

LOCAL PROGRAMS PROCEDURES LPP 23-01

California Department of Transportation
Division of Local Assistance
Office of Guidance and Oversight



LOCAL PROGRAMS PROCEDURES 23-01

The scope of LPP 23-01 includes the formal incorporation of the following Office Bulletins (OB) into the noted chapters of the Local Assistance Procedures Manual (LAPM) and/or Local Assistance Program Guidelines (LAPG).

OB Number	OB Title	Affected Chapters
23-01	DBE Updates	LAPM 9, 16
23-02R	Prompt Payment Certification	LAPM 9, 16
23-03	Preliminary Engineering Right of Way Checklist	LAPM 13
23-04	Update to Exhibit 12-G: Required Federal-aid Contract Language	LAPM 12, 16

Other technical updates including clarifications or corrections have been incorporated into the following Chapters/Exhibits:

LAPM Chapter 9	Civil Rights & DBE	
LAPM Chapter 10	Consultant Selection	
LAPM Chapter 12	PS&E	Exhibit 12-D, 12-G
LAPM Chapter 13	Right of Way	Exhibit 13-A, 13-B, 13-F
LAPM Chapter 15	Advertise & Award Project	Exhibit 15-B
LAPM Chapter 16	Administer Construction Contracts	
LAPM Chapter 17	Project Completion	
LAPG Chapter 25	State Programs for Local Agency Projects	

Significant additions are marked with blue text accompanied by a blue margin line on the right margin and are noted in the summary tables preceding each Chapter. Deletions to existing text are marked with red strikethroughs accompanied by a red margin line on the left margin. Minor typographical or grammatical changes were made throughout and are not documented in the summary table. The attached Chapters/Exhibits consist only of the pages with impacted sections/paragraphs unless otherwise noted.

Effective Date: JANUARY 2024

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LAPM C.9 CIVIL RIGHTS & DBE

LAPM C.9 Civil Rights & DBE

Section / Exhibit	Description of Changes
9.5 DBE Definitions	<ul style="list-style-type: none">• Calendar Days definition expanded and clarified.
9.6 Prompt Payment Certification	<ul style="list-style-type: none">• OB #23-02 text changes incorporated.
9.7 Running Tally of Actual Attainments	<ul style="list-style-type: none">• OB #23-02 text changes incorporated.
9.7 Commercially Useful Function	<ul style="list-style-type: none">• OB #23-01 text changes incorporated.
9.7 Use of Joint Checks	<ul style="list-style-type: none">• OB #23-01 text changes incorporated.
9.8 Good Faith Efforts	<ul style="list-style-type: none">• OB #23-01 text changes incorporated.
Exhibit 9-B Local Public Agency DBE Annual Submittal Form	<ul style="list-style-type: none">• Replaced with LAPM 9-B to allow expandable text fields to be printed without cutting off text.

The LPA's resident engineer should be cognizant of the contractual requirement and monitor the contractor for compliance. Specifically, the resident engineer should be concerned whether discriminatory practices take place, particularly in the hiring, firing, training, promotion, and utilization of employees (see [LAPM Chapter 16: Administer Construction Contracts](#), Section 16.9: Equal Employment Opportunity).

EEO Monitoring

The three checklists listed in Section 9.2: Nondiscrimination Title VI of the Civil Rights Act of 1964 and Related Statutes serve to assist LPAs in implementing EEO and are monitoring tools for DLAEs to ensure that EEO requirements are met. In addition, DLA performs periodic EEO process reviews that include reviews of the DLAE, LPA, and contractor.

Caltrans OCR includes LPA contracts in their compliance reviews of federal-aid contractors.

EEO Reporting

During the last full pay period in July, the prime contractor must complete [Exhibit 16-O: Federal-Aid Highway Construction Contractor's Annual EEO Report](#) (Form FHWA-1391) for all federal-aid construction contracts that are active.

NOTE: The person who should be signing Exhibit 16-O would either be the LPA Resident Engineer or the Project Manager. The person signing the forms is responsible for verifying all the information provided is correct and will be the contact person if there are any discrepancies.

9.5. Disadvantaged Business Enterprise (DBE)

Background

Caltrans is required under 49 CFR 26 to administer a Disadvantaged Business Enterprise (DBE) Program. The DBE Program is intended to ensure a level playing field and foster equal opportunity in federal-aid contracts. As a result, Caltrans periodically conducts studies that examine the availability, disparity, and discrimination of disadvantaged businesses in the transportation construction and engineering industry in California. Past studies have determined that discrimination continues to exist in the transportation contracting industry. When establishing the overall DBE goal, Caltrans must include the level of DBE participation that LPAs could contribute. This will include an assessment of the subcontracting opportunities for specific items of work and the DBE availability for specific items of work. In other words, that level of subcontracting opportunities that DBEs could reasonably be expected to compete for on a contract.

DBE Definitions

Additional definitions for the DBE Program not listed below can be found in 49 CFR 26.5.

Calendar Days - ~~Unless stated otherwise, days in this chapter is understood to mean calendar days which includes weekends and holidays.~~

Unless stated otherwise, days in this chapter refers to calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or federal holiday, the period extends to the next day that is not a Saturday, Sunday, or federal holiday. Similarly, in circumstances

where the LPA's offices are closed for all or part of the last day, the period extends to the next day on which the LPA is open.

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.

Recipient - In this section the recipient of federal funds refers to Caltrans.

Small Business Concern - Small Business Concern means with respect to firms seeking to participate as DBEs in federal-aid 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 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b).

Statewide Overall DBE Goal - As required by 49 CFR 26, Caltrans has established a statewide overall DBE goal. This is the average level of participation that Caltrans would expect DBEs to achieve in California. To ascertain whether the statewide overall DBE goal is achieved, Caltrans will track DBE participation on all federal-aid contracts.

Subrecipient - In this section subrecipient refers to the LPA receiving federal funds.

DBE Program Responsibilities

FHWA Responsibilities

FHWA administers the payment of federal-aid highway funds to recipients: states, counties, cities, and other agencies for transportation-related projects. 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 concerning nondiscrimination in administration of federal funds.

Caltrans Responsibilities

Office of Civil Rights (OCR)

- Administer (Caltrans DBE Program Plan).
- Maintain a directory of certified DBE contractors.
- Establish statewide overall DBE goal and race-neutral and race-conscious component projections.

Division of Local Assistance (DLA)

- Provide technical assistance to the districts.
- Monitor LPA compliance with DBE program requirements by conducting process reviews. FHWA and the District are invited to participate in these process reviews.
- Assemble statewide LPA DBE commitment, final utilization, and other information for reports to OCR.

Prompt Payment Certification

For projects awarded on or after September 1, 2023: the prime contractor or consultant must submit Exhibit 9-P to the LPA administering the contract by the 15th of the month following the month of any payment(s). If the prime contractor or consultant does not make any payments to subcontractors, supplier(s) and/or manufacturers they must report “no payments were made to subs this month” and write this visibly and legibly on Exhibit 9-P.

A failure to complete the Prompt Pay reporting requirement may result in the withholding of the prime contractor or consultant’s next progress payment and/or final payment. Additionally, Caltrans may require the LPA to issue a corrective action plan and/or it may require the LPA to suspend the contract in whole or in part if the prime or consultant does not make up the shortfall.

LPAs must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any shortfalls to the DBE commitment and prompt payment issues until the end of the project. The LPA must email a copy of Exhibit 9-P to DBE.Forms@dot.ca.gov before the end of the month after receiving the Exhibit 9-P from prime contractor or consultant.

Monitoring and Enforcement Mechanism for Prompt Payment

Per 49 CFR 26.29(d), the agency is required to stipulate the monitoring and enforcement mechanisms in the contract to ensure that all subcontractors, including DBEs, are promptly paid. These mechanisms may include appropriate penalties for failure to comply with the terms and conditions of the contract. The mechanisms may also provide that any delay or postponement of payment among the parties may take place only for good cause with the agency’s prior written approval.

9.7 DBE Participation on the Contract

Participation Opportunities

The LPA should structure its contracts and cost estimates by task to provide opportunities for DBE participation. Participation by DBEs is possible during the Preliminary Engineering, Environmental, Final Design, Right of Way, and Construction phases of the project, and includes work as lead consultants, prime contractors, sub-consultants, subcontractors, suppliers, vendors, and truckers.

DBE Contract Goals

All federal-aid contract that has subcontracting opportunities must have a DBE goal set. This includes, but is not limited to construction, consultant services such as project-specific Architectural & Engineering (A&E), and master on-call A&E contracts. A DBE contract goal is a percentage of the total contract amount that is expected to be performed by certified DBE firms. The DBE contract goal will vary depending on the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract.

The contract goal may be zero in situations such as extremely limited subcontracting opportunities, the lack of certified DBEs available in the district for the work to be performed, or other reasons. The LPA will need to keep documentation in the project file when a zero percent DBE contract goal is deemed appropriate.

each DBE participating in the contract. For A&E contracts, any format for written confirmation can be used. For construction contracts, [LAPM 9-I: DBE Confirmation](#) (or equivalent form) and DBE's quote must be submitted. The written confirmation must be submitted no later than 4pm on the 5th day after bid opening. If a DBE is participating as a joint venture partner, the bidder or proposer is encouraged to submit a copy of the joint venture agreement. Exhibit 15-G or Exhibit 10-O2 must be included in the construction or consultant contract whether or not there is a DBE goal on the contract. The LPA must submit this form to the DLAE within 30 days of contract execution for timely reporting. Failure to submit Exhibit 15-G or Exhibit 10-O2 to the DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract. The purpose of these forms is to capture all DBE proposed participation, or in instances when there is no DBE contract goal, DBE proposed participation acquired through normal contracting procedures as required under 49 CFR 26.

Running Tally of Actual Attainments

~~After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to the LPA.~~

For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to local administering agencies.

For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the prime contractor or consultant must now submit Exhibit 9-P to the LPA administering the contract. If the prime contractor or consultant does not make any payments to subcontractors, supplier(s) and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

Final Report

Upon completion of the construction or consultant contract, regardless of whether DBE participation was obtained, a summary of the DBE records must be prepared, certified correct, and submitted on the [Exhibit 17-F: Final Report-Utilization of DBE and First-Tier Subcontractors](#), or equivalent by the contractor to the LPA showing total dollars paid to each subcontractor and supplier whether DBE or non-DBE. Exhibit 17-F is reviewed by the LPA and certified as complete and accurate. The information in this report is required by the DBE Program and the FHWA to demonstrate DBE participation on LPA projects.

The LPA must send one copy of the completed Exhibit 17-F to the DLAE as part of its Final Report of Expenditure package before final payment (see [LAPM Chapter 17: Project Completion](#)).

Counting DBE Participation

Actual payment to subcontractors that are certified DBEs 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.

Work Performed by DBEs

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, 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 the 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 federal-aid contract, provided that the LPA 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 towards 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 towards the DBE participation. The DBE's share of each of the following must be commensurate with its ownership interest in the joint venture: capital contribution, control, management, risks, and profits.

Commercially Useful Function (CUF)

~~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:~~

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work on the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additionally, 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.

- ~~• 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 LPA 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 LPA must examine similar transactions, particularly those in which DBEs do not participate.

- ~~• The prime contractor has the responsibility to ensure a DBE firm performs a commercially useful function. At the same time, LPAs are required by federal and state regulations to monitor worksites to make sure work committed to a DBE is performed by the respective firms and ensure a commercially useful function. For additional information on how to monitor the worksite, refer to LAPM Chapter 16 (Section 16.9: Disadvantaged Business Enterprises).~~

If a DBE does not perform or exercise responsibility for at least 30% 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 LPA's determination as to whether the firm is performing a commercially useful function to accurately credit DBE services should be based upon the amount and type of work involved and normal industry practices. A resident engineer should certify CUF in writing, and a signed and documented CUF review would meet the monitoring requirement of the agency.~~

The prime contractor must perform CUF evaluation for each DBE working on a federal-aid contract, with or without a DBE goal. This also includes DBE truckers, suppliers, and other vendors where a subcontract is not required. For contracts between the first-tier DBE and the second-tier DBE, the first-tier DBE must perform the CUF evaluation on the second-tier DBE following the same procedure described in this section. Perform a CUF evaluation at the beginning of the DBE's work and continue to monitor the performance of CUF for the duration of the project.

The prime contractor must provide written notification to the LPA at least 15 days in advance of each DBE's initial performance of work or supplying materials for the contract. The notification must include the DBE's name, work the DBE will perform on the contract, and the location, date, and time of where their work will take place.

Within 10 days of a DBE initially performing work or supplying materials on the contract, the contractor must submit to the LPA the initial evaluation and validation of DBE performance of a CUF using [LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation](#). Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase orders
- Bills of lading

- Invoices
- Proof of payment

The prime contractor must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the contract using LAPM 9-J: DBE Commercially Useful Function Evaluation. The contractor must submit to the LPA these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

The contractor must notify the LPA immediately if the contractor believes the DBE may not be performing a CUF.

The LPA will verify DBE's performance of CUF by reviewing the initial and quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation, submitted supporting information, field observations, and through any additional LPA evaluations. The LPA must evaluate DBEs and their CUF performance throughout the duration of a Contract. The LPA will provide written notice to the contractor and DBE at least two (2) business days prior to any evaluation. The contractor and the DBE must participate in the evaluation. Upon completing the evaluation, the LPA must share the evaluation results with the contractor and the DBE. An evaluation could include items that must be remedied upon receipt. If the LPA determines the DBE is not performing a CUF, then the contractor must suspend performance of the noncompliant work.

The prime contractor and DBEs must submit any additional CUF related records and documents within five (5) business days of LPA's request such as:

- Proof of ownership or lease and rental agreements for equipment
- Tax records
- Employee rosters
- Certified payroll records
- Inventory rosters

Failure to submit required DBE CUF Evaluation forms or requested records and documents can result in withholding of payment for the value of work completed by the DBE.

If the contractor and/or the LPA determine that a listed DBE is not performing a CUF in performance of their DBE committed work, immediately suspend performance of the noncompliant portion of the work. The LPA may deny payment for the noncompliant portion of the work. The LPA will ask the contractor to submit a corrective action plan (CAP) to the LPA within five (5) days of the noncompliant CUF determination. The CAP must identify how the contractor will correct the noncompliance findings for the remaining portion of the DBE's work. The LPA has five (5) days to review the CAP in conjunction with the prime contractor's review. The contractor must implement the CAP within five (5) days of the LPA's approval. The LPA will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a CUF on the contract, then the contractor may have good cause to request termination and replacement of the DBE.

The LPA's decision on commercially useful function matters are subject to review by the DLAE. CUF determinations are not subject to administrative appeal to the LPA, Caltrans and USDOT.

Use of Joint Checks

A joint check may be used between the contractor or lower-tier subcontractor and a DBE subcontractor purchasing materials from a material supplier if the contractor obtains prior approval from the LPA for the proposed use of joint check upon submittal of [LAPM 9-K: DLA Disadvantaged Business Enterprises \(DBE\) Joint Check Agreement Request](#).

