

**DISADVANTAGED BUSINESS  
ENTERPRISE (DBE) PROGRAM**

**FOR**

**THE CITY OF RIVERSIDE**

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

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

# **THE CITY OF RIVERSIDE**

## **I Definitions 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)**

The City of Riverside has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Riverside has received Federal financial assistance from the DOT, and as a condition of receiving this assistance, the City of Riverside will sign an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City of Riverside to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our 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.

Pedro Payne, the Community Relations Administrator, has been delegated as the DBE Liaison Officer. In that capacity, Pedro Payne 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 Riverside in its financial assistance agreements with the California Department of Transportation (Caltrans).

The City of Riverside has disseminated this policy statement to the City Council and all the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by publishing this statement in general circulation, minority-focused and trade association publications.

## **III Nondiscrimination (§26.7)**

The City of Riverside will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the City of Riverside 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)**

The City of Riverside will continue to carry out this program until the City of Riverside has established a new goal setting methodology or until significant changes to this DBE Program are adopted. The City of Riverside will provide to Caltrans a proposed overall goal and goal setting methodology and other program updates by June 1 of every year.

#### **V Quotas (§26.43)**

The City of Riverside will not use quotas or set asides in any way in the administration of this DBE program.

#### **VI DBE Liaison Officer (DBELO) (§26.45)**

The City of Riverside has designated the following individual as the DBE Liaison Officer: Pedro Payne, 3900 Main Street, Riverside, telephone (909) 826-5709, e-mail: ppayne@riversideca.gov. In that capacity, Mr. Payne is responsible for implementing all aspects of the DBE program and ensuring that the City of Riverside complies with all provisions of 49 CFR Part 26. This is available on the Internet at <http://www.riversideca.gov/pworks/info/dbeprogram.pdf>. Mr. Payne has direct, independent access to the City Manager concerning DBE program matters. Mr. Payne will be assigned such staff as is necessary to fully implement the provisions of 49 CFR Part 26. The reporting structure and duties of support staff are shown in Attachment A.

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 Riverside'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. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

#### **VII Federal Financial Assistance Agreement Assurance (§26.13)**

The City of Riverside will sign the following assurance, applicable to all FHWA-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 Riverside 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 Riverside will refer interested persons to the DBE directory available from the Caltrans Disadvantaged Business Enterprise Program website at [www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep).

### **X Overconcentration (§26.33)**

The City of Riverside 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 Riverside 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 Riverside does not have a business development or mentor-protégé program. If the City of Riverside identifies the need for such a program in the future, the rationale for adopting such a program and a comprehensive description of it will be submitted to the DLAE for approval.

### **XII Required Contract Clauses (§§26.13, 26.29)**

#### Contract Assurance

The City of Riverside ensures that the following clause is 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 recipient deems appropriate.

#### Prompt Payment

The City of Riverside ensures 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 Riverside. 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 Riverside. 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 Riverside. This clause applies to both DBE and non-DBE subcontractors.

### **XIII Monitoring and Enforcement Mechanisms (§26.37)**

The City of Riverside 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 Riverside 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 I). 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 II). 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 "Notice of Materials To Be Used" (Exhibit III). 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 4100-4144. 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 IV "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 Exhibit IV and will be submitted to the DLAE attached to the Report of Expenditures. The RE will compare the completed Exhibit IV to the contractor's completed Exhibit II and, if applicable, to the completed Exhibit I. The DBEs shown on the completed Exhibit IV 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 Exhibit II 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 Exhibit IV.

The explanation will be attached to the completed Exhibit IV for submittal. The RE will file this in the project records.

The City of Riverside's Liaison Officer will keep track of the DBE certification status on the Internet at [www.dot.ca.gov/hq/bep](http://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 Riverside's commitment to require bidders list information to be submitted to the City of Riverside 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 Riverside 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 Riverside also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

#### **XIV Overall Goals (§26.45)**

##### Amount of Goal

The City of Riverside's overall goal for the Federal fiscal year FY 2000-2001 is the following: 10% of the Federal financial assistance in FHWA-assisted contracts. This overall goal is broken down into 8 % race-conscious and 2% race-neutral components.

