

EXHIBIT D - DIVERSITY & ECONOMIC OPPORTUNITY DEPARTMENT CONTRACT COMPLIANCE MANUAL (RC – FTA)

SECTION 100 - DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

100 FEDERAL OBLIGATION:

This contract is subject to the requirements of 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

101 POLICY STATEMENT:

It is LACMTA's policy to provide equal opportunity for Disadvantaged Business Enterprises (DBE) firm, as defined in Part 26, receive and participate on DOT-assisted contracts. It is also our policy:

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

102 INTERPRETATION:

Any conflict, error, omission or ambiguity which may arise between these instructions and the federal regulations or the above mentioned DBE Program shall be resolved first in favor of the federal regulation and second the DBE program.

103 INCORPORATION OF THE DBE PROGRAM INTO THE CONTRACT:

49 CFR Part 26 and the DOT approved DBE Program adopted by LACMTA are hereby incorporated by reference into this contract as though set forth in full. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a material breach of this contract. The Contractor and all project subcontractors are subject to the requirements of the DBE Program and to all requirements of the DOT DBE program found at 49 CFR Part 26. LACMTA will investigate any allegation of the Contractor, subcontractor or any other participating business failing to carry out the requirements of this DBE Program. Should this

investigation find merit in the allegations, LACMTA may pursue legal and/or contractual remedies and/or impose sanctions as provided for in 49 CFR Part 26. In appropriate cases, LACMTA may also refer the matter to proper Federal authorities 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.).

The Contract Compliance Manual is a component of this contract. It describes the DBE Program requirements applicable to this contract. The provisions and enforcement mechanisms set forth in the Contract Compliance Manual are in addition to all other provisions and enforcement mechanisms available to LACMTA set forth elsewhere in this contract. The Contractor's compliance with the DBE Program requirements will be monitored by LACMTA throughout the life of the contract.

104 GENERAL CONDITIONS AND SPECIAL PROVISIONS:

The General Conditions and Special Provisions of the subject Contract are incorporated by reference.

105 LACMTA ASSURANCE:

In accordance with 49 CFR Part 26, it is the policy of LACMTA to ensure that no person is excluded from participation, denied benefits, or otherwise discriminated against in connection with the award and performance of a contract on the basis of race, color, sex, religion or national origin. LACMTA will not directly or indirectly, through contractual or other arrangements, use criteria or methods of administration, that defeat or substantially impair the objectives of the DBE Program on the basis of an individual's race, color, sex, religion or national origin.

106 MISREPRESENTATION:

Suspension or debarment proceedings may be initiated against any firm that:

Attempts to participate in a DOT-assisted program as a DBE and does not meet the eligibility criteria stated in the Certification Standards for DBE programs; or on the basis of false, fraudulent or deceitful statements; or under circumstances indicating a serious lack of business integrity or honesty.

Attempts to use false, fraudulent or deceitful statements or representations in order to meet its DBE administrative requirements; or uses another firm that does not meet the DBE eligibility criteria stated in the certification standards.

DOT may take action itself through its Fraud and Civil Remedies Program or refer the matter to the Department of Justice for prosecution under appropriate criminal statutes.

107 AUDIT AND INSPECTION:

The Contractor shall maintain records of all DBE subcontractors and suppliers including names, business addresses, and the total dollar amounts actually paid through the term of the contract for five years after contract completion. LACMTA reserves the right to audit records and inspect the facilities of its contractors or any subcontractor (at any tier) for the purpose of verifying the DBE participation and/or adherence to the DBE program

requirements. Contractors and subcontractors shall permit access to their records at the request of LACMTA. Notice is hereby given that state, local, and federal authorities may initiate or cooperate with LACMTA in auditing and inspecting such records.

SECTION 200 - DBE PARTICIPATION

200 OVERALL DBE GOAL:

To comply with 49 CFR Part 26, LACMTA has set an overall goal for DBE participation on its federally assisted contracts. The overall goal applies to federal-aid funds LACMTA expects to expend for the fiscal year. LACMTA will strive to meet its overall goal through race conscious and race neutral measures.

LACMTA supports the use of race conscious and race neutral measures to facilitate participation of DBEs and other small businesses, and encourages prime contractors to subcontract portions of their work that they might otherwise perform with their own workforce. To ascertain whether the overall DBE goal is being achieved, LACMTA will track payments made to all DBE firms performing work eligible for credit.

201 DBE MEASURES:

- A. Race Conscious (RC) DBE Measures for FTA funded contracts - RC DBE contract goal(s) applies to all federal DBE groups, which includes: African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, Subcontinent Asian Americans, and Women (including Caucasian Women).
- B. DBE Measures for FHWA funded contracts - Includes setting DBE contract goals for the participation of DBE groups found in the California Department of Transportation (Caltrans) DBE Program, as [amended](#).

202 RACE NEUTRAL (RN) DBE MEASURES:

The DBE group(s) that have not been found in LACMTA's Disparity Study to have significant statistical disparity in LACMTA contracting and cannot be counted toward the RC DBE contract goal, but will be counted as RN DBE participation in accordance with 49 CFR Part 26.

Participation by all DBE groups will be tracked and reported to meet LACMTA's overall DBE goal.

203 DBE COMMITMENT:

The level of DBE participation, which the Contractor commits to at the time of contract award, is the commitment of record and is included in the Special Provision section of the contract. DBE participation will be monitored and enforced through the life of the contract.

204 COMMERCIALLY USEFUL FUNCTION (CUF):

A commercially useful function is performed when the business is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually

performing, managing and supervising the work involved. To perform a commercially useful function, the company must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) the material and paying for the material itself. To determine whether a company is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount of the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work and other relevant factors.

A DBE prime or subcontractor must perform at least 30% of its listed work with its own workforce or on the basis of normal industry practice, may not subcontract a greater portion of the work than would be expected. On-site CUF Reviews will determine whether the DBE is actively performing, managing, and supervising the contracted scope of work. It shall employ a labor force which is separate and apart from that employed by the prime, and which is independently recruited by the DBE in accordance with standard industry practice.

