

Lompoc City Council Agenda Item



City Council Meeting Date: June 1, 2010

TO: *Laurel M. Barcelona, City Administrator*

FROM: *Craig Dierling, Civil Engineering Associate III
c_dierling@ci.lompoc.ca.us*

SUBJECT: ***ADOPTION OF REVISED DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM ANNUAL ANTICIPATED DBE PARTICIPATION LEVEL (AADPL) AND CALCULATION METHODOLOGY FOR FEDERAL FISCAL YEAR (FFY) 2010/2011***

RECOMMENDATION:

The City Council take the following actions:

1. Hold a Public Hearing and take public input on the FFY 2010-2011 AADPL and Calculation Methodology.
2. Make any necessary changes to Resolution No. 5639(10) and to the FFY 2010-2011 AADPL and Calculation Methodology.
3. Adopt Resolution No. 5639(10), adopting a revised "Exhibit 9-B Local Agency DBE Annual Submittal Form," and "Revised Disadvantaged Business Enterprise (DBE) Program Annual Anticipated DBE Participation Level (AADPL) and Calculation Methodology for Federal Fiscal Year (FFY) 2010/2011," dated June 1, 2010; and authorizing the City Administrator to execute the above-mentioned documents, and to provide for implementation of their provisions.

BACKGROUND:

A DBE Program is designed to assist small businesses, which are at least 51% owned and controlled by socially and economically disadvantaged individuals. Those individuals must be citizens of the United States and be; Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Women, or any other minorities or individuals found to be disadvantaged by the United States Small Business Administration.

On May 19, 2009, the City Council approved Resolution No. 5552(09), "Adoption of Revised Disadvantaged Business Enterprise (DBE) Program." The DBE Program was implemented to comply with new State requirements, and was needed to allow the City to continue to receive United States Department of Transportation (DOT) funding for public transportation projects.

State regulations require the Annual Anticipated DBE Participation Level (AADPL) value

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and calculation methodology be updated and submitted to the California Department of Transportation (Caltrans) annually for the following Federal Fiscal Year. City staff revised the overall AADPL, calculation methodology, and breakdown of estimated Race-Neutral and Race-Conscious portions of the AADPL, in accordance with Title 49 of the U.S. Code of Federal Regulations, Part 26, and with the latest direction from Caltrans. The resulting overall AADPL for FFY 2010/2011 determined by staff is 7.0%, with a projected 2.0% Race-Neutral portion, and 5.0% Race-Conscious portion. The adopted FFY 10/11 AADPL will be in effect from October 1, 2010, through September 30, 2011.

Attachment No. 1 to Resolution No. 5639(10) (Exhibit 9-B) is the form that Caltrans requires local agencies to submit annually to report the AADPL and various other information pertaining to the local agency's DBE Program. Federal regulations require agencies meet the maximum feasible portion of their "overall goal" (AADPL) by using race-neutral means of facilitating DBE participation. Race-Neutral means of facilitating DBE participation includes measures that help enable all small businesses to participate, not specifically seeking participation because of DBE status. The City's "Planned Race-Neutral Measures" are listed on Exhibit 9-B.

Attachment No. 2 to Resolution No. 5639(10) (AADPL Calculation Methodology) explains the way in which City staff followed Federal and State direction to calculate and adjust an overall AADPL, and the Race-Neutral and Race-Conscious portions of the AADPL. The AADPL values were adjusted based on recent data on the volume of DOT-funded City project work that DBEs have performed in recent years as well as the percentage of DBE bidders on these projects. The AADPL values were also adjusted based on the types of work reported to be performed by currently certified DBEs located in the City's market area in consideration of the anticipated DOT-funded City project work for FFY 10/11. While the City has some evidence of Race-Neutral DBE participation in recent DOT-funded City projects, this evidence is limited, and the participation levels are not consistent through multiple Federal Fiscal Years. Given the inconsistent and relatively low DBE participation levels in most of the recent DOT-funded City projects, the need to follow various federal and state requirements in establishing an AADPL, and the intent to not impose un-due burdens on non-DBEs; downward adjustments were made to the initially calculated AADPL base figures, in order to arrive at the values presented above. Additional explanation of the calculations, past DBE participation data, and discussion of the AADPL adjustments made are included in Attachment No. 2 to Resolution No. 5639(10).

