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RESOLUTION NO. R-80-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLTON APPROVING THE ANNUAL ANTICIPATED DBE PARTICIPATION LEVEL (AADPL) FOR FEDERAL FISCAL YEAR 2015/2016 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 Disadvantaged 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 2015/2016.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the City Council authorizes the City Manager or his designee to sign the Disadvantaged Business Enterprise (DBE) Annual Submittal Form for Federal Fiscal Year 2015/2016 on behalf of the City of Colton.

PASSED, APPROVED AND ADOPTED this 7th day of July 2015.


RICHARD A. DELAROSA
Mayor

ATTEST:


CAROLINA R. PADILLA
City Clerk

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 (Caltrans) Disadvantaged Business Enterprise (DBE) Program Plan.

The City of Colton submits our Annual 9-B information for the Federal Fiscal Year 2015/2016, beginning on October 1, 2015 and ending on September 30, 2016.

Disadvantaged Business Enterprise Liaison Officer (DBELO)

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

Planned Race-neutral 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 2013 Census Bureau Data, CUCP DBE Directory, and all Federal Funded Projects expected to be completed for FY 2015-2016 to establish the AADPL for Federal Fiscal Year 2015-2016. We have established an AADPL of 16.2% 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's monitoring and enforcement mechanism is 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.

Prompt Pay Enforcement Mechanism

49 CFR 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)

Bill Smith, City Manager
CITY OF COLTON
(Authorized Governing Body Representative)

(909) 370-5051
(Phone Number)

(Signature of Caltrans District Local Assistance Engineer)

(Date)

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

(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 to 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.

Methodology

The process for establishing the Annual Anticipated DBE Participation Level (AADPL) was derived from data gathered from the U.S. Census Bureau - 2013 County Business Patterns (NAICS) and California Department of Transportation (Caltrans) Civil Rights Program. The data was gathered based upon four counties in which City of Colton lies and neighbors. These four 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 2013 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 2015-2016, 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 Neutral DBE. AADPL calculations for New Race Neutral DBEs are shown on the succeeding page.

**FY 2015-2016 Annual DBE Submittal
Establishment Located in Market Area
From 2013 County Business Patterns (NAICS)**

Counties	237310 Highway	238210 Electrical	541330 Engineering	541370 Surveying	541620 Environmental
Los Angeles	79	1679	1484	57	225
Orange	68	796	1097	50	161
Riverside	50	439	242	35	49
San Bernardino	51	357	214	30	36
Total Establishment	248	3271	3037	172	471

DBE in Market Area (MA)

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	38	24	132	84	170	108
238210 - Electrical	21	11	91	46	112	57
541330-Engineering	47	21	177	93	224	114
541370-Surveying	21	9	28	13	49	22
541620-Environmental	187	79	115	57	302	136
Total	314	144	543	293	857	437

List of DOT Assisted/Federal Funded Project for FY 15/16

Projects	NAICS Code						Total
	237310 Highway & Bridges	238210 Electrical	238210 Electrical	541330 Engineering	#541370 Surveying	#541620 Environmental	
1 Mt. Vernon Avenue Corridor Traffic Signal Improvement	\$ 330,000.00		\$ 270,000.00	\$ 75,000.00	\$ 15,000.00		690,000.00
2 Active Transportation Plan				\$ 225,000.00	\$ 25,000.00	\$ 15,000.00	265,000.00
3 Washington St. Extension Project				\$ 250,000.00	\$ 50,000.00	\$ 150,000.00	450,000.00
4							-
5							-
6							-
Total	\$ 330,000.00	\$ -	\$ 270,000.00	\$ 550,000.00	\$ 90,000.00	\$ 165,000.00	\$ 1,405,000.00
Weighted %	0.235	-	0.192	0.391	0.064	0.117	1.000

AADPL CALCULATIONS
FY 2015/2016

	NAICS CODES				
	#237310 Highway/Bridge	#238210 Electrical	#541330 Engineering Services	#541370 Surveying and Mapping	
(A) Total Establishment Located in Market Area (from CBP table)	248	3271	3037	172	471
All Female DBE Firms Working in Market Area (from CUCP)	38	21	47	21	187
Female DBE Located in Market Area	24	11	21	9	79
All Male DBE Firms Working in Market Area (from CUCP)	132	91	177	28	115
Male DBE Located in Market Area	84	46	93	13	57
(C) Total DBE Firms Working in Market Area (from CUCP)	170	112	224	49	302
Total DBE Firms Located in Market Area (from CUCP)	108	57	114	22	136
(D) Weight	0.235	0.192	0.391	0.064	0.117

$$\begin{aligned}
 \text{AADPL} = \text{New RC DBE} &= \left(\left(\frac{C}{A} \times D \right) + \left(\frac{C}{A} \times D \right) + \left(\frac{C}{A} \times D \right) + \left(\frac{C}{A} \times D \right) \right) \times 100\% \\
 &= \left(\left(\frac{108}{248} \times 0.235 \right) + \left(\frac{57}{3271} \times 0.192 \right) + \left(\frac{114}{3037} \times 0.064 \right) + \left(\frac{22}{172} \times 0.064 \right) + \left(\frac{136}{471} \times 0.117 \right) \right) \times 100\% \\
 &= \left(0.1023 \right) + \left(0.0033 \right) + \left(0.0147 \right) + \left(0.0082 \right) + \left(0.0339 \right) \times 100\% \\
 &= 16.2\%
 \end{aligned}$$

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss
3 CITY OF COLTON)

4 CERTIFICATION

5 I, **CAROLINA R. PADILLA**, City Clerk of the City of Colton, California, do
6 hereby certify that the foregoing is a full, true and correct copy of **RESOLUTION NO.**
7 **R-80-15**, duly adopted by the City Council of said City, and approved by the Mayor of
8 said City, at its Regular Meeting of said City Council held on the **7th day of July, 2015**,
9 and that it was adopted by the following vote, to wit:

10 AYES: COUNCILMEMBER Toro, Jorin, Navarro, González,
11 Bennett, Suchil and Mayor
12 DeLaRosa

13 NOES: COUNCILMEMBER None

14 ABSTAIN: COUNCILMEMBER None

15 ABSENT: COUNCILMEMBER None
16

17 **IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official
18 seal of the City of Colton, California, this _____ day of _____, 20__.

19
20
21 _____
22 CAROLINA R. PADILLA
23 City Clerk
24 City of Colton

25 (SEAL)
26
27
28