

**CALIFORNIA DEPARTMENT OF TRANSPORTATION  
DIVISION OF RAIL AND MASS TRANSPORTATION**

**INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE  
COMBINATION RACE-NEUTRAL/RACE-CONSCIOUS IMPLEMENTATION  
AGREEMENT  
FOR FEDERAL TRANSIT ADMINISTRATION SUBRECIPIENTS**

Division of Rail and Mass Transportation (DRMT) must ensure that our subrecipients of Federal Transit Administration (FTA) funds meet applicable DBE requirements when funds are used in whole or in part to finance procurement and contracts of products and service(s). To this end, subrecipients with contracting opportunities must adhere to the *California State Disadvantaged Business Enterprise Program Plan*, for FTA funds administered through Caltrans DRMT.

Additionally, subrecipients with contracting opportunities must submit a *Disadvantaged Business Enterprise Combination Race-Neutral/Race-Conscious Implementation Agreement for Federal Transit Administration Subrecipients* (Implementation Plan). Read the entire Implementation Plan before completing. Subrecipients are responsible for complying with the requirements contained therein.

Subrecipients must provide the following (these areas are highlighted in gray):

- Enter the agency name (Page 1 of 5)
- DBE Liaison Officer and staffing information must be attached as instructed (Page 3 of 5)
- Signature information (Page 5 of 5).

Otherwise, do not change or add to the wording of the Implementation Agreement.

Failure to meet these requirements may result in withholding of all invoice payments and may be grounds for PROJECT termination.

Subrecipients need only resubmit the Implementation Plan should the DBE Liaison Officer change or significant staffing changes occur, or should the Implementation Plan be reissued by DRMT as a result of changes in federal or state guidance.

If you have any questions, please contact your DRMT representative.

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DISADVANTAGED BUSINESS ENTERPRISE  
COMBINATION RACE-NEUTRAL/RACE-CONSCIOUS  
IMPLEMENTATION AGREEMENT

FOR

FEDERAL TRANSIT GRANT  
ADMINISTRATION SUBRECIPIENTS

2018

**DISADVANTAGED BUSINESS ENTERPRISE COMBINATION RACE-  
NEUTRAL/RACE CONSCIOUS IMPLEMENTATION AGREEMENT** for  
\_\_\_\_\_ ; hereinafter referred to as “SUBRECIPIENT”.

## **I Definition of Terms**

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

## **II Objective/Policy Statement (§26/1. 26/23)**

The SUBRECIPIENT intends to receive federal financial assistance from the U. S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans), and as a condition of receiving this assistance, the SUBRECIPIENT will sign the California Department of Transportation’s Disadvantaged Business Enterprise Implementation Agreement (hereinafter referred to as Agreement). The SUBRECIPIENT agrees to implement the *State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan* (hereinafter referred to as the DBE Program Plan) as it pertains to local agencies. The DBE Program Plan is based on U.S. Department of Transportation (DOT), 49 CFR, Part 26 requirements.

The SUBRECIPIENT must implement a policy to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also their policy:

- To ensure nondiscrimination in the award and administration of DOT-assisted procurement and contracts of products and services contracts.
- To create a level playing field on which DBE’s can compete fairly for DOT-assisted procurement and contracts of products and services contracts.
- To ensure that their annual overall DBE participation percentage 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 procurement and contracts of products and services contracts.
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

## **III Nondiscrimination (§26.7)**

SUBRECIPIENT 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 the local agency components of the DBE Program Plan, the SUBRECIPIENT 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 Plan with respect to individuals of a particular race, color, sex, or national origin.

#### **IV Race-Neutral Means of Meeting the Annual DBE Goal (§26.51)**

SUBRECIPIENT will assist Caltrans to achieve its Overall Statewide DBE Goal by a combination race-neutral/race-conscious means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

Race-neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has been historically low;
8. Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

#### **V Race Conscious Means of Meeting the Overall Statewide Annual DBE Goal (§26.51(d))**

SUBRECIPIENT must establish contract goals for Disadvantaged Business Enterprises to meet any portion of your annual anticipated DBE participation level you do not project being able to

meet using race neutral means. DBEs are limited to these certified DBEs that are owned and controlled by African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and non-minority women.

## **VI Quotas (§26.43)**

SUBRECIPIENT will not use quotas or set-asides in any way in the administration of the local agency component of the DBE Program Plan.

## **VII DBE Liaison Officer (DBELO) (§26.25)**

SUBRECIPIENT must designate a DBE Liaison Officer. The DBELO is responsible for implementing the DBE Program Plan, as it pertains to the SUBRECIPIENT and Verifies that the SUBRECIPIENT is fully and properly advised concerning DBE Program Plan matters.

The name, address, telephone number, electronic mail address, and an organization chart displaying the DBELO's position in the organization are found in Attachment \_\_\_\_\_ to this agreement.

The DBELO is responsible for developing, implementing, and monitoring the SUBRECIPIENT's requirements of the DBE Program Plan in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to determine projected annual anticipated DBE participation level.
4. Verifies that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and DBE race-neutral issues.
8. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

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

The SUBRECIPIENT will sign the following assurance, applicable to and to be included in all DOT-assisted procurement and contracts of products and services 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 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.). [Note – this language is to be used verbatim, as it is stated in §26.13(a).]

## **IX DBE Financial Institutions (§26.27)**

It is the policy of the SUBRECIPIENT 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 DBELO.

