



# CITY OF SAN CLEMENTE

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## Annual Anticipated DBE Participation Level (AADPL) Methodology

*for*

**FFY 2007/08**

*Submitted in fulfillment of:*

*Section 1101 of the Transportation Equity Act for the 21<sup>st</sup> Century  
49 Code of Federal Regulations Part 26  
and  
Caltrans Local Assistance Procedures Manual*

\*This analysis is prepared exclusively for the City of San Clemente; it is non-transferable and is not to be duplicated.\*

**CITY OF SAN CLEMENTE**  
**ANNUAL ANTICIPATED DBE PARTICIPATION LEVEL (AADPL)**  
**METHODOLOGY FOR**  
**FEDERAL FISCAL YEAR 2007/08**

*(Covering the period of October 1, 2007 through September 30, 2008)*

**I. INTRODUCTION**

In accordance with directives issued by the California Department of Transportation (Caltrans/Department) on May 1, 2006 and Chapter 9 of the Caltrans Local Assistance Procedures Manual, the City of San Clemente implemented a wholly race-neutral Disadvantaged Business Enterprise (DBE) Program. The Department issued these directives in response to a recent decision from the Ninth Circuit U.S. Court of Appeals in the *Western States Paving Co. v. United States & Washington State Department of Transportation* and guidelines promulgated by the Federal Highway Administration (FHWA) to ensure compliance with the Ninth Circuit Court's decision which impacts the application of race-conscious elements of the national DBE regulatory program. The Court's decision mandated that evidence of discrimination in the transportation contracting industry in the relevant geographic area must be documented in order to meet narrow tailoring provisions of the governing regulations and to apply race-conscious elements of the program. After careful analysis, the Department and FHWA concluded that the Department lacked sufficient evidence to satisfy the strict scrutiny and newly established evidentiary standards established by the Ninth Circuit to request a waiver at this time from United States Department of Transportation, Office of Civil Rights (US DOT) to continue its use of race-conscious measures to meet the State's Overall Annual DBE Goal.

Hence,

- Effective **May 1, 2006**, the Department and its subrecipients (Local Agencies) of DOT-assisted funding may no longer advertise and award contracts with Federal-aid funds containing Race-Conscious DBE goals.
- Effective **May 1, 2006**, all Federal-Aid procurements shall contain Race-Neutral DBE contract language (refer to "Sample Notice to Contractors and Special Provisions" and "Sample Proposal and Contract" available for download from Caltrans' Division of Local Assistance website at [http://www.dot.ca.gov/hq/LocalPrograms/sam\\_boil/sam\\_boil.htm](http://www.dot.ca.gov/hq/LocalPrograms/sam_boil/sam_boil.htm))
- Local Agencies will be required to collect and report participation and utilization by DBEs on Federal-aid contracts (no change).
- Local Agencies are required to actively participate in Department's Statewide DBE Availability Study and Disparity Study which commenced in May 2006 and is anticipated to be completed by June 2007 to fulfill the requirements of the law as identified by the Ninth Court of Appeals ruling.

In response to these policy directives, the City of San Clemente hereby sets forth its AADPL methodology for FFY 2007/08.

## II. DOT-ASSISTED CONTRACTING PROGRAM FOR FFY 2007/08

*Table 1* serves to identify the City of San Clemente's DOT-assisted contracting program for FFY 2007/08 considered in preparing its *Annual Anticipated DBE Participation Level (AADPL)* in accordance with Chapter 9, Section 9.7 of the Local Assistance Procedures Manual (LAPM). These projects have viable contracting and subcontracting possibilities, a required criterion for AADPL consideration and are anticipated to be awarded within the given federal fiscal year.

