

RESOLUTION NO. 5214

A RESOLUTION OF THE CITY OF REDLANDS ESTABLISHING
A DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM,
AND APPOINTING A DBE LIAISON OFFICER, AND ESTABLISHING
DBE GOALS, AND RESCINDING RESOLUTION No. 4483

WHEREAS, 49 CFR Part 23 heretofore requires a Disadvantaged Business Enterprise (DBE) Program for recipients of Department of Transportation funds; and

WHEREAS, the Federal Register states that all sub-recipients of Department of Transportation funds must prepare their own DBE Program; and

WHEREAS, the City of Redlands intends to be a sub-recipient of Department of Transportation funds;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Redlands as follows:

1. The City hereby adopts the DBE Program, which is attached hereto and made a part of this resolution;
2. The Contract Administration Engineer, is hereby appointed as the DBE Liaison Officer whose duties and responsibilities are defined in the DBE Program;
3. The following DBE goals are established for the period of October 1, 1995 through September 30, 1996:

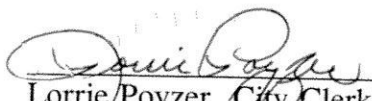
Disadvantage Business: 10%

4. That Resolution Number 4483 is hereby rescinded.

APPROVED AND ADOPTED this 19th day of September, 1995.


Swen Larson, Mayor

ATTEST:


Lorrie Poyzer, City Clerk

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

OCTOBER 1, 1995 through SEPTEMBER 30, 1996

**CITY OF REDLANDS
PUBLIC WORKS DEPARTMENT
35 CAJON STREET, SUITE 222, P O BOX 3005
REDLANDS CA 92373**

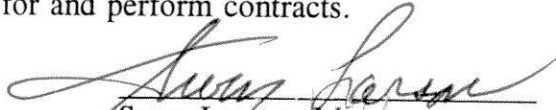
CITY OF REDLANDS

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

I. POLICY STATEMENT

It is the policy of the City of Redlands to utilize Disadvantaged Business Enterprises (DBE) and firms as defined in 49 CFR Part 23 in all aspects of contracting to the maximum extent feasible. This policy which is fully described herein constitutes policy and commitment to substantially increase DBE utilization in all program activities funded wholly or in part by any U.S. Department of Transportation model element.

This Agency, its contractors and subcontractors, which are the recipients of Federal Aid funds, agree to ensure DBE firms have the maximum opportunity to participate in the performance of contracts and subcontracts. In this regard, this Agency and all of its contractors and subcontractors will take all reasonable steps in accordance with 49 CFR 23 to ensure that DBE's and firms have the maximum opportunity to compete for and perform contracts.


Swen Larson, Mayor


Lorrie Poyzer, City Clerk

II. DBE LIAISON OFFICER

The Contract Administration Engineer is the DBE Liaison Officer for this Agency and shall report to the Public Works Director. He will be assigned such staff as is necessary to fully implement the provision of 49 CFR Part 23 and such other DBE programs as may be required. The reporting structure and duties of support staff are shown on Attachment A.

III. DUTIES OF THE DBE LIAISON OFFICER

The DBE Liaison Officer shall develop, manage, and implement the DBE Program on a day-to-day basis. The Liaison Officer shall:

- o Develop and carry out technical assistance programs for DBE's.
- o Arrange solicitations, time for the presentation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of DBE's. Where such changes are found necessary to increase DBE utilization, they will be made in consultation and cooperation with the functional unit involved.
- o Provide guidance to DBE's in overcoming barriers, such as inability to obtain bonding or financing.
- o Carry out information and communication programs on contracting opportunities in a timely manner. Programs shall be bilingual where appropriate.
- o Investigate the services offered by banks owned and controlled by Disadvantaged Business Enterprises.
- o Unless noted elsewhere herein, the listing of DBE's certified by Caltrans will be utilized. Said listing is to be made available to all project bidders. Such listing will include the following information: Name, address, telephone number, ethnic and/or sexual ownership, and type of work performed by firm.
- o Prior to approval of the substitution of any DBE sub-contractor, the prime contractors will be required to prove performance of good faith efforts to replace the DBE with another eligible DBE.
- o Establish a DBE overall annual goal. The goal shall be evaluated annually and adjusted as necessary.
- o Establish an appropriate individual project DBE goal for each Federal Aid Project advertised.
- o Perform good faith analysis when the project goal is not achieved.
- o Maintain such documentation as is necessary to verify performance of all activities included in this program.