##### Methodology

- (1) Projected DOT-Assisted Contract Expenditures: The City of Riverside will conduct an analysis of the projected number, type of work, and dollar amounts of contracting opportunities that will be funded, in whole or part, by DOT federal assistance for that fiscal year.
- (2) Establishing a Base Figure: Pursuant to 49 CFR 26.45, the City of Riverside will develop a base figure to express the availability of DBEs as a percentage of all contractors, subcontractors, and suppliers in the relevant contracting markets. The City of Riverside will utilize the Census Bureau's County Business Pattern (CBP) database and the Bidder's List to determine the number of ready, willing, and available businesses in the contracting markets in which the City solicits participation from contractors and suppliers for the fiscal year. This determination will include description of the geographic boundaries of the solicitations and the relevant Standard Industry Classification (SIC) codes for the type of work to be contracted. The same method will be used to determine the number of DBEs that are ready, willing, and available to participate as contractors or suppliers for the fiscal year. The base figure for the relative availability of DBEs in the City of Riverside's market for the fiscal year will be derived by dividing the number of DBEs by the number of all businesses and using a weight factor according to the contract expenditure pattern. Refer to Attachment B for details.



- (3) Adjusting the Base Figure: The City of Riverside will adjust the base figure based on the current capacity of DBEs to perform work in the City's DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years. The City will adjust the base figure up to 10% based on the current capacity of DBEs to perform work in the City's DOT-assisted contracting program as measured by the volume of work DBEs have performed in recent years.

#### Breakout of Estimated Race-Neutral and Race-Conscious Participation

The overall DBE goal is broken down into 8% race-conscious and 2% race-neutral components. The City of Riverside will use the race-neutral DBE participation to meet the overall goal to the maximum extent feasible. This will be accomplished through other City's contracts that have no DBE goal, or have participation that exceeds the contract goal, or DBE participation through a prime contract a DBE obtains through customary competitive procedures.

#### Process

Starting with the Federal fiscal year 2002, the amount of overall goal, the method to calculate the goal, and the breakout of estimated race-neutral and race-conscious participation will be required annually by June 1 in advance of the Federal fiscal year beginning October 1 for FHWA-assisted contracts. Submittals will be 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 overall goal information, the City of Riverside will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the City of Riverside's principal office for 30 days following the date of the notice, and informing the public that City of Riverside comments will be accepted on the goals for 45 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 overall goal resubmission to the Caltrans DLAE, will include a summary of information and comments received during this public participation process and the City of Riverside'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 Riverside may begin using the overall goal on October 1 of each year.

#### **XV Contract Goals (§26.51)**

The City of Riverside will use contract goals to meet any portion of the overall goal the City 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 Riverside 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 Riverside 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

The City of Riverside treats bidders'/offerors' compliance with good faith effort requirements as a matter of responsiveness. A responsive proposal is meeting all the requirements of the advertisement and solicitation.

Each solicitation for which a contract goal has been established will require the bidders'/offerors to submit the following information to the City of Riverside no later than 4:00 p.m. on or before the fourth day, not including Saturdays, Sundays and legal holidays, following bid opening:

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 project manager is 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.

The City of Riverside 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 Riverside 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 following reconsideration official: Tom Boyd, Deputy Public Works Director, 3900 Main Street, Riverside, CA 92522. The reconsideration official 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 Riverside 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 is not administratively appealable to Caltrans, FHWA or the DOT.

### Good Faith Efforts when a DBE is Replaced on a Contract

The City of Riverside 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 Riverside 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 Riverside 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 Riverside 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.

### **XIX Certification (§26.83(a))**

The City of Riverside 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 Riverside 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 firms.

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. These records will be made available for inspection upon request by any authorized representative of the City of Riverside, Caltrans, FHWA, or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Payments to DBE subcontractors will be reviewed by the City of Riverside 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 Riverside will submit to the DLAE Exhibit IV “Final Report - Utilization of Disadvantaged Business Enterprises, First Tier Subcontractors.”