*Table 1*

PROJECT	Total Estimated Project Cost	Estimated Federal Dollar Share of Construction	Estimated Federal Dollar Share of Professional Services	Estimated Federal Dollar Share of Materials & Supplies
Camino De Estrella/Camino Mira Costa	\$1,500,000.00	\$650,000.00	\$0	\$0
Avenida Vista Hermosa (Via Turquez to Camino Vera Cruz)	\$270,000.00	\$100,000.00	\$0	\$0
Avenida Pico Phase IV (I-5 to Ave. Presidio)	\$1,200,000.00	\$400,000.00	\$0	\$0
N. El Camino Real (Ave. Del Mar to Ave. Pico)	\$1,750,000.00	\$725,000.00	\$0	\$0
Camino De Los Mares (Camino Vera Cruz to City Limit)	\$870,000.00	\$435,000.00	\$0	\$0
Camino Vera Cruz (Camino de Los Mares to Carreterra)	\$1,050,000.00	\$437,500.00	\$0	\$0
<b>TOTAL</b>	<b>\$6,640,000.00</b>	<b>\$2,747,500.00</b>	<b>-0-</b>	<b>-0-</b>

*Table 2* provides a summary of work grouped by two (2) primary categories: *Construction* and *Professional Services*, utilizing the California Unified Certification Program Database (CUCP) by 2002 North American Industry Classification System (NAICS) work categories and Census Business Patterns NAICS. *Table 2* also serves to identify the estimated Federal Dollar Share and the Percent of Federal funding, as follows:

*Table 2*

<b>CONTRACT CATEGORY</b>	<b>CUCP DATABASE<sup>1</sup></b>	<b>CENSUS BUSINESS PATTERN DATABASE<sup>1</sup></b>	<b>ESTIMATED FEDERAL DOLLAR SHARE</b>	<b>% OF FEDERAL FUNDING</b>
<b>Construction</b>	221310	221310	\$2,747,500.00	100%
<b>Professional</b>	N/A	N/A	0	0
<b>TOTAL</b>			<b>\$2,747,500.00</b>	<b>100%</b>

### III. AADPL – METHODOLOGY

#### *Step 1: Determination of a Base Figure (26.45)<sup>2</sup>*

To establish the City of San Clemente’s Base Figure of the relative availability of DBEs to all comparable firms (DBEs and Non-DBEs) available to bid or propose on the City of San Clemente’s FFY 2007/08 DOT-assisted contracting opportunities projected to be solicited, the City of San Clemente followed one of the five prescribed federal methodologies to determine availability. This was accomplished by accessing the *California Unified Certification Program (CUCP) DBE Database of Certified Firms* and the *2004 U.S. Census Bureau County Business Patterns (CBP) Database*. Comparisons were made by corresponding zip codes within the City of San Clemente’s market area (defined as Orange County) and by the specified industries and types of businesses identified in Table 2. The City’s local market area represents where the substantial majority of the City’s dollars are expended and/or where the substantial majority of contractors bids or quotes are received.

The City of San Clemente made a concerted effort to ensure that the scope of businesses included in the numerator was as close as possible to the scope included in the denominator. For corresponding detail of all work category classifications grouped, refer to Attachments I and II.

- ⇒ *For the numerator: California UCP DBE Database of Certified Firms*
- ⇒ *For the denominator: 2004 U.S. Census Bureau’s Business Pattern Database (CBP)*

To determine the relative availability of DBEs, the City of San Clemente divided the numerator representing the ratio of ready, willing and able DBE firms within the City’s defined market area, by the denominator representing all firms (DBEs and Non-DBEs) available by each work category within the defined market area. Application of this formula yielded the following baseline information:

<sup>1</sup> Refer to Attachments I and II for corresponding detail of all work trades grouped under the primary NAICS Codes.

<sup>2</sup> 26.45 represent Title 49 CFR Part 26 regulatory reference.

$$\frac{\text{Number of Ready, Willing, and Able DBEs}}{\text{Number of All Available Firms (Including DBEs and Non-DBEs)}} = \text{BASE FIGURE}$$

The Base Figure was further adjusted by weighting the relative availability of DBEs grouped within the major work categories, giving more weight to the work categories in which the City projects to spend more DOT-assisted dollars. The Base Figure resulting from this weighted calculation is as follows:

**Step 1: Base Figure (weighted by type of work to be performed and corresponding contracting dollars)**

$$\text{Base Figure} = \left[ \frac{100\% \text{ (DBEs in NAICS 221310 *)}}{\text{(CBPs in NAICS 221310 **)}} \right]$$

$$\text{Base Figure} = \left[ \frac{1.00 \text{ (174)}}{2,484} \right]$$

$$\text{Base Figure} = \left[ 1.00 \text{ (.0700)} \right]$$

$$\text{Base Figure} = \left[ .0700 \right]$$

$$\text{Base Figure} = (.0700) 100 = 7.00 = 7\% \text{ ***}$$

\* For additional NAICS Codes from the California UCP DBE Database of Certified Firms, refer to Attachment I.

