

CITY OF
ANDERSON



AGENDA ITEM

May 19, 2009 City Council Meeting

Approved for Submittal By:

City Manager

Scott Morgan

To Be Presented By:

Jeff Kiser

Jeff Kiser

To: Honorable Mayor and Members of the Anderson City Council

Through: Scott Morgan, City Manager
Telephone 378-6646

From: Jeff Kiser, Public Works Director
Telephone 378-6636

Date: May 19, 2009

SUBJECT

Adoption of a Local Disadvantaged Business Enterprise (DBE) Policy for contracts utilizing Federal Transportation Funds.

RECOMMENDATION

The Public Works Director recommends that the City Council:

Adopt a Resolution establishing a Disadvantaged Business Enterprise Policy Goal as defined in Part 26, Title 49 Code of Regulations for agencies that desire to use Federal-aid Funds; establishing an overall Annual Goal for the utilization of DBE's at 4.3 % with 2.0% Race Neutral and 2.3% Race Conscious for the Federal Fiscal Year October 1, 2009 to September 30, 2010; and designating the Deputy Director of Public Works as DBE Liaison Officer to develop and carry out the technical assistance programs for DBE's.

FISCAL IMPACT

This action would not have an impact on current fiscal operations. If adopted, the resulting policy would fulfil State and Federal Grant Requirements.

DISCUSSION and BACKGROUND

Under Part 26 of Title 49 Code of Regulations requires all agencies applying for Federal-aid Funds to adopt a Disadvantaged Business Enterprise (DBE) Policy. This commitment is made in three parts.

1. The City Council affirms that all contractors and subcontractors, who are recipients of Federal-aid Funds, shall agree to ensure DBE firms have the maximum opportunity to participate in the performance of contracts and subcontracts.
2. The City Council establishes an annual overall DBE Goal of 4.3%, with a Race Neutral goal of 2.0% and a Race Conscious goal of 2.0% for participation in Federal-aid funded Projects.
3. The City Council designates the Deputy Public Works Director as the DBE Liaison Officer for the City of Anderson.

ATTACHMENTS

1. Resolution establishing DBE Policy, and Annual Goal
2. Proposed Disadvantaged Business Enterprise Policy

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RESOLUTION 09-_____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANDERSON APPROVING THE DISADVANTAGED BUSINESS ENTERPRISE POLICY, SETTING OF THE ANNUAL GOAL, AND APPOINTING A DBE LIAISON OFFICER FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2009 TO SEPTEMBER 30, 2010.**

WHEREAS; the City of Anderson, its contractors and subcontractors, which are recipients of Federal-aid funds are required, as defined in 49 CFR Part 26, to adopt a Disadvantaged Business Enterprise (DBE) Policy on an annual basis for the utilization of Disadvantaged Business Enterprise, and;

WHEREAS; the City of Anderson DBE Policy is consistent with Part 26 of Title 49 Code of Regulations, and;

WHEREAS; for the fiscal year October 1, 2009 to September 30, 2010 City Council of the City of Anderson has set the goal of 4.3 % and;

WHEREAS, the City Council designates the Deputy Public Works Director as the DBE Liaison Officer;

NOW, THEREFORE BE IT RESOLVED that the City Council of the Anderson City of Anderson adopts a Disadvantaged Business Enterprise Program, sets the overall goal for utilization of DBE's at 4.3% with Race Neutral of 2.0% and Race Conscious of 2.3% and designate the Deputy Public Works Director as DBE Liaison Officer for the City of Anderson.

PASSED AND ADOPTED by the City Council of the City of Anderson this 19th day of May 2009 by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

Butch Schaefer, Mayor

ATTEST:

Scott Morgan, City Clerk

Exhibit 9-B Local Agency DBE Annual Submittal Form

TO: CALTRANS DISTRICT 2
District Local Assistance Engineer

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

The City of Anderson, CA, submits our AADPL information. We have established an AADPL of **4.3** % (**2.0** % Race Neutral; **2.3**% Race Conscious) for the Federal Fiscal Year **2009 / 2010**, beginning on October 1, 2009 and ending on September 30, 2010.

Methodology

The total number of businesses in the 8-county areas (Butte, Lassen, Siskiyou, Modoc, Plumas, Shasta, Tehema and Trinity) for Highway, Electrical and Engineering services were obtained from the US Census Bureau NAICS database. The total number of DBE's and UDBE's for the same area and work classes were obtained from the Caltrans UCP database. These values were then weighted for the anticipated work to calculate these percentages. See attached for tables and data.

Disadvantaged Business Enterprise Liaison Officer (DBELO)

Kevin Kidd
1887 Howard Street, Anderson, CA 96007
530-378-6636 530-378-6666 kkidd@ci.anderson.ca.us

Planned Race-Neutral Measures

The City of Anderson will employ measures 1, 3, 6, 8 and 9 under Section V of its DBE Program Implementation Agreement (Exhibit 9A) with Caltrans.

Prompt Pay

Federal regulation (49 CFR 26.29) requires one of three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage, kept by the prime contractor or subcontractor, to a subcontractor. (Attached is a listing of the three methods. On the attachment, please designate which prompt payment provision the local agency will use.)

