



STAFF REPORT

DATE: OCTOBER 16, 2012

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: ROD FOSTER, CITY MANAGER *[Signature]*

PREPARED BY: AMER JAKHER, PUBLIC WORKS DIRECTOR *[Signature]*

SUBJECT: ANNUAL ANTICIPATED DISADVANTAGE BUSINESS ENTERPRISE (DBE) PARTICIPATION LEVEL (AADPL) FOR FEDERAL FISCAL YEAR 2012/2013

RECOMMENDED ACTION

It is recommended that the City Council approve the Federal Fiscal Year 2012-2013 Annual Anticipated Disadvantaged Business Enterprise (DBE) Participation Level (AADPL) of 11.7 % and the methodology that are presented herein and authorize the City Manager or his/her Designee to execute the DBE Annual Submittal Form.

GOAL STATEMENT

The proposed action will support the City's goal to improve traffic circulation and street infrastructure by ensuring compliance with the Federal requirements for federally-funded projects.

BACKGROUND

In 1984, City Council first adopted the Disadvantaged Business Enterprise (DBE) Program as required by 49 CFR Part 26. The program defines disadvantaged businesses and percentage goals for federally funded or assisted public works contracts to be awarded each year. The California Department of Transportation (Caltrans) has been entrusted with local agency oversight responsibility for DBE implementation since 1999, and as such, has the responsibility of overseeing Colton's DBE Program. The DBE Program is intended to remedy past and current discrimination against DBEs, ensure a level playing field, and foster equal opportunity in federal-aid contracts.

On June 29, 2012, California Department of Transportation (Caltrans) announced that the U.S. Department of Transportation (US DOT) has informed Caltrans that the Disadvantaged Business Enterprise (DBE) program waiver granted on August 7, 2008, has been rescinded. That waiver allowed race-conscious (RC) contract goals to be limited to only four groups (African Americans, Asian Pacific Americans, Native Americans, and Women) referred to as "UDBEs" (the "Old RC DBE Program"). With rescission of the waiver, contract goals for federally funded projects authorized on and after July 1, 2012, must include all DBE groups (African Americans, Asian Pacific American, Native American, Women, Hispanic American, and Subcontinent Asian

American and any other groups whose members are certified as socially and economically disadvantaged). This is referred to as the New RC DBE Program.

ISSUES/ANALYSIS

On May 19, 2009, the City Council approved the Race-Conscious Implementation Agreement with Caltrans. The City is now required to annually submit the AADPL calculation and methodology for Caltrans' approval. The methodology and calculation used to determine the AADPL is outlined in Exhibit 'A' (Local Agency DBE Annual Submittal Form). Public Works staff identified five (5) federally-funded transportation projects that are expected to be awarded for construction and preliminary engineering contracts during the 2012/2013 Federal Fiscal Year (October 1, 2012 to September 30, 2013). Those projects are: Colton Middle School Safe Route to School Project, Mt. Vernon Bridge/UPRR Widening Project, La Cadena Drive over Santa Ana River Bridge Replacement Project, Washington Street Extension Project and Washington Street/Reche Canyon Road Intersection Improvement Project.

To calculate the New RC DBE, the total number of DBEs within each project's market area from the Caltrans DBE database is compared to the total number of businesses (DBE and non-DBE) performing the same services based on information from the US Census Bureau database. The market areas vary by project and were selected by determining the location of the bidders for similar projects within the past several years. Using all five (5) individual projects' race-conscious percentage, a weighted average was calculated to determine the City of Colton's AADPL for Federal Fiscal Year 2012/2013. The results of the calculations are as follows:

$$\text{AADPL} = \text{New Race-Conscious DBEs} = 11.7\%$$

After the City Council approval, the Fiscal Year 2012-2013 AADPL and methodology will be submitted to Caltrans. The City will use every opportunity to implement good faith effort to meet the New RC DBE goal of 11.7% for all projects with federal funding.

FISCAL IMPACTS

There is no fiscal impact associated with this recommendation, however, if the DBE goal is not approved, the City may become ineligible for federal grants obtained to date and future federal grant funding application.

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENTS

1. Resolution No. R-69-12
2. Exhibit A – DBE Annual Submittal Form

Resolution No. R-69-12

FY 2012-2013 DBE

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RESOLUTION NO. R-69-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLTON APPROVING THE ANNUAL ANTICIPATED DBE PARTICIPATION LEVEL (AADPL) AND AUTHORIZING THE CITY MANAGER OR HIS/HER DESIGNEE TO SIGN THE DBE ANNUAL SUBMITTAL FORM ON BEHALF OF THE CITY OF COLTON.