205 VIOLATION OF COMMERCIAL USEFUL FUNCTION:

If an investigation reveals that there has been a violation of the CUF provisions, that portion of the work found to be in violation will not be credited toward the DBE commitment for the contract. Expenditures to a DBE subcontractor or supplier will count toward DBE commitment only if the DBE subcontractor or supplier performs a commercial useful function.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, LACMTA must presume that the DBE firm is not engaged in performing a commercially useful function. The presumption that arises can be rebutted within 15 days. LACMTA's decisions on CUF matters are administratively final and may not be appealed to DOT.

206 DBE'S WORK FORCE:

The DBE shall solicit, hire, place on its payroll, direct, and control all workers performing work under its contract. The DBE owner or its superintendent shall, on a full-time basis, supervise and control the work of the contract. The DBE may with the prior written consent of LACMTA augment its work force with personnel of another firm. LACMTA shall approve the request in writing only when specialized skills are required and the use of such personnel is for a limited time period.

The DBE's utilization of labor, supervisory personnel, equipment and material in the performance of the subcontract must be consistent with industry standards and demonstrate that the DBE (and not some other business entity) is actually performing the contracted scope of work. A DBE does not perform a CUF when it associates too closely with another business entity's work force, including the use of equipment or materials.

207 COUNTING DBE PARTICIPATION:

LACMTA is only able to count toward the achievement of the Contractor's commitment percentage(s) the value of payments made for CUF work actually performed by DBE firms during the performance of the Contract. There will be no credit for DBE work performed by a non-DBE prime or subcontractor. LACMTA and the Contractor are governed by the provisions of 49 CFR Part 26.55(c) on questions of commercially useful functions as it affects the work. Specific counting guidelines are provided in 49 CFR Part 26.55, the provisions of which govern over the summary contained herein.

- A. DBE as the Prime Contractor: 100% DBE credit for that portion of the work performed by the DBE's own forces, including the cost of materials and supplies and materials, for a construction contract, obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliates). When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE contract goal(s).
- B. DBE as a Joint Venture Contractor: 100% credit for that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work performed by the DBE's own forces.
- C. DBE as a Subcontractor: 100% credit for the work of the subcontract performed by the DBE's own forces, including the cost of materials and supplies, excluding the purchase of materials and supplies or the lease of equipment by the DBE subcontractor from the prime contractor or its affiliates. Work that a DBE subcontractor in turn subcontracts to a non-DBE firm does not count toward the contract goal.
- D. DBE as a Material Supplier or Broker:
 - 1. 60% credit for the cost of the materials or supplies purchased from a DBE regular dealer.
 - 2. 100% credit for the cost of materials or supplies obtained from a DBE manufacturer.
 - 3. 100% credit for the value of reasonable fees and commissions for the procurement of materials and supplies if not a regular dealer or manufacturer.
- E. DBE as a Trucker: 100% credit for trucking participation provided the DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible. At least one truck owned, operated, licensed and insured by the DBE must be used on the contract. Credit will be given for the full value of all such DBE trucks operated using DBE employed drivers. DBE credit will be limited to the value of the reasonable fee or commission received by the DBE if trucks are leased from a non-DBE company. LACMTA uses the following six (6) factors in determining whether to count expenditures to a DBE trucking firm, to determine if it is performing a commercially useful function:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
2. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases the trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
5. The DBE may also lease trucks from a non-DBE, including an owner-operator. The DBE who leases trucks from a non-DBE will be credited only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
6. For the purposes of determining whether a DBE trucking company is performing a commercially useful function, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

208 CHANGES IN WORK LISTED TO DBE FIRMS:

If LACMTA or the Contractor proposes changes for work contracted to a DBE firm(s), the Contractor is required to notify the DBE firm in writing within ten (10) working days prior to execution of the proposed change, reduction, or deletion of any work listed at time of contract award or after contract award. The dollar amount of changes or any other contract modification, change order, or provisions sums that increase or decrease the work listed to a DBE firm(s) will be commensurately added to or subcontracted from the total contract amount used to compute actual dollars paid to DBEs. Failure to comply with Section 207 will be cause for non-compliance and assessment of administrative sanctions.

SECTION 300 - ADMINISTRATIVE REQUIREMENTS

300 DBE STANDARDS:

The Contractor shall ensure that DBEs it has committed to in its bid/proposal have a level playing field to successfully perform their contract responsibilities and further commits to meet the DBE Goal of Record for the contract. These efforts should include but are not limited to the following:

- A. Negotiate in good faith to attempt to finalize subcontract and supply agreements with DBEs listed in its bid/proposal.
- B. Continue to provide assistance to DBE subcontractors or DBE suppliers in obtaining bonding, lines of credit, or other capital financing through referral to the DOT Bond Assistance Program (800) 532-1169.
- C. Issue the DBE(s) a written notice of any potential problem and provide a reasonable time frame for the DBE to remedy the problem. The Contractor shall, concurrently with the issuance of the notice to the DBE, send a copy of the notice by First Class mail, postage prepaid, to the Diversity & Economic Opportunity Department (DEOD). In instances where the DBE fails to remedy the problems identified in the notice, the Contractor shall within sixty (60) days of the first written notice to the DBE firm, take the steps outlined in Section 5.0 RESOLUTION OF DISPUTES BETWEEN CONTRACTOR AND (DBE) SUBCONTRACTORS, prior to formally requesting approval from LACMTA to substitute a DBE. Failure to comply with this section will be cause for non-compliance and assessment of administrative sanctions.

301 DBE CERTIFICATION STATUS:

If a subcontractor becomes a certified DBE during the life of the contract, the Contractor shall notify DEOD in writing with the date of certification to be counted toward the Contractor's DBE commitment subject to compliance with the substitution and addition requirements, if applicable. The Prime and DBE firm shall notify LACMTA of any change to its certification status. If a DBE firm's ineligibility is removed, the Prime and DBE firms shall notify LACMTA. The counting of DBE firm participation if deemed ineligible will be determined based on 49CFR26.87.