49 CFR Part 26.29(d) requires providing appropriate means to enforce prompt payment. These means may include appropriate penalties for failure to comply with the terms and conditions of the contract. The means may also provide that any delay or postponement of payment among the parties may take place only for good cause, with the local agency's prior written approval. Please briefly describe the monitoring and enforcement mechanisms in place to ensure that all subcontractors, including DBEs, are promptly paid.

B. Kevin Kidd
(Signature)

5/15/09
Date

B. KEVIN KIDD

(530) 378-6636
Phone Number

(Signature of Caltrans District Local Assistance Engineer [DLAE])

Date

Distribution: (1) Original - DLAE
(2) Signed copy by the DLAE – Local Agency

Prompt Payment of Withheld Funds to Subcontractors

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

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

- Method 1:** No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- Method 2:** No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- Method 3:** The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
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ATTACHMENT
Overall Participation Availability Methodology 2009/2010

City of Anderson

*Using "DBE Directory and Census Bureau County Business Pattern Database"
Or other method as outlined in Chapter 9, Local Assistance Procedures Manual (Last updated May 1, 2006)*

I. DOT-Assisted Contracting Program for FFY 2009/2010 [49 CFR 26.45 (a)]

#	Federal Funding Source/Program (1)	Project Name and Location (2)	Total Estimated Project Cost (3)	Federal funds (4)
1	Economic Stimulus	Street Preventive Roadway Maintenance	\$1,160,000	\$1,160,000
2	SRTS	Bruce Street / Emily Drive SRTS	\$695,000	\$695,000
3	HSIP	SR273 / Alexander / 3 rd Street Signal	\$1,140,000	\$513,000
4				
5				
6				
TOTAL				\$2,368,000

Summary DOT-FUNDED CONTRACTING PROGRAM (by Work Category)

	Work Category Description	NAICS Category Code	Number of DBE's From DBE Directory	Number of Total Businesses (DBE's + Non-DBE's)	Estimated Fed. Funds only (\$)
65%	Highway, Street and Bridge Const	237310	4	65	\$1,539,200
20%	Electrical Contractors	238210	1*	153	\$473,600
15%	Professional Services	541330	1*	93	\$355,200
			6	311	

* Search provided 4 electrical contractors, but only 1 signal contractor in the market area which is what is needed for the projects.

II. AADPL METHODOLOGY

Determination of the Base Figure

Definition of Base Figure [49 CFR 26.45(b)]:

To establish the Base Figure for FFY 2009/2010 DOT-assisted contracting program, **the City of Anderson** has elected to utilize the Caltrans DBE Directory of certified firms for FHWA-Assisted Contracts (filtered to represent only DBE firms within relevant market area of the City) for calculating the numerator and the Census Bureau's County Business Pattern Data within the same geographical market area to calculate the denominator, as follows:

- ⇒ *For the numerator:* (4) *Caltrans' DBE Directory*
- ⇒ *For the denominator:* (65) *Census Bureau's Business Pattern Database (CBP)*

To derive at the relative availability of DBEs, the number of DBEs available in Caltrans' DBE Directory, was divided by the number of all comparable CBP firms' available, application of this formula yielded the following baseline information:

$$\frac{\text{Number of Ready, Willing, and Able DBEs}}{\text{Number of All Ready, Willing, and Able Firms}} = \frac{.65(4) + .20(1) + .15(1)}{65 \quad 153 \quad 93} = .043 \text{ BASE FIGURE}$$

Step 1. Determination of a Base Figure [49 CFR 26.45(c)]

$$\begin{aligned} \text{Calculated Base Figure} &= [\text{DBE's} / \text{All Businesses (DBE's + Non-DBE'S)}] \times \% \text{ Fed. Funds (From} \\ \text{Table)} &= 4.3\% \end{aligned}$$

Step 2: Adjusting the Base Figure [49 CFR 26.45 (d)]

The **City of Anderson** reviewed and assessed other known relevant evidence to determine the adjustments, if any, were needed to narrowly tailor the Base Figure to **City of Anderson**. Factors considered in determining **City of Anderson** DBE participation that can be expected, absent discrimination, included the following:

A. Current Capacity of DBEs Measured By Actual Attainments [49CFR 26.45d(1)]

Did the City of Anderson use all or nearly all of the available DBEs in their market area and relevant NAICS codes on previous years federal-aid contracts? Please check yes or no:

If no, then no adjustments need to be made for past participation as a measure of demonstrated DBE capacity.

_____ If yes, then contact the District for further guidance in making this adjustment.

B. Evidence from Disparity Study [49CFR 26.45d(1)]

City of Anderson has not conducted any Disparity study in Transportation Industry.

C. Statistical Disparities in the Ability of DBEs to secure financing, bonding, and insurance.

City of Anderson has not conducted any Disparity study in Transportation Industry.

D. Data on employment, self-employment, education and training, union apprenticeship programs that would show that presumed disadvantaged persons are over/under represented as compared nondisadvantaged persons.N/A

E. Any other data that would help to better measure the % of work that DBEs would be likely to obtain in the absence of discrimination.N/A

Resultant Goal Adjustment:

Based on the available information, the adjusted Annual AADPL = 4.3 %.