

# FTA 5311 Recovery Act

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## Disadvantaged Business Enterprises (DBE) Program



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## ■ 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.

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- **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.

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## **DBE Program Background**

# *Ninth Circuit Court Decision*

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- 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*

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- 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*

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- 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*

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- **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”*

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- "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”*

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- 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”*

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## **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)

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- 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.

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- 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](http://www.dot.ca.gov/hq/bep/dbe_program.htm)

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- 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.

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



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- 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.

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Caltrans DBE Goal for Transit – 4%

FACILITY PROJECTS ONLY

All  
Registered  
DBEs

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

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- 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

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## ***DBE Race Neutral Implementation Agreement***

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

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- 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.

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- **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.

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- (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.



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

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- **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*

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- **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***

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

# Location of DBE Forms

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- DMT DBE webpage:

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

## *Where to Find a Certified DBE Firm?*

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- 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](mailto:rgongalez@padillainc.com)

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*DBE Questions?*

Call or email:

Lisa\_Bell@dot.ca.gov

(916) 657-4587



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***Title VI of the Civil Rights Act***

# Title VI of the Civil Rights Act

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- 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?

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- 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?

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- 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?

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- 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

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Mark E. Robertson

EEO Officer/Title VI Liaison

4300 Caterpillar Road

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Phone: (530) 225-3055

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# Title VI – What is Required?

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

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



# Americans with Disabilities Act of 1990 (ADA)

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

# ADA Requirements

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- 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

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

# Caltrans ADA Contacts

<b>Headquarters Staff</b>		
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