

DATE SUBMITTED January 15, 2015
SUBMITTED BY PLANNING DIRECTOR
DATE ACTION REQUIRED January 21, 2015

COUNCIL ACTION (x)
PUBLIC HEARING REQUIRED ()
RESOLUTION (x)
ORDINANCE 1ST READING ()
ORDINANCE 2ND READING ()
CITY CLERK'S INITIALS ()

**IMPERIAL CITY COUNCIL
AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION:

- I. Adopt and Approve the FFY 2014-2015 Disadvantage Business Enterprise (DBE) Program for the Imperial Transit Transfer Station located at 401 E Barioni Blvd, Imperial California 92251. APN 063-010-049

DEPARTMENT INVOLVED: Planning

BACKGROUND/SUMMARY:

The City received federal financial assistance from the Federal Transit Authority (FTA) to design and construct the Imperial Transit Transfer Station. The state funding in the amount of \$243,000 is from the Public Transportation Modernization, Improvement, and Service Enhancement Account Program (PTMISEA). The project is also receiving \$974,000 from the Federal Transit Administration (FTA). The City purchased the above-referenced property in early September 2014. In order to move on to the design phase, the City must comply with 49 CFR Part 26, DBE rule. The DBE program is intended to remedy past and current discrimination against DBEs and foster equal opportunity in federal-aid contracts (see attachment). The City of Imperial announced a proposed DBE goal of 12.7 percent for Fiscal Year 2014-2015. The goal represents the percentage of work to be accomplished by certified DBE subcontractors on FTA funded transit projects with the City of Imperial. The required 45 day public review of the DBE program ended on January 7, 2015. No public comments were submitted.

FISCAL IMPACT: No impact

F.O. INITIALS: _____

STAFF RECOMMENDATION:

Staff recommends to adopt and approve the 2014-2015 DBE Program to be in compliance with the regulation of the U.S Department of Transportation (DOT) 49 CFR Part 26 so staff can move onward to the design phase. Approve Resolution No. 2015-02.

MANAGER'S RECOMMENDATION:

MANAGER'S INITIALS

MOTION:

SECONDED: APPROVED () REJECTED ()
AYES: DISAPPROVED () DEFERRED ()
NAYES:
ABSENT: REFERRED TO:

RESOLUTION NO. 2015-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL APPROVING THE FFY 2014-2015 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

WHEREAS, the City of Imperial received federal financial assistance from the Federal Transit Authority (FTA); and

WHEREAS, as a condition of receiving this assistance, the City of Imperial agreed that it will comply with the regulations of the U.S Department of Transportation (DOT) 49 CFR Part 26.

NOW THEREFOR, BE IT RESOLVED, that the City Council of City of Imperial approves the FFY 2014-2015 Disadvantaged Business Enterprise (DBE) Program.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Imperial, this 21st day of January 2015.

Mayor

ATTEST:

City Clerk



**Disadvantaged Business Enterprise Program
(DBE) 49 CFR Part 26
Gracie Hauvermale**

2014-215

CITY OF IMPERIAL

DEPARTMENT OF TRANSPORTATION DBE PROGRAM – 49 CFR PART 26

POLICY STATEMENT

Section 26.1, 26.23

Objectives/Policy Statement

The City of Imperial 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 Imperial has received federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Imperial has signed an assurance that it will comply with 49 CFR Part 26.

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

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

Jorge Galvan has been delegated as the DBE Liaison Officer. In that capacity, Jorge Galvan 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 Imperial in its financial assistance agreements with the Department of Transportation.

The City of Imperial has disseminated this policy statement to the City Council and all of the relative components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform, or are anticipated to perform work for our organization on DOT assisted contracts. This distribution is accomplished through 1. Adoption of the program by the City Council; 2. Publication available to all interested parties via the City’s website; 3. Inclusion in all relative competitive bid documents.

City Manager

Date

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SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are found in the policy statement on the first page of this program.

