
2nd FLOOR
SACRAMENTO, CA 95814

PHONE: 916-808-6240
FAX: 916-808-5747

CENTRAL SERVICES
CONTRACT SERVICES
OFFICE OF SMALL BUSINESS DEVELOPMENT
PURCHASING

October 11, 2005

ANNUAL OVERALL GOAL INFORMATION

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

The amount of overall goal, methodology, breakout of estimated race-neutral and race-conscious participation, and Disadvantaged Business Enterprise (DBE) program updates are presented herein in accordance with Title 49 of the Code of Federal Regulations Part 26, and as described in the *Local Assistance Procedures Manual*.

The City of Sacramento submits our annual overall goal information for your review and comment. We have established an annual overall DBE goal of 25% for the Federal Fiscal Year 2005/2006, beginning on October 1, 2005, and ending on September 30, 2006.

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 the procurement of goods and services and determined whether DBE's had been under or over utilized in the procurement of those goods and services. To establish this year's goal, the City used the data, collected by MGT in previous years, for the projections of DBE utilization in the federal fiscal year 2005-2006. 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.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

Of the overall annual 25% goal for DBE participation, the City of Sacramento projects meeting 60% of the annual goal, utilizing race-gender neutral methods. The remaining 40% of the annual goal is anticipated to be accomplished through race-conscious measure, which includes establishing contract specific goals on contracts with contracting possibilities, when needed, to meet the City of Sacramento's 25% overall annual DBE goal.

DBE Program Updates

The 30-day Public Notice was published on August 12, 2005 and continued on September 23, 2005. The City of Sacramento City Council held a public hearing, followed by adoption in resolution, on October 11, 2005, for the continuation of the 25% annual overall goal, as confirmed by the analysis of the current data.

_____ _____

Trevor Walton
DBE Liaison Officer

Date

ATTACHMENTS: DBE Program Proposal for City of Sacramento
Sacramento City Council Resolution *No. 2006-*
Proof of Publication, Daily Journal, 8/12/05 and 9/23/05

CC: Laura J. Rice, Caltrans District 3
Gus Vina, City Finance Director
Christopher Stewart, Procurement Services Manager

EXHIBIT B

DBE PROGRAM PROPOSAL FOR CITY OF SACRAMENTO

Appendix A "To Part 26 – Guidance Concerning Good Faith Efforts"
Appendix B "To Be Used for Design-Build Contracts"
Appendix C "Resolution Regarding Subcontractor"
Public Hearing Notice

EXHIBIT B

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR CITY OF SACRAMENTO

TO BE ADOPTED: October 11, 2005
(Public Hearing and City Council Adoption)

CITY
AGREEMENT NO. 2006-xxx

This Program is in accordance with Title 49 of the Code of Federal Regulations Part 26

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
City of Sacramento, California

I Definition of Terms

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

II Objectives /Policy Statement (§§26.1, 26.23)

As a condition of receiving Federal financial assistance for the U. S. Department of Transportation (DOT), the City of Sacramento has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the DOT, 49 CFR Part 26.

It is the policy of the City of Sacramento to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the City's policy:

To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
To ensure that the 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; and
To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Trevor Walton, Program Specialist, has been delegated as the DBE Liaison Officer. In that capacity, DBE Liaison Officer is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Sacramento in its financial assistance agreements with the California Department of Transportation (Caltrans).

City of Sacramento has disseminated this policy statement to the City of Sacramento City Council Members and all affected components of the City's organization and has published this statement in general circulation, minority-focused and trade association publications.

III Nondiscrimination (§26.7)

City of Sacramento will 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.

In administering its DBE program, the City of Sacramento 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 with respect to individuals of a particular race, color, sex, or national origin.

IV DBE Program Updates (§26.21)

City of Sacramento will continue to carry out this program until significant changes to this DBE Program are adopted. City of Sacramento will provide to Caltrans a proposed overall goal and goal setting methodology and other program updates not later than June 1 of every year.

V Quotas (§26.43)

The City of Sacramento will use the procedures related to the DBE goal and good faith efforts described herein and will not use quotas or set-asides in the administration of this DBE program.

