Local Programs Procedures

LPP 01-04 Manual Update
New Disadvantaged Business Enterprise Requirements

Reference: LPP 98-04, "PS&E Review;" and the *Local Assistance Procedures Manual*, Chapter 9, "Civil Rights and Disadvantaged Business Enterprises;" Chapter 10, "Consultant Selection;" Chapter 11, "Design Standards;" Chapter 12, "Plans, Specifications & Estimate;" Chapter 15, "Advertise and Award Project;" Chapter 16, "Administer Construction Contracts;" and Chapter 17, "Project Completion."

Effective Date: March 15, 2001 Approved: Original Signed By

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User-Friendly Features:

- For clarity, Chapters 9, 12, and 15 of the *Local Assistance Procedures Manual* (LAPM) are provided in their entirety as updated chapters.
- A "Summary of Changes" table for Chapters 10, 11, 12, 15 16, and 17 has been included for easy reference.
- The Model DBE Program and the revised DBE instructions are included in Chapter 9.
- The Model DBE Program is available in Microsoft Word from the Local Assistance Program website on the Internet at www.dot.ca.gov/hq/LocalPrograms/.
- A list of references has been provided within this LPP.
- Changes on specific pages of the LAPM are indicated by a vertical line in the margin.

These new procedures are incorporated in the electronic version of the LAPM. The LAPM can be found on the Local Assistance Program Home Page on the Internet at www.dot.ca.gov/hq/LocalPrograms/. Once there, click on "publications" and then click on "Local Assistance Manuals."

PURPOSE

The purpose of this LPP is to revise the LAPM to describe the new Disadvantaged Business Enterprise (DBE) requirements and procedures for recipients of federal-aid highway funds.

Caltrans is entrusted with local agency oversight responsibility for DBE implementation. On July 25, 2000, an interim LPP 00-XX was issued for local agencies in preparing their DBE

Programs and goals for the Federal Fiscal Year (FFY) 2000/2001. This LPP contains information to implement the new DBE requirements and specific information beginning with initial FFY 2000/2001 (October 1, 2000).

EXISTING PROCEDURES

Title 49 of the Code of Federal Regulations (CFR), Part 23 was the federal requirement that provided guidance for all DOT-assisted contracts. A Caltrans letter dated September 9, 1999 notified all local agencies receiving federal-aid highway funds of new federal DBE regulations and the proposed implementation for California, pending approval of the Caltrans' DBE Program Plan by the Federal Highway Administration (FHWA). On April 3, 2000, Caltrans received conditional approval of its DBE Program from FHWA and implemented interim procedures on July 25, 2000.

NEW PROCEDURES

Part 26 has replaced Part 23, Title 49 of the CFR, as the final rule binding all recipients of DOT-assisted contracts. In July 2000, Caltrans received approval from FHWA of the local assistance procedures needed to implement the new regulations. FHWA's letter dated November 29, 2000 gave final approval of revisions to the Caltrans LAPM, incorporating the new requirements of Part 26.

The information below remains applicable to local agencies that have not completed their DBE Program and goal for FFY 2000/2001. This information was contained in the interim LPP 00-XX dated July 25, 2000. The following actions and dates must be met by local agencies that receive federal-aid highway funds.

1. Past Overall Goal: Each local agency's past overall goal remained in effect for FFY 1999/2000 which ended on September 30, 2000.

2. Model DBE Program: The draft Model DBE Program (previously called "Preapproved," and attached to the September 9, 1999 letter) has been revised and enclosed as part of the updated Chapter 9. Local agencies may adopt the revised Model DBE Program or prepare their own DBE program. The Model DBE Program has been revised from the September 9, 1999 version as follows:

    - Written more generically to apply to Federal Transit Administration and Federal Aviation Administration assisted contracts in addition to FHWA. This revision resulted in referring to contracts as "DOT assisted" or "federal-aid."
    - Added a section to address overconcentration.
    - Added a section to address Business Development Programs.
    - Added a section to address transit vehicle manufacturers.
    - Added a subsection to define the process of determining the overall goal.
    - A clarification of how to create a bidders list is provided.
    - Refined the language to apply to consultant contracts.
    - Added an appendix for design-build contracts.

The Model DBE Program has been developed so that the local agency need only complete the appropriate portions, include the draft methodology and the annual overall goal information, and sign it. The District Local Assistance Engineer (DLAE) will then review, approve, and sign to signify acceptance of the document. Local agencies choosing to submit their own DBE programs or a modified Model DBE Program must follow a similar process, sign it, and have it reviewed and approved by the DLAE before it can be implemented.

3. Public Participation: As of October 1, 2000, new federal regulations require public participation in establishing the overall DBE goal.

4. Bidders List: New federal regulations require that each recipient (local agency) create and maintain a bidders list. This bidders list may be used as a method of developing the overall goal for the local agency DBE Program. Each local agency should gather contractor data for the purpose of developing and maintaining their own bidders list.

5. Contract Provisions: Caltrans Local Assistance Program (LAP) has posted Sample Boiler Plate Contract Documents on its website (see address above) that contain the required federal provisions, including the new DBE provisions, that can be used in conjunction with the Caltrans *Standard Specifications*, or modified for use with the *Standard Specifications for Public Works Construction* (Greenbook). All federal-aid projects that have bid advertising dates (or consultant contract award dates) after October 1, 2000 must have incorporated the Sample Boiler Plate Contract Documents, or equivalent into their contracts. If the local agency put an approved DBE program into place before October 1, 2000, they will need to use their new boiler plate contract provisions as of the approval date. Failure to incorporate the new requirements into the local agency's contracts may result in loss of federal funds for projects after this date.

   Caltrans must verify that the local agency's construction contract provisions are in compliance with the federal requirements, (see the second Process Review on PS&E, 98-01 at the Local Assistance Program website for further information). Therefore, a copy of the local agency's proposed boiler plate contract provisions must be submitted to the DLAE for review and approval. The proposed provisions must include either the agency's own DBE program or the adopted Model DBE Program.

6. Reporting DBE Participation: Reporting actual DBE participation will be accomplished on the revised Exhibit 17-F, "Final Report - Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" of the LAPM. This completed form must be submitted to the DLAE with the final Report of Expenditures for construction contracts or as specified in the provisions for consultant contracts.

7. DBE Information Submittal: Once a DBE program has been approved, no other program submittals will be required except for annual overall goal information and any necessary program updates, e.g., procedural changes and change of DBE liaison officer. More typical annual overall goal information is discussed in the procedures included in the updated

Chapter 9. If a local agency fails to submit a DBE Program and annual overall goal, their Authorization for Federal-aid Funding and Program Supplemental Agreement will not be processed. Processing will commence once a local agency has submitted the above information and the DLAE has reviewed and approved it.

8. Enhanced Services: Caltrans Construction Process Review 98-04 recommended that more technical assistance be offered to local agencies during the construction phase for local agency projects off the State Highway System. Caltrans' new DBE program requires Caltrans to provide more monitoring of the local agency's compliance with the new DBE requirements during the construction phase of the projects. To meet the process review recommendation and the DBE program requirement, Caltrans DLAEs will now have Construction Contract Monitors working for them. The monitors will be available to offer technical assistance to the local agencies during the construction phase of their projects. The monitors will also review at least one contract per year per local agency with an active construction contract. This new Construction Contract Monitoring is an enhanced service to help ensure that local agency projects are complying with federal-aid requirements. Reviews will be conducted on active construction projects, so that, if deficiencies are found they can be corrected without jeopardizing the loss of federal-aid funds.

If local agencies should have any questions regarding the foregoing, they should contact their DLAE.

SUMMARY OF CHANGES

Note:

- Chapter 9, "Civil Rights and Disadvantaged Business Enterprises," has been updated and replaced in its entirety. Revisions are not indicated because they occur extensively throughout the chapter.
- Chapter 12, "Plans, Specifications & Estimate," and Chapter 15, "Advertise and Award Project," are also replaced here in their entirety to include changes from LPP 98-04 as well as this LPP.
- In order to reflect updated pages, Table of Contents pages are revised where necessary.

Chapter 10	Change
Pg. 10-5	Intent for DBE participation revised.
Exhibit 10-I	Replaced "Disadvantaged Business Enterprise Agreement Requirements" with "Bidder/Proposer DBE Participation Requirements and Instructions."
Exhibit 10-J	New exhibit "Sample DBE Participation Requirements" added.

SUMMARY OF CHANGES CONTINUED

Chapter 11	**Change**
Pgs. 11-8 and 11-8a	Clarification of federal and state laws and regulations pertaining to accessibility on new construction of pedestrian facilities.
Chapter 12	**Change**
Exhibit 12-D	PS&E Checklist revised.
Exhibit 12-E	PS&E Checklist Instructions revised.
Chapter 15	**Change**
Pgs. 15-15 and 15-16	Section 15.7, Award Package, revised.
Exhibit 15-A	"Local Agency Construction Contract Administration Checklist" revised.
Exhibit 15-B	"Resident Engineer's Construction Contract Administration Checklist" revised.
Exhibit 15-G	"Local Agency Bidder-DBE-Information" form revised.
Exhibit 15-H	"Replaced "Good Faith Effort Statement of DBE Participation" exhibit with "DBE Information-Good Faith Efforts" exhibit.
Exhibit 15-J	"General Service Administration (GSA) Excluded Parties List (EPL)" exhibit deleted.
Exhibit 15-K	"Report of DBE Awards" exhibit deleted.
Chapter 16	**Change**
Pgs. 16-8 and 16-9	Section 16.6, "Subcontractors," under "Procedures" reformatted to include items 1. NHS Projects, 2. Subcontracting, 3. Terms, and 4. Subcontractor Substitution. Revision to footnote 1 referencing special provision.
Exhibit 16-Z	New exhibit **"**Monthly DBE Trucking Verification" form added.
Chapter 17	**Change**
Pg. 17-5	Revisions to the following bullets: "Change Order Summary", "Final Report - Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors (Exhibit 17-F)", and "Disadvantaged Business Enterprises (DBE) Certification Status Change (Exhibit 17-O)."
Exhibit 17-A	"Report of Expenditures Checklist" revised.
Exhibit 17-F	"Final Report - Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form revised.
Exhibit 17-O	New exhibit "Disadvantaged Business Enterprises (DBE) Certification Status Change" form added.

REFERENCES

- 49 CFR 26

CHAPTER 9 CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISES

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CHAPTER 9 CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISES

9.1 INTRODUCTION

This section has been prepared to provide guidance for the local agency in complying with the Civil Rights requirements for federal-aid transportation programs. The information contained in this section has been extracted from other documents and should not be considered as a replacement or substitute for the laws, rules and regulations, agreements, circulars, and other guidance available.

Part 21 of Title 49 of the Code of Federal Regulations (CFR) implements the provisions of Title VI of the Civil Rights Act of 1964 to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the FHWA.

After the Civil Rights Act of 1964, other laws were added to prohibit discrimination in other areas:

- Sex added by Federal Aid Highway Act of 1973 {23 USC 324}
- Disabilities added by Section 504 of the Rehabilitation Act of 1973 {29 USC 790}
- Age added by Age Discrimination Act of 1975 {42 USC 6101}
- Scope expanded by Civil Rights Restoration Act of 1987 {P.L. 100-209} to include <u>all</u> of a recipient's and contractor's programs or activities whether federally assisted or not
- Accessibility for those with disabilities added by the Americans with Disabilities Act of 1990

9.2 DEFINITIONS, ROLES AND RESPONSIBILITIES

DEFINITIONS

<u>Disadvantaged Business Enterprises (DBE)</u> - A for-profit "small business concern" that is at least 51 percent <u>owned and controlled</u> by one or more socially and economically disadvantaged individuals. The management and daily business operations must also be controlled by one or more such individuals. These individuals must be citizens of the United States and (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis, or (2) who are either Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, women, or any other group found to be socially and economically disadvantaged by the Small Business Administration. This definition was revised in 1987 to include women. As used in this manual, the DBE term includes the Minority Business Enterprise (MBE) and the Women-Owned Business Enterprise (WBE) programs.

<u>Race-conscious measure or program</u> is one that is focused specifically on assisting only DBEs, including women owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For purposes here, race neutral includes gender neutrality.

Small Business Concern – Small Business Concern means, with respect to firms seeking to participate as DBEs in U.S. Department of Transportation (DOT) assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in Section 26.65(b) of 49 CFR.

Good Faith Efforts - For all projects where a DBE goal is established, the contractor is required to submit a listing of DBE participants and work to be performed to meet the goal. Good faith effort means that the contractor must have taken all necessary and reasonable steps to achieve DBE participation. Appendix A to Part 26 of 49 CFR provides guidance for determining good faith effort.

FHWA RESPONSIBILITIES

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

FHWA has ultimate responsibility over all of the Civil Rights Programs (U.S. Department of Transportation-assisted recipients).

CALTRANS RESPONSIBILITIES

Caltrans responsibilities are as follows:

- Ensure local agency compliance with Title VI civil rights requirements.
- The Disadvantaged Business Enterprise Program assists the District Local Assistance Engineer (DLAE) in responding to local agencies' requests for assistance with questions/issues relative to DBE matters.
- Assist with training courses for local agencies' staff that will include civil rights discussion.
- At the request of local agency or third party, analyze and recommend resolution of Title VI discrimination complaints.
- The Disadvantaged Business Enterprise Program administers the DBE program and maintains a directory of certified DBE contractors.
- Each DLAE will review and approve the local agency's DBE program.

- Each DLAE will review and approve the local agencies' annual overall goal information.

- The DLAE is the focal point for advice and assistance on civil rights and DBE matters.

- The DLAE will ensure that the final DBE Utilization Report (for consultant and construction contractors) is reported to the Office of Local Programs (OLP) for inclusion in the Caltrans DBE report to FHWA.

- OLP assembles statewide local agency DBE final utilization information and provides information for quarterly reports for FHWA.

- The DLAE will be responsible for DBE oversight of local agencies pursuant to the LAPM regulations.

- The DLAE will review at least one contract per year for each local agency with an active construction project. This will include reviewing records of DBE and non-DBE subcontractor utilization, substitutions, good faith efforts, and DBE complaints, as well as checking if a DBE Liaison Officer has been designated.

- The DLAE will review at least one complete PS&E package for federal provisions (including new DBE requirements) per year. If deficiencies are discovered, more frequent reviews should be conducted and a corrective action plan is to be submitted by the local agency for the DLAE's approval.

- The DLAE will maintain a list of each local agency's designated DBE Liaison Officer which will be updated annually with the local agency's submittal of their annual goal.

- The DLAE will maintain a file with an index of all local agency DBE programs and annual goals.

- OLP and the DLAE monitor local agencies' DBE program by conducting process reviews. The FHWA will be invited to participate in these process reviews.

LOCAL AGENCY RESPONSIBILITIES

The local agency responsibilities include:

- Developing a DBE Program and submitting it to the Caltrans' DLAE for approval.

- Developing annual overall goal information and submitting it to the Caltrans' DLAE for review.

- Designating a DBE Liaison Officer, accountable to the Chief Executive Officer of the local agency, to administer the DBE Program.

- Ensuring contractor compliance with the prompt payment clauses of the contract.

- Designate an EEO Compliance Officer to administer the Title VI civil rights requirements.

- Establishing contract specific goals for participation by DBEs, when warranted to achieve the annual overall goal, before submitting a "Request for Authorization" (see Chapter 3, "Project Authorization" of this manual) for the engineering and construction phases of a federal-aid project.

- Including the contract goals and appropriate DBE specifications in the PS&E documents.

- Ensuring contractor compliance in meeting contract DBE goal with qualified DBEs or making good faith efforts, including review and evaluation of good faith efforts to determine responsiveness to DBE provisions for award of contract and for subcontractor substitutions.

- Completing the "Report of Final DBE Utilization" forms.

- Reviewing and taking action for noncompliance with DBE requirements by local agency' contractors and consultants.

9.3 CIVIL RIGHTS

NONDISCRIMINATION (TITLE VI COMPLIANCE)

Caltrans, under Title VI of the Civil Rights Act of 1964 and related statutes, ensures that no person in the State of California shall, on the grounds of race, color, sex and national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity it administers. Local agencies sign this assurance as part of their master agreement with Caltrans. This assurance must be included in all DOT-assisted contracts executed by local agencies.

Caltrans will continue to provide ongoing guidance and technical assistance in this area. Updates to the Caltrans Title VI Program Plan will be communicated to local agencies as they occur. For further information, please contact your DLAE.

ACCESSIBILITY

49 CFR Part 27, requires nondiscrimination on the basis of disability in programs and activities receiving or benefiting from federal financial assistance. Local agencies, as part of their master agreements with Caltrans, sign assurances to this extent. Further explanation of compliance requirements under Section 504 of the Rehabilitation Act and the American Disability Act (ADA) are outlined below:

Section 504 of the Rehabilitation Act of 1973, as amended most recently in 1998, (codified as 29 U.S.C. §791 et seq.) requires that any entity receiving federal funds must ensure that persons with disabilities:

- Are not discriminated against in any and all aspects of employment, or

- Denied access to the goods or services that these federal fund recipients provide.

The intent of The Americans with Disabilities Act of 1990, (Public law 101-336,codified as 42 U.S.C. 12101 et seq.) was to "assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities." This law extended the protections offered for persons with disabilities further to include the following:

- Title I of the ADA requires all private employers of 15 or more be covered for employment practices, regardless of whether or not they receive any funds directly or indirectly from the federal government; (Title I of the act). For State and local government, the number of employees is irrelevant. All parts of the entity are covered, regardless of the number of employees in that sub-division.

- Title II of the ADA requires that all activities of State and local governments, including contracting and purchasing of services, must be operated in a manner that makes their services accessible to and useable by persons with disabilities. Thus, the public entity has the responsibility to ensure that any services they would perform but have decided to contract out with local entities or private businesses to provide, must be accessible to and useable by persons with disabilities. (Title II of the act). State and local governments must ensure that the "system in its entirety," but not necessarily every location where services are provided, is accessible to and useable by persons with disabilities. This extends to public transportation of any sort. All new construction must be barrier free. (Please see Chapter 11, “Design Standards”, of this manual)

- Title III of the ADA requires that providers of public accommodations in 12 general categories must be accessible to and useable by persons with disabilities, unless to do so would create an undue financial hardship or administrative burden. This includes all private transportation carriers that offer their goods and services to the public These businesses must not discriminate in the "goods, services, facilities, procedures and privileges, advantages and accommodations" offered to the public. Under this title of the ADA, alterations to facilities to allow access must be made that are "readily achievable," and all new construction must be barrier free.

- Title V of the ADA explicitly prohibits coercion, intimidation or threats against persons exercising their rights under the ADA. It also specifically excludes from coverage religious organizations, Indian tribes, and "exclusive private clubs" with a 501c classification by the Internal Revenue Service (IRS). It also excluded from consideration, as a person with a disability, individuals who are currently, illegally using controlled substances as defined in the Controlled Substance Act. Persons who are homosexual, transexual or trans-gender, or who have addictions to gambling, or other specific sexual conditions are not considered to be a "person with a disability" under the act.

- Title V of the ADA also states that should another federal, state or local statute offer greater access to services or provide greater protections for persons with disabling conditions, then it shall be followed. In California, several state statutes and regulations offer greater access or protections than those of the ADA, and therefore have precedence over the ADA's provisions in that area.

A. For example, in many cases the California Building Code (Title 24) have stronger requirements than does the Americans with Disabilities Act Access Guidelines (ADAAG) code. Thus, in California, Title 24 has precedence in these areas. However, the ADAAG has some areas that are stronger than California, such as elevators, when that code will apply over the state standard.

B. The Unruh Civil Rights Act (Civil Code Div. I, Part 2, §§51- 53.4) offer greater protections, in that persons with less severe disabling conditions may be eligible, and they have greater recourses to redress than under the ADA. Thus, it would have precedence over the ADA in this respect.

C. California Government Code 11135 additionally requires that any State of California entity have a process developed to deal with complaints. This process is to determine whether there is prima face evidence of discrimination against persons with disabilities in the contracting or purchasing process. If prima face evidence exists, then the allegations must be investigated and, should evidence be found of discrimination, action taken to immediately correct the discrimination or terminate the contract, or both.

As Caltrans updates the CT ADA Program Plan, additional information and guidance will be provided to local agencies. For further information concerning local obligations, you could contact your DLAE.

METHODS OF COMPLIANCE

1. Assurances by Agencies: The State signs annual assurances with the FHWA to certify compliance with the law. Similar assurances are agreed to by the local agency when they execute the "Local Agency-State Agreement for Federal-Aid Projects" (see Chapter 4, "Agreements," of this manual).

   The Program Supplement Agreement for each project will include the local agency's reaffirmation of the Nondiscrimination Assurances contained in the "Local Agency-State Agreement for Federal-Aid Projects."

2. Review: Methods of administration by the State and local agencies are subject to periodic reviews by the FHWA.

3. Field Reviews: Caltrans and FHWA may choose to audit local agencies directly. A field review may be held if felt necessary in any agency, particularly in the event of complaints to the Office of Federal Contract Compliance, or the Equal Employment Opportunity Commission. Caltrans Civil Rights Program personnel will participate in these field reviews.

CONTRACTOR COMPLIANCE

The local agency is responsible for ensuring that the Title VI of the Civil Rights Act of 1964 requirements are being complied with by the contractor. Part 60, Section 60-4.3 of Title 41 of the CFR contains information on contractor compliance. The requirements are discussed in Chapter 16, Section 16.12, "Equal Employment Opportunity," of this manual. Title VII of the Civil Rights Act of 1964 {42 U.S.C. 2000e} additionally states:

"It shall be an unlawful employment practice for an employer:

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges, of employment, because of such individual's race, color, religion, sex, or national origin; or
(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

Any employee who alleges employment discrimination or harassment against their contractor or subcontractor employer under Title VII should immediately be referred to the U.S. Equal Employment Opportunity Commission (EEOC) and/or the Department of Fair Employment and Housing (DFEH). A referral to the employer's EEO Officer may also be appropriate. If a member of the public alleges discrimination on the part of contractor or subcontractor employee(s), the complainant should also be referred to the EEOC and/or DFEH.

CIVIL RIGHTS COMPLAINTS

The procedures in this section have been established to receive and resolve alleged civil rights discrimination complaints concerning a local agency project or projects funded with federal-aid funds.

Any Title VI complaint received by the local agency will be investigated by Caltrans.

> A local agency will not investigate itself. If a complaint is filed against the local agency, the local agency will forward the complaint to Caltrans Headquarters, Civil Rights Investigation Unit, within 10 days of the date the complaint is received. The complainant will be informed of appeal rights to the FHWA California Division by the Caltrans investigative staff. . An appeal will be accepted by FHWA up to 180 days FROM THE DATE OF RECEIPT OF THE DECISION. Caltrans will investigate and submit a report of findings to FHWA within 60 days of receipt of the complaint.

Caltrans will include a summary report of its findings on all Title VI complaints in its annual Title VI update report to FHWA.

CIVIL RIGHTS COMPLIANCE REVIEWS OF LOCATION PROCEDURES

Caltrans will monitor a local agency's location procedures to assure compliance with Title VI and Title VIII of the Civil Rights Acts of 1964 and 1968, respectively. The "Guidelines for Civil Rights Compliance Reviews of Location Procedures" (see Exhibit 9-C), written in question form, shall be used to the extent applicable as a minimum guide. These guidelines are intended to suggest areas where compliance reviews may be appropriate, not to limit the range of questions that may be asked. After a review is completed, the reviewer should have a rather comprehensive knowledge of the agency's highway location procedures as they pertain to civil rights. Based upon the answers to these questions, the reviewer should be able to judge whether or not the agency is in

compliance with Title VI and Title VIII and recommend appropriate remedial action.

9.4 LOCAL AGENCY DBE PROGRAM

Local agency recipients of federal funds shall comply with all the elements of Title 49, Part 26 of the CFR entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." These provisions apply to all federal-aid funded transportation projects.

After October 1, 2000, each local agency shall implement a Disadvantaged Business Enterprise (DBE) Program and establish an annual overall goal prior to submitting a "Request for Authorization" to proceed with a federal-aid project.

In this manual, federal-aid contracts refers to U.S. Department of Transportation (DOT) assisted contracts, which includes funding from the FHWA, Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA).

DBE PROGRAM OPTIONS

A local agency has two options in complying with DBE Program requirements. The options are:

1. Adopt the OLP "Model DBE Program" for local agencies along with their methodology(Exhibit 9-A), or

2. Develop its own DBE Program, or modify the "Model DBE Program" in compliance with Part 26 of Title 49 CFR.

Under option one, the local agency adopts the OLP Model DBE Program and submits it to the DLAE for review of the draft, which is followed by the later submittal of the final for approval, acceptance signature and date.

Under option two, the local agency prepares its own DBE program with all the elements required by Part 26 of Title 49 CFR, and submits it to the DLAE for review of the draft, which is followed by the later submittal of the final for approval, acceptance signature and date.

DBE PROGRAM ELEMENTS

The required elements of a DBE program are prescribed in 49 CFR Part 26. This is available at the DOT Office of Small and Disadvantaged Business Utilization website on the Internet at http://osdbuweb.dot.gov/programs/dbe/dbe.htm. One important element is that the Caltrans Business Enterprise Program certifies eligible DBEs as discussed in Section 9.5 of this chapter. Other elements are highlighted below.

POLICY STATEMENT

Each program shall contain a policy statement expressing a commitment to the DBE program, stating its objectives, and outlining responsibilities for its implementation.

Each local agency will circulate the statement throughout its organization and to the DBE and non-DBE business communities that perform work on its DOT-assisted contracts (one way is to include the policy statement in each contract solicitation).

DBE LIAISON OFFICER

Each local agency must designate a DBE liaison officer who shall have direct independent access to the local agency's Chief Executive Officer concerning DBE program matters. This person shall be responsible for the duties as described in Exhibit 9-A.

BIDDERS LIST

Each local agency will be required to create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote to the local agency on DOT-assisted contracts. The bidders list will include the name, address, DBE/non-DBE status, date established, and annual gross receipts of firms.

A local agency may include in its bidding process a clause requiring prime bidders to report the names/addresses, and other pertinent information, of all firms who quote to them on subcontracts as a way to establish their bidders list. Also, a survey of consulting firms and contractors, that were awarded DOT-assisted contracts in the past, may be used to obtain bidders list data.

CONTRACT PROVISIONS

Contract Assurance

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

"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate."

Prompt Payment for Satisfactory Performance

This contract clause requires the prime contractor to pay subcontractors for satisfactory performance of their contract no later than a specific number of days from receipt of each payment the local agency makes to the prime contractor.

Prompt Payment of Retainage

This clause must require the prompt release of retainage payments from the prime contractor to the subcontractor within a specified number of days after the subcontractor's work is satisfactorily completed.

MONITORING AND ENFORCEMENT MECHANISMS

This section is for the local agency to explain the means it will use to ensure compliance with the DBE regulations by all participants.

OVERALL GOAL PROCESS

Establishing an overall goal is a two-step process. The overall goal must be segregated into race-neutral and race-conscious components. The information to be considered for analysis in establishing the goal is discussed in detail under Section 9.4, "Annual Overall Goal" of this chapter.

TRANSIT VEHICLE MANUFACTURERS

If the local agency is an FTA recipient, the local agency must require in its DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements elsewhere in this chapter.

GOOD FAITH EFFORTS

A good faith effort must be documented if a bidder's proposal does not meet the contract goals or if a substitution is needed where a non-DBE subcontractor is the only ready, willing, and able subcontractor to perform the work and the contract goal is not otherwise met. More information is discussed in Section 9.6, "Good Faith Efforts" of this manual.

9.5 ANNUAL OVERALL GOAL

PROCESS

The amount of the overall goal, the method to calculate the goal, and the breakout of estimated race-neutral and race-conscious participation will be required annually by June 1 in advance of the federal fiscal year beginning October 1 for federal-aid contracts. Submittals will be to the Caltrans DLAE, using Exhibit 9-B of this chapter. An exception to this will be if FTA or FAA recipients are required by FTA or FAA to submit the annual information to them or a designee by another date. FHWA recipients will follow this process:

As part of establishing an overall goal, the local agency must provide for public participation. This public participation must include consultation with minority, women's and general contractor groups; community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the local agency's efforts to establish a level playing field for the participation of DBEs.

With that consultation referenced, the local agency will submit the draft overall goal information (amount of overall goal, the method to calculate the goal, and the breakout of estimated race-neutral and race-conscious participation) by June 1 to the Caltrans DLAE for preliminary comments. With Caltrans' preliminary comments incorporated, the local

agency will proceed with the public participation process (described below) which allows public input into the overall goal.

After the public participation process, the local agency will submit the overall goal information to the Caltrans DLAE. The submittal will include a summary of the information, copies of the public notices, comments received during this public participation process, and the local agency's response to these comments. This will be due to the DLAE by September 1 so that the DLAE will have one month for a final review and the local agency may begin using the overall goal on October 1 of each year.

The local agency is not required to obtain Caltrans' prior concurrence with the proposed overall goal. However, if the Caltrans' review concludes that the overall goal has not been correctly calculated, or that the method for calculating goals is inadequate, the DLAE may, after consulting with the local agency, adjust the overall goal or require that the local agency do so. The adjusted overall goal or review comments will be binding on the local agency.

PUBLIC PARTICIPATION

Once the DLAE has responded with preliminary comments to the local agency's draft overall goal information and the comments have been incorporated into the draft overall goal information, the local agency will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the local agency's principal office for 30 days following the date of the notice, and informing the public that comments will be accepted on the goal for 45 days following the date of the notice. The notice must be published in general circulation media and available minority-focused media and trade association publications. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposed goal and its rationale may be inspected .

