



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Disadvantaged Business Enterprise (DBE) Program for use with Federally Funded Transportation Projects

RECOMMENDED MOTION:

Adopt Resolution Authorizing the City Manager to execute a Disadvantaged Business Enterprise Implementation Agreement with the State of California.

SUMMARY

The City was awarded three grants from the Federal Non-motorized Transportation Pilot Program. As a condition of obtaining these grant funds, the City must establish a Disadvantaged Business Enterprises (DBE) program to ensure that a portion of the grant funds go to disadvantaged businesses. A DBE Program was prepared to comply with this requirement. The proposed DBE Program is a State prepared race neutral DBE Program that the City is agreeing to implement. To do this, an agreement needs to be executed with the State. The draft DBE Program sets a goal of 13.5%.

The State DBE program is undergoing revision to return to race conscious operation. The City made need to revise this DBE program in the future to conform. Adoption of a DBE program, now, is requested to enable the hiring of consultants as soon as possible to meet project completion goals.

Staff recommends that the Council adopt the attached resolution approving the DBE Program and authorize the City Manager to execute documents related to the 2008/2009 Sausalito DBE Program.

BACKGROUND

The attached Implementation Agreement binds the City to statewide DBE Program provisions. This means that consultant and construction contracts will be required, when feasible, to use some services and/or products from Disadvantage Businesses. The state DBE goal is 13.5%. The City's last DBE program, from 2006, had a goal of 13%. The state did a federally required study to determine the statewide goal.

At the moment the State DBE program is race neutral. It became that way in 2006 when a state proposition was passed prohibiting race based selections. Staff believes the goal of

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that state proposition was to recognize business disadvantage from an economic and/or gender basis, not by race or nationality. After one year the State evaluated the effectiveness of the change and found problems. The State is in the process of revising its DBE program to return to race conscious operation. They have notified Cities and Counties that revisions of DBE programs may be required depending on when funding agreements are executed. Should revisions found to be necessary, staff will return to the Council with a revised program.

The DBE Program is proposed to apply only to those projects supported with federal funds. At the present time that means the three NMTTP projects (Bridgeway to Ferry Landing Improvements, Bridgeway Pathway Planning, Stairs between Filbert/Cazneau and between Santa Rosa/Prospect. Should the City receive other federal grants these goals will apply to those projects as well.

The DBE program is proposed, now, so that efforts can be started to solicit proposals for consultant services for the three NMTTP projects. The goal is to have all three projects substantially completed by November of 2009.

ISSUES

Failure to adopt a DBE could result in the forfeiture of \$640,000 of Federal funds.

FISCAL IMPACT

DBE Program was prepared by City staff. There is \$50,000 funded by local sources for Bridgeway to Ferry Landing Project. The funding detailed in the 2008-2010 Budget under consideration, separately, tonight.

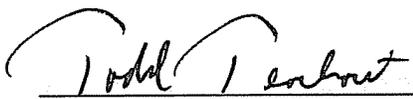
STAFF RECOMMENDATIONS

Adopt the attached resolution approving of the Sausalito DBE Program and authorizing the City Manager to execute documents related to the 2008/2009 DBE Program.

ATTACHMENTS

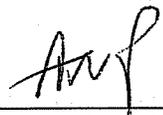
1. Draft Implementation Agreement and Annual Submittal Form.
2. Resolution

PREPARED BY:



Todd Teachout, City Engineer

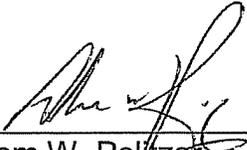
REVIEWED BY (Department Head):



for Vacant, Director of Public Work

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SUBMITTED BY:



Adam W. Politzer
City Manager

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RESOLUTION ____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAUSALITO APPROVING
THE 2008/09 SAUSALITO DBE PROGRAM

WHEREAS, the City of Sausalito was awarded Federal Grants for three projects funded from the Non-Motorized Transportation Pilot Program (NMTTPP), and

WHEREAS, a condition of the grant requires the City to assure that disadvantage business enterprises (DBE) are provided opportunities to work on federally the funded transportation projects, and

WHEREAS, in response to the grant condition a DBE Program was prepared by the State of California(State), and

WHEREAS, utilizing a State prepared evaluation of the market, a goal of 13.5% DBE participation, is established in the program, and

WHEREAS, the City of Sausalito DBE Program, by this reference is the same as the State DBE Program; and

WHEREAS, the State requires the City of Sausalito to execute a DBE Implementation Agreement; and

WHEREAS, the City desires to NMTTPP funding.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Sausalito:

1. Approves the 2008/09 Sausalito Disadvantaged Business Enterprise Program for Federally Funded Projects.
2. Authorizes the City Manager to execute necessary DBE Implementation Agreement and annual submittal forms.