302 DBE DECERTIFICATION:

Contracts executed prior to the decertification of the DBE shall remain undisturbed. Neither the prime contract nor the subcontract shall be subject to cancellation because of the decertification, provided there is no culpability on the part of either the prime contractor or the subcontractor that led to the decertification. The prime contractor for whom the decertified DBE is working receives credit toward the project goal provided the prime contractor acted in good faith in relying on LACMTA's certification of the firm. However, if the decertified DBE were also found not to have performed a commercially useful function, no credit is to be made to the project goal or LACMTA's overall goal. The contractor shall promptly replace decertified firms with DBE in accordance with guidelines herein.

SECTION 400 - CONTRACT COMPLIANCE MONITORING

400 REVIEW AND MONITORING SYSTEM:

This section describes the review and monitoring system to ensure that all contractors, subcontractors, consultants, vendors, suppliers, dealers, brokers and other sources, and all LACMTA departments comply with the DBE requirements and all other contract provisions related to DBE participation.

Non-compliance by the Contractor with the DBE contract requirements or federal regulations constitutes a breach of contract, and requires, at a minimum, a written explanation and documented description of the contractor's good faith efforts (GFE). Failure to comply may result in: (1) mandatory participation in a DBE Program Training Session, reviewing the performance, accountability, record keeping and reporting aspects of the DBE Program, and/or (2) termination of the contract, and/or (3) administrative sanctions, and/or (4) other appropriate remedies.

401 CREATE A LEVEL PLAYING FIELD OF OPPORTUNITY TO PARTICIPATE:

The Contractor shall ensure that DBEs have a level playing field to successfully perform the responsibilities of their contract in order to meet its DBE contract commitment. These efforts include, but are not limited to the following:

- A. Negotiate in good faith to attempt to finalize subcontract and supply agreements with DBEs listed in its bid/proposal.
- B. Continue to provide assistance to DBE Subcontractors or Suppliers in obtaining bonding, lines of credit, or other capital financing through referral to the DOT Bond Assistance Program (800) 532-1169.
- C. Contractors who failed to meet the DBE goals established for the contract, but who were determined by LACMTA to have fulfilled the good faith effort requirements to meet the goal, shall make additional documented efforts to seek out and utilize additional first-tier DBE Subcontractors and Suppliers to increase DBE participation, during the life of the contract.
- D. Contractor shall immediately inform DEOD of any problems anticipated or concerns in achieving the DBE commitment agreed upon at the time of award.
- E. Issue the DBE(s) a written Cure Notice of any potential problem and provide a reasonable time frame for the DBE to cure the problem. The Contractor shall, concurrently with the issuance of the Cure Notice to the DBE, send a copy of the Cure Notice by First Class mail, postage prepaid, to the assigned Contract Compliance Officer, DEOD Contract Compliance Manager and to the Contract Administrator. In instances where the DBE fails to cure, the Contractor is then obligated to take the steps outlined in the section herein RESOLUTION OF DBE DISPUTES BETWEEN CONTRACTOR AND DBE SUBCONTRACTORS before formally requesting approval from LACMTA to substitute a DBE.

402 PRE-CONSTRUCTION (KICK-OFF) MEETING:

Both the Contractor and the Subcontractor(s) or a representative of each firm shall attend the kick-off meeting concerning DBE requirements and other matters, prior to or immediately after Notice to Proceed is issued. The Contractor shall be responsible for informing the Subcontractors of all DBE requirements as specified by LACMTA herein.

403 CONTRACT COMPLIANCE SUBMITTALS – REPORTING DBE PARTICIPATION:

Contractor and all subcontractors shall report payment details to LACMTA using the web-based Small Business Programs Compliance Reporting System (SBCRS) by the

15th of each month. SBCRS allows Contractors to manage their own records, maintain accurate contract information, and report payment details online, and submit system generated report to LACMTA. SBCRS is mandatory for Contractors and subcontractors to use unless LACMTA instructs otherwise. LACMTA will provide the Contractor, subcontractors, suppliers, brokers, and truckers online training, login and password information, at no cost to the Contractor or its subcontractors, suppliers, and truckers. Contractor shall have fourteen (14) days from Notice to Proceed (NTP) to register and obtain login and password with the SBCRS. Subcontractors, at all tiers, shall register within thirty (30) days of the NTP.

After award, Contractor will receive instructions on how to set up their account and enter required Subcontractor data. Contractor must require each of its subcontractors to enter required payment information into SBCRS. Contractor shall submit all monthly reports, subcontractor agreements, and documents through the SBCRS to LACMTA for review and approval. The Contractor is responsible for ensuring that all subcontractors, suppliers, brokers, and/or truckers (at all tiers) participate in the SBCRS based webinar trainings to comply with the verification of payments and other related reporting requirements through the software system. Failure of Contractor or its subcontractors to enter required information on a timely basis may result in delay of payment by LACMTA and assessment of DBE non-compliance for reporting requirements as identified in Section 800 of this Manual.

A. CONTRACTOR MONTHLY DBE PROGRESS REPORT (Design/Build Only):

The Contractor shall submit timely and complete monthly progress report summarizing the overall status of commitments to DBE firms, attainments to DBE firms, and prompt payment/retainage counts to all firms (DBE and non-DBE firms) performing on this contract.

The monthly progress report shall be submitted to LACMTA by the 15th day following the reporting month. The monthly report shall provide, at a minimum, the following information:

1. General Contract Value Information: The following general contract value information must be provided:
 - a. Original Contract Amount
 - b. Running Total of Change Order Amount
 - c. Current Contract Amount
 - d. Amount Paid to Contractor during Month
 - e. Amount Paid to Contractor Inception to Date
 - f. DBE Contract Goal
 - g. Total Dollar Amount of DBE Commitment
 - h. DBE Commitment as Percentage of Current Contract Amount

