



## Disadvantaged Business Enterprise Program



December 29, 2016

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## **I. POLICY STATEMENT AND PROGRAM OBJECTIVES**

### **Policy Statement/Objectives (§26.3, §26.7, §26.21, §26.23)**

OMNITRANS has established and adopted a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation, Title 49, Code of Federal Regulations (CFR), Part 26 “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.” OMNITRANS receives Federal financial assistance from the Department of Transportation (DOT), and as a condition of receiving this assistance, OMNITRANS has signed an assurance that it will comply with Title 49 CFR Part 26. The DBE Program applies to all OMNITRANS DOT-assisted projects.

It is the policy of OMNITRANS to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to compete for and participate in the performance of all OMNITRANS DOT-assisted contracts and subcontracts.

Pursuant to the intent of these Regulations, the OMNITRANS policy objectives are to:

1. Ensure non-discrimination in the award and administration of all OMNITRANS DOT-assisted contracts and subcontracts;
2. Create a level playing field by which DBEs can fairly compete for and perform in OMNITRANS DOT-assisted contracts;
3. Ensure that the OMNITRANS DBE Program is narrowly tailored in accordance with applicable law and current legal standards, including the Ninth Circuit Ruling in *Western States Paving vs. Washington State Department of Transportation*;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove procurement and contracting barriers, which impede DBE participation in OMNITRANS DOT-assisted contracts;
6. Monitor and enforce contractor compliance in meeting established goal objectives and program requirements;
7. Assist in the development of DBEs and Small Businesses to increase their ability to compete successfully in the market place outside the DBE Program; and
8. Ensure OMNITRANS contractors and subcontractors take all necessary and reasonable steps to comply with these policy objectives.

As evidence of OMNITRANS commitment to pursue these policy objectives, the Board of Directors has designated Jennifer M. Sims, Director of Procurement, as the DBE Liaison Officer (DBELO). In this capacity Ms. Sims is responsible for implementing all aspects of the DBE program. The DBELO has direct access to the Chief Executive Officer for DBE-related matters.

Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by OMNITRANS in its financial assistance agreements with DOT. It is the expectation of the CEO/General Manager that all OMNITRANS personnel shall adhere to the full spirit and intent of the DBE program and carry out all DBE requirements accordingly.



OMNITRANS will disseminate this policy statement to all of the departments of our organization. Additionally, OMNITRANS will distribute this policy to DBE and non-DBE business communities that perform or are interested in performing work on OMNITRANS projects.

Through such efforts, OMNITRANS will ensure DOT-assisted contracting and procurement related processes promote equity in access, consideration and opportunity for DBEs and other small businesses in response to requirements set forth under 49 CFR Part 26; "Participation of Disadvantaged Business Enterprises in U.S. Department of Transportation Programs," effective March 4, 1999, and subsequently issued DOT Directives and Final Rules.

P. Scott Graham, CEO/General Manager

  
*(Signature of Chief Executive Officer)*

  
Date

## II. APPLICABILITY (§26.3, §26.21)

OMNITRANS, as a direct recipient of federal funds from DOT, and as a condition of Federal financial assistance, is required to submit for approval to the DOT Operating Administration from which it receives the majority of its funding, a DBE Program developed in accordance with federal regulations published under 49 CFR Part 26 and subsequent guidance. This DBE Program sets forth the policies and procedures to be implemented by OMNITRANS to ensure that DBEs have an equitable opportunity to participate in OMNITRANS DOT-assisted contracting opportunities.

In direct response to these regulatory requirements, OMNITRANS hereby establishes a DBE Program, which will:

1. Comply with federal regulations and financial assistance agreements;
2. Meet legal standards for narrow-tailoring requirements;
3. Ensure non-discrimination in the award of DOT-assisted contracts; and
4. Reaffirm the OMNITRANS commitment to fairness and the principles of equal opportunity.

In conformance with 49 CFR Part 26, OMNITRANS will continue to carry out its DBE Program until all DOT funds have been expended.