\*\* For additional NAICS Codes, refer to Attachment II.

\*\*\* Rounded to the nearest whole number.

**Step 2: Adjusting the Base Figure**

Upon establishing the Base Figure, the City of San Clemente reviewed and assessed other known evidence potentially impacting the relative availability of DBEs within the City of San Clemente's market area, in accordance with prescribed narrow tailoring provisions set forth under 49 CFR Part 26.45.

Evidence considered in making an adjustment to the Base Figure included the *City of San Clemente's Past DBE Goal Attainments on Similar Type Projects, Bidders List, Disparity Studies and Other Relevant Evidence within the City of San Clemente's jurisdiction*. A summary of these considerations follows:

**A. Past DBE Goal Attainments on Similar Type Projects**

The following table reflects the demonstrated capacity of DBEs (measured by actual historical DBE participation attainments) on DOT-assisted contracts awarded by the City of San Clemente within the last three fiscal years:

**Table 3**

<b>PROJECT</b>	<b>DBE CONTRACT GOAL</b>	<b>DBE GOAL COMMITMENT</b>	<b>DBE GOAL ATTAINMENT</b>
Pico Phase III	10%	10%	10.40%
Pico Phase II A & Phase II B	10%	10%	11.18%
Vista Hermosa	10%	10%	11.20%
Los Mares	10%	10%	12.20%
Pico Phase I	10%	10%	11.12% (median)
Vaquero	10%	10%	10.18%
El Camino Real	10%	10%	15.90%
Rail Corridor Pedestrian Beach Trail Phase I	10%	10%	Project in progress; Final Attainment Data Not Available
<b>MEDIAN DBE GOAL ATTAINMENT:</b>			<b>11.12%*</b>

\* Rounded to the nearest whole number

The City of San Clemente considered an adjustment to the Base Figure based on historical DBE goal attainments on similar contracts to those contracting opportunities identified and considered in the AADPL analysis for this federal fiscal year 2007/08. Eight (8) projects are listed in Table 3 above, however, one (1) project (shaded) was not considered as it is currently in progress therefore, no attainment data is available at this time. Based on the historical attainments of the seven (7) closed out projects, the City's past participation percentages range from 10.18% to 15.90%, with a Median Past Participation of 11.12%, as reflected in the table above. The Step One Base Figure (7%) was added to the Median Past Participation (11.12%) and divided by two (2) to calculate the average. The Adjusted Base Figure resulting from the application of this formula follows:

***Step I Base Figure (7%) + Median Past Participation (11.12%)***

2

***Formula***

<b><i>Step I Base Figure</i></b>	<b>7.00 %</b>
<b><i>Median Past Participation</i></b>	<b><u>+11.12 %</u></b>
	<b>18.12 % ÷ 2 = 9.06%</b>
<b><i>Adjusted Base Figure = 9% (rounded) *</i></b>	

- Rounded to the nearest whole number

The formula resulted in an upward adjustment to the Base Figure from 7% to 9%.

***B. City of San Clemente's Bidders List***

As an added measure in evaluating whether the Base Figure should be further adjusted, the City of San Clemente's Bidders List was considered as this data represents demonstrated evidence of DBE availability based on the City's bidding pool. The City's adjusted Base Figure (9%) was added to the Bidders List availability factor (25%) and divided by two (2) to calculate the average. The Adjusted Base Figure resulting from the application of this formula follows:

***Formula***

<b><i>Step I Base Figure</i></b>	<b>9 %</b>
<b><i>Bidder's List</i></b>	<b><u>+25 %</u></b>
	<b>34 % ÷ 2 = 17.0%</b>
<b><i>Adjusted Base Figure = 17%</i></b>	

The formula resulted in an upward adjustment to the Base Figure from 10% to 17%.

