

RESOLUTION NO. 2004-215

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADOPTING
A DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM (OCTOBER 1,
2004 TO SEPTEMBER 30, 2005) FOR USE ON PROJECTS RECEIVING FEDERAL
FINANCIAL ASSISTANCE THROUGH THE CALIFORNIA DEPARTMENT OF
TRANSPORTATION**

WHEREAS, as a condition of receiving Federal financial assistance from the California Department of Transportation, the City of Elk Grove will sign an assurance that it will comply with Title 49 of the Code of Federal Regulations, Part 26; and

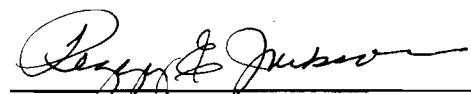
WHEREAS, the City of Elk Grove desires to establish a Disadvantaged Business Enterprise program for use on projects receiving Federal financial assistance through the California Department of Transportation in accordance with and as required by Title 49 of the Code of Federal Regulations, Part 26.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby adopts said Disadvantaged Business Enterprise Program (October 1, 2004 to September 30, 2005); and designates the City Engineer to be the Disadvantaged Business Enterprise Liaison Officer for the City of Elk Grove; and designates the City Manager to be the Reconsideration Official; and authorizes the City Manager or his designee to sign the subject Disadvantaged Business Enterprise Program on behalf of the City of Elk Grove.

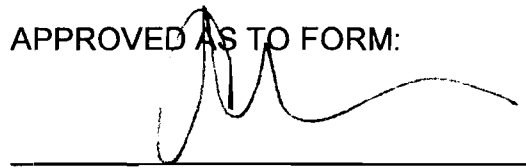
PASSED AND ADOPTED by the City Council of the City of Elk Grove this 1st day of September 2004.

for 
SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:


PEGGY E. JACKSON,
CITY CLERK

APPROVED AS TO FORM:


ANTHONY B. MANZANETTI,
CITY ATTORNEY



**CITY OF ELK GROVE, CALIFORNIA
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

OCTOBER 1, 2004 TO SEPTEMBER 30, 2005

For Use on Projects Receiving Federal Financial Assistance from the Department of Transportation

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

**Local Assistance Procedures Manual Exhibit 9-A
and
Model Disadvantaged Business Enterprise (DBE) Program
For Local Agencies**

October 1, 2004 to September 30, 2005

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

CITY OF ELK GROVE, CALIFORNIA

I Definitions of Terms

The terms used in this program have the meanings defined in Title 49 of the Code of Federal Regulations Part 26 (49 CFR Part 26) §26.5.

II Objectives /Policy Statement

The City of Elk Grove 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 Elk Grove has received federal financial assistance from the DOT, and as a condition of receiving this assistance, the City of Elk Grove will sign an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City of Elk Grove to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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

The City Engineer has been delegated as the DBE Liaison Officer. In that capacity, the City Engineer 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 Elk Grove in its financial assistance agreements with the California Department of Transportation (Caltrans).

The City of Elk Grove has disseminated this policy statement to the *City Council of the City of Elk Grove* and all the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.

III Nondiscrimination

The City of Elk Grove 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 Elk Grove 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

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

V Quotas

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

VI DBE Liaison Officer (DBELO)

The City of Elk Grove has designated the following individual as the DBE Liaison Officer: Robert L. Lee, City Engineer of the City of Elk Grove, 8400 Laguna Palms Way, Elk Grove, California 95758; email address: blee@elkgrovecity.org; telephone: (916) 478-2227. In that capacity, Robert L. Lee is responsible for implementing all aspects of the DBE program and ensuring that the City of Elk Grove complies with all provisions of 49 CFR Part 26. This is available on the Internet at osdbuweb.dot.gov/main.cfm. Robert L. Lee has direct, independent access to the City Manager of the City of Elk Grove concerning DBE program matters. The DBE Liaison Officer has a staff of 2 professional employees assigned to the DBE program on a part-time basis who devote a portion of their time to the program on an as needed basis.

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

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the City of Elk Grove's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City Manager and City Council on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.