AMOUNT OF OVERALL GOAL

For an FHWA recipient, the overall goal should be expressed as a percentage of all federal-aid highway funds that a local agency will expend in FHWA-assisted contracts in the forthcoming fiscal year. If the local agency is also an FTA and FAA recipient, the percentage is determined in a similar way, but it includes FTA and FAA-assisted contracts—excluding FTA funds used to purchase transit vehicles.

The overall goal is a determination of the level of DBE participation the local agency would expect absent the effects of discrimination. The overall goal is split into two components: race-neutral and race-conscious.

METHODOLOGY—STEP 1

The overall goal methodology is a two-step process as described in 49 CFR Part 26, Section 26.45. The first step is determining a base figure for the relative availability of DBEs that are ready, willing and able to participate in the federal-aid contracting program. Five methods are described to accomplish this first step, although other methods or combinations of methods to determine a base figure may be used, subject to review and

comments by DLAE.

USE OF DBE DIRECTORIES AND CENSUS BUREAU DATA

Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) database, determine the number of all ready, willing and able businesses available in your market that perform work in the same SIC codes. (Information about the CBP database may be obtained from the Census Bureau at their website, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

USE OF A BIDDERS LIST

By using the required Bidders List, determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all contractors and consultants that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all contractors and consultants to derive a base figure for the relative availability of DBEs in your market.

USE OF DATA FROM A DISPARITY STUDY

Caltrans will not set out specific requirements for what data or analysis is required before a disparity study can be used for setting a goal, because Caltrans believes that the design and conduct of the study is best left to the local officials and the professional organizations with which they contract to conduct the study. Instead, Caltrans offers simple general principles that should apply to all studies used for goal setting. Any study data relied on in the goal setting process should be as recent as possible and be focused on the transportation contracting industry.

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

USE OF THE GOAL OF ANOTHER LOCAL AGENCY

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

USE OF ALTERNATIVE METHODS

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

relative availability of DBEs in the local agencies' market.

METHODOLOGY—STEP 2

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

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

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

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

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

RACE-NEUTRAL/RACE-CONSCIOUS COMPONENTS

Each time a local agency submits its overall goal for review by Caltrans, the local agency must also submit its projection of the portion of the goal that they expect to meet through race-neutral means and their basis for that projection. This projection is subject to approval by the DLAE in conjunction with the review of the overall goal.

Local agencies must meet a portion of their overall goal, to the maximum extent feasible, 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 a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

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

1. Arranging solicitations, times for the presentation of bids, quantities, specifications,

and delivery schedules in ways that facilitate DBE and other small business participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces).

2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses obtain bonding and financing).
3. Providing technical assistance and other services.
4. Providing 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.

Race-conscious measure is an overall goal component that focuses on assisting only DBEs. The use of contract goals is the primary example of a race-conscious measure in the DBE program. Local agencies must establish contract goals to meet any portion of their overall goal they do not project being able to meet using race-neutral means.

EXPECTED PARTICIPATION

If a local agency's overall goal is 18% and the overall goal is segregated into 14% race-conscious and 4% race-neutral components, then it would be expected that some local agency contracts will have DBE goals which will result in an overall participation of 14% of the total local agency federal-aid highway funding for the fiscal year. Also, other local agency contracts will have no DBE goals, or will have participation that exceeds the contract goal, or DBE participation through a prime contract a DBE obtains through customary competitive procedures, all of which will result in an overall participation of 4% of the total local agency federal-aid highway funding for the same year.

TRANSIT VEHICLE MANUFACTURERS

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

TRANSIT VEHICLE MANUFACTURER'S ANNUAL GOAL

Transit vehicle manufacturers must establish and submit for FTA's approval an annual

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

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

9.6 CONTRACT GOAL

A contract goal is a percentage of the total contract amount that is expected to be performed by certified DBE firms. Local agencies may use contract goals only on those DOT-assisted contracts that have subcontracting, supplier, or trucking possibilities.

Local agencies are not required to set a contract goal on every DOT-assisted contract. Local agencies are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by an overall goal, contract goals must be set so that they will cumulatively result in meeting the portion of the overall goal that is not projected to be met through the use of race-neutral means.

Caltrans approval of each contract goal is not necessarily required. However, Caltrans may review and approve or disapprove any contract goal that a local agency establishes.

A contract goal must provide for participation by certified DBEs and must not be subdivided into group-specific goals.

PARTICIPATION OPPORTUNITIES

The local agency should structure its project development, and contract items and specifications in a manner which provides opportunities for DBE participation.

Participation by disadvantaged business enterprises is possible at four main points in the process for developing local federal-aid transportation projects. They are:

- Preliminary engineering and environmental analysis
- Final design
- Right of way acquisition
- Construction, including construction management

Preliminary engineering studies and environmental analysis are the first steps in developing a local transportation project. Disadvantaged business enterprises may be engaged to perform all of these activities as a prime consultant or some of these activities

as a member of a team of consultants.

Completion of final design and preparation of plans, specifications, and estimates normally are a continuation of preliminary engineering activities. However, in some situations the agency employs different consultants and professional teams to perform these final design activities. Disadvantaged business enterprises may be engaged at this point.

Acquisition of right of way for local transportation projects may be performed by the local agency or by a qualified consulting firm. Qualified disadvantaged business enterprises may be considered for performance of right of way activities.

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

ADJUSTING CONTRACT GOALS

To ensure that local agencies' DBE programs are narrowly tailored to overcome the effects of discrimination, it may be necessary for an adjustment in the use of contract goals during the fiscal year for which the overall goal applies. This adjustment may be needed as a result of more or less subcontracting items with DBE opportunities for a contract that was not foreseen during the overall goal analysis. The scope of work on a contract may differ from what was originally thought of during overall goal analysis. Also, a contract change order may have a direct bearing on the DBE participation opportunities for the contract. Other reasons may warrant the need for adjustments.

Contract goals may also need adjustment induced by how the overall goal is set. These adjustments may be needed for the following reasons:

1. If the local agency estimates that they can meet their entire overall goal for a given year through race-neutral means, they must implement their program without setting contract goals during that year.

2. If, during the course of any year in which contract goals are used, a local agency determines that it will exceed their overall goal, they must reduce or eliminate the use of contract goals to the extent necessary. Contract goals are not to be set after the overall annual goal is achieved. If the local agency determines that it will fall short of their overall goal, then it must make appropriate modifications in their use of race-neutral and/or race-conscious measures to meet the overall goal.

3. If the DBE participation that was obtained by race-neutral means alone meets or exceeds a local agency's overall goals for two consecutive years, the local agency is not required to make a projection of the amount of goal that can be met using such means in the next year. The local agency will not set contract goals on any contracts in the next year. The local agency will continue using only race-neutral means to meet their overall goal unless and until they do not meet their overall goal for a year.

4. If a local agency obtains DBE participation that exceeds their overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), the local agency must reduce their use of contract goals

proportionately in the following year.

Caution is needed regarding making adjustments during the fiscal year. If a local agency handles a large volume of contracts simultaneously, DBE utilization will occur during different times of a contract. High usage of DBEs that overlap at the same time may seemingly warrant an adjustment—only to make a counter adjustment later when an overlap of low DBE usage occurs. It is also important to note that many contracts will encompass multiple fiscal years with DBE usage concentrated unevenly during the contract term.

CONSTRUCTION CONTRACT REQUIREMENTS

The local agency must determine the individual project goal based on the work performed and the availability of certified DBE contractors in the geographic area (a specific goal may not be appropriate for every project). These goals must be consistent with the following policies:

- Individual contract goals are established in order to achieve fair DBE participation.
- The project analysis starts with the availability and capacity of certified DBE contractors (in the project area) to perform the items of work. The contractible items of work are evaluated by the local agency in light of the project type and size, and normal industry contracting practices.
- All contract bidders are required to meet the contract goal, or document that they have made adequate good faith efforts to meet the goal if they did not succeed in obtaining the DBE participation specified in the contract specifications.
- The contract goals are set to allow non-disadvantaged as well as DBE contractors to compete for contract work.

FINAL REPORT

The “Final Report of Utilization of Disadvantaged Business Enterprises (DBE), First Tier Subcontractors”, Exhibit 17-F, is reviewed by the local agency and certified for completion and accuracy. The local agency must submit this report as part of its “Report of Expenditures” package before final payment is made (see Chapter 17, “Project Completion” of this manual.)

COUNTING WORK TOWARD THE CONTRACT GOAL

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

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

Specific instances of counting DBE participation toward a contract goal is presented in the following sections.

PERFORMED BY DBE

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

- Count the entire amount of that portion of a construction contract (or other contract not covered by the following bullet) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

- Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward the DBE goal, provided that the local agency determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals 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 goals.

JOINT VENTURE

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

COMMERCIALLY USEFUL FUNCTION

Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

- A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the local agency must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

- A DBE does not perform a commercially useful function if its role is limited to that of

an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the local agency must examine similar transactions, particularly those in which DBEs do not participate.

- If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, one must presume that it is not performing a commercially useful function.

- When a DBE is presumed not to be performing a commercially useful function as provided in the previous bullet, the DBE may present evidence to rebut this presumption. The local agency's determination as to whether the firm is performing a commercially useful function should be based upon the type of work involved and normal industry practices.

- Local agencies' decisions on commercially useful function matters are subject to review by the DLAE.

DBE TRUCKING

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

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is getting credit on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

- The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

- A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

MATERIALS AND SUPPLIES

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

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

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

- If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

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

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

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

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

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

NOT COUNTING PARTICIPATION

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

Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward a local agency's overall goal.

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

APPARENT LACK OF CONTROL

In order for a firm to become a certified DBE, it needs to meet the various requirements prescribed in the Code of Federal Regulations, as administered by Caltrans. The DBE must be in control of the firm. Some situations may arise where the work to be performed by the DBE is being performed by someone else. The local agency will have to use discretion of when to investigate, or report, apparent cases of fraud to Caltrans. Caution is needed because those involved in performing the work may legitimately be doing so. Three areas are highlighted here:

1. Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

2. The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

3. The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

DBE ELIGIBILITY

Firms (consultant or contractors) certified as eligible DBEs is a decision that is made by the Caltrans Disadvantaged Business Enterprise Program (BEP). Caltrans can also remove the eligibility of a firm and issue a written notice of ineligibility. A directory of

certified DBE firms is available from the BEP website at www.dot.ca.gov/hq/bep.

The Caltrans directory list is available in hard copy from:

Caltrans
Publications Distribution Unit
1900 Royal Oaks Drive
Sacramento, CA 95815
Phone: (916) 445-3520

An electronic listing of DBEs is also available on the Website of the Caltrans Civil Rights Program under the Caltrans Bulletin Board System. For further information, contact the Caltrans Disadvantaged Business Enterprise Program, Systems Support (916) 654-6598 or 654-3496.

CERTIFICATION

A DBE may request certification from Caltrans by requesting an application form at:

Caltrans
Business Enterprise Program
Office of Certification Analysis
PO Box 942874, MS - 79
Sacramento, CA 94274-0001
Phone: (916) 227-9599

The form may also be downloaded from the internet at:
www.dot.ca.gov/hq/bep/downloads.html

DECERTIFICATION

Regarding DBE participation on a contract, two different actions can take place depending on when a firm was issued a notice of ineligibility relative to when the contract was executed:

1. When a prime contractor has made a commitment to use an ineligible firm, or the local agency has made a commitment to use a DBE prime contractor, but a subcontract or contract has not been executed before the issuance of the decertification notice, the ineligible firm does not count toward the contract goal or overall goal. The local agency must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so.

2. If a prime contractor has executed a subcontract with a firm before the local agency notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where the local agency had let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the local agency issued the notice of its ineligibility shall not count toward the local agency's overall goal, but may count toward the contract goal.

Exception

If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the local agency may continue to count its participation on that contract toward overall and contract goals.

Appeal

When Caltrans makes an administratively final removal of a firm's eligibility, the firm may appeal the removal to the DOT under Section 26.89 of 49 CFR Part 26. Caltrans will provide information for an appeal with the removal of eligibility.

9.7 GOOD FAITH EFFORTS

Whether as a bidder or contractor of a DOT-assisted contract, good faith efforts are required to meet the contract goal. This applies even if the bidder or prime contractor is a DBE.

When a local agency establishes a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if a bidder does not meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of 49 CFR Part 26 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. No local agency shall require that a bidder meet a contract goal in order to be awarded a contract.

In any situation in which a contract goal has been established, the use of good faith efforts must be allowed. Each local agency must make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that local agencies' determination concerning the sufficiency of the firm's good faith efforts is a judgment call; meeting quantitative formulas is not required.

Caltrans also strongly cautions local agencies against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, only that the bidder makes an adequate showing of good faith efforts. Title 49, CFR Part 26 specifically prohibits DOT financial recipients from ignoring bona fide good faith efforts.

ANTICIPATED ACTIONS

The following types of actions should be considered by a local agency as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

- Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached for DBEs to perform the work.

  A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as the contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. nonunion employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

- Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

ADMINISTRATIVE RECONSIDERATION

If the goal is not met, a bidder must, in order to be responsible and/or responsive, have made good faith efforts to meet the DBE goal by documenting commitments for participation by sufficient DBE firms, or document adequate good faith efforts to actively and aggressively obtain participation by a sufficient number of DBE firms. An administrative review (see Section 26.53, CFR 49 Part 26) and judgment call of the good faith efforts should be made prior to award in each instance by the local agency. If the local agency determines that the apparent successful bidder/offeror has failed to meet the good faith requirements, the local agency must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration in accordance with Section 26.53, CFR 49 Part 26.

SUBSTITUTIONS

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

Local agencies must require that a prime contractor not terminate for convenience a DBE subcontractor listed in the Local Agency Bidder DBE Information form (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the local agency’s prior written consent.

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

NONCOMPLIANCE

Local agencies must include in each prime contract a provision for appropriate administrative remedies that will be invoked if the prime contractor fails to comply with the good faith efforts requirements during the contract.

9.8 REFERENCES

49 CFR Part 26 (DBE Regulations)
49 CFR Part 21 (Title VI Regulations)
23 USC 140(b)
23 CFR 200 and 230

MODEL DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR LOCAL AGENCIES

This Program is in accordance with Title 49 of the Code of Federal Regulations Part 26.

MODEL DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

City/County of _____

I Definitions of Terms

The terms used in this program have the meanings defined in 49 CFR §26.5.

II Objectives /Policy Statement (§§26.1, 26.23)

The *[Name of Local Agency Recipient]* has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The *[Name of Local Agency Recipient]* has received federal financial assistance from the DOT, and as a condition of receiving this assistance, the *[Name of Local Agency Recipient]* will sign an assurance that it will comply with 49 CFR Part 26.

It is the policy of the [*Name of Local Agency Recipient]* to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
To assist the development of firms that can compete successfully in the market place outside the DBE Program.

[Name or title of appropriate person or office] has been delegated as the DBE Liaison Officer. In that capacity, *[Name or title]* is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the *[Name of Local Agency Recipient]* in its financial assistance agreements with the California Department of Transportation (Caltrans).

[Name of Local Agency Recipient] has disseminated this policy statement to the *[identify the governing board or officials of the local agency recipient]* and all the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. *(Note: One acceptable method is to include this policy statement in your DOT-assisted contracts*

III Nondiscrimination (§26.7)

[Name of Local Agency Recipient] will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the *[Name of Local Agency Recipient]* will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

IV DBE Program Updates (§26.21)

[Name of Local Agency Recipient] will continue to carry out this program until the *[Name of Local Agency Recipient]* has established a new goal setting methodology or until significant changes to this DBE Program are adopted. *[Name of Local Agency Recipient]* will provide to Caltrans a proposed overall goal and goal setting methodology and other program updates by June 1 of every year.

V Quotas (§26.43)

[Name of Local Agency Recipient] will not use quotas or set asides in any way in the administration of this DBE program.

VI DBE Liaison Officer (DBELO) (§26.25)

[Name of Local Agency Recipient] has designated the following individual as the DBE Liaison Officer*: [Provide name, address, telephone number, and e-mail address]*. In that capacity, *[Name of DBELO]* is responsible for implementing all aspects of the DBE program and ensuring that the *[*Name of Local Agency Recipient*]* complies with all provisions of 49 CFR Part 26. This is available on the Internet at osdbuweb.dot.gov/main.cfm. *[Name of DBELO]* has direct, independent access to the *[*indicate chief executive officer of local agency recipient*]* concerning DBE program matters. *[Specify resources available to the* DBELO*; e.g. The DBELO has a staff of 2 professional employees assigned to the DBE program on a full-time basis and two support personnel who devote a portion of their time to the program.]* An organization chart displaying the DBELO's position in the organization is found in Attachment ___ to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination other appropriate officials. Duties and responsibilities include the following *(suggested)*:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes *[Name of Local Agency Recipient]*'s progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.

11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.

VII Federal Financial Assistance Agreement Assurance (§26.13)

[Name of Local Agency Recipient] will sign the following assurance, applicable to all DOT-assisted contracts and their administration as part of the program supplement agreement for each project:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

[Note – this language is to be used verbatim, as it is stated in §26.13(a). However, approval authority of the recipient's DBE Program has been delegated to Caltrans for DOT-assisted contracts.]

VIII DBE Financial Institutions

It is the policy of the *[Name of Local Agency Recipient]* to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer. The Caltrans Disadvantaged Business Enterprise Program may offer assistance to the DBE Liaison Officer.

IX Directory (§26.31)

[Name of Local Agency Recipient] will refer interested persons to the DBE directory available from the Caltrans Disadvantaged Business Enterprise Program website at www.dot.ca.gov/hq/bep.

X Overconcentration (§26.33)

[Name of Local Agency Recipient] has not identified any types of work in DOT-assisted contracts that have a overconcentration of DBE participation. If in the future *[Name of Local Agency Recipient]* identifies the need to address overconcentration, measures for addressing overconcentration will be submitted to the DLAE for approval.

XI Business Development Programs (§26.35)

[Name of Local Agency Recipient] does not have a business development or mentor-protégé program. If the *[Name of Local Agency Recipient]* identifies the need for such a program in the future, the rationale for adopting such a program and a comprehensive description of it will be submitted to the DLAE for approval.

XII Required Contract Clauses (§§26.13, 26.29)

Contract Assurance

[Name of Local Agency Recipient] ensures that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate.

[Note –This language is to be used verbatim, as it is stated in §26.13(b). See Caltrans Sample Boiler Plate Contract Documents on the Internet at www.dot.ca.gov/hq/LocalPrograms *under "Publications."]*

Prompt Payment

[Name of Local Agency Recipient] ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

Satisfactory Performance
The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from *[Name of Local Agency Recipient*]. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the *[Name of Local Agency Recipient]*. This clause applies to both DBE and non-DBE subcontractors

Release of Retainage
The prime contractor agrees further to release retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the *[Name of Local Agency Recipient]*. This clause applies to both DBE and non-DBE subcontractors.

XIII Monitoring and Enforcement Mechanisms (§26.37)

The *[Name of Local Agency Recipient]* will assign a Resident Engineer (RE) or Contract Manager to monitor and track actual DBE participation through contractor and subcontractor reports of payments in accordance with the following:

After Contract Award

After the contract award the *[Name of Local Agency Recipient]* will review the award documents for the portion of items each DBE and first tier subcontractor will be performing and the dollar value of that work. With these documents the RE/Contract Manager will be able to determine the work to be performed by the DBEs or subcontractors listed.

Preconstruction Conference

A preconstruction conference will be scheduled between the RE and the contractor or their representative to discuss the work each DBE subcontractor will perform.

Before work can begin on a subcontract, the local agency will require the contractor to submit a completed "Subcontracting Request," Exhibit 16-B of the LAPM or equivalent. When the RE receives the completed form it will be checked for agreement of the first tier subcontractors and DBEs. The RE will not approve the request when it identifies someone other than the DBE or first tier subcontractor listed in the previously completed "Local Agency Bidder DBE Information," Exhibit 15-G. The "Subcontracting Request" will not be approved until any discrepancies are resolved. If an issue cannot be resolved at that time, or there is some other concern, the RE will require the contractor to eliminate the subcontractor in question before signing the subcontracting request. A change in the DBE or first tier subcontractor may be addressed during a substitution process at a later date.

Suppliers, vendors, or manufacturers listed on the "Local Agency Bidder DBE Information" will be compared to those listed in the completed Exhibit 16-I of the LAPM or equivalent. Differences must be resolved by either making corrections or requesting a substitution.

Substitutions will be subject to the Subletting and Subcontracting Fair Practices Act (FPA). Local agencies will require contractors to adhere to the provisions within Subletting and Subcontracting Fair Practices Act (State Law) Sections 4100-4144. FPA requires the contractor to list all subcontractors in excess of one half of one percent (0.5%) of the contractor's total bid or $10,000, whichever is greater. The statute is designed to prevent bid shopping by contractors. The FPA explains that a contractor may not substitute a subcontractor listed in the original bid except with the approval of the awarding authority.

The RE will give the contractor a blank Exhibit 17-F, "Final Report Utilization of Disadvantaged Business Enterprises, First Tier Subcontractors" and will explain to them that the document will be required at the end of the project, for which payment can be withheld, in conformance with the contract.

Construction Contract Monitoring

The RE will ensure that the RE's staff (inspectors) know what items of work each DBE is responsible for performing. Inspectors will notify the RE immediately of apparent violations.

When a firm other than the listed DBE subcontractor is found performing the work, the RE will notify the contractor of the apparent discrepancy and potential loss of payment. Based on the contractor's response, the RE will take appropriate action: The DBE Liaison Officer will perform a preliminary investigation to identify any potential issues related to the DBE subcontractor performing a

commercially useful function. Any substantive issues will be forwarded to the Caltrans Disadvantaged Business Enterprise Program. If the contractor fails to adequately explain why there is a discrepancy, payment for the work will be withheld and a letter will be sent to the contractor referencing the applicable specification violation and the required withholding of payment.

If the contract requires the submittal of a monthly truck document, the contractor will be required to submit documentation to the RE showing the owner's name; California Highway Patrol CA number; and the DBE certification number of the owner of the truck for each truck used during that month for which DBE participation will be claimed. The trucks will be listed by California Highway Patrol CA number in the daily diary or on a separate piece of paper for documentation. The numbers are checked by inspectors regularly to confirm compliance.

Providing evidence of DBE payment is the responsibility of the contractor.

Substitution

When a DBE substitution is requested, the RE/Contract Manager will request a letter from the contractor explaining why substitution is needed. The RE/Contract Manager must review the letter to be sure names and addresses are shown, dollar values are included, and reason for the request is explained. If the RE/Contract Manager agrees to the substitution, the RE/Contract Manager will notify, in writing, the DBE subcontractor regarding the proposed substitution and procedure for written objection from the DBE subcontractor in accordance with the Subletting and Subcontracting Fair Practices Act. If the contractor is not meeting the contract goal with this substitution, the contractor must provide the required good faith effort to the RE/Contract Manager for local agency consideration.

If there is any doubt in the RE/Contract Manager's mind regarding the requested substitution, the RE/Contract Manager may contact the DLAE for assistance and direction.

Record Keeping and Final Report Utilization of Disadvantaged Business Enterprises

The contractor shall maintain records showing the name and address of each first-tier subcontractor. The records shall also show:

1. The name and business address, regardless of tier, of every DBE subcontractor, DBE vendor of materials and DBE trucking company.
2. The date of payment and the total dollar figure paid to each of the firms.
3. The DBE prime contractor shall also show the date of work performed by their own forces along with the corresponding dollar value of the work claimed toward DBE goals.

When a contract has been completed, the contractor will provide a summary of the records stated above. The DBE utilization information will be documented on the form "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" (Exhibit 17-F) and will be submitted to the DLAE attached to the Report of Expenditures. The RE will compare the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form to the contractor's completed "Local Agency Bidder-DBE-Information" (Exhibit 15-G) and, if applicable, to the completed "Subcontracting Request" (Exhibit 16-B). The DBEs shown on the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier

Subcontractors" form should be the same as those originally listed unless an authorized substitution was allowed, or the contractor used more DBEs and they were added. The dollar amount should reflect any changes made in planned work done by the DBE. The contractor will be required to explain in writing why the names of the subcontractors, the work items or dollar figures are different from what was originally shown on the completed "Local Agency Bidder-DBE-Information" form when:

- There have been no changes made by the RE.
- The contractor has not provided a sufficient explanation in the comments section of the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form.

The explanation will be attached to the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form for submittal. The RE will file this in the project records.

The local agency's Liaison Officer will keep track of the DBE certification status on the Internet at www.dot.ca.gov/hq/bep and keep the RE informed of changes that affect the contract. The RE will require the contractor to act in accordance with existing contractual commitments regardless of decertification.

The DLAE will use the PS&E checklist to monitor the *[Name of Local Agency Recipient]*'s commitment to require bidders list information to be submitted to the *[Name of Local Agency Recipient]* from the awarded prime and subcontractors as a means to develop a bidders list. This monitoring will only take place if the bidders list information is required to be submitted as stipulated in the special provisions.

[Name of Local Agency Recipient] will bring to the attention of the DOT through the DLAE any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. *[Name of Local Agency Recipient]* also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

XIV Overall Goals (§26.45)

Amount of Goal

[Name of Local Agency Recipient]'s overall goal for the federal fiscal year FY _____(FY 2001 or later) is the following: ___% of the federal financial assistance in DOT-assisted contracts. This overall goal is broken down into ____% race-conscious and ____% race-neutral components.

Methodology

Before working on this section, refer to the two step process and choice of methods in Section 9.4 of this Chapter in the LAPM.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

Before working on this section, refer to race-neutral and race-conscious in Section 9.4 of this Chapter in the LAPM.

Process

Starting with the federal fiscal year 2002, the amount of overall goal, the method to calculate the goal, and the breakout of estimated race-neutral and race-conscious participation will be required annually by June 1 in advance of the federal fiscal year beginning October 1 for DOT-assisted contracts. Submittals will be to the Caltrans' DLAE. An exception to this will be if FTA or FAA recipients are required by FTA or FAA to submit the annual information to them or a designee by another date. FHWA recipients will follow this process:

Once the DLAE has responded with preliminary comments and the comments have been incorporated into the draft overall goal information, the *[Name of Local Agency Recipient]* will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the *[Name of Local Agency Recipient]*'s principal office for 30 days following the date of the notice, and informing the public that comments will be accepted on the goals for 45 days following the date of the notice. The notice must be published in general circulation media and available minority-focused media and trade association publications. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The overall goal resubmission to the Caltrans DLAE, will include a summary of information and comments received during this public participation process and *[Name of Local Agency Recipient]*'s responses. This will be due by September 1 to the Caltrans DLAE. The DLAE will have a month to make a final review so the *[Name of Local Agency Recipient]* may begin using the overall goal on October 1 of each year.

If there is a design build please refer to Appendix B of this Model DBE Program.

XV Contract Goals (§26.51)

[Name of Local Agency Recipient] will use contract goals to meet any portion of the overall goal *[Name of Local Agency Recipient]* does not project being able to meet by the use of race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. Contract goals need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). The contract work items will be compared with eligible DBE contractors willing to work on the project. A determination will also be made to decide which items are likely to be performed by the prime contractor and which ones are likely to be

performed by the subcontractor(s). The goal will then be incorporated into the contract documents. Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

XVI Transit Vehicle Manufacturers (§26.49)

If DOT-assisted contracts will include transit vehicle procurements, *[Name of Local Agency Recipient]* will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26, Section 49. *[Name of Local Agency Recipient]* will direct the transit vehicle manufacturer to the subject requirements located on the Internet at http://osdbuweb.dot.gov/programs/dbe/dbe.htm.

XVII Good Faith Efforts (§26.53)

Information to be Submitted

[Name of Local Agency Recipient] treats bidders'/offerors' compliance with good faith effort requirements as a matter of responsiveness. A responsive proposal is meeting all the requirements of the advertisement and solicitation.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information to *[Local Agency Recipient's address]* no later than 4:00 p.m. on or before the fourth day, not including Saturdays, Sundays and legal holidays, following bid opening:

1. The names and addresses of known DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participation;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Demonstration of Good Faith Efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26 which is attached.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive: *[Name individuals or committee who performs this function.]*

[Name of Local Agency Recipient] will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before a commitment to the performance of the contract by the bidder/offeror is made.

Administrative Reconsideration

Within 10 days of being informed by *[Name of Local Agency Recipient]* that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official*: [provide name, address, phone number, e-mail address]*. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The *[Name of Local Agency Recipient]* will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to Caltrans, FHWA or the DOT.

Good Faith Efforts when a DBE is Replaced on a Contract

[Name of Local Agency Recipient] will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The prime contractor is required to notify the RE immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the prime contractor will be required to obtain *[Name of Local Agency Recipient]* prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, *[Name of Local Agency Recipient]* contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

XVIII Counting DBE Participation (§26.55)

[Name of Local Agency Recipient] will count DBE participation toward overall and contract goals as provided in the contract specifications for the prime contractor, subcontractor, joint venture partner with prime or subcontractor, or vendor of material or supplies. See the Caltrans' Sample Boiler Plate Contract Documents. Also, refer to XIII. "After Contract Award."

XIX Certification (§26.83(a))

[Name of Local Agency Recipient] ensures that only DBE firms currently certified on the Caltrans' directory will participate as DBEs in our program.

XX Information Collection and Reporting

Bidders List

The *[Name of Local Agency Recipient]* will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted contracts. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

Monitoring Payments to DBEs

Prime contractors are required to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the *[Name of Local Agency Recipient]*, Caltrans, FHWA, or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Payments to DBE subcontractors will be reviewed by the *[Name of Local Agency Recipient]* to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Reporting to Caltrans

[Name of Local Agency Recipient] - Final utilization of DBE participation will be reported to the DLAE using Exhibit 17-F of the Caltrans' LAPM.

Confidentiality

[Name of Local Agency Recipient] will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local laws.