### ***C. Evidence from Disparity Studies***

The City of San Clemente is not aware of any current disparity studies within the City of San Clemente's jurisdiction and/or market area to consider any further adjustment to the Adjusted Base Figure. However, the City of San Clemente will actively participate in the Department's DBE Availability/Disparity study and apply relevant results of such in future analysis.

### ***D. Other Relevant Evidence***

The City of San Clemente is not aware of any additional relevant data, including anecdotal evidence over and above those factors considered that would sufficiently merit any further adjustments to the Base Figure at this time. However, the City will continue to explore and consider all available evidence that could have a potential impact on the AADPL process.

### ***Overall Resultant AADPL Adjustment***

Based on the City of San Clemente's review and consideration of the above factors, the evidence considered supported an upward adjustment to the Step 1 Base Figure to 17%.

As such, the **City of San Clemente has determined its AADPL to be 17% for FFY 2007/08.** The AADPL is expressed as a percentage of all DOT-assisted funds that the City will expend in the forthcoming fiscal year.

## **IV. RACE-NEUTRAL MEASURES**

The City of San Clemente will implement race-neutral measures to meet its overall AADPL objectives, including but not limited to:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation.
- Unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might, otherwise perform with their own forces.
- Providing information and communications programs on contracting procedures and specific contract opportunities.

## **V. PUBLIC PARTICIPATION**

Public Participation is not a required component in determining an AADPL.



**CITY OF SAN CLEMENTE  
ANNUAL ANTICIPATED DBE PARTICIPATION LEVEL (AADPL) ANALYSIS FOR FFY 2007/08**

**ESTABLISHMENT OF THE NUMERATOR:**

**# OF ESTABLISHED DBE FIRMS BY WORK CATEGORY WITHIN THE CITY OF SAN CLEMENTE'S MARKET AREA  
(DEFINED AS THE COUNTY OF ORANGE) <sup>1</sup>**

<b>CONSTRUCTION SERVICES:</b>		<b>BY CORRESPONDING ZIP CODE:</b>									
<b>2003 NAICS CODE</b>	<b>NAICS DESCRIPTION</b>	<b>906</b>	<b>907</b>	<b>926</b>	<b>927</b>	<b>928</b>	<b>TOTAL</b>				
221310	Water Supply and Irrigation Systems	1	1	0	1	2	5				
237130	Power and Communication Line and Related Structures Construction	1	2	0	0	0	3				
237310	Highway, Street, and Bridge Construction	8	4	6	2	6	26				
237990	Other Heavy and Civil Engineering Construction	6	2	2	0	1	11				
238110	Poured Concrete Foundation and Structure Contractors	3	2	3	1	4	13				
238120	Structural Steel and Precast Concrete Contractors	5	0	1	1	3	10				
238190	Other Foundation, Structure, and Building Exterior Contractors	1	2	0	0	0	3				
238210	Electrical Contractors	3	1	5	3	4	16				
238910	Site Preparation Contractors	7	1	2	3	7	20				
238990	All Other Specialty Trade Contractors	11	7	11	7	12	48				
541370	Surveying and Mapping (except Geophysical) Services	2	1	4	5	1	13				
561730	Landscaping Services	1	1	1	1	2	6				
<b>TOTAL NUMBER OF ESTABLISHED DBE FIRMS:</b>		<b>49</b>	<b>24</b>	<b>35</b>	<b>24</b>	<b>42</b>	<b>174</b>				

<sup>1</sup>: Data Source: California UCP Directory of Certified DBE Firms.

**CITY OF SAN CLEMENTE  
ANNUAL ANTICIPATED DBE PARTICIPATION LEVEL (AADPL) ANALYSIS FOR FFY 2007/08**

**ESTABLISHMENT OF THE DENOMINATOR:**

# OF ALL ESTABLISHED FIRMS BY WORK CATEGORY WITHIN THE CITY OF SAN CLEMENTE'S MARKET AREA (DEFINED AS THE COUNTY OF ORANGE) <sup>1</sup>