VI DBE Liaison Officer (DBELO) (§26.45)

The City of Sacramento has designated the following individual as the DBE Liaison Officer: Trevor Walton, Finance Department Procurement Division, Office of Small Business Development, 915 "I" Street, 2nd Floor, Sacramento, CA 95814, (916) 808-6764, TWalton@cityofsacramento.org. In that capacity, Trevor Walton is responsible for implementing all aspects of the DBE program and ensuring that the City of Sacramento complies with all provisions of 49 CFR Part 26. This is available on the Internet at osdbuweb.dot.gov/main.cfm. Trevor Walton has direct, independent access to the City Manager, concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment **A** to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination 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 set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the City of Sacramento's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.

The DBELO has two professional staff employees who devote a portion of their time to the program.

VII Federal Financial Assistance Agreement Assurance (§26.13)

The City of Sacramento will sign the following assurance, applicable to 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.).

VIII DBE Financial Institutions

It is the policy of the City of Sacramento 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 DBE Liaison Officer. The Caltrans Disadvantaged Business Enterprise Program may offer assistance to the DBE Liaison Officer.

IX Directory (§26.31)

The City of Sacramento will refer interested persons to the DBE directory available from the Caltrans Disadvantaged Business Enterprise Program website at www.dot.ca.gov/hq/bep.

X Overconcentration (§26.33)

The City of Sacramento has not identified any types of work in DOT-assisted contracts that have an overconcentration of DBE participation. If in the future the City of Sacramento identifies the need to address overconcentration, measures for addressing overconcentration will be submitted to the DLAE for approval.

XI Business Development Programs (§26.35)

The City of Sacramento is continually assessing and evaluating its Emerging and Small Business Development Program. Development of program components has involved creation of partnerships with business support services agencies, which provide capacity-building assistance in business education and consultations, finance and bonding assistance, and sponsorship of a regional annual procurement exposition. Future efforts are planned to formalize program components with evaluative goals and objectives.

XII Required Contract Clauses (§§26.13, 26.29)

Contract Assurance

The City of Sacramento shall require that the following clause be placed in every DOT-assisted contract and subcontract:

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 the City deems appropriate.

Prompt Payment

The City of Sacramento shall require that the following clauses or equivalent will be included in each DOT-assisted prime contract:

Satisfactory Performance
The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from the City of Sacramento. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Sacramento. This clause applies to both DBE and non-DBE subcontractors

Release of Retainage
The prime contractor agrees further to release retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Sacramento. This clause applies to both DBE and non-DBE subcontractors.

XIII Monitoring and Enforcement Mechanisms (§26.37)

The City of Sacramento will assign a Resident Engineer (RE) or Contract Manager to monitor and track actual DBE participation through contractor and subcontractor reports of payments in accordance with the following:

After Contract Award

After the contract award, the City of Sacramento will review the award documents for the portion of items each DBE and first tier subcontractor will be performing and the dollar value of that work. With these documents the RE/Contract Manager will be able to determine the work to be performed by the DBEs or subcontractors listed.

Preconstruction Conference

A preconstruction conference will be scheduled between the RE and the contractor or their representative to discuss the work each DBE subcontractor will perform.

Before work can begin on a subcontract, the local agency will require the contractor to submit a completed "Subcontracting Request," Exhibit 16-B of the LAPM or equivalent. When the RE receives the completed form it will be checked for agreement of the first tier subcontractors and DBEs. The RE will not approve the request when it identifies someone other than the DBE or first tier subcontractor listed in the previously completed "Local Agency Bidder DBE Information," Exhibit 15-G. The "Subcontracting Request" will not be approved until any discrepancies are resolved. If an issue cannot be resolved at that time, or there is some other concern, the RE will require the contractor to eliminate the subcontractor in question before signing the subcontracting request. A change in the DBE or first tier subcontractor may be addressed during a substitution process at a later date.

Suppliers, vendors, or manufacturers listed on the "Local Agency Bidder DBE Information" will be compared to those listed in the completed Exhibit 16-I of the LAPM or equivalent. Differences must be resolved by either making corrections or requesting a substitution.

Substitutions will be subject to the Subletting and Subcontracting Fair Practices Act (FPA). Local agencies will require contractors to adhere to the provisions within Subletting and Subcontracting Fair Practices Act (State Law) Sections 4100-4114. FPA requires the contractor to list all subcontractors in excess of one half of one percent (0.5%) of the contractor's total bid or $10,000, whichever is greater. The statute is designed to prevent bid shopping by contractors. The FPA explains that a contractor may not substitute a subcontractor listed in the original bid except with the approval of the awarding authority.