FISCAL IMPACT:

Adequate funding for public projects is difficult to secure; therefore, the Public Works Department plans to rely heavily on federal funds to augment scarce local funds. The City constructed one federal stimulus (ARRA) funded project during the FFY 08-09, and plans to construct multiple federally funded projects during this summer of 2010, and again during the summer of 2011 representing over \$4 million of federally funded construction work.

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SUMMARY:

The City of Lompoc proposes to follow federal and state regulations and policies in implementing and updating its Disadvantaged Business Enterprise program, which will allow the City to receive substantial federal funding for public works projects. The adoption of Resolution No. 5639(10) enables the City to accomplish those objectives.

Craig Dierling, P.E.
Civil Engineering Associate III

Attachment: Resolution No. 5639(10) and Attachments 1 and 2 to Resolution

APPROVED FOR SUBMITTAL TO THE CITY ADMINISTRATOR:

Larry A. Bean, P.E., Public Works Director

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

Laurel M. Barcelona, City Administrator

RESOLUTION NO. 5639(10)

**A Resolution Of The Council Of The City Of Lompoc,
County Of Santa Barbara, State Of California,
Adopting A Revised Disadvantaged Business Enterprise (DBE) Program
Annual Anticipated DBE Participation Level (AADPL) And Calculation Methodology for
Federal Fiscal Year (FFY) 2010/2011**

WHEREAS, the City will benefit by making use of available United States Department of Transportation (DOT) funds; and

WHEREAS, when utilizing DOT funds, the City must comply with Title 49, Part 26, of the Code of Federal Regulations (CFR), entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"; and

WHEREAS, the Federal Regulation includes requirements that recipients of DOT funds adopt a Disadvantaged Business Enterprise (DBE) Program; and

WHEREAS, State policy requires that the City will administer its Federal-Aid Projects; and

WHEREAS, the City previously adopted a DBE Program for Federal-Aid Projects by Resolution No. 5552(09); and

WHEREAS, the DBE Program AADPL and calculation methodology requires annual revision to comply with State regulations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOMPOC, STATE OF CALIFORNIA, DOES HEREBY RESOLVE, AS FOLLOWS:

SECTION 1. Attachment 1, "Exhibit 9-B Local Agency DBE Annual Submittal Form," and Attachment 2, "Revised Disadvantaged Business Enterprise (DBE) Program Annual Anticipated DBE Participation Level (AADPL) and Calculation Methodology for Federal Fiscal Year (FFY) 2010/2011," dated June 1, 2010, are hereby adopted.

SECTION 2. The City Administrator is directed to execute Attachments 1 and 2, and to provide for implementation of their provisions.

The above and foregoing Resolution was proposed by Councilmember _____, seconded by Councilmember _____, and was duly passed and adopted by the Council of the City of Lompoc at its regular meeting on June 1, 2010, by the following electronic vote:

AYES: Councilmember(s):

NOES: Councilmember(s):

ABSENT: Councilmember(s):

Michael A. Siminski, Mayor
City of Lompoc

ATTEST:

Donna N. Terrones, CMC, City Clerk
City of Lompoc

Attachments: Attachment 1 Exhibit 9-B Local Agency DBE Annual Submittal Form
Attachment 2 Revised Disadvantaged Business Enterprise (DBE) Program Annual Anticipated DBE Participation Level (AADPL) and Calculation Methodology for Federal Fiscal Year (FFY) 2010/2011, dated June 1, 2010

Exhibit 9-B Local Agency DBE Annual Submittal Form

TO: Garin Schneider, District Local Assistance Engineer
CALTRANS DISTRICT 05
50 Higuera Street
San Luis Obispo, CA 93401-54145

The amount of the Annual Anticipated DBE Participation Level (AADPL) and methodology are presented herein, in accordance with Title 49 of the Code of Federal Regulations (CFR), Part 26, and the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan.

The City/County/Region of Lompoc, submits our AADPL information. We have established an AADPL of 7 % (2% Race Neutral; 5 % Race Conscious) for the Federal Fiscal Year 2010 / 2011, beginning on October 1, 2010 and ending on September 30, 2011.

Methodology

Please refer to the enclosed Attachment 2 to City Resolution 5639(10) for AADPL Calculation Methodology and supporting information.