CONSTRUCTION SERVICES:		BY CORRESPONDING ZIP CODE:	
2003 NAICS CODE	NAICS DESCRIPTION	ORANGE COUNTY	TOTAL
221310	Water Supply and Irrigation Systems	11	11
237130	Power and Communication Line and Related Structures Construction	42	42
237310	Highway, Street, and Bridge Construction	76	76
237990	Other Heavy and Civil Engineering Construction	52	52
238110	Poured Concrete Foundation and Structure Contractors	203	203
238120	Structural Steel and Precast Concrete Contractors	32	32
238190	Other Foundation, Structure, and Building Exterior Contractors	33	33
238210	Electrical Contractors	721	721
238910	Site Preparation Contractors	226	226
238990	All Other Specialty Trade Contractors	317	317
541370	Surveying and Mapping (except Geophysical) Services	51	51
561730	Landscaping Services	720	720
<b>TOTAL NUMBER OF ALL ESTABLISHED FIRMS:</b>		<b>2,484</b>	<b>2,484</b>

<sup>1</sup>: Data Source: U.S. Census Bureau: County Business Patterns Utilizing NAICS Work Category Codes.

## **DISADVANTAGED BUSINESS ENTERPRISE RACE-NEUTRAL IMPLEMENTATION AGREEMENT**

For the City of San Clemente, hereinafter referred to as "RECIPIENT."

### **I Definition of Terms**

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

### **II OBJECTIVE/POLICY STATEMENT (§26/1. 26/23)**

The RECIPIENT intends to receive federal financial assistance from the U. S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans), and as a condition of receiving this assistance, the RECIPIENT will sign the California Department of Transportation's Disadvantaged Business Enterprise Implementation Agreement (hereinafter referred to as Agreement). The RECIPIENT agrees to implement the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan (hereinafter referred to as the DBE Program Plan) as it pertains to local agencies. The DBE Program Plan is based on U.S. Department of Transportation (DOT), 49 CFR, Part 26 requirements.

It is the policy of the RECIPIENT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also their policy:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- To create a level playing field on which DBE's can compete fairly for DOT-assisted contracts.
- To ensure that their annual overall DBE participation percentage 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.
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

### **III Nondiscrimination (§26.7)**

RECIPIENT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR, Part 26 on the basis of race, color, sex, or national origin. In administering the local agency components of the DBE Program Plan, the RECIPIENT will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

#### **IV Annual DBE Submittal Form (§26.21)**

The RECIPIENT will provide to the Caltrans District Local Assistance Engineer (DLAE) a completed *Local Agency DBE Annual Submittal Form* (Exhibit 9-B) by June 1 of each year for the following Federal Fiscal Year (FFY). This form includes an Annual Anticipated DBE Participation Level (AADPL), methodology for establishing the AADPL, the name, phone number, and electronic mailing address of the designated DBELO, and the choice of Prompt Pay Provision to be used by the RECIPIENT for the following FFY.

#### **V Race-Neutral Means of Meeting the Annual DBE Goal (§26.51)**

RECIPIENT will assist Caltrans to achieve its Overall Statewide DBE Goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

Race-neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of types of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

## **VI Quotas (§26.43)**

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

## **VII DBE Liaison Officer (DBELO) (§26.25)**

RECIPIENT has designated a DBE Liaison Officer. The DBELO is responsible for implementing the DBE Program Plan, as it pertains to the RECIPIENT, and ensures that the RECIPIENT is fully and properly advised concerning DBE Program Plan matters. The DBELO has a staff of one professional employee assigned to the DBE program on a full-time basis. The name, address, telephone number, electronic mail address, and an organization chart displaying the DBELO's position in the organization are found in Attachment A to this Agreement. This information will be updated annually and included on the DBE Annual Submittal Form.

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

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

## **VIII Federal Financial Assistance Agreement Assurance (§26.13)**

RECIPIENT will sign the following assurance, applicable to and to be included in all DOT-assisted contracts and their administration, as part of the program supplement agreement for each project.

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR 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 DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient 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. 3801 et seq.). [Note – this language is to be used verbatim, as it is stated in §26.13(a).]

## **IX DBE Financial Institutions (§26.27)**

It is the policy of the RECIPIENT 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 DOT-assisted contracts to make use of these institutions.

Information on the availability of such institutions can be obtained from the DBELO. The Caltrans' Disadvantaged Business Enterprise Program may offer assistance to the DBELO.

