

AGENDA  
ITEM

**11**



# AGENDA STAFF REPORT

**DATE:** November 17, 2021

**TO:** Mayor and City Council

**APPROVED BY:** Miguel Figueroa, City Manager *MV*

**PREPARED BY:** Lilliana Falomir, Public Works Manager – Administrative *L Falomir*

**SUBJECT:** Adopt Resolution No. 2021-\_\_ of the City Council of the City of Calexico Adopting the California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for the City of Calexico.

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**Recommendation:**

Adopt Resolution No. 2021-\_\_ of the City Council of the City of Calexico Adopting the California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for the City of Calexico.

**Background:**

The California Department of Transportation Disadvantaged Business Enterprise (DBE) program is designed to remedy ongoing discrimination and the continuing effects of past discrimination in federally-assisted highway, transit, airport, and highway safety financial assistance transportation contracting markets nationwide. The primary remedial goal and objective of the DBE program is to level the playing field by providing small businesses owned and controlled by socially and economically disadvantaged individuals a fair opportunity to compete for federally funded transportation contracts.

**Discussion & Analysis:**

On September 2020, the California Department of Transportation updated their Local Assistance Procedure Manual (LAPM) Exhibit 9A - DBE Implementation Agreement for Local Agencies, because of this it requires all local agencies including the City of Calexico to submit an updated LAPM Exhibit 9A in order to comply with Code of Federal Regulations, 49 CFR 26.5,26.1,26.23, 26.27, 26.31, 26.13 and 26.29. For this reason, Public Works staff is requesting that the City Council of the City of Calexico adopt the attached resolution in order to continue receiving federal funds through California Department of Transportation.

<b>AGENDA ITEM</b>
<b>11</b>

**Fiscal Impact:**

No fiscal impact at this time.

**Coordinated With:**

Public Works Department.

**Attachment(s):**

1. Resolution No. 2021-\_\_ of the City Council of the City of Calexico Adopting the California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for the City of Calexico.
2. Exhibit 9-A: DBE Implementation Agreement for Local Agencies.

ATTACHMENT NO. 1

**RESOLUTION NO. 2021-\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO ADOPTING THE CALIFORNIA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM IMPLEMENTATION AGREEMENT FOR THE CITY OF CALEXICO

WHEREAS, the City Council previously adopted the prior California Department of Transportation's Disadvantaged Business Enterprise (DBE) Program and authorized the City Manager to execute the Implementation Agreement on behalf of the City of Calexico; and

WHEREAS, the California Department of Transportation now has revised its Disadvantaged Business Enterprise (DBE) Implementation Program; and

WHEREAS, the California Department of Transportation requires the immediate implementation of the new DBE program that includes revisions to the "Section XII. Required Contracts Clauses (49 CFR 26.13 and 26.29)" and revisions to "Section XVII. Prompt Payment for the Local Agency to the Contractors (California Public Contract Code §20104.50)"; and

WHEREAS, the California Department of Transportation (Caltrans) has directed all local agencies receiving federal-aid funds, specifically including Calexico, to implement the new DBE Program and to execute its Disadvantaged Business Enterprise Program Implementation Agreement; and

WHEREAS, as a condition of receiving continuing and future federal financial assistance, it now is necessary for the City Council of the City of Calexico to adopt the new DBE Program and thereafter authorize the City Manager to execute the new DBE Program.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO DOES HEREBY RESOLVE, DECLARE, AND DETERMINE AND ORDER AS FOLLOWS:

1. That the foregoing is true, correct, and adopted.
2. That the City Council of the City of Calexico does hereby adopt the California Department of Transportation Disadvantage Business Enterprise Program and authorize the City Manager to execute the DBE Program Implementation Agreement on behalf of the City.
3. That the DBE Program and Program Implementation Agreement are on file in the Office of the City Clerk.
4. That the City Manager has the authority to amend said agreement if necessary to maintain the City of Calexico's ability to receive federal financial assistance and to take any and all other necessary actions to implement this resolution.

PASSED, APPROVED AND ADOPTED this 17<sup>th</sup> day of November 2021.

