



## *Local Programs Procedures*

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### **LPP 06-06 Manual Update**

**Subject: Deletion of DBE Availability Advisories and other Technical Changes**

Reference: *Local Assistance Procedures Manual*, Chapter 5-Accounting/Invoices; Chapter 9-Civil Rights and Disadvantaged Business Enterprises; Chapter 10-Consultant Selection; Chapter 12-Plans, Specifications & Estimate; Chapter 15-Advertise and Award Project; and Chapter 20-Deficiencies and Sanctions.

Effective Date: November 14, 2006

Approved: Original Signed By  
TERRY L. ABBOTT, Chief  
Division of Local Assistance

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### **WHAT IS AN LPP**

LPPs are Local Programs Procedures. These documents are used for the rapid deployment of new procedures and policies between updates of Local Assistance manuals, guidelines and programs. They are numbered according to calendar year and order in which released. This is the sixth LPP issued in 2006; hence, it is LPP 06-06.

### **PURPOSE**

The purpose of this LPP is threefold: 1) to delete the Disadvantaged Business Enterprise (DBE) Availability Advisory requirement and related language; 2) to make the race-neutral measures listed in Chapter 9 and the Exhibit 9-A "Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Local Agencies" read identically to the list of race-neutral measures in 49 CFR Part 26.51; and 3) to make technical changes as required.

### **BACKGROUND**

DBE Availability Advisory Percentage: On May 1, 2006, Caltrans began implementing a race-neutral DBE Program due to a federal court decision. Under a race-neutral DBE Program, Caltrans is still required by law to attain the overall DBE Program goal but must rely on voluntary efforts of contractors to utilize DBEs on contracts. As a guide to contractors as to the relative availability of DBEs, DBE Availability Advisory Percentages (AAP) were included in contracts. The AAP was merely advisory and not an enforceable goal. Given the limited utility of the AAP, Caltrans has decided that resources could be better spent focusing efforts on measures that facilitate the

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participation of all small businesses and enhancing Caltrans overall race-neutral program. The AAP may also have had the unintended effect of placing a “ceiling” on potential DBE participation because bidders may believe the AAP represents the outer limits of DBE participation. To that end, the AAP will be removed from the contract specifications.

Local agencies advertising contracts after November 1, 2006, may begin to use a revised boilerplate. The revised boilerplate may be found at the Local Assistance website at:

[http://www.dot.ca.gov/hq/LocalPrograms/DBE\\_CRLC/DBE\\_CRLC.html#DBE](http://www.dot.ca.gov/hq/LocalPrograms/DBE_CRLC/DBE_CRLC.html#DBE)

Caltrans is granting a phase-in period between November 1, 2006, and January 31, 2007, to allow local agencies sufficient time to incorporate the revised boilerplate in their contract documents. During the phase-in period, no amendment will be required if a contract is advertised using the old boilerplate. After January 31, 2007, local agencies must use the revised boilerplate.

Race-Neutral Measures: Caltrans Civil Rights Program is editing the race-neutral measures listed in the Caltrans DBE Program Plan to read identically to the race-neutral measures listed in the 49 CFR Part 26.51. For the purpose of maintaining consistency with the Caltrans DBE Program Plan, these changes need to be incorporated in Chapter 9 and the Exhibit 9-A “Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Local Agencies.”

Changes to the *Local Assistance Procedures Manual* (LAPM) and the Exhibit 9-A require that local agencies either: 1) write and execute an amendment to their existing Exhibit 9-A; or 2) execute the updated Exhibit 9-A included in this LPP. The deadline is February 1, 2007, to have either an amendment or a new agreement executed. Under separate cover, the Division of Local Assistance is mailing to local agencies a sample amendment.

Reinstatement and Modification of the Bidder’s List of Subcontractors (DBE and Non-DBE) (Exhibit 12-G, Parts I and II): Reinstated the “Bidder’s List of Subcontractors” form and modified same to require the local agency--rather than the bidder--to determine whether or not a subcontractor is a DBE *after* award of the contract. The purpose of modifying the form is to ensure that DBE participation is not considered during the bidding process per the requirements of a Race-Neutral DBE Program.

#### **PREVIOUS PROCEDURE**

The agency establishes a DBE Availability Advisory for individual contracts to assist the bidders in ascertaining a reasonable level of DBE participation for a given contract. The agency includes a DBE Availability Advisory in each contract whenever the opportunity arises, regardless of whether the agency has achieved its Annual Anticipated DBE Participation Level (AADPL).

**NEW PROCEDURE**

The new procedure disallows the use of DBE Availability Advisories Percentages on individual contracts.



**USER FRIENDLY FEATURES**

- These new procedures are incorporated in the electronic version of the LAPM that is available at the Division of Local Assistance Home page on the Internet at: <http://www.dot.ca.gov/hq/LocalPrograms/>. Once there, click on “Publications” and click on *Local Assistance Procedures Manual*.
- You may also purchase Publications for Local Assistance CD, which acts as a one-stop shop for information and promotes flexible access to helpful information for local project delivery at: <http://www.dot.ca.gov/hq/LocalPrograms/lam/LApubsCD.htm>
- Additional user-friendly features were developed to make the manual easier to edit and to access on the DLA website. These added features will allow the users to navigate more quickly through the manual. **Sidbars are used to indicate where the revisions were made on the affected pages.**
- To receive an electronic notification when new information is posted on the DLA website, please subscribe to the DLA list server at: <http://www.dot.ca.gov/hq/LocalPrograms/sub.htm>
- Comments and suggestions for improvement to the manual or the processes and procedures are welcome. They may be submitted to:

Department of Transportation  
Division of Local Assistance, MS 1  
Attention: Cathy Felkins  
P.O. Box 942874  
Sacramento, CA 94274-0001  
FAX (916) 654-2409  
[Cathy\\_Felkins@dot.ca.gov](mailto:Cathy_Felkins@dot.ca.gov)

**SUMMARY OF CHANGES**

<b>LAPM Item</b>	<b>Change</b>
<p><b>Chapter 5</b>  <b>Section 5.2</b>  <b>(Requirements for Reimbursement)</b>  <b>page 5-5</b></p>	<p>Under <i>Award Package</i> deleted item “5. <i>Disadvantaged Business Enterprise Project Goal, ....</i>” and replaced with item “5. <i>Local Agency Bidder DBE Information Sheet ....</i>”</p>
<p><b>Chapter 9</b>  <b>Table of Contents</b></p>	<p>Updated the Table of Contents to reflect the changes.</p>
<p><b>Section 9.5</b>  <b>(Disadvantaged Business Enterprise)</b>  <b>pages 9-8, 9, 10, 11</b></p>	<p>Under the <i>DBE Definitions</i> the following changes were made:</p> <ul style="list-style-type: none"> <li>- Deleted from term <i>Annual Anticipated DBE Participation Level (AADPL)</i> “<i>The AADPL will be derived....</i>”</li> <li>- Deleted the term “<i>DBE Availability Advisory</i>”</li> <li>- Replace “<i>the Department</i>” with “<i>Caltrans.</i>”</li> </ul> <p>Under <i>DBE Program Responsibilities</i> the following changes were made:</p> <ul style="list-style-type: none"> <li>- Deleted the fifth and sixth bulleted items from the <i>Local Agency Responsibilities</i>.</li> </ul>
<p><b>Section 9.6</b>  <b>(Local Agency Responsibilities under Caltrans DBE Program Plan)</b>  <b>pages 9-11, 12</b></p>	<p>Corrected the link to the DBE website.</p> <p>Under <i>DBE Annual Submittal Form</i>, item 1, deleted ...“that will be used ... Level.”</p> <p>Under <i>DBE Liaison Officer</i> added title of Exhibit 9-A “<i>Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Local Agencies.</i>”</p>
<p><b>Section 9.8</b>  <b>(DBE Availability Advisory for Individual Contracts)</b>  <b>pages 9-16, 17, 18, 19, 20, 21</b></p>	<p>Pages 16 – 21 were consolidated.</p> <p>The first five paragraphs under <i>DBE Participation on Contract</i> were deleted.</p> <p>The <i>Participation Opportunities</i> section and title for <i>DBE Contract Requirements</i> were moved to page 17 leaving page 18 intentionally blank.</p> <p>Under <i>DBE Contract Requirements</i> the first paragraph and all bulleted items were deleted.</p> <p>Under <i>Local Agency Bidder DBE Information</i> exhibit titles were added for Exhibit 15-G “<i>Local Agency Bidder-DBE (Construction Contracts)-Information</i>” and Exhibit 10-O “<i>Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information.</i>”</p> <p>Changed section title “<i>Counting Work Toward the Contract Availability Advisory</i>” to “<i>Counting DBE Participation.</i>”</p>

<b>Exhibit 9-A,</b> <b>page 9-29</b>	Changed <i>Article V Race-Neutral Means of Meeting the Annual DBE Goal (§26.51)</i> to read identically to 49 CFR Part 26.51.
<b>Chapter 10</b> <b>Section 10.2</b> <b>(Identifying and</b> <b>Defining a Need for</b> <b>Consultants)</b> <b>pages 10-7, 8</b>	Under <i>DBE Participation</i> the following changes were made: <ul style="list-style-type: none"> <li>- First paragraph, a portion of the second to the last sentence was deleted ...“<i>as this will help them in the establishment of the DBE ‘availability advisory’.</i>”</li> <li>- Last paragraph was deleted.</li> </ul> Under <i>Reporting DBE Participation</i> the following were deleted: <ul style="list-style-type: none"> <li>- The last sentence in the first paragraph.</li> <li>- The first sentence of the second paragraph.</li> </ul>
<b>Section 10.4</b> <b>(Consultant Selection</b> <b>Using the One-Step-</b> <b>RFP Method)</b> <b>page 10-17</b>	Under <i>Negotiate Contract with Top-Ranked Consultant</i> added bulleted item “ <i>Products to be Delivered.</i> ”
<b>Section 10.5</b> <b>(Consultant Selection</b> <b>Using the One-Step</b> <b>RFQ Method)</b> <b>pages 10-18, 20</b>	Under <i>Prepare Request for Qualifications (RFQ)</i> deleted the seventh bulleted item “ <i>A DBE ‘availability advisory percentage’ may be included if it is a Federal-aid contract.</i> ”  Under <i>Negotiate Contract With Top-Ranked Consultant</i> deleted the entire third paragraph.
<b>Exhibit 10-D</b> <b>page 10-39</b>	List item B.6.p was corrected from ...“ <i>CFR Part 26</i> ”... to ...“ <i>49 CFR Part 26</i> ”...
<b>Exhibit 10-I</b> <b>page 10-49</b>	Deleted the first and second paragraphs after the title. “ <i>Notice to Bidders/Proposers.</i> ”  Delete 2.C “ <i>Meeting the DBE Availability Advisory Percentage is not a condition for being eligible for award of the Agreement.</i> ”
<b>Exhibit 10-J:</b> <b>pages 10-53, 54</b>	Changed title of list item 2. Deleted entire list item “ <i>3. Disadvantaged Business Enterprise Program Availability Advisory.</i> ”
<b>Exhibit 10-O</b> <b>pages 10-73, 74</b>	Deleted “ <i>ADVERTISED DBE CONTRACT ‘Availability Advisory Percentage’:</i> ” under PROPOSER’S/BIDDER’S NAME  Deleted from first paragraph of Instructions ... “ <i>and Advertised DBE ‘Availability Advisory Percentage’ if any.</i> ”
<b>Chapter 12</b> <b>Section 12.8</b> <b>(Standard</b> <b>Specifications)</b> <b>page 12-13, 14</b>	Changed ESC to Caltrans Office Engineer from Caltrans Specifications on the Internet.  Under <i>Contents</i> deleted from the first paragraph ... “ <i>the Disadvantaged Business Enterprise (DBE) Availability Advisory (See Chapter 9, Section 9.8)</i> ”...