IV. PUBLIC NOTIFICATION

1. At the time of submittal of this program to the State Department of Transportation, a notice in both minority and majority local media will be published. Said publication shall include:
 - o The annual overall DBE goal.
 - o Notification that a description of how the goal was set is available for public inspection for a period of 30 days.
 - o Notification that both U.S. DOT and this agency will accept comments on the goal for 45 days from the date of the notice. The notice shall advise interested parties that comments are for information purposes only.
2. This program will be reaffirmed by public notice annually at the time of publication of overall goal. If substantial changes are made to this document, the entire document shall be subject to notification noted in (1) above.
3. In addition to the foregoing, interested disadvantaged and majority contractor organizations will receive direct mailing of this complete program.

V. ESTABLISHMENT OF GOAL

1. The DBE goal will be established both annually (overall) and on a per contract basis. The overall goal will be based on planned contract activity for the coming year. The overall goal established will be subject to methodology and procedures established in 49 CFR 23, Subparts (C) and (D) and take effect on October 1st of each year.
2. The overall DBE goal established with this initial program is 10% and covers the period October 1, 1995 through September 30, 1996.
3. Individual project goals will be established based on the following criteria:
 - o Attainment of established overall goals.
 - o Size of project.
 - o Opportunities for DBE's as subcontractors, vendors, and suppliers.
 - o Minority population of geographic area in which work is to be performed.

- o DBE goals being utilized in the geographic area by other Federal, State, or local jurisdictions.
- o Availability of certified DBE's.
- o Past experience on projects similar to the project being evaluated.
- o Such other factors as may effect the utilization of DBE's.

Complete evaluation documentation will be retained for each project.

4. Projects which do not contain a specific goal will contain the following provisions:
 - A. "Policy - It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this agreement."
 - B. "DBE Obligation - The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts."

VI. CONTRACT PROCEDURE

This program shall be implemented through the utilization of a contract special provision which will be provided/updated as necessary by Caltrans' Division of Local Streets and Roads. These procedures require bidders to submit the names of DBE subcontractors and suppliers, a description of the work each is to perform or material to be furnished, and the dollar value of each DBE subactivity.

VII. DBE NOTIFICATION

Projects will be advertised in local newspapers and minority focus newspapers when possible. These ads will include reference to DBE requirements and will indicate the DBE project goal.

DBE supportive service assistance centers will receive notification of projects scheduled to be advertised. Such centers will be afforded the opportunity to receive complimentary plans and specifications for projects within their geographical area of responsibility.

VIII. SELECTION CRITERIA FOR PROJECTS WITH DBE GOAL

Every project containing a DBE goal shall be evaluated by the DBE Liaison Officer or his designee to ascertain bidding contractors' efforts to attain the DBE goal. The award of any project must be concurred with by the DBE Liaison Officer or his designee before said contract may be awarded. Should there be disagreement between functional units concerning contractors' efforts to attain contract goals for DBE participation, the matter shall be referred to the Public Works Director or his designee, for final determination.

Competitors that fail to meet the DBE goal and fail to demonstrate sufficient reasonable good faith efforts shall be declared non-responsive and ineligible for award of the contract.

All contracts that contain a DBE goal, pursuant to this policy, will be monitored on an ongoing basis by project personnel during the course of construction. The DBE Liaison Officer is to be immediately advised of any circumstances wherein contractor compliance with the DBE provision is questionable. The contractor shall submit a final report for each project which includes total payments to the prime contractor as well as any payments the prime contractor has made to DBE subcontractors, vendors, and suppliers. If the report indicates the prime contractor has not achieved the project goal, project personnel shall attach an evaluation, in narrative form, of the reasons for failure to attain the goal and any corrective action that was taken.

Prime contractors will be required to notify the Agency of any situation in which regularly scheduled progress payments are not made to DBE subcontractors, vendors, or suppliers.

IX. SET-ASIDES

If determined necessary by the DBE Liaison Officer, DBE set-asides will be considered as a tool to achieve annual overall goals.

X. COUNTING DBE PARTICIPANTS

This Agency, its contractors, and subcontractors shall count DBE participation in accordance with the provisions of Section 23.47, Title 49, of the Code of Federal Regulations.