_____
[Signature of Local Agency Recipient's Chief Executive Officer] Date: _____

This Disadvantaged Business Enterprises Program is accepted by:

_____
[Signature of DLAE] Date: _____

APPENDIX A TO PART 26 -- GUIDANCE CONCERNING GOOD FAITH EFFORTS

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part 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.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

APPENDIX B
TO BE USED FOR DESIGN-BUILD CONTRACTS

The following are hereby incorporated into the Agency's Disadvantaged Business Enterprise (DBE) Program:

II Objectives /Policy Statement (§§26.1, 26.23)

At the end of the first paragraph, add the following:

The Agency recognizes that certain modifications are necessary to adapt the program for use in connection with design-build contracts, and has therefore established certain procedures applicable to design-build DBE contracts under the DBE Program. Public Contract Code Section 4109 requires subcontractors to be identified by the prime contractor for the subletting or subcontracting of any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid. Exceptions are only in the cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity. The written public record of the awarding authority/Agency as to either emergency or necessity is attached hereto (See Appendix C for sample).

XIII Monitoring and Enforcement Mechanisms (§26.37)

At the end of the first paragraph below "After Contract Award", add the following paragraph:

After Design-Build Contract Award

As described in the Section entitled "GOOD FAITH EFFORTS" below, each proposer for an Agency design-build contract will be required to submit a DBE Performance Plan as part of a responsive proposal. Following award of a design-build contract and during both the design and construction portions of the project, the design-build contractor will be required to submit documentation, in the form of progress reports described below, to show that the design-build contractor is meeting the contract goal for the project, or if the goal is not being met, the design-build contractor must submit satisfactory evidence that it has made good faith efforts, in accordance with Section XVII, to meet the goal. Evidence of good faith efforts, as described in 49 CFR Part 26 Section 26.53 and Appendix A, will be monitored by the Agency throughout the duration of the design-build project.

At the end of the first paragraph below "Preconstruction Conference", add the following sentence:

_____***The contractor will promptly provide the Agency with the information required by the form entitled "Local Agency DBE Information" upon selection of any DBE or other subcontractor not previously identified by the design-build contractor. During the course of the contract, differences must be explained and resolved by either making corrections or requesting a substitution.***

At the end of the fourth paragraph below "Construction Contract Monitoring", add the following paragraph:

_____***The contractor will provide DBE Progress Reports to the Agency with each invoice and will provide an annual report on or before August 1 of each year of the design-build contract. Each report must also include a narrative summary stating whether the contractor is on target with respect to the DBE goal set forth in the design-build contract, whether the goal has been exceeded (stating the amount of the excess), or whether the contractor is behind target (stating the amount of the deficit).***

XVII Good Faith Efforts (§26.53)

At the end of the third paragraph below "Information to be Submitted", add the following items:

> ***7. A DBE Performance Plan containing a detailed description of the design-build contractor's planned methodology for achieving the DBE goal stated in the contract, including a description of the good faith efforts the design-build contractor intends to undertake to achieve that goal.***
> ***8. A design-build proposal must also include an affidavit that the proposer will either attain the DBE goals for the design-build contract or will exercise good faith efforts to do so.***

At the end of the first paragraph below "Demonstration of Good Faith Efforts", add the following sentence:

If it is a design-build contract, each contractor proposing will be required to submit a DBE Performance Plan as part of a responsive proposal and good faith efforts.

_____
[Signature of Local Agency Recipient's Chief Executive Officer] Date: _____

This Disadvantaged Business Enterprise Program for design-build contracts is accepted by:

_____
[Signature of DLAE] Date: _____

APPENDIX C

RESOLUTION OF THE (Agency Name) REGARDING NECESSITY OR EMERGENCY FOR SUBSEQUENT SUBCONTRACTOR IDENTIFICATION AND SELECTION FOR DESIGN-BUILD CONTRACTS

(REQUIRED BY PUBLIC CONTRACT CODE SECTION 4109 ENTITLED "Public Emergency Grounds For Change")

A. EXPLANATION OF PUBLIC NECESSITY OR EMERGENCY

B. FACTS CONSTITUTING THE PUBLIC NECESSITY OR EMERGENCY

C. FINDINGS

D. RESOLUTION FOR SUBSEQUENT IDENTIFICATION OF SUBCONTRACTORS

E. ADOPTION OF PROCEDURE TO BE USED BY DESIGN-BUILD CONTRACTOR FOR SUBSEQUENT IDENTIFICATION OF SUBCONTRACTORS

F. CERTIFICATE OF SECRETARY

1. MOTION MADE AND DATE

2. VOTING RESULTS

3. SIGNATURES

(a) Secretary

(b) Chairperson

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(Agency Letterhead)

ANNUAL OVERALL GOAL INFORMATION

TO: CALTRANS DISTRICT _____
District Local Assistance Engineer

The amount of overall goal, methodology, breakout of estimated race-neutral and race-conscious participation, and any DBE program updates are presented herein in accordance with Title 49 of the Code of Federal Regulations Part 26, and as described in the *Local Assistance Procedures Manual*.

The City/County/Region of _____
submits our annual overall goal information (and any needed updates of our DBE program) for your review and comment. We [propose][1] [have established][2] an annual overall DBE goal of _____ % for the Federal Fiscal Year _____ / _____ , beginning on _____ and ending on _____ .

Methodology

[Before working on this section, refer to the two step process and choice of methods discussed in Chapter 9 of the *Local Assistance Procedures Manual*.]

Breakout of Estimated Race-Neutral and Race-Conscious Participation

[Before working on this section, refer to the race-neutral and race-conscious discussion in Chapter 9 of the *Local Assistance Procedures Manual*.]

DBE Program Updates

[Include in this section any changes to the approved DBE program]

_____ _____
DBE Liaison Officer Date

[1] To be used for submittal due June 1 of every year.
[2] To be used for submittal due September 1 of every year.

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GUIDELINES FOR CIVIL RIGHTS COMPLIANCE REVIEWS OF LOCATION PROCEDURES

GENERAL

In accordance with Title VI and Title VIII of the Civil Rights Act of 1964 and 1968, local agencies are required to follow certain location procedures on federal-aid highway projects. This guideline may be used to suggest areas for review.

1. As a result of the choice of highway locations or the procedures used in arriving at the choice, has the Agency, State, or Federal Highway Administration received any civil rights complaints? If so, what were the complaints and what has been done to resolve them?

2.a. To what extent does the agency employ minority staff personnel in the location program under review? Are these personnel involved in the following:

- Developing and comparing alternatives,
- Assessing impacts, and
- When used, operating through consultant contracts?

Are they involved in any other related areas? If not, what is being done to recruit and hire minority personnel?

2.b. What training or education sessions are conducted to increase the skills of minorities as well as non-minorities? Are promotional opportunities available for minorities? Does the Agency fill professional as well as nonprofessional positions with minorities? If not, what is being done to rectify these situations?

3. Does the Agency choose consultant firms without discrimination on the basis of race, sex, color, or national origin? Is there evidence that minority consultant and consultants with minority staffs offered equal employment opportunity? How many of these firms have contracts and what type are they?

4. Does the process for preparation of Environmental Impact Statements, or do the Environmental Impact Statements themselves, reflect any indication of a violation of any of the provisions of Title VI or Title VIII? If so, elaborate.

LOCATION DETERMINATION

When reviewing the process leading to location determination on a specific project, the following questions are to be used:

1.a. To what extent has the agency or consultant compiled the following information for use in the location determination?

1.b. The racial character of the portion of the area through which the alternate locations pass, including the approximate number by race of persons and families affected by each alternate (affected means all persons directly displaced or located in areas

directly adjoining the road.)

1.c. The social and economic character of the area through which alternates pass, including levels of income, whether the area is commercial or residential, and the approximate number of minority and non-minority owners of businesses and residences in the area.

1.d. The racial character of the people employed in the area affected by each alternate.

2. How was the racial and ethnic data used to identify possible problem areas and adverse impacts, such as relocation difficulties or possible changes in minority income capabilities, mobility, or community cohesion? What efforts have been made to rectify these problem areas and minimize the adverse impacts?

3. Will a minority area be bypassed or separated from contiguous areas by an of the alternatives, and if so, what effect will this have on the minority community? To what extent will it perpetuate patterns of segregation?

4. How will each of the alternates affect the use of various community facilities and services such as hospital, libraries, shopping areas, fire stations, police installations, schools, churches, parks and recreation centers by minority groups in the area?

5. To what extent will each of the locations produce an adverse effect of residential, commercial and industrial development existing or planned within minority communities?

6. What attempt has the Agency made to satisfy minority community planning goals and needs? To what extent were the goals and needs determined utilizing input from the minority community?

7. Have the gradeline, safety considerations, cross-street treatment, pedestrian overpasses, and other design features been established for alternatives to the same degree in minority areas as in nonminority areas?:

8. Is access to and from the various alternates provided without discrimination?

9. Would the alternates have an effect on traffic volumes on adjacent streets within minority communities? To what extent has the Agency studied the effect of increased or decreased traffic on residences and businesses?

10. To what extent have aesthetics, noise, and air quality been considered within minority communities?

11. Has all the above information been adequately tabulated and mapped for use in the location determination?

COMMUNITY PARTICIPATION

In any review of projects, a determination should be made that the minority groups have had an opportunity to provide meaningful input into the decision-making process regarding their goals and needs as they pertain to the location determination. The following questions should be used:

1. To what extent do the Agency's procedures provide for consultation with and dissemination of information to minority community and groups?

2. Where non-English speaking minorities are involved, what provisions are made to overcome language barriers?

3. How are the minority leaders identified and encouraged to provide suggestions and ask questions about locations?

4. To what extent are informal hearings and meetings held with the affected minority communities and groups?

5. To what extent does the Agency respond to questions asked and consider comments made by minorities?

6. To what extent are minority community and groups represented on the various councils, boards, and committees, etc., that provide input to the location determination? How were these representatives selected and have they been given an equal voice?

PUBLIC HEARINGS

When reviewing the conduct of public hearings, the following questions should be used:

1. Are hearing(s) held at a place and time convenient to minority community and groups?

2. Are advertisements of the hearing(s) (i.e., newspapers, posters, radio, etc.) adequate to provide notification to minorities?

3. Where non-English speaking minorities are involved, what provisions are made to overcome language barriers both in advertisements and at the hearing(s) ?

4. Are minority leaders specifically invited to attend and present their views? Do they attend? Do they make comments?

5. To what extent does the Agency respond to questions asked and consider comments made by minority persons at the hearing(s)?

6. To what extent are fair housing requirements and the availability of hardship acquisition discussed at public hearings when minorities are to be relocated.

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CHAPTER 10 CONSULTANT SELECTION

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unusual situations. These situations require a thorough justification as to why the local agency cannot perform the work. Consultants used in management roles must be selected using the same procedures as those for other consultants specified in this directive with full justification retained in the project files for future reference.

DETERMINING THE PROJECT SCHEDULE

The local agency develops a schedule to show the time for performance of work and completion of the project. The schedule includes sufficient time to allow for selecting consultants, developing consultant contracts, completing the pre-award audit, and conducting meetings and project reviews.

SEGMENTING CONSULTANT WORK

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable.

Preparing an environmental assessment or environmental impact statement is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning assessment. Initial project studies include only as much traffic and engineering analysis of alternatives as is needed to produce a sound environmental assessment or environmental impact statement (see Chapter 6, "Environmental Procedures"). Final detailed design is delayed until environmental clearance has been received if federal reimbursement is desired.

Figure 10-1 illustrates several satisfactory ways to segment consultant activities.

SPECIFY PRODUCTS TO BE DELIVERED

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

DEFINE SCOPE OF CONSULTANT WORK

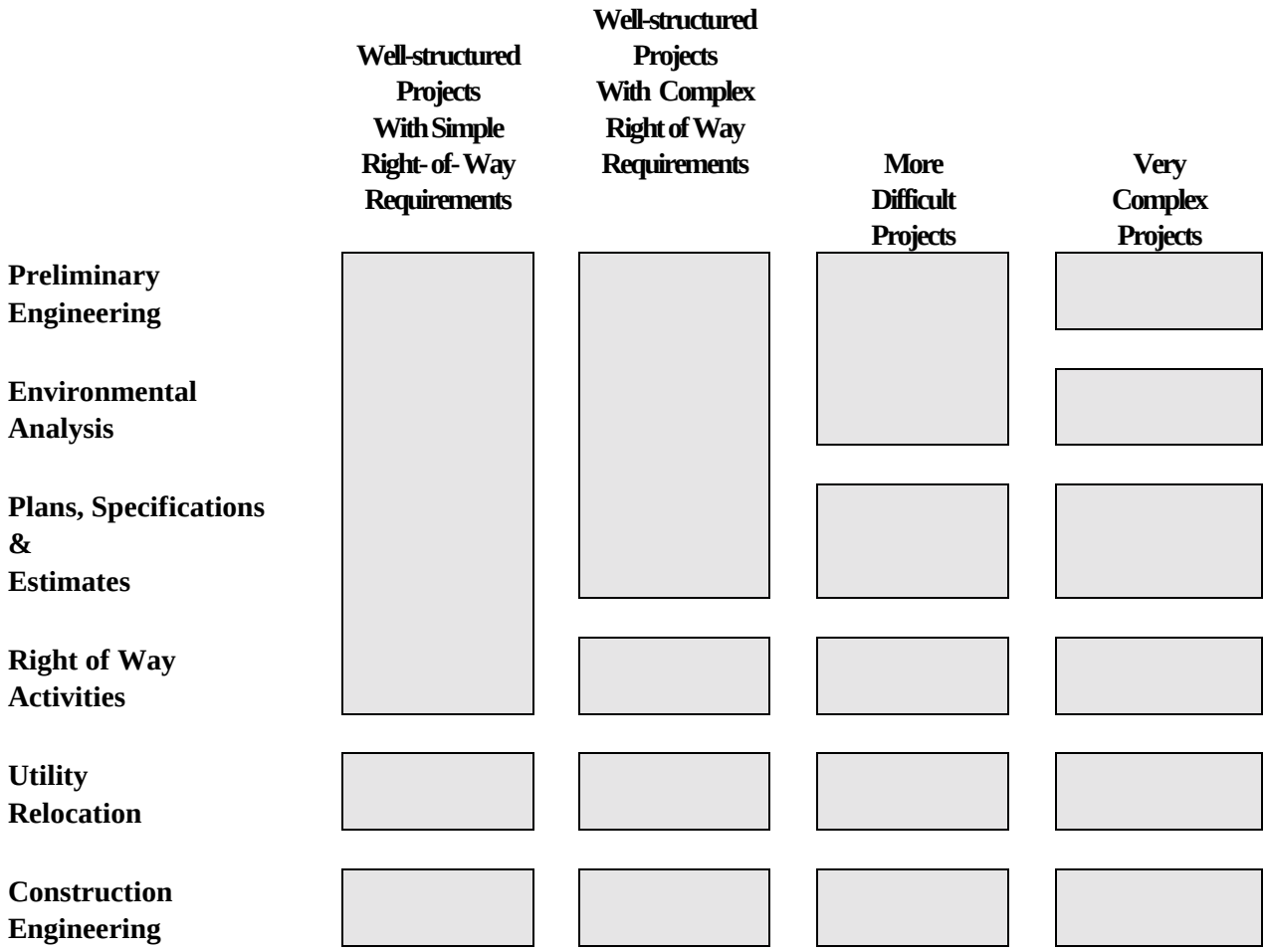
The scope of work, which the contract must include, is a detailed description of the products or services the consultant is to provide. From a detailed scope of work, consultants responding to a project advertisement determines personnel and time requirements, and develops a technical proposal and person-hour estimate for the contract.

ESTABLISH INTENT FOR DBE PARTICIPATION

A local agency receiving federal funds must have an adopted Disadvantaged Business Enterprise (DBE) program and annual goals. The local agency's policy must be that certified DBE firms shall have the maximum opportunity to participate in the performance of such contracts. Such steps include soliciting DBE firms and, when feasible, organizing the project schedule and task requirements to encourage participation by DBE firms. The consultant shall ensure that certified DBE firms have the maximum opportunity to

participate in the performance of the contract and shall take all necessary and reasonable steps for such assurance. The consultant has the added responsibility for meeting the goal or documenting a good faith effort to meet the goal by using DBEs as sub-consultants when the contract has a DBE goal. If a DBE subconsultant is unable to perform, the consultant must make a good faith effort to replace him/her with another DBE subconsultant if the goal is not otherwise met. DBE efforts shall be documented and verified. See Exhibit 10-I, "Bidder/Proposer DBE Participation Requirements and Instructions" for more detailed information. See exhibit 10-J, "Sample DBE Participation Requirements" for sample contract clauses with and without specified DBE goals.

Figure 10-1 Segmenting Consultant Work



ESTIMATE COST OF CONSULTANT WORK

An independent cost estimate is needed to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance so the local agency's negotiating team has a detailed analysis of the project from which to evaluate the strengths and weaknesses of the consultant's cost proposal. The estimate is kept confidential for use by the local agency negotiating team.

BIDDER/PROPOSER DBE PARTICIPATION REQUIREMENTS AND INSTRUCTIONS

(For Local Agency Contracts Fully Or Partially Funded With Federal Funds)

This project is subject to Part 26, Title 49, Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs." Bidders/proposers shall be fully informed of the requirements of the regulations and the [Local Agency's] Disadvantaged Business Enterprise (DBE) program developed pursuant to the regulations.

DEFINITIONS

A DBE must be a small business concern as defined pursuant to the Small Business Act and Small Business Administration (SBA) regulations. A firm is not an eligible DBE in any federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of $16.6 million.

A DBE is a for profit small business concern that is:

1. At least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation (publicly- owned business), at least 51% of the stock is owned by one or more such individuals and

2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

AWARD AND SUBSTITUTION

Award of this contract will be to the lowest responsive and responsible bidder/proposer or to the most qualified Architectural and Engineering (A&E) firm whose proposal complies with all the requirements prescribed and who has met the goal for DBE participation or demonstrated, to the satisfaction of the [Local Agency], that the bidder/proposer has documented adequate good faith efforts to do so as required by these instructions. Failure to do so will be cause for rejection.

If awarded the contract, Contractor may not substitute a person as a subcontractor in place of the DBE subcontractor listed in the original bid/proposal without the written authorization of the contract manager pursuant to the term of the contract. Failure to obtain approval may result in payment being denied.

COMMERCIALLY USEFUL FUNCTION

A DBE must perform a commercially useful function, i.e. must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work or in accordance with the factors described in Section 26.55, 49 CFR Part 26 for materials, supplies or trucking.

DBE PARTICIPATION

A bidder/proposer in order to be considered a responsible and responsive bidder must make good faith efforts to meet the goal established for the contract. The bidder/proposer can meet this requirement in either of two ways:

1) meet the goal, documenting commitments for participation by DBE firms; or

2) if the goal is not met, the bidder/proposer must document adequate good faith efforts.

A bidder/proposer (prime contractor) who is not a certified DBE bidder/proposer will be required to document one or a combination of the following:

1. The bidder/proposer will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.

2. The bidder/proposer, prior to bidding, made a adequate good faith efforts to meet the goal.

A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, or as a vendor of material or supplies or as a trucking company.

A certified DBE bidder/proposer not bidding as a joint venture with a nonDBE, will be required to document one or a combination of the following:

1. The DBE bidder/proposer will meet the goal by performing work with its own forces:

2. The bidder/proposer will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.

3. The bidder/proposer prior to bidding, made adequate good faith efforts to meet the goal.

A DBE joint venture partner must be responsible or specific contract items of work, or portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces.

The DBE joint venture partner must share in the capital contributions, control, management, risks and profits of the joint venture. The DBE joint venture must submit the joint venture agreement with the bid or proposal or the DBE participation information form attached to these instructions.

If the bidder/proposer documents adequate good faith efforts to meet the goal, the award cannot be denied on the basis that the bidder/proposer failed to meet the goal.

The bidder/proposer (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal.

Any dollar amount of work, service or supplies proposed for DBE participation can only be counted once. That is, any further subcontracting or spending for DBE work, service or supplies already credited once for DBE participation cannot be counted again.

DBEs must be certified by the Caltrans Civil Rights Program or a participating California local agency, which has a reciprocal agreement with Caltrans and which certifies in conformance with 49 CFR, Part 26 regulations, by the Invitation for Bid (IFB) opening date or by the Request for Proposal (RFP) or Architectural and Engineering (A&E) contract Statement of Qualification (SOQ) due date before credit may be considered toward meeting the DBE goal.

Firms that are self-certified as DBEs are not eligible for DBE credit.

A prime contractor who is a certified DBE is eligible to claim all of the work it performs in the contract toward the goal except that portion of the work to be performed by nonDBE subcontractors.

Credit for materials or supplies purchased from DBEs will be as follows:

1. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will count toward the DBE goal. NOTE: A DBE manufacturer is a firm that operates or maintains a factory or establishment that procedures, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

2. If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will count toward the DBE goal.

NOTES:

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

2) To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business as provided in this paragraph if the person owns and operates distribution equipment for the products.

3) Any supplementing of regular dealers' own distri-bution equipment shall be by a long-term lease agreement and not on an ad hoc or contract by contract basis.

4) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.

5) Credit for materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer will be <u>limited to</u> the entire amount of <u>fees or commission</u> charged for assistance in the procurement of the materials an supplies or fees or transportation charges for the delivery of materials or supplies required on a job site, provide fees are reasonable and not excessive as compared with fees charged for similar services. The cost of materials or supplies are not counted toward the DBE goal in this instance.

<u>Credit for DBE trucking companies will be as follows:</u>

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee provides on the contract. The DBE may also lease trucks from a nonDBE firm, including an owner-operator. The DBE who leases trucks from a nonDBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement.

5. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

6. A lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck.

7. Leased trucks must display the name and identification number of the DBE.

SUBMISSION OF DBE INFORMATION

To be eligible for award of the contract, bidders or proposers must either have met the DBE goals or have provided documentation to establish that prior to bid or cost proposal submittal, the bidder or proposer has made adequate good faith efforts to do so. Final determination of goal attainment or good faith effort by the bidder or proposer will be at the [Local Agency's] discretion.

The required DBE information shall be submitted on the DBE Participation Exhibit 15-G attached to these instructions.

It is the bidder/proposer's responsibility to make enough work available to DBEs and to select those portions of the work or material needs consistent with the available DBEs to meet the goal.

It is the responsibility of the bidder/proposer to verify that DBEs are certified.

Bidders/proposers are cautioned that even though their submittal indicates they will meet the stated DBE goal, their submittal should also include their adequate good faith efforts information along with their DBE goal information to protect their eligibility for award of the contract in the event the [Local Agency], in its review, finds that the goal has not been met.

The bidders/proposers DBE information shall include:

1) The names of DBE firms that will participate in the contract with a complete description of work or supplies to be provided by each DBE and the dollar value of each proposed DBE transaction.

2) A written confirmation from each DBE that is participating in the contract. A copy of the DBEs quote will serve as written confirmation that the DBE is participating in the contract.

3) When 100 percent of a contract item of work is not to be performed or furnished by a DBE, a description of the exact portion of that work to be performed or furnished by that DBE shall be included in the DBE information including the planned location of that work.

4) The work that a DBE prime contractor has committed to be performed with its own forces as well as the work that it has committed to be performed by DBE subcontractors, suppliers and trucking companies will be required.

GOOD FAITH EFFORTS

The information necessary to establish the bidder/proposer's adequate good faith efforts to meet DBE goal should include:

1. The names and dates in each publication which a request for DBE participation for this contract was placed by the bidder/proposer.

2. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested.

3. The items of work which the bidder/proposer made available to DBE firms, including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation.

Note: It is the bidder/proposer's responsibility to demonstrate that sufficient work to meet the DBE goal was made available to DBE firms.

4. The names, addresses, and telephone numbers of rejected DBE firms, the firms selected for that work, and the reasons for the bidder/proposer's choice.

5. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs.

6. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate.

7. The names of agencies contacted to provide assistance in contacting, recruiting and using DBE firms.

8. Any additional data to support a demonstration of good faith efforts.

Note: The Caltrans Civil Rights Program maintains a website, which includes a directory of certified DBE firms at: www.dot.ca.gov/hq/bep.

RIGHT OF ADMINISTRATIVE CONSIDERATION

If the apparent successful bidder/proposer has failed to meet the DBE requirements by failing to document it has obtained enough DBE participation to meet the goal; or did not succeed in documenting adequate good faith efforts, the bidder/proposer has five (5) calendar days after notification by the [Local Agency] to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

Written documentation must be submitted to:
[Local Agency]
[Local Agency's address]
Phone:
Fax:

A written decision on reconsideration will be issued within _____days of receipt of the request.

SAMPLE
DBE PARTICIPATION REQUIREMENTS

This information is not intended to constitute an entire contract. The information contained herein is only a sample of clauses needed for DBE participation.

Use the following Article for contracts with no DBE goals specified. Delete the Articles after this.

ARTICLE _____DBE PARTICIPATION REQUIREMENTS

A. Disadvantaged Business Enterprise (DBE) Participation (Without Goals)

1. The [Local Agency] has established no goals for the participation of DBE for this contract. However, the Contractor shall be fully informed in respect to Part 26, Title 49, Code of Federal Regulations, which is incorporated by reference, and is urged to obtain DBE participation should a clearly defined portion of the work become available.

2. It is the policy of the [Local Agency] that certified DBE firms shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. The Contractor shall ensure that certified DBE firms, as defined in said Code of Federal Regulations, have the maximum opportunity to participate in the performance of this contract and shall take all necessary and reasonable steps, as set forth in said Part 26, for such assurance. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subconsultants. Failure to carry out the requirements of this paragraph shall constitute a breach of contract and may result in termination of this contract or such other remedy the [Local Agency] may deem appropriate.

3. If DBE participation is obtained, the Contractor shall maintain records of all subconsultant agreements entered into with DBE subconsultants and records of materials purchased from DBE suppliers. Such records shall show each subconsultant's and vendor's name and address and the actual dollars paid to each. Upon completion of the contract, a summary of these records shall be prepared, certified correct and submitted on the form "Final Report - Utilization Of Disadvantaged Business Enterprises (DBE), First - Tier Subcontractors" (Exhibit 17-F), or equivalent, by the Contractor or his authorized representative to the [Local Agency]'s Contract Manager showing total dollars paid to each DBE subconsultant and supplier.

4. Any DBE firm working as a subconsultant under this contract must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.

5. The Contractor need not replace a certified DBE firm that is unable to perform the provisions of this contract with another certified DBE firm.

B. Prompt Payment to DBE and NonDBE Contractors

The Contractor shall not be entitled to any payment for the work or material, unless it is performed or supplied by the listed subcontractors (DBE or nonDBE), or by the Contractor's own forces, pursuant to prior written authorization of the Contract Manager. This is the case even if other contract work is not completed and has not been accepted in conformance with the terms of the contract by the State. The Contractor shall pay all DBE subcontractors and nonDBE subcontractors for satisfactory performance of their contracts within ten (10) days from receipt of each payment from the [Local Agency] made to the Contractor.

C. Prompt Payment Progress Pay Retention to DBE and NonDBE Subcontractors

The Contractor shall return all moneys withheld in retention from the subcontractor within 30 days after receiving payment for work satisfactorily completed, even if other contract work is not completed and has not been accepted in conformance with the terms of the contract. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or subcontractor in the event of a dispute involving late payment or nonpayment to the Contractor or deficient subcontract performance or noncompliance by a subcontractor.

Use the remainder of these Articles for contracts with DBE goals specified.

ARTICLE _____DBE PARTICIPATION REQUIREMENTS

A. DBE Participation Requirements and Regulations General

The DBE participation for this contract is _____percent.

The Contractor shall carry out applicable requirements of 49 CFR, Part 26, of the Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," in the award and administration of DOT-assisted contracts. The regulations in their entirety are incorporated herein by reference. The Contractor shall not discriminate on the basis of race color, national origin or sex in the performance of this contract.

Noncompliance by the Contractor with the requirements of the regulations is a material breach of this contract and may result in termination of the contract or other such appropriate remedy as the [Local Agency] deems appropriate.

The Contractor shall include the following in each subcontract the Contractor signs with a subcontractor:

1. A subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

2. The subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract.

3. Contractors shall include in their subcontracts, language providing the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

B. Performance of DBE Contractors, Subcontractors and Suppliers

Delete this paragraph if the Prime Contractor is not a DBE.

DBE prime contractors must perform at least 30 percent of the total cost of this contract with their own work force.

DBE subcontractors shall perform the work and supply the materials for which they have been listed in the Contractor's response to the contract award requirements in Exhibit 15-G, "Local Agency - Bidder DBE – Information" of the *Local Assistance Procedures Manual* (LAPM), attached, unless the Contractor has received prior written authorization to perform the work with other forces or to obtain the materials from other sources as set forth in Paragraph G, "DBE Substitution and Additions", of this Article.

C. Prompt Payment to DBE and NonDBE Contractors

The Contractor shall not be entitled to any payment for the work or material, unless it is performed or supplied by the listed subcontractors (DBE or nonDBE), or by the Contractor's own forces, pursuant to prior written authorization of the Contract Manager. This is the case even if other contract work is not completed and has not been accepted in conformance with the terms of the contract by the State.

Delete the Following Paragraph if there are No Trucking Company Subcontractors

Prior to the fifteenth of each month, the Contractor shall submit documentation to the Contract Manager showing the amount paid to DBE trucking companies listed in the Contractor's DBE information. This monthly documentation shall indicate the portion of the revenue paid to DBE trucking companies which is claimed toward DBE participation. The Contractor shall also obtain and submit documentation to the Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. The DBE who leases trucks from a nonDBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The records must confirm that amount of credit claimed toward DBE participation conforms with Paragraph J of this Article.

The Contractor shall also obtain and submit documentation to the Engineer showing the truck number, owner's name, California Highway Patrol CA number and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month for which DBE participation will be claimed. This documentation shall be submitted on Exhibit 16-Z, "Monthly DBE Trucking Verification" of the LAPM.