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<b>Section 12.9 (Required Federal Contract Provisions) pages 12-22, 23, 23A</b>	<p>Deleted the following under the <i>Disadvantaged Business Enterprise</i>:</p> <ul style="list-style-type: none"><li>- “Additional information regarding DBE contract availability advisories can be found in Chapter 9, ‘Civil Rights and Disadvantaged Business Enterprises’ and Chapter 15, ‘Advertise and Award Project’ of this manual.”</li><li>- “Required DBE specifications and contract provisions are the following for projects....”</li></ul> <p>Added last paragraph under Disadvantaged Business Enterprise explaining the requirement to maintain a bidder’s list of subcontractors: “In accordance with Section 9.4 Local Agency DBE Program.....”</p>
<b>Exhibit 12-D pages 12-51, 52</b>	<p>Deleted the <i>Example</i> under <i>Item A; Item B</i> of Section E. <i>Disadvantaged Business Enterprise (DBE)/Subcontracting</i>; and <i>Items a. 2-1.03; 2.a.; 2.b.</i></p>
<b>Exhibit 12-E pages 12-61, 93</b>	<p>Deleted the following from Section E. <i>Disadvantaged Business Enterprise (DBE)</i>:</p> <ul style="list-style-type: none"><li>- In the second paragraph “<i>Individual project availability advisory... .</i>”</li><li>- Entire third paragraph “<i>In some cases, ....</i>”</li><li>- In the fourth paragraph ... “<i>the contract goal,</i>” ...</li><li>- In the fifth paragraph ... “<i>and DBE Availability Advisory for project.</i>”</li></ul> <p>Deleted entire Section “<i>2-1.03 DBE Availability Advisory.</i>”</p>
<b>Exhibit 12-G pages 12-111, 112</b>	<p>Reinstated the <i>Bidder’s List of Subcontractors</i> form and modified same to require the local agency to determine whether or not a subcontractor is a DBE. The purpose of modifying the form is to ensure that DBE participation is not considered during the bidding process per the requirements of a Race Neutral DBE Program. Local agencies complete the DBE section of the form <b>after</b> the award of the contract.</p>
<b>Chapter 15 Exhibit 15-B page 15-20</b>	<p>Deleted under Item 12 “<i>*Contract DBE availability advisory percentage for this project.</i>”</p>
<b>Exhibit 15-G pages 15-31, 32</b>	<p>Deleted “<i>ADVERTISED DBE CONTRACT AVAILABILITY ADVISORY Percentage.</i>”</p> <p>In the first paragraph of the Instructions, deleted ... “<i>and Advertised DBE Contract Availability Advisory.</i>”</p>
<b>Chapter 20 Section 20.2 (Deficiencies) page 20-2</b>	<p>In the fourth bulleted item under Procedural Deficiencies, replaced ... “<i>their approved</i>” ... with ... “<i>the Caltrans</i>” ...</p>

#### REFERENCES

- 49 CFR, Part 26
- *Caltrans Local Assistance Procedures Manual (LAPM)*

## AWARD PACKAGE

The local agency must submit a complete Award Package to the DLAE immediately after the award of the construction contract. A copy of the Award Package **must also be included** with the local agency's **first invoice for construction** to LPA at:

Department of Transportation  
Division of Accounting  
Local Program Accounting Branch - MS 33  
Attn: Invoice Control  
P.O. Box 942874  
Sacramento, CA 94274-0001

If LPA does not receive a copy of the award package with the first invoice for the construction phase, the invoice will be returned to the local agency unpaid.

For construction work involving force account, the submittal of the award package is required if the work is contracted out to a contractor. No award package is required if the local agency utilizes its own work force. In this case, submit a brief memo explaining why the award package is not included.

### **The Award Package for Federal-Aid projects includes the following:**

1. Local Agency Contract Award Checklist (LAPM, Exhibit 15-L) with attachments
2. Detail Estimate (LAPM, Exhibit 15-M)
3. Finance Letter (LAPM, Exhibit 15-N)
4. Resident Engineer's Construction Contract Administration Checklist (LAPM, Exhibit 15-B)
5. Local Agency Bidder DBE Information Sheet (LAPM, Exhibit 15-G)

### **Award Package for State Transportation Improvement Program (STIP) projects:**

The Award Package for state-only funded construction contracts shall consist of the completed Award Information for STIP projects. (See LAPG, Chapter 23, Exhibit 23-A "Award Information for STIP Projects").

## 5.3 REIMBURSABLE PROJECT COSTS

The costs of salaries, wages and related project costs may be reimbursable for the following activities. All costs must be broken down into eligible direct and/or indirect cost components.

## PHASES OF WORK

1. **Preliminary Engineering:** Preliminary Engineering is the initiation, design, and related work preparatory to the advancement of a project to physical construction. For local STIP Projects, the Preliminary Engineering costs must be segregated into:
  - Environmental Studies and Permits
  - Plans, Specifications & Estimate
2. **Right of Way:** Acquisition of right of way, real property, or rights thereto is included. It also includes the preparation of right of way plans, making economic studies and other related preliminary work, appraisal for parcel acquisition, review of appraisals, preparation for and trial of condemnation cases, management of properties acquired, furnishing of relocation advisory assistance, utility relocation, and other related labor expenses.

Note: Right of Way rental income and the proceeds from the sale of excess land may be retained by local agencies **if it is used for a valid Title 23 purpose**. It is the local agency's responsibility to assure they comply with Title 23 if this option is selected.

For additional information about Right of Way topics, see LAPM, Chapter 13 "Right of Way."

3. **Construction Engineering:** Construction Engineering is the supervision and inspection of construction activities, additional staking functions considered necessary for effective control of the construction operations, testing materials incorporated into construction, checking shop drawing, and measurements needed for the preparation of pay estimates. **Construction Engineering costs must be listed on the "Authorization to Proceed" (E-76) to be eligible for reimbursement.**
4. **Construction:** Eligible construction costs include the actual costs to construct the transportation facility and its appurtenant facilities. It also includes: removal, adjustment or demolition of buildings or major construction; utilities or railroad work that is a part of the physical construction of the project; and administrative settlement cost of contract claims.
5. **Pre-award Audit Costs:** Pre-award audits are required for engineering and design related service contracts and subcontracts. See LAPM, Chapter 10 "Consultant Selection" for more information.
6. **Administrative Settlement Costs:** These are service costs related to contract claims related to the review and defense of claims against federal-aid projects. See LAPM, Chapter 16 "Federal-Aid Participation".



# CHAPTER 9 CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISES

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## REPORTING

The federal-aid contractor on federal-aid construction contracts that are active during the last full pay period in July completes “Form FHWA PR-1391, Federal-Aid Highway Construction Contractors Annual EEO Report,” (see Chapter 16, “Administer Construction Contracts,” of the LAPM).

## 9.5 DISADVANTAGED BUSINESS ENTERPRISE

Caltrans is required under 49 CFR, Part 26 to administer a DBE Program. The DBE Program is intended to remedy past and current discrimination against DBEs, ensure a level playing field and foster equal opportunity in federal-aid contracts.

In this manual, federal-aid contracts refer to U.S. DOT assisted-contracts that include funding from the FHWA, Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA).

### BACKGROUND

For several years, Caltrans through local agencies implemented a DBE Program in accordance with applicable requirements and included race-conscious components in the program. In May 2005 the Ninth Circuit Court of Appeals issued a decision on *Western States Paving, Inc. vs. Washington Department of Transportation, et al*, which required the State of Washington to comply with new evidentiary standards necessary to constitutionally support the use of race-conscious DBE goals such as those being used by Caltrans. The decision is binding on the states within its jurisdiction, including California.

Caltrans initiated a public comment period to request submission of evidence and information from the public that would support its current race-conscious DBE program.

After consideration of comments received during the public comment period, Caltrans determined that it is unable to continue with any level of a race-conscious DBE program, and that DBE participation will be achieved solely by race-neutral measures.

On May 1, 2006, Caltrans implemented a race-neutral DBE program, which includes the following changes:

- Local agencies will no longer have their own separate DBE programs unless such programs have been approved directly by a federal agency. Instead, local agencies must complete a “Disadvantaged Business Enterprise Race-Neutral Implementation Agreement,” as discussed in Section 9.6 of this chapter.
- Local agencies may no longer advertise and award contracts with federal-aid funds containing race-conscious DBE goals.
- Local agencies will still collect and report participation and utilization by DBEs on federal-aid contracts.
- All federal-aid procurements shall contain race-neutral DBE contract language. (See “Sample Notice to Contractors and Special Provisions” and “Sample Proposal and Contract” available to download from the DLA website:  
[http://www.dot.ca.gov/hq/LocalPrograms/sam\\_boil/sam\\_boil.htm](http://www.dot.ca.gov/hq/LocalPrograms/sam_boil/sam_boil.htm)

Changing from a race-conscious to a race-neutral DBE program is not retroactive, so contracts executed prior to the implementation date (May 1, 2006), and amendments thereto with race-conscious DBE contract participation goals are not affected by the new race-neutral DBE program. In terms of contract monitoring, those prime contractors or prime consultants that were awarded contracts with race-conscious DBE participation goals would still be required to meet those goals during performance of the contract. The request for DBE substitution process would also continue for the term of those contracts.