VII Federal Financial Assistance Agreement Assurance

The City of Elk Grove will sign the following assurance, applicable to all DOT-assisted contracts and their administration as part of the program supplement agreement for each project:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

VIII DBE Financial Institutions

It is the policy of the City Elk Grove to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer. The Caltrans Disadvantaged Business Enterprise Program may offer assistance to the DBE Liaison Officer.

IX Directory

The City of Elk Grove 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

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

XI Business Development Programs

The City of Elk Grove does not have a business development or mentor-protégé program. If the City of Elk Grove 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

Contract Assurance

The City of Elk Grove ensures that the following clause is placed in every DOT-assisted contract and subcontract:

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

Prompt Payment

The City of Elk Grove ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

Satisfactory Performance

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from the City of Elk Grove. 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 Elk Grove. This clause applies to both DBE and non-DBE subcontractors

Release of Retainage

The prime contractor agrees further to release retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Elk Grove . This clause applies to both DBE and non-DBE subcontractors.

XIII Monitoring and Enforcement Mechanisms

The City of Elk Grove will assign a Resident Engineer (RE) or Contract Manager to monitor and track actual DBE participation through contractor and subcontractor reports of payments in accordance with the following:

After Contract Award

After the contract award the City of Elk Grove will review the award documents for the portion of items each DBE and first tier subcontractor will be performing and the dollar value of that work. With these documents the RE/Contract Manager will be able to determine the work to be performed by the DBEs or subcontractors listed.

Preconstruction Conference

A preconstruction conference will be scheduled between the RE and the contractor or their representative to discuss the work each DBE subcontractor will perform.

Subcontracting Request

Before work can begin on a subcontract, the local agency will require the contractor to submit a completed "Subcontracting Request," Exhibit 16-B of the California Department of Transportation Local Assistance

Procedures Manual (Caltrans LAPM) or equivalent. When the RE receives the completed form it will be checked for agreement of the first tier subcontractors and DBEs. The RE will not approve the request when it identifies someone other than the DBE or first tier subcontractor listed in the previously completed "Local Agency Bidder DBE Information," Exhibit 15-G of the Caltrans LAPM. The "Subcontracting Request" will not be approved until any discrepancies are resolved. If an issue cannot be resolved at that time, or there is some other concern, the RE will require the contractor to eliminate the subcontractor in question before signing the subcontracting request. A change in the DBE or first tier subcontractor may be addressed during a substitution process at a later date.

Suppliers, vendors, or manufacturers listed on the "Local Agency Bidder DBE Information" will be compared to those listed in the completed Exhibit 16-I of the Caltrans 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 RE will give the contractor a blank Exhibit 17-F of the Caltrans LAPM, "Final Report Utilization of Disadvantaged Business Enterprises, First Tier Subcontractors" and will explain to them that the document will be required at the end of the project, for which payment can be withheld, in conformance with the contract.

Construction Contract Monitoring

The RE will ensure that the RE's staff (inspectors) know what items of work each DBE is responsible for performing. Inspectors will notify the RE immediately of apparent violations.

When a firm other than the listed DBE subcontractor is found performing the work, the RE will notify the contractor of the apparent discrepancy and potential loss of payment. Based on the contractor's response, the RE will take appropriate action: The DBE Liaison Officer will perform a preliminary investigation to identify any potential issues related to the DBE subcontractor performing a commercially useful function. Any substantive issues will be forwarded to the Caltrans Disadvantaged Business Enterprise Program. If the contractor fails to adequately explain why there is a discrepancy, payment for the work will be withheld and a letter will be sent to the contractor referencing the applicable specification violation and the required withholding of payment.

If the contract requires the submittal of a monthly truck document, the contractor will be required to submit documentation to the RE showing the owner's name; California Highway Patrol CA number; and the DBE certification number of the owner of the truck for each truck used during that month for which DBE participation will be claimed. The trucks will be listed by California Highway Patrol CA number in the daily diary or on a separate piece of paper for documentation. The numbers are checked by inspectors regularly to confirm compliance.