OMNITRANS additionally complies with the California Department of Transportation's (Caltrans') DBE Program on projects on which it is a sub-recipient of federal funds through Caltrans.

OMNITRANS will advise all applicable DOT Operating Administrations of any significant updates and/or changes to this DBE Program.

In the event of any conflicts or inconsistencies between the Regulations and the OMNITRANS DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail.

## III. DEFINITION OF TERMS (§26.5)

**Race-Conscious Measure or Program:** A program or portion thereof that focuses specifically on assisting only DBEs, including minority and women-owned DBEs, by the development and inclusion of participation goals or Good Faith Effort activities.

**Race-Neutral Measure or Program:** A program or portion thereof that assists all small businesses, including DBEs, regardless of ownership status, in successfully participating in the OMNITRANS procurement program. For the purposes of the DBE Program, "race-neutral" includes gender-neutrality.

Any other term used in this DBE Program shall have the meaning set forth in 49 CFR Part 26, § 26.5).

<http://www.ecfr.gov/cgi-bin/text-idx?SID=7d57da4319c5a595f3174a4a0cf9944b&node=pt49.1.26&rgn=div5>

## IV. RESPONSIBILITIES FOR DBE PROGRAM IMPLEMENTATION

### A. DBE Liaison Officer (\$26.25)

OMNITRANS has designated the following individual as the Disadvantaged Business Enterprise Liaison Officer (DBELO):

Ms. Jennifer M. Sims  
Director of Procurement  
OMNITRANS  
1700 West Fifth Street  
San Bernardino, CA 92411  
Telephone: (909) 379-7203  
Email: [jennifer.sims@omnitrans.org](mailto:jennifer.sims@omnitrans.org)

In this capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that OMNITRANS complies with all provisions of 49 CFR Part 26 and subsequent DOT-issued directives and final rules. The DBELO has direct, independent access to the OMNITRANS Chief Executive Officer/General Manager concerning DBE Program matters (Refer to Exhibit B, "DBE Program Organizational Chart"). The DBELO has sufficient support personnel who devote a portion of their time to implement and administer the Program. The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate officials.

The DBELO's and/or designee's duties include, but are not limited to, the following activities:

1. Gathers and reports statistical data and other information as required by the DBE Program, including preparation of semi-annual DBE reports (Exhibit D) and overall Project DBE goals and related analysis for submission to the applicable DOT Operating Administration and management ad hoc reporting.
2. Reviews applicable contracts, purchase requisitions, advertisements, boilerplate language specifications and other related documentation specific to implementing applicable DBE requirements.
3. Consults with all affected departments in developing overall DBE goals and project goals.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Reviews DOT-assisted contracts and procurements for purposes of applying contract-specific DBE goals, when appropriate, and/or applicable race-neutral methods.
6. Analyzes OMNITRANS progress towards meeting overall DBE goal commitments by monitoring individual contract DBE attainments ("Monthly Subcontractor Paid Report"- Exhibit E).
7. Participates in pre-bid meetings for purposes of reviewing DBE solicitation and contract requirements with potential bidders and/or offerors.
8. Advises the CEO/General Manager and/or the OMNITRANS Board on DBE matters and achievements.

9. Determines contractor compliance with race-conscious DBE Good Faith Effort provisions, as applicable, in a race-conscious environment and conducts contract DBE responsiveness reviews, including assessing DBE participation eligibility towards the OMNITRANS overall DBE goal, as applicable, to both race-conscious and race-neutral methods.

Additionally, the DBELO and/or designee is charged with implementing the race-neutral measures defined in Section VI of this DBE Program document.

#### **B. Reconsideration Official (§26.53)**

Should OMNITRANS implement a race-conscious component to this DBE Program, the DBE Program will be amended to provide the procedures for the administrative reconsideration process and to specify the OMNITRANS Reconsideration Official.

### **V. ADMINISTRATIVE REQUIREMENTS**

#### **A. Non-Discrimination Requirements (§26.7)**

OMNITRANS 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 its DBE program, OMNITRANS 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 with respect to individuals of a particular race, color, sex, or national origin.

