

DEPARTMENT: Public Works

By: James J. Petropulos

Phone: 966-5356

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes ___ No X)

Resolution to review and adopt the draft Disadvantaged Business Enterprise (DBE) Plan for submittal to Caltrans for final review.

Caltrans requires the draft DBE Plan be submitted for review in October 2000. After Caltrans' review, the draft will be returned to Public Works with comments and changes. The final draft with Caltrans' comments will be resubmitted for final adoption by the Board of Supervisors prior to December 31, 2000.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The DBE Plan is a federal requirement administered by Caltrans for transportation projects utilizing federal funds. The Plan set a 10% goal for Disadvantaged Business Enterprise involvement on any federal-funded projects.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Negative action would result in the potential inability to use federal funds for transportation projects.

<p>COSTS: <input checked="" type="checkbox"/> Not Applicable</p> <p>A. Budgeted current FY> \$ _____</p> <p>B. Total anticipated Costs> \$ _____</p> <p>C. Required additional funding> \$ _____</p> <p>D. Internal transfers> \$ _____</p> <p>SOURCE: () 4/5th Vote Required</p> <p>A. Unanticipated revenues> \$ _____</p> <p>B. Reserve for contingencies> \$ _____</p> <p>C. Source description: > _____</p> <p>Balance in Reserve Contingencies, If Approved: \$ _____</p>	<p>SPECIAL INSTRUCTIONS: List the attachments and number the pages consecutively:</p> <p><u>1. Draft DBE Plan (11 pgs)</u></p> <p><u>2. Organization Chart (1 pg)</u></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
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CLERK'S USE ONLY

Res. No.: 00-313 Ord. No.: _____

Vote - Ayes: 4 Noes: Richard

Absent: _____ Abstained: _____

Approved Denied

Minute Order Attached No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office

Date: _____

ATTEST: _____

MARGIE WILLIAMS, Clerk of the Board

By: _____

Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:

This item on agenda as:

Recommended

Not Recommended

For Policy Determination

Submitted with Comment

Returned for Further Action

Comment: _____

C.A.O. Initials: MM

DISADVANTAGED BUSINESS ENTERPRISE PLAN

Definitions of Terms

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

Objectives/Policy Statement (§§26.1, 26.23)

The Mariposa County Department of Public Works Joint Powers has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Mariposa County Department of Public Works has received Federal financial assistance from the Federal Highway Administration (FHWA), and as a condition of receiving this assistance, the Mariposa County Department of Public Works will sign an assurance as part of the program supplement agreement that it will comply with 49 CFR Part 26 for each project.

It is the policy of the Mariposa County Department of Public Works to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in FHWA-assisted contracts. It is also our policy –

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

The Director of the Mariposa County Department of Public Works has been delegated as the DBE Liaison Officer. In that capacity, the Director is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Mariposa County Department of Public Works in its financial assistance agreements with the California Department of Transportation (Caltrans).

The Mariposa County Department of Public Works has distributed this statement to DBE and non-DBE business communities that perform work for us on FHWA-assisted contracts by publishing this statement in general circulation, minority-focused and trade association publications.

8. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.

Federal Financial Assistance Agreement Assurance (§26.13)

The Executive Director has signed a Federal Financial Assistance Agreement Assurance. (Attached)

DBE Financial Institutions

It is the policy of the Mariposa County Department of Public Works to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on FHWA-assisted contracts to make use of these institutions.

Directory (§26.31)

Mariposa County Department of Public Works will refer interested persons to the DBE directory available from Caltrans' Business Enterprise Program website at www.dot.ca.gov/hq/bep.

Required Contract Clauses (§§26.13, 26.29)

Contract Assurance

We will ensure that the following clause is placed in every FHWA-assisted contract and subcontract:

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 FHWA 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 local agency recipient deems appropriate.

Prompt Payment

We will include the following clause or equivalent in each FHWA-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from the Mariposa County Department of Public

percent (0.5%) of the contractor's total bid or \$10,000, whichever is greater. The statute is designed to prevent bid shopping by contractors. The FPA explains that a contractor may not substitute a subcontractor listed in the original bid except with the approval of the awarding authority.