Disadvantaged Business Enterprise Liaison Officer (DBELO)

Craig Dierling, 100 Civic Center Plaza, Lompoc, CA 93436, (805) 875-8224 (phone), (805) 875-8329 (fax), c_dierling@ci.lompoc.ca.us

Planned Race-Neutral Measures

1. *Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses participation.* The City plans to continue utilizing this race-neutral measure in the course of advertising and administering most of its typical DOT assisted public works contracts, which are advertised and administered in ways which facilitate DBE and other small business participation. These contracts typically range in value from \$250,000 to \$1,500,000, which, compared to many state projects, have a relatively small dollar value, and are in a range in which several local DBE firms have participated in recent years both as prime and sub-contractors.
2. *Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.* The City plans to continue utilizing this measure first through providing the internet link to the Caltrans DBE search database in each DOT assisted project specification advertised, and at all times on the City website page which posts public works bid opportunities. Additionally, the City plans to provide assistance as necessary to both DBE and non-DBE firms in order to help them obtain or review a DBE directory for the City's market area.
3. The City also plans to continue posting the internet link to the California Construction Contracting Program on the City's website page for posting public works bid opportunities. The California Construction Contracting Program offers free training and counseling to California small businesses in order to enhance their ability to bid for and win state highway construction contracts. These training and counseling opportunities include construction management, business management, construction law, accounting, bonding, marketing, and other topics; and are applicable to work on the City's DOT assisted projects as well as to Caltrans projects.

Prompt Pay

Federal regulation (49 CFR 26.29) requires one of three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage, kept by the prime contractor or subcontractor, to a subcontractor. (Attached is a listing of the three methods. On the attachment, please designate which prompt payment provision the local agency will use.)

49 CFR Part 26.29(d) requires providing appropriate means to enforce prompt payment. These means may include appropriate penalties for failure to comply with the terms and conditions of the contract. The means may also provide that any delay or postponement of payment among the parties may take place only for good cause, with the local agency's prior written approval. Please briefly describe the monitoring and enforcement mechanisms in place to ensure that all subcontractors, including DBEs, are promptly paid.

(Signature)

Date

Laurel M. Barcelona, City Administrator
(Print Name and Title)
ADMINISTERING AGENCY
(Authorized Governing Body Representative)

(805) 875-8203
Phone Number

(Signature of Caltrans District Local Assistance Engineer [DLAE])

Date

(Attachment)

Prompt Payment of Withheld Funds to Subcontractors

Federal regulation (49 CFR 26.29) requires one of the following three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

Please check the box of the method chosen by the local agency to ensure prompt and full payment of any retainage.

- Method 1:** No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- Method 2:** No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- Method 3:** The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Attachment No. 2 to Resolution 5639(10)

June 1, 2010

Garin Schneider
District Local Assistance Engineer
CALTRANS DISTRICT 5
50 Higuera Street
San Luis Obispo, CA 93401-5415

Subject: **Revised Disadvantaged Business Enterprise (DBE) Program Annual Anticipated DBE Participation Level (AADPL) and Calculation Methodology for Federal Fiscal Year (FFY) 2010/2011**

The amount of overall AADPL, methodology, breakdown of projected Race-Neutral (RN) and Race-Conscious (RC) portions of the AADPL, and any DBE program updates, are presented herein in accordance with Title 49 of the Code of Federal Regulations Part 26, and as described in the latest direction from the California Department of Transportation (Caltrans) included in the Local Assistance Procedures Manual (LAPM) and other applicable direction from Caltrans.

The City of Lompoc submits our AADPL information (and any needed updates of our DBE program) for your review and comment. We propose an AADPL of **7.0%** for FFY 2010/2011, beginning on October 1, 2010, and ending on September 30, 2011.

Methodology

To calculate the AADPL base value, the City of Lompoc followed the calculation procedure set forth in the LAPM Exhibit 9-D, revised July 31, 2009. The City then examined available evidence to determine what adjustment was necessary to arrive at the overall AADPL.

To determine a base figure for the relative availability of DBE's in the Lompoc market area that are ready, willing, and able to participate on US DOT (DOT) funded contracts, several sources of information were consulted. City staff reviewed Caltrans' continuously updated DBE Directory for Santa Barbara, San Luis Obispo, and Ventura Counties. A total of 12 DBE firm listings, as shown in *Appendix A*, were found to be both located in the Lompoc market area, and listed to perform work within the North American Industry Classification System (NAICS) codes corresponding to the types of work the City anticipates performing with DOT funds during FFY 2010-2011.