## DBE DEFINITIONS

**“Annual Anticipated DBE Participation Level (AADPL)”** - The level of participation that the local agency would expect DBEs to achieve in the absence of discrimination and the effects of past discrimination on federal-aid contracts awarded in its jurisdiction in a given Federal Fiscal Year (FFY). This includes an assessment of the availability for specific items of work that DBEs could reasonably be expected to compete for subcontracting opportunities on a federal-aid contract and their likely availability for work on federal-aid contracts that will be awarded in a given fiscal year. The AADPL is not a goal that the local agency needs to achieve, but the AADPL will be used by the Department to establish a statewide overall DBE participation goal as required by Title 49, Part 26 of the CFR. The local agency must have an approved AADPL on file with the DLAE before federal funds can be authorized on any new federal-aid consultant or construction contract.

**“Disadvantaged Business Enterprises (DBE)”** - A-for-profit “small business concern” that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. One or more such individuals must also control the management and daily business operations. These individuals must be citizens (or lawfully admitted permanent residents) of the United States and (1) any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis, or (2) who are either Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, women, or any other group found to be socially and economically disadvantaged by the Small Business Administration.

**“Race-conscious measure or program”**- One that is focused specifically on assisting only DBEs. The use of contract goals is the primary example of a race-conscious measure in the DBE program.

**“Race-neutral measure or program”**- A race-neutral measure or program is one that, while benefiting DBEs, is not solely focused on DBE firms. For example, small business outreach programs, technical assistance programs, and prompt payment clauses can assist a wide variety of small businesses, not just DBEs. For purposes here, race-neutral includes gender neutrality.

**“Small Business Concern”** - Small Business Concern means, with respect to firms seeking to participate as DBEs in U.S. Department of Transportation (DOT) assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR

Part 121) that also does not exceed the cap on average annual gross receipts specified in Section 26.65(b) of 49 CFR.

**“Statewide Overall DBE Goal”** - As required by federal regulation, Caltrans has established a statewide overall DBE goal. This is the level of participation that Caltrans would expect DBEs to achieve in the absence of discrimination and the effects of past discrimination in a given fiscal year. In order to ascertain whether the Statewide Overall DBE Goal is achieved, Caltrans will track DBE participation on all federal-aid contracts.

## **DBE PROGRAM RESPONSIBILITIES**

### **FHWA RESPONSIBILITIES**

The Federal Highway Administration (FHWA) administers the payment of federal-aid highway funds to recipients: states, counties, cities, and other agencies such as transit districts for transportation related projects. The FHWA is responsible for monitoring these agencies for compliance with Title VI and other aspects of the Civil Rights Acts of 1964, 1968, and 1973, all concerning nondiscrimination in administration of federal funds.

### **CALTRANS RESPONSIBILITIES**

#### **Office of Civil Rights**

Office of Civil Rights responsibilities include:

- The Disadvantaged Business Enterprise Program in the Office of Civil Rights administers the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan (Caltrans DBE Program Plan).
- Maintains a directory of certified DBE contractors.
- The DBE Program, in the Office of Civil Rights, assists the District Local Assistance Engineer (DLAE) and the DLA in responding to local agency requests for assistance with questions/issues relative to DBE matters.
- Assist with training courses for district and local agency staff.

#### **Division of Local Assistance (DLA) and District Local Assistance Engineer (DLAE)**

Local Assistance responsibilities include:

- DLA will provide assistance to DLAE and district staff with questions/issues relative to DBE matters.
- DLA and the DLAE monitor local agency compliance with DBE program requirements by conducting process reviews. The FHWA will be invited to participate in these process reviews.
- DLA assembles statewide local agency DBE final utilization information and provides information for reports for FHWA.
- DLA will monitor districts for procedure compliance.

- DLA and the DLAE assist with training courses for district and local agency staff.
- The DLAE ensures that local agencies with federal-aid contracts submit the local agency's "Race-neutral Implementation Agreement" (Exhibit 9-A).
- The DLAE reviews and approves the local agency's DBE Annual Submittal Form (See Exhibit 9-B).
- The DLAE is the focal point for advice and assistance to the local agencies on DBE matters.
- The DLAE will ensure that the final DBE Utilization Report (for consultant and construction contractors) is reported to the DLA for inclusion in the Caltrans DBE report to FHWA.
- The DLAE is responsible for DBE oversight of local agencies pursuant to the *Local Assistance Procedures Manual* (LAPM) regulations.
- The DLAE will review at least one contract per year for each local agency with an active construction project. This will include review of records of DBE and non-DBE subcontractor utilization, substitutions, and DBE complaints, as well as checking if and verification that a DBE Liaison Officer has been designated.
- The DLAE will review at least one complete PS&E package for the required provisions (including DBE requirements) per year. If deficiencies are discovered, more frequent reviews should be conducted and a corrective action plan is to be submitted by the local agency for the DLAE's approval.
- The DLAE will maintain a list of each local agency's designated DBE Liaison Officer, which will be updated annually with the local agency's submittal of their DBE Annual Submittal Form.
- The DLAE will maintain a file with an index of all local agencies DBE Race-Neutral Implementation Agreements and DBE Annual Submittal Forms. Information from these forms will be entered into LP2000.

#### LOCAL AGENCY RESPONSIBILITIES

Local agency responsibilities are detailed in Section 9.6. These responsibilities include:

- Submitting a "DBE Race-Neutral Implementation Agreement for Local Agencies" to the Caltrans DLAE (See Exhibit 9-A).
- Developing an AADPL and submitting it to the Caltrans DLAE for review on the "Local Agency DBE Annual Submittal Form" (See Exhibit 9-B).
- Designating a DBE Liaison Officer, accountable to the Chief Executive Officer of the local agency, to administer the DBE Program.
- Ensuring prompt and full payment to the prime contractor and subcontractor in compliance with the prompt payment clauses of the contract.

- Reporting DBE anticipated participation Local Agency Bidder DBE Information (See Exhibit 15-G “Local Agency Bidder-DBE (Construction Contracts)-Information” and Exhibit 10-O “Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information”).
- Completing the “Report of Final DBE Utilization” forms (Exhibit 17-F).

## 9.6 LOCAL AGENCY RESPONSIBILITIES UNDER CALTRANS DBE PROGRAM PLAN

Local agency recipients of federal financial assistance shall comply with all the elements of Title 49, Part 26 of the CFR entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.” These provisions apply to all federal-aid transportation projects. Local agency responsibilities are detailed in the Caltrans DBE Program Plan. A copy of this plan is available to download from the DLA website at:

[http://www.dot.ca.gov/hq/LocalPrograms/DBE\\_CRLC/DBE\\_CRLC.html](http://www.dot.ca.gov/hq/LocalPrograms/DBE_CRLC/DBE_CRLC.html)

As an initial step, each local agency shall submit a “DBE Race-Neutral Implementation Agreement for Local Agencies” (Exhibit 9-A, of this chapter) to formally acknowledge the local agencies commitment to implement the Caltrans DBE Program Plan, and to comply with all the prescribed responsibilities detailed in the Plan and explained in the LAPM.

Each local agency shall also annually submit a “DBE Annual Submittal Form” (Exhibit 9-B, of this chapter). This form will provide information for the upcoming Federal Fiscal Year (FFY), which will include:

- (1) the local agency's AADPL
- (2) the methodology for establishing the AADPL
- (3) identification of the Disadvantaged Business Enterprise Liaison Officer (DBELO)
- (4) prompt pay provision to be used in contracts

### DBE RACE-NEUTRAL IMPLEMENTATION AGREEMENT FOR LOCAL AGENCIES

This agreement will need to be completed and submitted to the DLAE by June 1, 2006, by each local agency that currently has a DBE Program, or will be receiving federal financial assistance for their transportation projects. This agreement will need to be signed by a representative who is authorized by the governing body to take such action. Local agencies will not be permitted to continue with their own separate DBE programs, unless such programs have been approved directly by a federal agency.

Some of the elements of the Agreement are highlighted below:

#### OBJECTIVE/POLICY STATEMENT

Each agreement contains a policy statement expressing a commitment to the Caltrans DBE Program, stating its objectives, and outlining responsibilities for its implementation. Each local agency will circulate the statement throughout its organization and to the DBE and non-DBE business communities that perform work on its DOT-assisted contracts.

### DBE ANNUAL SUBMITTAL FORM

Each local agency must provide to the Caltrans DLAE a completed “DBE Annual Submittal Form for Local Agencies,” (Exhibit 9-B) by June 1 of each year for the following FFY. This form must be received prior to submitting a “Request for Authorization” to proceed with a federal-aid project. This form will include:

1. The amount of AADPL and the methodology for establishing the AADPL.
2. Designated DBE Coordinator information (name, address, phone number, and e-mail address).
3. Local agency’s choice for method of prompt payment of withheld funds to subcontractors.

### DBE LIAISON OFFICER

Each local agency must designate a DBE Liaison Officer (DBELO) who shall have direct independent access to the local agency’s Chief Executive Officer concerning DBE program matters. This person shall be responsible for the duties as described in “Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Local Agencies” (Exhibit 9-A in this chapter). Annually, the DBELO designation will be reported to Caltrans when the local agency completes its “Local Agency DBE Annual Submittal Form” (Exhibit 9-B in this chapter).

### REQUIRED CONTRACT CLAUSES

#### Contract Assurance

DBE regulations require the following contract assurance statement in every DOT-assisted contract and subcontract.

“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.”

#### Prompt Progress Payment to Subcontractors

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than 10 days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, Federal Regulation (49 CFR 26.29) requires a prime contractor or subcontractor to pay a subcontractor no later than 30 days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of the agency. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. These requirements apply to both DBE and non-DBE subcontractors.



### USE OF DATA FROM A DISPARITY STUDY

Disparity studies generally contain a wide array of statistical data, as well as anecdotal data and analysis that can be particularly useful in the AADPL-setting process. The data, which a good disparity study provides, can be an excellent guide for a recipient to use to set a narrowly tailored participation availability percentage. When setting the goal, first use the study's statistical evidence to set a base figure for the relative availability of DBEs. Other study information, whether it is anecdotal data, analysis, or statistical information about related fields, should be included when making adjustments to the base figure (see Step 2 below), but not included in the base figure for the relative availability of DBEs. Any study data relied on in the goal setting process should be as recent as possible and be focused on the transportation contracting industry.

### USE OF THE GOAL OF ANOTHER LOCAL AGENCY

If another DOT recipient in the same, or substantially similar market, has set an AADPL in compliance with 49 CFR, Part 26, you may use that figure as a base figure for your participation availability percentage.

### USE OF ALTERNATIVE METHODS

Local agencies may use other methods to determine a base figure for their overall participation availability percentage. Any methodology chosen must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a participation availability percentage that is rationally related to the relative availability of DBEs in the local agencies' market.