The RE will give the contractor a blank Exhibit 17-F, "Final Report Utilization of Disadvantaged Business Enterprises, First Tier Subcontractors" and will explain to them that the document will be required at the end of the project, for which payment can be withheld, in conformance with the contract.

Construction Contract Monitoring

The RE will ensure that the RE's staff (inspectors) know what items of work each DBE is responsible for performing. Inspectors will notify the RE immediately of apparent violations.

When a firm other than the listed DBE subcontractor is found performing the work, the RE will notify the contractor of the apparent discrepancy and potential loss of payment. Based on the contractor's response, the RE will take appropriate action. The DBE Liaison Officer will perform a preliminary investigation to identify any potential issues related to the DBE subcontractor performing a commercially useful function. Any substantive issues will be forwarded to the Caltrans Disadvantaged Business Enterprise Program. If the contractor fails to adequately explain why there is a discrepancy, payment for the work will be withheld and a letter will be sent to the contractor referencing the applicable specification violation and the required withholding of payment.

If the contract requires the submittal of a monthly truck document, the contractor will be required to submit documentation to the RE showing the owner's name; California Highway Patrol CA number; and the DBE certification number of the owner of the truck for each truck used during that month for which

DBE participation will be claimed. The trucks will be listed by California Highway Patrol CA number in the daily diary or on a separate piece of paper for documentation. The numbers are checked by inspectors regularly to confirm compliance.

Providing evidence of DBE payment is the responsibility of the contractor.

Substitution

When a DBE substitution is requested, the RE/Contract Manager will request a letter from the contractor explaining why substitution is needed. The RE/Contract Manager must review the letter to be sure names and addresses are shown, dollar values are included, and reason for the request is explained. If the RE/Contract Manager agrees to the substitution, the RE/Contract Manager will notify, in writing, the DBE subcontractor regarding the proposed substitution and procedure for written objection from the DBE subcontractor in accordance with the Subletting and Subcontracting Fair Practices Act. If the contractor is not meeting the contract goal with this substitution, the contractor must provide the required good faith effort to the RE/Contract Manager for local agency consideration.

If there is any doubt in the RE/Contract Manager's mind regarding the requested substitution, the RE/Contract Manager may contact the DLAE for assistance and direction.

Record Keeping and Final Report Utilization of Disadvantaged Business Enterprises

The contractor shall maintain records showing the name and address of each first-tier subcontractor. The records shall also show:

1. The name and business address, regardless of tier, of every DBE subcontractor, DBE vendor of materials and DBE trucking company.
2. The date of payment and the total dollar figure paid to each of the firms.
3. The DBE prime contractor shall also show the date of work performed by their own forces along with the corresponding dollar value of the work claimed toward DBE goals.

When a contract has been completed the contractor will provide a summary of the records stated above. The DBE utilization information will be documented on the form "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" (Exhibit 17-F) and will be submitted to the DLAE attached to the Report of Expenditures. The RE will compare the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form to the contractor's completed "Local Agency Bidder-DBE-Information" (Exhibit 15-G) and, if applicable, to the completed "Subcontracting Request" (Exhibit 16-B). The DBEs shown on the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form should be the same as those originally listed unless an authorized substitution was allowed, or the contractor used more DBEs and they were added. The dollar amount should reflect any changes made in planned work done by the DBE. The contractor will be required to explain in writing why the names of the subcontractors, the work items or dollar figures are different from what was originally shown on the completed "Local Agency Bidder-DBE-Information" form when:

- There have been no changes made by the RE.
- The contractor has not provided a sufficient explanation in the comments section of the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form.

The explanation will be attached to the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form for submittal. The RE will file this in the project records.

The local agency's Liaison Officer will keep track of the DBE certification status on the Internet at www.dot.ca.gov/hq/bep and keep the RE informed of changes that affect the contract. The RE will require the contractor to act in accordance with existing contractual commitments regardless of decertification.

The DLAE will use the PS&E checklist to monitor the City of Sacramento's commitment to require bidders list information to be submitted to the City of Sacramento from the awarded prime and subcontractors as a means to develop a bidders list. This monitoring will only take place if the bidders list information is required to be submitted as stipulated in the special provisions.