Section 26.3 Applicability

The City of Imperial through the Imperial County Transportation Commission (ICTC) is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definitions

The City of Imperial will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

The City of Imperial 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 Imperial 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.

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

We will report DBE participation to DOT as follows:

We will report DBE participation on a quarterly basis, using DOT Form 4630 or through the FTA TEAM website. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

The City of Imperial will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

We will collect this information in the following ways: requiring prime bidders to report the names/addresses and possible other information, of all firms who quote to them on subcontracts, providing a notice in solicitations and post it on the City website.

Section 26.13 Federal Financial Assistance Agreement

The City of Imperial has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

The City of Imperial 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 City of Imperial 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 City of Imperial'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 City of Imperial of its failure to carry out its approved program, the Department may impose sanction 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.*).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the City may receive a grant of \$250,000 or more for planning or development, planning capital, and or operating assistance in a federal fiscal year, by the statute for we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this program.

Section 26.25 DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer:

Jorge Galvan
Planning and Development Director
City of Imperial
420 South Imperial Avenue
Imperial CA, 92251
760-355-3326
jgalvan@cityofimperial.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City of Imperial complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager of the City of Imperial 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 with other appropriate officials. The DBELO has a staff of 0 to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all components within the City of Imperial 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 attainment and identifies ways to improve progress.
6. Analyzes the City of Imperial's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City Manager/City Council on DBE matters and achievement.
9. Participates in pre-bid meetings.
10. Provides DBEs with information and assistance in preparing bids.
11. Plans and participates in DBE training seminars.
12. Acts as liaison to the Uniform Certification Process in California.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains the City of Imperial's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of the City of Imperial 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 contract to make use of these institutions. We have made the following efforts to identify and use such institutions: research the credit unions and commercial banks in the community through on site visits and website reviews.

To date we have identified the following such institutions: None

Section 26.29 Prompt Payment Mechanisms

The City of Imperial will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the City of Imperial. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors 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 Imperial. This clause applies to both DBE and non-DBE subcontracts.

Any failure to comply with this section by the prime contractor shall be considered as a breach of the contract, subject to the provisions of the agreement. In addition, the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractors ensures that the subcontractors are promptly paid for the work that they have performed.

Section 26.31 Directory

The City of Imperial maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. We revise the Directory annually.

We make the Directory available online at http://www.dot.ca.gov/hq/bep/find_certified.htm.

Further information may be found about California's Uniform Certification Program at <http://www.dot.ca.gov/hq/bep/ucp.htm>

Section 26.33 Overconcentration

The City of Imperial has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The City of Imperial has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The City of Imperial will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation 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.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished via a reporting mechanism.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The City of Imperial does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f) the City of Imperial will submit its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, the City of Imperial will consult with the Chambers of Commerce and CALTRANS Local District Offices to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Imperial's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our office for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice. The notice will be available on the Commission's website and the local newspaper of general circulation. We will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from

DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.49 Transit Vehicle Manufacturers Goals

The City of Imperial will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the City of Imperial may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program. This section of the program will be updated annually when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

The City of Imperial will establish contract goals to meet any portion of the overall goal and does not project being able to meet using 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 our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal 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.)

We will express our contract goals as a percentage of total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

Demonstration of Good Faith Efforts (26.53(a) & (c))

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 located in Appendix A to 49 CFR Part 26.

The following personnel 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

Jorge Galvan
Planning and Development Director
City of Imperial
420 South Imperial Avenue
Imperial CA, 92251
760-355-3326
jgalvan@cityofimperial.org

We will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

The City of Imperial treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information:

1. The names and addresses of 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 participating;
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 contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 10 days of being informed by the City of Imperial 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:

Marlene D. Best, City Manager
City of Imperial
420 South Imperial Avenue
Imperial CA, 92251
760-355-3340
mbest@cityofimperial.org

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not 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 our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We 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 the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

The City of Imperial 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. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our 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 Imperial 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.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City of Imperial to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of ____ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City of Imperial will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