XI. RECORDS AND REPORTS

1. The DBE Liaison Officer shall maintain such records and provide such reports, as are necessary to ensure full compliance with this policy. Such records and reports shall include, as a minimum, the following information:
 - o Awards to DBE's.
 - o Awards to majority contractors.
 - o Final project reports concerning DBE utilization.
 - o Such other data as is needed to fully evaluate compliance with this program.
2. The DBE Liaison Officer shall submit reports to Caltrans and/or to the appropriate U.S. DOT element as required. These reports will include:
 - o Number and dollar value of contracts awarded.
 - o Number and dollar value of contracts and subcontracts awarded to DBE's.
 - o Description of general categories of contracts awarded to DBE's.
 - o The percentage of the dollar value of all contracts awarded during the year which were awarded to DBE's.
 - o Indication as to the extent of which the percentage met or exceeded the overall goal.
 - o Reports shall be broken down separately by ethnic grouping.

XII. COMPLAINTS

Any complaints received by the Agency concerning this program will be investigated by the Public Works Director. He will endeavor to resolve said complaints within 90 days of receipt by the DBE Liaison Officer. The appropriate DOT element and Caltrans will be furnished a copy of the complaint and may be invited to participate in the investigation/resolution. The DOT element and Caltrans will receive a complete investigative report on the complaint and may be requested to concur in the proposed disposition of said complaint.

Contractors will be directed to notify the Agency of any complaints they may receive concerning this program.

ATTACHMENT A

Organization Chart

Duties

PUBLIC WORKS DIRECTOR
Ronald C. Mutter

Insure that DBE Policy is implemented
as adopted by the City Council.

Take appropriate action to resolve
disagreement.

LIAISON OFFICER See Section III of Policy.
Alan K. Griffiths

PUBLIC WORKS INSPECTOR

Assist the Liaison Officer in insuring
contractor compliance through receiving
reports and taking interviews, then making
field observations and keeping records in
daily diary of contract activities.

ATTACHMENT B

The City of Redlands has set the following annual goals for participation in projects receiving U.S. DOT funds by DBE contractors for the period October 1, 1995 through September 30, 1996. DBE: 10%.

These goals are based on the following:

1. Number and types of contracts to be awarded.
2. Number and types of DBE contractors likely to be available to compete for contracts.
3. Other information you wish to use.

ATTACHMENT C

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION SPECIAL PROVISIONS

Annexed to City Contract No. _____

SECTION 1. SPECIFICATIONS AND PLANS

The work embraced herein shall be done in accordance with the Standard Specifications, latest edition, and the Standard Plans, latest edition, of the Department of Transportation insofar as the same may apply and in accordance with the following special provisions.

In case of conflict between the Standard Specifications and these special provisions, the special provisions shall take precedence over and be used in lieu of such conflicting portions.

SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS

2-1.01 GENERAL -- The bidder's attention is directed to the provisions in Section 2, "Proposal Requirements and Conditions," of the Standard Specifications and these special provisions for the requirements and conditions which he must observe in the preparation of the proposal form and the submission of the bid.

The United States Department of Transportation will not consider for award any bid proposals submitted by any contractor, and will not consent to subletting any portions of the contract to any subcontractor, of a foreign country during any period in which such foreign country is listed by the United States Trade Representative as discriminating against U.S. firms in conducting procurements for public works projects. In addition, no product of any such listed country shall be permanently incorporated into the project.

This special provision applies to the participation of contractors, subcontractors and products of the following countries which have been listed by the United States Trade Representative:

JAPAN

For purpose of these special provisions:

(a) Any contractor or subcontractor who is a citizen or national of a foreign country or is controlled directly or indirectly by citizens of nationals of a foreign country, shall be considered to be a contractor or subcontractor also include any partner in a joint venture.

(b) Any product, of which 50 percent or more of its cost is attributable to production or manufacturing in a foreign country, shall be considered to be a product of such foreign country.

The form of Bidder's Bond mentioned in the last paragraph in Section 2-1.07, "Proposal Guaranty," of the Standard Specifications will be found following the signature page of the proposal annexed hereto.

2-1.02 DISADVANTAGED BUSINESS -- This project is subject to Part 23, Title 49, Code of Federal Regulations entitled "Participation By Minority Business Enterprise In Department of Transportation Programs." The Regulations in their entirety are incorporated herein by this reference.