The Contractor shall pay all DBE subcontractors and nonDBE subcontractors for satisfactory performance of their contracts within ten (10) days from receipt of each payment from the [Local Agency] made to the Contractor.

D. Prompt Payment Progress Pay Retention to DBE and NonDBE Subcontractors

The Contractor shall return all moneys withheld in retention from the subcontractor within 30 days after receiving payment for work satisfactorily completed, even if other contract work is not completed and has not been accepted in conformance with the terms of the contract. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or subcontractor in the event of a dispute involving late payment or nonpayment to the Contractor or deficient subcontract performance or noncompliance by a subcontractor.

E. DBE and NonDBE Subcontractor Payment Records

The Contractor in addition to maintaining records showing the name and business address of each first tier subcontractor, shall also show the name and business address of every DBE subcontractor, DBE vendor of materials and if applicable, DBE trucking company, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all DBE firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of work.

Upon completion of the contract, a summary of these records shall be prepared on Exhibit 17-F, "Final Report Utilization of Disadvantaged Businesses" of the LAPM and certified correct by the Contractor or the Contractor's authorized representative, and shall be furnished to the Contract Manager. The Exhibit shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of

DBE payments with the final invoice will result in the invoice being in dispute until the report is received.

F. Penalty Assessed for Failure to Provide Subcontractor Payment Records

$_____ ($10,000) will be withheld from payment if Exhibit 17-F, "Final Report Utilization of Disadvantaged Businesses" of the LAPM is not submitted. The amount will be paid to the Contractor when the form is submitted.

G. DBE Substitutions or Additions

The Contractor may not substitute, or terminate for convenience a subcontractor, a supplier or— if applicable— a trucking company, listed in the original bid/proposal without the prior written approval of the Contract Manager. However, the Contractor may add a firm to perform work originally planned to be done by the Contractor's own forces.

The Contractor must make an adequate good faith effort to find another certified DBE subcontractor to substitute for the original DBE. The Contractor will be required to make good faith efforts to replace the original DBE subcontractor with another DBE subcontractor to the extent needed to meet the contract goal.

The requirement that DBEs must be certified by the bid opening date does not apply to DBE substitutions or additions after award of the contract. DBEs must be certified at the time of the substitution or addition.

Contractors shall submit requests for substitution in writing to the Contract Manager. Authorization to use other subcontractors or suppliers may be requested for the following reasons:

1. The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions for this contract or on the terms of such subcontractor's or supplier's written bid, is presented by the Contractor.

2. The listed DBE becomes bankrupt or insolvent.

3. The listed DBE fails or refuses to perform the subcontract or furnish the listed materials.

4. The Contractor stipulated that a bond was a condition of executing a subcontract and the listed DBE subcontractor failed or refuses to meet the bond requirements of the contract.

5. The listed DBE was the result of an inadvertent clerical error. The Contractor must have asserted a claim of inadvertent clerical error in listing the subcontractor within two working days after the bid opening and copies of that notice to both the subcontractor he or she claims to have listed in error and intended subcontractor who had bid to the Contractor prior to bid/proposal opening.

6. The listed DBE was not licensed as required by the State of California Contractor's Licensing Board or failed to have the required permits or licenses as required by Federal, State or Local governmental jurisdictions.

7. The work performed by the listed subcontractor is substantially unsatisfactory and is not in substantial conformance with the scope of work to be performed, or the subcontractor is substantially delaying or disrupting the progress of the work.

8. When the listed DBE is ineligible to work on a public works project pursuant to Section 1777.1 or 17777.7 of the Labor Code.

9. When it is in the best interest of the Local Agency.

Prior to approval of the Contractor's request for substitution to the Contract Manager, the Contractor shall give notice in writing to the listed DBE subcontractor of the Contractor's request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified, shall have five working days within which to submit written objections to the substitution to the Contract Manager. Failure to respond to a written objection shall constitute the listed subcontractor's consent to the substitution.

H. Termination of a DBE

In conformance with Federal DBE regulation Sections 26.53(f)(1) and 26.53(f)(2), Part 26, 49 CFR, the Contractor shall not:

1. Terminate for convenience a listed DBE subcontractor and then perform that work with its own forces (personnel), or those of an affiliate, unless the Contractor has received prior written authorization from the Contract Manager to perform the work with other forces or to obtain materials from other sources

2. If a DBE subcontractor is terminated or fails to complete its work for any reason, the Contractor will be required to make good faith efforts to replace the original DBE subcontractor with another DBE subcontractor to the extent needed to meet the contract goal.

I. DBE Certification Status

If a DBE subcontractor is decertified during the life of the contract, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the contract, the subcontractor shall notify the Contractor in writing with the date of certification.

Upon completion of the contract, the Contractor shall complete Exhibit 17-F, "Final Report Utilization of Disadvantaged Businesses" of the LAPM, indicating the DBEs certification status and shall be signed and certified correct by the Contractor. The certified form shall be furnished to the Contract Manager within 30 days from the date of completion of the contract.

J. DBE Eligibility Toward Goal

The dollar value of work performed by **a DBE is credited/counted toward the goal only after the DBE has been paid.**

Delete the following paragraph if the prime contractor is not a DBE

Credit for DBE Prime Contractors

The prime contractor who, is a certified DBE, is eligible to claim the prime contractor's work toward the goal.

Credit for Material or Supplies

Credit for materials or supplies purchased from DBEs will be as follows:

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

If the materials or supplies purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will count toward the DBE goal.

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.

Credit for materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer will be limited to the entire amount of fees or commissions charged for assistance in the

procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

Delete the following paragraph if there are no trucking company subcontractors

Credit for DBE trucking companies will be as follows:

The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible. There cannot be a contrived arrangement for the purpose of meeting the DBE goal.

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 nonDBE firm, including an owner-operator. The DBE who leases trucks from a nonDBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

For the purposes of this paragraph, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working or others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

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TRAFFIC SIGNAL CONTROLLERS

Assembly Bill 3418 (1995) which amended Section 21401 of the California Vehicle Code requires "any traffic signal controller that is newly installed or upgraded by the Department of Transportation or a local authority after January 1, 1996, shall be of a standard traffic signal communication protocol capable of two-way communications." Communication standards for traffic signal controllers are available from the National Transportation Communications for ITS Protocol. This information may be accessed through the Internet at http://www.ntcip.org/.

SAFETY

The following publications have also been developed to aid the designer in improving highway safety:

- Caltrans *Traffic Manual* (deviations from mandatory standards for signs and markings are not permitted)
- *Designing Safer Roads*, Special Report 214, Transportation Research Board
- *Roadside Design Guide*, 1995 (available through AASHTO)

These publications are primarily informational or guidance in nature and serve to assist local agencies in knowing the information valuable to attaining good designs. All designers should be familiar with these documents. Although the principles contained are written primarily for high-speed highway facilities, consideration should be given to their application on other types of projects regardless of traffic volumes and design speed. Project-by-project deviations from the criteria in these publications do not require handling in accordance with design exception approval procedures cited in Section 11.4 of this chapter. However, any deviations should be justified and documented in the project files.

Evaluating accident records is an integral step in developing highway projects and often reveals problems requiring special attention and corrective action. Accident records are available from the Statewide Integrated Traffic Records System (SWITRS) for analysis. Relative accident rates can influence the priorities of projects and ensure that project objectives and the scope of design are related to accident causes. In addition, it may be necessary to use a cost/benefit study and an investigation of accident experience to determine if the correction of an identified safety problem is cost effective. Significant safety problems, such as narrow bridges or culverts, railroad crossings or fixed objects which are not cost effective to correct, must be provided with suitable warning and traffic control devices. For example, no bridges may be left in place which have a width narrower than the surfaced approach roadway unless suitable signing, marking and parapet protection are provided.

On many local agency projects, right of way considerations may limit the extent to which side slopes may be flattened and roadside clearances obtained. In such situations it is expected that the desired smooth and obstacle-free roadside will be obtained to the extent feasible.

BIKEWAY STANDARDS

The standards for bikeway projects shall conform to Chapter 1000 of the Caltrans *Highway Design Manual*. Deviations from the "mandatory" bikeway standards stated therein require approval in accordance with the design exception approval procedures described in Section 11.4 of this chapter.

PEDESTRIAN FACILITIES

ACCESSIBILITY

Title II of the federal law known as the Americans with Disabilities Act (ADA) of 1990 prohibits discrimination on the basis of disability by public entities. This means that a public entity may not deny the benefits of its programs, activities and services to individuals with disabilities because its facilities are inaccessible. A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to all existing facilities of a public entity. Public entities, however, are not required to make each of their existing facilities accessible, as long as persons with disabilities have "equal access" to the goods and services provided to persons without disabilities.

Public entities may achieve program accessibility by a number of methods. In many situations, providing access to facilities through structural methods, such as alteration of existing facilities and acquisition or construction of additional facilities, may be the most efficient and "equal" method of providing program accessibility.

Where structural modifications are required to achieve program accessibility, a public entity (city, county, or State of California) with 50 or more employees is required to develop a transition plan setting forth the steps necessary to complete such modifications. A public entity shall also provide an opportunity to interested persons, including individuals with disabilities or organizations representing the same, to participate in the development of the transition plan by submitting comments. A copy of the transition plan must be made available for public inspection for a period of three years.

If a public entity has responsibility or authority over streets, roads or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walkways cross curbs, giving priority to walkways serving local government offices and facilities, transportation and places of public accommodation, followed by walkways serving other areas.

The State of California has also adopted regulations specifying that all buildings, structures, sidewalks, curbs and related facilities constructed in California by the use of State, county or municipal funds, or the funds of any political subdivision of the State, shall be accessible to and usable by persons with disabilities. The Division of the State Architect (DSA) is given responsibility for developing regulations and standards to ensure full accessibility. These regulations and standards are to prescribe no lesser a standard of accessibility or usability than provided by the Accessibility Guidelines prepared by the Federal Access Board (see below) to implement the ADA (ref: Government Code Section 4450).

Based on both the federal and State laws and regulations, all newly-constructed facilities must allow full accessibility. When existing facilities are being reconstructed or modified, the contract must also include work to make these facilities fully accessible. "Title II-6.6000" of the Department of Justice's "Technical Assistance Manual" further clarifies this by stating: "When streets, roads, or highways are newly built or altered, they must have ramps or sloped areas wherever there are curbs or other barriers to entry from a sidewalk or path. Likewise, when new sidewalks or paths are built or are altered, they must contain curb ramps or sloped areas wherever they intersect with streets, roads, or highways. Resurfacing beyond normal maintenance is an alteration. Merely filling potholes is considered to be normal maintenance."

State and local governments, regardless of whether they receive federal funds, are required to comply with the Federal ADA Accessibility Guidelines (ADAAG), Title 24, or Local Code, whichever provides the greatest access. Private-funded improvements are required to comply with the Federal ADA Accessibility Guidelines (ADAAG) and with Title 24, whichever code offers the greatest access or protections to individuals with disabilities.

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CHAPTER 12 PLANS, SPECIFICATIONS & ESTIMATE

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CHAPTER 12 PLANS, SPECIFICATIONS, & ESTIMATE

12.1 INTRODUCTION

For locally sponsored projects on the State highway system, the local agency must enter into a cooperative agreement with Caltrans to establish the responsibility for project PS&E (see Caltrans *Cooperative Agreement Manual*).

The preparation of the plans, specifications, and estimate (PS&E) for local federal-aid projects off the State highway system is the responsibility of the local agency.

Except for major NHS projects, local agencies will certify that their project PS&E complies with all applicable federal and State regulations and procedures. A PS&E checklist form is included as Exhibit 12-D and summarizes the items requiring local agency compliance. The local agency's project PS&E certification checklist must be submitted to the Caltrans District Local Assistance Engineer (DLAE) along with their "Request for Authorization" to proceed with construction. Local agency PS&Es are reviewed on a periodic basis as part of Caltrans' process review program.

The policies and procedures contained in this chapter reflect current federal requirements for the PS&E phase of local federal-aid projects. These instructions do not necessarily address the relevant State laws and local regulations with which a local agency must also comply.

DEFINITIONS

Design Standards - The standards, specifications, procedures, guides and references listed herein that are acceptable for application in the geometric and structural design of federal-aid projects.

Controlling Criteria - The specific minimum criteria and controls contained in the design standards for highway projects that are considered of primary importance for safety. Deviations from these controlling criteria require design exception approval.

Design Exception Approval - A process to justify, approve and document allowable deviations from controlling criteria.

Specifications - The directions, provisions and requirements contained in the contract documents for a specific construction project. Included are various proposal conditions, contract administration provisions, required construction methods and material specifications.

Standard Specifications - A published document that contains commonly used specifications developed for use as a reference for construction contract documents.

Standard Plans - A collection of plan details developed for use as a reference for construction contract documents. Included are standard abbreviations, symbols, design notes, design conditions and data, construction details, specifications, layouts, and measurement and payment details.

12.2 PS&E PROCEDURES FOR MAJOR NHS PROJECTS

For major projects on the NHS, the local agency's written PS&E procedures must be approved by Caltrans before final design is started. The DLAE will determine which projects require this approval at the field review (see Chapter 7 of this manual). The procedures should identify changes from the procedures described in this chapter and as a minimum cover the following items:

- Project Management personnel and procedures
- Highway Design Standards (and any other Technical standards as appropriate)
- Consultant Selection procedures
- Project DBE goal setting procedures
- Review and approval procedures
- Oversight procedures if a State highway is involved
- Maintenance of records and Access

The DLAE should consult with headquarters Office of Local Programs (OLP) for assistance with the review of the local agency procedures.

12.3 ENVIRONMENTAL PROCEDURES

The Code of Federal Regulations, Title 23 (Highways), Part 771.113 (23 CFR 771.113) prohibits starting work on the final design phase of a federally funded project until after approval of the final environmental document (see Chapter 6 "Environmental Procedures" of this manual). Failure to comply with this requirement will make a project ineligible for federal reimbursement.

COMPLIANCE WITH ENVIRONMENTAL LAWS

The local agency is responsible for insuring that mitigation measures presented as commitments in environmental documents, and that conditions and restrictions, associated with regulatory permits, are incorporated into appropriate contract documents, plans, specifications and estimates prior to proceeding with major construction activities such as land acquisition or construction. Environmental documents referred to here may be a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

Failure to meet mitigation commitments may render the project ineligible for federal reimbursement.

Omission or modification of a mitigation commitment, thereby creating new significant environmental effects will result in the need to prepare a re-evaluation (if three years have passed since approval of the environmental document) to assess any changes that have occurred and their effect on the validity of the environmental document. Changes in project design, applicable laws or regulations, or environmental impacts may also require environmental re-evaluation, including additional studies, consultation and public involvement. If the document is an EIS, a Supplemental EIS may be required.

PRELIMINARY DESIGN

Local agencies may complete all necessary design work needed to complete the environmental document or to comply with other environmental laws during the NEPA process. This should not be construed as an authorization to proceed with final design for the entire project, but only for those aspects of the project necessary to consider specific environmental concerns. An example of this is where such work is necessary to permit the full evaluation of environmental impacts and to permit the consideration of appropriate mitigation measures, e.g., impacts to wetlands, Section 4(f) areas and resources covered by Section 106 of the National Historic Preservation Act.

FINAL DESIGN

Local agencies may not proceed with final design activities until FHWA has approved the final environmental document and signed the CE, Finding of No Significant Impact (FONSI) or Record of Decision (ROD), or Caltrans has approved the application of a programmatic CE. Granting approval to proceed with final design prior to final environmental approval would be a premature commitment to one alternative at a time when other alternatives, including the alternative of taking no action, are still being actively considered by the FHWA, in the environmental process.

A summary of required mitigation measures can be found in the FONSI for projects processed with an Environmental Assessment, or in the ROD for projects processed with an Environmental Impact Statement, but detailed descriptions must be gleaned from the Final EA and EIS documents or from mitigation and/or monitoring plans (as appropriate).

Unique environmental commitments including, but not limited to, excavation of historic sites, protection of public-owned public parklands, removal and disposal of hazardous materials and the establishment of sensitive plant communities or wetland mitigation sites, are often complex and require technical expertise in the translation and transfer into final design. (Projects cleared with a CE may have environmental mitigation measures associated with resources and impacts that must also be incorporated into project planning.) In some cases, a plant establishment period or monitoring period is necessary and must be addressed during final design.

For complex projects, Caltrans staff are available to assist in the translation and proper transfer of environmental commitments into the final design.

Caltrans assures that mitigation measures and any required ongoing maintenance of mitigation are implemented by conducting periodic process reviews.

PERMITS

The local agency is also responsible for translating permit conditions and restrictions into the final design. Permits include, but are not limited to, Army Corps of Engineers, Section 404 (discharge of Fill) Nationwide or Individual, Section 10 Waterways and Navigable Waters, Water Quality Certification, California Department of Fish and Game Section 1601/03 Stream Encroachment, Pollution Discharge Elimination System, or U.S. Coast Guard. Typical mitigation includes hay bales, silt fencing, dust control, rip-rap, soil

stabilization matting, slope drain, turbidity barrier, etc.

Local agencies should work closely with the permitting agency to ensure accurate translation and proper transfer of permit conditions and restrictions (as appropriate) into final design. Conversations with regulatory agencies regarding translation of permit conditions and restrictions should be well documented.

DOCUMENTATION

Well documented records, referencing the page numbers and/or plan sheets on which commitments are illustrated, should be maintained by the local agency, as this information will be necessary when certifying PS&E. This information will also be useful during process reviews.

12.4 METHOD OF CONSTRUCTION

CONTRACTING METHOD

Except as noted below, all federal-aid construction projects must be completed by contracts awarded to the lowest responsible bidder of a competitive bid process (23 CFR 635.104). In addition, local agencies may not, under any circumstances, negotiate with a bidder prior to award to reduce the price of a construction contract.

Occasionally, situations arise which may support the use of a contracting method other than competitive bidding. Noncompetitive construction contracting may be approved under the following conditions:

- When an emergency exists of such magnitude that work cannot be delayed
- There is only one organization qualified to do the work
- Competition is deemed inadequate after soliciting bids
- When it is more cost effective to do the project by “force account” (defined below)

The use of a non-competitive contracting method must be thoroughly justified in writing, documented in the project files and retained for future reference. For local federal-aid projects that are not exempt from FHWA oversight (see Chapter 2, “Roles and Responsibilities”), justification must be submitted to the DLAE for review and approval.

FORCE ACCOUNT (DAY LABOR)

Federal regulations (23 CFR 635.203) defines “force account” as the direct performance of construction work by a local agency, railroad, or public utility using labor, equipment, materials and supplies furnished by them and under their direct control. Payment under force account is based on the actual cost of labor, equipment, and materials furnished, with consideration for overhead and profit.

Since work by force account is an exception to the normal contract method, which is based on competitive bidding, each local agency must also look to its own charter and applicable State code(s) when considering work by force account.

The performance of work by force account on a federal-aid project may be appropriate when:

- It is determined that the rights or responsibilities of the community are so affected as to require a special course of action, including a lack of competition or unreasonable bids (must be documented).

- By the inherent nature of the operation, it is deemed cost effective to perform minor adjustments of railroad and utility facilities while the major work is still accomplished by competitive bidding (the use of force account work under this circumstance has been predetermined to always be cost effective without further documentation or authorization).

- It is deemed cost effective to perform some work (incidental to the main purpose of the project and other than minor adjustments of railroad and utility facilities), while the major work is still accomplished by competitive bidding.

A public interest finding fully justifying the use of force account work on a local federal-aid project must be prepared by the local agency. The documentation should include:

- An identification and description of the project and the kinds of work to be performed
- A comparison of the detailed cost estimates for work by force account versus a competitive bid contract
- An estimate of federal funds to be provided based on the reimbursement ratio of the qualifying costs
- The reason(s) the use of work by force account is considered to be cost effective or an emergency
- An authorization by the City or County Public Works Director authorizing local agency forces to perform the work and certifying that the documentation reflects the true and current estimates of costs to perform the work.

The cost estimates for competitive bidding may be based on unit prices, including any engineering and administrative costs necessary to prepare, monitor, and close-out the project. Unit prices must be based on the estimated actual cost of performing the work but shall not exceed unit prices currently being obtained by competitive bidding on comparable construction work in the same general locality.

Incidental force account work must be carefully incorporated into a project's PS&E package. The local agency must keep precise project records documenting: the date(s) of authorization, actual work performed, date of performance, and costs for personnel, materials and equipment. Documentation of costs should include:

- Personnel
  - Time sheets
  - Salaries and payrolls
  - Foreman's reports
- Materials
  - Invoices for materials and supplies, and for any special services
  - Cost of producing materials supplied by the local agency
- Equipment

- Time and cost for using equipment owned by the local agency
- Time and rates for using rented equipment

Project records must be kept at least three years after the federal government completes a final voucher of the project.

EMERGENCY WORK

In an emergency situation competitive bidding may be waived on any of the federal-aid programs, and the work may be performed by either force account or negotiated contract. For projects that are not exempt from FHWA oversight, the waiver shall be approved by the DLAE. An emergency is a situation that requires emergency repair work, as provided under Emergency Relief (ER) Program (see Chapter 11 "Disaster Assistance" in the *Local Assistance Program Guidelines*) or when a major element or segment of a highway system has failed and the situation is such that competitive bidding is not possible or is impractical. Competitive bidding under such circumstance may not be possible or may be impractical because immediate action is necessary to:

- Minimize the extent of the damage
- Protect remaining facilities, or
- Restore essential travel

As an example: A local agency has a bridge programmed for replacement, using HBRR funds, and has begun preliminary engineering on the bridge replacement project. Before the local agency completes the design of the bridge a major storm does such damage to the bridge that to repair the bridge is not practical. At this point, for projects that are exempt from FHWA oversight, the local agency could contact their DLAE to be granted a waiver ("Authorization to Proceed") so as to begin negotiations with contractor(s) to replace the bridge, using HBRR funds, and using the plans that have been completed to date.

It should be noted that this waiver to competitive bidding only applies to emergency repairs as defined above, reconstruction work and permanent repairs, that can be separated from emergency repairs, are to be performed using the competitive bidding process.

12.5 VALUE ANALYSIS

INTRODUCTION

The National Highway System Designation Act of 1995 established a program to improve project quality, reduce project costs, foster innovation, eliminate unnecessary and costly design elements, and ensure efficient investments by requiring the application of value engineering (VE) to all federal-aid highway projects on the National Highway System (NHS) with an estimated cost of $25 million or more.

In accordance with the federal-state relationship established under the federal-aid program, State highway agencies shall assure that a VE analysis has been performed on all applicable projects and that all resulting approved recommendations are incorporated into the plans specifications and estimates.

Under Caltrans' delegation authority, the responsibility of assuring that VE analysis has been performed shall be delegated to the local agency administering their project.

DEFINITIONS

Project - A portion of a highway that a local agency proposes to construct, reconstruct, or improve as described in the preliminary design report or applicable environmental document. A project may consist of several contracts or phases over several years.

Value Engineering - The systematic application of recognized techniques by a multi-disciplined team to identify the function of a product or service, establish a worth for that function, generate alternatives through the use of creative thinking, and provide the needed functions to accomplish the original purpose of the project, reliably, and at the lowest life-cycle cost without sacrificing safety, necessary quality, and environmental attributes of the project.

PROCEDURES

Local agencies must establish programs to assure that VE studies are performed on all federal-aid highway projects on the NHS with an estimated cost of $25 million or more. This cost is the total cost of the project, from preliminary engineering through construction. Value engineering studies shall follow the widely recognized systematic problem-solving analysis process that is used throughout private industry and governmental agencies. Studies must be performed using multi-disciplined teams of individuals not personally involved in the design of the project. Study teams should consist of a team leader and individuals from different specialty areas, such as design, construction, environmental, planning, maintenance, right of way, and other areas depending upon the type of project being reviewed. Individuals from the public and other agencies may also be included on the team when their inclusion is found to be in the public interest.

For VE Studies of projects on the State Highway System, it is advisable to leave Caltrans' participation on the VE team.

This process concludes with a value analysis report that contains the approved recommendations. A copy of this report shall be forwarded to the District Value Analysis Coordinator (DVAC) in the district that is programming the project. The DVAC will submit this report to the value analysis branch in headquarters, who will then include it in their annual report to FHWA.

As a guide, Chapter 19 "Value Analysis" of the *Project Development Procedures Manual* may be used. The DVAC should be consulted for applicable sections.

12.6 METRICATION

IMPLEMENTATION

The 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) mandated that all PS&Es for federal-aid construction projects use metric units after September 30, 1996.

However, the National Highway System Designation Act of 1995, signed by the President on November 28, 1995, postponed this requirement until September 30, 2000.

Caltrans has already implemented the conversion to metric units for all projects on the State highway system. Caltrans design manuals, standard plans, and standard specifications have been converted to metric units. As of July 1, 1998, Caltrans standards in English units will not be maintained. **For projects on the State highway system, all local agency project PS&Es (even those using local funds) must be in metric units.**

Although Caltrans encourages local agencies to proceed with their conversion to metric units, either English or metric units may be used for local federal-aid projects off the State highway system until September 30, 2000. Both units must be used in any environmental document.

In transition, the following will apply for local retrofit bridge projects developed under the State's mandated Seismic Safety Retrofit Program (see Chapter 7 of the *Local Assistance Program Guidelines*): When Caltrans' consultants prepare bridge PS&E for seismic retrofit design in English units, both the bridge and roadway portions of the final PS&E must be in English units. Whatever the units used, the bridge and roadway units must be the same. When the local agency is preparing the final PS&E, either English or metric units may be used.

CONVERSION TO METRIC UNITS

There are two ways to convert from English to metric units:

- "Soft" conversion -- a direct mathematical conversion to an exact or nearly exact metric equivalent; for example: a 12 foot lane can be "soft converted" to 3.658 meters.

- "Hard" conversion -- a rounded, rationalized, metric number that is convenient to work with and easy to remember; for example: the new metric standard lane width (see Chapter 300 of the Caltrans *Highway Design Manual*, 5th edition) is 3.6 meters.

The "hard" conversion approach to metric units has effectively resulted in many new "metric standards."

The Institute of Transportation Studies - University of California Berkeley (ITS), through the Cooperative Training Assistance Program (CTAP) and the Local Technical Assistance Program (LTAP), offers training courses in understanding metric conversion for local agencies. Also available through ITS are: AASHTO's *Guide to Metric Conversion*, Caltrans' booklet entitled *Getting into Metrics*, and CD-ROM metric training packages.

12.7 PLANS

Project plans shall describe the location, design features, and construction requirements in sufficient detail to facilitate the construction, contract control and estimation of construction costs for the project.

A local agency may use the Caltrans *Drafting and Plans Manual* as a guide for preparing

contract plans. This manual is available from Caltrans Central Publications and Distribution Unit at 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone No. (916) 445-3520.

DESIGN STANDARDS

Standards for design of federal-aid highway projects are contained in Chapter 11, "Design Standards" of this manual.

DESIGN EXCEPTIONS

Approval for design exceptions shall be signed by the Public Works Director or the person to whom approval authority has been delegated. The person with approval authority must be a registered Civil Engineer in the State of California. Additional procedures concerning documentation requirements and delegation of this approval authority shall be in accordance with Chapter 11, "Design Standards" of this manual.

PLAN SHEET SIGNATURES

On local federal-aid projects, the title sheet must be signed (with registration number) by the local agency's responsible person in charge who is licensed as a professional engineer in the State of California for the type of plans being signed. Additional local agency signatures on the title sheet are optional. Plans for projects advertised, awarded and administered by the local agency do not include the State Engineer's signature, except as required for a State encroachment permit and/or cooperative agreement. The title sheet must also show the federal-aid project number.

Other plan sheets (including typical section sheets) must be signed and stamped by the person under whose direction the sheets were prepared. Signature of the sheets may be delegated to a California registered engineer retained by the local agency to prepare the plans. The signer's signature, California registration number and registration classification, e.g., Registered Civil Engineer, must appear on all plan sheets.

STANDARD PLANS

Caltrans *Standard Plans* shall be used for locally sponsored projects on the State highway system.

The following standard plans are acceptable for use with local federal-aid projects off the State highway system:

- The current edition of the Caltrans *Standard Plans*
- The current edition of the *Standard Plans for Public Works Construction,* developed and promulgated by the American Public Works Association - Southern California Chapter and the Associated General Contractors of California - Southern California Districts

In addition to the above, standard plans which are developed locally for non-federally

funded projects may be used on local federal-aid projects. The local standard plans shall be signed (with registration number) by the local agency's responsible person in charge who must be registered in California in the professional field for the type of standard plan being signed. Details included in local standard plans used for projects on the NHS shall meet statewide geometric standards.

Bridge construction details included in local standard plans shall meet the Caltrans' bridge design standards.
When a local agency requests structure-review assistance from Caltrans, Caltrans *Standard Plans* must be used, as appropriate, for the structure portion of the project. However, Caltrans' review will be contingent upon availability of staff.

EROSION CONTROL PLANS

Erosion control measures and practices shall be taken to inhibit the dislodging and transporting of soil particles by water or wind, including actions that limit the area of exposed soil and minimize the time the soil is exposed.

Emphasis shall be placed on erosion control in the preparation of PS&E. All reasonable steps shall be taken to ensure that highway project designs for the control of erosion and sedimentation and the protection of water quality comply with applicable standards and regulations of other agencies.

The AASHTO *Highway Drainage Guidelines*, Volume III, and *Erosion and Sediment Control in Highway Construction*, 1992, are guidelines to be followed on all construction projects. These guidelines are not intended to preempt any local requirements or State law if such requirements are more stringent.

Federal-aid funds shall not be used in erosion and sediment control actions made necessary because of contractor oversight, carelessness, or failure to implement sufficient control measures.

