

DEPARTMENT OF TRANSPORTATION

DIVISION OF LOCAL ASSISTANCE – M.S. 1

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August 25, 2006

To: COUNTY PUBLIC WORKS DIRECTORS
CITY ENGINEERS
RTPAs
MPOs

Re: Notice of Technical Changes to Chapter 9 of the Caltrans Local Assistance
Procedures Manual

The California Department of Transportation (Caltrans) Civil Rights Program is making technical changes to the Caltrans Disadvantaged Business Enterprise (DBE) Program Plan. These technical changes consist of having the Race-Neutral Measures section of the Caltrans DBE Program Plan read identically to 49 CFR Part 26.51 (b), (1) – (9).

For purposes of maintaining consistency with the Caltrans DBE Program Plan, Caltrans Division of Local Assistance is making the same technical changes to Chapter 9 of the Local Assistance Procedures Manual (LAPM). These technical changes extend to Exhibit 9(a) of the DBE Race-Neutral Implementation Agreement. Enclosed are the revisions to the LAPM. A formal Local Program Procedure with timelines for executing the amendment to the Exhibit 9(a) will be forthcoming in the near future.

If you have any questions, please contact Patrice Carroll, Civil Rights Coordinator, at (916) 653-9251.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry L. Abbott".

TERRY L. ABBOTT, Chief
Division of Local Assistance

Enclosure

c: Olivia Fonseca, Deputy Director, Civil Rights
Jose Aguirre, Assistant Chief Counsel

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

RACE-NEUTRAL COMPONENTS

You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE obtains a prime contract through customary competitive procurement procedures; is awarded a subcontract on a prime contract that does not carry a DBE goal; or even if there is a DBE goal, obtains wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

Race-neutral measures may include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. ~~Providing~~ Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development; increase opportunities to participate in a variety of kinds of work; handle increasingly significant projects; and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of the DBE directory, through print and electronic means to the widest feasible universe of potential prime contractors;
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.
10. ~~Implementing or developing a mentor protégé program.~~

IV Annual DBE Submittal Form (§26.21)

The RECIPIENT will provide to the Caltrans' District Local Assistance Engineer (DLAE) a completed *Local Agency DBE Annual Submittal Form* (Exhibit 9-B) by June 1 of each year for the following Federal Fiscal Year (FFY). This form includes an Annual Anticipated DBE Participation Level (AADPL), methodology for establishing the AADPL, the name, phone number, and electronic mailing address of the designated DBELO, and the choice of Prompt Pay Provision to be used by the RECIPIENT for the following FFY.

V Race-Neutral Means of Meeting the Annual DBE Goal (§26.51)

RECIPIENT will assist Caltrans to achieve its Overall Statewide DBE Goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts). Race-neutral means that may include, but are not limited to the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces); Advertising solicitations, scheduling bidding periods and opening times, and packaging quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation;
2. Providing assistance to DBE and small businesses in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, -and providing services to help DBEs and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services to DBE and small businesses.;
4. Providing Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors including DBE's and small businesses; providing provision of the information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has been historically low;
8. -Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- 8.9. Assisting DBEs and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.
9. Implementing or developing a mentor protégé program.