The City of Sacramento will bring to the attention of the DOT through the DLAE any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. The City of Sacramento also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

XIV Overall Goals (§26.45)

Amount of Goal

Specifically, City of Sacramento's overall goal for the Federal fiscal year FY 2005/2006 is the following: 25% of the Federal financial assistance in DOT assisted contracts. This overall goal is broken down into two components: First, race-gender neutral methods will be utilized to meet 60% of the annual goal. Second, the remaining 40% of the goal is anticipated to be accomplished through race-conscious measures, which includes establishing contract specific goals on contracts with contracting possibilities, when needed, to meet the City of Sacramento's overall annual DBE goal of 25%.

The approach to establishing the overall goal incorporates the methodology of the Business Utilization Study, conducted by MGT of America, Inc., for the Sacramento Multi-Regional Public Agencies (MRPA), which included the City and other local agencies. The City retained MGT for a business utilization study for the City's DBE utilization, analysis, and determinations of the amount of DBE participation in procurement of goods and services. The analysis conducted by MGT concluded DBEs have been under utilized in the procurement of goods and services.

Methodology

The approach to methodology for the City's Disadvantaged Business Enterprise (DBE) Program is to incorporate the business utilization study, conducted by MGT of America, Inc. MGT was retained for a business utilization study for the Sacramento Multi-Regional Public Agencies (MRPA). MRPA is a consortium of five local public agencies in the Sacramento area: City of Sacramento, County of Sacramento, Sacramento Employment and Training Agency (SETA), Sacramento Housing and Redevelopment Agency (SHRA) and Sacramento Regional Transit District (RT). Objectives of MRPA

methodology is to analyze the amount of participation of Disadvantaged Business Enterprises (DBE) in procurement of goods and services and determine whether DBEs have been under or over utilized in the procurement of those goods and services.

The City of Sacramento continues to utilize the methodology, as applied by MGT, and includes: (1) Parameters for determining business categories, (2) Collecting of data, and (3) Procedures and analysis for determining geographical market areas, utilization, and availability of eligible DBEs and non-DBEs.

Business Categories Parameters

The City's relevant market area and the utilization and availability of DBEs is analyzed for four business categories. The categories were defined by the type of purchase made and contracts awarded by the City during the period July 1, 1993 through June 30, 1998.

The City's relevant market area for each business category was determined to be:

- Construction – Sacramento and Yolo counties, California
- Professional Services – Sacramento, Yolo, and Placer counties, California
- Business Services – Sacramento, Los Angeles, and Yolo counties, California
- Materials and Supplies – Sacramento, Yolo, Alameda, Los Angeles, Orange, San Francisco, Placer, and San Mateo counties, California.

The methodology takes a look at the utilization of disadvantaged business enterprising firms identified within these parameters and then compares the utilization to their availability.

Collection of Data

Utilization data, collected by MGT in the utilization study, is captured for current DBE utilization. MGT collected data from contracts awarded to firms by the City in files maintained by the City Clerk's Office, purchasing and accounting data from the City's financial on-line systems, City Procurement Services contract printouts, and bid documents submitted by prime contractors on construction projects.

Relevant data captured in the MRPA business utilization study included:

- Contract number
- Award date
- Service provided
- Award amount
- Final amount
- Prime contractor
- Prime contractor's race, ethnicity, gender
- Prime contractor's address
- Subcontractor
- Subcontractor's ethnicity, race, gender
- Subcontractor's address
- Subcontractor's dollar amount
- Service provided by subcontractor

Using amount paid to primes and subcontractors or vendors within the relevant market area, the percent of dollars will be calculated for annual DBE participation. The dollar amounts include all contracts awarded to, and retained by, prime contractors within the relevant market area.

Availability Data collected by MGT in the utilization study, regarding availability of business categories is utilized to identify DBE availability. Data collected by MGT included census data and number of vendors available to conduct business with the City in the City's relevant market area. Standard Industrial Codes for the four business categories will be tracked for the number of DBE firms that provide the same types of goods and services that the City procured over the five-year period studied by MGT.

