CITY COUNCIL
AGENDA REPORT

SUBJECT: California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies (Race-Conscious)

AGENDA DATE: May 20, 2009

VA

PREPARED BY: Veronica Atondo, P.E., Interim Engineering Manager

APPROVED FOR AGENDA BY: Ralph G. Velez, City Manager

RECOMMENDATION(S): Authorize City Manager to Execute and Implement the California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies (Race-Conscious).

FISCAL IMPACT: All Federal Funding from FHWA including ARRA funding.

BACKGROUND INFORMATION:

In the past the City was required to execute and implement a "Disadvantage Business Enterprise (DBE) Race-Neutral Implementation Agreement." On March 26, 2009, the Department of Transportation mandated that all Local Agencies receiving federal funding must begin the transitioning to the new DBE Race-Conscious program.

DISCUSSION (Current consideration):

In order to continue to receive Federal Highway Administration (FHWA) and the American Recovery and Reinvestment Act (ARRA) funding the City must execute the subject agreement prior to June 2, 2009 (Exhibit 9-A and Attachment No. 1). The DBE Race Conscious Program requires the City to adhere to the Guidelines provided by the Department of Transportation (DOT) including but not limited to the bidding and contract award procudures of all Federal Funded Projects.

ENCLOSURES: California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies (Race-Conscious) (Exhibit 9-A and 9-B and Attachment No. 1)

Letter from DOT Director, Will Kempton, March 26, 2009

Agenda Item No. ____
Page ____ Of _____

CALIFORNIA

DEPARTMENT OF TRANSPORTATION

DISADVANTAGED BUSINESS ENTERPRISE

PROGRAM

IMPLEMENTATION AGREEMENT

FOR

LOCAL AGENCIES

March 4, 2009

IV Annual DBE Submittal Form (§26.21)

The RECIPIENT will provide to the Caltrans District Local Assistance Engineer (DLAE) a completed *Local Agency DBE Annual Submittal Form* (Exhibit 9-B) by June 1 of each year for the following Federal Fiscal Year (FFY). This form includes an Annual Anticipated DBE Participation Level (AADPL), methodology for establishing the AADPL, the name, phone number, and electronic mailing address of the designated DBELO, and the choice of Prompt Pay Provision to be used by the RECIPIENT for the following FFY.

V Race-Neutral Means of Meeting the Overall Statewide Annual DBE Goal (§26.51)

RECIPIENT must meet the maximum feasible portion of its AADPL by using race-neutral 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 types 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 historically been 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.

IX Federal Financial Assistance Agreement Assurance (§26.13)

RECIPIENT will sign the following assurance, applicable to and to be included in 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.). [Note – this language is to be used verbatim, as it is stated in §26.13(a).]

X DBE Financial Institutions (§26.27)

It is the policy of the RECIPIENT 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 DBELO. The Caltrans' Disadvantaged Business Enterprise Program may offer assistance to the DBELO.

XI Directory (§26.31)

RECIPIENT 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.

XII Required Contract Clauses (§§26.13, 26.29)

RECIPIENT ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

A. 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 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.

[Note – This language is to be used verbatim, as is stated in §26.13(b). See Caltrans Sample Boiler Plate Contract Documents on the Internet at www.dot.ca.gov/hq/LocalPrograms under "Publications."]

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.

XIII Local Assistance Procedures Manual

The RECIPIENT will advertise, award and administer DOT-assisted contracts in accordance with the most current published Local Assistance Procedures Manual (LAPM).

XIV Transit Vehicle Manufacturers (§ 26.49)

If FTA-assisted contracts will include transit vehicle procurements, RECIPIENT 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.

XV Bidders List (§26.11(c))

The RECIPIENT 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/nonDBE status, age, and annual gross receipts of the firm.

XVI Reporting to the DLAE

RECIPIENT will promptly submit a copy of the Local Agency Bidder/Proposer-UDBE Commitment (Consultant Contract), (Exhibit 10-O(1) "Local Agency Bidder/Proposer-DBE Commitment (Consultant Contract)") or Exhibit 15-G(1) "Local Agency Bidder-UDBE Commitment (Construction Contract) to the DLAE at the time of award of the consultant or construction contracts.

RECIPIENT will promptly submit a copy of the Local Agency Bidder-DBE Information (Exhibit 15-G(2) "Local Agency Bidder-DBE (Construction Contracts) – Information" or Exhibit 10-O(2) "Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information" of the LAPM) to the DLAE at the time of execution of consultant or construction contract.

RECIPIENT will promptly submit a copy of the Final Utilization of DBE participation to the DLAE using Exhibit 17-F "Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" of the LAPM immediately upon completion of the contract for each consultant or construction contract.