\_\_\_\_\_  
Javier Moreno, Mayor

Attest:

\_\_\_\_\_  
Gabriela Garcia, City Clerk

Approved as to Form:

\_\_\_\_\_  
Carlos Campos, City Attorney

State of California )  
County of Imperial ) ss.  
City of Calexico )

I, Gabriela Garcia, City Clerk of the City of Calexico do hereby certify the above Resolution No. 2021-\_\_ was approved at a regular City Council meeting held on the 17<sup>th</sup> day of November, 2021, by the following vote to-wit:

AYES:  
NOES:  
ABSTAIN:

\_\_\_\_\_  
Gabriela Garcia, City Clerk

ATTACHMENT NO. 2

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**Exhibit 9-A: DBE Implementation Agreement for Local Agencies****CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS)  
DISADVANTAGED BUSINESS ENTERPRISE (DBE) IMPLEMENTATION AGREEMENT**

For the City of Calexico, hereinafter referred to as "SUB-RECIPIENT."

**I. Definition of Terms**

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

**II. Objective/Policy Statement (49 CFR 26.1 and 26.23)**

SUB-RECIPIENT intends to receive federal financial assistance from the U. S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans), and as a condition of receiving this assistance, SUB-RECIPIENT will sign the California Department of Transportation Disadvantaged Business Enterprise Implementation Agreement (hereinafter referred to as Agreement). SUB-RECIPIENT agrees to implement the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan (hereinafter referred to as the DBE Program Plan) as it pertains to Local Agencies. The DBE Program Plan is based on U.S. Department of Transportation (DOT), 49 CFR 26 requirements. It is the policy of SUB-RECIPIENT to ensure that DBEs, as defined in 49 CFR 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also SUB-RECIPIENT's policy:

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

**III. Nondiscrimination (49 CFR 26.7)**

SUB-RECIPIENT 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 26 on the basis of race, color, sex, or national origin. In administering the Local Agency components of the DBE Program Plan, SUB-RECIPIENT will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.



**IV. Annual DBE Submittal Form (49 CFR 26.21)**

SUB-RECIPIENT will provide to the Caltrans District Local Assistance Engineer (DLAE) a completed Local Agency DBE Annual Submittal Form (Exhibit 9-B), by June 30 of each year for the following Federal Fiscal Year (FFY). This form must include the name, phone number, email address of the designated Disadvantaged Business Enterprise Liaison Officer (DBELO), and the choice of Prompt Pay Provision to be used by SUB-RECIPIENT for the following FFY.

**V. Race-Neutral Means of Meeting Caltrans Overall Statewide Annual DBE Goal (49 CFR 26.51(a))**

Caltrans expects SUB-RECIPIENT to meet the maximum feasible portion of Caltrans Overall Statewide Annual DBE Goal through race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes when 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 the participation of DBE and other small businesses (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 SUB-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.

**VI. Race-Conscious Means of Meeting Caltrans Overall Statewide Annual DBE Goal (49 CFR 26.51(d))**

SUB-RECIPIENT must establish DBE contract goals to meet any portion of Caltrans Overall Statewide Annual DBE Goal that cannot be achieved through race-neutral means.

**VII. Quotas (49 CFR 26.43)**

SUB-RECIPIENT will not use quotas or set-asides in any way in the administration of the Local Agency component of the DBE Program Plan.

**VIII. DBE Liaison Officer (DBELO) (49 CFR 26.25)**

SUB-RECIPIENT has designated a DBE Liaison Officer. The DBELO is responsible for implementing the DBE Program Plan as it pertains to the SUB-RECIPIENT, and ensures that the SUB-RECIPIENT is fully and properly advised concerning DBE Program Plan matters. [Specify resources available to the DBELO; e.g., the DBELO has a staff of two professional employees assigned to the DBE program on a full-time basis and two support personnel who devote a portion of their time to the program.] The name, address, telephone number, email address, and an organization chart displaying the DBELO's position in the organization are found in Attachment A this Agreement. This information will be updated annually and included on the DBE Annual Submittal Form.

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

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

**IX. Federal Financial Assistance Agreement Assurance (49 CFR 26.13)**

Each agreement SUB-RECIPIENT signs with Caltrans must include the following assurance: The SUB-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 26. The SUB-RECIPIENT shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The SUB-RECIPIENT's DBE Program, as required by 49 CFR 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 SUB-RECIPIENT of its failure to carry out its approved program, Caltrans may impose sanctions as provided for under 49 CFR 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.).

Each contract Sub-recipient signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following 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 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 the Sub-recipient deems appropriate.

**X. DBE Financial Institutions (49 CFR 26.27)**

SUB-RECIPIENT must 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 (49 CFR 26.31)**

SUB-RECIPIENT will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's [website](#).

**XII. Required Contract Clauses (49 CFR 26.13 and 26.29)**

For the purpose of this section, contractor also means consultant, and subcontractor also includes subconsultant. For prompt payment, the following State regulations are referenced: the California Business and Professions Code (CBPC), California Public Contract Code (CPC) and California Civil Code (CCC).