CALTRANS Civil Rights
ATTN: Certification Unit
1823 14th Street
Sacramento, Ca. 95811
(866) 810-6346
http://www.caltrans.ca.gov/hq/bep/business_forms.htm

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The City of Imperial adopts the California Unified Certification program (CUCP) procedures administered by the Certifying agencies of the CUCP. The UCP meets all of the requirements of this section. The following is a description of the UCP (as provided on the CUCP website located at <http://www.californiaucp.com/index.html>)

“The California Unified Certification Program (CUCP) went into effect on January 1, 2002. It is a one stop shopping certification procedure that eliminates the need for Disadvantaged Business Enterprises (DBE) firms to obtain certifications from multiple agencies within the State.

The CUCP is charged with the responsibility of certifying firms and compiling and maintaining a single

Statewide database of certified DBEs, pursuant to 49 CFR Part 26. The database is intended to expand the use of DBE firms by maintaining complete and current information on those businesses and the products and services they can provide to all DOT assisted grantees in California.

The CUCP has established two regional DBE certification clusters throughout the State, designated by geographical boundaries to effectively facilitate Statewide DBE certification activities.

The CUCP certifying agencies are responsible for certifying DBE firms. It is not necessary to apply for DBE certification at more than one agency. If your firm meets the general criteria for DBE certification as provided on the Application package, please submit your completed application, along with the requested documentation to one of the Certifying agencies serving the County where your firm has its principal place of business.”

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

We will review the eligibility of DBEs, to make sure that they will meet the standards of Subpart E of Part 26. We will complete this review no later than five years from the most recent certification date of each firm.

For firms that we have reviewed and found eligible under part 26, we will again review their eligibility every five years. These reviews will include the following components: filing out a new application, performing on site visits in the City of Imperial local area, and reviewing work history, qualifications and equipment of the firm.

“No Change” Affidavits and Notices of Change (26.83(j))

To the extent as required by the CUCP, we require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the CUCP’s application for certification.

We also require all owners of all DBEs to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j). The test of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [*name of DBE firm*] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [*name of DBE*]’s application for certification, except for any changes about which you have provided written notice to the ICTC under 26.83(j). [*Name of firm*] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$16.6 million.

We require DBEs to submit with this affidavit documentation of the firm’s size and gross receipts.

We will notify all currently certified DBE firms of these obligations. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.85 Denials of Initial Requests for Certification

If the CUCP denies a firm’s application or decertify it, it may not reapply until 12 months have passed from the action.

Section 26.87 Removal of a DBE’s Eligibility

In the event the CUCP proposes to remove a DBE’s certification, we will follow procedures consistent with 26.87.

Section 26.89 Certification Appeals

Any firm or complainant may appeal the CUCP decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights Certification Appeals Branch
400 7th Street, SW
Room 2104
Washington, D.C. 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

We will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

We will require prime contractors 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 Imperial or DOT. This reporting requirement also extends to any certified DBE subcontractor.