TRAFFIC CONTROL PLANS

A "traffic control plan" is a plan or procedure for handling traffic through or around a specific highway, street work zone or project to provide safety for motorists and workers. A traffic control plan shall be included in the PS&E for all federal-aid highway construction projects.

A traffic control plan must be developed specifically for each construction project and must be consistent with the *Standard Plans* and the *Manual of Traffic Controls for Construction and Maintenance Work Zones* (published by Caltrans) or Part VI - "Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations" of the *Manual of Uniform Traffic Control Devices* (MUTCD) (published by the FHWA).

The degree of detail in the traffic control plan depends on the project's complexity and degree to which construction activity interferes with traffic. The scope of the traffic control plan should be determined during the preliminary design phase of the project. Caltrans uses the following guidelines to establish the scopes of traffic control plans for

State highway projects:

- For expressway work requiring lane closures or shifting of traffic, drawings are required (a Caltrans standard plan sheet has been developed for such lane closures).

- For conventional multi-lane highways, where widening or reconstruction requires lane closures or shifting traffic for stage work, drawings are preferred. The Caltrans standard plan sheet shows a typical lane closure.

- For resurfacing and minor repair or reconstruction work on two-lane highways requiring one-way traffic control, a reference to standard plans or a manual is adequate for most projects. Where special problems are apparent, additional special provisions may be written (e.g., restricting hours of lane closures, etc.) and a plan showing the placement of signs, positioning of flagger, etc., may be added provided the plan does not reduce the established standards.

Contract provisions may permit contractors to develop and use their own traffic control plans and if the local agency finds that these plans are better than those provided in the PS&E. Any changes to the traffic control plans included in the approved PS&E must be reviewed and approved by the local agency's Resident Engineer, if registered, or at a higher level as required to satisfy the need for registration.

The PS&E should specify the method of payment for providing, installing, moving, replacing, maintaining, and cleaning traffic control devices required by the Traffic Control Plan. Suitable force account procedures may be utilized for traffic control items. The lump-sum method of payment should be used only on very small projects and projects of short duration. Payment for traffic control items incidental to other items of work should be discouraged.

All persons responsible for the development, design, implementation and inspection of traffic control shall be adequately trained. Local agency engineers may contact the Caltrans DLAE for information concerning the availability of traffic control training.

TRANSPORTATION MANAGEMENT PLANS

In general, a Transportation Management Plan (TMP), formerly called "traffic management plans," is needed if construction work on an existing roadway already experiencing recurrent delays (or is expected to experience delays due to construction activity) causes a significant increase in recurrent delays over an extended period of time. "Significant traffic delay" is any additional delay beyond the existing conditions normally experienced by travelers through the traffic corridor as determined by the Traffic Engineer or project engineer. TMPs may be complex or may be very simple, with one or two activities added to the traditional traffic-handling practices. TMPs consist of activities which are normally eligible for reimbursement with federal-aid funds, as normal construction expenditures. Project planning can include other considerations, such as special construction materials and incentive/disincentive provisions, which are also permitted on federal-aid projects.

Typical activities include (but are not limited to): 1) media outreach, 2) public information/relations, 3) operational improvements through traffic engineering including signs, signals (installation and upgrade, interconnect and actuated control) and markings,

lighting improvements, changeable message signs, restricted moves during peak hours, 4) telecommuting incentives, 5) ridesharing, carpooling, and vanpooling activities, 6) enhancements for transit service and parking facilities, 7) intersection widening, 8) detour paving, 9) traffic control officers, and 10) comparable improvements on alternate and parallel roadways used for detour or diversion.

TMPs are required for all reconstruction, rehabilitation, and other projects (including projects on the State highway system not funded by the State), if significant traffic delays are anticipated. Determination of "significance" should be made on a project-by-project basis. Factors involved in this decision should include: 1) cost-effectiveness, 2) safety, 3) public reaction, 4) expected delays, 5) availability of detours and alternate routes, and 6) duration of project.

Additional information on TMPs can be obtained from the TMP Coordinator in headquarters, Caltrans, Traffic Operations Program, or by reference to the Caltrans *Transportation Management Plan Guidelines.*

12.8 STANDARD SPECIFICATIONS

The specifications for a construction contract include the requirements contained in the standard specifications and special provisions written specifically for a contract. The special provisions provide the technical contract requirements applicable to the specific project construction features as well as legal and administrative requirements peculiar to the project.

A list of federally required contract provisions, contractor certifications, as well as contract provisions requiring prior justification/approval for local federal-aid construction projects is included in Exhibit 12-C. A complete description of these contract provisions/requirements and their application is provided in this section

ACCEPTABLE STANDARD SPECIFICATIONS AND SPECIAL PROVISIONS

The local agency must use Caltrans *Standard Specifications* and *Standard Special Provisions* for locally sponsored projects on the State highway system.

The following standard specifications are acceptable for use on all local federal-aid projects off the State highway system:

- The current edition of the Caltrans *Standard Specifications and Standard Special Provision,*

- The current edition of the *Standard Specifications for Public Works Construction* (commonly referred to as the "Green Book"), developed and promulgated by the American Public Works Association, Southern California Chapter and the Associated General Contractors of California, Southern California Districts

In addition to the above, standard specifications which are developed locally for non-federally funded projects may be used for local federal-aid projects that are off the NHS. However, the use of local standard specifications and standard special provisions are subject to the following condition:

- In the event that any conflict arise between the local standard specifications and the local assistance procedures contained in this manual or elsewhere, the local assistance procedures shall apply.

- Bridge construction methods and materials specifications included in local standard specifications shall meet the bridge requirements of the Caltrans B*ridge Design Specifications*.

CALTRANS SPECIFICATIONS ON THE INTERNET

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

- First access the Caltrans Home Page at www.dot.ca.gov

- Then call up the ESC Home Page, and

- Finally, call up the Office of Office Engineer Home Page. Then go to "Master" at ftp://trescftp.dot.ca.gov/pub/Highway-Specs/SSPs/Boilers/Masters.

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

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

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

SAMPLE "BOILER PLATE" CONTRACT DOCUMENTS ON THE INTERNET

Microsoft Word versions of a complete sample set of "Boiler Plate" construction contract documents are available on the Internet, in the Caltrans Local Programs Home Page at www.dot.ca.gov/hq/LocalPrograms/

Follow the directions on the Home Page to "Sample Boiler Plate Contract Documents." The file is compressed into a "Sit" format which can be downloaded and edited on either a Mac or PC.

This sample includes a Notice to Contractors & Special Provisions, as well as a sample Proposal and Contract. These documents are in the July 1995, metric and the July 1992, English versions. They are edited versions of the Caltrans, Office Engineers, Standard Special Provisions and other contract documents which are used for Caltrans highway construction contracts.

Contents

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

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

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

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

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

12.9 REQUIRED FEDERAL CONTRACT PROVISIONS

GENERAL FEDERAL REQUIREMENTS

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

FORM FHWA 1273

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

I. GENERAL

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

Incorporation of Form FHWA 1273 into the contract, subcontracts, and purchase orders. The provisions apply to all work performed on the contract including work performed by subcontract. The Form FHWA 1273 is required to be physically incorporated into each contract, subcontract and subsequent lower-tier subcontracts. The provisions may not be incorporated by reference.

Failure of the local agency to incorporate the Form FHWA 1273 in the contract is considered an unrecoverable project deficiency and shall make the construction phase of the project ineligible for federal reimbursement (see Chapter 20, "Deficiencies and Sanctions" of this manual).

The prime contractor is responsible for compliance with the requirements by all subcontractors and lower tier subcontractors. Failure of the prime contractor to comply with this requirement is grounds for local agency termination of the contract with the contractor and debarment of the contractor by the FHWA.

Modification of Form FHWA 1273. Sections IV (Payment of Predetermined Minimum Wages), Section V (Statements and Payrolls), Section VI (Record of Materials, Supplies and Labor), Section VII (Subletting or Assigning the Contract), and Section VII (Subletting or Assigning the Contract) of Form FHWA 1273 need not be included in the contract provisions for some projects, as described below. If the project is exempted from any of these provisions, the appropriate section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Use of Local Hiring Preference. The local agency shall not include contract provisions that require preferences to hire locally on any federal-aid contract. The contract provisions included in Form FHWA 1273 also require that the contractor not discriminate against labor from any other State.

Any contract that includes provisions that require a contractor to give any preference in hiring (with the exception of Indians living on or near a reservation on eligible projects) shall make the contract ineligible for federal reimbursement (see Chapter 20 "Deficiencies and Sanctions" of this manual).

Use of Convict Labor. Construction work shall not be performed by convict labor within the site boundaries of any federal-aid construction project. An exception is "labor performed by convicts who are on parole, supervised release, or probation." The use of convict labor restricts competition because the labor rates are below market costs and force account rates. A person on a daily-release program could be eligible to work on a federal-aid project if that person was employed by the contractor and was being paid at least the minimum prevailing wage.

II. NONDISCRIMINATION

On all federal-aid construction contracts and all related subcontracts of $10,000 or more, nondiscrimination provisions prohibit discrimination because of race, color, religion, sex, national origin, age or disability. This applies to the contractor's employment, solicitations, selection of subcontractors and procurement of materials. Contractors are required to have an Equal Employment Opportunity (EEO) policy that provides: for affirmative action in employment; a designated EEO officer to administer the EEO

program; and posted notices or posters containing EEO information. The contractor shall not discriminate in recruitment and is required to review the project sites, wages and personnel action for compliance with EEO policy. The contractor is required to notify employees regarding available training and provide opportunities for the improvement of skills for minorities and women. The contractor should cooperate with the union to incorporate EEO clauses.

Non-compliance with EEO specifications may be a breach of contract. Payment may be withheld or the contract canceled. The local agency must have staff to conduct reviews, check for required posters and make noncompliance determinations.

III. NONSEGREGATED FACILITIES

On all federal-aid construction contracts and all related subcontracts of $10,000 or more; organizations, firms, subcontractors and suppliers shall certify (in the contract) that they maintain nonsegregated facilities which conform to requirements of 41 CFR 60.1.8. The only exception to the nonsegregated facilities provision is access for the disabled.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGES

The payment of predetermined minimum wages applies to all federal-aid construction contracts exceeding $2,000 and all related subcontracts, except for projects not located on a federal-aid route.

Note: All public roads other than those functionally classified as local roads or rural minor collectors are considered Federal-aid Routes (see Chapter 3, "Federal-Aid Routes and Functional Classifications" in the *Local Assistance Program Guidelines*).

The Davis-Bacon Act of 1931 was enacted to prevent contractors from importing cheap labor from outside the area. The U.S. Department of Labor enforces these statutes and determines the minimum federal wage rates. The federal wage rates are determined by a review of payroll or a survey based on wage data from active projects. Disputes involving wage rates shall be resolved using local agency - U.S. Department of Labor procedures.

Notice of wage-rate decisions are published in the *Federal Register*. The minimum federal wage rates are also available from the Caltrans Local Programs Home Page via the Internet at www.dot.ca.gov/hq/LocalPrograms/index1.htm.

All employees must be classified with a wage-rate determination as set forth by the U.S. Department of Labor. There are provisions for fringe benefits and requirements for paying less than the full wage rate for apprenticeships and trainee programs. Apprenticeship and trainee programs are subject to other Department of Labor requirements. The contractor and subcontractors should pay employees at least the minimum wage and fringe benefits specified for the classification of work performed. The local agency is responsible for including the project wage rates in the federal-aid contract.

The local agency has the authority to withhold funds from the progress payments to the prime contractor for under payment to employees and the subcontractor full wages. The contractor is required to pay overtime at one and one half times the employee's basic pay rate for time worked in excess of eight (8) hours per day. Liquidated damages may be

held for the days the contractor did not pay overtime. The local agency can enforce the withholding of $10 per day against the contractor or subcontractor for each underpaid employee. Other actions such as termination of the contract or legal action may be enforced if there are any serious violations of the contract.

Contractors must pay the **higher** of either the minimum federal wage rates or State prevailing wage rates.

State prevailing wage rates are available from the State Department of Industrial Relations, Division of Labor Statistics.

V. STATEMENTS AND PAYROLLS

This section of Form FHWA 1273 applies to all federal-aid construction contracts exceeding $2,000 and all related subcontracts, except for projects not located on a federal-aid route (see "Note" above).

Under the Copeland Act, workers are protected from paybacks to employers. The contractor and subcontractors must furnish weekly certified payroll statements so that the Davis Bacon requirements can be verified.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

This section of Form FHWA 1273 applies to all federal-aid projects in excess of $1 million that are on the NHS excluding force account, beautification and railroad protective device projects.

Under this provision, the contractor is required to complete and submit a "Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds" (see FHWA Form 47 as Exhibit 17-H of this manual).

VII. SUBLETTING OR ASSIGNING THE CONTRACT

This section of Form FHWA 1273 applies only to federal-aid highway construction projects on the NHS.

For local agency projects on the NHS, the contractor is required to perform work amounting to not less than 30 percent of the original contract amount with his/her own organization, excluding specialty items.

No portion of the work may be sublet, assigned or otherwise subcontracted without the written consent of the local agency.

Conformance with State public contract law regarding subcontracting shall be provided elsewhere in the contract provisions.

Note: Local agencies which use *Caltrans Standard Specifications* or the *Standard Specifications for Public Works Construction (Green Book)* and choose to use the 30 percent (NHS Projects only) or the no limit option (Non NHS projects) specified for federal-aid projects must include a special provision to override the *Caltrans Standard Specifications Section 8-1.01,* or the *Green Book Specifications Section 2-3.1,* which require that the minimum percentage of work

that a contractor must perform with its own organization is 50 percent excluding any identified specialty items. The no limit for subcontractors option for Non NHS projects also requires that the FHWA boiler plate provisions (Form FHWA 1273) Section VII must also be revised to exclude the 30 percent requirement.

VIII. SAFETY: ACCIDENT PREVENTION

On all federal-aid construction contracts, the contractor must comply with all federal, State, and local laws governing health, safety, and sanitation. The contractor must protect the life and health of employees and safety of the public and property. Laborers and mechanics should not be allowed to work under unsanitary or hazardous conditions as determined by construction safety standards. The Department of Labor has right of entry to any construction site of a contract for inspection or investigation of Occupation, Safety, and Health Act (OSHA) standards. The local agency must enforce State safety standards, report violations, and provide cooperation.

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

On all federal-aid construction contracts, the use of false statements is a felony. False claims for the purpose of obtaining payments against federal funds is subject to a $2,000 fine per each violation. Willful distortion, or misrepresentation of any facts related to the project violates federal law. A "false statements" poster (Form FHWA 1022) must be posted on the project site. Copies of the poster may be obtained through Caltrans or FHWA Offices.

X. CLEAN AIR ACT AND WATER POLLUTION CONTROL ACT

On all Federal-aid construction contracts and all related subcontracts of $100,000 or more, concrete or asphalt plants used in construction must meet air standards of the Clean Air Act and the water quality standards Federal Water Pollution Control Act.

Form FHWA 1273 implements the EPA regulations which requires violating facilities be listed and not used on government contracts. Use of Form FHWA 1273 constitutes a certification by the contractor that the facilities being used on the contract are not under consideration for inclusion on the EPA's "List of Violating Facilities." The contractor is required to inform the local agency of any notification from EPA showing that the facility may soon be on the list.

The EPA's "List of Violating Facilities" appears in the *Federal Register*. Changes to this list are published weekly in the *EPA Environmental News*.

The "List of Violating Facilities" consists of the following sublists:

- Violating Facilities of the Clean Air Act (mandatory listed) and
- Facilities that are or have been in recurring noncompliance with clean air or water standards and have one or more of the following:
- A conviction under the Clean Air Act under Section 113C(2)
- Any injunction or judgment including consent decrees or other forms of civil ruling by a federal, State, or local court issued because of noncompliance with

clean air and water standards

- A criminal conviction by a State or local court based on noncompliance of the clean air or water standards

- Violation of an administrative order issued under Sections 113(a),(d), 167, or 303 of the Clean Air Act or Section 309(b) of the Clean Water Act due to noncompliance

- An enforcement action filed by the EPA in federal court under Sections 113(b), 167, 205, or 211 of the Clean Air Act or Section 309(b) of the Clean Water Act due to noncompliance with standards

XI. DEBARMENT, SUSPENSION AND INELIGIBILITY CERTIFICATION

On all federal-aid construction contracts and all related subcontracts of $25,000 or more, the contractor and lower tier participants must certify they are in compliance with this provision. This includes subcontractors, material suppliers and vendors.

Each participant in the contract must certify "that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal agency and they have not been convicted or had civil judgment rendered within the past 3 years for certain types of offenses" (see Attachment E in Exhibit 12-E). It is the administering agency's responsibility to assure that the contractor is not suspended or debarred from federal contracts. A publication titled, "A Listing of Parties Excluded from Federal Procurement and Non-procurement Programs" is available electronically via the internet at http://epls.arnet.gov

XII. LOBBYING CERTIFICATION

On all federal-aid construction contracts and to all related subcontracts of $100,000 or more, federal funds may not be used to provide financial gain to a member of congress or a federal agency. Awarding a federal-aid contract to a constituent would be an example of financial gain. This applies to contractors as well as subcontractors. A certification that the contractor has not and will not use federal funds to make any payments for lobbying must be included in the contract proposal (see Exhibit 12-E, Attachment F).

Payments of nonfederal funds to any lobbyist must be disclosed on Standard Form LLL "Disclosure of Lobbying Activities" (see Exhibit 12-E, Attachment G), and if there are disclosures, included in the contract proposal.

CONTRACT TIME

Contract time is defined as the maximum time allowed in the contract for completion of all work contained in the contract documents. This time can be established in the specifications by either a specific completion date or a fixed number of calendar days. Contract time often becomes an issue when the traveling public is inconvenienced without any apparent reason. While there may be several reasons for a project to appear dormant, frequently the cause can be traced to excessive contract time or poor contractor scheduling.

For projects on the NHS, the contract time shall be specified in the bidding documents and shall be monitored by the administering agency. Specification of contract time is optional for projects off the NHS.

Insufficient contract time can result in higher bid prices, increased time overruns and claims, inefficiencies, and safety problems. On the other hand, excess contract time can result in increased inefficiencies, equating to costs, to both the local agency and contractor. In addition, delays and inconvenience to the public may be unnecessarily extended.

Caltrans will periodically perform a process review of local agency procedures for determining contract time to assess if the resulting contract times are appropriate. There are several different techniques used to determine contract time. The *FHWA Technical Advisory 5080.15, Construction Contract Time Determination Procedures*, describes time determination techniques in detail, and is available in the appendix of the FHWA *Contract Administration Core Curriculum*.

The local agency should strive for the shortest practical duration of traffic interruptions during highway construction. Innovative contracting methods including incentive/disincentive (I/D), lane rental, A+B contracts or other contract provisions for early completion are available to minimize traffic inconvenience and delay. These provisions are available from Caltrans. The *FHWA Technical Advisory 5080.10, Incentive/Disincentive for Early Completion*, describes this technique in detail, and is available in the appendix of FHWA *Contract Administration Core Curriculum.*

LIQUIDATED DAMAGES

The term *liquidated damages* means the daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by a local agency because of the contractor's failure to complete the contract work within the number of calendar days or workdays specified. The term may also mean the total of all daily amounts deducted under the terms of a particular contract.

Federal law requires the provision for liquidated damages on all federal-aid projects on the NHS. For projects off the NHS, this provision is optional. Liquidated damages are based on the estimated cost of field construction engineering. In special cases, liquidated damages greater than the estimated field construction engineering cost may be specified provided that detailed reasons are given to support the greater amount. In all cases, calculations should support the recommended rate.

Local agencies should use the following formula to avoid excessive liquidated damages:

$$\frac{\text{L\% (See Table Below) X Total Estimate}}{\text{Working Days}} = \text{Liquidated Damages}$$

LIQUIDATED DAMAGES FACTOR (L%)

	Project Type		
Project Estimate	**Resurfacing***	**New Align Highway**	**Others**
Over $5 million	3%	3%	3%
$500,000 - $5 million	3%	5%	5%
$200,000 - $500,000	3%	9%	7%
Less Than $200,000	5%	9%	7%

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

Except when the minimum liquidated damages apply as provided herein, the calculated liquidated damages should be rounded up as follows:

Calculated Liquid Damages	Round Up
<$500	$25 increments
$500-$1000	$50 increments
>$1000	$100 increments

If the local agency 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. The local agency should have a liquidated damage calculation in the project files.

BUY AMERICA

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

Buy America provisions do not apply to:

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

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

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

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

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

DISADVANTAGED BUSINESS ENTERPRISE

In accordance with Title VI of the 1964 Civil Rights Act, all federal-aid projects are subject to the legislative and regulatory Disadvantaged Business Enterprise (DBE) requirements. The main objective is to ensure that DBE firms have an opportunity to participate in federally funded projects. Additional information regarding DBE contract goals can be found in Chapter 9, "Civil Rights and Disadvantaged Business Enterprises" and Chapter 15, "Advertise and Award Project" of this manual.

Required DBE specifications and contract provisions are the following for projects with goals:

- DBE Program Policy
- Definitions
- DBE Contract Goal
- Eligibility Criteria
- Good Faith Effort Provisions
- DBE Obligations
- Sanctions on Failure to Comply with DBE Requirements
- Determination Procedures on Counting DBE Participation toward the DBE Goal
- Award Documentation and Procedures
- Post Award Compliance Provisions

- Records and Reporting Requirements

Contracts which do not contain specific goals shall contain special provisions stating that it is the local agency's policy to comply with Part 23 of Title 49, Code of Federal Regulations (CFR) and specify the contractor's obligation under these regulations. See Exhibit 9-A (Part V, 4).

If Caltrans' standard specifications will be used where no DBE goals are specified, appropriate editing of the "Sample Boiler Plate Contract Documents" will be necessary (see "Sample 'Boiler Plate' Contract Documents on the Internet" in Section 12.8 of this manual).

NONCOLLUSION CERTIFICATION

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

FEDERAL TRAINEES (ON-THE-JOB TRAINING)

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

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

- Provide training for women and minorities which will upgrade their job skills, thereby increasing their access to higher-paying trade jobs and journeyman-level positions and

- Ensure that a diverse work force will meet future labor needs in the construction industry.

A majority of training positions on each project must be for women and minorities. If a contractor cannot meet the OJT objectives, direct recruitment efforts must be documented to show an effort at OJT compliance.

The major components of an OJT program include:

- The local agency must include the required federal training special provisions in the PS&E package if the project size and duration warrant an OJT program (see below).

- The local agency should select contracts that contribute to the "Contract Training Goals." These contracts must show the number of trainees, number of trainees upgraded to journeyman and level of skills.

- The local agency must review the training programs proposed by contractors. Approval or rejection is based on the legitimacy of the job-skill classifications proposed and the number of training hours specified.

- Caltrans must determine if statewide OJT is effective.

- The contractor is responsible for recruitment and selection of trainees.

- The contractor must evaluate training based on an approved training program.

- The contractor shall report the number of trainees and jobs using Form PR1391 "Federal-aid Highway Construction Contractors EEO Report" to the local agency. The local agency shall forward Form PR1391 to the Caltrans District Labor Compliance Officer (see Exhibit 16-O of this manual).

- OJT provision costs are reimbursed by the FHWA with Federal Intermodal Surface Transportation Efficiency Act (ISTEA) funds. Training special provisions may be funded at $0.80/hour, or the training program can be a bid item with the same reimbursement ratio as the construction project. OJT support services include recruiting, counseling, remedial training, and OJT program administration by others.

- If the contractor does not show a good faith effort to provide acceptable training to the trainees specified, a sanction may be applied. Sanctions may include withholding progress payments if effective on-the-job training is not provided.

In California, federal "trainees" are considered registered apprentices. There are relatively few crafts in highway work which utilize apprentices—brick layers, carpenters, cement masons, electricians, equipment operators, iron workers, pile bucks, and a few others. There are no apprentice teamsters or laborers. The ratio of journeymen to apprentices is generally 5 to 1.

With these thoughts in mind, the number of trainees established for a project should be determined by examining the extent of only that work which will be done by the apprenticeable crafts. The following procedure may be used as a guide for establishing the number of trainees for a federal-aid project.

1. If the job has less than 100 working days---no trainees.
2. Add the individual totals for the following items in the Engineer's Estimate:
   - Excavation of all kinds
   - Embankment and backfill (but not imported borrow)
   - Portland cement concrete, all classes except precast items
   - Bar reinforcing steel and prestressing steel
   - Drive piling
   - Sound walls, masonry blocks
   - Retaining walls, bin walls, etc.
   - Concrete box culverts
   - Highway lighting
   - Signal systems, loop detectors
   - Electrical work for pumps, landscaping, etc.
   - Erect structural steel (but not "Furnish")
   - L.S. items for buildings, restrooms, etc.
3. Using the total obtained above, determine the number of trainees from the following table:

Number of Federal Trainees

$ Value	No. Trainees	$ Value	No. Trainees
Under $200,000	0	$3,000,000	7
400,000	1	4,000,000	8
700,000	2	5,000,000	9
1,000,000	3	6,500,000	10
1,500,000	4	8,000,000	11
2,000,000	5	10,000,000	12
2,500,000	6		

Over $10,000,000 add 1 trainee per $5,000,000

FEDERAL WAGE RATES

The payment of predetermined minimum wages on federal-aid contracts is derived from the Davis-Bacon Act of 1931 and is prescribed by 23 USC 113. These wage rates must be inserted in the special provision on all federal-aid highway construction projects exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempted. In addition, local agencies are also responsible for incorporating the applicable wage rate decision into each federal-aid contract. Federal rules require that an amendment for a general wage rate determination be incorporated into a federal-aid contract if notification of the change is published in the *Federal Register* 10 days or more prior to bid opening.

The federal minimum wage rates are available directly from Caltrans Local Programs Home Page under "Federal Wage Rates." For local agencies in California to be in conformance with the federal "10 day rule," local agencies are to access the "Federal Wage Rates" ten days prior to bid opening to see if updated federal wage rates have been posted. If the updated wage rates have been posted, local agencies are required to issue an addendum to insert the updated wage rates in their contract.

Access to "Federal Wage Rates" is password protected. The appropriate user name and password may be requested from the District Local Assistance Engineers. The name and password are entered after the user agrees to the "Terms of Use" on the "Federal Wage Rates" page. Local agencies or their current consultants that have Internet access are to be given the user name and password. All District Local Assistance Engineers have received a memorandum containing the selection of user names and the password.

Local agencies who do not have Internet access will continue to receive federal wage rates from the District Local Assistance Engineer. This is subject to district staffing availability. Consultants on retainer as a City/County Engineer or Public Works Director may also receive the password provided that the wage rates are for federal-aid highway construction contracts programmed through Caltrans, Office of Local Programs.

RELATIONS WITH RAILROAD

Where construction of a federal-aid project requires use of railroad properties or adjustments to railroad facilities, there shall be an agreement in writing between the local

agency and the railroad company. This agreement is discussed in the *Local Assistance Program Guidelines*, Chapter 10, Section 10.6 "Local Agency/Railroad Agreements."

FHWA approval of railroad agreements is required for nonexempt projects. A copy of the conformed agreement shall be transmitted through the DLAE for FHWA review.

The pertinent portions of this agreement applicable to any protective services required during performance of the work must be included in the project specifications and special provisions for any construction contract. Caltrans uses standard special provisions for this section on Caltrans projects.

CHANGED CONDITION CLAUSES

Standardized changed condition clauses are required to be included in all contracts. The Caltrans' standard specifications and the *Standard Specifications for Public Works Construction (Green Book)* contain standard changed condition clauses. If a local agency chooses to use a different standard specifications book, the federal regulations shall still apply.

The regulation requires the use of three different clauses:

DIFFERING SITE CONDITIONS CLAUSE

This clause provides for the adjustment of the contract terms if the contractor encounters:

- Subsurface or latent physical conditions that differ materially from those indicated in the contract, or
- Unknown physical conditions of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent to the work

SUSPENSIONS OF WORK ORDERED BY THE ENGINEER

This clause provides for the adjustment of the contract terms if the performance of all or a portion of the work is suspended or delayed by the resident engineer, in writing, for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry). The contractor is required to submit a request for adjustment, in writing, to the resident engineer within 7 calendar days of receipt of the notice to resume work. Recovery of profit on costs resulting from suspensions of work are not allowed.

This clause does not preclude the recognition of constructive suspensions or delays resulting from the contracting agency's actions, without written notification. The local agencies may address constructive delays and suspensions, as they chose, in their standard specifications and contract administration procedures.

Suspensions must be for unreasonable periods and do not include brief, customary suspensions for reasons inherent to highway construction (i.e., material sampling and testing; approval of shop drawings, material sources, etc.; and other reasonable and customary suspensions necessary for the supervision of construction by the contracting agency). In addition, an adjustment under this clause is not allowed if the work is

suspended for other reasons or if an adjustment is provided for, or excluded, under other terms or conditions of the contract.

MATERIAL CHANGES IN THE SCOPE OF THE WORK

This clause provides for the adjustment of the contract terms if the resident engineer orders, in writing, an alteration in the work or in the quantities that significantly change the character of work. The term "significant change" shall be constructed to

apply only to the following circumstances:

- The altered character of the work differs materially from that of the original contract, or

- A major item of work, as defined in the contract, is increased or decreased by more than 25 percent of the original contract quantity (adjustments shall apply only to that portion in excess of 125 percent of original contract quantity, or in case of a decrease, to the actual quantity performed)

This clause provides for adjustments resulting from formal change orders by the resident engineer, in writing, to the extent that the impacted work is part of the contract. Either party may initiate an adjustment and both must be in agreement before the work is performed. As with the suspension of work provision, this clause does not preclude the recognition of constructive suspensions or delays.