## METHODOLOGY—STEP 2

Once a base figure has been determined, local agencies must survey their jurisdiction to determine what types of relevant evidence is available to them. Then, relying on their own knowledge of their contracting markets, local agencies must review the evidence to determine whether an up or down adjustment from the base figure is needed. Some types of evidence to consider include the following:

- The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years.
- Evidence from disparity studies conducted anywhere within your jurisdiction to the extent it is not already accounted for in your base figure.
- If your base figure is the figure of another recipient, you must adjust it for differences in your local market and your contracting program.

You may also consider available evidence from related fields that affect the opportunities for DBEs to form, grow, and compete. These include, but are not limited to:

- Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program.
- Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the “but for” factor), or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

## RACE-NEUTRAL COMPONENTS

You must meet the maximum feasible portion of your overall 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 business 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 communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for 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 various 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 the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
9. Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.

## TRANSIT VEHICLE MANUFACTURERS

If the local agency is also an FTA recipient, the FTA assistance used in transit vehicle procurements is not used in the base amount from which an overall AADPL is calculated.

### TRANSIT VEHICLE MANUFACTURER'S ANNUAL AVAILABILITY GOAL

Transit vehicle manufacturers must establish and submit for FTA's approval an annual overall AADPL. In setting the overall AADPL, transit vehicle manufacturers should be guided to the extent applicable by the principles underlying Section 26.49, Part 26 of Title 49 CFR. The base from which transit vehicle manufacturers calculate this AADPL is the amount of FTA financial assistance included in transit vehicle contracts that will be performed during the fiscal year in question. Transit vehicle manufacturers must exclude from this base funds attributable to work performed outside the United States, and its territories, possessions, and commonwealths.

In lieu of complying with the aforementioned procedures, local agencies may, with FTA approval, establish project-specific availability goals for DBE participation in the procurement of transit vehicles. Transit vehicle manufacturers should contact FTA for applicable procedures.

## 9.8 DBE PARTICIPATION ON CONTRACT

### PARTICIPATION OPPORTUNITIES

The local agency should structure its project development, contract items, and specifications in a manner that provides opportunities for DBE participation. Participation by DBEs is possible at four main points in the process for developing local federal-aid transportation projects. They are:

- Preliminary Engineering (PE) and Environmental Analysis (EA)
- Final Design
- Right of Way Acquisition
- Construction, including Construction Management

Preliminary Engineering Studies (PES) and (EA) are the first steps in developing a local transportation project. DBEs may be engaged to perform all of these activities as a prime consultant or some of these activities as a member of a team of consultants.

Completion of final design and preparation of PS&E normally are a continuation of PE activities. However, in some situations the agency employs different consultants and professional teams to perform these final design activities. DBEs may be engaged at this point.

Acquisition of R/W for local transportation projects may be performed by the local agency or by a qualified consulting firm. Qualified DBEs may be considered for performance of R/W activities.

DBEs may participate in bidding for construction contracts for projects developed by local agencies. Other opportunities for participation in construction include work as subcontractors, suppliers, vendors, truckers, etc.

## **DBE CONTRACT REQUIREMENTS**

### **LOCAL AGENCY BIDDER DBE INFORMATION**

A “Local Agency Bidder DBE Information” form (Exhibit 15-G) “Local Agency Bidder-DBE (Construction Contracts)-Information” of the LAPM for construction contracts or (Exhibit 10-O) “Local Agency Proposer/Bidder-DBE (Consultant Contract) Information” of the LAPM for Consultant Contracts) will be included in the contract documents to be executed by the successful bidder. The purpose of these forms is to collect data required under 49 CFR 26. Even if no DBE participation is achieved, the successful bidder must execute and return the form. The completed “Local Agency Bidder DBE Information” form must be submitted to the DLAE at the time of contract execution.

The successful bidder's “Local Agency Bidder DBE Information” form should include the names, addresses and phone numbers of DBE firms that will participate, with a complete description of work or supplies to be provided by each, and the dollar value of each DBE transaction. When 100 percent of a contract item of work is not to be performed or furnished by a DBE, a description of the exact portion of that work to be performed or furnished by that DBE should be included in the DBE information, including the planned location of that work. A bidder certified as a DBE should describe the work it has committed to performing with its own forces, as well as any other work that it has committed to be performed by DBE subcontractors, suppliers, and trucking companies.

The bidder is encouraged to provide written confirmation from each DBE participating in the contract. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract. If a DBE is participating as a joint venture partner, the bidder is encouraged to submit a copy of the joint venture agreement.

## FINAL REPORT

Upon completion of the contract, regardless of whether DBE participation is obtained, a summary of the DBE records shall be prepared, certified correct, and submitted on the form “Final Report- Utilization of Disadvantaged Business Enterprise (DBE) First-Tier Subcontractors” (Exhibit 17-F) or equivalent, by the contractor to the local agency showing total dollars paid to each subcontractor and supplier whether DBE or non-DBE. Exhibit 17-F is reviewed by the local agency and certified as complete and accurate.

**Consultant Contracts:** The local agency must send the original plus one copy of the completed Final Report of Utilization of Disadvantaged Businesses (see Chapter 17, Exhibit 17-F of the LAPM) with the final invoice to the DLAE within 30 days after completion of the contract (see Chapter 10, Consultant Selection of the LAPM).

**Construction Contracts:** The local agency must send the original plus one copy of the completed Final Report of Utilization of Disadvantaged Businesses (see Chapter 17, Exhibit 17-F of the LAPM) to the DLAE as part of its “Report of Expenditure” package before final payment (see Chapter 17, Project Completion of the LAPM).

## COUNTING DBE PARTICIPATION

Actual payment to subcontractors that are certified DBEs and performing a commercially useful function will be counted as DBE participation. If the prime contractor is a qualified DBE, his/her work is reported and counted toward the contract participation.

“Final Report Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors” is the DBE utilization form to be completed at the completion of a contract and submitted to the DLAE (see Chapter 17 for specific instructions). The information in this report is required by the DBE Program and the FHWA to demonstrate DBE participation on local agency projects.

Specific instances of counting DBE participation are presented in the following sections.

### **PERFORMED BY DBE**

When a DBE participates in a contract, count only the value of the work actually performed by the DBE.

- Count the entire amount of that portion of a contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
- Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided that the local agency determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE participation only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE participation.

### JOINT VENTURE

When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward the DBE participation.

### COMMERCIALLY USEFUL FUNCTION

Count expenditures to a DBE contractor only if the DBE is performing a commercially useful function on that contract. The following examples explain what is considered to be performing a commercially useful function:

- 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. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the contract for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the local agency must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
- A DBE does not perform a commercially useful function if its 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 DBE participation. In determining whether a DBE is such an extra participant, the local agency must examine similar transactions, particularly those in which DBEs do not participate.
- If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, one must presume that it is not performing a commercially useful function.
- When a DBE is presumed not to be performing a commercially useful function, as provided in the previous bullet, the DBE may present evidence to rebut this presumption. The local agency's determination as to whether the firm is performing a commercially useful function should be based upon the type of work involved and normal industry practices.
- Local agencies' decisions on commercially useful function matters are subject to review by the DLAE.

**DBE TRUCKING**

Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is getting credit on a particular contract, and there cannot be a contrived arrangement for the purpose of counting DBE participation.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. 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.
- A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck.

**MATERIALS AND SUPPLIES**

Count expenditures with DBEs for materials or supplies toward DBE participation as provided in the following:

- If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE participation.

Note: For purposes of counting DBE participation, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

- If the materials or supplies are purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies toward DBE participation.

Note: For purposes of counting DBE participation, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

To be a regular dealer, the firm must be an established business that regularly engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not considered regular dealers for purposes of counting DBE participation.

- With respect to materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer; count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies; fees or transportation charges for the delivery of materials or supplies required on a job site toward DBE participation, provided the local agency determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. However, do not count any portion of the cost of the materials and supplies themselves toward DBE participation.

#### **NOT COUNTING PARTICIPATION**

If a firm is not currently certified as a DBE at the time of the execution of the contract, do not count the firm's participation, except as provided for under "Decertification" of this section.

Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified.

Do not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements or the local agency's overall participation until the amount being counted toward the participation has been paid to the DBE.

#### **APPARENT LACK OF CONTROL**

In order for a firm to become a certified DBE, it needs to meet the various requirements prescribed in the CFR, as administered by the California Unified Certification Program (UCP). The DBE must be in control of the firm.



#### 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.

## **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.

For bridge projects, the multi-discipline team shall also include bridge substructure requirements based on construction material and be evaluated as follows:

- On engineering and economic bases, taking into consideration acceptable designs for bridges.
- Using an analysis of life-cycle and duration of project construction.

### **SPECIFY PRODUCTS TO BE DELIVERED**

The Contract Administrator identifies the products and services to be delivered as a result of consultant contract work. These vary depending upon the type of projects and the phase of project development being addressed.

### **DEFINE SCOPE OF CONSULTANT WORK**

The scope of work, which the contract must include, is a detailed description of the products or services the consultant is to provide. From a detailed scope of work, consultants respond to a project advertisement; determine personnel and time requirements; and develop a technical proposal. Therefore, the scope of work must be clear, concise, complete, and describe the deliverables and deadlines.

### **DBE PARTICIPATION**

The provisions of 49 CFR, Part 26 require that a local agency receiving federal-aid funds comply with the Disadvantaged Business Enterprise (DBE) program, and that DBE firms have the opportunity to participate in the projects (see Chapter 9, "Civil Rights and Disadvantaged Business Enterprises," of the LAPM). Such steps include the considering of DBE firms by the proposing consultants. When feasible, organize the project schedule and task requirements to encourage participation in the contract by DBE firms. Local agencies should be fully aware of all of the subcontracting opportunities in their consultant contracts. Below are some examples of subcontracting opportunities for various types of contracts:

- For the design of a bridge (surveys, geotechnical, hydraulics, hydrology, seismic studies, cost estimating, traffic control, as-builts, etc.).
- For the seismic retrofit of an existing bridge (surveys, geotechnical, forensic studies, seismic studies, cost estimating, as-builts, etc.).
- For the design of roadways (surveys, hydrology, geotechnical, cost estimating, traffic control, as-builts, etc.).

The consultant shall ensure that certified DBE firms have the opportunity to participate in the performance of the contract, and shall take all necessary and reasonable steps for such assurance.

### **REPORTING DBE PARTICIPATION**

DBE language must be included in the RFQ or RFP, if the proposed contract will include federal-aid funds. "Notice to Bidders/Proposers Disadvantaged Business Enterprise Information" (see Exhibit 10-I), is to be included in all consultant contracts with federal-aid funds. In addition, certain DBE contract clauses must be included in the consultant contract.

“Local Agency Proposer/Bidder DBE (Consultant Contract) Information” (see Exhibit 10-O) should be submitted by the successful consultant to the local agency with the award.