## **X Directory (§26.31)**

RECIPIENT will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's website at [www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep).

## **XI Required Contract Clauses (§§26.13, 26.29)**

RECIPIENT ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

### **A. CONTRACT ASSURANCE**

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, 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 recipient deems appropriate.

[Note – This language is to be used verbatim, as is stated in §26.13(b). See Caltrans Sample Boiler Plate Contract Documents on the Internet at [www.dot.ca.gov/hq/LocalPrograms](http://www.dot.ca.gov/hq/LocalPrograms) under "Publications."]

### **B. PROMPT PAYMENT**

#### **Prompt Progress Payment to Subcontractors**

A prime contractor or subcontractor shall pay to any subcontractor not later than 10-days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

### **Prompt Payment of Withheld Funds to Subcontractors**

The local agency shall include either (1), (2), or (3) of the following provisions [local agency equivalent will need Caltrans approval] in their federal-aid contracts to ensure prompt and full payment of retainage [withheld funds] to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the 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.

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.

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.

**XII Local Assistance Procedures Manual**

The RECIPIENT will advertise, award and administer DOT-assisted contracts in accordance with the most current published Local Assistance Procedures Manual (LAPM).

**XIII Bidders List (§26.11)**

The RECIPIENT will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted contracts. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of the firms.

**XIV Reporting to the DLAE**

RECIPIENT will promptly submit a copy of the Local Agency Bidder-DBE Information (Exhibit 15-G "Local Agency Bidder-DBE (Construction Contracts) – Information" or Exhibit 10-O "Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information" of the LAPM) to the DLAE at the time of execution of consultant or construction contract award.

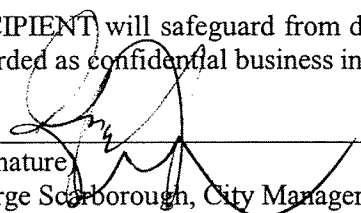
RECIPIENT will promptly submit a copy of the Final Utilization of DBE participation to the DLAE using Exhibit 17-F "Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" of the LAPM immediately upon completion of the contract for each consultant or construction contract.

**XV Certification (§26.83(a))**

RECIPIENT ensures that only DBE firms currently certified by the California Unified Certification Program will participate as DBEs on DOT-assisted contracts.

**XVI Confidentiality**

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

By   
(Signature)  
George Scarborough, City Manager  
City of San Clemente

Phone Number: (949) 361-8322

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

\_\_\_\_\_  
[Signature of DLAE]

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

\_\_\_\_\_  
[Print Name of DLAE]