MGT developed a Master Vendor Database, based on the participating MRPA vendor lists. The City's availability of vendors for each of its business categories in its relevant market area is based on this Master Vendor database. The Master Vendor Database is a collection of vendor names from many sources, mainly vendor lists supplied by each agency of the Sacramento Multi-Regional Public Agencies (MRPA) Consortium. The City maintains BizTrack, an electronic database, based on this Master Vendor database, that tracks relevant information for DBE program reporting and can be utilized as a major source of vendor availability.

Finally market availability in each of the business categories collected in the business utilization study will be captured for DBE market availability.

Procedures and Analysis

First, the utilization analysis of DBE firms will be conducted for those firms located within the relevant market area. Utilization of the prime contracting level is based on dollars awarded to prime contractors. Subcontracting utilization is based on the subcontracting dollars awarded to subcontractors by prime contractors.

Second, determinations will be made for the number of DBEs available and capable of providing goods and services of the City in its relevant market area for each business category. Availability of DBEs is calculated as the percentage of all DBE firms in the relevant market area that is DBEs. These figures were used for comparison with utilization levels in order to determine disparity.

Analysis of data will include:

- 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 prime contractors according to dollar thresholds
- Utilization of DBE subcontractors according to dollar thresholds
- Analysis of Bid Data.

Utilization of race-neutral and race-conscious methods

Of the overall annual 25% goal for DBE participation, the City of Sacramento projects meeting 60% of the annual goal, utilizing race-gender neutral methods. Race and gender neutral methods will include: Making efforts to assure that bidding and contract requirements facilitate participation by DBEs and other small businesses; unbundling of large contracts to make them more accessible to small businesses; providing business development forums and information workshops to assist DBEs and small business with contracting procedures and opportunities with the City; encouraging prime contractors to subcontract portions of the work that they might otherwise perform themselves; providing information and access to City's electronic website and directory; and, providing technical assistance and other support services to the City's internal and external sources to facilitate consideration of DBEs and other small businesses. The remaining 40% of the annual goal is anticipated to be accomplished through race-

conscious measures, which includes establishing contract specific goals on contracts with contracting possibilities, when needed, to meet the City of Sacramento's overall annual DBE goal.

Process

Starting with the Federal fiscal year 2000/2001, the amount of overall goal, the method used to calculate the goal, and the utilization of race-neutral and race-conscious participation is required annually by June 1 in advance of the Federal fiscal year beginning October 1 for FHWA-assisted contracts. Submittals are to the Caltrans' DLAE. An exception to this will be if FTA or FAA recipients are required by FTA or FAA to submit the annual information to them or a designee by another date. FHWA recipients will follow this process:

Once the DLAE has responded with preliminary comments and the comments have been incorporated into the draft annual overall goal information, the City of Sacramento will publish a notice of the proposed annual overall goal, informing the public that the proposed goal and its rationale, as contained in Section II Objectives/Policy Statement, are available for inspection during normal business hours at one or more City of Sacramento's office for 30 days following the date of the notice, and informing the public that City of Sacramento comments will be accepted on the goals for 30 days following the date of the notice. Advertisements in newspapers, minority focus media, trade publications, and websites will be the normal media to accomplish this effort. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The annual overall goal resubmission to the Caltrans DLAE, will include a summary of information and comments received during this public participation process and City of Sacramento's responses. This will be due by September 1 to the Caltrans DLAE. The DLAE will have a month to make a final review so the City of Sacramento may begin using the overall goal on October 1 of each year.

XV Contract Goals (§26.51)

The City of Sacramento will use contract goals to meet any portion of the overall goal the City of Sacramento does not project being able to meet by the use of race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. Contract goals need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). The contract work items will be compared with eligible DBE contractors willing to work on the project. A determination will also be made to decide which items are likely to be performed by the prime contractor and which ones are likely to be performed by the subcontractor(s). The goal will then be incorporated into the contract documents. Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

XVI Transit Vehicle Manufacturers (§26.49)

If DOT-assisted contracts will include transit vehicle procurements, the City of Sacramento will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26, Section 49. The City of Sacramento will direct the transit vehicle manufacturer to the subject requirements located on the Internet at http://osdbuweb.dot.gov/programs/dbe/dbe.htm.