To use a joint check, the following conditions must be met:

- All parties, including the contractor, must agree to the use of a joint check
- Entity issuing the joint check acts solely to guarantee payment
- DBE must release the check to the material supplier
- LPA must authorize the request before implementation
- Any party to the agreement must provide requested documentation within 10 days of the LPA's request for the documentation
- Agreement to use a joint check must be short-term, not to exceed 1 year, allowing sufficient time needed to establish or increase a credit line with the material supplier

A request for a joint check agreement may be initiated by any party.

If a joint check is used, the DBE remains responsible for all elements of 49 CFR 26.55(c)(1).

Failure to comply with the above requirements disqualifies DBE participation and results in no credit and no payment to the contractor for DBE participation.

A joint check may not be used between the contractor or subcontractor and a DBE regular dealer, bulk material supplier, manufacturer, wholesaler, broker, trucker, packager, manufacturer's representative, or other persons who arrange or expedite transactions.

DBE Trucking

Use the following factors to determine if 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

whose participation it submits to meet a contract goal.

10. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the bidder/offeror's commitment.
11. Written documentation of reason(s) for rejecting DBE quotes.
12. Any additional data to support demonstration of good faith efforts.

The LPA may consider DBE commitments from other bidders when determining whether the low bidder made good faith efforts to meet or exceed the DBE goal.

Administrative Review and Reconsideration

An administrative review (49 CFR 26.53) and evaluation of the Good Faith Efforts (GFEs) should be made prior to award in each instance by the LPA. If the LPA determines that the apparent successful bidder has failed to meet the GFEs requirements, the LPA, before awarding the contract, must provide the apparent successful bidder the opportunity for administrative reconsideration in accordance with 49 CFR 26.53. A sample procedure for reconsideration hearing (Exhibit 9-H) can be found at the [LAPM Exhibits webpage](#).

Termination and ~~Substitution~~ Replacement of DBE Subcontractors

~~After a contract, which specified goals for the DBE participation, has been executed, adequate GFEs are required for any necessary substitution of DBE subcontractors to the extent needed to meet the DBE contract goal.~~

~~LPAs must require a prime contractor not to terminate for convenience a DBE subcontractor listed in [Exhibit 15-G: Construction Contract DBE Commitment](#) or an approved substitute DBE subcontractor in order to perform the work of the terminated subcontract with its own forces or those of an affiliate without the LPA's prior written consent.~~

A prime contractor cannot terminate or perform any work of a DBE listed on [Exhibit 15-G: Construction Contract DBE Commitment](#) or [Exhibit 10-O2: Consultant Contract DBE Commitment](#); neither can it substitute any work for a DBE subcontractor without the written consent of the LPA prior to any replacement taking place. Unless the LPA provides prior written consent, the contractor is not entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the [Exhibit 15-G](#) or [Exhibit 10-O2](#). After affording the DBE due process (see [Termination of DBE Subcontractors](#) below), when a prime contractor receives written permission from the LPA to terminate it must then make adequate Good Faith Efforts (GFEs) for any necessary replacement of a DBE subcontractor to the extent needed to meet the DBE commitment.

Termination of DBE Subcontractors

The LPA must include in each prime contract a provision stating that the contractor must utilize the specific DBEs listed to perform the work and supply the materials for ~~which each is item listed in the contract~~ unless the contractor obtains the LPA's written ~~permission. consent due to the following, but not limited to, good reasons such as:~~

After a contract with a specified DBE goal has been executed, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization from the LPA:

- The listed DBE subcontractor fails or refuses to execute a written contract

- The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards
- The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements
- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness
- The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law
- Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law or is not properly registered with the California Department of Industrial Relations as a public works contractor.
- The LPA has determined that the listed DBE subcontractor is not a responsible contractor
- The listed DBE subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal
- The listed DBE is ineligible to receive DBE credit for the type of work required
- A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract
- Other documented good cause that the LPA determines compels the termination of the DBE subcontractor

~~Before transmitting to the LPA its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the LPA, of its intent to request to terminate and/or substitute, and the reason for the request.~~

~~The prime contractor must give the DBE five days to respond to the prime contractor's notice. The DBE shall advise the LPA and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the LPA should not approve the prime contractor's action.~~

~~When a DBE subcontract is terminated or when a DBE subcontractor fails to complete its work on the contract for any reason, the LPA must require the prime contractor to make GFEs to find another DBE subcontractor to substitute for the original DBE subcontractor. These GFEs must be directed at finding another DBE subcontractor to perform at least the same amount of work under the contract as the DBE subcontractor that was terminated to the extent needed to meet the DBE contract goal.~~

To terminate a DBE or to terminate a portion of a DBE's work, the contractor must use the following procedures:

1. Send a written notice to the DBE of the contractor's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the LPA. The written notice to the DBE must request they provide any response within five (5) business days to both the contractor and the LPA by

either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.

2. If the DBE does not respond within five (5) business days, the contractor may move forward with the request as if the DBE had agreed to the contractor's written notice.
3. Submit the DBE termination request by written letter to the LPA and include:
 - One or more above listed justifiable reasons along with supporting documentation.
 - The contractor's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of the contractor's written notice
 - The DBE's response to the contractor's written notice, if received. If a written response was not provided, provide a statement to that effect.

The LPA must respond in writing to contractor's DBE termination request within five (5) business days.

Replacement of DBE Subcontractors

After receiving the LPA's written authorization of DBE termination request, the contractor must obtain the LPA's written agreement for DBE replacement. The contractor must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

The following procedures must be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the LPA which must include:
 - a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.
 - b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
 - Quote for bid item work and description of work to be performed
 - Proposed subcontract agreement and written confirmation of agreement to perform on the Contract
 - Revised Subcontracting Request form
 - Revised Exhibit 10-O2: Consultant Contract DBE Commitment or a revised Exhibit 15-G: Construction Contract DBE Commitment
2. If contractor has not identified a DBE replacement firm, submit documentation of GFEs to use DBE replacement firms within seven (7) days of LPA's authorization to terminate the DBE. The contractor may request the LPA's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:

- Search results of certified DBEs available to perform the original DBE work identified and or other work the contractor had intended to self-perform, to the extent needed to meet the DBE commitment
- Solicitations of DBEs for performance of work identified
- Correspondence with interested DBEs that may have included contract details and requirements
- Negotiation efforts with DBEs that reflect why an agreement was not reached
- If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive
- Copies of each DBE's and non-DBE's price quotes for work identified, as the LPA may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
- Additional documentation that supports the good faith effort

The LPA must respond in writing to the contractor's DBE replacement request within five (5) business days. The Contractor must submit a revised Subcontracting Request form if the replacement plan is authorized by the LPA.

Monitoring and Enforcement Mechanism for DBE Termination and Substitution Replacement

LPAs are required to implement appropriate mechanisms to ensure compliance with the requirements related to the termination and substitution replacement of subcontractors by all program participants. The LPA needs to stipulate legal and contractual remedies available under federal, state and local law in the contract and must set forth these mechanisms in the LPA's DBE program.

The LPA's DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that the LPA has reviewed contracting records and monitored work sites in the LPA's jurisdiction for this purpose (for example, a resident engineer certifies CUF in writing).

Noncompliance

LPAs must include in each prime contract a provision for appropriate sanctions that will be involved if the prime contractor fails to fulfill the DBE commitments made at the time of execution of the contract. The LPA must deny payment to the prime contractor for the portion of the contract that was committed at the time of contract execution to be performed by a DBE subcontractor but was completed by the prime contractor or a substitute non-DBE subcontractor, unless agreed by the LPA in writing.

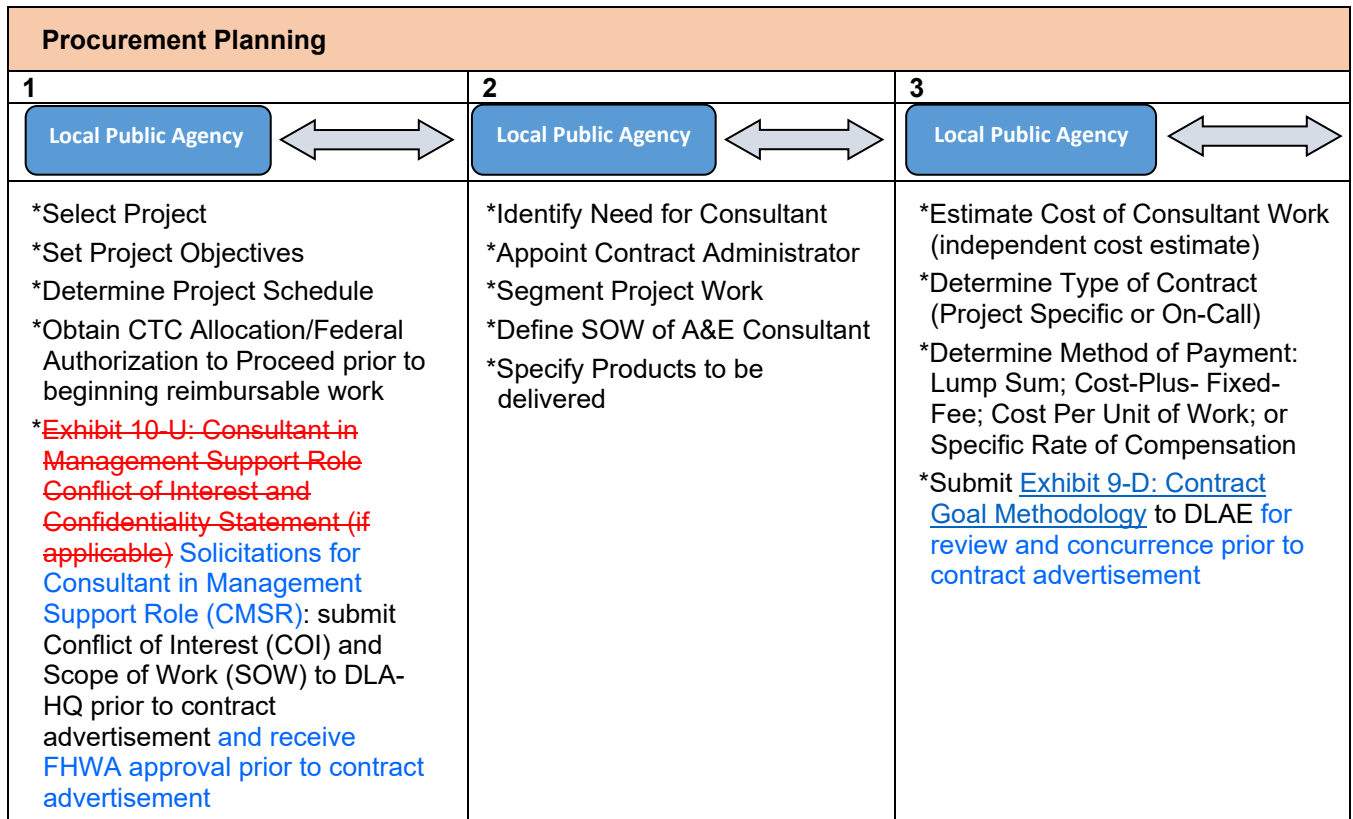
Submitting the GFE and Supporting Document for Review

LAPM C.10 CONSULTANT SELECTION

LAPM C.10 Consultant Selection

Section / Exhibit	Description of Changes
Figure 10-1 A&E Contract Procurement Process Workflow Diagram	<ul style="list-style-type: none">• Clarifying text added.
Figure 10-4 Consultant Selection Flowchart	<ul style="list-style-type: none">• Flowchart to be removed from Chapter 10 and will be updated / maintained on the A&E website.
10.1.5 Develop Technical Criteria for Evaluation of Proposals	<ul style="list-style-type: none">• Clarifying text added for non-technical evaluation criteria.
10.1.6 Develop Technical Criteria for Evaluation of Qualifications	<ul style="list-style-type: none">• Clarifying text added.
10.1.9 Retaining a CMSR	<ul style="list-style-type: none">• Clarification added: FHWA approval of Exhibit 10-U required prior to award.
10.3 Example of Determining Non-A&E	<ul style="list-style-type: none">• Added Traffic Counts and Speed Surveys to bullet list of common non-A&E services.

10.1 FEDERALLY-FUNDED A&E CONTRACTS



The Division of Local Assistance Acronyms List is available at:
<https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/guide/dla-acronyms.pdf>

Figure 10-1: A&E Contract Procurement Process Workflow Diagram

Contract Negotiation		
		Contract Execution
10	11	12
<div style="border: 1px solid black; background-color: #4F81BD; color: white; padding: 5px; display: inline-block;">Local Public Agency</div> ↔	<div style="border: 1px solid black; background-color: #4F81BD; color: white; padding: 5px; display: inline-block;">Local Public Agency</div> ↔	<div style="border: 1px solid black; background-color: #E86A53; color: white; padding: 5px; display: inline-block;">DLAE</div>
<ul style="list-style-type: none"> *Negotiate contract costs with the most qualified Consultant *Prepare and retain record of cost negotiations *Initiate CT IOAI Financial Review Section (Section 10.1.3: A&E Consultant Audit and Review Process) and send documents (Financial Document Review Request), if applicable, to Caltrans IOAI *Receive and analyze findings of the Financial Review Letter from CT IOAI, if any *Address and resolve all findings by IOAI and incorporate into final contract and cost proposal *If negotiations with First ranked firm is unsuccessful, formally terminate cost negotiations with Consultant and begin Step 9 with next ranked consultant *For CMSR, submit Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement (if applicable) to DLA-HQ. LPA will receive FHWA's approved Exhibit 10-U via email. FHWA approval required prior to award. *Complete and submit the A&E Consultant Contract form to the A&E Consultant Contract database prior to award or after award, but no later than the first invoice *Retain A&E Consultant Contract form 	<ul style="list-style-type: none"> *Finalize contract, cost proposal *Retain copy of contract Financial Review Letter with acceptance, denial, or adjustment of the ICR *Sign and Execute contract *Offer and conduct debriefing meetings with consultant who asked for one *Send copies of executed contract and DBE Commitment Exhibits (Exhibit 10-O1: Consultant Proposal DBE Commitment and Exhibit 10-O2: Consultant Contract DBE Commitment) to DLAE *Close out contract procurement process 	<ul style="list-style-type: none"> *Prior to concurring with invoice payment related to consultant services, ensure submittal of the A&E Consultant Contract form and District has received and has a file on copy of the executed consultant contract, Exhibit 10-O1 Consultant Proposal DBE Commitment, Exhibit 10-O2: Consultant Contract DBE Commitment. Also, check IOAI database to ensure that Certification of Indirect Costs and Financial Management System, if applicable, has been accepted by IOAI. <div style="text-align: center; margin-top: 10px;"> <div style="border: 1px solid black; background-color: #FFD700; padding: 5px; display: inline-block; border-radius: 10px;">Caltrans IOAI</div> </div> <ul style="list-style-type: none"> *Perform Incurred Cost Audit, if selected

Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued

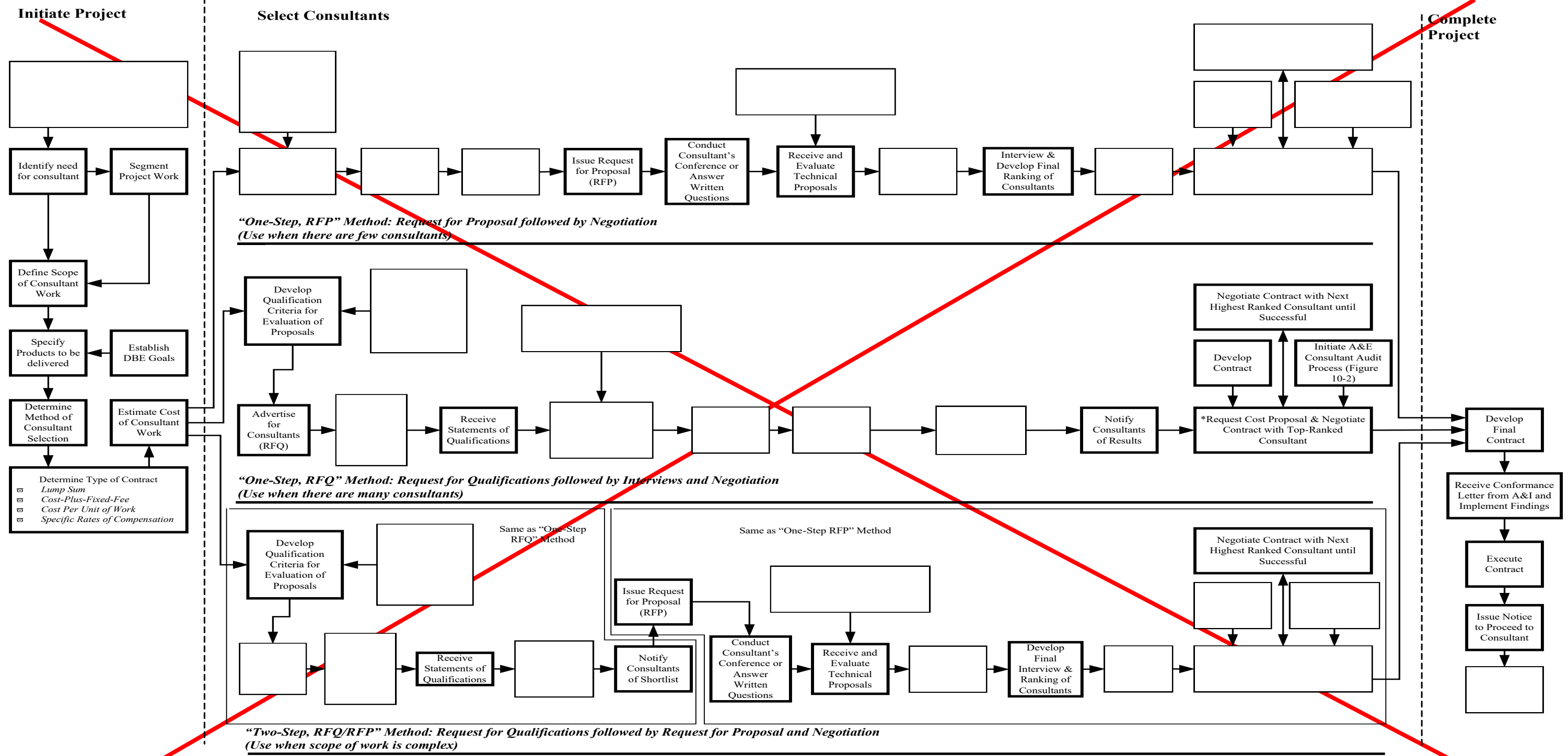


Figure 10-4: Consultant Selection Flowchart

10.1.5 Consultant Selection Using the One-Step RFP Method

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. This procurement procedure usually involves a single step process with issuance of a request for proposal (RFP) to all interested consultants. For non-A&E consulting contracts, a cost proposal must be part of the RFP and the selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been final ranked based upon their submitted technical proposal.

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 materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the project/segment to be contracted out and with the LPA standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the agency and subject to availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the LPA of its responsibility to ensure that proper procurement procedures are followed, and all requirements are met.

LPA Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172.7(b)(4)) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in [Exhibit 10-T: Conflict of Interest & Confidentiality Statement](#).

Develop Technical Criteria for Evaluation of Proposals

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals. In-State or local preference must not be used as factor in the evaluation, ranking, and selection phase. ~~All non-technical evaluation criteria, including DBE participation, must not exceed 10 percent~~ Local presence and DBE participation are the only two non-qualifications-based evaluation criteria that are permitted, however, the combined total of these criteria cannot exceed a nominal value of 10 percent of the total evaluation criteria (23 CFR 172.7(a)(1)(iii)(D)). All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#) is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The LPA should consult with the DLAE before making major changes to the suggested approach.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the LPA. The LPA and the consultant will agree on the final cost proposal and incorporate into final contract. Retain all documentation related to negotiations.

Before executing the consultant contract, the LPA must review contract to ensure that all federal and state requirements have been met and adjustment or denial of ICR as identified in the Financial Review Letter has been included in the final cost proposal, if applicable.

Prior to contract award, or after contract award but no later than the first invoice, the LPA must submit a completed A&E Consultant Contract form for all new federal funded A&E consultant contracts using the A&E Consultant Contract database at: <https://dla.dot.ca.gov/fmi/webd/AE%20Consultant%20Contract%20Form> (please use Firefox or Chrome if not supported by your browser). Submission of the A&E Consultant Contract form is not required for non-A&E consultant contracts.

If there are any changes requiring an amendment to the contract after submittal of the A&E Consultant Contract form, refer to [Section 10.1.8: Contract Amendments](#) of this chapter.

10.1.6 Consultant Selection Using the One-Step RFQ Method

The RFQ method is used when the services being procured are specialized, or the scope of work is defined broadly and may include multiple projects.

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 subject matter experts from the project's functional area. The members should be familiar with the scope of work to be contracted out and with the LPA standards that will be used in the contract.

Participation by a Caltrans district representative is at the option of the LPA and subject to the availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the LPA of its responsibility to ensure that proper procurement procedures are followed, and all requirements are met.

LPA Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172.7(b)(4)) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in [Exhibit 10-T: Conflict of Interest & Confidentiality Statement](#).

Develop Technical Criteria for Evaluation of Qualifications

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant qualifications. [In-State or local preference must not be used as factor in the evaluation, ranking, and selection phase. Local presence and DBE participation are the only two non-qualifications-based evaluation criteria that are permitted, however, the combined total of these criteria cannot exceed a nominal value of 10 percent of the total evaluation criteria \(23 CFR 172.7\(a\)\(1\)\(iii\)\(D\)\). All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.](#) The

- Participate in, or exercise authority over management of work performed by the consultant's firm, or to a consultant's firm of which the LPA consultant firm is a subconsultant. This would include, but not be limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables, and approving invoices.
- Apply for or receive reimbursement of federal-aid funds for the LPA's federal-aid project if either of the foregoing has occurred. However, reimbursement for the construction contract portion of the project will still be allowed provided all other federal-aid requirements have been met.
- Where benefiting more than a single federal-aid project, allocability of consultant contract costs for services related to a management support role must be distributed consistent with the cost principles applicable to the contracting agency in 23 CFR 172.7(b)(5).

If engineering services for a project are within the scope of the services described in the retained consultant's contract, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for federal reimbursement for these services require a new consultant contract to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the RFP or RFQ must not be considered in the selection of consultants for the resulting project specific work.

When a CMSR is procured with federal-aid funds, the LPA (subgrantee) must fully comply with the following:

- Subparagraphs of 2 CFR 200.318 maintain a contract administration system and maintain a written code of standards. No employee, officer, or agent of the subgrantee must participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.
- Subparagraph of 23 CFR 172.7(b) requires that the LPA must receive approval of the CMSR from FHWA.
- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

For federally-funded projects, LPAs that solicit to hire A&E consultant(s) in a management support role must obtain FHWA approval prior to contract execution.

In order for a contract for a CMSR to be federally eligible, the following are required prior to contract execution:

- The LPA must submit a request for approval via email, the Scope of Work (SOW) and Conflict of Interest (COI) Policy to the Division of Local Assistance-Headquarters (DLA-HQ) at aeoversight@dot.ca.gov, prior to contract advertisement.
- Once the LPA receives FHWA's written response, the LPA may need to revise the documents reflecting FHWA's opinions and can proceed with the RFQ.
- ~~After consultant selection~~ Before award, the LPA must submit the completed [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality](#)

[Statement](#) to DLA-HQ at aeoversight@dot.ca.gov. LPA will receive FHWA’s approved [Exhibit 10-U](#) via email. **FHWA approval required prior to award.**

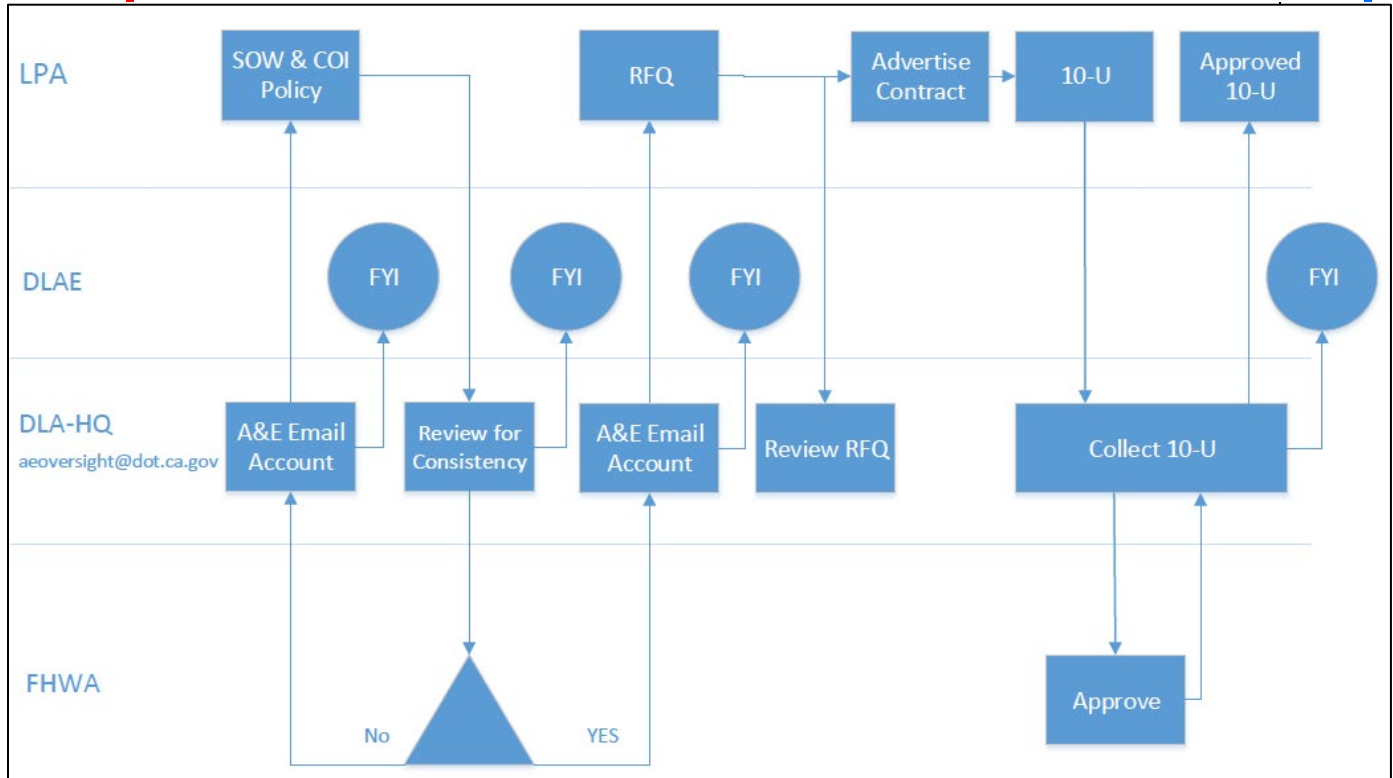


Figure 10-4: Consultant in a Management Support Role Flowchart

Construction Engineering Services

Under federal-aid regulations and state policy, the primary responsibility for general supervision of construction must remain with the LPA. The LPA must also ensure that the work is performed in accordance with the approved plans and specifications, by employing or retaining as a consultant a registered engineer for construction engineering services on the project.

All construction engineering activities performed by a consultant must be under the overall supervision of a full-time employee of the agency who is in responsible charge. These activities may include preparation of contract change orders, construction surveys, foundation investigations, measurement, and computation of quantities, testing of construction materials, checking of shop drawings, preparation of estimates, reports, and other inspection activities necessary to ensure that the construction is being performed in accordance with the plans and specifications. The construction engineering consultant’s contract defines the relative authorities and responsibilities of the full-time employee of the LPA in charge of the project and the consultant’s construction engineering staff.

If a technical inspection consultant is to provide professional assistance to the LPA, a formal consultant contract must be executed which follows this chapter’s requirements. The contract must provide for reviews at appropriate stages during performance of the work to determine if any changes or other actions are warranted. These reviews are to be made by the LPA.

- Non-Infrastructure
- Local Roadway Safety Plan (LRSP) associated with Highway Safety Improvement Program (HSIP)-funded projects
- [Traffic Counts](#)
- [Speed Surveys](#)

Intelligent Transportation System (ITS) Projects

Intelligent Transportation System (ITS) means electronic, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system. ITS projects are those that in whole or in part, fund the acquisition of technologies or systems of technologies that provide significant contributions to the provision of one or more ITS user services as defined in the National ITS Architecture.

The federal-aid procurement regulations identify three possible contract procurement procedures for ITS projects including engineering and design related services (A&E), construction, and non-engineering/non-architectural (non-A&E).

If ITS projects include physical installation of field devices and/or communications infrastructure, such as new traffic signals, new controller cabinets, changeable message signs, radio and computers, vehicle detectors, and conduits for cabling in the roadway, then that work and required equipment usually meets the definition of construction. The construction contract must be procured based on competitive bidding. If the ITS project involves software development, system integration, hiring engineers, and specialists for ITS design and installation support, inspection, design documentation, training and deployment, it may be considered an engineering and design services contract and the contract must be procured as an A&E consultant contract. If the scope of work is unclear as to whether it is an A&E type of work, contact aeoversight@dot.ca.gov for assistance.

However, if an ITS project does not meet either the definition of construction or engineering and design services, then the contract may be considered to be a non-A&E consultant contract.

Examples of non-A&E consultant contracts are:

- The procurement of hardware and software associated with incident management system;
- Software systems for arterial and freeway management systems;
- Operating the 511 traveler information service;
- Nonprofessional services for system support such as independent validation and verification, testing and specification development;

For more information regarding Intelligent Transportation Systems (ITS) Program procurement requirements, refer to [LAPG Chapter 13: Intelligent Transportation Systems \(ITS\) Program](#).