12.10 RESTRICTED CONTRACT PROVISIONS

INDIAN PREFERENCE

Generally, local agencies may not use local hiring practices on federal-aid construction projects. However, ISTEA permits an Indian employment preference provision for federal-aid projects on or near Indian reservations or Indian lands. Roads near an Indian reservation are those within a reasonable commute to and from the reservation. Indian preference shall be applied without regard to tribal affiliation or place of enrollment.

In setting employment goals, consideration should be given to the potential employment requirements of the contractor and core-crew. A contractor shall not layoff or terminate a core-crew employee to meet a preference goal**.** Any sanctions for failure to meet employment goals should be included as part of the contract.

Many tribes have a Tribal Employment Rights Office (TERO) tax which applies to contracts performed within the reservation boundaries. FHWA will reimburse any local tax as long as it does not single out federal-aid highway construction contracts. TERO's can bill contractors for services rendered during recruitment and related support services. These fees are not eligible for federal participation. If part of a project is not within the reservation boundaries, the TERO tax shall not apply to that portion. "On" and "off" reservation portions of the project should be clearly indicated in order to avoid over-payment.

BONDING AND PREQUALIFICATION

Bonding is grouped into three classifications which are:

- Bid bonds -- consisting of a bond, certified check or negotiable instrument submitted with the bid as assurance that the bidder will execute the contract within the specified time;

- Performance bonds -- executed with the contract to assure the contractor's obligations under the contract; and

- Payment bonds -- executed in connection with a contract to assure payment, as required by law, to all persons supplying labor and material in the contract.

Prequalification is defined "as a means of predetermining job experience and work capacity and is used to identify individuals and organizations from whom the local agency may accept a bid."

The FHWA does not require implementation of procedures or requirements for prequalification, bonding, or licensing on federal-aid projects. However, if the local agency has such procedures or requirements they must conform to the FHWA's competitive bidding policy as follows:

- No procedures or requirements for bonding, insurance, prequalification, qualification, or licensing of contractors shall be used which may operate to restrict competition, prevent submission of a bid by or prohibit consideration of a bid submitted by any responsible contractor, whether a resident or nonresident of the State wherein the work is to be performed.

- No contractor shall be required to obtain a license before the submission of a bid or before the bid may be considered for award of a contract.

PRICE ADJUSTMENT CLAUSES

On all federal-aid construction projects, price adjustment clauses may be implemented under the following conditions:

- Material costs are extremely volatile
- Suppliers are unable to provide a price quote for the full term of the contract
- Price quotes are subject to delivery or market conditions
- Shortages are expected

These provisions should be limited to materials whose price volatility may produce a large effect on contract prices. The standard adjustment(s) should be quantifiable and set out in the contract specifications. The standard adjustment(s) should be based on a price or base index which is not susceptible to manipulation by contractors or suppliers, such as the consumer price index. Published price data may be found in the Bureau of Labor Statistics: *Producer Price Indexes*, *Engineering News Record* (weekly), or various oil-related publications with price data for oil related products.

Some concepts for developing price adjustment clauses include:

- Price adjustment does not need to be a standard specification unless shown in the bid proposal
- There should be upper and lower limits on adjusted compensation
- Both upward and downward adjustments should be calculated
- Only by a significant change in the index should trigger a price adjustment
- Basis of payment should clearly indicate coverage of the price adjustment clause
- Contractor should not have an option to accept or reject a price adjustment compensation and the compensation should be automatically incorporated in the progress and partial payment computations.
- Compensation should not be based on actual invoiced receipts
- Upward price adjustments should not be allowed after the contract time has expired.

When local conditions warrant the use of price adjustment clauses, the following should be considered:

- Use for projects which will exceed nine months duration from bid opening to completion
- On single season contracts; provide price adjustment clauses for all price volatile materials which affect the unit costs of the major items of work
- On multiple season contracts: provide price adjustment clauses for all price volatile materials and supplies

When fuel prices are volatile, a price adjustment clause may be needed. This may occur on projects that are fuel intensive such as excavation, embankment, aggregate hauling and paving.

12.11 OPTIONAL CONTRACT PROVISIONS

ALTERNATE BIDS

Alternate bidding is a method used to minimize the overall cost of any federal-aid projects through increased competition. By considering alternate design schemes and construction methods, it is possible to attract the greatest number of bidders and realize the lowest possible bid prices.

Alternate bidding procedures should be used when more than one alternate is judged equal over the design period and there is a reasonable possibility that the least costly design approach will depend on the competitive circumstances. The potential for using alternates

will normally be developed through design studies and value engineering analysis during project development. Moreover, there may be standard plan alternates developed for repetitive design items (i.e., drainage items, bridge structures, sound walls and pavement details, etc.).

The bidding documents and contract plans should clearly indicate the design criteria and the type of alternate designs or contractor options that will be acceptable. The contractor should be permitted to bid any designated alternate that is consistent with its expertise and equipment.

INCENTIVE/DISINCENTIVE (I/D) PROVISIONS

FHWA's long-standing policy prohibiting bonus payments on federal-aid projects, as formerly stated in 23 CFR 635.118, was rescinded on June 13, 1984. The decision was based on the findings of National Experimental and Evaluation Program (NEEP) 24. The NEEP-24 demonstrated that the use of early completion incentive payments could be used beneficially and without abuses.

A clear distinction should be made between the intent of I/D provisions and the purpose of liquidated damages. Although they have similar mechanisms, the function of each is different. The primary function of liquidated damages is to recover costs associated with the contractor's failure to complete the project on time. On the other hand, an I/D provision is intended to motivate the contractor to complete the work on or ahead of schedule without jeopardizing quality of work. An I/D provision for early completion is defined as a contract provision which compensates the contractor for each day that identified critical work is completed ahead of schedule and assesses a deduction for each day that completion of the critical work is delayed. The use of I/D provisions is primarily intended for critical projects where it is essential that traffic inconvenience and delays be held to a minimum. It must be emphasized that I/D provisions should <u>not</u> be used routinely

A discussion of factors to consider when selecting and developing I/D projects is available in FHWA's *Contract Administration Core Curriculum*, 1997.

Sample I/D special provisions are available through Caltrans Engineering Service Center via the Internet. The site address is:

http://tresc.dot.da.gov

QUALITY - PRICE ADJUSTMENT CLAUSES

Price adjustment clauses and schedules are an important and effective component of quality assurance specifications. "Quality Assurance" specifications generally include statistically based acceptance plans, require contractor process control testing, and have provisions for pay adjustments based on the degree of compliance with specified requirements. Incentives and disincentives should rationally relate to the gain or loss in service life or performance of the product. Quality assurance specifications and programs may lead to better contractor control of the quality of the product, however, they do not diminish the need for effective construction inspection.

The FHWA has traditionally endorsed the use of incentive provisions up to five percent of the unit bid price for improved quality provided they are based on readily measured physical properties that reflect improved performance. Incentives greater than 5 percent on NHS projects are considered on a case-by-case basis following an analysis of performance data. For non-NHS projects, consideration for incentives greater than 5 percent is delegated to the local agency.

A detailed discussion of the criteria (such as: typical critical physical properties, acceptance plans and pay schedules) to consider when developing price adjustment provisions is provided in FHWA's *Contract Administration Core Curriculum*.

INNOVATIVE CONTRACTING PRACTICES

Neither the FHWA nor Caltrans have any intention of mandating the use of any of the innovative contracting practices cited below on local agencies. However, the FHWA is trying to develop a process nationwide through which states, local agencies and the industry can bring forth innovative contracting practices that they believe could result in worthwhile improvements to our traditional ways of doing business. It is FHWA's intent to try all promising concepts proposed that fall within the flexibility of the federal-aid program requirements.

A discussion on the "Cost-Plus-Time Bidding" (A+B method), "Lane Rental" and "Design/Build" innovative contracting techniques are provided in the FHWA's *Contract Administration Core Curriculum*.

The "Design/Build" contracting technique requires prior approval by the FHWA before a local agency uses it on a local federally funded project.

12.12 MATERIALS AND EQUIPMENT

PUBLICLY-OWNED EQUIPMENT

On all federal-aid construction projects, publicly-owned equipment should not normally compete with privately-owned equipment on a project going out for bid. The local agency may approve the use of publicly-owned equipment when justified by a public interest finding. Federal participation is permitted provided:

- The PS&E submittal provides for the proposed use
- The specifications indicate equipment availability, rates and delivery point
- The specifications include the provision that the contractor shall have the <u>option</u> of providing or renting all or part of the equipment

Public agencies shall not benefit from the rental of its own equipment and rental rates must be competitive. The rates for work performed by force account work should be based on an agreed unit price or actual cost. The equipment need not be included in the estimate, however the estimate should include a schedule of rates charged for use of publicly owned equipment.

CONTRACTOR-PURCHASES FOR LOCAL OWNERSHIP

On all federal-aid construction projects, equipment purchased by the local agency or by a contractor with ownership transferred to the local agency for construction engineering (CE) is not totally eligible for federal participation. Only that portion of the amortized equipment cost (over its useful life) attributable to the time the equipment is used on a federal-aid project is accounted for as CE and eligible.

Equipment is defined as tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

CONVICT PRODUCED MATERIALS

Materials produced by convict labor after July 1, 1991 may be used on any federal-aid projects if:

- Such materials have been produced by convicts on parole, supervised release, or probation from prison.

- Such material has been produced in a qualified prison facility and the amount produced during any 12-month period does not exceed the amount produced during the 12 month period ending July 1, 1987.

These materials are not given preferential treatment and are subject to the same requirements as materials from other sources. The contractor furnishes all materials through normal contracting procedures and selects either public or private sources of materials. Prison Industries may not bid directly on projects but may serve as a material supplier to contractors.

LOCAL PREFERENCES

On all federal-aid construction projects, materials produced within the State or local area shall not be favored over comparable materials produced outside of the or the State or local area. Also, in-state material sources cannot be given preference over foreign materials or actions taken against materials of foreign origin unless permitted by federal law. State or local preference provisions are not allowed on federal-aid project contracts.

WARRANTY CLAUSES

For projects off the NHS, local agencies may include warranty provisions in construction contracts in accordance with procedures they have developed for their non-federal projects.

For projects on the NHS, local agencies may include warranty provisions, for exempt non-NHS projects, in construction contracts in accordance with the following conditions:

- Warranty provisions shall be for a specific construction product or feature. Items of maintenance not eligible for federal participation shall not be covered.

- No warranty requirements shall be approved which may place an undue obligation on the contractor for items over which the contractor has no control.

The local agency shall provide documentation of these conditions in the project files. Local agencies are advised that items of maintenance are not eligible for federal participation. Including maintenance items results in the items being considered non-participating and requiring pay back of the federal funds involved.

PROPRIETARY ITEMS

It is the policy of the FHWA not to participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process specifically set forth in the plans and specifications for a project, unless:

- The item is purchased or obtained through competitive bidding with equally suitable unpatented items.

- The local agency certifies either that the proprietary or patented item is essential for synchronization with the existing highway facilities or that no equally suitable alternative exists, or

- The item is used for research or for a special type of construction on relatively short sections of road for experimental purposes.

The primary purpose of this policy is to have competition in selection of materials and allow for development of new materials and products. The policy further permits:

- Materials and products that are judged equal may be bid under generic specifications. If only patented or proprietary products are acceptable, they shall be bid as alternatives with all, or at least a reasonable number of acceptable materials or products listed.

- The local agency may approve a single source if it can be found that its utilization is in the public interest. The approved public interest finding shall be fully documented and retained in the project files.

Trade names are generally the key to identifying patented or proprietary materials. Trade name examples include 3M, Corten, etc. Generally, products identified by their brand or trade name are to be used, all or at least a reasonable number of these materials or products should be listed. The licensing of several suppliers to produce a product does not change the fact that it is a single product and should not be specified to the exclusion of other equally suitable products.

EQUIPMENT RENTAL RATES

Federal policy requires that actual costs be used to determine extra work payments; however, actual equipment costs are not readily available. Therefore, the FHWA permits the local agencies to specify in their construction contract specifications the use of predetermined rate guides as well as equipment rates schedules development by the local agency which are in conformance with the federal cost principles and the FHWA's policy

contained in the *Contract Administration Core Curriculum*, published by the FHWA. Caltrans' Equipment Rental Rates are in conformance with these requirements.

12.13 ESTIMATES

The estimate used to authorize the construction phase of a federal-aid project shall reflect the anticipated cost of the project in sufficient detail to provide an initial prediction of the financial obligations to be incurred by the local agency and FHWA and to permit an effective review and comparison of the bids received.

Initially, a preliminary estimate is prepared by the local agency which includes the basic items that a contractor will be asked to bid. This is a confidential document which represents the local agency's best estimate of a fair and reasonable price for the items or work to be performed. As such, the Engineer's Estimate should not be made available to contractors and the general public prior to opening bids. This estimate must be prepared in a format which describes the item of work, unit amount, quantity, unit price, amount, a subtotal, contingencies and a total. (Exhibit 12-A, "Preliminary Estimate of Cost," or equivalent.)

Other estimates must also be prepared, if appropriate, for local agency furnished materials, supplemental work, construction engineering, the Federal Trainee program, and force account (day labor) work performed by the local agency. The estimates must be segregated by major construction categories. Furthermore, any items of work which are ineligible for federal participation in a category must be segregated from the eligible items of work.

These estimates are used to prepare the Finance Letter and the "Request for Authorization for Construction." After bids are opened and the project has been awarded, a Detail Estimate is prepared by the local agency which upgrades the preliminary estimate by using actual bid amounts rather than estimates. For more information on detail estimates, refer to Chapter 15 "Advertise and Award" of this manual.

NONPARTICIPATING WORK

On all federal-aid construction projects, work which is not within the limits of the project must be segregated under a category called "Not Part of Federal Project" for purposes of the preliminary and detail estimates (work funded by others is most generally nonparticipating).

Work within the federal-aid project limits, but ineligible for federal funding, is referred to as "nonparticipating work." Items considered "nonparticipating work" include but are not limited to the following:

- Betterment work such as capital outlay, safety improvements, or operational improvements that goes beyond restoring a site to its original condition or to the current standard (for emergency relief work)
- Right of way obligations when right of way is nonparticipating
- Maintenance related activities
- Spare parts not incorporated in the work

The above work must also be identified and segregated for the purposes of the preliminary and detail estimates.

Quantities for each structure shall be shown separately with an appropriate structure code. Miscellaneous work, such as utility adjustments by a utility company, shall also be separate.

CONTRACT ITEMS

In order to determine which contract items should be included in the preliminary estimate, the work is broken down into the basic types of construction, such as excavation, concrete and steel. Each type and each classification of a type of construction comprises one bid item. Each contract item must be measured accurately. After September 30, 1996, metric units shall be used for all items of work for projects on the State highway system. For projects off the State highway system, the local agency has the option of using English or metric units until October 30, 2000. However, the local agency must use metric units if the local agency project uses Caltrans' contract documents (*Standard Plans*, *Standard Specifications*, etc.) or when it is requested that Caltrans review the structure portion of a project.

When practical, work performed by a different subcontractor should also be segregated into separate contract items.

The list of contract items should be analyzed to be sure that all phases of the work are included in the estimate. Care should also be taken to ensure that there is no overlap of contract items, which could result in a duplication of payments.

The *Coded Contract Item List* published by Caltrans may be used by the local agency with or without the item code number. The contract item list should be used if the local agency is using Caltrans *Standard Specifications* as the item descriptions are matched with the specifications.

LOCAL AGENCY FURNISHED MATERIALS

Local agency furnished materials are a part of the total cost of the project and should

be subtotaled and included in the total project cost.

To be eligible for federal participation, any material (other than local natural material) purchased by the local agency and furnished to the contractor for mandatory use in the project must be acquired on the basis of competitive bidding, except when there is a finding of public interest justifying the use of another method of acquisition. The unit cost eligible for federal participation is limited to the unit cost of such material to the local agency.

SUPPLEMENTAL WORK

"Supplemental work" is work that is anticipated and required but cannot be described and quantified for delivery on a unit-price or lump-sum basis.

Such work must be included in the project estimates and should follow the "Subtotal Contract Items." Supplemental work should include extra work, additional work, right of way obligations, traffic control (if required) or other work to be performed by the contractor and charged to the contract work order. Supplemental work can be listed and included in the total project cost, as a separate line item, or included in the contingencies section of the preliminary estimate. Supplemental work must be included in the contingencies of the Detail Estimate (see Exhibit 15-M).

For additional information on the use of supplemental work as an item of work, refer to the Caltrans *PS&E Guide*, available from the Caltrans Publications Distribution Unit.

CONTINGENCIES

Estimates may include contingencies, including supplemental work, of five to ten percent of the total estimate. Contingency amounts should be adjusted to give the total contract a round number. If there is a large amount of supplemental work, ten percent may be exceeded, but contingencies should always be at least five percent.

CONSTRUCTION ENGINEERING

The Code of Federal Regulations defines construction engineering as the supervision and inspection of construction activities; additional staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates.

Construction engineering costs should be shown on the Estimate if federal reimbursement is desired.

Federal reimbursement for construction engineering is limited to 15 percent of the federal participating construction costs. However, for the HBRR program, requests for reimbursement of construction engineering costs in excess of 15% must be approved by the Office of Local Programs.

FEDERAL TRAINEE PROGRAM

Estimates for federal-aid projects may include an estimated amount for the federal Trainee Program. It is up to the local agency to establish the number of trainees for each project. For additional information on the Federal Trainee Program refer to the "Other Required Contract Provisions" section of this chapter.

ESTIMATES FOR FORCE ACCOUNT (DAY LABOR)

If force account work (day labor) is to be included in the project, it must be listed in the estimate as a separate item. Such work must be justified and documented as described in Section 12.4 of this chapter.

12.14 OPTIONAL BRIDGE REVIEW

When a bridge or major structure is involved, the local agency may request a cursory review of the structural designs by Caltrans Division of Structures, Local Assistance. Caltrans' review and comments will be advisory only. If requested, Caltrans' decision to review structural plans will be based on:

- Experience of local agency staff
- Complexity of project, type of structure
- Availability of Caltrans staff

If the local agency requests a cursory review, they must submit checked plans to Caltrans Division of Structures. The checker's signature or initials must appear on each sheet of the structure plans. Unsigned plans will be returned to the local agency. The project special provisions and engineering reports must have the engineer's stamp, signature and registration number on the title sheet.

For major federal-aid construction projects on the NHS, involving a bridge or major structure, the bridge review shall be in accordance with PS&E procedures described in Section 12.2 of this chapter.

When transmitting the project documents to the Division of Structures for review, the local agency must identify the following:

- Agency advertising the project
- Estimated advertising date
- Type of funding
- Expenditure authorization number on State-advertised projects

When structure design documents are to be reviewed by Caltrans, the following number of copies, as appropriate, are to be submitted to the Division of Structures. These figures represent the minimum number of copies required.

Document Submitted	Number Required
Plans (reduced or full size prints)	3
Special provisions (for bridge portion)	3
Hydraulic report	2
Foundation report	2

12.15 PS&E CERTIFICATION

Local agencies must certify their PS&E. A PS&E Checklist that identifies the critical federal requirements is provided to assist the local agency. The local agency must submit the local agency PS&E Certification, the PS&E Checklist, along with the PS&E package to the Caltrans DLAE when making their "Request for Authorization" to proceed with construction.

The "PS&E Certification" (Exhibit 12-C) must be signed by the local agency engineer in charge of the project. This person must be a professional civil engineer registered to practice in California and either a public employee or consultant on retainer as the City/County Engineer.

In the certification, the local agency certifies that the PS&E has been prepared in accordance with this chapter and that any necessary design exceptions have been approved by the Public Works Director or his/her designee. The certification must also acknowledge that review of PS&E will not be performed by Caltrans. By this certification, the local agency accepts responsibility for compliance with applicable design standards, Title 23 of the United States Code, and other applicable federal requirements (DBE, EEO, federal and State wage rates, license requirements, etc.). Failure to comply with any of these requirements may cause withdrawal of funds.

PS&E CHECKLIST

Local agencies will complete the "PS&E Checklist" (Exhibit 12-D) and attach it to all PS&E Certification Letters submitted to the DLAE. The checklist has been developed to address the flexibility allowed under federal regulations and still ensure that the minimum required provisions are included in each set of contract documents. For instance, some provisions included in FHWA Form 1273 may not apply to some projects. This will depend on estimated cost, functional classification of the road, and whether the project is on the National Highway System (NHS). However, if any of the required provisions are left out of a construction contract, the project will not be eligible for federal reimbursement.

"PS&E Checklist Instructions" (Exhibit 12-E) are included in order to lead the local agency through the checklist and determine which of the various federal contract provisions are required. Samples of each required federal contract provision are attached. These samples are based on Caltrans *Standard Specifications*, however, the local agency may use equivalent provisions based on other standard specifications as long as the intent of the federal requirement is met.

CHECKLIST REVIEW BY CALTRANS

The DLAEs will review each checklist to ensure that the local agency has completed the form in accordance with the instructions in this manual. Except as discussed below, this review will be limited to the actual checklist and will not involve a review of the PS&E package.

SPECIAL PROVISIONS REVIEW BY CALTRANS

At the discretion of the DLAE, a review of the special provisions will also be made to check that the correct provisions are included as indicated on the checklist. It is expected that at least one set of special provisions will be reviewed per year for each local agency. However, the DLAE will decide the number of documents that will be reviewed based on past experience with the agency, the number of federal-aid projects the agency has done since the reengineering of Local Assistance Procedures, and the amount of resources the district can redirect to this effort. Local agencies requesting reviews will be accommodated to the extent that resources are available.

The checklist has been designed to facilitate this review by providing space for the local agency to indicate the page numbers of the appropriate federal provisions. This review will help the local agencies become familiar with the use of the checklist and the corresponding federal contract provisions. It will not, however, relieve the local agency of responsibility for compliance with all federal requirements.

DLAE ACCEPTANCE OF THE CHECKLIST

The DLAE will indicate acceptance of the checklist by checking the type of review (i.e., whether the checklist review included a review of the special provisions) and signing the form. The local agency's "Request for Authorization" for the construction phase of a project will not be forwarded to the OLP for approval prior to acceptance by the DLAE.

SUBMITTAL OF PLANS, SPECIFICATIONS AND ESTIMATE (PS&E)

As a minimum, local agencies will submit the contract special provisions and the preliminary estimate with the PS&E Certification Letter. At the discretion of the DLAE, a set of plans will also required. The plan requirement may be waived based on past experience with the agency and the number of federal-aid projects the agency has completed previously. As soon as the project is advertised, the local agency shall furnish the DLAE one copy of the "as advertised" plans and special provisions or two copies if structures (bridges) are involved.

PROCESS REVIEW

Process reviews of a random sample of the local agency PS&E packages will be conducted as needed. The process reviews will be conducted on a "post audit" basis.

Local agencies should be aware that if deficiencies are found during a process review, it may be too late to make corrections and the loss of all or a portion of the project federal funding will result.

12.16 PROJECTS WITHOUT TRADITIONAL PS&E

Some ISTEA projects, on or off the NHS, such as Congestion Mitigation and Air Quality (CMAQ) and Transportation Enhancement Activities (TEA) may consist of studies and other nonconstruction type projects. Examples include: Traffic Demand Management (TDM) studies relating to regional air quality, ride sharing, commuter incentives and commuter computer centers.

These projects will not have a set of plans or PS&E, but may only consist of a consultant contract agreement. The local agency shall submit the following to DLAE

(see Exhibit 12-I):

- Workplan
- Budget, with schedule

- Consultant agreement
- "Request for Authorization" form (prior to consultant approval)

Unlike the traditional PS&E, these studies are submitted for preliminary engineering, only. The project workplan, budget, and consultant agreement are submitted in lieu of PS&E and a detailed estimate. If the project is part of a regional study done by a Metropolitan Planning Organization (MPO), then the local federal-aid portion of the workplan must be segregated to show the project costs associated with each local agency.

12.17 REFERENCES

The Civil Rights Act of 1964
ISTEA Section 1041(a)
ISTEA Section 1048(a)
STAA Section 165
23 USC 106(b)(2)
23 USC 112
23 USC 113
23 USC 114
23 USC 140
23 USC 140(b)
23 USC 315
23 USC 324
40 USC 276 (a) Davis-Bacon & (c) Copeland Act
40 USC 333
23 CFR 200
23 CFR 230
23 CFR 230 A&D
23 CFR 230.111
23 CFR 627.1
23 CFR 627.3
23 CFR 627.5
23 CFR 630.1010(a)(2)
23 CFR 633
23 CFR 771.113
28 CFR 35
29 CFR 1,3,5
29 CFR 1630
29 CFR 1926
41 CFR 60
48 CFR 31
49 CFR 1.48
49 CFR 20
49 CFR 21
49 CFR 23

DEPARTMENT OF TRANSPORTATION

PRELIMINARY ESTIMATE OF COST

SHEET _____OF_____

Bid Opening	Expenditure Authorization	Budget Allocation	Date
District County	Route PM	Source of Funds	
Federal-aid Number	Description		

Item Number	Item Description	Unit	Quantity	Unit Price		Amount	

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SCOPE OF WORK - CMAQ/TSM/TEA Projects

BASIC ELEMENTS
The scope of work should be one page long and include:

- project description
- major objectives
- project locations
- project components
- project milestones
- special conditions
- target populations

PROJECT MILESTONES
Provide all completion dates and deliverables including:

- quarterly progress reports
- final report
- marketing plans
- Request for Proposal (RFP)
- notice of completion
- equipment procurement & purchase
- beginning of operation

PROPOSED BUDGET
Provide a budget and workplan with costs that include:

- capital costs
- non-capital costs
- donations
- all private & public $
- administrative costs
- line items for marketing, training, and data collection
- workplan costs by task

SAMPLE WORK PLAN FOR A TRAFFIC DEMAND CENTER (shows all tasks and associated costs)

TASK DESCRIPTION		**COST**	**SCHEDULE**	
			Start Date	**Completion Date**
A	Building Space	$45,000		
B	Telephones	$75,000		
C	Cabling and Wiring	$12,000		
D	Communications	$30,000		
E	Security	$16,000		
F	Furniture	$60,000		
G	Hardware	$17,000		
H	Software	$85,000		
I	Teleconferencing	$90,000		
J	Marketing	$32,000		
K	Administration	$30,000		
L	Project operations	$60,000		
M	Evaluations	$10,000		
TOTAL		$562,000		

SAMPLE BUDGET FOR A TRAFFIC DEMAND CENTER (shows all fund sources and private contributions)

CAPITAL COSTS	**Local**	**Private**	**MPO**	**Measure**	**Total**
Equipment	$177,000	$70,000	$42,000	$40,000	$329,000
Lease		$45,000			$45,000
Construction				$28,000	$28,000
Subtotal					$402,000
NON-CAPITAL COSTS					
Construction Engineering				$30,000	$30,000
Design	$10,000				$10,000
Administration			$30,000		$30,000
K Operations		$60,000			$60,000
L Project Implementation	$30,000				$30,000
TOTAL COSTS	$217,000	$175,000	$72,000	$98,000	$562,000

Rev.5/22/95

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PS&E CERTIFICATION

Local Agency Letterhead

To: (***District Local Assistance Engineer's name***)
District Local Assistance Engineer
Caltrans, Office of Local Assistance
(***District Address***)

(***Federal Number***)
(***Project Description***)

Dear (***District Local Assistance Engineer's name***):

With submission of the attached PS&E CHECKLIST for the above subject project, I hereby certify that the project was designed and prepared for advertisement in accordance with the *Local Assistance Procedures Manual* produced by the California Department of Transportation (Caltrans).

I understand Caltrans may not be performing a review of this PS&E at this time but that all documents relating to this project are subject to review by the Federal Highway Administration (FHWA) and/or Caltrans in order to verify this PS&E certification. I also understand if deficiencies are found in subsequent review the following actions will be considered:

(1) Where minor deficiencies are found, PS&E certification for future projects may be conditioned or not accepted until the deficiencies are corrected.

(2) Where deficiencies are of such magnitude as to create doubt that the policies and objectives of Title 23 of the United States Code (or other applicable federal and State laws) will not be accomplished by the project, federal funding may be withdrawn.

_____
(***Signature, Title***)

_____
(***Local Agency***)

Professional Registration Number: _____

Expiration Date: _____

Attachment

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PS&E CHECKLIST

Agency _____ Federal Project No. _____

This form is to be completed by the local agency and attached to the PS&E Certification. See Exhibit 12-E for instructions and the referenced attachments.

I. HIGHWAY SYSTEM

☐ On the National Highway System (NHS)

☐ Off the NHS

II. FUNCTIONAL CLASSIFICATION (Check as many as appropriate)

On the Federal-aid System

☐ Urban Principal Arterial - Fwy or Expwys
☐ Urban Principal Arterial - Other
☐ Urban Minor Arterial
☐ Urban Collector
☐ Rural Principal Arterial - Other
☐ Rural Minor Arterial
☐ Rural Major Collector

Off the Federal-aid System

☐ Urban Local
☐ Rural Minor Collector
☐ Rural Local

III. TYPE OF CONSTRUCTION (Check appropriate box)

☐ New or Reconstruction

☐ Resurfacing, Restoration and Rehabilitation (3R)

☐ Preventive Maintenance

IV. METHOD OF CONSTRUCTION

A. Contracting Method (Check appropriate box)

☐ Competitive bidding

☐ Other than competitive bidding

(If the contracting method is other than competitive bidding, check appropriate box.)

☐ The project is exempt from FHWA oversight. A Public Interest Finding is on file in the contract records justifying the method.

☐ The project is not exempt from FHWA oversight. A Public Interest Finding justifying the method has been submitted and approved by Caltrans.

B. Force Account (Day Labor) (Check appropriate box)

☐ The entire project will be constructed by contract as indicated above.

☐ Some work (incidental to the main purpose of the project) will be constructed by Force Account. A Public Interest Finding is on file in the contract records justifying the work.