#### **B. Federal Financial Assistance Agreement Assurance (§26.13 {a})**

OMNITRANS will sign the following assurance as a condition of financial assistance agreements with the DOT, and which is hereby made applicable to all OMNITRANS DOT-assisted contracts:

“OMNITRANS shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. OMNITRANS shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. OMNITRANS DBE Program, as required by 49 CFR Part 26 and as approved by U.S. 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 OMNITRANS of its failure to carry out its approved program, the Department may impose sanctions as provided under 49 CFR 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.)”

### **C. DBE Financial Institutions (§26.27)**

It is the policy of OMNITRANS 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 utilize these institutions, as available, and to encourage prime contractors on OMNITRANS DOT-assisted contracts to make use of these institutions.

At this time, OMNITRANS has not identified DBE-Owned financial institutions. However, OMNITRANS encourages contractors to use the services of minority and women-owned financial institutions identified from listings posted at the Website of the Financial Management Service, US Department of the Treasury, Minority Bank Deposit Program. The Internet address of this website is <http://www.fms.treas.gov/mbdp>.

### **D. DBE Directory (§26.31)**

OMNITRANS refers interested parties to the California Unified Certification Program (CUCP) Database of Certified DBE Firms (DBE Directory) to assist in identifying certified DBEs. The DBE Directory is published at [www.CaliforniaUCP.com](http://www.CaliforniaUCP.com).

### **E. Overconcentration (§26.33)**

OMNITRANS has not identified any types of work that have a burdensome overconcentration of DBE participation. However, should OMNITRANS determine that overconcentration exists in a work classification, OMNITRANS will obtain the approval of the concerned DOT Operating Administration of its determination and the measures devised to address it. Once these measures are approved, they will become part of the OMNITRANS DBE Program.

### **F. Business Development Programs (§26.35)**

OMNITRANS has not established a business development program. The DBELO will continually evaluate the need and assess whether OMNITRANS should establish a Business Development Program and/or a Mentor Protégé Program. If OMNITRANS establishes either program, the program will be guided by the applicable Appendix of 49 CFR Part 26 and approved by the cognizant DOT Operating Administration before being implemented.

### **G. Fostering Small Business Participation (§26.39)**

OMNITRANS will structure contracting requirements to facilitate competition by small businesses by requiring prime contractors to specify elements of work that small businesses can perform and to provide subcontract opportunities for those elements to DBEs and other small businesses.

In addition, OMNITRANS commits to the following:

- Configuring large contracts into smaller contracts when feasible, which would make contracts more accessible to small business, and would not impose significant additional cost, delay or risk to OMNITRANS;
- Assisting in overcoming limitations in bonding and financing;



- Providing technical assistance in orienting small businesses to public contracting procedures, use of the Internet, and facilitating introductions to OMNITRANS and other U.S. DOT recipients' contracting activities;
- Providing outreach and communications programs on contract procedures and contract opportunities to ensure the inclusion of small businesses;
- Providing business development assistance.

## **VI. DETERMINING, MEETING AND COUNTING DBE PARTICIPATION TOWARDS THE OVERALL DBE GOAL (§26.45; §26.51; §26.55)**

OMNITRANS is currently operating a strictly race-neutral DBE Program in accordance with DOT guidance following the Western States Paving decision of the 9th Circuit Court of Appeals. Should OMNITRANS incorporate a race-conscious DBE Program in the future, the breakout of estimated race-neutral and race-conscious participation 5 to this program will be updated. This section of the program will be updated triennially when the goal calculation is updated.

As OMNITRANS is currently operating a strictly race-neutral DBE Program, contract goals are not applicable to OMNITRANS procurements. Should OMNITRANS, at a future date, incorporate a race-conscious component to its DBE Program, it will then use contract goals to meet any portion of the overall goal OMNITRANS does not project being able to meet using race-neutral means.