Non-Infrastructure Projects

Non-infrastructure (NI) projects are those transportation-related projects that do not involve either engineering design, Right-of-Way acquisition (for additional guidance refer to [LAPM Chapter 13: Right of Way](#)), or the eventual physical construction of transportation facilities.

LAPM C.12 PS&E

LAPM C.12 PS&E

Section / Exhibit	Description of Changes
12.8 Federal Contract Requirements	<ul style="list-style-type: none">• OB # 23-04 text changes incorporated.
Exhibit 12-D PS&E Checklist	<ul style="list-style-type: none">• VI. Value Engineering Analysis (VA) – additional checkbox added for design-build projects (though not required, it is highly recommended for projects with an estimated cost of \$25 million or more.• XII. E. Federal Wage Rates text simplified; expanded information to be incorporated in a forthcoming Office Bulletin update to LAPM Chapter 15.
Exhibit 12-G Section 14. Federal Trainee Program	<ul style="list-style-type: none">• Clarifying text added.
<p><i>Note: Exhibit 12-G changes were incorporated with the publication of Office Bulletin #23-04 to avoid multiple updates to the Exhibit within a short period of time.</i></p>	

Table 12-1: Liquidated Damages

Total Bid		Liquidated damages per day
From over	To	
\$0	\$200,000	\$2,800
\$200,000	\$500,000	\$3,600
\$500,000	\$1,000,000	\$3,600
\$1,000,000	\$2,000,000	\$4,200
\$2,000,000	\$5,000,000	\$5,200
\$5,000,000	\$10,000,000	\$6,700
\$10,000,000	\$20,000,000	\$9,500
\$20,000,000	\$50,000,000	\$13,200
\$50,000,000	\$100,000,000	\$16,000
\$100,000,000	\$250,000,000	\$19,300

If all work except plant establishment or permanent erosion establishment is complete and the total number of working days have expired, liquidated damages are \$950 per day.

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

Buy America

FHWA's policy for Buy America requires a domestic manufacturing process for all steel and iron products, [manufactured products](#), and construction materials that are permanently incorporated in a federal-aid funded project.

[Manufactured products](#) are those that contain steel or iron components that equate to 90 percent or more by weight of the product. Steel or iron products used within precast concrete products, such as reinforcing steel, wire mesh, and pre-stressing or post-tensioning strands, rods, or cables, must meet Buy America regardless of the percentage of use.

FHWA defines a construction material as an article, material, or supply that ~~is considered or consists primarily of~~ [consists of only one of the following items](#): non-ferrous metals, plastic, and polymer-based products (including polyvinylchloride, ~~and composite building materials, and polymers used in fiber optic cables~~), glass (~~including optic glass~~), fiber optic cable (including drop cable), optical fiber, lumber, [engineered wood](#), or drywall. [The manufacturing processes for all materials governed by Buy America requirements are outlined in accordance with 2 CFR 184.6.](#) If one or more of these construction materials have been combined by a manufacturer with other materials through a manufacturing process, Buy America requirements do not apply unless otherwise specified.

Buy America provisions are also applicable to non-federal-aid funded projects, if:

- the non-federal-aid contract is included within the scope of the NEPA document, and

- at least one other contract within the scope of the same NEPA document is funded or will be funded with federal-aid funds. This includes any contract eligible for federal-aid assistance including but not limited to environmental, design, right-of-way, construction, etc.

When Buy America is applicable, the LPA must include Buy America provisions in their PS&E packages prior to advertising for bids and in its contracts. Awarding any such non-federal-aid highway contract, without applicable Buy America provisions would render all contracts within the scope of the NEPA document ineligible for federal-aid funds.

The Buy America provision also applies to all steel and iron components of a manufactured product with at least 90 percent or more by weight of the product(s). Iron and steel used in precast concrete manufactured products must meet the Buy America requirements regardless of the amount used. 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:

- Recycled steel
- Raw materials, scrap temporary steel items such as sheet pilings, bridges, steel scaffolding, and false work
- Materials that remain in place at the contractor's convenience such as sheet pilings and forms
- Pig iron and processed, pelletized, and reduced iron ore manufactured outside the United States

Buy America requirements apply to all steel and iron products, [manufactured products](#), and construction materials supplied and permanently incorporated into a federal-aid project regardless of the funding source used to purchase the product and regardless of how the products were procured (i.e., agency furnished materials, materials added by change order, etc.). The LPA must not list non-domestic steel and iron products, or construction materials as nonparticipating in order to circumvent the Buy America requirements.

Typically, the need for Buy America waivers is identified during the early phases of the project. If the need for a waiver is identified during the design phase, the LPA must wait until the FHWA's Buy America waiver is approved before requesting PS&E approval. In the case of non-federally funded projects covered under the NEPA document, the LPA must wait for the FHWA's Buy America waiver approval to advertise the project for bids. If during construction, the LPA identifies the need for a Buy America waiver, the LPA must wait for FHWA's approval of the Buy America waiver to incorporate the material in the project. A request for a Buy America waiver does not guarantee FHWA's approval of the waiver request. The LPA must expeditiously contact their DLAE to discuss potential Buy America waivers.

The LPA may request a waiver of the Buy America requirement for specific projects, certain materials or products in specific geographical areas, or combinations of both if:

- Buy America is inconsistent with the public interest, or

- There is not a sufficient supply of domestic materials of satisfactory quality.

The LPA must submit their Buy America waiver request to the DLAE which will review the request and recommend to FHWA for further processing. The following supporting information must be provided by the LPA, but additional information may be requested during the waiver review period:

- Federal project number
- Project description
- Total construction project cost, including Federal, State, and Local share amounts
- Description of the waiver item(s)
- Cost of waiver item(s)
- Country of origin of the product(s) (if known at the time)
- Reasons for the waiver request
- A description of the efforts made by the LPA to locate domestically-manufactured product(s)
- An analysis of re-design of the project using alternate or approved equal domestic product
- LPA's documentation of good faith efforts to maximize the use of domestic iron and steel products in accordance with U.S. President Executive Order 14005 Section 1: Ensuring the Future is Made in All of America by All of America's Workers

In addition to the Buy America waiver, FHWA's Buy America policies allow the LPA to incorporate non-domestic steel or iron materials if any of the following methods is used:

- Minimal use of foreign steel and iron materials. If the cost of foreign steel and iron materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. The total cost of iron and steel includes the cost of the material plus the cost of transportation to the project site, but does not include labor costs involved in final assembly.
- Alternate bid provisions. The LPA elects to include alternate bid provisions for both, foreign and domestic steel and iron materials. The contract provisions must require all bidders to submit a bid based on furnishing domestic steel and iron materials, and clearly state that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel and iron materials unless such total bid is more than 25 percent higher than the total bid based on foreign steel or iron products. The comparison must be between the total lowest bid using domestic ~~iron/steel~~ steel and iron product and the total lowest bid using foreign ~~iron/steel~~ steel and iron product.

The LPA must coordinate with their DLAE prior to using the alternate bid provisions; the DLAE will coordinate with FHWA.

Approval authority for waiver of Buy America requirements has not been delegated from the FHWA to Caltrans, and therefore, is not delegated to the LPAs. The LPA should plan for a Buy America waiver request to take at least one year; however, longer timeframes for review and

VI. Value Engineering Analysis (VA) (check applicable)

- VA has been performed on this project and a copy of the analysis has been submitted to the DLAE for forwarding to the Caltrans District Value Analysis Coordinator
- The project is not a bridge project; VA has not been performed as the estimated total project cost is <\$50 million (NHS projects only)
- The project is a bridge project; VA has not been performed as the total project cost is <\$40 million
- [The project is a design-build project where VA is not required, but recommended if estimated cost ≥ \\$25 million](#)

VII. Geometric Design Standards (complete this section only if project changes existing geometrics)

- Current Caltrans Design Standards (on SHS)
- FHWA-adopted AASHTO Standards (Green Book)
- 3R Projects – Caltrans DIB 79-04 (on SHS)
- 3R Projects – Exhibit 11-A: Geometric Design Standards for Local 3R Projects (off SHS)
- LPA approved Design Standards (non-NHS only) Date: _____

VIII. Bridge Design Procedures

- All bridges have been designed in accordance with the current AASHTO LRFD Bridge Design Specifications with California Amendments
- Not Applicable (bridge construction not included in the project)

IX. Standard Plans

- Current Caltrans Standard Plans Year / Version: _____
- Current Standard Plans for Public Works Construction Year / Version: _____
- Current Local Approved Standard Plans
Date signed (on behalf of the LPA) by a person in responsible charge and who is a registered professional engineer in the State of California Date: _____

X. Project Plans and Specifications

- Cover sheet of plans and specifications signed and stamped on behalf of the LPA by the person in responsible charge, and who is a registered engineer licensed to practice in the State of California.
- Temporary Traffic Control (TTC) Plans or reference to Standard Plan and Signs/Striping Plans in Standard Plan included.
(Note: additionally, Traffic Management Plans are required to be on file for all reconstruction, rehabilitation, and other projects [including projects on the SHS not funded by the State], if significant traffic delays are anticipated, and as a result from project activities).
- Erosion Control Plan, if required
- Americans with Disabilities (ADA) Compliance Plan, whenever applicable, is being fully complied with including Federal ADA Standards for Accessible Guidelines for Buildings and Facilities (ADAAG), Title 24 of the California Code of Regulations, and local codes.

XI. Standard Specifications

- Current Caltrans Standard Specifications and Standard Special Provisions Year / Version: _____
- Current Standard Specifications for Public Works Construction (Green Book) Year / Version: _____
- Current LPA approved Standard Specifications Year / Version: _____

B. DBE Goal (refer to Exhibit 12-E: PS&E Checklist Instructions)

- LPA non-zero DBE Goal percentage for this contract is: _____ Page No: _____
- The DBE Goal for this contract is zero percent because there are no subcontracting opportunities for DBE participation. Documentation verifying this determination is attached to this PS&E Checklist and is also on file with the LPA.
- The contract has no DBE Goal because:
 - This is an Emergency Relief project
 - This contract is "non-profit"
 - This contract uses Force Account
 - Other (specify): _____

Documentation verifying the above "no DBE Goal" determination is attached to the PS&E Checklist and is also on file with the LPA.

C. Certifications / Disclosures (refer to Exhibit 12-H: Sample Bid)

- Equal Employment Opportunity Certification or equivalent Page No: _____
- Non-collusion Affidavit or equivalent Page No: _____
- Debarment and Suspension Certification or equivalent Page No: _____
- Non-lobbying Certification for Federal-aid contracts Page No: _____
- Disclosure of Lobbying Activities Page No: _____

D. Other Required Forms

The following forms are applicable with the above required federal requirements (see Exhibit 12-H: Sample Bid)

- Exhibit 12-B: Bidders List of Subcontractors (DBE and Non-DBE) – include data for all subcontractors listed by the prime contractor Page No: _____
- Exhibit 15-G: Local Agency Bidder DBE Commitment (Construction Contracts) or equivalent Page No: _____
- Exhibit 15-H: DBE Information – Good Faith Efforts (if DBE Goal not met) Page No: _____

E. Federal Wage Rates

- Federal wage rates are physically incorporated into this contract advertising package Page No: _____

~~LPAs must comply with the federal "10-day rule" where LPAs are required to access the federal wage rates within ten days prior to bid opening to check if updated rates have been posted. If the updated wage rates exist, the revised federal wage rates must be issued by an addendum by LPAs. The final contract documents signed by the LPA and the contractor must physically include the current federal wage rates.~~

LPAs must verify and incorporate the current wage determination published by US DOL into the contract, including updated wage rates by addendum.

- Federal wage rates are not physically incorporated in the contract advertising package but are referenced to a website address on page number _____ of the Special Provisions where the applicable federal wage rates can be found. ~~LPAs must comply with the federal "10-day rule" as described above.~~ The final contract documents signed by the LPA and the contractor must physically include the current federal wage rates.

F. Relations with Railroads

- The required provisions are included Page No: _____
- The project does not involve the use of railroad properties or adjustments to railroad facilities

Federal Trainee Program Special Provisions
(to be used when applicable)**14. FEDERAL TRAINEE PROGRAM**

For the Federal training program, the number of trainees or apprentices is ____.

This section applies if a number of trainees or apprentices is ~~specified in the special provisions~~ shown on the [Notice of Bidders](#).

As part of the prime contractor's equal opportunity affirmative action program, provide on-the-job training to develop full journeymen in the types of trades or job classifications involved.

The prime contractor has primary responsibility for meeting this training requirement.

If the prime contractor subcontracts a contract part, they shall determine how many trainees or apprentices are to be trained by the subcontractor. Include these training requirements in each subcontract.

Where feasible, 25 percent of apprentices or trainees in each occupation must be in their 1st year of apprenticeship or training.

Distribute the number of apprentices or trainees among the work classifications on the basis of the prime contractor's needs and the availability of journeymen in the various classifications within a reasonable recruitment area.

Before starting work, the prime contractor shall submit to the City/County of _____ :

1. Number of apprentices or trainees to be trained for each classification
2. Training program to be used
3. Training starting date for each classification

The prime contractor shall obtain the City/County of _____ approval for this submitted information before the prime contractor starts work. The City/County of _____ credits the prime contractor for each apprentice or trainee the prime contractor employs on the job who is currently enrolled or becomes enrolled in an approved program.

The primary objective of this section is to train and upgrade minorities and women toward journeyman status. The prime contractor shall make every effort to enroll minority and women apprentices or trainees, such as conducting systematic and direct recruitment through public and private sources likely to yield minority and women apprentices or trainees, to the extent they are available within a reasonable recruitment area and show that they have made the efforts. In making these efforts, the prime contractor shall not discriminate against any applicant for training.

The prime contractor shall not employ as an apprentice or trainee an employee:

1. In any classification in which the employee has successfully completed a training course leading to journeyman status or in which the employee has been employed as a journeyman
2. Who is not registered in a program approved by the US Department of Labor, Bureau of Apprenticeship and Training

The prime contractor shall ask the employee if the employee has successfully completed a training course leading to journeyman status or has been employed as a journeyman. The prime contractor's records must show the employee's answers to the questions.

In the training program, the prime contractor shall establish the minimum length and training type for each classification. The City/County of _____ and FHWA approves a program if one of the following is met:

1. It is calculated to:
 - Meet the equal employment opportunity responsibilities
 - Qualify the average apprentice or trainee for journeyman status in the classification involved by the end of the training period
2. It is registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, and it is administered in a way consistent with the equal employment responsibilities of Federal-aid highway construction contracts

The prime contractor shall obtain the State's approval for their training program before they start work involving the classification covered by the program.