2. Contractor/Subcontractor information: The following general information shall be prepared for the Contractor and each subcontractor (at every tier level): Name, address, phone, DBE status, contact person, contractor(s), name, date contract agreement signed, scope of work, anticipated first date of performance and anticipated last date of performance
3. SUPPLEMENTAL REPORTS (Design/Build Only): The Prime Contractor shall submit, each month (or other such time as the DEO, may choose), the below compliance reports. LACMTA has developed a series of forms that may be adopted by the Contractor to meet this requirement or the Contractor may develop its own report format and present to LACMTA for approval and use to meet the supplemental report requirements:
 - a. The Prime Contractor's DBE Attainment and Commitment Report for the month listing its immediate subcontractors and the DBE Attainment and Commitment Tally Sheets from each subcontractor subcontracting at each tier listing their immediate subcontractors, to the Contract Compliance Officer, documenting DBE and Non-DBE participation expected for the month;
 - b. The Prime Contractor's "Prompt Payment" Report listing its immediate subcontractors and the "Prompt Payment" activity from each subcontractor subcontracting at each tier listing their immediate subcontractors, to the Contract Compliance Officer, documenting the status of each subcontractor's retainage account with the Prime Contractor engaged in subcontracting and their compliance with the return of the retainage regulations.
 - c. The Prime Contractor's "Prompt Payment and Retainage" Report for the month (or such time period as the DEOD may choose), listing its immediate subcontractors and the prompt payment and retainage activity from each subcontractor (at any tier).
 - d. DBE Trucking Verification Report by the fifth (5th) day of each month, for the preceding month's trucking activity. The Contractor shall submit documentation showing the amount paid to DBE trucking companies listed to perform on the contract. This monthly documentation shall indicate the portion of revenue paid to DBE trucking companies which is claimed toward DBE participation. The Contractor shall also obtain and submit documentation to the DEOD showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks.
 - e. The DBE who leases trucks from a non-DBE is to credit only for the fee or commission it receives as a result of the lease arrangement. The records must confirm that the amount of credit claimed toward DBE participation conforms with Section 207.

The Contractor shall also obtain and submit documentation showing the truck number, owner's name, California Highway Patrol CA number and if applicable, the DBE certification letter of the owner of the truck for all trucks used during that month for which DBE participation will be claimed. The Contractor shall promptly pay DBE trucking companies in accordance with the prompt payment provisions prescribed in herein.

4. **For Contracts that Require a DBE Contracting Outreach and Mentoring Plan (COMP).** The Contractor shall:

- a. Comply with the DBE requirement in the Contract Compliance Manual (RC-FTA);
- b. Annually, no later than 60 days before the anniversary date of the overall contract, the Contractor shall prepare and submit to LACMTA an updated DBE COMP that includes the next 2 calendar years of subcontracting activities, inclusive of the overall project DBE commitment forecast. At all times over the life of the Project, the DBE Plan shall cover a 2-year period; and
- c. Submit a quarterly report on all mentor protégé arrangements; meet with LACMTA, mentor(s) and protégé(s) annually to report overall progress of the mentor protégé component of the DBE COMP.

B. MONTHLY EXPENDITURE PLAN (CONSTRUCTION PROJECTS ONLY):

A monthly expenditure plan in calendar form for each of its approved DBE Subcontractors/Suppliers shall be submitted 14 working days after the Contractor executes a contract or purchase order with LACMTA. The planned expenditures shall equal the dollars committed to each DBE Subcontractor/Supplier and shall be developed according to the approved project schedule.

The plan shall be updated to incorporate any schedule changes and executed Changed Notices and Work Authorization Change Notices affecting the DBE's work. The original plan must be approved and each revision must be approved by the, "Construction Manager's Resident Engineer," prior to being submitted to the assigned Contract Compliance Officer and the Contract Administrator. Revised plans shall be submitted within 30 days from the incorporation of the change.

C. EXECUTED DBE SUBCONTRACT AGREEMENTS:

The Contractor shall submit copies of all executed DBE subcontract agreements and/or DBE purchase orders (PO) within 14 working days after the Notice to Proceed for all DBE firms listed in the Contractor's bid/proposal and DBE COMP. For Contracts that require a DBE Contracting Outreach and Mentoring Plan (COMP), the Contractor shall also submit the executed mentor protégé agreements for the DBE firms identified for mentor protégé development no later than 14 days after Notice to Proceed. Failure to comply with this section will be cause for non-compliance and assessment of administrative sanctions, and may include, imposing a special assessment against the Contractor.

The DBE subcontract or PO should be sent to the attention of the assigned Contract Compliance Officer. The Contractor shall incorporate the DBE Program document and this DBE Contract Compliance Manual into each PO and into each Subcontract issued under this DOT-assisted contract and each subcontractor, consultant, dealer, broker, vendor or other source shall agree to the terms and conditions. The Contractor shall immediately notify DEOD in writing, within the 14-day timeframe mentioned above, of any problems it may have in obtaining the subcontract

agreements from listed DBE firms within the specified time. Failure to notify DEOD may deem the Contractor in non-compliance with this requirement.

The Contractor shall include the following language verbatim in each subcontract agreement the Contractor signs with a DBE subcontractor(s):

1. 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 the recipient deems appropriate.
2. Enforcement: If a contractor or subcontractor fail or refuse to include the contract assurances verbatim in all DOT-assisted contracts, subcontracts and/or purchase orders agreements, MTA may impose penalties and administrative sanctions for non-compliance as contained in Section 800.
3. Prompt Payment: (Required in all DBE and non-DBE subcontract agreements)
 - a. Pursuant to 49 Code of Federal Regulations (CFR) Part 26 and the California Business and Professions Code Section 7108.5, the Contractor shall pay each subcontractor under this contract for satisfactory performance of its Work no later than to 7 days after receipt of each Progress Payment received from LACMTA. Any delay or postponement of payment from the above referenced time may occur only for good cause, and only upon prior written approval by LACMTA.
 - b. This clause applies to both DBE and non-DBE. For the purpose of this section, a subcontractor's work is satisfactorily completed when the Contractor certifies to LACMTA that all the tasks called in the subcontract have been satisfactorily accomplished and that the
 - c. (The above language is to be used verbatim, pursuant to federal regulations.)
 - d. After an investigation, if it is determined that the contractor is in non-compliance with prompt payment provisions, the contractor will receive written details of this deficiency. If additional clarification is required, the contractor must respond to the request within five (5) working days.

D. PROMPT PAYMENT, RETAINAGE AND RETENTION:

Contractor is referred to the General Terms and Conditions concerning Prompt Payment to Subcontractors and Prompt Payment of Withheld Funds to Subcontractors.