## **X Directory (§26.31)**

SUBRECIPIENT will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's website at [www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep).

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

SUBRECIPIENT will include in each DOT-assisted prime contract and subcontracts the following contract assurance and prompt payment and return of retainage clauses:

### DBE Contract Assurance

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 or SUBCONTRACTOR shall carry out applicable requirement of 49 CFR Part 26 in the award and administration of [Federal] DOT-assisted contracts. Failure by the CONTRACTOR or SUBCONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of the Standard Agreement between the STATE and the Awarding Agency, the termination of this contract by the Awarding Agency, or such other remedy the STATE or Awarding Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the CONTRACTOR from future bidding as non-responsive.

Awarding Agency shall notify the DBELO in the event the Awarding Agency finds the CONTRACTOR

or SUBCONTRACTOR is in violation of 49 CFR Part 26 within five (5) business days the finding is made.

#### DBE Participation Goal

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The contract goal for participation of Disadvantaged Business Enterprises (DBE) for this contract is **XX%**.

Offerors are required to document sufficient DBE participation to meet the contract goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53 (3)(i)(A). Award of this contract is conditioned on submission of the following:

1. If the offer meets the DBE contract goal the offeror must include with the offer a completed ADM-0227F form.
2. If the offer cannot meet the DBE contract goal the offeror must include with the offer a completed ADM-0312F form that documents the offeror's good faith efforts (GFE) and ADM-0227F form.

The CONTRACTOR shall not terminate the DBE subcontractors listed on ADM-0227F without the Awarding Agency's prior written consent and concurrence from the DBELO. The Awarding Agency may provide such written consent only if the CONTRACTOR has good cause to terminate the DBE firm. Before transmitting a request to terminate, the CONTRACTOR shall give notice in writing to the DBE SUBCONTRACTOR of its intent to terminate and the reason for the request. The CONTRACTOR shall give the DBE five (5) days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the CONTRACTOR shall make good faith efforts (GFE) to find another DBE subcontractor to substitute for the original DBE and immediately notify the Awarding Agency in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement.

#### Continued Compliance

The Awarding Agency shall monitor the CONTRACTOR'S DBE compliance during the life of this contract and submit to the STATE a completed ADM-0369 form in each their request for reimbursement (RFR) packet.

#### Prompt Payment and Return of Retainage

- A. The Awarding Agency shall comply with 49 CFR Part 26.29 and ensure the CONTRACTOR pay its subcontractors performing work satisfactorily completed related to this contract no later than thirty (30) days after the CONTRACTOR's receipt of payment for that work from the Awarding Agency.
- B. Unless the approved project is for Construction, the CONTRACTOR shall not hold retainage (withhold retention) from any subcontractor. The STATE shall not hold retainage (i.e. withhold retention) from any CONTRACTOR.
- C. If a dispute arises regarding Construction projects only, the CONTRACTOR may exercise its rights under California Public Contract Code (PCC) Sections 10262 and 10262.5 or California Business and Professions Code (BPC) Section 7108.5, as applicable.
- D. The CONTRACTOR is required to pay its subcontractors for satisfactory performance of work related to this Agreement no later than 30 days after the CONTRACTOR's receipt of payment for that work from the STATE. In addition, the CONTRACTOR is required to return any retainage (retention) payment to any subcontractor within 30 days after the subcontractor's work related to



this Agreement is satisfactorily completed.

## **XII Good Faith Effort (§§26.53)**

The SUBRECIPIENT must provide proof of Good Faith Effort if the contract DBE Goal is not met as outlined in [Appendix A to Part 26](#).

## **XIII FTA Transit Vehicle Manufacturer (TVM) Program (§§26.49)**

### Pre-award

The SUBRECIPIENT will follow DBE requirements for rollingstock procurements including requiring each transit vehicle manufacture, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of Section 26.49. The STATE, as part of its oversight responsibilities, will verify certification prior to expenditure authorization.

### Post-award

SUBRECIPIENT is required to submit a copy of the final purchase order to the DRMT grant program liaison within fifteen (15) days of issuance. The DRMT grant program liaison will report to the FTA the award for rollingstock in the manner prescribed by the FTA grant agreement with DRMT. If this requirement is not met, the rollingstock reimbursement request may be denied.

## **XIII Bidders List (§26.11)**

The SUBRECIPIENT will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted procurement and contracts of products and services contracts. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of the firms.

## **XIV Reporting**

SUBRECIPIENT will report bidder DBE information to the Division of Rail and Mass Transportation Procurement Management office prior to execution of contract award.

SUBRECIPIENT will submit the Disadvantaged Business Enterprise Awards-Commitments and Actual Payments form twice yearly to the District Transit Representative; Report due **April 10** of each year for the period of October 1<sup>st</sup> to March 31<sup>st</sup> and Report due **October 10** of each year for the period of April 1<sup>st</sup> to September 30<sup>th</sup>. Instructions and forms can be found on the DRMT DBE Program Website (<http://www.dot.ca.gov/drmt/feddbe.html>)

## **XV Certification (§26.83(a))**

SUBRECIPIENT Verifies that only DBE firms currently certified by the California Unified Certification Program will participate as DBEs on DOT-assisted procurement and contracts of products and services contracts.



**XV Confidentiality**

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

\_\_\_\_\_  
[Signature of Agency's Chief Executive Officer]

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

\_\_\_\_\_  
[Print Name of Agency's Chief Executive Officer]

Phone Number: \_\_\_\_\_