

DRAFT
Federal Fiscal Year 2005/06
DISADVANTAGED
BUSINESS ENTERPRISE
(DBE) PROGRAM

FOR THE SANTA CRUZ COUNTY
REGIONAL TRANSPORTATION COMMISSION

June 15, 2005

This Program was prepared in accordance with Title 49 of the Code of Federal Regulations Part 26.

SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

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 Santa Cruz County Regional Transportation Commission (SCCRTC) 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 SCCRTC has received Federal financial assistance from the DOT, and as a condition of receiving this assistance, the SCCRTC will sign an assurance that it will comply with 49 CFR Part 26.

It is the policy of the SCCRTC 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 marketplace outside the DBE Program.

The SCCRTC Acting Deputy Director, Luis Mendez, has been delegated as the DBE Liaison Officer. In that capacity, Luis Mendez 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 SCCRTC in its financial assistance agreements with the California Department of Transportation (Caltrans).

SCCRTC has disseminated this policy statement to the County of Santa Cruz and all the components of our organization. We have distributed a notice of the overall annual goal to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by publishing this statement in general circulation and direct mailings.

III Nondiscrimination (§26.7)

SCCRTC 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 SCCRTC 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)

SCCRTC is using its Bidder's List from the past three years to establish its goals for FY 05/06. Previously the SCCRTC based its goals on the number of DBE firms in its database of consultants, rather than its previously minute Bidder's List. SCCRTC will continue to carry out this program until the SCCRTC has established a new goal setting methodology or until significant changes to this DBE Program are adopted. SCCRTC will provide Caltrans with a proposed overall goal and goal setting methodology and other program updates by June 1 of every year.

V Quotas (§26.43)

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

VI DBE Liaison Officer (DBELO) (§26.45)

SCCRTC has designated the following individual as the DBE Liaison Officer (DBELO):

Luis Mendez, Acting Deputy Director
1523 Pacific Avenue
Santa Cruz, CA 95060
(831) 460- 3212
lmendez@sccrtc.org

In that capacity, Luis Mendez is responsible for implementing all aspects of the DBE program and ensuring that the SCCRTC complies with all provisions of 49 CFR Part 26. Luis Mendez has direct, independent access to the Acting Executive Director, Pat Dellin, concerning DBE program matters. The DBELO has one professional employee assigned to assist with the DBE program, Rachel Moriconi, Senior Planner.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination other appropriate officials. Duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required.
- Works with the Interagency Technical Advisory Committee to set overall annual goals.
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Identifies contracts and procurements so that DBE goals are included in solicitations (both race neutral methods and contract specific goals) and monitors results.
- Analyzes SCCRTC's progress toward goal attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the Executive Director and governing body on DBE matters and

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

VII Federal Financial Assistance Agreement Assurance (§26.13)

SCCRTC 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 SCCRTC 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 Caltrans Disadvantaged Business Enterprise Program.

IX Directory (§26.31)

SCCRTC 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)

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

XI Business Development Programs (§26.35)

SCCRTC does not have a business development or mentor-protégé program. If the SCCRTC 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

SCCRTC 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

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

Prompt Progress Payment to Subcontractors

A prime contractor or subcontractor shall pay a subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless, a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the agency's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

Prompt Payment of Withheld Funds to Subcontractors

The SCCRTC shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any

violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

XIII Monitoring and Enforcement Mechanisms (§26.37)

The SCCRTC will assign a Contract Manager (CM) 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 SCCRTC 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 Contract Manager will be able to determine the work to be performed by the DBEs or subcontractors listed.

Pre-engineering Conference/Contract Kickoff Meeting

A kickoff meeting will be scheduled between the CM and the contractor or their representative to discuss the work each DBE subcontractor will perform.

Before work can begin on a subcontract, SCCRTC will require the contractor to submit a completed "Subcontracting Request," Exhibit 16-B of the LAPM or equivalent. When the CM receives the completed form, it will be checked for agreement of the first tier subcontractors and DBEs. The CM 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 of the LAPM or DBEs listed in the bid proposal. 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 CM 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" or in the bid proposal 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 4100-4144. 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 CM 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.