### **A. Methodology for Setting Overall DBE Goals (§26.45; §26.49)**

In accordance with §26.45(e)(3), and with FTA approval, OMNITRANS will establish an overall program goal on a triennial basis beginning with Federal fiscal year 2012. The overall program goal will represent the amount of DOT-assisted funds OMNITRANS anticipates expending on DBE firms over three years, and will be presented as a percentage of the total DOT-assistance received.

The overall program goal will be developed in accordance with the 2-step process specified in §26.45 (c) & (d). The first step is to determine the goal "base figure" based on the relative availability of DBEs in the OMNITRANS market area. The second step is to adjust the goal "base figure" from Step 1 so that it reflects as accurately as possible the DBE participation OMNITRANS would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to DBE participation. Annual projections on DBE participation during each fiscal year will be developed as specified by §26.45 (e)(3)(iii). Additionally, OMNITRANS will provide for public participation in establishing an overall program goal. OMNITRANS will publish a notice of the proposed overall program goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at OMNITRANS for 30 days following the date of the notice, and informing the public that OMNITRANS and DOT will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority-focus media, minority-focused trade publications.

Additionally, OMNITRANS will issue the notice to minority, women's and general contractor groups, community organizations, and other officials or organizations to solicit

information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and OMNITRANS efforts to establish a level playing field for the participation of DBEs.

OMNITRANS will submit the overall program goal to DOT in accordance with §26.45 (f)(2). The overall goal submission to DOT will include a summary of information and comments received during this public comment/participation process and any OMNITRANS responses.

OMNITRANS will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

### **B. Transit Vehicle Manufacturers (TVM) Certifications (§26.49)**

OMNITRANS will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on DOT-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, OMNITRANS may, at its discretion and with DOT approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

### **C. Race-Neutral Measures (§26.51)**

OMNITRANS will implement the following race-neutral measures which are aimed at increasing DBE and other small business participation:

- Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation. OMNITRANS will also hold conferences, which include a networking component to promote teaming opportunities between prospective prime contractors and the DBE and Small Business contracting community.
- Configure large contracts into smaller contracts when feasible, which would make contracts more accessible to small business, and would not impose significant additional cost, delay or risk to OMNITRANS.
- Identify components of the work which represents subcontracting opportunities and identifying the availability of DBE subcontractors to participate in proportion to total available subcontractors. Contractors will be encouraged to consider subcontractors for components of the work for which there is a known supply of ready, willing, and able subcontractors, including DBE subcontractors, in preparing their bids.
- Provide technical assistance in orienting small businesses to public contracting procedures, use of the Internet, and facilitating introductions to OMNITRANS and other U.S. DOT recipients' contracting activities. OMNITRANS will also provide business development assistance and provide DBEs with information and assistance in preparing bids.
- Plan and participate in DBE training seminars.

- Provide 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). OMNITRANS will refer the DBE and Small Business contracting community to the SBA Bonding Assistance Program.
- Solicit DBEs and other small businesses participation by 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).
- Actively promote the Small Business conferences, programs, and support services offered by other agencies that have established DBE and Small Business Programs as a supportive service to help develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses.
- Advise its contracting community of the online directory of certified DBEs, found at the California Unified Certification Program website: [www.CaliforniaUCP.com](http://www.CaliforniaUCP.com).
- Advise the contracting community of the available small businesses certified by the California Department of General Services (DGS) and found at the following url: <https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

#### **D. Use of Set-Asides or Quotas (§26.43)**

OMNITRANS shall not permit the use of quotas for DBEs on DOT-assisted contracts in accordance with 49 CFR Part 26. Further, OMNITRANS shall not set aside contracts for DBEs on DOT-assisted contracts subject to the regulatory provisions, except in limited and extreme circumstances where no other method could be reasonably expected to redress egregious instances of discrimination.