XVII Good Faith Efforts (§26.53)

Information to be Submitted

Each solicitation, for which a contract goal has been established, will require the bidders/offerors to submit the following information to: City of Sacramento, Finance Department Procurement Division, Office of Small Business Development, Contract Services, 915 "I" Street, 2nd Floor, Sacramento, CA 95814, 916-808-6764. Bidders/offerors information, to be submitted no later than 4:00 p.m. on, or before, the fourth day, not including Saturdays, Sundays and legal holidays, following bid opening, must include:

1. The names and addresses of known DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participation;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract, as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Demonstration of Good Faith Efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26, which is attached.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive: Trevor Walton, Finance Department Procurement Division, Office of Small Business Development, 915 "I" Street, 2nd Floor, Sacramento, CA 95814. 916-808-6764.

City of Sacramento will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before a commitment to the performance of the contract by the bidder/offeror is made.

Administrative Reconsideration

Within 10 days of being informed by the City of Sacramento that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the City Manager (or "Designee" of the City

Manager's Office), as reconsideration official: City Manager, City of Sacramento, 915 "I" Street, 5th Floor, Sacramento, CA 95814. 916-808-5704. The reconsideration official, or "Designee," will not have played any role in the original determination that the bidder/offeror did not make or document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The City of Sacramento will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process may not be administratively appealed to Caltrans, FHWA or the DOT.

Good Faith Efforts when a DBE is Replaced on a Contract

The City of Sacramento will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The prime contractor is required to notify the RE immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the prime contractor will be required to obtain the City of Sacramento prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the City of Sacramento contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

XVIII Counting DBE Participation (§26.55)

The City of Sacramento will count DBE participation toward overall and contract goals as provided in the contract specifications for the prime contractor, subcontractor, joint venture partner with prime or subcontractor, or vendor of material or supplies. See the Caltrans' Sample Boiler Plate Contract Documents previously mentioned. Also, refer to XIII. "After Contract Award."

XIX Certification (§26.83(a))

The City of Sacramento ensures that only DBE firms currently certified on the Caltrans' directory would participate as DBEs in our program.

XX Information Collection and Reporting

Bidders List

The City of Sacramento 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 and annual gross receipts of firms. The Bidders List can be obtained and tracked by the Office of Small Business Development database BizTrack and the City of Sacramento's financial on-line systems.

Monitoring Payments to DBEs

Prime contractors are required to maintain records and documents of payments to DBEs for three years following the performance of the contract. Any authorized representative of the City of Sacramento, Caltrans, FHWA, or the DOT will make these records available for inspection upon request. This reporting requirement also extends to any certified DBE subcontractor.

Payments to DBE subcontractors will be reviewed by the City of Sacramento to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Reporting to Caltrans

The City of Sacramento will complete the "Report of Final DBE Utilization" forms and will report to the DLAE using Exhibit 17-F of the Caltrans' LAPM.

Confidentiality

The City of Sacramento will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, except to the extent that disclosure is required by Federal, state, or local laws.

_____ _____

Robert P. Thomas, City Manager Date

This Disadvantaged Business Enterprises Program is accepted by:

_____ _____

[Signature of DLAE] Date

APPENDIX A TO PART 26 -- GUIDANCE CONCERNING GOOD FAITH EFFORTS

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

IV. The following is a list of types of actions, which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

APPENDIX B
TO BE USED FOR DESIGN-BUILD CONTRACTS

The following are hereby incorporated into the Agency's Disadvantaged Business Enterprise (DBE) Program:

II Objectives /Policy Statement (§§26.1, 26.23)

At the end of the first paragraph, add the following:

The Agency recognizes that certain modifications are necessary to adapt the program for use in connection with design-build contracts, and has therefore established certain procedures applicable to design-build DBE contracts under the DBE Program. Public Contract Code Section 4109 requires subcontractors to be identified by the prime contractor for the subletting or subcontracting of any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid. Exceptions are only in the cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity. The written public record of the awarding authority/Agency as to either emergency or necessity is attached hereto (See Appendix C for sample).