4. The Contract Manager will give the contractor a blank "Final Report Utilization of Disadvantaged Business Enterprises," form, and will explain to them that the document will be required at the end of the project, for which payment can be withheld, in conformance with the contract.

C. Construction Contract Monitoring

1. The Contract Manager will ensure that staff knows what items of work each DBE is responsible for. Inspectors will notify the Contract Manager immediately of apparent violations.
2. When someone other than the listed DBE subcontractor is found performing the work (i.e., employees noted earlier as contractor's or non-DBE subcontractor's), the Contract Manager notifies the contractor of the apparent violation and potential loss of payment. Based on the contractor's response, the Contract Manager will take appropriate action: 1) If the contractor's response is that the employees will be on the listed DBE subcontractor payroll, payrolls will be checked when received, and if the employees in question are not on the listed DBE subcontractor payroll, payment for the work will be withheld. If the employee is on the payroll our DBE Liaison Officer will perform a preliminary investigation to identify and potential issues related to the DBE subcontractor performing a commercially useful function. Any substantive issues will be forwarded to Caltrans' Business Enterprise Program. 2) If the contractor's response to the Contract Manager is anything other than in action 1) above, payment for the work will be withheld and a letter will be sent to the contractor reference the applicable specification violation and the required withhold of payment.
3. If the contract requires the submittal of a monthly truck document, the contractor will be required to submit documentation to the RE showing the owner's name; California Highway Patrol CA number; and the DBE certification number of the owner of the truck for each truck used during that month for which DBE participation will be claimed. The trucks will be listed by California Highway Patrol CA number in the daily diary or on a separate piece of paper for documentation. The numbers are checked by inspectors regularly to confirm compliance.

The burden of proof of DBE payment is the responsibility of the contractor.

D. Substitution

1. When a DBE substitution is requested, the Contract Manager will request a letter from the contractor explaining why substitution is needed. The Contract Manager

provided in §26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Overall and Contract Goals (§26.45 and 26.51)

Amount of goal

The Mariposa County Department of Public Works will use the results of a Caltrans' survey of contractors to assist in the development of a bidders list. This bidders list will be used to determine the overall goal for the 00/01 fiscal year. The overall annual goal will be no less than 10% of the total amount of FHWA-assisted contracts.

We will establish contract goals only on those FHWA-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). We will compare the contract work items with eligible DBE contractors willing to work on the project. A determination will also be made to decide which items are likely to be performed by the prime contractor and which ones are likely to be performed by the subcontractor(s). The goal will then be incorporated into the contract documents. We will express our contract goals as a percentage of the total amount of a FHWA-assisted contract.

Methodology

Pursuant to 49 CFR Part 26, Section 25.45 the Mariposa County Department of Public Works DBE program is required to establish an overall goal for DBEs participating in DOT/FTA assisted contracts. Mariposa County Department of Public Works will work to ensure that only firms qualifying for eligibility in accordance to 49 CFR, Part 26 are permitted to participate and will help create a level playing field in order for DBEs to compete fairly for FHWA assisted contracts.

Good Faith Efforts (§26.53)

Information to be submitted

The Mariposa County Department of Public Works treats bidder/offerors' compliance with good faith effort requirements as a matter of responsiveness.

Each solicitation for which a construction contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participation;

Good Faith Efforts when a DBE is replaced on a contract

We will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete his work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the RE immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Counting DBE Participation (§26.55)

We will count DBE participation toward overall and contract goals as provided in the contract specifications for the prime contractor, subcontractor, joint venture partner with prime or subcontractor, or vendor of material or supplies.

Certification (§26.83)

The Mariposa County Department of Public Works ensures that only DBE firms currently certified on Caltrans' directory will participate as DBEs in our program.