The prime contractor shall provide training in the construction crafts, not in clerk-typist or secretarial-type positions. Training is allowed in lower-level management positions such as office engineers, estimators, and timekeepers if the training is oriented toward construction applications. Training is allowed in the laborer classification if significant and meaningful training is provided and approved by the division office. Off-site training is allowed if the training is an integral part of an approved training program and does not make up a significant part of the overall training.

The City/County of _____ reimburses the prime contractor 80 cents per hour of training given an employee on this contract under an approved training program:

1. For on-site training
2. For off-site training if the apprentice or trainee is currently employed on a Federal-aid project and prime contractor does at least one of the following:
 - a. Contribute to the cost of the training
 - b. Provide the instruction to the apprentice or trainee
 - c. Pay the apprentice's or trainee's wages during the off-site training period
3. If the prime contractor complies with this section.

Each apprentice or trainee must:

1. Begin training on the project as soon as feasible after the start of work involving the apprentice's or trainee's skill
2. Remain on the project as long as training opportunities exist in the apprentice's or trainee's work classification or until the apprentice or trainee has completed the training program

~~The prime contractor shall furnish the apprentice or trainee with a copy of the program that the prime contractor will comply with in providing the training.~~

Furnish the apprentice or trainee a:

1. Copy of the training plan approved by the U.S. Department of Labor or a training plan for trainees approved by both Caltrans and FHWA
2. Certification showing the type and length of training satisfactorily completed

Maintain records and submit reports documenting contractor's performance under this section.

15. PROHIBITION OF CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE EQUIPMENT AND SERVICES

In response to significant national security concerns, the agency shall check the prohibited vendor list before making any telecommunications and video surveillance purchase because recipients and subrecipients of federal funds are prohibited from obligating or expending loan or grant funds to:

- Procure or obtain;
- Extend or renew a contract to procure or obtain; or
- Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

The prohibited vendors (and their subsidiaries or affiliates) are:

- Huawei Technologies Company;
- ZTE Corporation;
- Hytera Communications Corporation;
- Hangzhou Hikvision Digital Technology Company;
- Dahua Technology Company; and
- Subsidiaries or affiliates of the above-mentioned companies.

In implementing the prohibition, the agency administering loan, grant, or subsidy programs shall prioritize

LAPM C.13 RIGHT OF WAY

LAPM C.13 Right of Way

Section / Exhibit	Description of Changes
13.5 Preliminary Right of Way Activities	<ul style="list-style-type: none">• OB #23-03 text changes incorporated.
13.7 Projects Requiring Right of Way / Property Rights	<ul style="list-style-type: none">• OB # 23-03 text changes incorporated.
Exhibit 13-A Short Form R/W Certification	<ul style="list-style-type: none">• Signature attestation language added for consistency with Right of Way Manual exhibits.
Exhibit 13-B R/W Certification	<ul style="list-style-type: none">• Additional column added to Section 1.A.6 pertaining to OP schedule.• Signature attestation language added for consistency with Right of Way Manual exhibits.
Exhibit 13-F LPA Real Property Services Checklist	<ul style="list-style-type: none">• Checkbox selections added for various Property Interest and Type of Excess Land.• Changed “Concurred by Caltrans” to “Received by Caltrans” and removed signature line.

Authorization to Begin Right of Way Work (E-76)

Each phase (capital/support) or function (appraisal, acquisition, utility relocation, property management, or excess land sales) of R/W claimed for reimbursement must be programmed and authorized by an E-76 prior to beginning that phase or function. Any work done prior to authorization will be ineligible. An E-76 may program multiple phases.

LPAs may not proceed with final design or request for authorization to proceed with R/W or construction until full compliance with the provisions of NEPA have been documented and approved by Caltrans. Failure to follow this requirement will make the project ineligible for FHWA reimbursement. Upon final environmental approval, it is incumbent upon the DLAE to provide the LPA with immediate notification and a copy of the signed Categorical Exemption/Categorical Exclusion Determination Form or approved environmental document Finding of No Significant Impact (FONSI) or Record of Decision (ROD), so the LPA can commence with final design and/or request authorization to proceed with R/W activities. Preliminary acquisition activities, including a title search and preliminary property map preparation, necessary for the completion of the environmental process can be advanced under preliminary engineering prior to NEPA compliance while other work involving contact with affected property owners must normally be deferred until NEPA approval, except as provided in 23 CFR 710.503, for protective buying and hardship acquisition, and in 23 CFR 710.501, early acquisition. Only under these exceptional circumstances will the agency be allowed to acquire property prior to environmental approval. For example, the agency may acquire property in advance of the normal schedule if the owner claims hardship, or the property must be protected from future development. Appropriate documentation must accompany the request to FHWA for approval of Hardship and Protection acquisitions. When making these advanced acquisitions, ensure that the intent of the Uniform Act and the NEPA are not circumvented. For additional information, please refer to Chapter 5: Hardship and Protection of the [Caltrans Right of Way Manual](#), or contact Caltrans Right of Way Local Programs Coordinator in your area.

13.5 Preliminary Right of Way Activities

Request Authorization to Proceed with Preliminary Engineering

Separate work authorizations and fund obligations are normally made for Preliminary Engineering (PE), R/W (including appraisal, acquisition, relocation assistance, and utility relocation) and Construction phases, if federal funds are to be used in each of these phases.

Preliminary Studies

At this early stage in the development process, it is crucial to correctly evaluate the project requirements: namely, the limits, location (including existing utilities), scope, costs, and whether any additional R/W will be required. Each agency should establish a process for accumulating this data, which will play an integral part in successfully completing the Field Review, the Preliminary Environmental Study (PES) Form (Exhibit 6-A), [the Preliminary Engineering Right of Way \(PERW\) Checklist \(Exhibit 13-E\)](#), and the Plans, Specifications & Estimate (PS&E) for the project.

Field Reviews

Formal Field Reviews, which may include FHWA and Caltrans representatives are not required on LPA transportation projects off of the National Highway System (NHS). For additional details, see [LAPM Chapter 7: Field Review](#). However, Field Reviews are suggested practice for all complex projects. A representative from FHWA and Caltrans Right of Way should be consulted on all FHWA Risk-Based Involvement (RBI) projects. All requests for FHWA participation should be coordinated through the DLAE. LPAs should complete the PES Form and the first two pages of the Field Review Form prior to requesting a Field Review. If it appears that additional R/W will be required, one of the intended results of the Field Review is to provide sufficient data to complete the R/W estimate (see [Section 13.7: Project Requiring Right of Way/Property Rights](#), subtitle: R/W Estimate in this chapter). The information contained in these two documents is crucial in obtaining FHWA authorization to proceed further with the next stage of the project (see Section 13.4: Right of Way Authorization, subtitle: [Request for Authorization to Proceed Right of Way](#)).

The Field Review process brings together all interested parties in order to reach an agreement on the important aspects of the project, including such items as the design features, alternative proposals for building the project, respective responsibilities of the various agencies involved, level of documentation required in the NEPA process, and whether a public hearing will be necessary. For R/W objectives, the Field Review may confirm the need to acquire R/W and relocate the occupants, or relocate utilities and/or railroad facilities, which can significantly affect the project development, in particular, the costs and scheduling. The review also facilitates the identification of compensable property interests plus uncovering project requirements such as the need for temporary construction easements, or permits to enter. Therefore, it is strongly encouraged that the Caltrans Right of Way Coordinators be invited to participate in the Field Reviews, as their assistance could be extremely helpful.

When the preliminary review is completed, the LPA is responsible for completing the Field Review Form. If there are R/W requirements for the project, the Division of Local Assistance Area Engineer (DLAE) should forward a copy of this form to the Right of Way Local Programs Coordinator. For NHS projects, all appropriate forms and attachments must be completed. For non-NHS projects, the two-page Field Review Summary must be completed at a minimum. Items 7 and 9 apply to R/W issues.

Preliminary Engineering Right of Way Checklist

During preliminary studies, the LPA must complete Exhibit 13-E: Preliminary Engineering Right of Way (PERW) Checklist in conjunction with the PES Form (Exhibit 6-A) and submit to the DLAE. The DLAE will forward the form to the District Right of Way Local Programs Coordinator. This form is required with or without a project field review being completed.

The purpose of the PERW Checklist is to help LPAs, their Right of Way Agents and/or Right of Way Consultants determine if there are right of way involvements such as fee or temporary right of way acquisitions, utility conflicts, relocations, etc. at the project initiation stage. It will provide the information needed to complete an accurate right of way estimate and notify the District Right of Way Local Programs Coordinator of upcoming projects with right of way involvement to allow real-time monitoring. This earlier engagement will also provide both the LPA and the District Right of Way Local Programs Coordinator the opportunity to discuss Caltrans policies and processes necessary for compliance with the Uniform Act.

The importance of explaining these projects within the context of a public hearing cannot be overstated. One of the most difficult aspects of any project is the displacement of people and/or personal property. Project construction activities can have very serious economic and social impacts on the affected region, including adverse impacts in the traffic patterns, business operations, and the lives of its citizens. Those who are displaced must relocate and reestablish their residence or business in a new area. As a result, those most directly affected are often emotionally impacted, apprehensive of the changes due to the project, and need detailed information on the R/W procedures and their rights. The public hearing is often their first real opportunity for information and contact with project representatives. One of the keys to a successful project may be the cooperation engendered at the first public hearing. As the project progresses, there may be a need for additional hearings devoted solely to R/W issues and impacts.

The Environmental Document

Depending upon the potential for impact, there are three NEPA Classes of Action under which a federal-aid project may be processed. These include: Categorical Exclusion (CE) determination, an Environmental Assessment (EA), or Environmental Impact Statement (EIS) document. The purpose of the environmental determination or document is to disclose to the public and decision makers the proposed action, potential environmental impacts, and propose avoidance, minimization, and mitigation measures to offset adverse impacts. R/W acquisition and activities associated with the action must be considered as part of the scope of the action. The environmental investigation and environmental determination or document must also address impacts associated with R/W activities. Guidance on analyzing impacts associated with R/W acquisition and use is provided in the [Standard Environmental Reference \(SER\)](#).

13.7 Projects Requiring Right of Way/Property Rights

Local federally-funded projects involving the acquisition of R/W should be discussed with the District R/W Local Programs Coordinator as early as possible in the project development stage.

[Exhibit 13-E: PERW Checklist](#) has been developed as a tool used in identifying potential right of way conflicts and notifies the R/W Coordinator to monitor the project. Exhibit 13-E must be completed in conjunction with the PES form (Exhibit 6-A). A signed copy is sent to the DLAE who forwards it to the Right of Way Coordinator. It will alert staff of potential right-of-way acquisitions and/or utility conflicts on a proposed federal aid project. The form also alerts the LPA that they will need to hire Right of Way Consultants if they are not a qualified agency.

There are several reasons for this. As noted above, while some PE activities (i.e., ordering title reports, preparing base maps and appraisal maps, conducting project-wide comparable sales searches, gathering cost estimates and completion of the appraisal) may be conducted and subsequently reimbursed by FHWA prior to NEPA compliance, the majority of R/W activities (such as, initiation of negotiations with property owners, relocating displaced persons, and utility relocations) may not be performed on federal-aid projects prior to NEPA compliance. This restriction minimizes the potential for predetermined project site or alignment selection.

Note: Although appraisals may be completed prior to NEPA, appraisals in an active market may be outdated in a very short time. Also offers/negotiations with property owners must occur promptly, potentially leading to unnecessary reappraisal activity, if started too

9. Cooperative Agreements

- None required
- Agency Agreement No. (if checked, please attach a copy)

10. Environmental Mitigation

- No environmental mitigation parcels are required for this project.
- All environmental mitigation parcels for the project have been acquired. **If this box is checked, please use Exhibit 13-B.**
- Acquisition of environmental mitigation parcels is ongoing. **If this box is checked, please use Exhibit 13-B.**

11. Certification

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(b) and (c)(1) or (c)(2) and 49 CFR Part 24. The project may be advertised with contract award being made at any time.

12. Indemnification by Local Public Agency (LPA)

This Local Public Agency agrees to indemnify, defend, and hold harmless the Department of Transportation (Caltrans) from any and all liabilities which may result in the event the right of way for this project is not clear as certified. LPA shall pay from its own non-matching funds, any costs which arise out of delays to the construction of the project because utility facilities have not been removed or relocated, or because rights of way have not been made available to LPA for the orderly performance of the project work.

Local Public Agency: _____

Project ID: _____

Authorized by Resolution No.: _____

Dated: _____

By: _____
Signature

Title

Date

["I do hereby attest I have authority via resolution to sign this document on behalf of my agency."](#)

The undersigned Caltrans Official has reviewed this Right of Way Certification as to form and content. Based on the review of the documents submitted, the Certificate is accepted on behalf of the LPA. It remains the sole responsibility of the LPA to ensure compliance with the Uniform Act.

Accepted as to form and content:

By: _____
Signature

Title

Date

- Distribution:
- 1) LPA completes this form, signs, and sends to DLAE.
 - 2) DLAE sends a copy to District Right of Way Local Programs Coordinator, keeps a copy for their files, and sends the signed original back to the LPA.

4. Parcels covered by Possession and Use Agreement Only: _____

Parcel Number	Owner	Project R/W Required ²	Effective Date	Date Funds Deposited into Escrow ⁴

5. Parcels covered by Right of Entry only (requires HQ R/W and FHWA pre-approval)⁵: _____

Parcel Number	Owner	Project R/W Required ²	Effective Date	Date Funds Deposited to Escrow

6. Parcels covered by Resolution of Necessity only⁶: _____

Parcel Number	Owner	Project R/W Required ²	LPA Resolution Date	Suit Filing Date and Date Funds Deposited	Anticipated OP Service Date (all parties) OP Hearing Date	Anticipated OP Service Date and Effective Date

7. Parcels covered by other acquisition documents as follows⁷: _____

Parcel Number or Location / PM	Owner	Project R/W Required ²	Type of Document	Effective Date	Expiration Date	Date Funds Deposited into Escrow

B. Construction Permits / Other Required Permits⁸: _____

Location / PM	Owner	Type of Document	Effective Date	Expiration Date

⁴ Funds must be deposited into an escrow account and be made available (able to withdraw), as legally permissible, to the grantor/s, as a condition of use.

⁵ Rights of Entry must only be used in emergencies, or extremely unusual/extraordinary circumstances. All Rights of Entry must be pre-approved by the Division of HQs RW&LS and approved by FHWA.

⁶ To be used only rarely in a Certification No. 3; Resolution of Necessity must be adopted and the Order for Possession served, but is not yet effective.

⁷ This section covers acquisitions where the document is a license, permit etc., not otherwise covered by A1-A6 above. Examples include Licenses from State Lands Commission, Flood Control Districts, and Letters of Consent from US Forest Service.

⁸ These permits are not counted as parcels, are not appraised, recorded, or require payment (e.g., Permits to Enter).

12. Indemnification by Local Public Agency (LPA)

The LPA agrees to indemnify, defend, and hold harmless the Department of Transportation (Caltrans) from any and all liabilities which may result in the event the right of way for this project is not clear as certified. The LPA shall pay from its own non-matching funds, any costs which arise out of delays to the construction of the project because utility facilities have not been removed or relocated, or because rights of way have not been made available to LPA for the orderly performance of the project work.