The Contractor shall incorporate the Prompt Payment Clause and Retention Clause, set forth above, in all subcontract, broker, dealer, vendor, supplier or PO or other source agreements issued to both DBE and Non-DBE firms. Contractor shall include a prompt payment and retention clause in all DBE and non-DBE subcontracts.

Enforcement: If LACMTA determines that the prime contractor has failed to (1) include prompt payment language verbatim, (2) promptly pay its subcontractors, or (3) promptly release Retainage, LACMTA shall give written notice to the Contractor and the Contractor's Surety that, if the default is not remedied within a specified period of time (at least 5 days), the contract may be terminated. The Contract may be terminated for cause in accordance with the Contract Article TERMINATION FOR DEFAULT. LACMTA shall also impose penalties and sanctions for non-compliance with the DBE Program as referenced in Section 800 and other requirements of State law.

E. PROMPT PAYMENT OF RETENTION:

Contractor shall promptly release retention to Subcontractors (Required in all DBE and non-DBE subcontract agreements verbatim):

With respect to retention that LACMTA withholds from the Contractor, LACMTA shall make prompt and regular incremental inspection(s) and upon approval of the Contractor's work at various stages of the Project, LACMTA shall pay a percentage of retention to the Contractor. The Contractor shall, within 7 days after LACMTA has made such payment, promptly pay all retention owed to Subcontractor(s) who has satisfactorily completed all of its work and whose work is covered by LACMTA inspection(s) and approval(s). For the purposes of this section, a subcontractor's work is satisfactorily completed when the Contractor certifies to LACMTA that all the tasks called for in the subcontract have been satisfactorily accomplished and that subcontractor's retention may now be paid. Any delay or postponement of prompt release of retention beyond the 7-day time limit shall be for good cause, and only upon prior written approval by LACMTA. (The above language is to be used verbatim, pursuant to federal regulations.)

F. FINAL REPORTING:

Contractor shall submit to LACMTA, along with invoice for final payment, a signed and notarized statement that the Contractor will pay all outstanding payments including retention 7 days after it receives final payment from LACMTA. Please see General Terms and Conditions concerning "Prompt Payment to Subcontractors and Prompt Payment of Withheld Funds to Subcontractors." The Contractor shall submit the final payment report in the reporting system within 14 calendar days of final payment.

G. FAILURE TO COMPLY:

If it is determined that the contractor is non-compliant with prompt payment provisions, the contractor will receive written details of this deficiency. If additional clarification is required, the contractor must respond to the request within five (5) working days. Failure to comply may result in the assessment of appropriate administrative sanctions and/or penalties.

1. Assessment for DBE Non-Compliance: If the Contractor fails to comply with the DBE Program requirements, contract payments shall be reduced by one or more of the following methods:

- a. A penalty of five thousand dollars (\$5,000) per day, from the date the Contractor is determined to be in non-compliance with the DBE Program requirements until compliance is determined.
 - b. Penalties of ten percent (10%) of the total contract value, including any approved change orders, for failure to meet DBE commitments or to demonstrate good faith efforts.
 - c. Penalties may be deducted from payments due the Contractor, from any funds retained.
2. Dispute Resolution: The Contractor must include in its DBE Subcontract Agreement(s) the Dispute Resolution provisions in Section 5.0 of the Contract Compliance Manual (Federal) for disputes arising out of or related to this contract between Contractor and any lower tier Subcontractors which cannot be settled by discussions between the parties involved. The Contractor and Subcontractor, in the event of a dispute to their contract, agree to proceed through informal meetings, mediation, or arbitration, or any combination thereof.
3. Equal Employment Opportunity (EEO) Policy Statement:
- a. Contractor shall submit a copy of its EEO Policy Statement. Each construction contractor is covered under Executive Order 11246, as amended if the contract amount exceeds \$10,000 and must submit a copy of its Equal Employment Opportunity (EEO) Policy. The EEO policy must also be included in the Contractor's subcontracts. The policy shall state that the contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices covering all provisions of this nondiscrimination clause.
 - b. The construction contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

SECTION 500 - RESOLUTION OF DISPUTES BETWEEN LACMTA CONTRACTOR AND SUBCONTRACTORS

500 INFORMAL MEETINGS

Disputes between the Contractor and any lower tier DBE subcontractors, which cannot be settled by discussions between the parties involved, shall be settled as described herein. Contractor shall notify LACMTA of such dispute within ten 10 days of failure to resolve through written cure notice process described above.

These provisions shall not apply to disputes between the Contractor and LACMTA. These provisions do not alter in any way or waive compliance with any provisions in Section GC36 "Submittal of Claims" included in the Contract Documents.

The Contractor and Subcontractors shall include the dispute resolution provision in their contract. Both parties shall agree to proceed through informal meetings, mediation, or arbitration, or any combination thereof. Dispute submittals shall include terms and timeframes and the service or assistance to be employed.

501 INFORMAL MEETINGS

The Diversity and Economic Opportunity Department will coordinate informal meeting requests, to assist in the resolution of disputes between Contractor and subcontractor. The assigned Diversity and Economic Opportunity Representative will conduct the informal meetings with parties in dispute. All parties must agree to the procedure.

502 MEDIATION

The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third party organizations. LACMTA's Diversity and Economic Opportunity Department is considered an independent third party. Submission to informal mediation is voluntary; is not binding and offers advisory opinions.

503 ARBITRATION

Should the parties fail to resolve any DBE related dispute arising out of or related to the contract via informal meetings or mediation, the parties are contractually obligated to submit the claims for arbitration within 120 days from date LACMTA is notified of dispute. Arbitration conducted pursuant to the contract shall be binding upon all parties to the arbitration. All arbitration is to be conducted in a manner consistent with section 1020 et seq. of the Public Contract Code and Section 1296 of Code of Civil Procedure.

Available mediation and arbitration services include:

The American Arbitration Association (213) 383-6516
Dispute Resolution Center (818) 793-7174

The Contractor shall incorporate this Section into each DBE subcontract related to work arising under this contract and shall not incorporate by reference.

Only when resolution of DBE disputes attempted through informal meetings, mediation, and/or arbitration has failed may the Contractor formally request substitution of a DBE subcontractor.