Confidentiality

The City of Riverside will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local laws.

\_\_\_\_\_  
John Holmes – City Manager

Date: \_\_\_\_\_

This Disadvantaged Business Enterprises Program is accepted by:

\_\_\_\_\_  
Caltrans District 08 – Local Assistance

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.

City of Riverside City of Riverside

## ATTACHMENT A

Support Staff for implementing the Disadvantaged Business Enterprises Regulations:

PUBLIC WORKS – ENGINEERING: will provide engineering support to determine individual project goals, prepare project specifications, and assure compliance of bid documents with the DBE regulations.

FINANCE – PURCHASING: will handle advertising and bid opening.

PUBLIC WORKS – INSPECTION: will monitor contractor compliance and reporting of DBE participation during construction.

**ATTACHMENT B**

**DETERMINATION OF THE OVERALL DBE GOAL**

DOT-Assisted Contracting Program for FFY 2000/2001

Table 1 below represents the anticipated areas of contracting, by project type, for which the City of Riverside intends to distribute DOT-assisted funds for transportation-related projects in FFY 2000/2001.

**Table 1**

<b>Project Type</b>
Street Rehabilitation
Bridge Seismic Retrofit
Consulting Engineering Services

Table 2 below represents a summary of corresponding subspecialty work areas under two primary categories: **Construction and Professional Services**. The Caltrans DBE Directory Work Category Codes (WWC) and descriptions and comparable 1997 and 1997 Census Business Patterns Database, North American Industry Classification System (NAICS) work category codes utilized are presented as follows:

**Table 2**

Primary Work Category Description	Caltrans Work Category Codes	NAICS Category
<b>Construction:</b>		
Highway and Street Construction	C1601, C1910, C2201, C2602, C3901, C3910, C7301, C8406, C8501	23411, 23499, 23521, 23571
<b>Professional Services:</b>		
Engineering Services	C8703, C8706, C8720, C8760, C8765	54133, 54134, 54136

Table 3 below represents a summary of The City of Riverside projected contracting opportunities for FFY 2000/2001.

**Table 3**

Category Opportunities	Federal Capital Funds	Total Federal Funds With Contracting Opportunities
<b>Construction</b>	\$5,000,000	\$5,000,000
Professional services	\$1,600,000	\$1,300,000
Materials/Supplies	\$0	\$0
<b>TOTAL</b>	<b>\$6,600,000</b>	<b>\$6,300,000</b>



Determination of Base Figure

Base Figure =  $\frac{\text{Number of Ready, Willing and Able DBE Firms in Counties}}{\text{Number of All Available Firm in Counties}}$

Base Figure =  $\frac{\text{DBEs in C1601, C1910}^*, \dots}{\text{CBPs in NAICS 23411, 23499}^{**}, \dots} + \frac{\text{DBEs in C8703, 8706}^*, \dots}{\text{CBPs in NAICS 54133, 54134}^{**}, \dots}$

BASE FIGURE =  $[\frac{0.79 * 227}{4,147} + \frac{0.21 * 25}{3,834}] [100]$

Base Figure = 5%

\* For detailed listings of all Caltrans Work categories grouped in each major category, refer to City's regional DBE Goal analysis for FFY 2000/2001, Attachment C.

\*\* For detailed listings of all NAICS and SIC Work Codes grouped in each major category, refer to City's regional DBE Goal analysis for FFY 2000/2001, Attachment D.