Bidders shall be fully informed respecting the requirements of the Regulations and the Department's Disadvantaged Business (DBE) program developed pursuant to the Regulations; particular attention is directed to the following matters:

(a) A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto;

(b) A DBE may participate as a subcontractor, joint venture partner with a prime or subcontractor, or vendor of material or supplies;

(c) A DBE joint venture partner must be responsible for a clearly defined portion of the work to be performed in addition to satisfying requirements for ownership and control.

The DBE joint venturer must submit either Schedule B of the Regulations or California Department of Transportation Form CR5A, "Information for Determining Disadvantaged Business and Woman Owned Business Enterprise Joint Venture Eligibility";

(d) A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work;

(e) Credit for a DBE vendor of materials or supplies is limited to 60 percent of the amount to be paid to the vendor for the material unless the vendor manufactures or substantially alters the goods;

(f) Credit for trucking by DBE's will be as follows:

(i) The amount to be paid when a DBE trucker will perform the trucking with his/her own trucks, tractors and employees.

(ii) One hundred percent of trucking costs will be allowed for all trucking acquired through certified DBE trucking brokers.

(g) A DBE must be a certified DBE on the date bids for the project are opened before credit may be allowed toward the DBE goal. The Department's DBE Directory identifies DBE's which have been certified. Other may also qualify for certification but must be certified before bid opening. The DBE directory may be obtained from the Department of Transportation, Publications Distribution Unit, 1900 Royal Oaks Drive, Sacramento CA 95815 (Phone 916/654-4576), or from the offices of the Department of Transportation at Los Angeles, San Francisco, and the District in which the work is situated.

(h) Noncompliance by the Contractor with the requirements of the regulations constitutes a breach of this contract and may result in termination of the contract or other appropriate remedy for such breach.

(i) Bidders are encouraged to utilize services offered by banks owned and controlled by minorities or women.

2-1.03 DBE GOAL FOR THIS PROJECT -- The Department has established the following goal for disadvantaged businesses (DBE) participation for this project.

Disadvantaged Business (DBE)	Ten Percent (10%)
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It is the bidder's responsibility to make a sufficient portion of the work available to 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 assure meeting the goal for DBE participation.

The Department has contracted with the following organization to assist DBE's in preparing bids for subcontracting or supplying materials:

Triaxial Management Services Inc.
2594 Industry Way Suite 101
Lynwood CA 90262
(310) 537-6677
(310) 637-0128 FAX

Triaxial Management Services Inc.
17870 Skypark Circle Suite 106
Irvine CA 92714
(714) 851-1448
(714) 851-3825 FAX

Bidders may utilize the services of this organization to contact interested DBE's.

SECTION 3. SUBMISSION OF DBE INFORMATION, AWARD, AND EXECUTION OF CONTRACT

3-1.01 GENERAL -- The bidder's attention is directed to the provisions in Section 3, "Award and Execution of Contract," of the Standard Specifications and these special provisions for the requirements and conditions concerning submittal of DBE information award, and execution of contract.

It is the bidder's responsibility to meet the goal for DBE participation or to provide information to establish that, prior to bidding, the bidder made good faith efforts to do so.

3-1.01A DBE INFORMATION -- The apparent successful bidder (low bidder) and the second low bidder shall submit DBE information to the office at which bids were received so the information is received by the Department no later than close of business on the first Monday after the bid opening. DBE information sent by certified mail and postmarked on or before the Friday after the bid opening will be accepted even if it is received after the first Monday of the week following bid opening. Failure to submit the required DBE information by the time specified will be grounds for finding the bid or proposal nonresponsive. Other bidders need not submit DBE information unless requested to do so by the Department. When such request is made, the DBE information of such bidder shall be submitted within 5 days, unless a later time is authorized by the Department.

The bidders DBE information shall establish that the DBE goal will be met or that a good faith effort to meet the goal has been made.

Bidders are cautioned that even though their submittal indicates they will meet the stated DBE goal, their submittal should also include their good faith efforts information along with their DBE goal information to project their eligibility for award of the contract in the event the department, in its review, finds that the goal has not been met.

The information to show that the DBE goal will be met shall include the names of DBE's to be used, with a complete description of work or supplies to be provided by each and the dollar value of each such DBE transaction. (Note: DBE subcontractors for signal and lighting items, if there are such items of work, must have been named in the bid - See section entitled "Subcontracting" of these special provisions.)