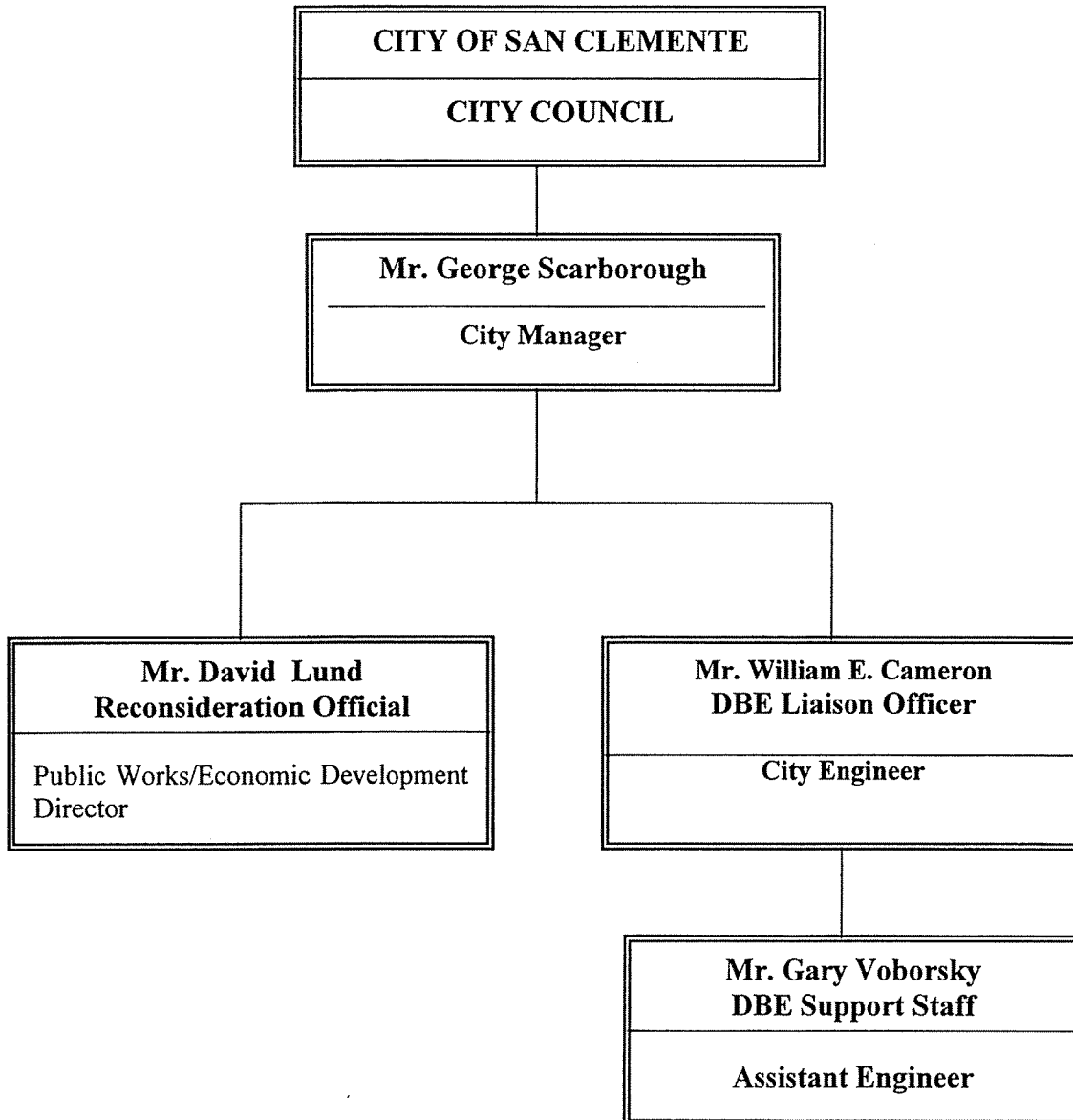
Distribution: (1) Original – DLAE  
(2) Signed copy by the DLAE – Local Agency





Attachment A

**CITY OF SAN CLEMENTE  
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM  
ORGANIZATIONAL CHART**



**DBE Liaison Officer Contact Information:**

Mr. William E. Cameron  
City Engineer  
Department of Public Works  
City of San Clemente  
910 Calle Negocio, Suite 100  
San Clemente, CA 92673  
Phone (949) 361-6120; Fax (949) 361-8316  
E-mail: CameronW@San-Clemente.org

**Exhibit 9-B Local Agency DBE Annual Submittal Form**

TO: CALTRANS DISTRICT 12  
District Local Assistance Engineer – Mr. Alan Williams

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, Part 26, and the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan.

The City of San Clemente, submits our AADPL information. We have established an AADPL of 17% for the Federal Fiscal Year 2007 /08, beginning on October 1, 2007, and ending on September 30, 2008.

Methodology

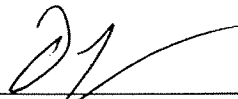
Refer to the attached AADPL Methodology Enclosure.

Disadvantaged Business Enterprise Liaison Officer (DBELO)

Mr. William Cameron  
City Engineer  
Department of Public Works  
City of San Clemente  
910 Calle Negocio, Suite 100  
San Clemente, CA 92673  
Phone: (949) 361-6120; Fax: (949) 361-8316  
E-mail: CameronW@San-Clemente.org

Prompt Pay

Please refer to attachment for City's prompt payment provision.

  
\_\_\_\_\_  
(Signature)

5/31/07  
\_\_\_\_\_  
Date

~~For~~ William E. Cameron  
City Engineer  
City of San Clemente

Phone Number: (949) 361-6120

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

\_\_\_\_\_  
Date

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

(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.*

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.

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.

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.