XIII Monitoring and Enforcement Mechanisms (§26.37)

At the end of the first paragraph below "After Contract Award", add the following paragraph:

After Design-Build Contract Award

As described in the Section entitled "GOOD FAITH EFFORTS" below, each proposer for an Agency design-build contract will be required to submit a DBE Performance Plan as part of a responsive proposal. Following award of a design-build contract and during both the design and construction portions of the project, the design-build contractor will be required to submit documentation, in the form of progress reports described below, to show that the design-build contractor is meeting the contract goal for the project, or if the goal is not being met, the design-build contractor must submit satisfactory evidence that it has made good faith efforts, in accordance with that Section, to meet the goal. Evidence of good faith efforts, as described in 49 CFR Part 26 Section 26.5349 and Appendix A, will be monitored by the Agency throughout the duration of the design-build project.

At the end of the first paragraph below "Preconstruction Conference", add the following sentence:

The contractor will promptly provide the Agency with the information required by the form entitled "Local Agency DBE Information" upon selection of any DBE or other subcontractor not previously identified by the design-build contractor. During the course of the contract, differences must be explained and resolved by either making corrections or requesting a substitution.

At the end of the fourth paragraph below "Construction Contract Monitoring", add the following paragraph:

The contractor will provide DBE Progress Reports to the Agency with each invoice and will provide an annual report on or before August 1 of each year of the design-build contract. Each report must also include a narrative summary stating whether the contractor is on target with respect to the DBE goal set forth in the design-build contract, whether the goal has been exceeded (stating the amount of the excess), or whether the contractor is behind target (stating the amount of the deficit).

XVII Good Faith Efforts (§26.53)

At the end of the third paragraph below "Information to be Submitted", add the following items:

7. A DBE Performance Plan containing a detailed description of the design-build contractor's planned methodology for achieving the DBE goal stated in the contract, including a description of the good faith efforts the design-build contractor intends to undertake to achieve that goal.
8. A design-build proposal must also include an affidavit that the proposer will either attain the DBE goals for the design-build contract or will exercise good faith efforts to do so.

At the end of the first paragraph below "Demonstration of Good Faith Efforts", add the following sentence:

If it is a design-build contract, each contractor proposing will be required to submit a DBE Performance Plan as part of a responsive proposal and good faith efforts.

Gus Vina, Chief Financial Officer
[Signature of Local Agency Recipient's Chief Executive Officer]

Date

This Disadvantaged Business Enterprise Program for design-build contracts is accepted by:

[Signature of DLAE]

Date

APPROVED AS TO FORM:

City Attorney

APPENDIX C

RESOLUTION OF THE (Agency Name) REGARDING NECESSITY OR EMERGENCY FOR SUBSEQUENT SUBCONTRACTOR IDENTIFICATION AND SELECTION FOR DESIGN-BUILD CONTRACTS

(REQUIRED BY PUBLIC CONTRACT CODE SECTION 4109 ENTITLED "Public Emergency Grounds For Change")

A. EXPLANATION OF PUBLIC NECESSITY OR EMERGENCY:

B. FACTS CONSTITUTING THE PUBLIC NECESSITY OR EMERGENCY:

C. FINDINGS:

D. RESOLUTION FOR SUBSEQUENT IDENTIFICATION OF SUBCONTRACTORS:

E. ADOPTION OF PROCEDURE TO BE USED BY DESIGN-BUILD CONTRACTOR FOR SUBSEQUENT IDENTIFICATION OF SUBCONTRACTORS:

F. CERTIFICATE OF SECRETARY

1. **MOTION MADE AND DATE**

2. **VOTING RESULTS**

3. **SIGNATURES:**

   (a) **(Secretary)**

   (b) **(Chairperson)**

PUBLIC HEARING

CITY OF SACRAMENTO

NOTICE IS HEREBY GIVEN that the City of Sacramento has plans to establish an Overall Annual Disadvantage Business Enterprise Goal, applicable to contracting opportunities scheduled to be awarded during the fiscal year of 2005 – 2006. The City of Sacramento's proposed Overall Annual Goal and its rationale were developed in response to U.S. Department of Transportation's New Disadvantage Business Enterprise Program Final Rule (49 CFR Part 26).