For reporting purposes, immediately after award of the contract, a copy of the completed “Local Agency Proposer/Bidder DBE (Consultant Contract) Information” should be sent by the local agency to the DLAE. Upon completion of the contract, regardless of whether DBE participation is obtained, a summary of the DBE records shall be prepared, certified correct, and submitted on the form “Final Report - Utilization Of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors” (Exhibit 17-F) or equivalent, by the consultant contractor to the local agency showing total dollars paid to each DBE subcontractor and supplier. The local agency will send one copy of the completed “Final Report-Utilization Of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors” with the final invoice to the DLAE within 30 days after completion of the contract for purposes of reporting DBE utilization.

**Figure 10-1 Segmenting Consultant Work**

	Well-structured Projects With Simple Right of Way Requirements	Well-structured Projects With Complex Right of Way Requirements	More Difficult Projects	Very Complex Projects
Preliminary Engineering				
Environmental Analysis				
Plans, Specifications & Estimates				
Right of Way Activities				
Utility Relocation				
Construction Engineering				

**ESTIMATED COST OF CONSULTANT WORK**

An independent cost estimate is needed for consultant contracts (required for contracts over \$100,000) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance, so the local agency’s negotiating team has a detailed cost analysis of the project to evaluate the reasonableness of the consultant’s cost proposal. The estimate, which is specifically for the use of the local agency’s negotiating team, is to be kept confidential.

A pre-award audit of the consultant may be required (see Section 10.1, “General”, in this chapter). If so, cost negotiations cannot be completed until after the audit report is received. Discussions on other aspects of the contract may occur concurrently with the preparation of the audit.

Items typically negotiated include:

- Work plan
- Schedule and deadlines
- Products to be delivered
- Classification, wage rates, and experience level of personnel to be assigned
- Cost items, payments, and fees

For federal-aid consultant contracts, see Chapter 9, “Civil Rights and Disadvantaged Business Enterprises,” of the LAPM and Exhibit 10-I, “Notice to Bidders/Proposers Disadvantaged Business Enterprise Information” in this chapter.

Before executing the consultant contract, the local agency must make a review to ensure that all federal and /or state requirements have been met (see Exhibit 10-C, “Consultant Agreement Reviewers Checklist,” in this chapter). The completed checklist is to be signed by the Contract Administrator and the original retained in the project file, one copy is to be sent to the DLAE for review within 30 days after award of the contract.

## **10.5 CONSULTANT SELECTION USING THE ONE-STEP RFQ METHOD**

### **APPOINT CONSULTANT SELECTION COMMITTEE**

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews and scores the materials submitted by consultants in response to the RFQ, develops a shortlist of qualified consultants, interviews those consultants, and develops a final ranking of the most qualified consultants. Representation on the committee includes the Contract Administrator and a representative from the project’s functional area. The members should be familiar with the project/segment to be contracted out and with the local agency standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the local agency and subject to the availability of the DLAE staff.

### **DEVELOP SCHEDULE FOR CONSULTANT SELECTION**

Before a contract is advertised, the Contract Administrator completes a contract schedule including key dates for consultant selection activities. The Contract Administrator should confirm target dates with all selection committee members before completing the schedule.

### **PREPARE REQUEST FOR QUALIFICATIONS (RFQ)**

As a minimum, the RFQ generally includes the following:

- General description of the project(s)
- Scope of work
- Schedule of work
- Request for Statement of Qualifications (SOQ)
- Proposal format to be submitted
- Method and criteria for selection

The RFQ should state that the following items are required in the SOQ:

- Qualifications of key personnel proposed for the contract
- Related projects that key personnel have worked on
- Qualifications/experience of the firm
- Organization chart
- References

### **ADVERTISE FOR CONSULTANTS**

Advertisements may take one of two approaches. The most common is advertisement or publication of the RFQ in a major newspaper of general circulation, or technical publication of widespread circulation. The RFQ shall contain sufficient project work information, so that interested consultants can submit an appropriate “SOQ.”

In the second approach, the local agency advertises the availability of the RFQ in a major newspaper of general circulation or technical publication of widespread circulation, and request interested consultants to send for the RFQ. The RFQs shall be sent to professional societies, if a federal-aid project, to recognized DBE organizations. In some cases, it may be desirable to advertise nationwide for a particular project or service.

The RFQ also specifies the content of a proposal, number of copies required, due date, mailing address, and physical address where the submittals may be hand delivered, if different from the mailing address. A minimum of two weeks is usually allowed between the time the RFQ is mailed, and time that proposals must be submitted. More time may be required for complex contracts or projects.

### **RECEIVE/EVALUATE STATEMENTS OF QUALIFICATIONS AND DEVELOP SHORTLIST**

The first step in the evaluation process is to determine that each proposal contains all forms and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, and submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

The Consultant Selection Committee reviews the submitted “SOQ” according to the published evaluation criteria and weighting factors. The committee makes an independent random check of one or more of the consultant’s references. This check applies to major subcontractors also. The committee establishes a shortlist of consultants who are considered to be best qualified to perform the contract work. The shortlist includes enough qualified consultants to ensure that at least three consultants are interviewed.

### **NOTIFY CONSULTANTS OF SHORTLIST**

All consultants that submitted an “SOQ” must be notified of the results of the review. The notification also identifies those consultants that are to be requested to attend interviews.

Most consultants will request information as to why they were not placed on the shortlist. Therefore, the selection committee should keep notes why a particular consultant was not selected for the shortlist. When a consultant requests a debriefing, the reasons given for not being selected should be objective reasons. Consultants should not be compared with

each other during the debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

### **INTERVIEW TOP-RANKED CONSULTANTS**

Each consultant to be interviewed is given a copy of the draft of the proposed contract, defining the detailed project requirements and others. This should be sent with the initial notification of the interview.

Between the time of the notification of the shortlist and interviews, the local agency may answer any questions concerning the project segment to be contracted out, if not done earlier during the solicitation. In addition, the local agency may conduct additional reference checks for each consultant to be interviewed. Consultants should submit their questions and receive their answers in writing. It is important that all consultants on the shortlist receive the questions and answers and are given the same information.

The committee should evaluate reference checks and other information that is gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks and other information may be discussed with the consultant at the interview.

Interviews are to be structured and conducted in a formal manner. Each consultant shall be allowed the opportunity to make a presentation if desired; however, a time limit should be specified. Interview questions are prepared in advance.

Two types of questions may be asked:

- Questions that are to be asked of all competing consultants.
- Questions relating to each specific consultant, based upon the reference checks, and the strengths and weaknesses identified during evaluation of the “SOQ.”

The agency can request competing consultants to bring additional information or examples of their work to the interviews; if the additional information facilitates the interview or evaluation process.

Additional information requested should be kept at a minimum, that is only information required to select the most qualified consultant for the contract. The selection committee or local agency shall not gather additional information concerning the consultants after the interviews are completed.

### **DEVELOP FINAL RANKING AND NOTIFY CONSULTANTS OF RESULTS**

The selection committee discusses and documents the strengths and weaknesses of each proposal and develops a final ranking of the most qualified consultants. All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not selected as the most qualified. Therefore, the selection committee should keep notes why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected should be objective. Consultants should not be compared with each other or provided with information about other consultants during the debriefing.

Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

## CONDUCT SCOPING MEETING

The Contract Administrator meets with the first-ranked consultant's project manager to review the project, and to ensure that the consultant has a complete understanding of the work that is required. The consultant is shown as much material as is available regarding the project. Any technical questions regarding the project are answered for the consultant.

## REQUEST COST PROPOSAL

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein. Alternatively, if time is of the essence and it can be justified, cost proposals may be requested from all of the consultants on the shortlist.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subcontractors, the prime consultant must include a separate cost proposal for each subcontractor. Each subcontractor's cost proposal must follow the same format as the prime consultant's cost proposal.

## NEGOTIATE CONTRACT WITH TOP-RANKED CONSULTANT

After the top-ranked consultant submits a cost proposal, the local agency reviews the cost proposal and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate developed in advance by the local agency, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, etc. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. A pre-award audit of the consultant's operations may be required (see Section 10.1 "General," in this chapter). If so, cost negotiations may not conclude until after the audit report is received. Discussions on other aspects of the contract may occur concurrently with the preparation of the audit. The items typically negotiated include:

- Work plan
- Schedule
- Products to be delivered
- Classification, wage rates, and experience level of personnel to be assigned
- Cost items, payments and fee

Lists of qualified consultants (prequalified lists) established through the RFQ process must be reestablished at least once every 12 months, to give new consultants the opportunity to qualify.



## n) Subcontractors, Assignment and Transfer

Consultant services are considered to be a personal relationship between client and principal; therefore, agreements in which participating federal and/or state funds are furnished shall contain a clause expressly prohibiting the subcontracting, assignment, or transfer of any of the work except, as otherwise, provided for in the executed agreement. All contracts shall provide that subcontracts exceeding \$25,000 in cost shall contain all required provisions of the prime contract.

## o) Consultant's Endorsement on PS&amp;E/Other Data

The responsible consultant/engineer shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

## p) Disadvantaged Business Enterprise Considerations

Consultants must give consideration to DBE firms as specified in 23 CFR 172.5(b), 49 CFR Part 26, and in Exhibit 10-I "*Notice to Bidders/Proposers Disadvantaged Business Enterprise Information.*"

## q) Insurance

The contract should provide for professional liability insurance and vehicle liability insurance limits. The contract should specify the reasonable amounts of such insurance, as required by the local agency. A method of verifying that the insurance is in effect should be included. Also, a method of notifying the local agency, if the specific insurance has been changed or cancelled should also be in the contract.

## r) Signature Blocks

A signature block for each of the parties to the agreement should be provided.

**C. CONCLUSION**

The concluding clause may be any one of the many accepted legal expressions commonly used for that purpose.

**D. SIGNATURE****E. CERTIFICATIONS**

Exhibits 10-F "Certification of Consultant, Commissions & Fees" and 10-G, "Certification of Agency" must be included as attachments to the contract and made a part of.

**F. COST PRICE PROPOSAL**

The consultant's and subconsultant(s) final cost proposal must be attached to the contract (see Exhibit 10-H "Sample Cost Proposal").