#### **E. Counting DBE Participation and Commercially Useful Function (§26.55)**

OMNITRANS will count DBE participation toward overall and contract specific goals as provided in the solicitation and contract specifications for the prime contractor, subcontractor, and joint venture partner with prime or subcontractor, vendor of material or supplies. OMNITRANS will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

The following guidelines apply in calculating DBE participation toward meeting established goals in accordance with Title 49CFR, Part 26.55:

- Only work proposed to be performed by a DBE's own work forces (including cost of supplies, materials and equipment leases) obtained by the DBE for the work of the contract, except supplies and equipment the subcontractor purchases and/or leases from the prime contractor or its affiliate.

- When a DBE subcontracts part of its work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce.
- In instances of joint venture, a Bidder/Proposer may only count toward its DBE goal the portion of the bid which meets certification, ownership and control standards.
- A Bidder/Proposer may count toward its DBE goal, only expenditures to firms that are proposed to perform a commercially useful function on that contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved.
- A Bidder/Proposer may count toward its DBE goal, sixty percent (60%) of its expenditures for materials and supplies required under the contract and obtained from a DBE regular dealer, and one hundred (100%) percent of such expenditures to a DBE manufacturer. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials and supplies obtained by the contractor. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.
- A Bidder/Proposer may count towards its DBE goal, fees and commissions paid to DBE firms that are not manufacturers or regular dealers, provided that the fees or commissions are determined to be reasonable and not excessive, as compared with fees customarily allowed for similar services.
- Special Provisions for Trucking – A Bidder/Proposer may count towards its goal, all transportation services provided by DBE trucking firms, who can demonstrate control of trucking operations for which it seeks credit and it owns, insures, and operates, using drivers it employs in the performance of the contract. The DBE must itself own and operate at least one fully licensed, insured, and operation truck used on the contract. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

- In cases where DBE certification has ceased during the performance period of the contract, although the prime contractor will continue to report the dollar value of the work performed to OMNITRANS on the monthly DBE Paid Report (Form 103), OMNITRANS will not count the participation towards its overall goal.

## **VII. REQUIRED CONTRACT PROVISIONS AND ENFORCEMENT**

### **A. Contractor's Assurance Clause Regarding Non-Discrimination (§26.13)**

OMNITRANS will ensure that the following clause is placed in all DOT-assisted contracts and subcontracts:

*“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 Title 49, CFR, Part 26 in the award and administration of OMNITRANS U.S. 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 OMNITRANS deems appropriate.”*

### **B. Prompt Payment Provisions (§26.29)**

The DBE Program found at Title 49 CFR Part 26 requires that any delay or postponement of payment over 30 days may take place only for good cause and with OMNITRANS prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

OMNITRANS has, by a contract clause pursuant to 49 CFR Part 26, 26.29, “Prompt Payment Mechanisms for Recipients”, adopted a prompt payment provision on all DOT-assisted contracts, to facilitate timely payment to all subcontractors. This provision, governing the payment to subcontractors (DBEs and non-DBEs), requires a prime contractor to issue payment to all subcontractors for satisfactory work performed, no later than ten (10) days from the prime contractor’s receipt of payment from OMNITRANS. A provision shall also apply to the disbursement of retention proceeds withheld by the prime, requiring the prompt return of retainage payments from the prime contractor to the subcontractor within 30 days of subcontractor’s satisfactory completion of the accepted work. These prompt payment provisions are required to be incorporated in all subcontract agreements issued by the prime contractor.

The prime contractor shall also incorporate in all subcontract agreements a contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

Failure to comply with this provision or delay in payment without prior written approval from OMNITRANS will constitute noncompliance, which will result in appropriate administrative sanctions, including, but not limited to a penalty of 2% of the amount due per month for every month that payment is not made.

Prior OMNITRANS' issuance of progress payments, commencing with the second invoice, the prime Contractor shall provide OMNITRANS with evidence that the Prime Contractor has paid all Subcontractors all amounts due for work that the subcontractor has performed.

### **C. Contractor Reporting Requirements and OMNITRANS Compliance Monitoring and Enforcement (§26.55)**

#### **1. Notification of Reporting Responsibilities**

Prior to execution of all contracts containing DBE goals, the prime contractor shall be directed to the contract specification for OMNITRANS' specific DBE reporting and record keeping requirements.