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

Substitution

When a DBE substitution is requested, the RE/Contract Manager will request a letter from the contractor explaining why substitution is needed. The RE/Contract Manager must review the letter to be sure names and addresses are shown, dollar values are included, and reason for the request is explained. If the RE/Contract Manager agrees to the substitution, the RE/Contract Manager will notify, in writing, the DBE subcontractor regarding the proposed substitution and procedure for written objection from the DBE subcontractor in accordance with the Subletting and Subcontracting Fair Practices Act. If the contractor is not meeting the contract goal with this substitution, the contractor must provide the required good faith effort to the RE/Contract Manager for local agency consideration.

If there is any doubt in the RE/Contract Manager's mind regarding the requested substitution, the RE/Contract Manager may contact the DLAE for assistance and direction.

Record Keeping and Final Report Utilization of Disadvantaged Business Enterprises

The contractor shall maintain records showing the name and address of each first-tier subcontractor. The records shall also show:

1. The name and business address, regardless of tier, of every DBE subcontractor, DBE vendor of materials and DBE trucking company.
2. The date of payment and the total dollar figure paid to each of the firms.
3. The DBE prime contractor shall also show the date of work performed by their own forces along with the corresponding dollar value of the work claimed toward DBE goals.

When a contract has been completed, the contractor will provide a summary of the records stated above. The DBE utilization information will be documented on the form "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" Exhibit 17-F of the Caltrans LAPM and will be submitted to the DLAE attached to the Report of Expenditures. The RE will compare the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form to the contractor's completed "Local Agency Bidder-DBE-Information" Exhibit 15-G of the Caltrans LAPM and, if applicable, to the completed "Subcontracting Request" Exhibit 16-B of the Caltrans LAPM. The DBEs shown on the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form 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 "Local Agency Bidder-DBE-Information" form when:

- There have been no changes made by the RE.
- The contractor has not provided a sufficient explanation in the comments section of the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form.

The explanation will be attached to the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form for submittal. The RE will file this in the project records.

The local agency's Liaison Officer will keep track of the DBE certification status on the Internet at www.dot.ca.gov/hq/bep and keep the RE informed of changes that affect the contract. The RE will require the contractor to act in accordance with existing contractual commitments regardless of decertification.

The DLAE will use the PS&E checklist to monitor the City of Elk Grove's commitment to require bidders list information to be submitted to the City of Elk Grove from the awarded prime and subcontractors as a means to develop a bidders list. This monitoring will only take place if the bidders list information is required to be submitted as stipulated in the special provisions.

The City of Elk Grove will bring to the attention of the DOT through the DLAE any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. The City of Elk Grove also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

XIV Overall Goals

Amount of Goal

The City of Elk Grove's overall goal for the federal fiscal year FY 2003-04 is the following: 5.5% of the federal financial assistance in DOT-assisted contracts. This overall goal is broken down into 3.5 % race-conscious and 2.0 % race-neutral components.

Methodology

The City of Elk Grove is utilizing the County of Sacramento overall annual goal for DBE participation as a means of establishing the City of Elk Grove base figure of relative availability of DBE's in FY 2003-04. The County of Sacramento overall annual DBE goal for FY 2003-04 was set in accordance with 49 CFR Part 26.45 criteria and has a similar contracting program within the same market area as the City of Elk Grove. The County of Sacramento goals for DBE participation were used within the area of Elk Grove prior to incorporation of the City of Elk Grove. Therefore, the City of Elk Grove does not need to make an adjustment to the County of Sacramento goal at this time.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

It is anticipated that the 5.5 % goal will be met with combination of 3.5 % race-conscious and 2.0 % race-neutral participation.