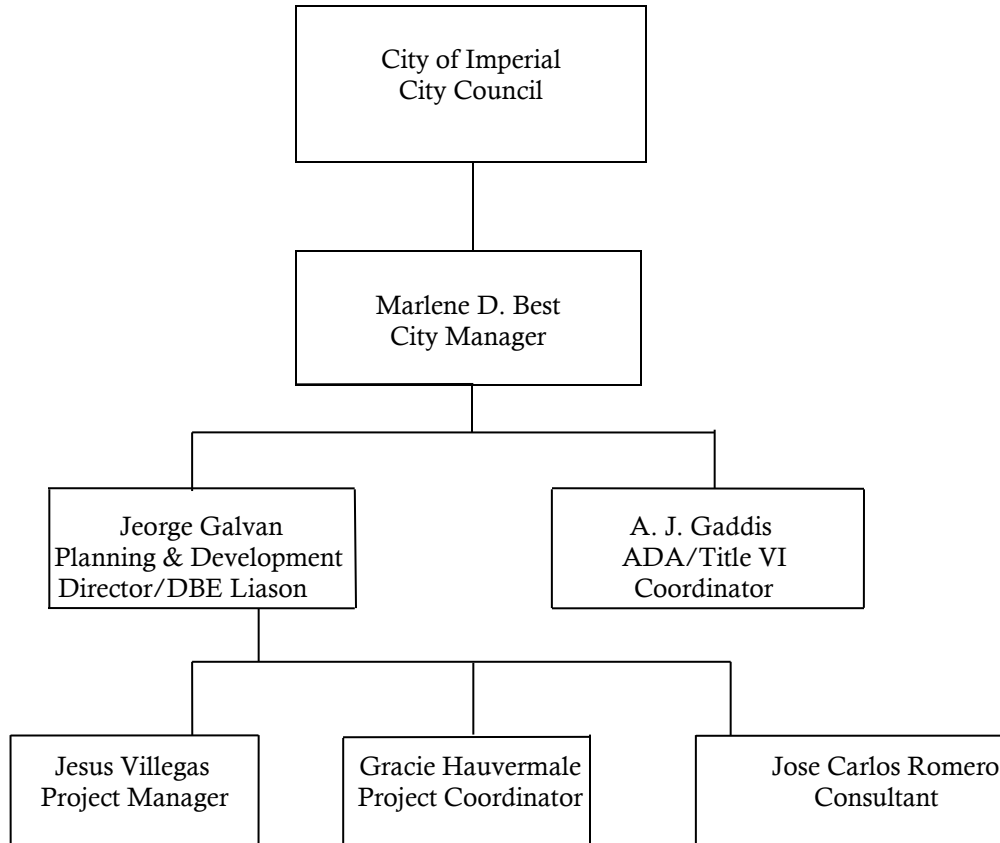
We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal Calculations
Attachment 5	Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 6	Forms for Demonstration of Good Faith Efforts
Attachment 7	Certification Application
Attachment 8	Procedures for Removal of DBE's Eligibility
Attachment 9	Regulations: 49 CFR part 26
Attachment 10	Affidavit(s) of Publication

Attachment 1
Organizational Chart

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM



|

Attachment 2

DBE Directory

See the CUCP directory, found at <http://californiaucp.org/>

The City of Imperial encourages prime contract bidders to search this directory when seeking subcontractors that are certified as a DBE.

Attachment 3

Monitoring and Enforcement Mechanisms

The City of Imperial has available several remedies to enforce the DBE requirements contained in its contracts, including, but are not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action pursuant to California Civil Code S 3300, et. seq;
3. Any other enforcement mechanism in law or equity allowable in California

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.

Attachment 4

The City of Imperial Methodology for adopting an FY 2014-15 DBE goal for FTA purposes

Pursuant to Section 49 CFR Part 26, The City of Imperial presents the following information as it relates to the development of the City of Imperial Methodology for adopting a FY 2014-15 DBE goal for FTA purposes.

Anticipated City of Imperial contracting opportunities during FY 2014-15 utilizing FTA funds:

1. Three (3) Contracts anticipated for engineering, right of way, and construction

Engineering Contract = \$300,000

Right of Way Contract = \$100,000

Construction Contract = \$517,000

Total FY 14-15 contract cost = \$917,000

The contracts will obtain property acquisition, design, and construct the City of Imperial Transit Transfer Terminal.

Unique factors affecting the development of the DBE Goal for FY 2014-15

1. Recognition and local knowledge that there is limited DBE participation in the immediate geographic area. The area is 84 miles to the south of Riverside and 120 miles to the east of San Diego counties, which represent the closest populated areas. The market area, or region, therefore has been expanded to include the Counties of Imperial, Riverside and San Diego Counties.
2. The DBE firms certified by the California Unified Certification Program with the most appropriate NAICS classification code
3. There may exist opportunities for the prime contractor to utilize outside firms to provide needed services.