13. Certification [use the appropriate statement]

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(b) **and** (c)(1) or (c)(2) and 49 CFR Part 24. The project may be advertised with contract award being made at any time.

(OR)

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3)(i)(iii)(iv) and 49 CFR Part 24. The project may be advertised at any time. The project will be certified as conforming to 23 CFR 635.309 (b) **and** (c)(1) or (c)(2) and 49 CFR Part 24 by (DATE).

[Attach letter explaining why a Conditional R/W Certification No. 3 is being used and substantiate that the Certification No. 1 or No.2 date given above is realistic.]

(OR)

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3)(ii),(iii) and (iv) with Work-Around and 49 CFR Part 24. The project may be advertised at any time. Appropriate notification has been included in the Bid Documents. An updated Certification will be provided by (DATE).

[Attach letter explaining why a Special Certification No.3 with Work-Around is being used.]

[When updating the Special Certification No.3 with Work-Around, use the following statement. This statement is required no later than 15 days prior to bid opening. If able to upgrade to a Certification No. 1 or No.2, use appropriate CFR certification statement referenced above.]:

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3)(ii),(iii) and (iv) with Work-Around and 49 CFR Part 24. The project has been advertised and the contract may be awarded. I have confirmed that all appropriate notifications have been included in the Bid Documents concerning said Work-Around.

Local Public Agency: _____

Project ID: _____

Authorized by Resolution No.: _____

Dated: _____

By: _____

Signature

Title

Date

"I do hereby attest I have authority via resolution to sign this document on behalf of my agency."

Exhibit 13-F: Local Public Agency Real Property Services Checklist

To: _____ From: _____
 District Local Assistance Engineer: _____ LPA: _____
 Caltrans District: _____ Contact & Phone No. _____
 Address: _____ Address: _____
 Email: _____ Email: _____

Project Name: _____
 Project No.: _____ Federal ID No.: _____
 Parcel No.: _____ Inventory No.: _____

Federal funds used to purchase? YES NO

Property Interest: Access Rights Temporary Easement Permanent Easement
 Partial Fee Full Fee

Project Date to Construction.: _____ Size: _____

Local Public Agency (LPA) must retain a file with pertinent documents that includes Title Documents, Acquisition Contract, Conveyance Documents, Relocation Documentation, and Diary.

Excess Land

- Portion of property is excess to the project
 - Excess was not purchased with federal funds
 - Excess was purchased with federal funds (disposal must be at fair market value)

Disposal Projection Date: _____

Size of Excess: _____

Type of Excess Land: Uneconomic Remnant Voluntary Request Design Change

Property Attributes

Vacant (no improvements): YES NO

Improvements: YES NO

Fixtures / Equipment: YES NO

Demolition Date: _____

If improvements, details:

SFR Industrial

Multi-Residential Farm / Barn

Commercial Outdoor Advertising

Other: _____

Rent

Rentable: YES NO

Tenants: _____

Insurance Required: YES NO
Reference 11.11.00.00 of Chapter 11 in the Caltrans Right of Way Manual

Inherited Tenants: YES NO

Rent Determination: YES NO

Date: _____

Relocation Date: _____

Rental Agreement: YES NO

(Lease clauses 23 CFR 710.405)

Non-Inherited Tenants: YES NO

Rent Determination: YES NO

Date: _____

Rental Application: YES NO

Credit Check: YES NO

Rental Agreement: YES NO

(Lease clauses 23 CFR 710.405)

Rent amount: \$ _____ per _____ (Rent must be at fair market [and attach support documentation.](#))

Rent deposited to an account that will only be used for Title 23 eligible purposes: YES NO Account No.: _____

Inspection Requirements

Inspection Schedule:

- Vacant Properties: 1x per year
- Improved Properties – Occupied: 1x per year
- Improved Properties – Vacant: 1x per month

Certified by LPA:

Print Name

Signature

Date

Submit completed form to District Local Assistance (DLA)

Received by Caltrans DLA:

[Received by Caltrans District R/W Local Programs from DLA](#)

Print Name and Title

Date

LAPM C.15 ADVERTISE & AWARD PROJECT

LAPM C.15 Advertise & Award Project

Section / Exhibit	Description of Changes
15.3 Project Advertisement	<ul style="list-style-type: none">• Clarifying text added regarding charging of advertising and award costs.
15.3 Procedures	<ul style="list-style-type: none">• COIN# 15-01 language added regarding the use of non-traditional (electronic) advertising for contract bids or proposals; COIN #15-01 to be archived.
Exhibit 15-B RE's Construction Contract Administration Checklist	<ul style="list-style-type: none">• Added new DBE Exhibits: LAPM 9-I, 9-J, and 9-K to checklist

The LPA must not advertise a project until it has received in writing an Authorization to Proceed with construction from Caltrans (see [LAPM Chapter 3: Project Authorization](#)).

15.3 Project Advertisement

One of the most basic tenets of federal-aid contracting is that construction contracts are to be awarded competitively to the contractor which submits the lowest responsive bid. Project advertisement is the process used in soliciting such competitive bids from contractors.

This federal mandate is set forth in 23 U.S.C.112 and reinforced by 23 CFR 635.114(a) which states:

Federal-aid contracts shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting the criteria of responsibility as may have been established by the SHA.

These principles are the basis for federal assistance to the state highway construction programs.

On locally administered projects, the construction engineering is performed by LPA personnel, unless arrangements are made to hire a consultant. If a consultant is used, the LPA must still designate an employee of the agency as the person in responsible charge of the project.

Construction engineering for locally administered projects must be performed in accordance with the requirements found in [LAPM Chapter 16: Administer Construction Contract](#) of this manual.

Each LPA and all of its contractors, subcontractors, and vendors must take all reasonable steps to assure that DBEs have equitable opportunity to compete for and perform contracts and provide language access to Limited English Proficiency (LEP) individuals under Title VI of the Civil Rights Acts of 1964 prohibiting discrimination based on national origin (see [LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises](#)).

Warning: No project shall be advertised for bids, nor shall any project work (by contract or other than contract) be undertaken, and no materials shall be purchased on any federal-aid project, prior to issuance of Authorization to Proceed by FHWA. Violation of this requirement shall result in the project being ineligible for federal funding.

Only one exception to this requirement can be made. It is for emergency relief projects involving emergency repair/opening of a facility. For more information on emergency relief projects see [LAPG Chapter 11: Emergency Relief](#).

Advertising and award costs may be charged to the preliminary engineering or construction engineering work authorization if such authorization has been requested and has been established for the purpose of federal reimbursement.

Prequalification of Contractors

The Federal Highway Administration (FHWA) permits the use of a prequalified list of Prime Contractors developed by the LPA, in accordance with 23 CFR 635.110(a). The use of a prequalification list and process is optional and not required. Prequalification should not be used to restrict competition or discourage otherwise responsible bidders from submitting a bid.

If the LPA wishes to utilize such a prequalification process on federal-aid projects, advance approval must be granted by the FHWA Division Administrator (California Division) for use on federal-aid projects. As such, the LPA would submit a package to their DLAE that would include an overview of their proposed process with timelines, the typical Responsibility Statement and

During the advertising period, the LPA must notify all prospective bidders of PS&E addenda in the same manner as all other nonfederal-aid projects. For award of federal-aid contracts, the LPA is required to certify that all bidders certify receipt of all addenda. The LPA must ensure free and open competition. The advertisement period is determined by the LPA. A minimum advertisement period of three weeks is required for all federal-aid projects. Caltrans DLAE may approve shorter periods in special cases where justified with a LPA's [Exhibit 12-F: Cost – Effectiveness/Public Interest Finding](#). The advertising period begins with publication of a Notice to Contractors ~~in a newspaper receiving wide local circulation~~. [Advertisement in a newspaper receiving wide local circulation, technical publications of widespread circulation, contractor/professional associations and societies, recognized DBE organizations, web hosting or clearinghouses known for posting government contract solicitations such as BidSync, and/or posting on the LPA's or other widely used social media/websites are all acceptable methods of solicitation](#). The Notice must identify the DBE goal. The LPA is responsible to approve and issue all addenda to the PS&E during the advertising period.

The LPA must assure that all updated estimates are fundable from available local or federal resources.

Upon advertising of the project, the LPA must furnish the DLAE with an electronic copy of the advertised construction contract (including plans and special provisions).

15.4 Contract Bid Opening

The contract bid opening is a public forum for the announcement of all bids and is that point in time where the bids are opened and read aloud. It is also the last moment that bids can be accepted. No bids can be accepted during or after bids are opened. Normally the advertisement/bid documents will state a final time in which bids can be accepted. For bidders, the reading of the bids confirms whether their bid is successful. For the LPA and the general public, this forum establishes the cost to build the project. The bid opening requirements as outlined below apply to all federal-aid highway construction projects.

Requirements

FHWA policy requires all bids to be opened publicly and read aloud either item-by-item or by total amount. If a bid is not read, the bidder is to be identified and the reason for not reading the bid announced.

Reasons for not reading a bid include the bid itself being nonresponsive, often called irregular or the bidder is determined to be unreliable. Responsive bid and responsible bidder are defined as:

A Responsive bid is one that meets all the requirements of the advertisement and proposal, meaning all bid-related paperwork or electronic forms are completed and signed. A Responsible bidder is one who is physically organized and equipped with the financial ability to undertake and complete the contract. A Responsible bidder is also one that is not suspended or debarred, or whose business ethics have not been otherwise determined to be inadequate.

Among the reasons a bid may be considered non-responsive and be precluded from reading are:

- Failure to sign the bid, not signing the bid in ink, or not supplying a valid electronic signature where electronic bidding is used.
- Failure to furnish the required bid bond
- Failure to include a unit bid price for each item

9. EEO / Wage Rate / False Statement Posters

- Federal posters must be posted for every worker to see at or near the contractor's office at the construction site, or at the worker's central gathering point

10. Employee Interviews

- Employee interviews must be conducted (LAPM 16-N or LAPM 16-N ESP)

11. On-the-Job-Training (OJT) – see LAPM Chapter 12.8: Federal Contract Requirements

- Is the job less than 100 working days? Yes No

If yes, proceed to Item #12.

If no, answer the following questions in relation to Table 12-2: Federal Trainee Schedule

- What is the total cost for the work categories: \$ _____
- What is the required number of trainees for this contract? _____

- Documentation will be retained in the project files to account for the apprentices on the job

12. Disadvantaged Business Enterprise (DBE)

- DBE Contract Goal Percentage Exhibit 9-D: _____
- LPA's DBE Liaison Officer: _____
- Verified that a copy of the completed Exhibit 15-G: Construction Contract DBE Commitment has been submitted to the DLAE within 30 days of contract award
- Contractor has been provided Exhibit 16-Z1: Monthly DBE Trucking Verification
- Contractor has been provided Exhibit 9-F: Monthly DBE Payment (for projects awarded between March 1, 2020 and September 1, 2023)
- Contractor has been provided Exhibit 9-P: Prompt Payment Certification (for projects awarded on or after September 1, 2023)
- Contractor has been provided LAPM 9-J: DBE Commercially Useful Function Evaluation
- Contractor has been provided LAPM 9-K: DBE Joint Check Agreement Request

13. Change Order (CO) / Claims

- A CO approval process must be established; for NHS projects, major COs must be approved by the DLAE prior to performance of work (see LAPM Chapter 16.10: Change Order)
- There must be a list of the approved COs
- All COs must note federal-aid eligibility or not
- Pending claims must be identified and documented in the contract file

14. Traffic Safety in Highway and Street Work Zones – see LAPM Chapter 16.15: Traffic Safety in Highway and Street Work Zones

- Traffic Control Plan (TCP) / Traffic Management Plan (TMP) in the PS&E? Yes No

Comments: _____

Responsible Person (if not the RE): _____

- LPA must field review the project to ensure that the TCP agrees with actual conditions
- LPA must analyze construction work site accidents for the purpose of correcting deficiencies which might be found to exist on these projects and to improve the content of future TCPs

LAPM C.16 ADMINISTER CONSTRUCTION

LAPM C.16 Administer Construction Contracts

Section / Exhibit	Description of Changes
<p>16.1 Introduction</p>	<ul style="list-style-type: none"> Clarification added regarding projects with state funding.
<p>16.3 Organization of Project Records</p>	<ul style="list-style-type: none"> Added DBE Monthly Payment documentation (Exhibit 9-F or 9-P) to list of DBE records
<p>16.8 Engineer's Daily Reports</p>	<ul style="list-style-type: none"> Text modified for replacement of Exhibit 16-A with LAPM 16-C1 and LAPM 16-C2 separating out the Assistant and Resident Engineer's Daily Reports.
<p>16.9 DBE</p>	<ul style="list-style-type: none"> OB #23-01 text changes incorporated. OB #23-02 text changes incorporated.
<p>16.11 Quality Assurance Program</p>	<ul style="list-style-type: none"> OB #23-04 text changes incorporated.
<p>Exhibit 16-A Weekly Statement of Working Days</p>	<ul style="list-style-type: none"> Replaced with LAPM 16-A
<p>Exhibit 16-C Resident and Assistant Engineer's Daily Report</p>	<ul style="list-style-type: none"> Replaced with LAPM 16-C1: Assistant Engineer's Daily Report and LAPM 16-C2: Resident Engineer's Daily Report.
<p>Exhibit 16-Q Office of Federal Contract Compliance Programs</p>	<ul style="list-style-type: none"> Exhibit 16-Q with outdated contact information has been retired; a link to the current California contacts for the Office of Federal Contract Compliance Programs has been provided instead. <p>Section 16.9: Report EEO Violations - https://www.dol.gov/agencies/ofccp/contact/district-area-offices#California</p>

Chapter 16 Administer Construction Contracts

16.1 Introduction

This chapter provides the procedures and guidelines Local Public Agencies (LPAs) must follow when administering the construction of federal-aid projects. [Projects with state funding may utilize this chapter where applicable.](#) Contract administration is the comprised actions taken after a contract is awarded to obtain and document compliance with contract requirements, such as timely delivery, proper construction, dispute resolution, acceptance, payment, and closing of contract. These actions may include technical administrative and managerial support.

Contract Administration Delegated to Local Public Agencies

For delegated projects, the Federal Highway Administration (FHWA) has assigned the responsibility of contract administration, including construction inspection, to Caltrans. This responsibility is conveyed by Caltrans to the LPA through an E-76, which is the Authorization to Proceed executed for each federal-aid project. For all locally administered federal-aid projects, further delegation of responsibility is made by Caltrans to the LPA through a state/local agreement called a Master Agreement (specific to each LPA) and the program supplements (specific to each project). Delegation to the LPA is based on the following conditions:

- An employee of the LPA is in responsible charge of the project and that person is a full-time employee of the LPA
- All federal requirements are met in performance of the work
- The LPA adequately staffs and equips the project team to properly administer the contract

Such delegation does not relieve Caltrans of overall project responsibility. Caltrans will perform periodic process reviews and oversight to assure compliance.