#### **2. DBE Activity Reporting Forms**

All prime contractors shall submit monthly progress reports on DBE utilization to OMNITRANS on Form 103 ("Monthly DBE Subcontractors Paid Report Summary and Payment Verification"). Failure to submit these reports in a timely manner may result in a penalty of \$10 per day, per report. The last Form 103 report shall be clearly marked "Final."

#### **3. Contractor Good Faith Efforts and Reporting Obligations**

During the term of the contract, the contractor shall continue to make good faith efforts to ensure that DBEs have an opportunity to successfully perform in the contract, and that the contractor meets its DBE goal.

## **VIII. DBE CERTIFICATION STANDARDS (§26.61-§26.73; §26.81; §26.83a)**

As a non-certifying member of the CUCP, OMNITRANS will accept DBE certifications from certifying member agencies of the CUCP. The CUCP DBE Certification application is available online. For more information about the certification process or to apply for certification, firms should visit the CUCP website at [www.californiaucp.com](http://www.californiaucp.com).

## **IX. CERTIFICATION PROCEDURES (SUBPART E)**

### **A. Unified Certification Program (UCP) (§26.81) & Procedures for Certification Decisions (§26.81)**

OMNITRANS is a member of the CUCP administered by the state of California Certifying Members. The CUCP will meet all of the requirements of Subpart E of 49 CFR Part 26.

## **X. RECORD KEEPING AND MONITORING (§26.11, §26.37)**

OMNITRANS has developed a detailed record keeping system as a mechanism for monitoring and tracking DBE commitments/attainments. The system includes procedures adopted by OMNITRANS to comply with DOT regulations and maintenance of support documentation including subcontractor commitments, contract documents for all subcontractors, and Monthly DBE Subcontractors Paid Report Summary and Payment Verification (Exhibit E) from prime contractors.

OMNITRANS will also develop and maintain a hard-copy of the contract-specific project management file which thoroughly includes all DBE Program related compliance monitoring and enforcement activities.

### **A. Bidders List (§26.11)**

OMNITRANS has developed and maintains a Bidders List consisting of all firms bidding on prime contracts, and bidding or quoting subcontracts on OMNITRANS DOT-assisted projects/contracts. The following information will be included in the bidders list:

1. Firm Name;
2. Address;
3. Years in Business;
4. Status as a DBE or non-DBE;
5. Type of Work; and
6. Annual Range of Gross Receipts.

### **B. Reporting to DOT (§26.11)**

OMNITRANS will submit to the applicable DOT Operating Administration the “Uniform Report of DBE Awards or Commitments and Payments” semiannually on June 1 and December 1 of each year, as required. The June 1 report will include DBE activity from October 1 through March 31. The December 1 report will include DBE activity from April 1 through September 30. This report presents a summary of U.S. DOT-assisted prime contracts and subcontracts awarded or committed to as well as actual payments for contracts completed and the associated dollar value during this reporting period.

Upon request, OMNITRANS will compile and submit ad-hoc DBE contract award and progress reports for U.S. DOT-assisted projects. Furthermore, OMNITRANS will continue to provide reports relative to the OMNITRANS DBE Program, as directed. These reports will provide DBE participation information on OMNITRANS race-neutral and gender-neutral contracts on all U.S. DOT-assisted procurement activities.

### **C. Information, Confidentiality, Cooperation (§26.109)**

OMNITRANS will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), California Public Records Act (Government Code §6250) state, and local law. Notwithstanding the preceding provision, OMNITRANS will not release any information that may reasonably



be construed as confidential business information to any third party (other than DOT) without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information.

**D. Monitoring and Enforcement Mechanisms (§26.37)**

OMNITRANS will implement appropriate mechanisms to ensure compliance with 49 CFR Part 26 requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). The OMNITRANS DBE Program will include a monitoring and enforcement mechanism to ensure that work committed to DBEs is actually performed by DBEs. Such mechanism will provide a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.

OMNITRANS may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts committed.