WHEREAS, the City of Colton intends to apply for Federal-Aid projects related to transportation, streets, and roads; and,

WHEREAS, to be eligible for such Federal-Aid projects, the Federal Highway Administration and the California Department of Transportation requires agencies to implement Caltrans' New Race-Conscious Disadvantage Business Enterprises (DBE) Program; and,

WHEREAS, Exhibit "A" is a Disadvantaged Business Enterprise (DBE) Annual Submittal Form provided by Caltrans that meets their requirements and the City Council wishes to meet the requirements of the Federal and State authorities and promotes the inclusion of Disadvantaged Business Enterprises in said projects; and,

WHEREAS, the City Council approved as attached in Exhibit "A" the Disadvantaged Business Enterprise (DBE) Annual Submittal Form with Caltrans for Federal Fiscal Year 2012/2013.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the City Council authorizes the City Manager or his/her designee to sign the Disadvantaged Business Enterprise (DBE) Annual Submittal Form for Federal Fiscal Year 2012/2013 on behalf of the City of Colton.

PASSED, APPROVED AND ADOPTED this 16th day of October 2012.

SARAH S. ZAMORA
Mayor

ATTEST:

EILEEN GOMEZ
City Clerk

Methodology

The process for establishing the Annual Anticipated DBE Participation Level (AADPL) was derived from data gathered from the U.S. Census Bureau - 2009 County Business Patterns (NAICS) and California Department of Transportation (Caltrans) Civil Rights Program. The data was gathered based upon five counties in which City of Colton lies and neighbors. These five counties include Los Angeles, Orange, Riverside, and San Bernardino, in the State of California. The U.S. Census Bureau's Economic Census and the County Business Patterns contain all business and minority business data which are to be compiled as of the latest published version. For the purpose of calculating the City's overall DBE goal, we used these neighboring counties as the market area. Those jurisdictions and municipalities most closely reflect the same jurisdictions where businesses are located that typically participate in the bid process for DBE projects awarded by the City of Colton. Also, in researching the most reliable sources of data available to complete our calculations, it was discovered that the best data could be obtained for the jurisdictions and municipalities contained in these areas.

In order to establish the City of Colton's base figure reflecting the relative availability of DBEs in relation to all comparable firms available to participate in the City's DOT assisted and other federally funded contracts. The City elected to use the Directory of Certified Firms with Census Bureau Data methodology. The strategy used to determine DBE availability involved a multi-step process. First, we identified the major work types (North American Industrial Classification System - NAICS) for the contracts anticipated for award in the upcoming fiscal year. Second, using the United States Census Bureau's 2010 County' Business Patterns data, we identified the businesses located in the counties noted for which data was available and recorded the number of businesses found for each work type. This particular database was used because it contained the most recent information available for counting the number of businesses located in the jurisdiction for each work type. Then, using Caltrans' database of DBE firms, we queried DBE firms for the appropriate NAICS codes and license type. Using that list, we identified the DBE firms ready, willing and able to perform services in our market area. Projected DOT and Federally assisted contracts by work type and NAICS Code For FY 20121-2013, we took the dollar value of work related to each work type (from the chart of federal DBE projects anticipated for award for the fiscal year) and calculated the percentage of federal funds applicable to each work type. Then, using Caltrans' Directory of Certified firms, we determined the availability of DBE firms for each work type by dividing the number of DBEs in the directory by the number of firms found in the census bureau data for each work type. Using the same Caltrans directory, Disadvantage Business Enterprise (DBE) Male firms (African Americans, Asian Pacific American, Native American, Women, Hispanic American, and Subcontinent Asian American and any other groups whose members are certified as socially and economically disadvantaged) and Female firm were further set aside to calculate for the Race Conscious DBE. AADPL calculations for New Race Conscious DBEs are shown on the succeeding page.

Exhibit A

DBE Annual Submittal Form

EXHIBIT 9-B LOCAL AGENCY DBE ANNUAL SUBMITTAL FORM

TO: CALTRANS DISTRICT 8
District Local Assistance Engineer

The information for exhibit 9-B 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 Colton,
submits our annual 9-B information for the Federal Fiscal Year 2012 / 2013, beginning on October 1, 2012 and ending on September 30, 2013.

Disadvantaged Business Enterprise Liaison Officer (DBELO)

Victor Ortiz, P.E.
Public Works and Utility Services Department
160 South 10th Street
Colton CA 92324
Tel. (909) 370-5065
Fax (909) 370-5072
Email vortiz@ci.colton.ca.us

Planned Race Conscious Measures

The City of Colton is planning to advertise all the projects with local and regional newspaper, and trade journals indicating the DBE requirement of the projects. The City also plans to hold mandatory pre-bid meetings when necessary to ensure compliance with all DBE requirements of the projects.

The City of Colton utilized the 2010 Census Bureau Data, CUCP DBE Directory, and all Federal Funded Projects expected to be completed for FY 2012-2013 to establish the AADPL for Federal Fiscal Year 2012-2013. We have established an AADPL of 11.7% for New Race-Conscious (RC) DBE (Please see attachment identifying the methodology used to determine the AADPL and calculations to determine the DBE Goal).