Local Public Agency Procedures when Administering a Federal–Aid Construction Contract

For projects off the State Highway System (SHS), the LPA must follow the Local Assistance Procedures Manual (LAPM), most notably [LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprise](#), [LAPM Chapter 15: Advertise and Award Project](#), [LAPM Chapter 16: Administer Construction Contracts](#), and [LAPM Chapter 17: Project Completion](#).

For projects on the SHS (projects constructing permanent improvement within the State Right of Way), the LPA must follow the procedures found in the following four manuals:

- [Local Agency Resident Engineer Construction Manual Supplement](#)
- [Caltrans Construction Manual](#)
- [Local Assistance Structure Representative Guidelines](#)
- [Bridge Construction Records and Procedures Manual, Volumes 1 and 2](#)

Keep in mind these manuals are not contract documents; they are procedures and guidelines. In case of conflicts, the contract documents and the agency-state agreements prevail. However, if mandated federal-aid requirements were inadvertently omitted from the contract, the LPA must amend the contracts via change order to correct the omissions.

- iv. Independent Supporting Force Account Cost Calculations (if Agreed Price)
 - v. Justification of time extension
 - vi. Extra Work Reports
 - b. CO 2, etc.
10. Progress Pay Estimates and Status of Funds
11. Labor Compliance and Equal Employment Opportunity (EEO) records
- a. Certified Payrolls
 - b. [LAPM 16-B: Subcontracting Request](#)
 - c. Photo Documentation of all required posters:
www.fhwa.dot.gov/programadmin/contracts/poster.cfm
 - d. Labor Compliance Interviews
 - e. [Exhibit 16-O: Federal-Aid Highway Contractors Annual EEO Report](#)
12. Disadvantaged Business Enterprise (DBE) Records
- a. [Exhibit 15-G: Construction Contract DBE Commitment](#)
 - b. [Exhibit 15-H: DBE Information - Good Faith Efforts](#)
 - c. [Exhibit 16-Z1: Monthly DBE Trucking Verification](#)
 - d. DBE Substitution Supporting documentation (if applicable)
 - e. [DBE Monthly Payment documentation \(Exhibit 9-F or Exhibit 9-P depending on project award date\)](#)
 - f. [Exhibit 17-F: Final Report - Utilization of DBE and First –Tier Subcontractor](#)
13. Environmental-related documents

Other sections of this chapter explain the content of the above listed file categories.

A large and complex project usually requires a more detailed record-keeping system. The record-keeping system described in Caltrans Construction Manual, [Section 5-102: Organization of Project Documents](#), is suggested for large projects.

Availability of Records for Review or Audit

The record retention period for the non-federal entities for financial purposes is three (3) years and begins when the final voucher is submitted in the Financial Management Information System (FMIS) and required documentation is submitted to FHWA per the Stewardship and Oversight Agreement. The files must be available at a single location for these reviews and audits. Use of a uniform project record-keeping system, together with diligent maintenance of the system, greatly facilitates a process review and minimizes negative findings. Good records of all construction activities clearly demonstrate to those concerned that project supervision and control were attained on the project.

Calculating the Amount of Work Subcontracted

The contractor must state on the Subcontracting Request what percentage and dollar amount of an item will be subcontracted. The RE must verify the amount. Any rational method of estimating the amount will be acceptable, for example:

- The percentage of an area, volume, or length
- The portion applicable to material cost
- The portion of labor and equipment cost

When an entire item is subcontracted, use the prime contractor's item bid price as the dollar amount for the form. When a portion of an item is subcontracted, apply the percentage of the bid item subcontracted to the prime contractor's item bid price as the dollar amount for the form.

Limits on the Work the Prime Contractor can do with their Own Forces

See steps one and two, above, for limits imposed by the Fair Practices Act and DBE Commitments, respectively.

STEP 4: Verify the Subcontractors are not on the Department of Industrial Relation's Debarred Contracts List

Visit the Department of Industrial Relation's [Debarred Contracts list](#) and confirm that the subcontract is not on the list and has been debarred.

16.8 Engineer's Daily Reports

Procedures

Assistant Resident Engineer

The LPA must write daily reports to document the work in progress. These daily reports may be written by the construction inspector, the Assistant RE, and/or the RE, as project and staffing needs dictate. The [Assistant RE's](#) daily report must document what work was performed, where and how it was performed, and who performed it. The details must be sufficient so that someone not familiar with the project could re-create the events that occurred and review of the contractor's costs to perform the work in a manner similar to force account. The report should also document significant events or conversations, and activities performed to ensure contract compliance. See [LAPM 16-C1: Assistant Engineer's Daily Report](#).

The [Assistant Engineer's](#) Daily Reports should record the following:

- General Information
 - The date
 - A brief description of the weather
 - The printed name and signature of the author
- For each person working on the project:
 - The full name
 - The labor classification
 - The employer

- The hours worked, broken down by contract item and/or Contract Change (CO) work
- For each piece of equipment working on the project:
 - The make and model (or contractor's ID number)
 - The hours worked, broken down by contract item and/or CO work

Equipment should be identified sufficiently to enable determination of the applicable rental rates and operator's minimum wage. Consider in the design of your daily report form that it is important to know who operated what equipment, as this may affect the wage rate. In some cases, it may be desirable to record dates of arrivals or departures of equipment, as well as idle time for breakdown or other reasons.

The Narrative Portion of the Report should include:

- A description of the contractor's operation
- The location where the work was performed (stations, off sets, depths, etc.)
- Statements made by the contractor or LPA personnel, which are pertinent to the work
- Activities performed by LPA staff to ensure the materials and workmanship complies with the contract specifications
- Sampling
- Acceptance Testing
- Measuring
- Collection of Certificates of Compliance
- Contract Item Quantity supporting information (measurements, tonnage, waste)

The description of the work performed must be sufficient to determine proper labor classification, such as differentiating work performed by a laborer versus work performed by an electrician. Workers must be classified and paid according to the work they actually perform, regardless of union affiliation, other titles, or designations.

Resident Engineer

In addition, the RE must record project activities separately ([see LAPM 16-C2: Resident Engineer's Daily Report](#)). [The RE may choose to report project activities on a daily or weekly basis at their discretion.](#) The RE report should include discussions and agreements with contractors or others and should not duplicate information from the inspector daily reports. This report is not required when the RE is also acting as the field inspector on the project.

~~See Exhibit 16-C: Resident and Assistant Engineers Daily Report for an example of both the RE's and Assistant RE's daily report forms used by Caltrans. The engineer's daily reports discussed herein are required in addition to any extra work reports submitted by the contractor. The daily reports must be kept current and in the project files.~~

[Include any information that may be pertinent even though no activity may have occurred. For example, such information could include support for determining working or nonworking days. Include the following in the daily report:](#)

1. Important discussions and agreements with the contractor. Record these on the day discussed. Give the names of specific persons to whom instructions were given or with whom agreements were made.
2. A general statement about the type of work done. Include the controlling operation and any facts concerning the work's progress.
3. Weather conditions such as maximum and minimum temperatures and precipitation, among other items. Expand on exceptional weather conditions.
4. Statements of any other important facts pertaining to the contract that are not specifically covered elsewhere in the contract records.

Keep the report concise yet include any important information. The report should not contain routine matters, such as quantities placed, that can be found in the assistant engineer's daily reports or other records.

16.9 Employment Practice: Labor Compliance, EEO, DBE

Labor Compliance

Labor compliance is the LPA's effort to ensure the contractor is complying with all the applicable labor laws, acts, and statutes detailed in the contract provisions. This section presents the guidelines for performing labor compliance. These guidelines apply to all state or federally-funded projects.

The basis for these labor compliance procedures and the legal authority for LPAs to enforce labor compliance provisions derive from the California Labor Code, the Code of Federal Regulations, regulations of the FHWA, the California Code of Regulations, and the United States Department of Labor.

State and federal laws require contractors working on public works contracts to pay prevailing wages to their employees. Prevailing wages are predetermined hourly rates for each craft that are set by both the United States Department of Labor and the California Department of Industrial Relations. The prevailing hourly wage rate is composed of the basic hourly wage rate plus fringe benefits.

In addition, these laws:

- Define overtime and overtime pay
- Establish a workday and a workweek
- Require substantiation of wages via certified payrolls
- Determine covered work, (work requiring the payment of prevailing wages), vs. non-covered work

The Federal-aid Highway Acts established that laborers and mechanics employed on federal-aid projects are paid at wage rates generally prevailing for the same type of work on similar construction in the immediate locality. The federal wage rate determinations are included in the contract. The California Department of Industrial Relations determines the general prevailing state wage rates, and those rates must be referenced in the contract.

Disadvantaged Business Enterprises (DBE)

Federal regulations define DBE as firms ~~owned and controlled by individuals who are either socially or economically disadvantaged, or both.~~ that are for-profit small business concerns where at least 51% are owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

This section presents the requirements for administration of the DBE requirements of the contract. These guidelines apply to all federally-funded projects. The DBE requirements come from 49 CFR 26, Form FHWA-1273, Disadvantaged Business Enterprises, Part 1, and [Exhibit 12-G: Required Federal-Aid Contract Language](#).

49 CFR 26 requires that bidders take all necessary and reasonable steps to achieve a DBE goal, which by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful (49 CFR 26 Appendix A). The required federal-aid contract language in Exhibit 12-G requires the contractor meet the DBE goal shown in the project special provisions or submit documents that demonstrate adequate good faith efforts were made to meet the goal.

DBE Goal

The DBE goal is a percentage of the total contract value that must be performed by certified DBE contractors. The DBE program is designed to increase DBE participation on federally-funded contracts by ensuring nondiscrimination in the award and administration of Department of Transportation assisted contracts, creating a level playing field on which DBEs can compete fairly, and by helping remove barriers to the participation of DBEs.

DBE Commitment Form

[Exhibit 15-G: Construction Contract DBE Commitment](#) provides the RE with a listing of specific work to be done or materials to be furnished by specific DBEs and is based on information the contractor submitted during the bidding process. The commitment is the percentage of work on the contract that the bidder has committed to perform using certified DBE contractors or suppliers. The commitment may be less than, equal to, or greater than the goal depending on the bidder. However, the contractor must meet the DBE commitment, regardless of the contract goal, or submit documents that demonstrates adequate good faith efforts were made to meet the goal. The RE will receive the approved DBE commitment form in the award package.

Role of the RE

The RE is responsible for monitoring and enforcing the DBE provisions of the contract. Therefore, the RE and support staff must have a working knowledge of [49 CFR 26](#) requirements. A good place to start is a complete review of Part 1: Disadvantaged Business Enterprises of [Exhibit 12-G: Required Federal-aid Contract Language](#), found in the special provisions and the DBE section of the Standard Specifications.

Prevention of DBE violations is preferable to imposing penalties for non-compliance; to accomplish this, the RE must perform or delegate the following activities:

Before the Work

Activity 1: Review the DBE Provisions of the Contract and the DBE Commitment Form with the Contractor and Construction Staff at the Pre-Construction Meeting

Include DBE Utilization Requirements as a topic on the pre-construction meeting agenda. The Federal-Aid Contract Prejob Checklist found on the [Caltrans Labor Compliance](#) website is a helpful tool for developing a discussion outline. Portions of the checklist require modification to conform to your contract provisions, form numbers and LPA policies. Ensure the field staff knows who should be performing DBE work. Be sure to emphasize the requirements for a DBE ~~substitution~~ replacement, especially the requirement that written approval must be obtained prior to performing the work or payment will be withheld.

Activity 2: Compare the DBE Commitment Form (Exhibit 15-G) and the Contractor's Subcontracting Request (LAPM 16-B) prior to Approving the Subcontracting Request

Do not construe the DBE Commitment form as a request to subcontract as required by the contract specifications. The contractor must still submit a Subcontracting Request form listing the DBEs for approval. For details on approving the Subcontracting Request, see Item 2, under Approval of Subcontractors Prior to Starting Contracted Work in Section 16.7: Subcontractors, earlier in this Chapter. If the value of the DBE subcontractor's work exceeds the dollar figure threshold (half of one percent of the total bid, or \$10,000, whichever is greater) specified in the Fair Practices Act, the DBE must also be listed on the subcontractor list.

Activity 3: Be sure any DBE subcontractor who wants to begin work has been approved on LAPM 16-B: Subcontracting Request (See Activity 2 above)

During the Work

Activity 4: Verify the DBE Performs a Commercially Useful Function (CUF)

A DBE performs a commercially useful function when it does all of the following (as per CFR 26.55[c]):

- Performs at least 30 percent of the total cost of its contract with its own work force and does not subcontract out portions of its contract work that are greater than normal industry practices for the type of work performed.
- Performs, manages, and supervises the work involved.
- Negotiates prices, determines quantity and quality, orders materials and supplies, pays for the materials and supplies, and installs the materials where applicable.
- The listed trucking DBE must own and operate at least one fully licensed, insured operational truck used on the contract.

A DBE firm does not perform a CUF if its role on the contract is limited to being an extra participant in a transaction or contract; through which funds are passed in order to obtain the appearance of participation.

The prime contractor ~~is ultimately responsible for ensuring~~ must ensure that a DBE performs a CUF ~~by performing periodic CUF evaluations as detailed and outlined in LAPM Chapter 9, Section 9.7: DBE Participation on the Contract. FHWA tips for evaluating CUF are available at: <https://www.fhwa.dot.gov/federal-aidessentials/commusefunction.pdf>.~~

At the same time, state and federal regulations require LPAs ensure work committed to a DBE is being performed by the correct firm, and that firm is performing a CUF.

- If the DBE is a subcontractor, document in the daily reports when the firm works. Include all details required in Section 16.8 of this Chapter: Engineer's Daily Reports.

Cross-check the reports against the DBE Commitment form Exhibit 15-G to ensure the appropriate firm is performing the work or providing the materials.

- Confirm that certified payroll records have been received for the DBE. Refer to Task 4: Check all Certified Payrolls under “Resident Engineer’s Role” in Section 16.9 of this Chapter: Employment Practice: Labor Compliance, EEO, DBE.
- If the DBE firm is a materials supplier, request the contractor provide documents such as delivery confirmation reports and canceled payment checks to confirm the DBE supplied the materials.
- If the trucking is part of the contractor’s DBE commitment, identify trucking firms and drivers and associated items of work for each trucking firm on daily inspection reports. In addition, ensure the contractor submits Exhibit 16-Z1: Monthly DBE Trucking Verification by the 15th of the month for the previous month’s trucking activities. If the prime contractor fails to submit the form, hold an administrative deduction for missing documents on the progress pay estimate. Randomly confirm the information on these forms by requesting copies of weighmaster certificates and canceled payment checks from the contractor. Cross-check the information against daily inspection reports as well.
- Do not pay for work unless it is performed or supplied by the DBE listed on the DBE Commitment form, unless a **substitution replacement** was authorized prior to performance of the work. For information on the substitution process, refer to LAPM Chapter 9 (Section 9.8: Termination and **Substitution Replacement** of DBE Subcontractors).
- **Review CUF evaluation forms, LAPM 9-J and LAPM 9-K, submitted by the prime contractor per LAPM Chapter 9, Section 9.7.**
- **Verify the accuracy of data provided by the prime contractor for CUF non-compliance.**

If a DBE fails to perform a CUF, the LPA ~~should~~ **must** take actions to enforce the contract. These actions can include:

- Deny or limit credit towards the contract DBE goal
- Require the prime contractor to ~~make Good Faith Effort (GFE) to~~ **terminate and** replace the DBE to meet the goal on remaining work **in accordance with LAPM Chapter 9, Section 9.8**
- Withhold progress payments

For additional information on CUF and failure to comply go to [the USDOT website https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise](https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise) and FHWA website [Federal-Aid Essentials for Local Public Agencies](#).