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**EXHIBIT 10-I Notice to Bidders/Proposers Disadvantaged Business Enterprise Information****LOCAL AGENCY LETTERHEAD  
(DATE)****NOTICE TO BIDDERS/PROPOSERS  
DISADVANTAGED BUSINESS ENTERPRISE INFORMATION****1. TERMS AS USED IN THIS DOCUMENT**

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term “bidder” also means “proposer” or “offerer.”
- The term “Agreement” also means “Contract.”
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

**2. AUTHORITY AND RESPONSIBILITY**

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The bidder/proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Bidders/Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

**3. SUBMISSION OF DBE INFORMATION**

A “Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information” form will be included in the Agreement documents to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

#### 4. DBE PARTICIPATION GENERAL INFORMATION

It is the bidder's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- D. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- E. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- F. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

#### 5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance. Bidder/Proposer may call (916) 440-0539 for web or download assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <http://www.dot.ca.gov/hq/bep/>.
  - Click on the link in the left menu titled Find a Certified Firm
  - Click on Query Form link, located in the first sentence
  - Click on Certified DBE's (UCP) located on the first line in the center of the page
  - Click on Click To Access DBE Query Form
  - Searches can be performed by one or more criteria
  - Follow instructions on the screen
  - "Start Search," "Requery," "Civil Rights Home," and "Caltrans Home" links are located at the bottom of the query form

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**EXHIBIT 10-J STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION****STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION****1. Subcontractors**

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Agency and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the Agency for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the Agency's obligation to make payments to the Contractor.
- B. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
- C. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the Agency.
- D. Any substitution of subcontractors must be approved in writing by the Agency's Contract Manager in advance of assigning work to a substitute subcontractor.

**2. Disadvantaged Business Enterprise (DBE) Participation**

- A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Bidders who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.
- C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

**3. Performance of DBE Contractors and other DBE Subcontractors/Suppliers**

- A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.
- B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.





**INSTRUCTIONS - LOCAL AGENCY PROPOSER/BIDDER-DBE (CONSULTANT CONTRACTS) INFORMATION FORM (Revised 10/05)**

The form requires specific information regarding the consultant contract: Agency, Location, Project Descriptions, Contract Number (assigned by local agency), Federal Aid Project Number (assigned by Caltrans Local Assistance), Total Dollar Contract Amount, Proposal/Bid Date, and Proposer's/Bidder's Name.

The form has a column for the Contract Item Number (or Item No's) and Item of Work and Description or Services to be Subcontracted or Materials to be provided by DBEs. The DBE should provide a certification number to the Contractor. Notify the Contractor in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of DBE certified contractors to perform the work (include DBE address and phone number).

There is a column for the total DBE dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your proposal/bid pursuant to the Contract Provisions. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.)

**Exhibit 10-O must be signed and dated by the person proposing/bidding. Also list a phone number in the space provided and print the name of the person to contact.**



## CALTRANS SPECIFICATIONS ON THE INTERNET

Electronic files containing Caltrans' standard specifications, standard special provisions, and federal contract "boilerplate" (Form FHWA 1273 and other Required Federal Contract Provisions) are available from the Caltrans Office Engineer. Caltrans operates a World Wide Web (WWW) site accessible via the Internet.

- First access the Caltrans Home Page at [www.dot.ca.gov](http://www.dot.ca.gov)
- Call up the Office Engineer Home Page. Then go to "Construction Standards".
- Then select under " Standard Specifications, Standard Special Provisions (SSPs)" the year (2006, 1999, etc.) of the Standard Specifications and SSPs desired.

For further assistance in connecting with the Internet, local agencies should contact their Internet service provider.

Caltrans also provides a sample set of highway contract provisions for local assistance projects as explained in "Sample 'Boiler Plate' Contract Documents on the Internet" below.

For local agency projects to be advertised, awarded and administered by Caltrans, Caltrans boilerplate specifications are inserted by Caltrans.

### SAMPLE "BOILER PLATE" CONTRACT DOCUMENTS ON THE INTERNET

Microsoft Word versions of a complete sample set of "Boiler Plate" construction contract documents are available on the Internet on the Caltrans Local Assistance home page at: <http://www.dot.ca.gov/hq/LocalPrograms/public.htm> Follow the directions in the home page to "Sample Boiler Plate Contract Documents."

The file can be downloaded and edited. This file includes a sample Notice to Contracts & Special Provisions as well as a Sample Proposal and Contract. These documents are in accordance with the *July 1999 Caltrans Standard Specifications and Standard Plans*. They are edited versions of the *Caltrans Office Engineers Standard Special Provisions* and other contract documents, which are used for Caltrans highway construction contracts.

## Contents

The Notice to Contractors & Special Provisions are combined into one document. The Notice to Contractors provides prospective bidders with the bid opening date, time and location where bids will be received and opened; a brief description of the project; time and location of any pre-bid meetings and notice that the project is subject to Buy America provisions. The Engineer's Estimate and location for the purchase of plans and specifications as well as reference to federal wage and rate information are also included.

The Special Provisions (along with the Caltrans Standard Specifications) specifies to the contractor the terms of the contract including, but not limited to, when the contractor is to start, number of working days, liquidated damages, payment, work operations and items of work.

The Proposal and Contract are also combined into one document. The Proposal is for the bidder to complete. In addition to the name, address, etc., it contains the Engineer's Estimate, list of subcontractors, EEO certification, Public Contract Code requirements, Noncollusion Affidavit, Debarment and Suspension Certification, Nonlobbying Certification, and Bidders Bond. The Contract includes an agreement, Engineer's Estimate, payment bond, performance bond, local agency DBE information, federal wage rates, and Disclosure of Lobbying Activities.

This package is based on the way Caltrans prepares and administers construction contracts. It contains specifications that may not be required on locally administered projects. Therefore, the Home Page will include appropriate disclaimers for the use of this "Boiler Plate."

For local agency projects to be advertised, awarded, and administered by Caltrans, the Caltrans Boiler Plate specifications are inserted by Caltrans.

## 12.9 REQUIRED FEDERAL CONTRACT PROVISIONS

### GENERAL FEDERAL REQUIREMENTS

A general special provision is required to reference FHWA Form 1273, Performance on Previous Contract, Noncollusion Provision, and Participation by Minority Business Enterprises In Subcontracting. Caltrans standard special provision (Section 14) is required or equivalent provision may be used.

### FORM FHWA 1273

Form FHWA 1273 (included in Exhibit 12-E) is a package of federally required contract provisions that must be included as special provisions for all federal-aid projects.

#### I. GENERAL

This section sets forth the general provisions of Form FHWA 1273.

**LIQUIDATED DAMAGES TABLE (L%)**

Project Estimate	Project Type					
	Resurfacing* /Rehab	New Highway	Realignment/ Widening	Landscaping	Soundwall	Others
Over \$30 million	10%	10%	13%	15%	15%	15%
\$10 million to \$30 million	10%	12%	15%	15%	15%	15%
\$5 million to \$10 million	10%	15%	15%	15%	15%	15%
\$750k to \$5 million	15%	15%	15%	18%	18%	15%
Less Than \$750k	15%	20%	20%	18%	20%	15%

\* Resurfacing projects include asphalt concrete (AC) surfacing, seal coats, slurry seals, etc.

The calculated liquidated damages should be rounded up in \$100 increments to determine the amount to be specified.

If the local agency uses an alternate method to determine liquidated damages for locally funded projects, this method may be used on federal-aid projects as long as it avoids excessive charges. The local agency should have a liquidated damage calculation in the project files.

**BUY AMERICA**

On all federal-aid construction projects, current regulations require that steel and iron used be made in the United States. All foreign steel and iron materials are covered by the "Buy America" provision regardless of the percentage of steel in the manufactured product. All manufacturing processes involved in steel or iron products must occur within the United States. These processes include rolling, extruding, machining, bending, grinding, drilling, coating, welding and smelting. Domestically produced steel billets or iron ingots shipped overseas for any process and returned to the United States do not conform to this requirement.

Buy America provisions do not apply to:

- Minimal use of all foreign material in which the total delivery cost to the project site is less than \$2500 or 0.1 percent of the contract amount, whichever is greater;
- Raw materials; scrap temporary steel items such as sheet piling, bridges, steel scaffolding and false work
- Materials that remain in place at the contractor's convenience such as sheet piling and forms
- Pig iron manufactured outside the United States

A local agency shall not list an ineligible iron or steel product as "nonparticipating" in order to circumvent the Buy America requirements.

A waiver of the Buy America requirements by the FHWA Division Administrator is permitted for specific projects, specific products, specific geographical areas, or combinations if:

- Buy America is inconsistent with the public interest or
- There is not a sufficient supply of domestic materials of satisfactory quality

Approval authority for waiver of Buy America requirements has not been delegated from the FHWA to Caltrans and therefore is not delegated to the local agencies.

## **DISADVANTAGED BUSINESS ENTERPRISE**

In accordance with Title VI of the 1964 Civil Rights Act, all federal-aid projects are subject to the legislative and regulatory DBE requirements. The main objective is to ensure that DBE firms have an opportunity to participate in federally funded projects.

Contracts shall contain special provisions stating that it is the local agency's policy to comply with Part 26 of Title 49, Code of Federal Regulations (CFR) and specify the contractor's obligation under these regulations.

If Caltrans' standard specifications will be used, appropriate editing of the *Sample Boiler Plate Contract Documents* will be necessary (see "*Sample Boiler Plate Contract Documents on the Internet*" in Section 12.8 of this chapter).

In accordance with Section 9.4 Local Agency DBE Program of Chapter 9, Civil Rights and Disadvantaged Business Enterprises, each local agency is required to create and maintain a bidders list containing information about all DBE and non-DBE firms that bid or quote on the local agency's federal-aid construction contracts. The required bidders list is to include the name, address, DBE/non-DBE status, date established and annual gross receipts of the firms. Exhibit 12-G "Bidder's List of Subcontractors (DBE and Non-DBE)" in this chapter consists of sample forms that local agencies may choose to use in their solicitations to compile a bidders list as follows:

- (a) "Bidder's List of Subcontractors (Part 1)" is required in accordance with Section 2-1.054 of the Caltrans Standard Specifications, and
- (b) "Bidder's List of Subcontractors (Part 2)" of those providing a quote or bid, but not selected, which is needed to compile a bidders list.

## NONCOLLUSION CERTIFICATION

On all federal-aid construction projects, a noncollusion certification protects the integrity of the federal-aid highway program and serves as a tool in prosecuting construction contract bid rigging cases. A noncollusion certification is required from all bidders as part of the bid proposal package (see Exhibit 12-E, Attachment D). Failure to submit the certification will render the bid ineligible for award.

## FEDERAL TRAINEES (ON-THE-JOB TRAINING)

On selected federal-aid highway construction projects, "Federal Trainee" or "On-the-Job (OJT) Training" special provisions (included in Exhibit 12-E, Attachment N) must be included in the contract provisions to establish the number of trainees for the construction contract.

The main objectives of the Federal Trainee/OJT Program are to:

- Provide training for women and minorities which will upgrade their job skills, thereby increasing their access to higher-paying trade jobs and journeyman-level positions and
- Ensure that a diverse work force will meet future labor needs in the construction industry.