Pre-Engineering Contract Monitoring

The CM will ensure that the CM's staff knows what items of work each DBE is responsible for performing. Inspectors will notify the CM immediately of apparent violations. When a firm other than the listed DBE subcontractor is found performing the work, the CM will notify the contractor of the apparent discrepancy and potential loss of payment. Based on the contractor's response, the CM 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.

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

Substitution

When a DBE substitution is requested, the Contract Manager will request a letter from the contractor explaining why substitution is needed. The 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 Contract Manager agrees to the substitution, the 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 Contract Manager for local agency consideration.

If there is any doubt in the Contract Manager's mind regarding the requested substitution, the 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:

- The name and business address, regardless of tier, of every DBE subcontractor, DBE vendor of materials and DBE trucking company.
- The date of payment and the total dollar figure paid to each of the firms.

- 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 17-F and will be submitted to the DLAE attached to the Report of Expenditures. The CM will compare the completed Exhibit 17-F to the contractor's completed Exhibit 15-G and, if applicable, to the completed Exhibit 16-B. The DBEs shown on the completed Exhibit 17-F 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 15-G when:

- There have been no changes made by the CM.
- The contractor has not provided a sufficient explanation in the comments section of the completed Exhibit 17-F.

The explanation will be attached to the completed Exhibit 17-F for submittal. The CM will file this in the project records.

The SCCRTC's Liaison Officer will keep track of the DBE certification status on the Internet at www.dot.ca.gov/hq/bep and keep the CM informed of changes that affect the contract. The CM 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 SCCRTC's commitment to require bidders list information to be submitted to the SCCRTC 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.

SCCRTC 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. SCCRTC also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

XIV Overall Goals (§26.45)

Amount of Goal

SCCRTC's overall goal for the Federal fiscal year FY 05/06 is the following: 12.7% of the Federal financial assistance in FHWA-assisted contracts. Since SCCRTC only anticipates having few, if any, federally-funded contracts in FY 05/06, we plan to achieve this goal using "race-conscious" methods.

Goal-Methodology

During FY 2005/06, SCCRTC may have one or two DOT-funded Consultant Services contracts. Since SCCRTC has had very few federally-funded contracts in the past ten years, and only three in the previous five years, we found that it would be useful to compare our Bidder's List to our consultant database and to Bidder's Lists from other agencies in our region to establish SCCRTC's Base Figure.

Step 1:

SCCRTC elected to utilize the following methodology in establishing SCCRTC's Base Figure of relative DBE availability for FFY 05/06:

For the Numerator: DBE Firms in SCCRTC's Bidder's List = 15

For the Denominator: Firms in SCCRTC's Bidder's List = 44

SCCRTC calculated its Base Figure by first determining the number of ready, willing and able consultant (work code C87*) DBEs in its database and dividing the number of DBEs by the total of firms in the same work category. Through this method, SCCRTC can measure availability by the number of firms that have directly participated in, or expressed interest in, SCCRTC contracts in the recent past.

Application of this formula yields the following baseline information:

By dividing the numerator (15) by the denominator (44) we got a base figure of 34.1%.

Step 2:

Upon establishing the Base Figure, SCCRTC reviewed and assessed other known relevant evidence to determine what additional adjustments, if any, were needed to narrowly tailor the Base Figure to SCCRTC's marketplace.

Factors considered in determining SCCRTC's DBE participation that can be expected, absent discrimination, included the following:

Comparison to other methodologies – Database of Interested Firms

Consultants that have asked the SCCRTC to include them in our consultant database could be considered a snapshot of available firms.

DBE Firms in SCCRTC's consultant database = 32

Total Firms in SCCRTC's consultant database = 252

Application of this methodology shows that only 12.7% of available firms are DBEs. Last year this methodology was used and DBEs accounted for 14% of firms in the consultant database.

Comparison of Bidder's Lists Countywide

After combining our Bidder's List with those from some of the smaller agencies in Santa Cruz County, we found that DBEs account for 27% of engineering and environmental consulting firms that have bid on jobs either as primes or subconsultants.