Activity 5: Ensure Running Tally of Actual Attainments

~~Ensure Submittal of Exhibit 9-F: Monthly Disadvantaged Business Enterprise (DBE) Payment by the 10th of the month for the previous month’s activities by the Prime Contractor~~

~~This form documents payments made the previous month to DBEs, regardless of tier including contractors, material suppliers, truckers, or service providers. If the prime fails to~~

~~submit the form, take a payment withhold. Confirm the information on Exhibit 9-F using documents such as Exhibit 15-G, LAPM 16-B, daily inspection reports, or other documentation. (Exhibit 9-F is submitted by the Prime Contractor directly to business.support@dot.ca.gov with a copy to the LPA).~~

For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to local administering agencies.

For projects that are awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the prime contractor or consultant must now submit Exhibit 9-P to the LPA administering the contract. If the prime contractor or consultant does not make any payments to subcontractors, supplier(s) and/or manufacturers they must report “no payments were made to subs this month” and write this visibly and legibly on Exhibit 9-P.

Activity 6: Ensure Prompt Payments to DBEs

If contractor fails to promptly pay DBE firms or other subcontractors within 7 days of receiving a progress **payment** relating to that **subcontractor's** work notify your Labor Compliance Officer and take a performance failure withhold **and do not release retainage owed to the prime contractor** until corrected.

After the Work

Activity 7: Ensure Submittal of Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change

This form notifies the LPA if a DBE becomes decertified or a business entity becomes certified as a DBE before completing its work. The contractor must submit this form even if there were no changes in DBE certification.

Activity 8: Obtain and Verify the Accuracy of Exhibit 17-F: Final Report – Utilization of DBEs

Be sure the contractor submits the Final Report. If the form is not submitted within 90 days of contract acceptance withhold \$10,000 on the next progress pay estimate per the federal requirements. Release the money only upon submission of the completed form. Confirm the form is complete and correct. The description of the work performed, the company performing the work, and the date the work was completed can be checked using the contract records. The contractor is to list the actual dollar amount paid to each entity and the date of the final payment to the entity. If actual DBE utilization (or item of work) was different than that approved at award, the contractor must provide an explanation. Examples of items the contractor would need to explain in writing includes why the names of subcontractors, work items, or dollar figures do not match the contractor's initial plan.

Activity 9: Compare the Final Report – Utilization of DBE to the DBE Commitment Form

Compare the contractor's original dollar commitment with the amount shown on the final DBE report. Review the contractor's calculations to verify the appropriate amount is credited for participation of DBE suppliers and truckers. Table 16-1 lists the criteria for crediting DBE supplier and trucker participation.

Activity 10: Withhold Payment if DBE Commitments were not met

If the contractor does not meet the DBE commitment, hold only the amount of contract funds necessary to meet the original DBE contract goal. If the contractor does not attain the original goal for reasons beyond their control, then no funds should be withheld. Examples of issues beyond the contractor’s control are: if a change order eliminates a portion of an item originally designated to be performed by a DBE, or if the Engineer’s Estimate overestimated the work shown on the plans. The subcontractor refusing to show up or not coordinating with the Prime contractor’s schedule does not qualify as “beyond the contractor’s control,” as the contractor should have requested a substitution. If there is a change order, then the contract goal applies to the change order as well as the original contract. The Prime Contractor must make GFE to obtain additional work for the DBE participation. If no issues with the final utilization reports are identified, sign the final report. For federally-funded contracts, the signature of the RE provides written certification of DBE participation through onsite monitoring and record review activities. For additional information regarding DBE enforcement, ~~substitutions~~ **replacements**, violations, and penalties see [Section 16.7: Subcontractors](#) for more information pertaining to Approval of Subcontractors Prior to Starting Subcontracted Work.

Consult with your DBE liaison officer for questions on implementing enforcement activities.

Table 16-1: Disadvantaged Business Enterprise (DBE) Materials and Transportation

If the DBE is a ...	And if the DBE ...	The credit toward the DBE goal is ...
Supplier	manufactured the materials*	100%
	acts as a regular dealer * (including bulk materials)	60%
	is neither a manufacturer nor a regular dealer	reasonable fees or commissions for the procurement and delivery
Trucking Company	uses trucks it owns , insures and operates using drivers it employs	100%
	uses trucks leased from another DBE firm , including owner-operator who is a certified DBE**	100%
	uses trucks leased from a non-DBE firm , as long as the DBE firm uses its own drivers	100%

Note: the determination above be made on a contract-by-contract basis.

[Certificate of Compliance Per the Caltrans Standards Specifications](#) and [Exhibit 16-T2: Materials Requiring a Certificate of Compliance Per the Greenbook](#) are lists of materials for which the contractor must submit a COC per the respective project specifications. The COC must be furnished before the material is incorporated into the work and include:

- Project number
- Certified material lot number matching lot tags affixed or stenciled to the released materials
- Manufacturer's signature
- A statement that the material complies with the specifications of the contract

All materials accepted on the basis of a signed COC must be documented in the inspector's daily reports. Inspect the material upon arrival to be sure it meets the requirements of the specifications and is undamaged by shipping and handling before accepting. Manufactured products, materials, or assemblies used on the basis of a COC may be sampled again at the job site and tested at any time during the life of the contract. Items found not in conformance with contract requirements must be rejected whether in place or not.

A COC for each item must be kept in the RE's file.

Materials Requiring a Buy America Certification

~~Steel and iron products~~ [Iron and steel, manufactured products](#), and construction materials permanently incorporated into the project must comply with Buy America requirements per 23 CFR 635.410 and Section 70914 of the Build America, Buy America (BABA) Act. All steel and iron products must be delivered with a COC stating all manufacturing processes involved in the production of the products occurred within the United States. These processes include:

- | | |
|-------------|------------|
| • Rolling | • Drilling |
| • Extruding | • Coating |
| • Machining | • Welding |
| • Bending | • Smelting |
| • Grinding | |

In addition to the COC requirements mentioned earlier in this section, a Buy America COC must also include the mill markings or heat numbers. All manufacturing processes for construction materials [as defined in 2 CFR 184.6](#) must occur in the United States. Contractors must provide certificates of compliance with each project delivery for all construction materials used for the projects. Manufacturer's certificate of compliance must identify where the construction material was manufactured and attest specifically to ~~the Buy America compliance 2 CFR 184.6~~. [Minor additions of articles, materials, supplies, or binding agents to these construction materials do not change the categorization of the construction material.](#)

The Buy America requirements apply to the entire construction contract if any federal-aid money has been authorized for any phase of the project, not just the construction phase. This policy is applicable to all phases of a project (such as design, environmental, right-of-way, or construction) covered under the National Environmental Policy Act (NEPA) document, regardless of the funding sources. Therefore, the LPA cannot circumvent the Buy America requirement by declaring that the material is being paid for with the non-federal portion of the funding.

**EXHIBIT 16-Q U. S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
EMPLOYMENT STANDARDS**

ADMINISTRATION OF CCP OFFICES WITHIN

CALIFORNIA

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Ms. Alice V. Young
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or contact the Federal Information Center at (800) 688-9889 for other OFCCP office information.

LAPM C.17 PROJECT COMPLETION

LAPM C.17 Project Completion

Section / Exhibit	Description of Changes
17.4 State-Funded Projects	<ul style="list-style-type: none">• Paragraph related to EEM projects removed as these projects have been sunset.
Exhibit 17-N EEM Program Final Report of Right of Way Expenditures	<ul style="list-style-type: none">• Retired as these projects have been sunset.

State-Funded Projects

For state-funded projects the LPA must complete [Exhibit 17-M: Final Project Expenditure Report](#). The report with the final invoice attached will be submitted to the DLAE.

Note: These programs were intended under the blueprint legislation as state-only funded projects. However due to varying circumstances of the state budget each year, and the variations of the State Highway Account, Caltrans at times may require projects in these programs to utilize federal-aid funds. When this occurs the FROE must be completed as described under federal-aid projects above.

The DLAE will verify project completion as described for state-authorized federal-aid projects, sign the report and, ~~except for EEM projects,~~ forward ~~the original plus two copies~~ to the Headquarters Division of Local Assistance.

~~For EEM projects, the DLAE will forward the original plus two copies of the Final Project Expenditure Report, to Caltrans Local Programs Accounting, with a copy to the EEM Program Manager in the HQ Division of Local Assistance. Use [Exhibit 17-N: EEM Programs Final Report of Right of Way Expenditures](#) for projects involving the acquisition of real property or rights thereto with funds direct deposited into an escrow account. In this case, the DLAE will not verify project completion until the close of escrow is completed and the recordation of both the grant deed and the Agreement Declaring Restrictive Covenants (ADRC). A copy of the recorded grant deed(s) and the original ADRC will be attached to the final report of right of way expenditures.~~

17.5 Consequences for Non-Compliance

Sanctions may be imposed by Caltrans on LPAs that are found in noncompliance with the reporting requirements listed above in [Section 17.4: Final Report of Expenditures](#).

If there is a discrepancy between the Final Invoice and Final Detail Estimate, the LPA is notified by phone that a discrepancy exists, and their payment will be delayed until it is resolved. If the problem cannot be resolved within (180) days, CLPA must bill the LPA for all expenditures made on this project. If the LPA does not pay the accounts receivable bill within thirty (30) days, CLPA must initiate action with the State Controller to offset funds due the LPA.

If the LPA has previously included in their billing, items not reimbursable by the FHWA or over-billed progress payments that exceed the Final Estimates, the LPA must be billed for the overpayment. The LPA must pay the State's accounts receivable bill within thirty days or CLPA must initiate action with the State Controller to offset funds due the LPA. The same policy must apply to those recommendations from Process Review Reports on applicable findings or the improper utilization of Disadvantaged Business Enterprises.

17.6 References

23 CFR 635 Subpart D

<http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0635d.htm>

23 CFR 637 Subpart B

<http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0637b.htm>

23 CFR 640.113

<https://www.gpo.gov/fdsys/pkg/CFR-1999-title23-vol1/pdf/CFR-1999-title23-vol1-sec640-109.pdf>

ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM) PROGRAM
FINAL REPORT OF RIGHT OF WAY EXPENDITURES
FOR PROJECTS INVOLVING ACQUISITION OF REAL PROPERTY, OR RIGHTS THERETO, RECEIVING
DIRECT DEPOSIT OF FUNDS INTO AN ESCROW ACCOUNT
(PREPARED BY DISTRICT)

State of California

Business, Transportation, and Housing Agency

Memorandum

To: EEM Program Manager
Design and Local Programs

Date: _____

File: _____

From: DEPARTMENT OF TRANSPORTATION
District _____

Subject: EEM Project No. _____
Applicant-State Agreement No. _____
FINAL REPORT OF RIGHT OF WAY EXPENDITURES

Attached is the following information on the subject project:

1. Copy of the recorded grant deed(s)
2. Original recorded Environmental Enhancement and Mitigation Program Agreement Declaring Restrictive Covenants (ALRC)
3. Case of Escrow was _____
4. Copy of invoice(s) (on Applicant letterhead)

PROJECT VERIFICATION: This verification of completion constitutes approval that acquisition(s) occurred for the attached property(ies) listed in the original grant deed(s) (attached).

District Local Assistance Engineer

LAPG C.25 STATE PROGRAMS FOR LOCAL AGENCY

LAPG C.25 State Programs for Local Agency Projects

Section / Exhibit	Description of Changes
25.3.1 STIP Matching Requirements	<ul style="list-style-type: none">• Paragraph added (taken from the latest 2024 STIP guidelines) which clarifies that the approved non-proportional spending of STIP funds cannot be increased until all other funds committed to the project have been expended.

Funding Distribution

STIP consists of two broad programs: the regional program funded from 75% of new STIP funding and the interregional program funded from 25% of new STIP funding. The 75% regional program is further subdivided by formula into county shares. County shares are available solely for projects nominated by regions in their RTIPs. The Caltrans ITIP will nominate only projects for the interregional program. Under restricted circumstances, an RTIP may also recommend a project for funding from the interregional share.

Planning, Programming, and Monitoring Funds (PPM): Section 14527 of the Government Code and the CTC STIP Guidelines allow the programming of up to 5% of the county share of STIP funds for project planning, programming, and monitoring activities by the regional transportation planning agency. Programming of these funds comes from county shares and can be programmed for each year of the STIP. Agencies will receive state-only funding for eligible PPM activities. Caltrans has prepared standard agreements for the distribution of these funds. Each agency receiving PPM funds is required to prepare a PPM work plan to be included as part of the standard agreement. Agencies are required to submit a final report of expenditures within 60 days from the completion of the PPM work plan. Planning agencies must request allocations and agreements for the upcoming year as they near completion of PPM expenditures for the current year.

Matching Requirements

CTC does not require a funding match for STIP. Since one of the funding sources of STIP is the Federal Highway Trust Fund, the federal government requires California provide an 11.47% matching funds to any federal STIP funding.

If an implementing agency does elect to supply matching funds to the federal funding, the source of the matching funds may be any combination of local, private, or state. The CTC STIP Guidelines allow a reserve of state funds in the STIP to provide matching funds for federal funds. These state-only funds are reserved from the regions' county shares for each year of the STIP. The reserves of state matching funds are available for any eligible federal projects that are also permissible under Article XIX of the California Constitution. The state-match amount must also be less than or equal to the required minimum nonfederal-match of federal participating costs. Since Timely Use of Funds rule applies, the RTPAs must monitor the allocation of the reserves each year to ensure that all reserves programmed have been allocated before the end of the fiscal year.

In the event of project cost savings, local contribution and STIP funds will be reduced proportionally. Matching funds may be proportionally adjusted before or shortly after contract acceptance to reflect any substantive change after construction completion.

Where a project is funded from both STIP and non-STIP sources, and where the Commission has approved non-proportional spending allowing for the expenditure of STIP funds before other funds, (sometimes referred to as sequential spending), the project is not eligible for an increase (supplemental) allocation under the authority delegated to Caltrans by Commission Resolution G-12 until all other funds committed to the project have been expended. Locally implemented projects do not receive supplemental or G-12 funds.