**ATTACHMENT C**

**NUMBER OF ESTABLISHED DBE FIRMS**

Number of Established DBE Firms in Riverside County, Los Angeles County, Orange County, San Bernardino County and San Diego County determined from Caltrans Bulletin Board System List of Certified DBE Firms

<u>NAICS</u>	<u>No. of Firms</u>
23411	146
23499	27
23521	20
23571	<u>34</u>
Total No.	227
54133	21
54134	1
54136	<u>3</u>
Total No.	25

## ATTACHMENT D

### NUMBER OF ESTABLISHED FIRMS

Number of Established Firms in Riverside County, Los Angeles County, Orange County, San Bernardino County and San Diego County determined from US Census Bureau, County Business Patterns, NAICS and SIC Work

<u>NAICS and SIC Code</u>	<u>NAICS/SIC DESCRIPTION</u>	<u>NUMBER</u>
CONSTRUCTION:		
23411	Highway and Street Construction	401
23499	All Other Heavy Construction	629
23521	Painting and Wall Covering Contractors	1,960
23571	Concrete Contractors	1,157
	<b>TOTAL ESTABLISHED FIRMS</b>	<b>4,147</b>
PROFESSIONAL SERVICES:		
54133	Engineering Services	3,675
54134	Drafting Services	138
54136	Geophysical Surveying & Mapping Services	21
	<b>TOTAL ESTABLISHED FIRMS</b>	<b>3,834</b>

**EXHIBIT I**

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**SUBCONTRACTING REQUEST**  
 DC-CEM-1201 (REV. 4/99) (OLD HC-45) CT# 7541-3514-7

FRONT

See Instructions  
On Back

		<b>REQUEST NUMBER</b>					
<b>CONTRACTOR NAME</b>			<b>COUNTY</b>		<b>ROUTE</b>		
<b>BUSINESS ADDRESS</b>			<b>CONTRACT NO.</b>				
<b>CITY/STATE</b>		<b>ZIP CODE</b>	<b>FEDERAL AID PROJECT NO. (From Special Provisions)</b>				
<b>SUBCONTRACTOR (Name, Business Address, Phone)</b>	<b>BID ITEM NUMBER(S)</b>	<b>% OF BID ITEM SUBBED</b>	<b>CHECK IF: (See Categories Below)</b>			<b>DESCRIBE WORK WHEN LESS THAN 100% OF WORK IS SUBBED</b>	<b>\$ AMOUNT BASED ON BID \$ AMOUNT</b>
			(1)	(2)	(3)		

**Categories:**      1) Specialty                      2) Listed Under Fair Practices Act                      3) Certified DBE/DVBE

**I Certify That:**

- The Standard Provisions for labor set forth in the contract apply to the subcontracted work.
- If applicable, (Federal Aid Projects only) Section 14 (Federal Requirements) of the Special Provisions have been inserted in the subcontracts and will be incorporated in any lower-tier subcontract. Written contracts have been executed for the above noted subcontracted work.

<b>CONTRACTOR'S SIGNATURE</b>	<b>DATE</b>
-------------------------------	-------------

**NOTE:** This section is to be completed by the Resident Engineer

1. Total of bid items .....	\$	
2. Specialty items (previously requested) .....	\$	
3. Specialty items (this request) .....	\$	
4. Total (lines 2+3) .....	\$	
5. Contractor must perform with own forces (lines 1 minus 4) x _____%	\$	
6. Bid items previously subcontracted .....	\$	
7. Bid items subcontracted ( this request) .....	\$	
8. Total (lines 6+7) .....	\$	
9. Balance of work Contractor to perform (lines 1 minus 8).....	\$	

<b>APPROVED</b>	
<b>RESIDENT ENGINEER'S SIGNATURE</b>	<b>DATE</b>

**COPY DISTRIBUTION:**  
 1. Original - Contractor    2. Copy - local agency Resident Engineer  
 3. Copy - local agency Labor Compliance Officer  
 4. HQ Construction Program    5. Contractor's Information Copy

Back

## INSTRUCTIONS FOR COMPLETING SUBCONTRACTING REQUEST FORM

*All First-tier subcontractors must be included on a subcontracting request.*

Submit in accordance with Section 8-1.01 of the Standard Specifications. Type or print requested information. Information copy is to be retained by the contractor. Submit other copies to project's Resident Engineer. After approval, the original will be returned to the contractor.

When an entire item is subcontracted, the value to be shown is the contractor's bid price.

When a portion of an item is subcontracted, describe the portion, and show the % of bid item and value.