☐ The entire project will be constructed by Force Account (Day Labor).

(If the entire project will be constructed by Force Account (Day Labor), check the appropriate box.)

☐ The project is exempt from FHWA oversight. A Public Interest Finding is on file in the contract records justifying the work.

☐ The project is not exempt from FHWA oversight. A Public Interest Finding justifying the method has been submitted and approved by Caltrans.

V. ENVIRONMENTAL ANALYSIS (Check box if requirement is met)

☐ The PS&E is fully responsive to the necessary actions called for by the environmental document, permit conditions and other agreements.

.

VI. VALUE ENGINEERING (VE) ANALYSIS (Check appropriate box if the project is on the NHS)

☐ VE analysis been performed on this project and a copy of the analysis has been forwarded to the Caltrans District Value Analysis Coordinator).

☐ VE analysis has not been performed; the estimated project cost is <$25 million.

VII. GEOMETRIC DESIGN STANDARDS (Complete this section if project changes existing geometrics)

A. Geometric Design Standards Used (Check appropriate box)

☐ Caltrans Design Standards (on State highway system)

☐ Current AASHTO Standards

☐ 3R Projects - Minimum Standards for Geometric Design of Federal-Aid Resurfacing, Restoration, and Rehabilitation Projects on Local Streets and Roads, *Local Programs Manual*, State of California Department of Transportation.

☐ Local Agency Design Standards Date approved _____

B. Deviations from Controlling Criteria (check appropriate box for each controlling criteria)

Criteria Met	Design Criteria Not Met	Design Exception Approval Date	Controlling Criteria
☐	☐	_____	Design Speed

☐	☐	_____	Lane Width
☐	☐	_____	Shoulder Width
☐	☐	_____	Bridge Width
☐	☐	_____	Horizontal Alignment
☐	☐	_____	Vertical Alignment
☐	☐	_____	Grades
☐	☐	_____	Stopping Sight Distance
☐	☐	_____	Cross Slopes
☐	☐	_____	Superelevation
☐	☐	_____	Horizontal Clearance
☐	☐	_____	Vertical Clearance

VIII. BRIDGE DESIGN PROCEDURES (Check the appropriate box)

All bridges have been designed in accordance with the current edition of the Caltrans *Bridge Design Specifications Manual*

YES	DOES NOT APPLY (Bridge construction not included in the project)
☐	☐

IX. STANDARD PLANS (Check appropriate box)

☐ Caltrans *Standard Plans* ☐ *Standard Plans for Public Works Construction*

☐ Local Approved Standard Plans:

_____ Date signed (on behalf of the local agency) by a person in responsible charge and who is a registered professional engineer licensed to practice in the State of California.

X. PROJECT PLANS (Check box if requirements met)

☐ Plans signed and stamped on behalf of the local agency by the person in responsible charge and who is a registered professional engineer licensed to practice in the State of California.

☐ Traffic Control Plans and Signs/Striping Plans Included

☐ Erosion Control Plan

XI. STANDARD SPECIFICATIONS (Check Standards used)

☐ Caltrans *Standard Specifications*

☐ *Standard Specifications for Public Works Construction* (Green Book)

☐ Locally Approved Standard Specifications

XII. REQUIRED FEDERAL CONTRACT PROVISIONS

A. General Federal Requirements (Check appropriate box and indicate page number)

Page No.

☐ Caltrans SSP - *SECTION 14. FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS* (Attachment A, FR-1 & FR-2) is included. ..... _____

☐ Equivalent provisions are included. ..... _____

B. FHWA Form 1273

1. Incorporation of FHWA Form 1273 into Contract (Check appropriate box and indicate page number)

Page No.

☐ An unmodified copy of FHWA Form 1273 *REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS* (Attachment B, FR-3 thru FR-14) has been physically incorporated into this contract ..... _____

☐ A modified copy of FHWA Form 1273 *REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS* has been physically incorporated into this contract. ..... _____

2. Modification of FHWA Form 1273 (Complete this section if the form has been modified.)

Project cost _____

a. Section IV. Payment of Predetermined Wages (Check appropriate box)

☐ Section IV has not been modified.
☐ Section IV has been *crossed out/ removed/ specified elsewhere in the contract that it does not apply* (indicate type of modification).

b. Section V. Statements and Payrolls (Check appropriate box)

☐ Section V has not been modified.
☐ Section V has been *crossed out/ removed/ specified elsewhere in the contract that it does not apply* (indicate type of modification).

c. Section VI. Record of Materials, Supplies, and Labor (Check appropriate box)

☐ Section VI has not been modified.

☐ Section VI has been *crossed out/ removed/ specified elsewhere in the contract that it does not apply* (indicate type of modification).

d. Section VII. Subletting or Assigning the Contract (Check appropriate box)

☐ Section VII has not been modified.

☐ Section VII has not been *crossed out/ removed/ specified elsewhere in the contract that it does not apply* (indicate type of modification).

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

☐ *EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION* (Exhibit 12-E, Attachment C) ..... _____

☐ *NONCOLLUSION AFFIDAVIT* (Exhibit 12-E, Attachment D) ..... _____

☐ *DEBARMENT AND SUSPENSION CERTIFICATION* (Exhibit 12-E, Attachment E)..... _____

☐ *NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS* (Exhibit 12-E, Attachment F)..... _____

☐ *DISCLOSURE OF LOBBYING ACTIVITIES* (Exhibit 12-E, Attachment G) ..... _____

☐ 2-1.015—*FEDERAL LOBBYING RESTRICTIONS* (Exhibit 12-E, Attachment H) ..... _____

☐ Equivalent provisions (Attach complete listing, including page numbers)

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

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

☐ Equivalent provisions are included..... _____

E. Disadvantaged Business Enterprise (DBE)/Subcontracting

Date Annual Goal approved by DLAE _____

DBE Annual Overall Goal _____ Race Conscious Portion_____ Race Neutral Portion_____

This Contract Goal _____ Race Conscious Portion_____ Race Neutral Portion_____
(Note: Contract Goals are calculated based upon the percentage of federal-aid dollars in the contract)

☐ This contract has a specific DBE goal to meet the intent of the DBE Program and the Annual Overall Goal
☐ This contract has no specific DBE goal as it has been determined that one is not appropriate. Documentation verifies this determination and is on file.

If contract has a specific race conscious goal, complete Section 1 below. If contract does not have a specific race conscious goal, complete Section 2 below.

1. Contracts with specific goals (Check if included and indicate page number)

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

Page No.

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

☐ LISTING OF SUBCONTRACTORS (Form in Sample Proposal and Contract)
or *Equivalent Form* ..... _____

☐ 2-1.02 DISADVANTAGED BUSINESS ENTERPRISE (DBE) (Exhibit 12E, Attachment H)
or *Equivalent Provisions* ..... _____

☐ 2-1.02A DBE GOAL FOR THIS CONTRACT (Exhibit 12-E, Attachment H)
or *Equivalent Provisions* ..... _____

☐ 2-1.02B SUBMISSION OF DBE INFORMATION (Exhibit 12-E, Attachment H)
or *Equivalent Provisions* ..... _____

☐ 3- AWARD AND EXECUTION OF CONTRACT (Exhibit 12-E, Attachment I)
or *Equivalent Provisions* ..... _____

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

☐ Caltrans SSP 5-1. _DBE CERTIFICATION STATUS CHANGE (Exhibit 17-O)
or *Equivalent Provisions* ..... _____

☐ Caltrans SSP *5-1.__ PERFORMANCE OF DBE SUBCONTRACTORS AND SUPPLIERS* (Exhibit 12-E, Attachment K)
or *Equivalent Provisions* ..... _____

☐ Caltrans SSP 5-1. SUBCONTRACTING
or *Equivalent Provisions* ..... _____

☐ Caltrans SSP 5-1. PROMPT PROGRESS PAYMENTS TO SUBCONTRACTORS
or *Equivalent Provisions* ..... _____

☐ Caltrans SSP 5-1. PROMPT PAYMENT OF WITHHELD FUNDS TO SUB-CONTRACTORS.
or *Equivalent Provisions* ..... _____

☐ Caltrans SSP *LOCAL AGENCY BIDDER-DBE INFORMATION Form (Exhibit 12-E,* Attachment L)
or *Equivalent Provisions* ..... _____

☐ Bidder's List (49 CFR, Part 26.11) List data for all firms that bid as prime, or bid or quote subcontracts for this contract (optional). ..... _____

2. Contracts without specific goals (Check if included and indicate page number)

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

Page No.

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

☐ LISTING OF SUBCONTRACTORS (Form in Sample Proposal and Contract) or *Equivalent Form* ..... _____

☐ 2-1.02 DISADVANTAGED BUSINESS ENTERPRISE (DBE) (Exhibit 12-E, Attachment H) or *Equivalent Provisions* ..... _____

☐ 3- AWARD AND EXECUTION OF CONTRACT (Exhibit 12-E, Attachment I) or *Equivalent Provisions* ..... _____

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

☐ Caltrans SSP 5-1. _DBE CERTIFICATION STATUS CHANGE (Exhibit 17-O) or *Equivalent Provisions* ..... _____

☐ Caltrans SSP 5-1. SUBCONTRACTING *or Equivalent Provisions* ..... _____

☐ Caltrans SSP 5-1. PROMPT PROGRESS PAYMENTS TO SUBCONTRACTORS *or Equivalent Provisions* ..... _____

☐ Caltrans SSP 5-1. PROMPT PAYMENT OF WITHHELD FUNDS TO SUB-CONTRACTORS. *or Equivalent Provisions* ..... _____

☐ Bidder's List (49 CFR, Part 26.11) List data for all firms that bid as prime, or bid or quote subcontracts for this contract (optional). ..... _____

F. Buy America Specification (Check appropriate box and indicate page number if requirement applies. See Section 12.9 of the *Local Assistance Procedures Manual* for requirement.)

Page No.

☐ Caltrans SSP *5-1.__ BUY AMERICA REQUIREMENTS* (Exhibit 12-E, Attachment M). ... _____

☐ Equivalent provisions are included..... _____

☐ Buy America specifications are not included in contract.

☐ Waiver for the following has been approved by FHWA: _____ Date _____.

G. Federal Trainees (Check appropriate box and indicate page number if requirement applies)

☐ The project has less than 100 working days. A Federal Trainee goal and special provisions are not required.

☐ Analysis of the Engineers Estimate has the dollar value under $200,000. A Federal Trainee goal and special provisions are not required.

Page No.

☐ Caltrans SSP - *FEDERAL REQUIREMENT TRAINING SPECIAL PROVISIONS* (Exhibit 12-E, Attachment N, FR-15 and FR-16) are included. (The Trainee goal is _____ .) ..... _____

☐ Equivalent provisions are included (The Trainee goal is _____ .) ..... _____

H. Federal Wage Rates (Check appropriate box and indicate page number if Federal Wages Rates are included)

Page No.

☐ Federal Wages Rates are physically incorporated in this contract. ..... _____

Note: By checking the above box, the local agency is indicating that they are aware of the Federal-aid "10 day rule" requirement.

☐ This project is not located on a Federal-aid Route, Federal Wage Rates are not required.

I. Relations with Railroad (Check appropriate box and indicate page number if special provisions are included)

Page No.

☐ The required provisions are included. ..... _____

☐ This project does not involve the use of railroad properties or adjustments to railroad facilities.

XIII. RESTRICTED CONTRACT PROVISIONS (CHECK APPROPRIATE BOX)

A. Indian Preferences (Check appropriate box and provide required information)

☐ Not included

☐ Included. The project is on or near the _____ Indian Reservation.

B. Bonding and Prequalification (Check box if requirement met)

☐ Bonding or prequalification, if required, will not be used to restrict competition, prevent submission of a bid by or prohibit consideration of a bid submitted by any responsible contractor, whether a resident or nonresident of the State of California

C. Price Adjustment Clauses (Check appropriate box)

☐ Price adjustment clauses are not included.

☐ Price adjustment clauses are included. The federal conditions restricting the use of these clauses have been met and are documented in the project files.

D. Warranty Clauses (Complete this section if project is on the NHS)

☐ Warranty Clauses are not included.

☐ Warranty Clauses are included. Documentation of the required conditions on the use of these clauses is in the project files.

E. Proprietary Items (Complete this section if project is on the NHS)

☐ Proprietary Items are not included.

☐ Proprietary Items are included. A Public Interest Finding justifying the use has been approved and is documented in the project files.

XIV. MATERIALS & EQUIPMENT (Check appropriate box)

A. Publicly Owned Equipment (for use by Contractor) (Check appropriate box)

☐ Not included

☐ Included. A Public Interest Finding justifying this use is in project files and the project specifications meet the requirements for federal participation listed in Chapter 12.

B. Equipment Purchases for Local Ownership (Check appropriate box)

☐ Not included

☐ Included. Amount charged to construction engineering will be limited to amortized equipment cost (over its useful life) attributable to the time the equipment is used on the project.

C. Convict Produced Materials

☐ Not included

☐ Included. The conditions placed on the use of these materials by the contractor meet federal requirements and are included in the contract specifications.

D. Local Agency Furnished Materials (Check appropriate box)

☐ Local Agency Furnished Materials are not included.

(If Local Agency Furnished Materials are included check appropriate box.)

☐ Local Agency Furnished Materials have been acquired on the basis of competitive bidding.

☐ A Public Interest Finding is on file in the contract records justifying another method of acquisition.

XV. PRELIMINARY ESTIMATE (Check boxes if requirements met)

☐ Exhibit 12-A, or equivalent has been completed and is attached.

☐ The estimate is broken down into items sufficient in detail to provide an initial prediction of the financial obligation to be incurred by the local agency, State and FHWA and to permit an effective review and comparison of the bids received.

☐ Non-participating items of work have been identified and segregated from the estimated cost of work eligible for federal-aid.

(If project is funded with more than one type of federal-aid, check box if requirement met.)

☐ The estimate has been segregated by fund types for use in preparing the "Request for Authorization for Construction" (Detail Record) and the Finance Letter.

XVI. LOCAL AGENCY SIGNATURE

This Federal Contract Provisions checklist has been prepared in accordance with Chapter 12 "PS&E" of the *Local Assistance Procedures Manual*.

Signature: _____ Date: _____

Title: _____

XVII. CALTRANS ACCEPTANCE:

Check appropriate acceptance statement:

☐ I have not personally inspected the subject project PS&E package but I am aware of the scope of the project. I have reviewed this "PS&E CHECKLIST" and agree it is complete and appears to have been prepared in accordance Chapter 12 "PS&E" of the *Local Assistance Procedures Manual*.

☐ I have inspected the specifications portion of the subject project PS&E package and I am aware of the scope of the project. I have reviewed this "PS&E CHECKLIST" and agree it is complete and appears to have been prepared in accordance with Chapter 12 "PS&E" of the *Local Assistance Procedures Manual*. I have also verified that the indicated Required Federal Contract Provisions are included in the specifications.

Signature: _____

Title: _____

Date: _____

Distribution:
Original submitted to DLAE with PS&E Certification.
Original "Accepted" copy to be retained in DLAE file with PS&E Certification.
One "Accepted" copy to be returned to local agency

PS&E CHECKLIST INSTRUCTIONS

The PS&E Checklist is to be completed by the local agency in accordance with the following instructions and attached to the PS&E Certification.

I. HIGHWAY SYSTEM

Some PS&E requirements depend on the whether the project is on or off the National Highway System. See *Local Assistance Program Guidelines,* Chapter 3 - "Federal-Aid Routes and Functional Classifications," for a listing of the local agency NHS routes.

Check the appropriate box indicating on which system the project is located.

II. FUNCTIONAL CLASSIFICATION

Federal-aid eligibility, design standards as well as some PS&E requirements depend on the functional classification of the route the project is on. See *Local Assistance Program Guidelines,* Chapter 3 - "Federal-Aid Routes and Functional Classifications," for a discussion of the functional classification system.

Check the appropriate box

III. TYPE OF CONSTRUCTION

Design standards as well as some oversight responsibilities depend on the type of construction. See Chapter 2 of this manual for definitions and check the appropriate box.

IV. METHOD OF CONSTRUCTION

A. CONTRACTING METHOD

Unless justified by a Public Interest Finding, all federal-aid construction contracts must be awarded to the lowest responsible bidder of a competitive bid process. For projects that are exempt from FHWA oversight, the local agency may approve the Public Interest Finding if it meets the conditions described in Chapter 12. Caltrans must approve the Public Interest Finding for projects that are not exempt before accepting the local agency's PS&E Certification.

Check the appropriate box.

B. FORCE ACCOUNT (DAY LABOR)

Any construction work performed by the local agency must be justified by a Public Interest Finding. When the entire project will be constructed by the local agency, and the project is not exempt from FHWA oversight, the Public Interest Finding shall be approved by the DLAE before accepting the local agency's PS&E Certification. The Public Interest Finding will be approved by the local agency for all other force account (day labor) work.

Check the appropriate boxes and process the Public Interest Finding as required.

V. ENVIRONMENTAL ANALYSIS

The preparation of PS&E must reflect findings of the environmental analysis performed for the project. By checking the box, the agency certifies that the necessary actions called for by the environmental documents have been responded to in the PS&E. Failure to check the box will result in denial of the Request for Authorization.

VI. VALUES ENGINEERING (VE) ANALYSIS

The application of values engineering (VE) is required for all federal-aid highway project on the National Highway System (NHS) with an estimated cost of $25 million or more. If the project is on the NHS, check appropriate box.

VII. GEOMETRIC DESIGN STANDARDS

If the project does not change existing geometrics, Section A and B do not apply and the local agency is not required to check any boxes in these sections.

A. GEOMETRIC DESIGN STANDARDS USED

New and reconstruction projects on the NHS shall be designed in accordance with Standards as defined in the current edition of "*A Policy on Geometric Design of Highways and Streets*" published by the American Association of State Highway and Transportation Officials (AASHTO). The minimum standards for geometric design of local federal-aid resurfacing, restoration and rehabilitation (3R) projects on the NHS are shown in Tables 11-1 through 11-10 in Exhibit 11-A. Local geometric design standards that have been developed for use on locally funded new and reconstruction, or 3R projects off the NHS, may be used subject to the conditions listed in Chapter 11.

Check appropriate box if this section applies.

B. DEVIATIONS FROM CONTROLLING CRITERIA

The controlling criteria listed are considered to be of primary importance for highway safety, and deviations require design exception approval procedures as described in Chapter 11. Check whether the criteria have been met on this project. If a design exception has been approved, indicate the approval date. Documentation shall be retained in the project files.

VIII. BRIDGE DESIGN PROCEDURES

All bridges shall be designed in accordance with the current edition of the Caltrans *Bridge Design Specifications Manual*. Check if requirement met, or if the project does not include any bridge construction indicate requirement does not apply.

IX. STANDARD PLANS

For projects off the State highway system, the local agency may use Caltrans *Standard Plans, Standard Plans for Public Works Construction*, or subject to the conditions described in Chapter 11, Locally approved Standard Plans. Check appropriate box.

X. PROJECT PLANS

Project plans shall be signed and stamped on behalf of the local agency by the person in responsible charge and who is a registered professional engineer licensed to practice in the State of California. A traffic control plan shall be included in the PS&E for all federal-aid highway construction projects. Check boxes to indicate requirements are met. Failure to check both boxes will result in denial of the Request for Authorization.

Erosion control plans may be required; see Section 12.7 "Plans" in the *Local Assistance Procedures Manual*. If required, check box.

XI. STANDARD SPECIFICATIONS

For projects off the State highway system, the local agency may use Caltrans *Standard Specifications, the Standard Specifications for Public Works Construction*, or subject to the conditions described in Chapter 11, "Locally approved Standard Specifications." Check appropriate box.

XII. REQUIRED FEDERAL CONTRACT PROVISIONS (SEE ATTACHMENTS A-N, THIS EXHIBIT)

A. GENERAL FEDERAL REQUIREMENTS

General provisions must be included to reference FHWA Form 1273, Performance on Previous Contract, Noncollusion Provision, and Participation by Minority Business Enterprises In Subcontracting. Caltrans SSP - *SECTION 14. FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS* (Attachment A, pages FR-1 & FR-2) or equivalent provisions shall be used.

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

B. FHWA FORM 1273

1. Incorporation of FHWA Form 1273 into Contract

FHWA Form 1273 - *REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS, (Exclusive of Appalachian Contracts)* (Attachment B, pages FR-3 thru FR-14) shall be made a part of, and physically incorporated into all contracts as well as appropriate subcontracts and purchase orders. The provisions contained in FHWA Form -1273 are generally applicable to all federal-aid construction projects. Except as described below, the form may not be modified.

Check the appropriate box, (i.e., unmodified or modified), and indicate page number.

2. Modification of FHWA Form 1273

If the provisions contained in FHWA Form 1273 will be modified, fill in the required project information before completing Sections **2.a.** thru **2.d.**

a. Section IV. Payment of Predetermined Wages

This section applies to all federal-aid highway construction projects exceeding $2,000 dollars and to all related subcontracts, except for projects not located on the Federal-aid System, which are exempted. If exempted, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box, (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

b. Section V. Statements and Payrolls

This section applies to all federal-aid highway construction projects exceeding $2,000 dollars and to all related subcontracts, except for projects not located on the Federal-aid System, which are exempted. If exempted, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box, (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

c. Section VI. Record of Materials, Supplies, and Labor

This section applies to all federal-aid projects in excess of $1 million, except for projects off the National Highway System (NHS). If exempted, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

d. Section VII. Subletting or Assigning the Contract

This section applies to all federal-aid projects except for projects off the NHS. If exempted, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

C. CERTIFICATION/DISCLOSURE FORMS

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

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION (Attachment C)

NONCOLLUSION AFFIDAVIT (Attachment D)

DEBARMENT AND SUSPENSION CERTIFICATION (Attachment E)

NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS (Attachment F)

DISCLOSURE OF LOBBYING ACTIVITIES (Attachment G)

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

D. LIQUIDATED DAMAGES

Provisions for liquidated damages shall be included in all federal-aid contracts. (See Chapter 12 "PS&E" of the *Local Assistance Procedures Manual*, for requirements.) Caltrans SSP *SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES* (Attachment I, second page), or equivalent provisions shall be used.

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

E. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Fill in the required project information before completing this section.

It is the policy of the FHWA that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Individual project goals will be established based on the criteria for establishing project goals identified in the local agency's DBE Program. Complete evaluation documentation is required and shall be retained for each project (see DBE references in the *Local Assistance Procedures Manual*).

In some cases, a specific goal may not be appropriate due to the extremely limited subcontracting opportunities for DBEs or the lack of certified DBEs in the geographic area in which work is to be performed. If this project has a specific goal, complete Section 1. If project the does not have a specific goal, complete Section 2.

1. PROJECTS WITH SPECIFIC GOALS.

For projects that contain a specific goal, Caltrans SSPs (and the referenced Caltrans *Standard Specifications*), or equivalent provisions, are required to describe DBE Program Policy, the contract goal, eligibility criteria, good faith effort requirements, sanctions on failure to comply, procedures for counting DBE participation, award documentation procedures, post award compliance procedures, and required records and reporting.

Caltrans SSP *SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS* (Attachment H.) includes requirements for DBE subcontractor listing, Federal Lobbying Restrictions, Disadvantaged Business requirements, and DBE Goal for project.

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

2. PROJECTS WITHOUT SPECIFIC GOALS.

Documentation is required that verifies the local agency has determined that a specific project goal is not appropriate. Special provisions for projects without goals are then required as described in the boxes to be checked.

F. BUY AMERICA SPECIFICATION

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

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

G. FEDERAL TRAINEES

Chapter 12 "PS&E" of the *Local Assistance Procedures Manual* includes information for On-the-Job Training. If a Federal Trainee goal is not required, check the appropriate box. If a goal is required, check appropriate box (i.e., Caltrans SSP or equivalent), indicate the trainee goal and the page number. (Attachment N)

H. FEDERAL WAGE RATES

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

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

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

I. RELATIONS WITH RAILROAD

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

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

XIII. RESTRICTED CONTRACT PROVISIONS

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

A. INDIAN PREFERENCES

Generally, local agencies may not use local hiring practices. However, ISTEA permits an Indian employment preference provision for projects on or near Indian reservations or Indian lands. Check the appropriate box.

B. BONDING AND PREQUALIFICATION

Bonding and prequalification procedures are not required for federal-aid projects. However, any procedures or requirements for bonding, insurance, prequalification, qualification, or licensing of contractors shall not be used which may operate to restrict competition, prevent submission of a bid by or prohibit consideration of a bid submitted by any responsible contractor, whether a resident or nonresident of California. Check appropriate boxes and if bonding and/or prequalification are used check the last box to indicate the requirement will be met.

C. PRICE ADJUSTMENT CLAUSES

Price adjustment clauses may be implemented if certain conditions are met. If these clauses are used, the local agency must provide documentation of the required conditions in the project files. Check the appropriate box.

D. WARRANTY CLAUSES (COMPLETE THIS SECTION IF PROJECT IS ON THE NHS)

Warranty clauses may be implemented if the conditions described in Section 12.12 of Chapter 12 are met. The local agency must provide documentation of the required conditions in the project files. Check the appropriate box.

E. PROPRIETARY ITEMS (COMPLETE THIS SECTION IF PROJECT IS ON THE NHS)

The use of proprietary items is restricted as described in Section 12.12 in Chapter 12. If the use does not meet these restrictions, a Public Interest Finding justifying the use must be approved by the local agency and documented in the project files. Check the appropriate box.

XIV. MATERIALS AND EQUIPMENT

Unless otherwise noted, see Section 12.12 of Chapter 12 for details.

A. Publicly-Owned Equipment (for use by Contractor)

The use of publicly-owned equipment on a project going to bid must be justified with a Public Interest Finding. The local agency may approve the use provided it meets conditions described in Chapter 12. Check the appropriate box.

B. Equipment Purchases for Local Ownership

The cost of equipment purchased by the local agency or by the contractor with ownership transferred to the local agency for construction engineering is limited. Check the appropriate box.

C. Convict Produced Materials

Materials produced by convict labor may be used on any federal-aid project if they meet certain conditions. Check appropriate box.

D. Local Agency Furnished Materials

The use of local agency furnished materials not acquired on the basis of competitive bidding must be supported by a Public Interest Finding justifying the us (see Section 12.13 of Chapter 12). The justification must be approved by the local agency and documented in the project files. If these materials are included, check the appropriate box indicating the method of acquisition.

XV. PRELIMINARY ESTIMATE

An estimate of the contract items of work must be prepare in a format which describes the items of work, unit amount, quantity, unit price, amount, a subtotal, contingencies and a total. (Exhibit 12-A, or equivalent). The estimate must be broken down into items sufficient in detail to meet the stated requirements. Check boxes if these requirements are met.

If the project is funded with more than one type of federal-aid it must be segregated by fund types (see Chapter 3). Check box if this requirement is met.

XVI. LOCAL AGENCY SIGNATURE

The Federal Contract Provisions Checklist shall be signed by the person preparing the contract specifications. The checklist shall be signed even if prepared by the same person who will sign the PS&E Certification.

XVII. CALTRANS ACCEPTANCE

Caltrans will indicate the appropriate acceptance statement based on the type of review, as described in Chapter 12 "PS&E" of the *Local Assistance Procedures Manual*, and sign the bottom of the form.

SECTION 14. FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL.—The work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, "Form FHWA 1273, are included in this Section 14. Whenever in said required contract provisions references are made to "SHA contracting officer," "SHA resident engineer," or "authorized representative of the SHA," such references shall be construed to mean "Engineer" as defined in Section 1-1.18 of the Standard Specifications.

PERFORMANCE OF PREVIOUS CONTRACT.—In addition to the provisions in Section II, "Nondiscrimination," and Section VII, "Subletting or Assigning the Contract," of the required contract provisions, the Contractor shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of $10,000 will be considered under the provisions of Section VII of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION.—The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary projects.

Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28, USC, Sec. 1746, is included in the proposal.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING.—Part 26, Title 49, Code of Federal Regulations applies to this Federal-aid project. Pertinent sections of said Code are incorporated in part or in its entirety within other sections of these special provisions.

Schedule B—Information for Determining Joint Venture Eligibility

(This form need not be filled in if all joint venture firms are DBE owned.)

1. Name of joint venture _____

_____

2. Address of joint venture _____

_____

3. Phone number of joint venture _____

_____

4. Identify the firms which comprise the joint venture. (The DBE partner must complete Schedule A.) _____

_____

a. Describe the role of the DBE firm in the joint venture.

_____

b. Describe very briefly the experience and business qualifications of each non-DBE joint venturer: _____

_____

5. Nature of the joint venture's business _____

_____

6. Provide a copy of the joint venture agreement.

7. What is the claimed percentage of DBE ownership? ___

_____

8. Ownership of joint venture: (This need not be filled in if described in the joint venture agreement, provided by question 6.).

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a. Profit and loss sharing.
b. Capital contributions, including equipment.
c. Other applicable ownership interests.

9. Control of and participation in this contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:

a. Financial decisions _____

_____

b. Management decisions, such as:

1. Estimating _____

_____

2. Marketing and sales _____

_____

3. Hiring and firing of management personnel ___

_____

4. Purchasing of major items or supplies _____

_____

c. Supervision of field operations _____

_____

Note.—If, after filing this Schedule B and before the completion of the joint venture's work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee, either directly or through the prime contractor if the joint venture is a subcontractor.

Affidavit

"The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to grantee current, complete and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

.....	.....
Name of Firm	Name of Firm
.....	.....
Signature	Signature
.....	.....
Name	Name
.....	.....
Title	Title
.....	.....
Date	Date

Date _____

State of _____

County of _____

On this ____ day of _____, 19 __, before me appeared (Name) _____, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) _____ to execute the affidavit and did so as his or her free act and deed.