The City then used the U.S. Census Bureau's County Business Pattern (CBP) database, which was last updated with 2007 data, to obtain the number of all ready, willing, and able businesses located in the Lompoc market area (SLO, SB, and Ventura Counties) that

perform work in the same NAICS codes. This search reported a total of 480 businesses within all applicable codes, as shown in *Appendix B*.

AADPL Calculation

The base AADPL was calculated by dividing the number of DBEs in the Lompoc market area by the number of all businesses in the Lompoc market area for each NAICS work code, then multiplying each resulting quotient by the percentage of the total DOT-funded City work that the particular NAICS code is estimated to represent for FFY 10/11, then adding each resulting product to sum to the base AADPL. Expressed in formula format, the calculation appears as follows:

$$\left[\frac{\text{DBEs in code \#}}{\text{All Bus in code \#}} \times \% \text{ work in code \#} \right] + \left[\frac{\text{DBEs in code \#\#}}{\text{All Bus in code \#\#}} \times \% \text{ work in code \#\#} \right]$$

= Overall Base AADPL (expressed as a percentage)

Inserting the numbers obtained for the City of Lompoc's projected FFY 10/11 DOT-funded project work results in the following formula values:

$$\left[\frac{10}{51} \times (73.33\% \text{ in } 237310) + \frac{2}{429} \times (26.67\% \text{ in } 238210) \right] \times 100$$

= 14.5%

The Race-Conscious (RC) portion of the AADPL was calculated in the same manner, except that only Under-Utilized DBEs (UDBEs) were included in the numerators of the calculation, rather than including all DBEs, as in the above calculation. UDBEs are defined in the City's current Disadvantaged Business Enterprise Implementation Agreement for Local Agencies as "...these certified DBEs that are owned and controlled by African Americans, Native Americans, Women, and Asian Pacific Americans." The RC portion of the AADPL calculation values were as follows:

$$\left[\frac{5}{51} \times (73.33\% \text{ in } 237310) + \frac{1}{429} \times (26.67\% \text{ in } 238210) \right] \times 100$$

= 7.25%, round to 7%

AADPL Adjustment

After establishing the 14.5% overall AADPL base figure, and the 7% RC portion of the overall AADPL base figure, the City of Lompoc searched for other evidence to determine what adjustments were needed to narrowly tailor the base figure to the Lompoc market area. The following evidence was considered:

1. The current capacity of DBEs to perform work in the City's DOT-assisted (funded by

- US DOT) contracting program, as measured by the volume of work DBEs have performed on DOT-assisted City projects in recent years;
2. The current interest of DBEs in performing work on the City’s DOT-assisted projects, as measured by the reported number of DBEs providing bids and quotes for the City’s DOT-assisted projects in recent years compared with the total number of reported bids and quotes from all businesses, and compared to an adjusted total number of bids and quotes in order to account for those received by prime contracting bidders, but not reported with their bid to the City;
 3. The current detailed work codes (such as C1910 Grading, C3901 Asphalt Concrete, etc.) within the general NAICS codes used above, reported to be performed by each certified DBE in the Lompoc market area, relative to the types of work anticipated to be performed with DOT funds on City projects in FFY 10/11.

The right-most column of Table 1 below shows the City’s data related to the current capacity of DBEs to perform work on the City’s DOT funded projects, reported as the percentage of the DOT dollars of work performed by DBEs divided by the total DOT dollars of work performed for each recent DOT-assisted project for which the City has data. Additionally shown in Table 1 is the DBE percentage of the adjusted number of total bidders on DOT funded projects for each federal fiscal year. The adjusted total number of bidders was determined assuming that approximately three bids/quotes were received by each prime-contracting bidder for each bid/quote reported.

Table 1
Participation of DBEs in Recent DOT-funded City Projects

FFY	City Project Number	DBE % of Adj. Total Bidders	# and type of bidder (prime or sub) for DBEs Used in Work	% of Adj. Total bidders who were DBEs used in work	AADPL used for FFY	RC Goal used for Project	% Work Completed by DBEs of Total DOT-funded Work
01-02	98-S-5	5.1%	2-sub	2.6%	5.0%	13.0%	3.5%
01-02	98-AP-1	5.7%	1-sub	0.5%	5.0%	5.0%	2.9%
02-03	99-S-4A	8.3%	1-prime	2.1%	5.0%	5.0%	41.1%
02-03	01-T-1	15.2%	0	0%	5.0%	5.0%	0%
03-04	-	-	-	-	7.0%	-	-
04-05	-	-	-	-	7.0%	-	-
05-06	05-AP-1	7.4%	0	0%	7.0%	7.0%	0%
06-07	-	-	-	-	7.0%	-	-
07-08	01-S-7A	3.3%	0	0%	7.0%	NA	0%
08-09	09-S-1	9.1%	1-sub	1.5%	6.5%	6.0%	3.1%