The City of Sacramento Public Hearing will be held:

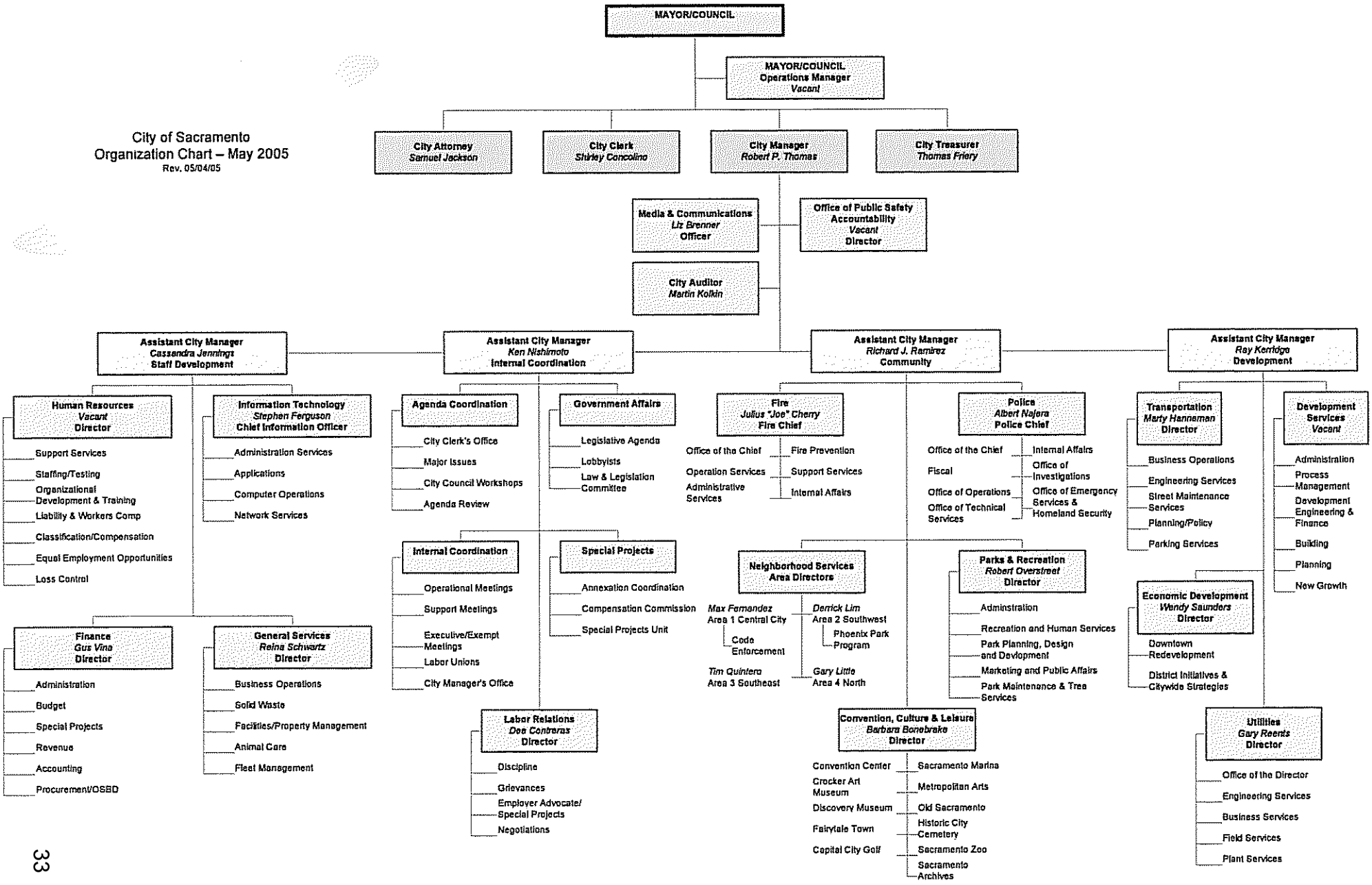
Date: October 11, 2005
Place: City of Sacramento
New City Hall
915 "I" Street, First Floor
Sacramento, CA 95814
Time: 2:00 P.M. to 5:00 P.M.

If you have any questions please contact Trevor Walton or Charlotte Broussard, in the Office of Small Business Development, 915 "I" Street, 2nd Floor Sacramento, CA 95814, or telephone (916) 808-6747.

EXHIBIT C

PROOF OF PUBLICATION
DAILY JOURNAL
8/12/05 and 9/23/05

EXHIBIT D

CITY ORGANIZATION CHART
MAY 2005

City of Sacramento
Organization Chart – May 2005
Rev. 05/04/05