The information necessary to establish the bidder's good faith efforts to meet the DBE goal should include:

- (1) The names and dates of advertisement of each newspaper, trade paper, and minority-focus paper in which a request for DBE participation for this project was placed by the bidder.
- (2) The names and dates of notices of all certified DBE's solicited by direct mail for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBE's were interested.
- (3) The items of work for which the bidder requested sub-bids or materials to be supplied by DBE's, the information furnished interested DBE's in the way of plans, specifications and requirements for the work, and any breakdown of items of work into economically feasible units to facilitate DBE participation. Where there are DBE's available for doing portions of the work normally performed by the bidder with his own forces, the bidder will be expected to make portions of such work available for DBE's to bid on.
- (4) The names of DBE's who submitted bids for any of the work indicated in (3) above which were not accepted, a summary of the bidder's discussions and/or negotiations with them, the name of the subcontractor or supplier that was selected for that portion of work, and the reasons for the bidder's choice. If the reason for rejecting a DBE bid was price, give the price bid by the rejected DBE and the price bid by the selected subcontractor or supplier. Since the utilization of available DBE's is expected, only significant price differences will be considered as cause for rejecting such DBE bids.
- (5) Assistance that the bidder has extended to DBE's identified in (4) above to remedy the deficiency in their sub-bids.
- (6) Any additional data to support a demonstration of good faith effort, such as contracts with DBE assistance agencies.

3-1.01B AWARD OF CONTRACT -- The award of contract, if it be awarded, will be to the lowest responsible bidder whose proposal complies with all the requirements prescribed and who has met the goal for DBE participation or has demonstrated, to the satisfaction of the Department, good faith effort to do so is a condition for being eligible for award of contract.

SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION, AND LIQUIDATED DAMAGES

Attention is directed to the provisions in Section 8-1.03, "Beginning of Work," in Section 8-1.06, "Time of Completion," and in Section 8-1.07, "Liquidated Damages," of the Standard Specifications and these special provisions.

The Contractor shall begin work within 15 days after the contract has been approved by the Attorney General or the attorney appointed and authorized to represent the Department of Transportation.

Said work shall be diligently prosecuted to completion before the expiration of

____ WORKING DAYS

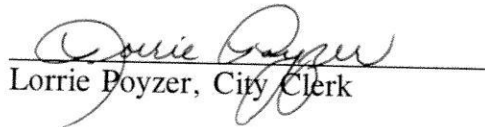
beginning on the fifteenth calendar day after approval of the contract.

The Contractor shall pay to the City of Redlands the sum of \$500.00 per day, for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed above.

NOTICE OF DISADVANTAGED BUSINESS ENTERPRISE (DBE)
GOALS AND RIGHTS OF PUBLIC TO COMMENT

NOTICE IS HEREBY GIVEN to the public that:

1. The City of Redlands has heretofore adopted major project DBE overall goals consisting of utilizing disadvantaged business enterprises in all aspects of contracting to the maximum extent feasible and committing itself to substantially increase disadvantaged business utilization. These goals further include insuring that the City of Redlands, its contractors and subcontractors, which are recipients of Federal Aid funds, agree to provide disadvantaged business enterprises with the maximum opportunity to participate in the performance of contracts and subcontracts and a commitment by the City of Redlands and all its contractors and subcontractors to take all reasonable steps in accordance with 49 CFR 23 to insure that disadvantaged business enterprises have the maximum opportunity to complete and perform contracts.
2. The City of Redlands has set the following annual goals for participation in projects receiving U.S. DOT funds by DBE contractors for the period of October 1, 1995 through September 30, 1996. DBE: 10%.
3. The public may inspect the goals and a description of how they were set at the Public Works Department of the City of Redlands, 35 Cajon Street, Suite 222, Redlands, CA 92373, for a period of 30 days from the date that this notice is first published.
4. The U.S. Department of Transportation and the City of Redlands will accept comments on the said goals for 45 days from the date that this notice is first published and said comments shall be considered to be for informational purposes only.
5. In addition to the foregoing, interested minority and majority contractor organizations, upon request, shall receive a direct mailing of the complete program with a request that they provide written comments to the City of Redlands on this program.


Lorrie Poyzer, City Clerk