AYES: Councilmembers:
NOES: Councilmembers:
ABSTAIN: Councilmembers:

Mayor, City of Sausalito

ATTEST:

City Clerk

REVISIONS

1. The first sentence of the first paragraph should be reworded to be more concise.

2. The second paragraph needs a topic sentence to introduce the main point.

3. The third paragraph contains several run-on sentences that should be broken up.

4. The fourth paragraph is missing a concluding sentence.

5. The fifth paragraph should be reorganized to improve the flow of ideas.

6. The sixth paragraph needs more specific evidence to support the claim.

7. The seventh paragraph should be revised to clarify the author's intent.

8. The eighth paragraph is too long and should be split into two.

9. The ninth paragraph needs a stronger topic sentence.

10. The tenth paragraph should be reworded to avoid repetition.

11. The eleventh paragraph needs a concluding sentence.

12. The twelfth paragraph should be reorganized to improve the flow of ideas.

13. The thirteenth paragraph needs more specific evidence to support the claim.

14. The fourteenth paragraph should be revised to clarify the author's intent.

15. The fifteenth paragraph is too long and should be split into two.

16. The sixteenth paragraph needs a stronger topic sentence.

17. The seventeenth paragraph should be reworded to avoid repetition.

Exhibit 9-A Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Local Agencies

**DISADVANTAGED BUSINESS ENTERPRISE
RACE-NEUTRAL
IMPLEMENTATION AGREEMENT
FOR
LOCAL AGENCIES**

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DISADVANTAGED BUSINESS ENTERPRISE RACE-NEUTRAL IMPLEMENTATION AGREEMENT

For the City of Sausalito, 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.

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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. [Specify resources available to the DBELO; e.g., the DBELO has a staff of two professional employees assigned to the DBE program on a full-time basis and two support personnel who devote a portion of their time to the program.] The name, address, telephone number, electronic mail address, and an organization chart displaying the DBELO's position in the organization are found in Attachment _____ 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.

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 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.

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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.

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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)

Adam W. Politzer, City Manager
(Print Name and Title) ADMINISTERING AGENCY
City of Sausalito - Authorized Governing Body Representative

Phone Number: (415) 289-4111

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

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Exhibit 9-B Local Agency DBE Annual Submittal Form

TO: CALTRANS DISTRICT 04
District Local Assistance Engineer

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 Sausalito, submits our AADPL information. We have established an AADPL of 13.5% for the Federal Fiscal Year 2008/09, beginning on October 1, 2008, and ending on September 30, 2009.

Methodology

The City of Sausalito intends to follow and utilize the more stringent of the Goals established by the State of California or the Transportation Authority of Marin (TAM) for construction, engineering and planning services.

Disadvantaged Business Enterprise Liaison Officer (DBELO)

City of Sausalito has designated the City Engineer as the DBE Liaison Officer. This position is currently occupied by Todd Teachout (as of 6/24/2008). The City Engineer can be reached at the City of Sausalito, 420 Litho Street, Sausalito, CA 94965. Telephone: (415)289-4111, FAX: (415) 339-2256, E-Mail: tteachout@ci.sausalito.ca.us

Prompt Pay

Federal regulation (49 CFR 26.29) requires one of 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. (Attached is a listing of the three methods. On the attachment, please designate which prompt payment provision the local agency will use.)

(Signature)

Date

Adam W. Politzer, City Manager
City of Sausalito (Print Name and Title)

(415) 289-4111
Phone Number

ADMINISTERING AGENCY
(Authorized Governing Body Representative)

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

Date

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

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(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.

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