SUB-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 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 SUB-RECIPIENT deems appropriate.

**NOTE:** This language is to be used verbatim, as is stated in Exhibit 12-G: Required Federal-aid Contract Language. See also 49 CFR 26.13(b).

## B. Prompt Payment

### Prompt Progress Payment to Subcontractors

The Local Agency shall require contractors and subcontractors to pay their subcontractors within seven (7) days for construction contracts, and within fifteen (15) days for consultant contracts, after receiving each progress payment. Any delay or postponement of payment may take place only for good cause and with the Local 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 CBPC and Section 10262 of the CPCC for construction contract, and Section 3321 of the CCC for consultant contract. 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 Payment of Withheld Funds to Subcontractors

The Local Agency shall ensure prompt and full payment of retainage from the prime contractor to the subcontractor within seven (7) days for construction contracts, or within fifteen (15) days for consultant contracts after the subcontractor's work is satisfactorily completed and accepted. This shall be accompanied by including; either (1), (2), or (3) of the following provisions [Local Agency equivalent will need Caltrans approval] in their federal-aid contracts to ensure prompt and full payment of retainage [withheld funds] to subcontractors in compliance with 49 CFR 26.29.

- ~~1. No retainage will be held by the Local 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 Local 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 CBPC and Section 10262 of the CPCC for construction contracts, and Section 3321 of the CCC for consultant contracts. 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.~~

- ~~2. No retainage will be held by the Local 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 **within seven (7) days for construction contracts, or within fifteen (15) days for consultant contracts** after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the Local 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 **CBPC and Section 10262 of the CPCC for construction contracts, and Section 3321 of the CCC for consultant contracts**. 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.~~
3. The Local Agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Local 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 **seven (7) days for construction contracts, or within fifteen (15) days for consultant contracts** after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the Local Agency. Any delay or postponement of payment may take place only for good cause and with the Local 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 **CBPC and Section 10262 of the CPCC for construction contracts, and Section 3321 of the CCC for consultant contracts**. 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.

**Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.**

### **XIII. Local Assistance Procedures Manual (LAPM)**

The SUB-RECIPIENT will advertise, award and administer Federal-aid contracts in accordance with the current **Local Assistance Procedures Manual (LAPM)** including **Forms and Exhibits**.

**XIV. Vehicle Manufacturers/Specialized Equipment (§26.49)**

If Federal-aid contracts will include vehicle/specialized equipment procurements, SUB-RECIPIENT will require each vendor, as a condition of being authorized to bid or propose on vehicle/specialized equipment procurements, to certify that it has complied with the requirements of 49 CFR 26.69.

**XV. Reporting to the DLAE**

SUB-RECIPIENT will promptly submit a copy of the Consultant Proposal DBE Commitment (Exhibit 10-O1) at the time of award of the consultant contract.

SUB-RECIPIENT will promptly submit a copy of Consultant Contract DBE Information (Exhibit 10-O2) or the Local Agency Bidder DBE Commitment (Construction Contracts) (Exhibit 15-G) to the DLAE within 30 days after execution of consultant or construction contract.

SUB-RECIPIENT will promptly submit a copy of the Final Report-Utilization of DBE, First-Tier Subcontractors (Exhibit 17-F) of the LAPM, immediately upon completion of each consultant or construction contract.

**XVI. Certification (§26.83(a))**

SUB-RECIPIENT ensures that only DBE firms currently certified by the California Unified Certification Program (CUCP) will participate as DBEs on Federal-aid contracts.

**XVII. Confidentiality**

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

**XVIII. Prompt Payment from the Local Agency to the Contractors (California Public Contract Code §20104.50)**

The Local Agency shall make any progress payment within **30 days** after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract. If the Local Agency fails to pay promptly, the Local Agency shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the Local Agency shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by the Local Agency as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than **seven (7) days**, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

By: \_\_\_\_\_  
(Signature)

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

Miguel Figueroa, City Manager Phone #: 760/768-2110  
(Print Name and Title)  
ADMINISTERING AGENCY  
(Authorized Governing Body Representative)

This California Department of Transportation's Disadvantaged Business Enterprise Program  
Implementation Agreement is accepted by:

\_\_\_\_\_  
(Signature of DLAE)

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

\_\_\_\_\_  
(Print Name of DLAE)

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

CITY OF CALEXICO  
ORGANIZATIONAL CHART  
FISCAL YEAR 2021-2022  
PUBLIC WORKS DEPARTMENT

ATTACHMENT A