Process

Starting with the federal fiscal year 2004, the amount of overall goal, the method to calculate the goal, and the breakout of estimated race-neutral and race-conscious participation will be required annually by June 1 in advance of the federal fiscal year beginning October 1 for DOT-assisted contracts. Submittals will be to the Caltrans' DLAE. An exception to this will be if FTA or FAA recipients are required by FTA or FAA to submit the annual information to them or a designee by another date. FHWA recipients will follow this process:

Once the DLAE has responded with preliminary comments and the comments have been incorporated into the draft overall goal information, the City of Elk Grove will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the City of Elk Grove's principal office for 30 days following the date of the notice, and informing the public that comments will be accepted on the goals for 45 days following the date of the notice. The notice must be published in general circulation media and available minority-focused media and trade association publications. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The overall goal resubmission to the Caltrans DLAE, will include a summary of information and comments received during this public participation process and the City of Elk Grove's responses. This will be due by September 1 to the Caltrans DLAE. The DLAE will have a month to make a final review so the City of Elk Grove may begin using the overall goal on October 1 of each year.

Refer to Appendix B of this DBE Program for design build contracts.

XV Contract Goals

The City of Elk Grove will use contract goals to meet any portion of the overall goal the City Elk Grove does not project being able to meet by the use of race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. Contract goals need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). The contract work items will be compared with eligible DBE contractors willing to work on the project. A determination will also be made to decide which items are likely to be performed by the prime contractor and which ones are likely to be performed by the subcontractor(s). The goal will then be incorporated into the contract documents. Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

XVI Transit Vehicle Manufacturers

If DOT-assisted contracts will include transit vehicle procurements, City of Elk Grove will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26, Section 49. City of Elk Grove will direct the transit vehicle manufacturer to the subject requirements located on the Internet at <http://osdbuweb.dot.gov/programs/dbe/dbe.htm>.

XVII Good Faith Efforts

Information to be Submitted

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

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information to The City Engineer of the City of Elk Grove, 8400 Laguna Palms Way, Elk Grove, California 95758 no later than 4:00 p.m. on or before the fourth day, not including Saturdays, Sundays and legal holidays, following bid opening:

1. The names and addresses of known DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participation;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Demonstration of Good Faith Efforts

The obligation of the bidder / offeror is to make good faith efforts. The bidder / offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26 which is attached.

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: City Engineer and Project Manager.

The City of Elk Grove will ensure that all information is complete and accurate and adequately documents the bidder / offeror's good faith efforts before a commitment to the performance of the contract by the bidder / offeror is made.

Administrative Reconsideration

Within 10 days of being informed by the City of Elk Grove 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: *City Manager, City of Elk Grove, 8400 Laguna Palms Way, Elk Grove, California 95758*. 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 so. The City of Elk Grove will send the bidder / offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to Caltrans, FHWA or the DOT.

Good Faith Efforts when a DBE is Replaced on a Contract

The City of Elk Grove will require a contractor to make good faith efforts to replace a DBE that is

terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The prime contractor is required to notify the RE immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the prime contractor will be required to obtain the City of Elk Grove 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 Elk Grove contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

XVIII Counting DBE Participation

The City of Elk Grove 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. See the Caltrans' Sample Boiler Plate Contract documents. Also, refer to XIII. "After Contract Award."

XIX Certification

The City of Elk Grove 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

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

Monitoring Payments to DBEs

Prime contractors are required to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Elk Grove, Caltrans, FHWA, or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Payments to DBE subcontractors will be reviewed by the City of Elk Grove to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Reporting to Caltrans

The City of Elk Grove will report final utilization of DBE participation to the DLAE using Exhibit 17-F of the Caltrans LAPM.

Confidentiality

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

John Danielson, City Manager

Date: _____

APPENDIX A

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, 49 CFR 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.

**APPENDIX B
TO BE USED FOR DESIGN-BUILD CONTRACTS**

The following are hereby incorporated into the Agency's Disadvantaged Business Enterprise (DBE) Program:

II Objectives /Policy Statement

At the end of the first paragraph, add the following:

The Agency recognizes that certain modifications are necessary to adapt the program for use in connection with design-build contracts, and has therefore established certain procedures applicable to design-build DBE contracts under the DBE Program. Public Contract Code Section 4109 requires subcontractors to be identified by the prime contractor for the subletting or subcontracting of any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid. Exceptions are only in the cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity. The written public record of the awarding authority/Agency as to either emergency or necessity is attached hereto (See Appendix C for sample).