504 TIMELINESS

Should the parties proceed to arbitration, moneys due, if any, shall be placed in a trust account. Such funds shall be released to the appropriate party within five (5) working days of a determination being issued by the arbitrator.

NOTE: Arbitration findings are binding upon the parties. However, the findings do not in any way relieve the contractor of its obligation to meet the DBE goals.

SECTION 600 - ADDING OR SUBSTITUTING OR TERMINATING A DBE

Contractors shall obtain written approval from DEOD prior to adding, substituting, or terminating DBE subcontractors.

600 ADDING DBE SUBCONTRACTORS:

If contractors determine that there are additional opportunities for DBEs not originally listed, they may exercise good faith efforts by requesting to add DBE firm(s) to their contract. LACMTA shall authorize the addition of DBE subcontractor(s) for credit toward the contract commitment upon verification of certification. Prior to adding DBE subcontractors, written requests must be submitted to DEOD and Contract Administration for approval. This request must include the Request to Add DBE or Non-DBE Subcontractor form (reference Appendix B) specifying the scope of work, dollar amount, period of performance, and applicable North American Industry Classification System (NAICS) code(s), with a DBE certification letter attached.

The request to add a new certified firm to the contract is to be submitted to DEOD and approved prior to any commencement of work. In addition to the Request to Add DBE or Non-DBE Subcontractor form, the prime contractor request must include the following documentation:

- A. Written justification for adding additional firm(s) to contract team;
- B. Provide subcontract agreement for added firm(s) with dollar amount of scope of work, period of performance, and required flow down provisions;
- C. Provide certified letter evidencing certification status of firm(s) to be added;
- D. Documentation of prime contractor outreach efforts and selection process undertaken for the scope of work to be performed by the proposed added firm(s);
- E. Identify if the added firm(s) replacing another originally listed certified firm or is a result of reducing scope of work originally listed. (The prime contractor shall comply with substitution requirements when making changes to originally scope committed to another certified firm).

Enforcement: Failure by the contractor to comply with the “request to add requirements,” shall constitute a material breach of the contract and may result in termination of contract or imposition of administrative sanctions for non-compliance.

After formal approval by LACMTA, the contractor may add the subcontractor to the reporting system and must provide a copy of the Subcontract Agreement.

601 SUBSTITUTING OR TERMINATING DBE SUBCONTRACTORS:

Pursuant to 49 Code of Federal Regulations (CFR) Part 26 and the California Public Contract Code Section 4100, no contractor at any tier may terminate a DBE subcontractor for convenience and then perform that work with its own workforce or that of its affiliate. The contractor shall provide written request to DEOD to substitute a DBE subcontractor.

- A. LACMTA shall only authorize the substitution of a subcontractor for one or more of the following reasons:
1. The listed DBE, after having had a reasonable opportunity, fails or refuses to execute a written contract.
 2. The listed DBE becomes bankrupt or has credit unworthiness.
 3. The listed DBE fails or refuses to perform his subcontract with normal industry standard.
 4. The listed DBE subcontractor, after having had a reasonable opportunity, fails or refuses to meet the contractor’s non-discriminatory bond requirements.
 5. The prime contractor demonstrates to LACMTA, pursuant to Public Contract Code, Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.
 6. The listed subcontractor is not licensed pursuant to the Contractor’s License Law.
 7. It was determined that the work performed by the listed subcontractor is substantially unsatisfactory and is not in accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work
 8. The DBE is ineligible to work because of suspension and debarment.
 9. It has been determined that the DBE is not a responsible contractor.
 10. The DBE voluntarily withdraws, with written notification, from the contract.
 11. The DBE is ineligible to receive credit for the type of work required.
 12. The DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract.

13. Other documented compelling reasons.

- B. DEOD shall send written notice to the listed DBE subcontractor of the Contractor's request for substitution, including the reasons for the request. The DBE subcontractor shall have five (5) working days to submit written objections to the substitution to DEOD. Failure to respond to a written objection may constitute the listed DBE subcontractor's consent for substitution.
- C. If written objections are filed by a DBE subcontractor, LACMTA shall give written notification within at least five (5) working days, to the prime contractor and the listed subcontractor of an informal mediation regarding the request for substitution.
- D. Contractor(s) shall replace a DBE subcontractor with another DBE firm, after following dispute resolution procedures, pursuant to the provisions of the California Public Contracts Code.
- E. If no written objections are filed by the DBE subcontractor, the prime's request to substitute shall be approved. A new DBE listing shall include the commitment amount and the type of work covered by each Subcontractor. All substitutions and additions are subject to LACMTA's approval.
- F. If substitution with another DBE firm is not viable, the Contractor shall submit a written request for a substitution with a non-DBE. This request must include documentation of good faith efforts demonstrating the contractor's attempt to substitute the DBE firm with another DBE firm for LACMTA's review and approval.

The Contractor shall obtain the written consent prior to making any substitutions. If adding DBE firms for credit toward the goal, verification of certification is required prior to receiving credit toward the contract specific goal. DBEs must be certified at the time of the substitution or addition.

Failure to comply with this or any other DBE requirement may result in assessment of appropriate administrative sanctions.

SECTION 700 - GOAL ATTAINMENT DURING LIFE OF CONTRACT

- A. The Contractor shall not make any falsification of a Subcontract as to Subcontractor's name, Subcontract amount and/or actual work to be performed by DBE firms.
- B. The Contractor shall utilize DBEs according to the participation levels committed to at the time of contract award, and demonstrate an adequate and positive good faith effort to do so throughout the life of the contract.
- C. The dollar amount of Change Orders, contract modifications, or provisions sums for design, construction, O&M that increase or decrease the scope of work committed to DBEs shall be commensurately added to or subtracted from the total contract amount used to compute actual dollars paid to DBEs regardless of who performed the work.
- D. All contract amounts revised as a consequence of a Change Order, contract modification or provisional sums shall be reflected in the Contractor's monthly referenced herein in Diversity and Economic Opportunity Submittals, herein.