OMNITRANS will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps provided in 26.107 (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules). Additionally, OMNITRANS will consider similar action under its own legal authorities, including responsibility determinations in future contracts.



## **XI. LIST OF EXHIBITS**

**Exhibit A: DBE Program Organizational Chart**

**Exhibit B: Form 103- Monthly DBE Subcontractors Paid Report  
Summary and Payment Verification**

## Exhibit A: DBE Program Organizational Chart





## **Exhibit B: Form 103- Monthly DBE Subcontractors Paid Report Summary and Payment Verification**



## Summary of Disadvantaged Business Enterprise (DBE) - Subcontractors Paid Monthly Report

|                               |               |               |
|-------------------------------|---------------|---------------|
| Reporting Period (Month/Year) | Report Number | Date Prepared |
|-------------------------------|---------------|---------------|

|  |  |                                       |  |
|--|--|---------------------------------------|--|
| 1) Project Name  |  | 2) Project Location                   |  |
| 3) Contract Number                                       | 4) Original Contract Award Amount        | 5) Contract Award Date                |  |
| 6) Current Contract Value                                | 7) Omnitrans Payment to Prime This Month | 8) Total Amount Paid to Prime to Date |  |
| 9) Date of Last Progress Payment Received from Omnitrans | 10) Percent of Project Complete          | 11) DBE Goal Percentage (committed)   |  |

|                         |                    |
|-------------------------|--------------------|
| 12) Prime Contractor    | 13) Contact Person |
| 14) Street Address      | 15) City/State/Zip |
| 16) Area Code/Phone No. | 17) Email Address  |

| 18) SUBCONTRACTOR/SUPPLIER       | Dollars Paid This Month | Dollar Amount Paid to Date | Schedule Activity ID (Construction only) | Type of Work Performed | Original Dollar Amount Committed | Dollar +/- resulting from Change Order Activity |
|----------------------------------|-------------------------|----------------------------|--|------------------------|----------------------------------|---|
| <b>Subcontractor/Supplier #1</b> | ↓                       | ↓                          | ↓  | ↓                      | ↓                                | ↓   |
| Name                             |                         |                            |  |                        |                                  |   |
| Address                          |                         |                            |  |                        |                                  |   |
| Area Code/Phone                  |                         |                            |  |                        |                                  |   |
| Contact Person                   |                         |                            |  |                        |                                  |   |
| <b>Subcontractor/Supplier #2</b> | ↓                       | ↓                          | ↓  | ↓                      | ↓                                | ↓   |
| Name                             |                         |                            |  |                        |                                  |   |
| Address                          |                         |                            |  |                        |                                  |   |
| Area Code/Phone                  |                         |                            |  |                        |                                  |   |
| Contact Person                   |                         |                            |  |                        |                                  |   |
| <b>Subcontractor/Supplier #3</b> | ↓                       | ↓                          | ↓  | ↓                      | ↓                                | ↓   |
| Name                             |                         |                            |  |                        |                                  |   |
| Address                          |                         |                            |  |                        |                                  |   |
| Area Code/Phone                  |                         |                            |  |                        |                                  |   |
| Contact Person                   |                         |                            |  |                        |                                  |   |



## Summary of Disadvantaged Business Enterprise (DBE) - Subcontractors Paid Monthly Report

|                               |               |               |
|-------------------------------|---------------|---------------|
| Reporting Period (Month/Year) | Report Number | Date Prepared |
|-------------------------------|---------------|---------------|

|                                  |  |  |  |  |  |  |  |
|----------------------------------|--|--|--|--|--|--|--|
| <b>Subcontractor/Supplier #4</b> |  |  |  |  |  |  |  |
| Name                             |  |  |  |  |  |  |  |
| Address                          |  |  |  |  |  |  |  |
| Area Code/Phone                  |  |  |  |  |  |  |  |
| Contact Person                   |  |  |  |  |  |  |  |
| <b>Subcontractor/Supplier #5</b> |  |  |  |  |  |  |  |
| Name                             |  |  |  |  |  |  |  |
| Address                          |  |  |  |  |  |  |  |
| Area Code/Phone                  |  |  |  |  |  |  |  |
| Contact Person                   |  |  |  |  |  |  |  |
| <b>Subcontractor/Supplier #6</b> |  |  |  |  |  |  |  |
| Name                             |  |  |  |  |  |  |  |
| Address                          |  |  |  |  |  |  |  |
| Area Code/Phone                  |  |  |  |  |  |  |  |
| Contact Person                   |  |  |  |  |  |  |  |