XIII Monitoring and Enforcement Mechanisms

At the end of the first paragraph below "After Contract Award", add the following paragraph:

After Design-Build Contract Award

As described in the Section entitled "GOOD FAITH EFFORTS" below, each proposer for an Agency design-build contract will be required to submit a DBE Performance Plan as part of a responsive proposal. Following award of a design-build contract and during both the design and construction portions of the project, the design-build contractor will be required to submit documentation, in the form of progress reports described below, to show that the design-build contractor is meeting the contract goal for the project, or if the goal is not being met, the design-build contractor must submit satisfactory evidence that it has made good faith efforts, in accordance with Section XVII, to meet the goal. Evidence of good faith efforts, as described in 49 CFR Part 26 Section 26.53 and Appendix A, will be monitored by the Agency throughout the duration of the design-build project.

At the end of the first paragraph below "Preconstruction Conference", add the following sentence:

_____ The contractor will promptly provide the Agency with the information required by the form entitled "Local Agency DBE Information" upon selection of any DBE or other subcontractor not previously identified by the design-build contractor. During the course of the contract, differences must be explained and resolved by either making corrections or requesting a substitution.

At the end of the fourth paragraph below "Construction Contract Monitoring", add the following paragraph:

The contractor will provide DBE Progress Reports to the Agency with each invoice and will provide an annual report on or before August 1 of each year of the design-build contract. Each report must also include a narrative summary stating whether the contractor is on target with respect to the DBE goal set forth in the design-build contract, whether the goal has been exceeded (stating the amount of the excess), or whether the contractor is behind target (stating the amount of the deficit).

XVII Good Faith Efforts

At the end of the third paragraph below "Information to be Submitted", add the following items:

7. A DBE Performance Plan containing a detailed description of the design-build contractor's planned methodology for achieving the DBE goal stated in the contract, including a description of the good faith efforts the design-build contractor intends to undertake to achieve that goal.

8. A design-build proposal must also include an affidavit that the proposer will either attain the DBE goals for the design-build contract or will exercise good faith efforts to do so.

At the end of the first paragraph below "Demonstration of Good Faith Efforts", add the following sentence:

If it is a design-build contract, each contractor proposing will be required to submit a DBE Performance Plan as part of a responsive proposal and good faith efforts.

John Danielson, City Manager

Date: _____

APPENDIX C

**RESOLUTION OF THE CITY OF ELK GROVE REGARDING NECESSITY
OR EMERGENCY FOR SUBSEQUENT SUBCONTRACTOR
IDENTIFICATION AND SELECTION FOR DESIGN-BUILD CONTRACTS**

**(REQUIRED BY PUBLIC CONTRACT CODE SECTION 4109
ENTITLED "Public Emergency Grounds For Change")**

- A. EXPLANATION OF PUBLIC NECESSITY OR EMERGENCY**

- B. FACTS CONSTITUTING THE PUBLIC NECESSITY OR EMERGENCY**

- C. FINDINGS**

- D. RESOLUTION FOR SUBSEQUENT IDENTIFICATION OF SUBCONTRACTORS**

- E. ADOPTION OF PROCEDURE TO BE USED BY DESIGN-BUILD CONTRACTOR FOR
SUBSEQUENT IDENTIFICATION OF SUBCONTRACTORS**

- F. CERTIFICATE OF SECRETARY**
 - 1. MOTION MADE AND DATE**

 - 2. VOTING RESULTS**

 - 3. SIGNATURES**
 - (a) Secretary**

 - (b) Chairperson**

**CITY OF ELK GROVE, CALIFORNIA
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
OCTOBER 1, 2004 TO SEPTEMBER 30, 2005
ATTACHMENT A**

**Appendix A to Title 49 of the Code of Federal Regulations 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.

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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.

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2004-215

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) **ss**
CITY OF ELK GROVE)

I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 1st day of September 2004 by the following vote:


AYES 3: COUNCILMEMBERS: Soares, Cooper, Leary

NOES 0: COUNCILMEMBERS:

ABSTAIN 0: COUNCILMEMBERS:

ABSENT 2: COUNCILMEMBERS: Scherman, Briggs





Peggy E. Jackson, City Clerk
City of Elk Grove, California