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.)

The City of Colton will use 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 subcontractors 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 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

Prompt Pay Enforcement Mechanism

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.**

The City's monitoring and enforcement mechanisms in- place to ensure that all subcontractors, including DBEs, are promptly paid include the following:

- Establish a contract clause that requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment from the agency.
- Establish a contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
- Establish a contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(Signature)

Date

(Print Name and Title)
ADMINISTERING AGENCY
(Authorized Governing Body Representative)

Phone Number

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

Date

Distribution: (1) Original - DLAE
(2) Signed copy by the DLAE – Local Agency
DBE Annual Submittal Form (07/ 1/10)

(Attachment)

**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.

AADPL CALCULATIONS

FY 2012/2013

NAICS CODES

#237310 Highway/Bridge #238210 Electrical #541330 Engineering Services #541370 Surveying and Mapping #541620 Environmental Services

Total Establishment Located in Market Area (from CBP table)	284	3168	3000	161	449
All Female DBE Firms Working in Market Area (from CUCP database)	46	20	91	21	137
Female DBE Located in Market Area	22	13	39	9	51
All Male DBE Firms Working in Market Area (from CUCP database)	95	88	211	40	75
Male DBE Located in Market Area	43	49	106	16	39
Total DBE Firms Working in Market Area (from CUCP database)	141	108	302	61	212
Total DBE Firms Located in Market Area (from CUCP database)	65	62	145	25	90
Weight	0.073	0.031	0.503	0.066	0.328

(A)

(C)

(D)

$$\begin{aligned}
 \text{AADPL} = \text{New RC DBE} &= \left(\left(\frac{C}{A} \times D \right) + \left(\frac{C}{A} \times D \right) + \left(\frac{C}{A} \times D \right) + \left(\frac{C}{A} \times D \right) \right) + \left(\frac{C}{A} \times D \right) + \left(\frac{C}{A} \times D \right) \\
 &= \left(\left(\frac{65}{284} \times 0.073 \right) + \left(\frac{62}{3168} \times 0.031 \right) + \left(\frac{145}{3000} \times 0.503 \right) + \left(\frac{25}{161} \times 0.066 \right) + \left(\frac{90}{449} \times 0.328 \right) \right) + \left(\frac{90}{449} \times 0.328 \right) \\
 &= \left(\left(0.0167 \right) + \left(0.0006 \right) + \left(0.0243 \right) + \left(0.0102 \right) + \left(0.0657 \right) \right) \times 100 \\
 &= \mathbf{11.7\%}
 \end{aligned}$$

FY 2012-2013 Annual DBE Submittal
Establishment Located in Market Area
 From 2010 County Business Patterns (NAICS)

Counties	237310 Highway	238210 Electrical	541330 Engineering	541370 Surveying	541620 Environmental
Los Angeles	97	1622	1439	55	223
Orange	75	766	1080	47	153
Riverside	53	438	253	30	37
San Bernardino	59	342	228	29	36
Total Establishment	284	3168	3000	161	449

DBE in Market Area

Trade/Work	DBE Female		DBE Male		All DBE Firms	
	Working in MA	Located in MA	Working in MA	Located in MA	Working in MA	Located in MA
237310 - Highway	46	22	95	43	141	65
238210-Electrical	20	13	88	49	108	62
541330-Engineering	91	39	211	106	302	145
541370-Surveying	21	9	40	16	61	25
541620-Environmental	137	51	75	39	212	90
Total	315	134	509	253	824	387

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List of DOT Assisted/Federal Funded Project for FY 12/13

Projects	NAICS Code					Total
	237310 Highway & Bridges	238210 Electrical	541330 Engineering	#541370 Surveying	#541620 Environmental	
1 Colton MS Safe Route to School Project	\$ 330,000.00	\$ 45,000.00		\$ 10,000.00		385,000.00
2 La Cadena Bridge over SantaAna Replacement project			\$ 1,625,000.00	\$ 150,000.00	\$ 1,000,000.00	2,775,000.00
3 Mt. Vernon Bridge over UPRR Widening Project			\$ 1,604,800.00	\$ 250,000.00	\$ 1,200,000.00	3,054,800.00
4 Washington Street/Reche Canyon Road CMAQ Project.	\$ 182,000.00	\$ 175,000.00				357,000.00
5 Washington Street Extension			\$ 300,000.00	\$ 50,000.00	\$ 100,000.00	450,000.00
Total	\$ 512,000.00	\$ 220,000.00	\$ 3,529,800.00	\$ 460,000.00	\$ 2,300,000.00	\$ 7,021,800.00
Weighted %	0.073	0.031	0.503	0.066	0.328	1.000