**INSTRUCTIONS**

The Prime shall make prompt payment of all monies due and owed to DBE and non-DBE firms within 10 business days upon receipt of payment from Omnitrans as per Contract Agreement. Payment of retention shall be made to all DBE and non-DBE subcontractors within 10 days after satisfactory completion of the subcontracted work.

This form is due to Omnitrans by the 15<sup>th</sup> of each month and should reflect all payments made to subs through the last day of the previous month.

The Prime must report monthly, even if the sub(s) did not perform any work for the previous month. Please forward signed original documents by email and/or fax.

**Completed By:**

|  |  |  |
|--|--|--|
|  |  |  |
|--|--|--|

**Name**

**Signature**

**Date**



## Summary of Disadvantaged Business Enterprise (DBE) - Subcontractors Paid Monthly Report

|                               |               |               |
|-------------------------------|---------------|---------------|
| Reporting Period (Month/Year) | Report Number | Date Prepared |
|-------------------------------|---------------|---------------|

### Invoice Payment History

| DBE<br>Subcontractors/Suppliers       |                               | Sub/Supplier<br>#1 | Sub/Supplier<br>#2 | Sub/Supplier<br>#3 | Sub/Supplier<br>#4 | Sub/Supplier<br>#5 | Sub/Supplier<br>#6 | DBE<br>Sub/Supplier<br>Total |
|---------------------------------------|-------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|------------------------------|
| Invoice<br>Numbers                    | Invoice Date<br>and Date Paid | Amount Paid \$     | Amount Paid \$     | Amount Paid \$     | Amount Paid \$     | Amount Paid \$     | Amount Paid \$     | Amount Paid \$               |
|                                       |                               |                    |                    |                    |                    |                    |                    |                              |
|                                       |                               |                    |                    |                    |                    |                    |                    |                              |
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|                                       |                               |                    |                    |                    |                    |                    |                    |                              |
|                                       |                               |                    |                    |                    |                    |                    |                    |                              |
|                                       |                               |                    |                    |                    |                    |                    |                    |                              |
| <b>GRAND TOTAL<br/>(Paid to Date)</b> |                               |                    |                    |                    |                    |                    |                    |                              |



## Summary of Disadvantaged Business Enterprise (DBE) - Subcontractors Paid Monthly Report

| Reporting Period (Month/Year) | Report Number | Date Prepared |
|-------------------------------|---------------|---------------|
|-------------------------------|---------------|---------------|

### Instructions – Summary of Monthly DBE Payments Information

#### SUCCESSFUL BIDDER:

This form requires specific information regarding the disadvantaged business enterprise subcontractors paid on this construction contract.

The form must be completed for all DBEs. The form requires that the Reporting Period (month/year) be included. A Report Number should also be completed. This field should include a sequential number with the first form having number "1". The date prepared should also be included.

**IMPORTANT:** Identify **all** DBE firms that were paid during the reporting period for the project, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid.

There is a column for the "Dollars Paid This Month". Enter the Total amount paid for each DBE firm for the reporting period. Also include the total amount paid to date, which shall include the amount paid for the current reporting period.

Include the Schedule Activity ID for construction contracts. Include a brief description for the type of work performed. The original dollar amount committed to the DBE firm should be included in the appropriate Column and any increase or decrease in the subcontract amount resulting from a change order shall be included in the "Dollar +/- resulting from Change Order Activity" column.

This form must be signed and dated by the prime contractor's representative that is responsible for reporting DBE compliance matters. The form must be submitted no later than the 15<sup>th</sup> day of each month.