Filling training positions on each project must focus on hiring women and minorities, but not exclude anyone. If a contractor cannot meet the OJT objectives, direct recruitment efforts must be documented to show an effort at OJT compliance.

The major components of an OJT program include:

- The local agency must include the required federal training special provisions in the PS&E package if the project size and duration warrant an OJT program.
- The local agency should select contracts that contribute to the “Contract Training Goals.” These contracts must show the number of trainees, number of trainees upgraded to journeyman and level of skills.
- The local agency must review the training programs proposed by contractors. Approval or rejection is based on the legitimacy of the job-skill classifications proposed and the number of training hours specified.
- Caltrans must determine if statewide OJT is effective.
- The Contractor is responsible for recruitment and selection of trainees.
- The Contractor must evaluate training based on an approved training program.
- The contractor shall report the number of trainees and jobs using Form PR1391 “Federal-aid Highway Construction Contractors EEO Report” to the local agency. The local agency shall forward Form PR1391 to the Caltrans District Labor Compliance Officer (see Exhibit 16-O of this manual).
- OJT provision costs are reimbursed by the FHWA in accordance with the Federal Requirement Training Special Provisions” included in selected contracts. Required trainees/apprentices are to be funded on the bidding schedule or by change order at \$0.80/hour; or the training program can be a bid item with the same reimbursement ratio as the construction project. OJT support services include recruiting, counseling, remedial training, and OJT program administration by others.
- If the Contractor does not show a good faith effort to provide acceptable training to the trainees specified, a sanction may be applied. Sanctions may include withholding progress payments if effective on-the-job training is not provided.

**C. Certification/Disclosure Forms** (Check if included and indicate page number) **Page No.**

- EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION* (Exhibit 12-E, Attachment C) \_\_\_\_\_
- NONCOLLUSION AFFIDAVIT* (Exhibit 12-E, Attachment D) ..... \_\_\_\_\_
- DEBARMENT AND SUSPENSION CERTIFICATION* (Exhibit 12-E, Attachment E) ..... \_\_\_\_\_
- NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS*  
(Exhibit 12-E, Attachment F)..... \_\_\_\_\_
- DISCLOSURE OF LOBBYING ACTIVITIES* (Exhibit 12-E, Attachment G)..... \_\_\_\_\_
- 2-1.015—*FEDERAL LOBBYING RESTRICTIONS* (Exhibit 12-E, Attachment H) ..... \_\_\_\_\_
- Equivalent provisions (Attach complete listing, including page numbers)

**D. Liquidated Damages** (Check appropriate box and indicate page number) **Page No.**

- Caltrans SSP *SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES* (Exhibit 12-E, Attachment I) is included in this contract..... \_\_\_\_\_
- Equivalent provisions are included. .... \_\_\_\_\_

**E. Disadvantaged Business Enterprise (DBE)/Subcontracting**

A. Local Agency "Annual Anticipated DBE Participation Level (AADPL)(the AADPL percentage comprising all contracts) \_\_\_\_\_

For use with all federal-aid contracts. (Check if included and indicate page number)

**a. The following applicable Caltrans Standard Special Provisions (SSPs) to the Caltrans Standard Specifications or their equivalent are included in the contract Special Provisions with page numbers noted (editing may be required)**

..... Page No.

2-1.01 GENERAL Required Listing of Proposed Subcontractors and Required Contract Assurance Statement (Exhibit 12-E, Attachment H) or *Equivalent Provisions* \_\_\_\_\_

LISTING OF SUBCONTRACTORS (Form in Sample Proposal and Contract) or *Equivalent Form* \_\_\_\_\_

2-1.015 Federal Lobbying Restrictions (Has been included) or *Equivalent Provisions* \_\_\_\_\_

2-1.02 DISADVANTAGED BUSINESS ENTERPRISE (DBE) (Exhibit 12-E, Attachment H) or *Equivalent Provisions* \_\_\_\_\_

3- AWARD AND EXECUTION OF CONTRACT (Exhibit 12-E, Attachment I) or *Equivalent Provisions* \_\_\_\_\_

Caltrans SSP 5-1.- SUBCONTRACTOR AND DBE RECORDS (Exhibit 12-E, Attachment J) or *Equivalent Provisions* \_\_\_\_\_

Caltrans SSP 5-1.- DBE CERTIFICATION STATUS CHANGE (Exhibit 17-O) or *Equivalent Provisions* \_\_\_\_\_

Caltrans SSP 5-1.- PERFORMANCE OF SUBCONTRACTORS (Exhibit 12-E, Attachment K) or *Equivalent Provisions* \_\_\_\_\_

Caltrans SSP 5-1. SUBCONTRACTING (Exhibit 12-E, Attachment L) or *Equivalent Provisions* \_\_\_\_\_

Caltrans SSP 5-1. PROMPT PROGRESS PAYMENTS TO SUBCONTRACTORS or *Equivalent Provisions* \_\_\_\_\_

Caltrans SSP 5-1. PROMPT PAYMENT OF WITHHELD FUNDS TO SUBCONTRACTORS or *Equivalent Provisions* \_\_\_\_\_



**C. CERTIFICATION/DISCLOSURE FORMS**

The following certification/disclosure forms shall be included in all federal-aid projects. Except for the Disclosure of Lobbying form and instructions, equivalent provisions may be used.

*EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION* (Attachment C)

*NONCOLLUSION AFFIDAVIT* (Attachment D)

*DEBARMENT AND SUSPENSION CERTIFICATION* (Attachment E)

*NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS* (Attachment F)

*DISCLOSURE OF LOBBYING ACTIVITIES* (Attachment G)

Check appropriate box (i.e., Attachments or equivalents) and indicate page number.

**D. LIQUIDATED DAMAGES**

Provisions for liquidated damages shall be included in all federal-aid contracts on the NHS (see Chapter 12 *Plans, Specifications & Estimate*, of the *LAPM* for requirements.). Caltrans SSP *SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES* (Exhibit 12-E, Attachment I, also in *Sample Notice to Contractors & Special Provisions*) or equivalent provisions shall be used.

Check appropriate box (i.e., Caltrans SSP or equivalent) and indicate page number.

**E. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

Fill in the required project information before completing this section.

It is the policy of the FHWA that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds.

For all federal-aid projects, Caltrans SSPs (and the referenced Caltrans *Standard Specifications*), or equivalent provisions, are required to describe DBE Program Policy, eligibility criteria, procedures for counting DBE participation, award documentation procedures, post-award compliance procedures, and required records and reporting.

Caltrans SSP *SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS* (Exhibit 12-E, Attachment H, PS & E "Checklist Instructions" also in *Sample Notice to Contractors & Special Provisions*) includes requirements for DBE subcontractor listing, Federal Lobbying Restrictions, Disadvantaged Business requirements.

Check appropriate boxes (i.e., Caltrans SSPs or equivalent provisions) and indicate page number. If equivalent provisions are used, attach a complete listing, including page numbers.

**F. BUY AMERICA SPECIFICATION**

Current Buy America regulations are discussed in Section 12.9 of the *LAPM*. Buy America requirements do not apply to minimal use of the material such that the cost, delivered to the project site, is less than \$2,500 or one-tenth-of-one-percent of the contract amount, whichever is greater. (Attachment M)

If the Buy America requirement applies, check the appropriate box (i.e., Caltrans SSP or equivalent) and indicate page number. If the requirement does not apply, check the last box.

**G. FEDERAL TRAINEES**

Chapter 12, *Plans, Specifications & Estimate*, of the *LAPM* includes information for On-the-Job Training. If a Federal Trainee goal is not required, check the appropriate box. If a goal is required, check appropriate box (i.e., Caltrans SSP or equivalent), indicate the trainee goal and the page number. (Attachment N)

**H. FEDERAL WAGE RATES**

If payment of federal predetermined wages are required per instructions in Section B.2.a, “Section IV. *Payment of Predetermined Wages*, they shall be physically incorporated into the contract and in all related subcontracts

Check appropriate box (i.e., Federal Wages Rates are included or not required) and indicate page number if included.

By checking the box the local agency is indicating that they are aware of the federal-aid “10-day rule” for federal wage rates. See section 12.9 *Required Federal Contract Provisions – Federal Wage Rates* for local agency requirements under the “10-day rule.”

**I. RELATIONS WITH RAILROAD**

Where construction of a federal-aid project requires use of railroad properties or adjustments to railroad facilities, there shall be an agreement in writing between the local agency and the railroad company. The pertinent portions of the agreement applicable to any protective services required during performance of the work shall be included in the project specifications and special provisions.

Check appropriate box (i.e., provisions are included or not required). If provisions are included, indicate page number.

**XIII. RESTRICTED CONTRACT PROVISIONS**

Unless otherwise noted, see Section 12.10 of Chapter 12 for detailed guidance.

- hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph F.2.
3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
- G When reporting DBE participation, bidders may count the participation of DBE trucking companies as follows:
1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
  2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
  4. The DBE may lease trucks from another DBE firm including an owner-operator, who is certified as a DBE. 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.
  5. The DBE may also lease trucks from a non-DBE firm including from 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;
  6. For the purposes of this paragraph G, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- H. Bidders are encouraged to use services offered by financial institutions owned and controlled by DBEs.

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**BIDDER'S LIST OF SUBCONTRACTORS (DBE and NON-DBE)- PART I**

The bidder shall list all subcontractors (both DBE and non-DBE) in accordance with Section 2-1.054 of the Standard Specifications and per Title 49, Section 26.11 of the Code of Federal Regulations. This listing is required in addition to listing DBE Subcontractors elsewhere in the proposal. **Photocopy this form for additional firms.**

Firm Name/ Address/ City, State, ZIP	Phone/ Fax	Annual Gross Receipts	Description of Portion of Work to be Performed	Local Agency Use Only (Certified DBE?)
<i>Name</i>	<i>Phone</i>	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
<i>Address</i>		<input type="checkbox"/> < \$10 million		<i>If YES list DBE #:</i>
<i>City State ZIP</i>	<i>Fax</i>	<input type="checkbox"/> < \$15 million		
		<input type="checkbox"/> > \$15 million		<i>Age of Firm (Yrs.)</i>
<i>Name</i>	<i>Phone</i>	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
<i>Address</i>		<input type="checkbox"/> < \$10 million		<i>If YES list DBE #:</i>
<i>City State ZIP</i>	<i>Fax</i>	<input type="checkbox"/> < \$15 million		
		<input type="checkbox"/> > \$15 million		<i>Age of Firm (Yrs.)</i>
<i>Name</i>	<i>Phone</i>	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
<i>Address</i>		<input type="checkbox"/> < \$10 million		<i>If YES list DBE #:</i>
<i>City State ZIP</i>	<i>Fax</i>	<input type="checkbox"/> < \$15 million		
		<input type="checkbox"/> > \$15 million		<i>Age of Firm (Yrs.)</i>
<i>Name</i>	<i>Phone</i>	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
<i>Address</i>		<input type="checkbox"/> < \$10 million		<i>If YES list DBE #:</i>
<i>City State ZIP</i>	<i>Fax</i>	<input type="checkbox"/> < \$15 million		
		<input type="checkbox"/> > \$15 million		<i>Age of Firm (Yrs.)</i>

**Distribution:** 1) Original - Local Agency File

**BIDDER'S LIST OF SUBCONTRACTORS (DBE and NON-DBE)- PART II**

The bidder shall list all subcontractors who provided a quote or bid but were not selected to participate as a subcontractor on this project. This is required for compliance with Title 49, Section 26 of the Code of Federal Regulations. Photocopy this form for additional firms.

