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March 3, 2011

Robert Mahan
Gold Dolphin Insurance Services, Inc.
2600 Walnut Avenue, Suite D
Tustin, CA 92780

Dear Mr. Mahan:

Thank you for taking the time to meet with me and Eric Mandell, Department of General Services (DGS), regarding how the California Department Transportation (Caltrans) would count insurance costs and premiums toward the Disabled Veteran Business Enterprise (DVBE) goal.

The Military and Veterans Code section 999(5) (b) states:

(5) (B) "Disabled veteran business enterprise contractor, subcontractor, or supplier" means any person or entity that has been certified by the administering agency pursuant to this article and that performs a "commercially useful function," as defined below, in providing services or goods that contribute to the fulfillment of the contract requirements:

(i) A person or an entity is deemed to perform a "commercially useful function" if a person or entity does all of the following:

(I) (aa) Is responsible for the execution of a distinct element of the work of the contract.

(ab) Carries out the obligation by actually performing, managing, or supervising the work involved.

(ac) Performs work that is normal for its business services and functions.

(II) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

(ii) A contractor, subcontractor, or supplier will not be considered to perform a "commercially useful function" if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of a disabled veteran business enterprise participation.

There are multiple questions to your request on how Caltrans will count insurance costs/premiums towards the DVBE goal on a contract. During our meeting, you indicated business related bonding and insurances are distinct elements of the contract requirements. You further indicated as the bond/insurance agent you carry out the obligation of the issuance of the bond/insurance policy by managing the policy requirements. You also indicated you are not further subcontracting a portion of the policy that is greater than that expected to be subcontracted by normal industry practices. Lastly, you indicated you have 100 percent risk of loss of the bond/insurance premium if the prime contractor fails to pay the full bond/insurance cost/premium. You bill the prime contractor, and the prime contractor pays the invoice directly

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to your business and not directly to the bond/insurance company. Based on our general discussion as described, it appears your bond/insurance issuance meets the test of performing a commercially useful function (CUF).

Another question you raised was will Caltrans count the total insurance premium cost as DVBE participation on a contract when the DVBE is issuing a general liability insurance policy as their contract service. Commonly, a general liability insurance policy is issued annually for the prime contractor's entire yearly business operations. It is not common for a prime contractor to obtain a separate policy for each public works contract. The policy premium is for the full year's coverage regardless of how many public works contracts the prime contractor pursues or is awarded. Therefore, it is up to the prime contractor to pro-rate the cost of the annual policy premium onto the individual contract that he/she is listing your services towards meeting the DVBE participation goal. As normal practice, when a prime contractor lists a DVBE for goal credit, Caltrans will evaluate the CUF and apply the appropriate DVBE dollar value and credit towards the goal. This opinion applies only to Caltrans contract evaluation for DVBE credit on state-funded contracts.

If you have questions or need further assistance, please contact me via telephone at (916) 324-0990 or via e-mail at olivia_fonseca@dot.ca.gov.

Sincerely,



OLIVIA FONSECA
Deputy Director
Office of Business and Economic Opportunity

- c: Eric Mandell, Chief, Procurement Division, DGS Office of Small and Disabled Veterans Services, Communications and Outreach
- Alicia Sequeira, Program Analyst, Office of Business and Economic Opportunity