### THIS FORM IS NOT TO BE USED FOR SUBSTITUTIONS.

Prior to submittal of a DC-CEM-1201 involving a replacement Subcontractor, submit a separate written request for approval to substitute a listed subcontractor. Section 4107 of the Government Code covers the conditions for substitution.

Submit a separate written request for approval of any DBE/MBE/WBE/DVBE substitution. Include appropriate backup information and state what efforts were made to accomplish the same dollar value of work by other certified DBE/MBE/WBE/DVBEs.

NOTE: For contractors who will be performing work on railroad property, it is necessary for the contractor to complete and submit the Certificate of Insurance (State Form DH-OS-A10A) naming the subcontractor as insured. *No work shall be allowed which involves encroachment on railroad property until the specified insurance has been approved.*

## EXHIBIT II

### LOCAL AGENCY BIDDER - DBE - INFORMATION

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This information may be submitted with your bid proposal. If it is not, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received as specified in the Special Provisions. Failure to submit the required DBE information will be grounds for finding the proposal nonresponsive.

**CO.-RTE.-K.P.:** \_\_\_\_\_  
**CONTRACT NO.:** \_\_\_\_\_  
**BID AMOUNT: \$** \_\_\_\_\_  
**BID OPENING DATE:** \_\_\_\_\_  
**BIDDER'S NAME:** \_\_\_\_\_  
**DBE GOAL FROM CONTRACT:** \_\_\_\_\_  
**DBE PRIME CONTRACTOR CERTIFICATION <sup>1</sup>:** \_\_\_\_\_

CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED <sup>2</sup>	DBE CERT. NO.	NAME OF DBEs (Must be certified on the date bids are opened - include DBE address and phone number)	DOLLAR AMOUNT DBE <sup>3</sup>
<b>IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Copies of the DBE quotes are required. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above shall be consistent with the names and items of work in the "List of Subcontractors" submitted with your bid pursuant to the Subcontractors Listing Law and the Special Provisions.</b>			<b>Total Claimed Participation</b>	\$ _____  _____ %
1. DBE prime contractors shall enter their DBE certification number. DBE prime contractors shall indicate all work to be performed by DBEs including work performed by its own forces.  2. If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE.  3. See Section "Disadvantaged Business Enterprises," of the Special Provisions to determine the credit allowed for DBE firms.			_____ Signature of Bidder  _____ Date (Area Code) Tel. No.  _____ Person to Contact (Please Type or Print)	

CT Bidder - DBE Information (Rev06-29-00)

**EXHIBIT III**

DEPARTMENT OF TRANSPORTATION  
NOTICE OF MATERIALS TO BE USED

To: \_\_\_\_\_  
Resident Engineer

Date: \_\_\_\_\_ 19\_\_\_\_\_

You are hereby notified that materials required for use under Contract No. \_\_\_\_\_  
for construction of \_\_\_\_\_

in Dist. \_\_\_\_\_, Co. \_\_\_\_\_, Rte. \_\_\_\_\_,  
P.M. \_\_\_\_\_

will be obtained from sources herein designated.

CONTRACT ITEM NO.	KIND OF MATERIAL	NAME AND ADDRESS WHERE MATERIAL CAN BE INSPECTED

It is requested that you arrange for sampling, testing and inspection of materials prior to delivery in accordance with Section 6 of the Standard Specifications where the same is practicable and in accord with your policy. It is understood that source inspection does not relieve me of the full responsibility for incorporating in the work materials that comply in all respects with the contract plans and specifications, nor does it preclude the subsequent rejection of materials found to be unsuitable.

Distribution:

Original Office of Materials Engineering & Testing Services  
5900 Folsom Blvd.  
Sacramento, California 95819

Copy Resident Engineer  
Copy Contractor's File  
Copy District

Yours truly,  
\_\_\_\_\_

Address  
\_\_\_\_\_

Phone No. ( ) \_\_\_\_\_

## INSTRUCTIONS TO CONTRACTOR

Section 6 of the Standard Specifications states that, “Promptly after the approval of the Contract, the Contractor shall notify the Engineer of the proposed sources of supply of all materials to be furnished by him, using a form which will be supplied by the Engineer upon request.”