Information Collection and Reporting

Bidders List

The Mariposa County Department of Public Works will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on FHWA-assisted contracts. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms. Initially, the results from a Caltrans' contractor survey will be used to start a bidders list.

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Mariposa County Department of Public Works, Caltrans or FHWA. This reporting requirement also extends to any certified DBE subcontractor.

CERTIFICATION FOR FEDERAL FINANCIAL ASSISTANCE AGREEMENT
ASSURANCE

FISCAL YEAR 2000-01

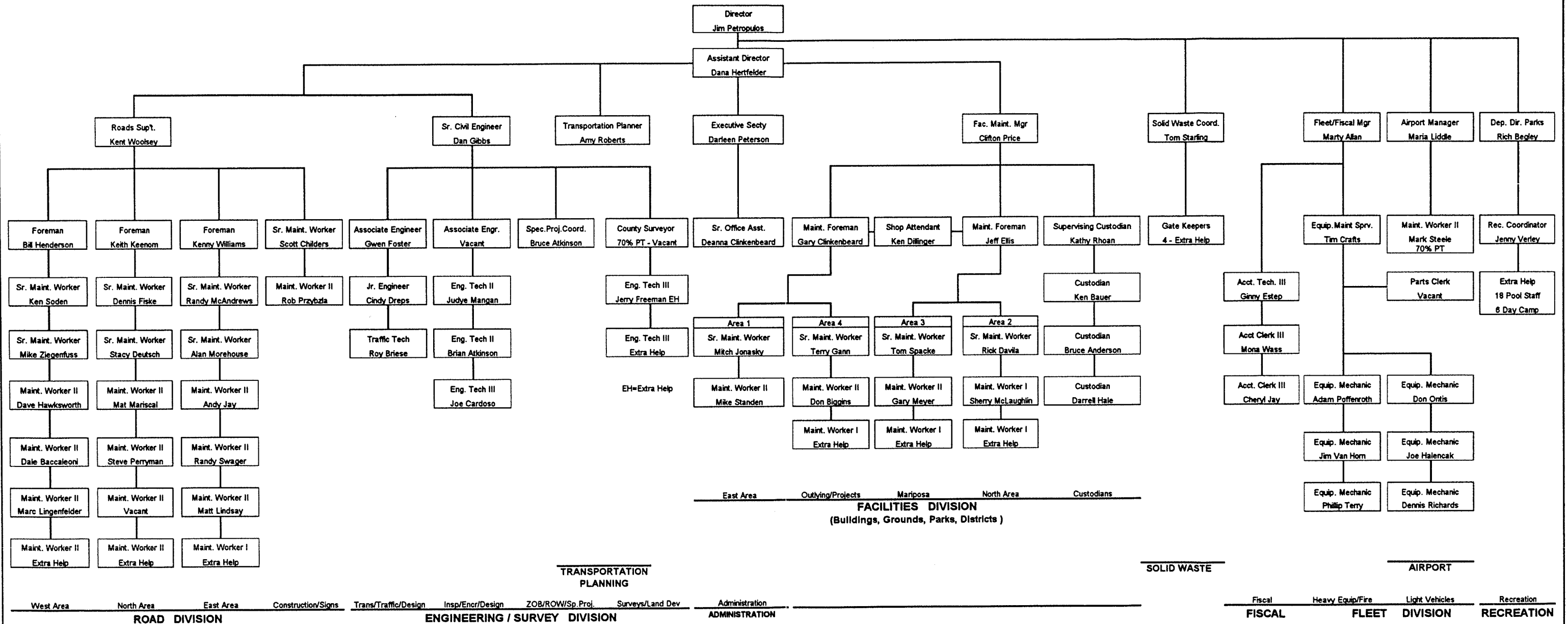
The Mariposa County Public Works Department shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FHWA assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of FHWA assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by FHWA, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as violation of this agreement. Upon notification to the Mariposa County Public Works Department of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26, and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3901 et seq.).

James J. Petropulos, Director

Date

Mariposa County Public Works Department

Functional Organizational Chart



REVISED AUGUST 29, 2000