

FTA 5311 Recovery Act

Disadvantaged Business Enterprises (DBE) Program



FTA 5311 Recovery Act

■ Caltrans DBE Program Applicability

1. DBE requirements apply to all Sub-recipients with contracting opportunities or “third-party” contracts for goods and/or services.
2. Sub-recipients with operating assistance and non-vehicle capital projects (with contracting opportunities) must meet all requirements of Caltrans DBE program as they pertain to local agencies.

FTA 5311 Recovery Act

■ Caltrans DBE Program Applicability

3. DBE requirements for vehicle projects are satisfied by the vehicle manufacturer and are not passed on to the Sub-recipient.
4. Important Note Regarding Operating Assistance: Subrecipients using federal funds to pay a percentage of their net project cost are subject to DBE requirements for any purchase that is paid from the operating budget. This is also the case for preventive maintenance projects.

FTA 5311 Recovery Act

DBE Program Background

Ninth Circuit Court Decision

- Western States Paving vs. Washington State DOT decision led to guidance directing recipients (DOTs) to conduct a disparity study to determine if disparity existed in their federally-aided contracting programs.

Disparity Study

- Caltrans conducted a Disparity Study in response to the Ninth Circuit Court Decision.
- The study indicated “substantial disparity” among four of the six DBE groups.

Disparity Study Findings

- The four underutilized DBE groups:
 - African American
 - Asian Pacific American
 - Native American
 - Women
- The other two DBE groups:
 - Hispanic American
 - Subcontinent Asian Americans

Additional Study Findings

- **Need for smaller contracts (unbundling)**
- **Better outreach/communication**
- **Provide additional technical assistance**
- **Provide more opportunities for small businesses seeking construction and engineering contracts**
- **Surety Bond Programs**

Caltrans Overall DBE Goal = 13.5%

- Per Director Kempton's March 4, 2009, letter, Caltrans will implement a 13.5% DBE goal -- to be achieved 6.75 % race neutral, 6.75 % race conscious for ***FHWA-funded*** projects.
- In a letter dated April 2, 2009, FHWA formally approved the FFY 2009 DBE goal and goal-setting methodology.

“Race Conscious”

- "Race Conscious" measures, such as establishing individual contract goals, are those measures and programs focused on specifically assisting disadvantaged business enterprise.

“Race- and Gender Neutral”

- Remedies that apply to individuals or firms that are not classified based on race, ethnicity or gender. Note that this term is more accurately “race-,” “*ethnicity-*” and “gender-” neutral.

“Race- and Gender Neutral”

R-GN Remedies/Strategies:

1. Overcoming bonding & financing obstacles
2. Simplifying bidding procedures
3. Providing technical assistance
4. Programs to assist start-up firms
5. A broader list of examples can be found in 49 CFR Section 26.51(b)

FTA 5311 Recovery Act

- Sub-recipients must implement a policy to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.
- Ensure nondiscrimination in the award and administration of procurement and contracts for federally funded products and services.

FTA 5311 Recovery Act

- Sub-recipients will not use quotas or set-asides in any way in the administration of the local agency component of the DBE Program.
- Sub-recipients shall adhere to the Caltrans DBE Program Plan (2007).

www.dot.ca.gov/hq/bep/dbe_program.htm

FTA 5311 Recovery Act

- Key points of the DBE Program Plan:
 - Ensure DBE firms can compete fairly for federally funded transportation-related projects.
 - Identify and remove barriers to the bidding, award, and administration of U.S. DOT Federally-assisted contracts.
 - Increase the participation of all DBE's in the procurement of materials, equipment and supplies.

FTA 5311 Recovery Act

***DBE Race-Gender
Neutral Goal
for Transit Facility Projects***

FTA 5311 Recovery Act

- For transit capital construction projects (facilities), there is currently a 4 % Race- Gender Neutral DBE goal.
- Sub-recipients must include the 4% RGN DBE goal in their bid packages for facilities projects.

FTA 5311 Recovery Act

Caltrans DBE Goal for Transit – 4%

FACILITY PROJECTS ONLY

All
Registered
DBEs

4% Race- Gender Neutral
DBE Goal for Transit Facility
Projects

FTA 5311 Recovery Act

- There is no DBE goal for “other” equipment (e.g., radios, computers)
- DBE goals and reporting for transit vehicles are covered by FTA with the manufacturer per 49 CFR 26.49

FTA 5311 Recovery Act

DBE Race Neutral Implementation Agreement

FTA 5311 Recovery Act

- Sub-recipients must submit a DBE Race-Neutral Implementation Agreement (revised January 2009).
- If already submitted to DMT, no need to resubmit again.

FTA 5311 Recovery Act

- Sub-recipients must designate a DBE Liaison Officer (DBELO), who is responsible for developing, implementing and monitoring the DBE Program Plan.
- DBELO ensures that the Sub-recipient is fully and properly advised concerning DBE Program Plan matters.