Step 1 – Development of the Base Goal Figure

In order to determine an overall goal the first step is to determine a base figure:

Potential funding available for the contracting opportunities

NAICS CODE	Description of the Work	Amount of DOT funds	Percent of Total Weight
236220	Commercial and Institutional Building Construction	\$ 50,000.00	0.05
237310	Highway, Street, and Bridge Construction	\$ 300,000.00	0.33
238210	Electrical Contractors and Other Wiring Installation Contractors	\$ 80,000.00	0.09
238910	Site Preparation Contractors	\$ 45,000.00	0.05
541199	All Other Legal Services	\$ 100,000.00	0.11
541330	Engineering Services	\$ 255,000.00	0.28
541360	Geophysical Surveying & Mapping Services	\$ 45,000.00	0.05
561730	Landscaping Services	\$ 42,000.00	0.04
	TOTALS	\$ 917,000.00	100%

The number of DBE and non DBE firms ready, willing, and able to bid on contracting opportunities

NAICS CODE	Description of the Work	Available DBEs in the Region	Number of all Firms Available	Relative Availability
236220	Commercial and Institutional Building Construction	35	684	0.051
237310	Highway, Street, and Bridge Construction	37	128	0.289
238210	Electrical Contractors and Other Wiring Installation Contractors	24	1109	0.022
238910	Site Preparation Contractors	28	436	0.064
541199	All Other Legal Services	3	86	0.035
541330	Engineering Services	52	1287	0.040
541360	Geophysical Surveying & Mapping Services	2	13	0.154
561730	Landscaping Services	18	1320	0.014
	TOTALS	199	5063	

Local Potential Subcontracting Opportunities

Table 3 Step One - Base Goal Development			Relative	Weighted
NAICS CODE	Description of the Work	Weight	Availability	Base Figure
236220	Commercial and Institutional Building Construction	0.05	0.051	0.003
237310	Highway, Street, and Bridge Construction	0.33	0.289	0.095
238210	Electrical Contractors and Other Wiring Installation Contractors	0.09	0.022	0.002
238910	Site Preparation Contractors	0.05	0.064	0.003
541199	All Other Legal Services	0.11	0.035	0.004
541330	Engineering Services	0.28	0.040	0.011
541360	Geophysical Surveying & Mapping Services	0.05	0.154	0.008
561730	Landscaping Services	0.04	0.014	0.001
TOTALS		100%		12.7%

Step 2: Adjustments to the Base DBE relative Availability Figure

Adjustments to the base figure goal may be necessary and justified for a variety of reasons including: lower or higher than expected past participation by DBE firms, additional evidence from disparity studies, etc.

There are no adjustments.

FFY 2014-15 DBE Goal = 12.7%

Attachment 5

Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious Participation

The City of Imperial will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation as required in Section 26.51(a). Planned outreach efforts by the City of Imperial are all race/gender neutral and it is anticipated that the City of Imperial will accomplish its DBE goal solely through race/gender neutral means.

The City of Imperial will use the following race neutral means to increase DBE participation:

1. Arranging solicitations, times for the presentations of bids, quantities, specifications and delivery schedules in a manner that facilitate DBE and other small businesses participation. i.e unbundling large contracts to make them more accessible, requiring large contractors to subcontract portions of the work effort
2. Reducing bonding requirements when possible
3. Providing technical assistance and other services
4. Providing information and communications in a bilingual format
5. Coordinating with resource agencies i.e. workforce development, small business alliance, chambers of commerce and economic development centers

Attachment 6

Forms for Demonstration of Good Faith Efforts

[Forms should be provided as part of the solicitation documents.]