DBE Representation in Bid Proposals with Multiple Subconsultants—Current Capacity of DBEs:

Though DBEs constitute 34% of the consultant firms in the Commission's Bidder's List, the majority of these firms were subs on a few bids with multiple subconsultants for the PA/ED phase of the Highway 1 Widening/HOV project. Of the overall bids received for that project, DBEs constituted 12% of the work within the bid proposals. Similarly, the percentage of DBEs on the "countywide" Bidder's List (27%) does not actually represent the amount of work bid on by each of those firms, since many were subconsultants on large proposals.

The FFY 05/06 Adjusted Goal

After consideration of the above stated factors, especially the current capacity of DBEs based on the volume of work DBEs have performed, the SCCRTC has determined that 12.7% DBE participation is a reasonable goal for FY05/06.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

Of the overall annual 12.7% goal for DBE participation, SCCRTC projects meeting the entire goal utilizing race conscious measures, which includes establishing contract specific goals on contracts with subcontracting possibilities, when needed, to meet the overall annual goal. Race-neutral methods, including making efforts to assure that bidding and contract requirements facilitate participation by DBEs and other small businesses; unbundling large contracts to make them more accessible to small businesses; encouraging prime contractors to subcontract portions of the work that they might otherwise perform themselves; listing contract opportunities on the internet; and providing technical assistance, and other support services to facilitate consideration of DBEs and other small businesses may also be used.

Process

SCCRTC understands that 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 is required annually by June 1 in advance of the Federal fiscal year beginning October 1 for FHWA-assisted contracts. Submittals will be made to Mike Giuliano, the Caltrans' District 5 DLAE.

Each year, after the DLAE reviews the SCCRTC's draft DBE Program, the SCCRTC will publish notices of the proposed overall goal, informing the public of the proposed goal and make its rationale available for inspection during normal business hours at the SCCRTC's office for over 30 days following the date of the notice, and inform the public that comments would be accepted on the goals for 45 days following the date of the notice. Advertisements will be placed in two regional newspapers, notices will be sent to minority focused business groups, and the Draft DBE Program will be placed on the SCCRTC website. Members of the public will be given the opportunity to comment on the draft program in writing and at the Regional Transportation Commission's September meeting. These will continue to be the normal media to accomplish this effort in future years. The notice includes addresses to which comments can be sent and addresses where the proposal could be reviewed.

XV Contract Goals (§26.51)

SCCRTC will use contract goals to meet the overall goal given that SCCRTC does not project being able to meet the goal 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. 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)

This section is not applicable to SCCRTC.

XVII Good Faith Efforts (§26.53)

Information to be Submitted

SCCRTC 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 is established will require the bidders/offerors to submit the following information to SCCRTC, 1523 Pacific Avenue, Santa Cruz, CA 95060 no later than 4:00 p.m. on or before the fourth day, not including Saturdays, Sundays and legal holidays, following bid closing:

- The names and addresses of known DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The dollar amount of the participation of each DBE firm participation;
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- 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.

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: Kim Shultz, Luis Mendez, and Tegan Speiser, Contract Managers.

SCCRTC 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 SCCRTC 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: Pat Dellin, 1523 Pacific Avenue, Santa Cruz, CA 95060, (831) 460-3200. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make 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. SCCRTC 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

SCCRTC 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 CM 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 prior approval of the substitute DBE from SCCRTC 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, SCCRTC 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)

SCCRTC 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, which is described in more detail under Contract Documents and section XI, A. "After Contract Award."

XIX Certification (§26.83(a))

SCCRTC ensures that only DBE firms currently certified on the Caltrans' directory will

participate as DBEs in our program.

XX Information Collection and Reporting

Bidders List

SCCRTC has created and will maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted contracts, for use in future years. 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 SCCRTC, Caltrans or FHWA. This reporting requirement also extends to any certified DBE subcontractor.

Payments to DBE subcontractors will be reviewed by SCCRTC 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

Final utilization of DBE participation will be reported to the DLAE using Exhibit 17-F of the Caltrans' LAPM by SCCRTC.

Confidentiality

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

_____ Date: _____
Pat Dellin, Acting Executive Director

This Disadvantaged Business Enterprises Program is accepted by:

_____ Date: _____
Michael Giuliano, DLAE

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.