As shown in Table 1 above, the highest actual DBE participation level of DBE subcontractors in a DOT-funded City project in recent years was 3.5%. The DBE

participation level was much higher for project number 99-S-4A since a DBE prime contractor was the low bidder, and performed approximately 41% of the project work with its own forces, but did not use any additional DBE subcontractors. Given the range of recent City AADPL values used, and the range of RC Goals used on recent DOT-funded City projects, compared to the actual participation level of DBE subcontractors, the data suggests that the AADPL values and RC Goals used have been substantially above the capacity of DBE subcontractors to perform work on these projects. Since AADPL values and RC Goals for specific projects do not directly help enable DBE prime contractors to win low-bid contracts, and since recent data suggests that past AADPL values and RC Goals have been above the capacity of DBE subcontractors to perform work on these projects, the City believes that current AADPL and RC Goal values should not exceed the values which the City commonly used in prior recent years.

Based on the evidence of DBE interest expressed by bidding/quoting on recent DOT-funded projects, and on current detailed work codes reported to be performed by each currently certified DBE in the Lompoc market area compared with the DOT-funded project work anticipated to be performed in FFY 10-11, the City again believes that current AADPL and RC Goal values should not exceed the values which the City commonly used in prior recent years.

After reviewing the evidence discussed above, and considering the intents and requirements of the DBE program, including to help remove barriers to DBE participation, to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts, to meet the maximum feasible portion of the overall AADPL by using Race-Neutral means of facilitating DBE participation, to establish contract goals to meet any portion of your overall AADPL you do not project being able to meet using Race-Neutral means, and to not impose undue burdens on non-DBEs, the City proposes an overall AADPL of **7.0%**, and a RC portion of the AADPL of **5.0%** for FFY 2010/2011.

Federal Aid Projects Anticipated for the 2010/2011 DBE Program

Construction: The City anticipates the following DOT-funded projects will begin construction during FFY 2010/2011:

1. 09-S-3 SRTS Sidewalk Infill Project
2. 07-S-2 U Street Pedestrian Bridge
3. 10-S-1 Hwy 246/R St Traffic Signal

Design: No DOT-funded design consulting contracts are anticipated to begin in FFY 2010/2011.

**Disadvantaged Business Enterprise (DBE) Search Results Per NAICS
 Code in the Lompoc Market Area Using Caltrans DBE Directory**
 Market Area: San Luis Obispo, Santa Barbara, Ventura Counties

237310 - Highway, Street, and Bridge Construction						
	Firm ID	City	County	Ethnicity	Gender	UDBE
1	30815	Santa Maria	Santa Barbara	Hispanic	M	
2	24244	Santa Maria	Santa Barbara	Asian Pacific	M	UDBE
3	33939	Simi Valley	Ventura	Hispanic	M	
4	38088	Atascadero	San Luis Obispo	Hispanic	M	
5	651	Simi Valley	Ventura	Hispanic	M	
6	20528	Santa Maria	Santa Barbara	Hispanic	F	UDBE
7	23251	Fillmore	Ventura	Caucasian	F	UDBE
8	34994	San Luis Obispo	San Luis Obispo	Hispanic	F	UDBE
9	34433	Oxnard	Ventura	Hispanic	M	
10	37911	Morro Bay	San Luis Obispo	Black	M	UDBE

Total DBE Firms Located in Market Area = 10

238210 - Electrical Contractors						
	Firm ID	City	County	Ethnicity	Gender	UDBE
1	33939	Simi Valley	Ventura	Hispanic	M	
2	36052	Ventura	Ventura	Hispanic	F	UDBE
Total DBE Firms Located in Market Area = 2						

2007 (Latest Available) County Business Pattern Search Results for the Lompoc Market Area Per NAICS Code

County	NAICS Work Code	
	Hwy, St, Bridge Construction 237310	Electrical Contractors 238210
San Luis Obispo County	17	74
Santa Barbara County	7	109
Ventura County	27	246
Total	51	429

Source: <http://censtats.census.gov/cbpnaic/cbpnaic.shtml>