FTA 5311 Recovery Act

- **DBELO Duties and Responsibilities include:**
 - Gather and report statistical data.
 - Review third party contracts and purchase requisitions for program compliance.
 - Work with all departments to determine projected annual DBE participation level.
 - Ensure timely bid notices and requests for proposals.
 - Analyze DBE participation and identify ways to encourage participation through race-neutral ways.

FTA 5311 Recovery Act

- (Continued)
 - Participate in pre-bid meetings.
 - Advisory to CEO/Governing Board on DBE matters and DBE race-neutral issues.
 - Provide DBEs with information and recommend sources to assist in preparing bids, obtain bonding and insurance.
 - Plan and participate in DBE training sessions.
 - Provide outreach to DBEs and community organizations to fully advise them of contracting opportunities.

FTA 5311 Recovery Act

- All Contract Clauses Must Include:
 - Prompt payment procedures to subcontractors
 - Template will be provided by Caltrans DMT with exact language.

FTA 5311 Recovery Act

- **Bidder's List**

- Sub-recipients will create and maintain a bidder's list consisting of information about all DBE and non-DBE firms that bid or quote on Recovery Act contracts.

DBE Reporting

- **Recovery Act DBE Program Awards/Commitments Form**
 - Sub-recipient will submit bidder DBE information to DMT Representative on a monthly basis (as applicable).

DBE Reporting at Invoicing

- **Recovery Act DBE Program Actual Payments Form**
 - Sub-recipients will submit Actual Payments Form with the request for reimbursement to the DMT District Representative.

DBE Bi-Annual Reporting

- **DBE Biannual Reporting Form - Caltrans will report to FTA:**
 - Report due April 15 of each year for the period of October 1 – March 31st.
 - Report due October 15 of each year for the period of April 1 – September 30th.

Location of DBE Forms

- DMT DBE webpage:

<http://www.dot.ca.gov/hq/MassTrans/DBE.html>

Where to Find a Certified DBE Firm?

- Caltrans Office of Civil Rights
<http://www.dot.ca.gov/hq/bep>

- Caltrans Sponsored Supportive Services
Prime Contractor Referral Program
 - Outreach program
 - Phone: (714) 568-0363
 - E-Mail: rgongalez@padillainc.com

FTA 5311 Recovery Act

DBE Questions?

Call or email:

Lisa_Bell@dot.ca.gov

(916) 657-4587

FTA 5311 Recovery Act

Title VI of the Civil Rights Act

Title VI of the Civil Rights Act

- Caltrans must ensure:
 - that no person in the State of California shall be on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- Sub-recipients are also responsible for ensuring Title VI compliance of each third party contractor at any tier of the project.

Title VI – What is Required?

- Per FTA Circular 4702.1A, Sub-recipients must do the following:
 - Annual Certification and Assurance
 - Develop and Implement Title VI Complaint Procedures
 - Maintain Record of Investigations, Complaints, Lawsuits

Title VI – What is Required?

- Access for Limited English Proficiency Persons
Either a copy of the agency's LEP plan for providing access to meaningful activities and programs, or a copy of the agency's alternative framework for providing access to activities and programs.
- Certain Sub-recipients, such as those serving very few LEP persons or those with very limited resources may choose not to develop a written LEP plan.

Title VI – What is Required?

- Notify Beneficiaries of Protection
 - Sub-recipients must provide information to the public regarding their Title VI obligations and apprise the public of the protections against discrimination afforded to them by Title VI.
 - Sub-recipients that provide transit service shall disseminate this information to the public through measures that can include but not be limited to a posting on the agency's website.

Caltrans District 2 Title VI Liaison

Mark E. Robertson

EEO Officer/Title VI Liaison

4300 Caterpillar Road

Redding, CA 96003

Phone: (530) 225-3055

Fax: (530) 225-3244

mark_e_robertson@dot.ca.gov

Title VI – What is Required?

- Sub-recipient Compliance Report
 - Once every three years
- Caltrans must complete a Public Participation Survey at public meetings, workshops like today's Workshop!

FTA 5311 Recovery Act

***The Americans with Disabilities
Act of 1990
(ADA)***

Americans with Disabilities Act of 1990 (ADA)

- The ADA guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications.

ADA Requirements

- Prohibits discrimination in all programs, activities, and services of public entities.
- Applies to all state and local governments, their departments and agencies and any other instrumentalities or special purpose districts of state or local government.
- Includes public and private entities that provide public transportation.

ADA Requirements

- ADA Requirements Apply to ALL Recovery Act Projects:
 - Construction of Transit Facilities
 - Vehicle Procurements
 - ADA Operating
 - Other Equipment

Caltrans ADA Contacts

Headquarters Staff		
Transition Plan Project Manager	Jerry Champa	(916) 654-4555
ADA Transition Plan Contract Manager	Alex Morales	(916) 654-3507 (916) 215-8878 cell
Statewide Coordinator	Kim Taylor	(916) 327-5818
ADA Analyst	Latania Robinson	(916) 324-1999
Analyst	Doug Galbraith	(916) 324-8421
Analyst	Nicole Butler	(916) 324-0822