Firm Name/ Address/ City, State, ZIP	Phone/ Fax	Annual Gross Receipts	Description of Portion of Work to be Performed	Local Agency Use Only (Certified DBE?)
Name  Address  City State ZIP	Phone  Fax	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
		<input type="checkbox"/> < \$10 million		If YES list DBE #:
		<input type="checkbox"/> > \$15 million		Age of Firm (Yrs.)
Name  Address  City State ZIP	Phone  Fax	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
		<input type="checkbox"/> < \$10 million		If YES list DBE #:
		<input type="checkbox"/> > \$15 million		Age of Firm (Yrs.)
Name  Address  City State ZIP	Phone  Fax	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
		<input type="checkbox"/> < \$10 million		If YES list DBE #:
		<input type="checkbox"/> > \$15 million		Age of Firm (Yrs.)
Name  Address  City State ZIP	Phone  Fax	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
		<input type="checkbox"/> < \$10 million		If YES list DBE #:
		<input type="checkbox"/> > \$15 million		Age of Firm (Yrs.)

Distribution: 1) Original – Local Agency File

## RESIDENT ENGINEER'S CONSTRUCTION CONTRACT ADMINISTRATION CHECKLIST

This form is to be completed and signed by the local agency's Resident Engineer, and submitted with Local agency's Award Package

This form was created to help local agency Resident Engineers with the administration of the federal-aid projects. This list does not contain all the Federal-aid requirements for administration of federal-aid projects. Resident Engineers are advised to review the *Local Assistance Procedures Manual* to be familiar with all the federal-aid requirements.

This form shall be used as reference if the local agency's federal-aid project is subject to a Process Review.

**Local Agency Name** \_\_\_\_\_

**Federal-aid Project No.** \_\_\_\_\_

**1. Contract Staffing:**

Names and titles of all staff assigned to the contract shall be in the contract files and shall be adequate (see Chapter 16, Section 16.3 "Project Supervision and Inspection").

Date of Preconstruction Conference (Attendees list in contract file) \_\_\_\_\_

**2. Authorization:**

Date of the "Authorization to Proceed with Construction" \_\_\_\_\_  
(Shall be prior to date project was advertised)

Date the project was advertised \_\_\_\_\_

**3. Contract Files:**

Files shall be in an established order and separate from other contracts (see Chapter 16, Section 16.8 "Project Files").

Check one of the following: Index used on this project is  Local agency's standard for all jobs, or  
 For federal-aid jobs only.

**4. Resident Engineer's/Construction Inspectors Daily Diaries:**

Shall be current, thorough and neat with detailed information on all work performed (see Chapter 16, Section 16.7 "Engineer's Daily Reports").

**5. Construction Records and Accounting Procedures:**

Detail Estimate(s) and Finance Letter(s) are in the project files.

Amount of federal-aid funds encumbered for the project, \_\_\_\_\_

Program Supplemental Agreement is in the project files.

*Distribution: 1. Local Agency Project File 2. DLAE (please put on first page only)*

- There shall be source documents supporting progress payments made to Contractor.
- There shall be separate item sheets for each contract item paid.
- There shall be a procedure for Administrative or Labor Compliance deductions.
- Invoices to the State shall match progress payments made to the Contractor.
- 6. Contract Time:**
  - A method shall be established to determine contract time (see Chapter 16, Section 16.5 "Contract Time").
- 7. Labor Compliance:**
  - Certified payrolls shall be spot-checked against daily diaries and prevailing wages (see Chapter 16, Section 16.11 "Labor Compliance").  
Local agency's Labor Compliance Officer: \_\_\_\_\_
- 8. EEO:**
  - Maintain records to ensure EEO requirements are performed and documented in contract record (see Chapter 16, Section 16.12 "Equal Employment Opportunity").  
  
Local agency's EEO Compliance Officer: \_\_\_\_\_
- 9. EEO/Wage Rate/False Statements Posters:**
  - Federal posters shall be posted for every worker to see at, or near, the contractor's office at the construction site or at the workers central gathering point.
- 10. Employee Interviews:**
  - There shall be employee interviews conducted (see Chapter 16, Exhibit 16-N).
- 11. OJT:**
  - Are OJT requirements included in the contract, yes  no .
  - If yes, documentation will be retained in project files to account for the apprentices on the job.
- 12. DBE:**
  - Local agency's Annual Anticipated DBE Participation Level,
  - Local agency's DBE Liaison Officer: \_\_\_\_\_
  - Contractor's completed Local Agency Bidder-DBE-Information Form (Exhibit 15-G) in project files.
- Contractor has been provided "Monthly DBE Trucking Verification" Form (see Chapter 16, Exhibit 16-Z)







**INSTRUCTIONS - LOCAL AGENCY BIDDER-DBE (CONSTRUCTION CONTRACTS)**  
**INFORMATION FORM (Revised 11/06)**

The form requires specific information regarding the construction contract: Agency, Location, Project Descriptions, Contract Number (assigned by local agency), Federal Aid Project Number (assigned by Caltrans-Local Assistance), Total Dollar Contract Amount, Bid Date, and Bidder's Name .

The form has a column for the Contract Item Number (or Item No's) and Item of Work and Description or Services to be Subcontracted or Materials to be provided by DBEs. The DBE should provide a certification number to the Contractor. Notify the Contractor in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of DBE certified contractors to perform the work (must be certified on the date bids are opened and include DBE address and phone number).

There is a column for the total DBE dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your bid pursuant to the Special Provisions. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.)

Exhibit 15-G must be signed and dated by the person bidding. Also list a phone number in the space provided and print the name of the person to contact.

## CHAPTER 20 DEFICIENCIES AND SANCTIONS

### 20.1 INTRODUCTION

As outlined in earlier chapters, Caltrans will no longer be involved in most project level reviews and approval activities. The Process Review is now Caltrans' primary method of ensuring that federal and state requirements are met, (see Chapter 19, *Process Reviews*, in the *Local Assistance Procedures Manual* [LAPM]). During a Process Review of a local agencies project files or project site, errors and/or deficiencies could be found. If that happens, federal and/or state funds may be withdrawn from a project depending on the severity and circumstance of the deficiency.

It is important to note that the formal process review is not the only method of discovering project deficiencies. Errors or deficiencies are discovered occasionally as part of the normal routine of processing of project submittals by the District Local Assistance Engineers (DLAEs) or Division of Local Assistance Area Engineers.

This chapter is intended to assist local agencies that are involved in developing local assistance projects by providing examples of the deficiencies that have been found in the past and the possible ramifications for those errors or deficiencies. It should be understood that the examples given are by no means all inclusive. The key to avoiding possible sanctions is to follow the procedures outlined in this manual, the *Local Assistance Program Guidelines* (LAPG), and the *Standard Environmental Reference* (SER), and if you have any questions to consult your DLAE.

Section 20.4, *Local Assistance Dispute Resolution Process*, of this chapter also provides means for local agency to appeal a sanction that they feel has been imposed upon them unfairly or they feel the penalty is too harsh for the error or deficiency. This appeal process is not limited to just the appeal of sanctions; it can be used by local agencies when they are not satisfied with the decision they receive from a district office.

### 20.2 DEFICIENCIES

#### PROCEDURAL DEFICIENCIES

A Procedural Deficiency is defined as a finding that a local agency's practices and procedures fail to demonstrate sufficient familiarity for acceptable levels of conformance with procedures and required certifications defined in the LAPM. In addition to jeopardizing federal and/or state funding on completed or ongoing projects, certifications for future projects may be conditioned, or not accepted until the deficiencies are corrected.

**Examples of some of the most common procedural deficiencies (found by Caltrans) are:**

- Continued submission of Request for Authorization that contains errors and omissions (see Chapter 3, *Project Authorization*, in this manual).
- Continued submission of Preliminary Environmental Studies form that contains errors and omissions (see Chapter 6, *Environmental Procedures*, in this manual).

- Continued submission of Plans, Specifications & Estimate Certifications that contains errors and omissions (see Chapter 12, *Plans, Specifications & Estimate*, in this manual).
- Continued submission of Right of Way Certifications that contains errors and omissions (see Chapter 13, *Right of Way*, and Chapter 14, *Facility Utilities*, in this manual).
- Continued submission of Local Agency Contract Award Checklist that contains errors and omissions (see Chapter 15, *Advertise and Award Project*, in this manual).
- Failure of the local agency to comply with the Caltrans Disadvantaged Business Enterprise (DBE) program, particularly with regard to policy, utilization of DBEs, monitoring, and reporting (see Chapter 9, *Civil Rights and Disadvantaged Business Enterprises*, in this manual).

## MAJOR PROJECT DEFICIENCY

A Major Project Deficiency is defined as an error of commission or omission, which violates federal or state law or regulation, and if uncorrected, would prevent federal or state participation in all or a portion of the project.

### **Examples of some of the most common (found by Caltrans and FHWA) of Major Project Deficiencies (federal) are:**

- Failure to initiate an environmental reevaluation after environmental clearance when changes in the scope of the project are proposed, or when new project environmental impacts surface due to changes in law or investigations, shall result in loss of all or part of the federal funding for the project (see Chapter 6, *Environmental Procedures*, in this manual).
- Failure to fulfill mitigation commitments and adherence to restrictions in the environmental document shall result in a loss of all or part of federal funding for the project (see Chapter 6, *Environmental Procedures*, in this manual).
- Right of Way activities in violation of the Uniform Relocation Assistance and Real Properties Policy Act, as amended, can result in all or partial loss of project funding. Project funding losses can result even if there are not federal funds in Right of Way but only in other phases (see Chapter 13, *Right of Way*, in this manual).
- Force Account/Day Labor work, without proper justification, is not reimbursable (see Chapter 12, *Plans, Specifications & Estimate*, in this manual).
- For Emergency Relief (ER) projects, billing for emergency opening but actually doing permanent restoration work can result in a loss of all or part of the federal funding for the project (see Chapter 11, *Disaster Assistance*, in the LAPG).