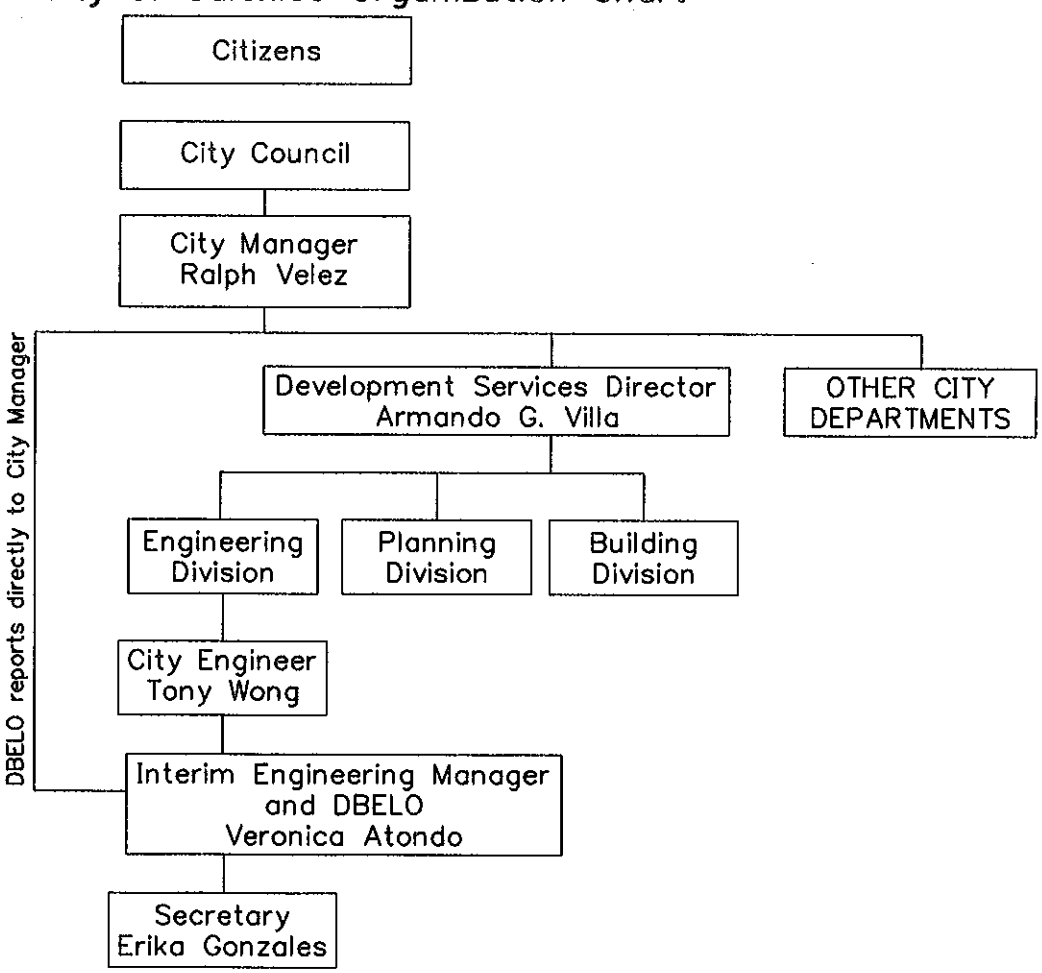
Attachment "1"
DBE Liaison Officer (DBELO)

The City of Calexico has designated the following individual as the DBE Liaison Officer

Veronica Atondo, P.E., Associate Civil Engineer
608 Heber Avenue
Calexico, CA 92231
Phone (760) 768-2100, Fax (760) 768-0854, vatondo@calexico.ca.gov

In that capacity, Veronica Atondo, Interim Engineering Manager, is responsible for implementing the DBE program plan, as it pertains to the RECIPIENT, and ensures that the RECIPIENT is fully and properly advised concerning the DBE Program Plan matters. The DBELO has a staff of one secretary to provide a portion of her time to the program.The DBELO has independent access to the City Manager concerning DBE program matters.

Attachment A
City of Calexico Organization Chart



DEPARTMENT OF TRANSPORTATION
OFFICE OF THE DIRECTOR
1120 N STREET, MS-49
SACRAMENTO, CA 95814-5680
PHONE (916) 654-5266
FAX (916) 654-6608
TTY 711

Flex your power!
Be energy efficient!

March 26, 2009

Cities and Counties
Metropolitan Planning Organizations
Regional Transportation Planning Agencies

Dear Transportation Partner:

This is to follow up on the letter from the California Department of Transportation's (Department) Division of Local Assistance (DLA), dated March 4, 2009, regarding the mandatory Race Conscious (RC) Disadvantaged Business Enterprise (DBE) Program. The letter stated that effective immediately, local agencies receiving federal funds must begin transitioning to the new RC DBE Program. It further stated that all contracts awarded after June 2, 2009, shall include the RC DBE requirements.

On March 20, 2009, I met with 35 minority and women trade organizations as part of our regular Small Business Council (SBC) meeting. They were concerned that a huge portion of the American Recovery and Reinvestment Act funds may get awarded without RC DBE requirements prior to June 2, 2009. To respond to the concerns raised by the SBC and the legislature, I am encouraging all local agencies to implement the RC DBE provisions, to the greatest extent possible, within 60 days of apportionment. I have also directed the Department's DLA to aid local agencies in meeting this goal, and we will continue to provide detailed guidance as necessary to ensure success.

DLA has begun providing RC DBE workshops throughout the State. During the month of April, additional RC DBE training will be provided through the University of California, Berkeley, Institute of Transportation Studies (ITS) Tech Transfer Program. ITS will announce the details of this training in the next few days. I encourage you to participate in these workshops and trainings.

If you have any questions, please contact your District Local Assistance Engineer.

Sincerely,

WILL KEMPTON
Director