In order to avoid delay in approval of materials, the Department of Transportation must receive notice as soon as possible.

Please comply with the following as closely as possible:

The Contract number and job limits should be the same as appears on the Special Provisions.

The column headed “Contract Item No.” should show all the item numbers for which the material is to be used.

The column headed “Material Type” should be a description of the material and not necessarily the name of the contract item.

The column headed “Name and Address of Inspection Site” should be that of the actual source of supply and not subcontractor or jobber.

If the sources of all materials are not known at the beginning of a Contract, report those known. Supplemental “Notices of Materials to Be Used” should be submitted for the others as soon as possible thereafter. Do not delay submitting the original notice until all information is known.

All changes in kinds and/or sources of materials to be used should be reported on supplemental “Notices of Materials to Be Used” immediately.

Retain your copy and mail all other copies to the Resident Engineer.

Note: When placing orders for materials that required inspection prior to shipment, be sure to indicate on your order that State inspection is required.



**EXHIBIT IV**

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION

**FINAL REPORT - UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE), FIRST-TIER SUBCONTRACTORS**

(FEDERALLY FUNDED PROJECTS)  
 CEM-2402(F) (Rev. 10/99) CT# 7541-3502-2

CONTRACT NUMBER		COUNTY	ROUTE	POST MILES/POST KILOMETERS	FEDERAL AID PROJECT No.	ADMINISTERING AGENCY	CONTRACT COMPLETION DATE			
PRIME CONTRACTOR			BUSINESS ADDRESS				ESTIMATED CONTRACT AMOUNT \$			
ITEM NO.	DESCRIPTION OF WORK PERFORMED AND MATERIALS PROVIDED	SUBCONTRACTOR NAME AND BUSINESS ADDRESS	DBE CERT. NO.	CONTRACT PAYMENTS					DATE WORK COMPLETE	DATE OF FINAL PAYMENT
				Non-DBE	DBE*	DBE,SMBE*	DBE,SWBE*	DBE, SMBE, SWBE*		
				\$	\$	\$	\$	\$		
<b>ORIGINAL COMMITMENT:</b>			<b>TOTAL</b>	\$	\$	\$	\$	\$		

\$ \_\_\_\_\_  
DBE, SWBE

\$ \_\_\_\_\_  
DBE SMBE, SWBE

\*The decision of which column to be used for entering the DBE dollar value is based on what Program(s) the firm is Certified. This Program status is determined by the Civil Rights Certification Unit based on ethnicity, gender, ownership and control issues at time of certification. The certified firm is issued a certificate by the Civil Rights unit that states their program status as well as the firms Expiration Date. DBE Program status may be obtained by accessing the Civil Rights website (<http://www.dot.ca.gov/hq/bep/>) and downloading the Calcert Extract or by calling 916 227 2207.

*List all First Tier Subcontractors, Disadvantaged Business Enterprises (DBE's) regardless of tier, whether or not the firms were originally listed for goal credit. If actual DBE utilization (or amount of work) was different than that approved at time of award, provide comments on a separate page. List actual amount paid to each DBE, even if different than originally listed for goal credit. Definitions: SMBE (Small Minority Business Enterprises) and SWBE (Small Woman-Owned Business Enterprises)*

**I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT**

CONTRACTOR REPRESENTATIVE SIGNATURE	BUSINESS PHONE NUMBER	DATE
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**TO THE BEST OF MY KNOWLEDGE THE ABOVE INFORMATION IS COMPLETE AND CORRECT**

RESIDENT ENGINEER SIGNATURE	BUSINESS PHONE NUMBER	DATE
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- Distribution:
- (1) Original plus one copy to DLAE included in the Report of Expenditures (original forwarded to Division of Structures , Office of External Liaison and Agreements)
  - (2) Copy- local agency project files
  - (3) Copy - OLP Area Engineer