- E. All submittal forms, containing any contract value, revised as a consequence of a Change Order, contract modification, provisional sums shall be accompanied with copy of relevant support documentation.
- F. The Contractor shall submit the final DBE report within fourteen (14) calendar days of final payment, retention and acceptance of the contract work by LACMTA as prescribed in Section 3.6.
- G. Listed first-tier subcontractors shall enter into subcontract agreements with the Contractor within the specified time frame of fourteen (14) working days following NTP. Failure to execute subcontract agreements in a timely manner shall be considered a violation of the DBE Program requirements.
- H. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- I. When a DBE performs in a joint venture, only the percentage of the DBE joint venture is eligible for credit. Work must be performed by the DBE's own work forces.
- J. Failure to adhere to any of the requirements of this Section shall constitute a breach of contract and may result in LACMTA's terminating the contract for default and/or imposing appropriate sanctions as outlined in the section Remedies for Breach of DBE Requirements.

SECTION 800 - SANCTIONS FOR VIOLATIONS

A. Failure to Comply

1. Failure to adhere to any of the DBE Program requirements shall constitute a breach of contract and may result in LACMTA terminating the contract for default and/or imposition of appropriate sanctions as outlined in this section.
2. Staff shall review the contractor's monthly progress reports to determine whether the utilization of DBE firms is consistent with the contractor's commitment at the time of contract award.
3. Failure to utilize a DBE as listed toward the goal is a breach of contract and may result in the imposition of administrative sanction.
4. If it is determined that the Contractor's DBE utilization is not consistent with the commitment, the contractor shall be required to submit written evidence of its good faith efforts (GFE) within ten (10) working days. For failure to respond, the contractor will be deemed non-compliant and subject to administrative sanctions.
5. If it is determined that the contractor's good faith efforts documentation is acceptable, the contractor shall be deemed to be in compliance with the requirements of the DBE program.

6. If it is determined that the contractor's good faith efforts documentation is not acceptable, the contractor will receive written details of any deficiencies. If additional clarification is required, the contractor must respond to the request within five (5) working days. Failure to comply may result in the assessment of appropriate administrative sanctions and/or penalties.
7. If it is determined that the contractor is in non-compliance with prompt payment provisions, the contractor will receive written details of this deficiency. If additional clarification is required, the contractor must respond to the request within five (5) working days. Failure to comply may result in the assessment of appropriate administrative sanctions and/or penalties.

B. Remedies for Breach of DBE Requirements

Contractor(s) found in violation of LACMTA's DBE program requirements, during the performance of the contract, shall be required to "correct" its deficiency or be subject to the Administrative Sanctions listed in this Section. Being subject to appropriate administrative remedies or sanctions does not preclude LACMTA from invoking other contract and/or legal remedies available under federal, state or local law

C. Appropriate Administrative Remedies

Appropriate administrative remedies will be imposed on Contractors deemed non-compliant to the DBE Program requirements. Contractors' failure to provide documentation of good faith efforts, as requested, will also be subject to appropriate administrative remedies. Contractor notifications shall be made by certified mail.

The appropriate administrative remedies shall include, but is not limited to the following:

1. Mandatory DBE Training Session(s) for Contractor(s) found in violation of DBE program requirements (DBE Training will be coordinated by DEOD, and all associated expenses, including, but not limited to, travel, lodging, meals and etc., will be the responsibility of the Contractor.)
2. Penalties as described in the, "Assessment for DBE Non-Compliance," (referenced in Sub-Section D)
3. Suspension of payment(s) to the Contractor by LACMTA
4. Termination of the Contract for default.
5. Debarment (29 CFR 5.6).

D. Assessment for DBE Non-Compliance

If the Contractor fails to comply with the DBE Program requirements, contract payments shall be reduced by one or more of the following methods:

1. A penalty of five thousand dollars (\$5,000) per day, from the date the Contractor is determined to be in non-compliance with the DBE Program requirements until compliance is determined.

2. Penalties of ten percent (10%) of the total contract value, including any approved change orders, for failure to meet DBE commitments or to demonstrate good faith efforts.
3. Penalties may be deducted from payments due the Contractor, from any funds retained.

E. Appeal of Sanction Determination

The Contractor shall be given ten (10) working days from the date of the notice to file a written appeal with the Director of Diversity and Economic Opportunity or his/her designee. Failure to respond within the ten (10) day period shall constitute a waiver of the Contractor's right to appeal. If the Contractor files an appeal, the Director of Diversity and Economic Opportunity, or his/her designee, shall issue a written recommendation within ten (10) working days of receipt of the written appeal.

If, after review of the Contractor's appeal, the Director of Diversity and Economic Opportunity or his/her designee decides to uphold the decision to impose administrative sanctions on the Contractor, the written recommendation shall state the specific sanction(s) to be imposed and inform the Contractor of its right to a hearing on the merits.

F. Contractor's Right to a Hearing

After receipt of the notice of administrative sanction, The Contractor shall be given ten (10) working days from the date of the written recommendation to file a written request for a hearing. Failure to respond within the ten (10) day period shall constitute a waiver of the Contractor's right to a hearing.

The Director of Diversity and Economic Opportunity Department, shall issue a written final determination within five (5) working days of the hearing. There shall be no right of appeal to the final decision.

APPENDIX A – DEFINITIONS

Change Order (CO): A written order by LACMTA's Contracting Officer directing Changed Work.

Changed Work (or Change): Changed Work is directed by LACMTA by a Change Order or is agreed to by the parties in an amendment or modification. Changed work includes work that does not involve an adjustment in the contract price and/or contract time; does not include work performed or time spent by contractor to correct any deficiency, additions, deletions or other revisions to the work within the general scope of the contract.

Commercially Useful Function: work performed by a DBE firm in a particular transaction that in light of industry practices and other relevant considerations, has a necessary and useful role and the firm's role is not a superfluous step added in an attempt to obtain credit toward goals. If, in LACMTA's judgment, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded.

Contractor: The individual, firm, partnership, corporation, joint venture, or combination thereof, which may also be referred to by the term "it", that has entered into the contract with LACMTA. Includes contractors, successors, employees, officers, contractors' representatives, and agents. Context may also include subcontractors, suppliers and any other persons for whom the contractor may be legally or contractually responsible.

Contracting Opportunity: Any decision by LACMTA or its contractors to institute a procurement action to obtain a product or service commercially (as opposed to intergovernmental actions).