PROVIDERS LIST OF PARTICIPATING FIRMS

PROJECT NAME _____

DATE _____

PRIME PROVIDER NAME/ADDRESS	DBE?	FIRM AGE/YEARS IN BUSINESS	ANNUAL GROSS \$\$ REVENUE	WORK TYPE*
SUBCONTRACTORS				

*P = PROFESSIONAL CONSULTING SERVICES, C = CONSTRUCTION, S = SUPPLIES, E = EQUIPMENT, O = OTHER (describe)

Report prepared by: _____ Signature: _____

Title: _____ Date: _____

DBE/NON-DBE PARTICIPATION

PROJECT NAME _____ DATE _____

SUBCONTRACTOR NAME/ADDRESS	WORK TO BE PERFORMED		ESTIMATED \$\$ PARTICIPATION	PERCENT OF TOTAL CONTRACT VALUE

Report prepared by: _____ Signature: _____

Title: _____ Date: _____

UNAVAILABILITY CERTIFICATION DISADVANTAGED BUSINESS ENTERPRISES

Project _____

Provider's Name _____

In order to demonstrate a good faith effort to utilize Disadvantaged Business Enterprises, Provider's who cannot meet their DBE participation goals must respond to either Item A or Item B below:

ITEM A

<u>Name and Address of Firms Contacted</u>	<u>DBE</u>	<u>Dates Contacted</u>	<u>Method of Contact</u>	<u>Results</u>

ITEM B

There exists no opportunity for subcontracting as part of this project. It is the general practice of _____ (Name of Bidder) to perform all work of this nature solely with its own work force and to do otherwise would _____

I, _____ (Name), _____ (Title) of _____ (Name of Firm), do hereby certify that the above information is true and correct, and that

I have made a good faith effort as documented in Item A or Item B above to obtain Disadvantaged Business participation in the performance of this contract.

(Signature)

(Date)

SUMMARY OF SUBCONTRACT AWARD AND MONTHLY PAYMENTS REPORT

PROJECT NAME: _____

PROVIDER NAME: _____

REPORTING PERIOD: From _____ To: _____

SUBCONTRACTOR NAME/ADDRESS	SUBCONTRACT \$\$ AMOUNT	DBE?	WORK ASSIGNMENT	DBE DOLLARS COMMITTED

Report prepared by: _____ Signature: _____

Title: _____ Date: _____

Attachment 7

Certification Application Forms

The certification application forms for the CUCP are found at:

http://www.dot.gov/sites/dot.gov/files/docs/DBE_Uniform_Certification_Application.pdf

The application package includes an affidavit of personal net worth.

Attachment 8

Procedures for Removal of DBE's Eligibility

The City of Imperial is not a certifying agency under the CUCP.

Ineligibility complaints

Any person may file a written complaint alleging that a currently certified firm is not eligible and specifying the alleged reasons why the firm is ineligible. The City of Imperial is not required to accept a general statement or allegation that a firm is ineligible, or an anonymous complaint. The complaint must include information supporting the assertion that the firm is ineligible and should not continue to be certified. Complainants identified must be protected as provided in Sec 26.109(b)

The City of Imperial will review its records concerning the firm and any materials provided by the complainant. The City of Imperial may request additional information or conduct any other investigation that the City of Imperial deems necessary.

If the City of Imperial determines that there is reasonable cause to believe that the firm is ineligible, the City of Imperial will provide written notice to the firm that the City of Imperial proposes to find the firm ineligible, setting forth the reasons. If the City of Imperial determines that reasonable cause does not exist, the City of Imperial will notify the complainant and the firm in writing of this determination and the reasons for it. All statement and reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which the reason is based.

Recipient initiated

If based on notifications by the firm of a change in its circumstances or other information that comes to the City's attention, the City of Imperial determines that there is reasonable cause to believe that a currently certified firm is ineligible, the City of Imperial will provide written notice to the firm that the City of Imperial proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

DOT directive

If the DOT determines that a firm does not meet the requirements for eligibility, the DOT will provide a notice setting forth the reasons for the record with relevant documentation and the City of Imperial may initiate appropriate actions after consultation with the DOT.

Attachment 9

Regulations: 49 CFR Part 26

Please refer to: <http://www.fhwa.dot.gov/hep/guidance/superseded/49cfr26.cfm#sec.26.1>

Attachment 10

Affidavit(s) of Publication