Department: Functional unit of LACMTA responsible for management and administration of specific projects included within the capital and operating budget.

Directory of Certified Firms: List of Certified Firms used by LACMTA and its contractors to identify potential DBE subcontractors and suppliers.

Disadvantaged Business Enterprise (DBE):

A for-profit small business, owned and controlled by socially and economically disadvantaged individuals, as defined in 49 CFR, Part 26.

- A. At least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals
- B. Appropriate to the type of work the DBE seeks to perform in DOT-assisted contracts and has average annual gross receipts as defined by SBA regulations found at 13 CFR 121.402 over the previous three years, and does not exceed \$21.4 million
- C. Personal net worth does not exceed \$1.32 million
- D. An independent business whose management and daily operations are controlled by one or more of the socially and economically disadvantaged individuals who own it

DOT Assisted Contract: Any contract or modification of a contract between LACMTA and a contractor which is paid for in whole or in part with DOT financial assistance.

FHWA: Federal Highway Administration, an operating administration, of the U.S. Department of Transportation

FTA: Federal Transit Administration, an operating administration, of the U.S. Department of Transportation.

LACMTA: The Los Angeles County Metropolitan Transportation Authority

Manufacturer: Means a business that operates, or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.

Metro Rail Project: The design, engineering and construction of the high-capacity, high-speed conventional rapid rail system, currently proposed as an 18 mile subway system with multi-car trains, steel rails and at least 16 stations serving the Los Angeles' Regional Core.

Non-Compliance: The condition existing when a contractor has failed to implement or meet the requirements of 49 CFR 26, as amended or LACMTA policy or procedure pertaining to DBE participation.

Payroll Form: The State of California WH 347 Dept. of Transportation form for completing the Contractor employee's number of hours worked, hourly rate of pay, employee's classification, name, SSN, address, and fringe benefits paid, etc.

Pre-Bid/Construction Conference: A meeting held by LACMTA after award of contract on a particular construction project, but prior to the beginning of any work, at which the prime contractor is advised of its federal compliance obligations and any final technical requirements.

Pre-Bid/Proposal Conference: A meeting held by LACMTA prior to the bid/proposal closing date of a particular project, at which prospective bidders/proposers are advised of LACMTA specification requirements which include DBE provisions.

Professional/Technical Services Contract: Contracts for the professional and technical services of accountants, architects, engineers, landscape architects, lawyers, planners, surveyors, companies, urban designers, appraisers, option negotiators, and other persons performing similar services for LACMTA.

Public Works Contract: Contracts for the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Secretary: The Secretary of U.S. Department of Transportation or any person whom he/she has designated to act for him/her.

Small Business Diversity Section: The staff that oversees and monitors labor standards activities for applicability to the State of California Labor Code and, where applicable, of the California code of Regulations.

State: State of California.

Statement of Compliance: The statement on the back of Payroll Form WH 347, whereby the Contractor declares how the fringes are paid whether by cash or through a bona fide fringe program.

Subcontract: Any contract, including contracts of any tier, to furnish Work, Goods or Equipment between the Contractor and/or any Subcontractor or Supplier.

Subcontractor: Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor that enters into a legal agreement with the Contractor or any Subcontractor to furnish Work, Construction Equipment or Goods. Unless otherwise specified, Subcontractor includes a Subcontractor of any tier.

U.S. Department of Transportation Regulation (49 CFR Part 26): Federal rules and regulations published in the Federal Register dated February 2, 1999; as amended by the Department of Transportation, Office of the Secretary; "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," and codified at 49, Code of Federal Regulations, Part 26.

Wages: The basic hourly rate of pay, any contribution made pursuant to, or cost anticipated to provide, a bona fide fringe benefit plan, fund or program.

APPENDIX B - DBE FORMS

REQUEST TO ADD DBE OR NON-DBE SUBCONTRACTOR

Project Name: _____ **Contract No.** _____

Prime Contractor: _____

Contractor herewith requests that _____, a ___ Disadvantaged Business Enterprise (DBE)* or ___ Non-DBE, subcontracted to _____, be added to the approved list of subcontractors on this project in accordance with our approved subcontracting plan.

*If the proposed subcontractor is a DBE, Contractor must attach a DBE certification letter to this form.

Description of Work (Specify Subcontractor's Portion of Work): Design ☐ Construction ☐

Expected Start Date: _____ Expected End Date: _____

NAICS Codes/ Description (List only those codes that are applicable):

Code(s)	Description:

Name of Proposed Firm: _____

Address: _____ **City** _____ **State** _____ **Zip** _____

Email _____ **Telephone** _____

Contact Person _____ **Title** _____

Public Work Contractor Registration # _____

☐ Copy of Public Works Registration Attached

☐ Copy of Certification Regarding Debarment, Suspension and Other Responsibility Matters Attached

California Contractors State License # _____

If the Work/Services require DIR Registration, per California Labor Code §1725.5, complete below:

a. DIR Registration No.: _____

b. DIR Registration Date: _____

Subcontractor Counting and Calculating DBE Credit:

- ☐ As Subcontractor ☐ As Joint Venture ☐ As Supplier (60% for DBE Credit)
☐ Trucking (Owner Operator) ☐ As Broker (DBE credit for fees/commissions only)

Subcontract Amount \$ _____ Amount Claimed as DBE Commitment: \$ _____

Contract Type (for proposed subcontractor):

- ☐ Time & Material (Not to Exceed) ☐ Contract Term: _____ through _____
☐ Lump Sum / Firm Fixed Price / Unit Price

Solicitation Process: This subcontractor was selected using the following process:

Competitive Selection:

- ☐ 3 Quotes (Best Value) ☐ Advertisement – Negotiated (Best Value)
☐ Advertisement – Low Bid ☐ Other _____

Subcontractor	DBE	Bid or Proposal Amount
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Non-Competitive:

- ☐ Sole Source Award ☐ Other _____

Justification for selection: _____

Has this subcontractor teamed with any other subcontractors on this Contract? ☐ Yes ☐ No

List all lower tier subcontractors that this subcontractor has teamed with on this contract and provide a separate Request to Add DBE or Non-DBE Subcontractor form for each.

Subcontractor	DBE	Scope of Work
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	