Notary Public _____

Commission expires _____

[Seal]

Date _____

State of _____

County of _____

On this ___ day of _____, 19 __, before me appeared (Name) _____ to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) _____ to execute the affidavit and did so as his or her free act and deed.

Notary Public _____

Commission expires _____

[Seal]

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REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

(Exclusive of Appalachian Contracts)

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ATTACHMENTS

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively

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administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

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7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 26, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

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c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3)] issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c) the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit

as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

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5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

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c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

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2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever being an officer, agent, or employee of the United States, or any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more that $10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized

for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

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d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of $25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract,

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grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

FEDERAL-AID FEMALE AND MINORITY GOALS

In accordance with Section II, "Nondiscrimination," of "Required Contract Provisions Federal-aid Construction Contracts" the following are the goals for female utilization:

Goal for Women
(applies nationwide).....(percent) 6.9

The following are goals for minority utilization:

CALIFORNIA ECONOMIC AREA

	Goal (Percent)
174 Redding, CA:	
Non-SMSA Counties	6.8
CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehama.	
175 Eureka, CA:	
Non-SMSA Counties	6.6
CA Del Norte; CA Humboldt; CA Trinity.	
176 San Francisco-Oakland-San Jose, CA:	
SMSA Counties:	
7120 Salinas-Seaside-Monterey, CA....	28.9
CA Monterey.	
7360 San Francisco-Oakland, CA.....	25.6
CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo.	
7400 San Jose, CA.....	19.6
CA Santa Clara.	
7485 Santa Cruz, CA.	14.9
CA Santa Cruz.	
7500 Santa Rosa, CA.....	9.1
CA Sonoma.	
8720 Vallejo-Fairfield- Napa, CA	17.1
CA Napa; CA Solano	
Non-SMSA Counties.....	23.2
CA Lake; CA Mendocino; CA San Benito.	
177 Sacramento, CA:	
SMSA Counties:	
6920 Sacramento, CA.....	16.1
CA Placer; CA Sacramento; CA Yolo.	
Non-SMSA Counties.....	14.3
CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA Yuba.	
178 Stockton-Modesto, CA:	
SMSA Counties:	
5170 Modesto, CA	12.3
CA Stanislaus.	
8120 Stockton, CA	24.3
CA San Joaquin.	
Non-SMSA Counties.....	19.8
CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Tuolumne.	
179 Fresno-Bakersfield, CA:	
SMSA Counties:	
0680 Bakersfield, CA	19.1
CA Kern.	
2840 Fresno, CA	26.1
CA Fresno.	
Non-SMSA Counties.....	23.6
CA Kings; CA Madera; CA Tulare.	
180 Los Angeles, CA:	
SMSA Counties:	
0360 Anaheim-Santa Ana-Garden Grove, CA.	11.9
CA Orange.	
4480 Los Angeles-Long Beach, CA	28.3
CA Los Angeles.	
6000 Oxnard-Simi Valley-Ventura, CA	21.5
CA Ventura.	

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6780 Riverside-San Bernardino-
Ontario, CA. 19.0
CA Riverside;
CA San Bernardino.
7480 Santa Barbara-Santa Maria-
Lompoc, CA 19.7
CA Santa Barbara.
Non-SMSA Counties..... 24.6
CA Inyo; CA Mono;
CA San Luis Obispo.

181 San Diego, CA:

SMSA Counties
7320 San Diego, CA..... 16.9
CA San Diego.
Non-SMSA Counties..... 18.2
CA Imperial.

In addition to the reporting requirements set forth elsewhere in this contract the Contractor and subcontractors holding subcontracts, not including material suppliers, of $10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form FHWA PR-1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

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(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS PROPOSAL SHALL ALSO CONSTITUTE AN ENDORSEMENT AND EXECUTION OF THOSE CERTIFICATIONS WHICH ARE A PART OF THIS PROPOSAL)

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder_____, proposed subcontractor _____, hereby certifies that he has ___, has not ____, participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filling requirements.

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of $10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

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Noncollusion Affidavit

(Title 23 United States Code Section 112 and
Public Contract Code Section 7106)

To the CITY / COUNTY of _____
DEPARTMENT OF PUBLIC WORKS.

In accordance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Noncollusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Noncollusion Affidavit.
Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

_____

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DEBARMENT AND SUSPENSION CERTIFICATION

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions.
The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

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NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(l) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

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DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action:

☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:

☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:

☐ a. initial
b. material change

For Material Change Only:
year ____ quarter _____
date of last report_____

4. Name and Address of Reporting Entity

☐ Prime ☐ Subawardee
Tier _____, if known

Congressional District, if known

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, if known

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable _____

8. Federal Action Number, if known:

9. Award Amount, if known:

10. a. Name and Address of Lobby Entity
(If individual, last name, first name, MI)

b. Individuals Performing Services (including address if different from No. 10a)
(last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

11. Amount of Payment (check all that apply)

$_____ ☐ actual planned

12. Form of Payment (check all that apply):

☐ a. cash
☐ b. in-kind; specify: nature_____
value _____

13. Type of Payment (check all that apply)

☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e deferred
☐ f. other, specify_____

14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) if necessary)

15. Continuation Sheet(s) attached: **Yes** ☐ **No** ☐

16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature:_____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

Standard Form LLL Rev. 09-12-97

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, State and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influenced the covered federal action.
    (b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (Ml).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

SF-LLL-Instructions Rev. 06-04-90«ENDIF»

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SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS

2-1.01 GENERAL

The bidder's attention is directed to the provisions in Section 2, "Proposal Requirements and Conditions," of the Standard Specifications and these special provisions for the requirements and conditions which the bidder must observe in the preparation of the proposal form and the submission of the bid.

In addition to the subcontractors required to be listed in conformance with Section 2-1.054, "Required Listing of Proposed Subcontractors," of the Standard Specifications, each proposal shall have listed therein the portion of work that will be done by each subcontractor listed. A sheet for listing the subcontractors is included in the Proposal.

The form of Bidder's Bond mentioned in the last paragraph in Section 2-1.07, "Proposal Guaranty," of the Standard Specifications will be found following the signature page of the Proposal.

In conformance with Public Contract Code Section 7106, a Noncollusion Affidavit is included in the Proposal. Signing the Proposal shall also constitute signature of the Noncollusion Affidavit.

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. Each subcontract signed by the bidder must include this assurance.

2-1.015--FEDERAL LOBBYING RESTRICTIONS.--Section 1352, Title 1352, Title 31, United States Code prohibits Federal funds from being expended by the recipient or any lower tier subrecipient of a Federal-aid contract to pay for any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal-aid contract, the making of any federal grant or loan, or the entering into of any cooperative agreement.

If any funds other than federal funds have been paid for the same purposes in connection with this federal-aid contract, the recipient shall submit an executed certification and, if required, submit a completed disclosure form as part of the bid documents.

A certification for federal-aid contracts regarding payment of funds to lobby Congress or a federal agency is included in the Proposal. Standard Form - LLL, "Disclosure of Lobbying Activities," with instructions for completion of the Standard Form is also included in the Proposal. Signing the Proposal shall constitute signature of the Certification.

The above referenced certification and disclosure of lobbying activities shall be included in each subcontract and any lower-tier contracts exceeding $100,000. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Engineer.

The Contractor, subcontractors and any lower-tier contractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by the Contractor, subcontractors and any lower-tier contractors. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase if $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered federal action; or

(3) A change in the officer(s), employees(s), or Member(s) contacted to influence or attempt to influence a covered Federal Action.

2-1.02 DISADVANTAGED BUSINESS ENTERPRISE (DBE).-- This contract is subject to Part 26, Title 49, Code of Federal Regulations entitled "Participation By Minority Business Enterprise In Department of Transportation Programs." The Regulations in their entirety are incorporated herein by this reference.

(Use the following through "J" if DBE goals are specified)

Bidders shall be fully informed respecting the requirements of the Regulations and the Department's Disadvantaged business (DBE) program developed pursuant to the Regulations; particular attention is directed to the following matters:

A. A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto;
B. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company;
C. A DBE bidder, not bidding as a joint venture with a non-DBE, will be required to document one or a combination of the following:

   1. The bidder will meet the goal by performing work with its own forces.
   2. The bidder will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.
   3. The bidder, prior to bidding, made adequate good faith efforts to meet the goal.

D. A DBE joint venture partner must be responsible for specific contract items of work, or portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture. The DBE joint venturer must submit the joint venture agreement with the proposal or the DBE Information form required in the Section entitled "Submission of DBE Information" of these special provisions;
E. A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work;
F. DBEs must be certified by either the California Department of Transportation, or by a participating agency which certifies in conformance with Title 49, Code of Federal Regulations, Part 26, as of the date of bid opening. It is the Contractor's responsibility to verify that DBEs are certified. Listings of certified DBEs are available from the following sources:

   1. The Department's DBE Directory, which is published quarterly. This Directory may be obtained from the Department of Transportation, Materiel Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520;
   2. The Department's Electronic Information Bulletin Board Service, which is accessible by modem and is updated weekly. The Bulletin Board may be accessed by first contacting the Department's Business Enterprise Program at Telephone: (916) 227-8937 and obtaining a user identification and password;
   3. The Department's web site at www.dot.ca.gov/hq/bep/index.htm;

G. Credit for materials or supplies purchased from DBEs will be as follows:

   1. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will count toward the DBE goal. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

2. If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will count toward the DBE goal. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph G.2. if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph G.2.
3. Credit for materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

H. Credit for DBE trucking companies will be as follows:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal;
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract;
3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks its owns, insures, and operates using drivers it employs;
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract;
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE;
6. For the purposes of this paragraph H, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

I. Noncompliance by the Contractor with the requirements of the regulations constitutes a breach of this contract and may result in termination of the contract or other appropriate remedy for a breach of this contract;
J. Bidders are encouraged to use services offered by financial institutions owned and controlled by DBEs.

(Use the following if no DBE goals are specified)

Bidders shall be fully informed respecting the requirements of the Regulations and are urged to obtain DBE participation in this project, although there is no specific goal for DBE participation.

Caltrans has engaged the services of a contractor to provide supportive services to contractors and subcontractors to assist in obtaining DBE participation on federally funded construction projects. Bidders and potential subcontractors should check the Caltrans website at www.dot.ca.gov/hq/bep to verify the current availability of this service.

(Use the following section if DBE goals are specified)

2-1.02A DBE GOAL FOR THIS CONTRACT

The City/County has established the following goal for Disadvantaged Business Enterprise (DBE) participation for this contract:

Disadvantaged Business Enterprise (DBE): ___percent

Caltrans has engaged the services of a contractor to provide supportive services to contractors and subcontractors to assist in obtaining DBE participation on federally funded construction projects. Bidders and potential subcontractors should check the Caltrans website at www.dot.ca.gov/hq/bep to verify the current availability of this service.

(Use the following section if DBE goals are specified)

2-1.02B SUBMISSION OF DBE INFORMATION

The required DBE information shall be submitted on the "LOCAL AGENCY BIDDER - DBE INFORMATION" form included in the Proposal. If the DBE information is not submitted with the bid, the DBE Information form shall be removed from the documents prior to submitting the bid.

It is the bidder's responsibility to make enough work available to DBEs and to select those portions of the work or material needs consistent with the available DBEs to meet the goal for DBE participation or to provide information to establish that, prior to bidding, the bidder made adequate good faith efforts to do so.

If DBE information is not submitted with the bid, the apparent successful bidder (low bidder), the second low bidder and the third low bidder shall submit DBE information to the City/County of _____ (*address*) so the information is received by the City/County of _____ no later than 4:00 p.m. on the fourth day, not including Saturdays, Sundays and legal holidays, following bid opening. DBE information sent by U.S. Postal Service certified mail with return receipt and certificate of mailing and mailed on or before the third day, not including Saturdays, Sundays and legal holidays, following bid opening will be accepted even if it is received after the fourth day following bid opening. Failure to submit the required DBE information by the time specified will be grounds for finding the bid or proposal nonresponsive. Other bidders need not submit DBE information unless requested to do so by the City/County of _____.

The bidder's DBE information shall establish that good faith efforts to meet the DBE goal have been made. To establish good faith efforts, the bidder shall demonstrate that the goal will be met or that, prior to bidding, adequate good faith efforts to meet the goal were made.

Bidders are cautioned that even though their submittal indicates they will meet the stated DBE goal, their submittal should also include their adequate good faith efforts information along with their DBE goal information to protect their eligibility for award of the contract in the event the City/County, in its review, finds that the goal has not been met.

The bidder's DBE information shall include the names, addresses and phone numbers of DBE firms that will participate, with a complete description of work or supplies to be provided by each, the dollar value of each DBE transaction, and a written confirmation from the DBE that it is participating in the contract. A copy of the DBE's quote will serve as written confirmation that the DBE is participating in the contract. When 100 percent of a contract item of work is not to be performed or furnished by a DBE, a description of the exact portion of that work to be performed or furnished by that DBE shall be included in the DBE information, including the planned location of that work. The work that a DBE prime contractor has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors, suppliers and trucking companies will count toward the goal.

The information necessary to establish the bidder's adequate good faith efforts to meet the DBE goal should include:

A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder.
B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested.
C. The items of work which the bidder made available to DBE firms, including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to meet the DBE goal was made available to DBE firms.
D. The names, addresses and phone numbers of rejected DBE firms, the firms selected for that work, and the reasons for the bidder's choice.
E. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs.
F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate.
G. The names of agencies contacted to provide assistance in contacting, recruiting and using DBE firms.
H. Any additional data to support a demonstration of good faith efforts.

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SECTION 3. AWARD AND EXECUTION OF CONTRACT

The bidder's attention is directed to the provisions in Section 3, "Award and Execution of Contract," of the Standard Specifications and these special provisions for the requirements and conditions concerning award and execution of contract.

(Use the following paragraph if DBE goals are specified)

The award of the contract, if it be awarded, will be to the lowest responsible bidder whose proposal complies with all the requirements prescribed and who has met the goal for DBE participation or has demonstrated, to the satisfaction of the City/County, adequate good faith efforts to do so. Meeting the goal for DBE participation or demonstrating to the satisfaction of the City/County, adequate good faith efforts to do so is a condition for being eligible for award of contract.

SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES

Attention is directed to the provisions in Section 8-1.03, "Beginning of Work," in Section 8-1.06, "Time of Completion," and in Section 8-1.07, "Liquidated Damages," of the Standard Specifications and these special provisions.
The Contractor shall begin work within __ calendar days after the contract has been approved by the City/County of _____.

This work shall be diligently prosecuted to completion before the expiration of_____WORKING DAYS beginning on the __ calendar day after approval of the contract.

(INSERT AMOUNT OF LIQUIDATED DAMAGES)

The Contractor shall pay to the City/County of _____ the sum of $ _____ per day, for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed above.

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5-1.__ SUBCONTRACTOR AND DBE RECORDS. -- The Contractor shall maintain records of all subcontracts. The records shall show those subcontracts entered into with certified DBE subcontractors and records of materials purchased from certified DBE suppliers. Such records shall show the name and business address of each DBE subcontractor or vendor and the total dollar amount actually paid each DBE subcontractor or vendor.

Upon completion of the contract, a summary of these records shall be prepared on "Final Report – Utilization of Disadvantaged Business Enterprises - (DBE), First-Tier Subcontractors" (Exhibit 17-F/Form CEM-2402) and certified correct by the Contractor or his authorized representative, and shall be furnished to the Engineer.

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5-1.__ PERFORMANCE OF DBE SUBCONTRACTORS AND SUPPLIERS

The DBEs listed by the Contractor in response to the requirements in the section of these special provisions entitled "Submission of DBE Information, Award, And Execution Of Contract," which are determined by the Department to be certified DBEs, shall perform the work and supply the materials for which they are listed unless the Contractor has received prior written authorization to perform the work with other forces or to obtain the materials from other sources.

Authorization to utilize other forces or sources of materials may be requested for the following reasons:

(1) The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project, or on the terms of such subcontractor's or supplier's written bid, is presented by the Contractor.

(2) The listed DBE becomes bankrupt or insolvent.

(3) The listed DBE fails or refuses to perform his subcontract or furnish the listed materials.

(4) The Contractor stipulated that a bond was a condition of executing a subcontract and the listed DBE subcontractor fails or refuses to meet the bond requirements of the Contractor.

(5) The work performed by the listed subcontractor is substantially unsatisfactory and is not in substantial accordance with the plans and specifications, or the subcontractor is substantially delaying or disrupting the progress of the work.

(6) It would be in the best interest of the State.

The Contractor shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of the Contractor) pursuant to prior written authorization of the Engineer.

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LOCAL AGENCY BIDDER-DBE INFORMATION

This information may be submitted with your bid proposal. If it is not, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received by the administering agency no later than the time specified in the special provisions.

CO./RTE./P.M.: _____
CONTRACT NO.:
_____
BID AMOUNT: $_____
BID OPENING DATE: _____

BIDDER'S NAME:
_____
ADDRESS:
_____
_____

DBE GOAL FROM CONTRACT _____%

CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OF WORK OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED	NAME OF DBE ** (Name of DBEs, Certification Number, and Telephone Number)	DOLLAR AMOUNT *** DBE	PERCENT *** DBE
		Total Claimed Participation	$_____ ___%	$_____ ___%

*	If 100% of item is not to be performed or furnished by DBE, describe exact portion, including planned location of work to be performed, of item to be performed or furnished by DBE
**	DBEs must be certified by Caltrans on the date bids are opened. Subcontractors and suppliers certified state-funded only cannot be used to meet goals on federally funded contracts.
***	Credit for a DBE supplier, who is not a manufacturer is limited to 60% of the amount paid to the supplier. (See Section "Disadvantaged Business" (DBE) of the special provisions)

IMPORTANT: Names of DBE subcontractors and their respective item(s) of work listed above should be consistent with the name and items of work in the "List of Subcontractors" submitted with your bid pursuant to the Subcontractors Listing Law.

_____
Signature of Bidder Date (Area Code) tel. No.

_____
Person to Contact (Please type or print)

Distribution for NHS Projects: (1) Original-Caltrans DLAE for NHS Projects, (2) Copy-Local Agency project file
Distribution for non-NHS Projects: (1) Original Local Agency project file

DEPT. OF TRANSPORTATION (FED DBE) MODIFIED DC-OE-19 (REV 09-18-95)

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5-1.__ BUY AMERICA REQUIREMENTS. -- Attention is directed to the "Buy America" requirements of the Surface Transportation Assistance Act of 1982 (Section 165) and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Sections 1041(a) and 1048(a), and the regulations adopted pursuant thereto. In accordance with said law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this project shall occur in the United States; with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of such steel or iron materials shall be considered a manufacturing process subject to the "Buy America" requirements.

A Certificate of Compliance, conforming to the provisions in Section 6-1.07, "Certificates of Compliance," of the Standard Specifications, shall be furnished for steel and iron materials. The certificates, in addition to certifying that the materials comply with the specifications, shall also specifically certify that all manufacturing processes for the materials occurred in the United States, except for the exceptions allowed herein.

The requirements imposed by said law and regulations do not prevent a minimal use of foreign steel and iron materials if the total combined cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract cost or $2,500, whichever is greater. The Contractor shall furnish the Engineer acceptable documentation of the quantity and value of any foreign steel and iron prior to incorporating such materials into the work.

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(To be used, when applicable, in Federal-aid projects)
***Insert number of trainees.**

FEDERAL REQUIREMENT TRAINING SPECIAL PROVISIONS

FEDERAL REQUIREMENT TRAINING SPECIAL PROVISION. -- As part of the Contractor's equal employment opportunity affirmative action program, training shall be provided as follows:

The Contractor shall provide on-the-job training to develop full journeymen in the types of trades or job classification involved.

The goal for the number of trainees or apprentices to be trained under the requirements of this special provision will be _____.

In the event the Contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees or apprentices are to be trained by the subcontractor, provided however, that the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The Contractor shall also ensure that this Training Special Provision is made applicable to such subcontract. Where feasible, 25 percent of trainees or apprentices in each occupation shall be in their first year of apprenticeship or training.

The number of trainees or apprentices shall be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing work, the Contractor shall submit to the Department for approval the number of trainees or apprentices to be trained in each selected classification and training program to be used. Furthermore, the Contractor shall specify the starting time for training in each of the classifications. The Contractor will be credited for each trainee or apprentice employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees or apprentices as provided hereinafter.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this Training Special Provision. Accordingly, the Contractor shall make every effort to enroll minority and women trainees or apprentices (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees or apprentices) to the extent such persons are available within a reasonable area of recruitment. The Contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee or apprentice in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The Contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the Contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the Contractor and approved by both the Department and the Federal Highway Administration. The Department and the Federal Highway Administration will approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee or apprentice for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with the State of California, Department of Industrial Relations, Division of Apprenticeship Standards recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office.

Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training. Except as otherwise noted below, the Contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the Engineer, reimbursement will be made for training of persons in excess of the number specified herein.

This reimbursement will be made even though the Contractor receives additional training program funds from other sources, provided such other source does not specifically prohibit the Contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the Contractor where he does one or more of the following and the trainees or apprentices are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or apprentice or pays the trainee's or apprentice's wages during the offsite training period.

No payment shall be made to the Contractor if either the failure to provide the required training, or the failure to hire the trainee or apprentice as a journeyman, is caused by the

Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee or apprentice will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees or apprentices be on board for the entire length of the contract. A Contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees or apprentices specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Only trainees or apprentices registered in a program approved by the State of California's State Administrator of Apprenticeship may be employed on the project and said trainees or apprentices shall be paid the standard wage specified under the regulations of the craft or trade at which they are employed.

The Contractor shall furnish the trainee or apprentice a copy of the program he will follow in providing the training. The Contractor shall provide each trainee or apprentice with a certification showing the type and length of training satisfactorily completed.

The Contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision

FR-16

CHAPTER 15 ADVERTISE AND AWARD PROJECT

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EXHIBITS

Exhibit	Description	Page Number
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EXHIBITS CONTINUED

Exhibit	Description	Page Number
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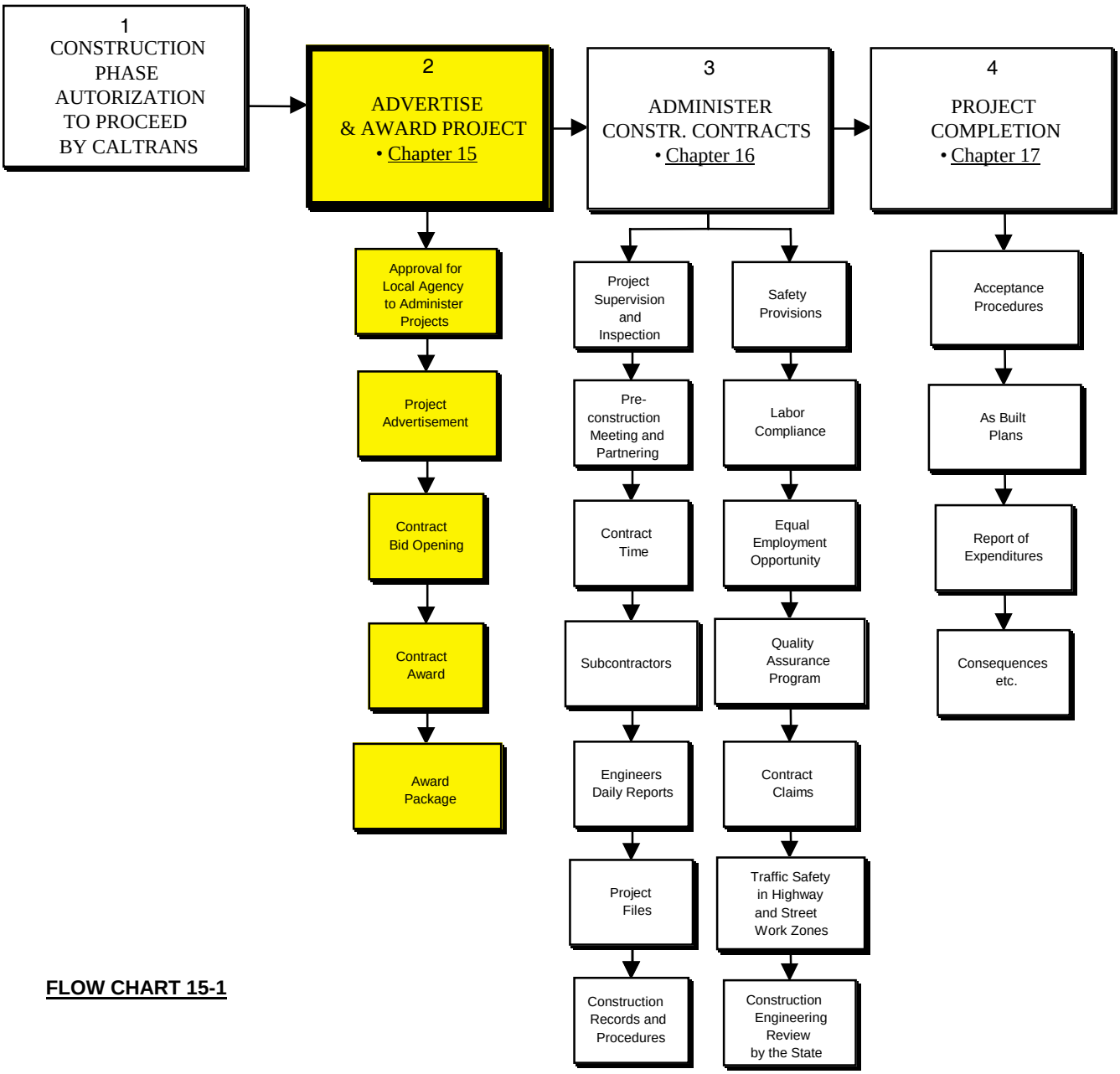
CHAPTER 15 ADVERTISE AND AWARD PROJECT

15.1 INTRODUCTION

This chapter, Chapter 16, "Administer Construction Contract," and Chapter 17, "Project Completion," are for use by local agencies who administer federal-aid construction projects under an "Administering Agency-State Agreement." These three chapters replace the previously issued *Local Programs Manual, Volume II*, titled "Contract Administration Procedures." When a locally sponsored project funded with federal-aid is within the State right of way (R/W) and the State (Caltrans) is the administering agency, the State's *Construction Manual* is normally used.



FLOW CHART 15-1

This chapter covers the activities beginning with advertising of a construction contract and continuing through the bid opening, award, and detail estimate procedures. It has been prepared mainly as a guide for administration of federal-aid contracts by local agencies. Each local agency Resident Engineer should be familiar with the contents of this chapter, Chapter 16, and 17 before administering such contracts.

Note: Procedures for locally administered projects within the State right of way shall also be in accordance with the *Special Funded Programs-Procedures Manual*.

15.2 DEFINITION OF TERMS

- AASHTO - American Association of State Highway and Transportation Officials
- ASTM - American Society for Testing and Materials
- Administering agency - The State, city, county, or other local public agency which advertises, opens bids, and awards the contract (also called responsible agency)
- Bid rigging - a conspiracy to disrupt or circumvent the competitive environment by establishing a competitive advantage for certain bidders.
- CCO - Contract Change Order
- CE - Construction Engineering. The supervision and inspection of construction activities; additional staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates.
- CFR - Code of Federal Regulations
- Contingencies - An amount of funds usually a small percentage of the detail estimate, set aside for unforeseen items or quantities of work not specified in the contract documents, but required to complete the project. The percentage used for contingencies varies depending on the type and scope of work.
- Contract Administration - Includes advertising, opening bids, award, and execution of the contract; control of work and material; and making payments to the contractor.
- Contractor - The person or persons, firm, partnership, corporation, or combination thereof, who have entered into a contract with the administering agency, as party or parties of the second part of his/her or their legal representatives.
- DBE - Disadvantaged Business Enterprise (includes Women-owned Business Enterprise (WBE) and Minority-owned Business Enterprise (MBE)). The breakdown of different Business Enterprise descriptions is due to the difference between the State and federal requirements
- Department - The Department of Transportation of the State of California, as created by law; also referred to as Caltrans, the Department of Transportation, or State.

- District - The subdivision of the Department of Transportation organized to administer the affairs of the Department relating directly to the local agency; also referred to as Transportation District.

- DLAE - District Local Assistance Engineer - District Engineer responsible for liaison with local agencies.

- EA - Expenditure Authorization number

- EEO - Equal Employment Opportunity

- ER - Emergency Relief

- Exempt Project - A classification for federal-aid projects which are exempt from FHWA review and oversight required by *Title 23 Code of Federal Regulations*. For exempt federal-aid projects the FHWA and Caltrans exercises the maximum degree of delegation of authority to local agencies (see Chapter 2, Section 2.4, "Stewardship - Letters of Agreement").

- Finance Letter - A document required by local programs accounting (see Exhibit 15-N) and submitted by the administering agency to Caltrans with information required as backup for the federal-aid/State project agreement.

- FTIP - Federal Transportation Improvement Program

- FNM-76 - Federal-aid Program Document titled: "Request for Approval to Proceed" Form FNM-76

- FSTIP - Federal Statewide Transportation Improvement Program

- FHWA - Federal Highway Administration

- HPMS - Highway Performance Monitoring System

- Headquarters - The Headquarters office of the Department of Transportation; also referred to as Transportation headquarters (1120 "N" Street, Sacramento, CA 94274-0001).

- ISTEA - Intermodal Surface Transportation Efficiency Act of 1991

- Invoice - A detailed list of expenditures that an administering agency requests reimbursement for with federal funds, pursuant to the Local Agency-State Agreement (see Chapter 16, Exhibit 16-L, "Federal-aid Invoice")

- LAAPS - Local Agency Automated Pay System

- LRH - Last Resort Housing

- Local agency - A city, county, or other local public agency

- Local Agency-State Agreement - Agreement between the State and local agency. Generally refers to the Master agreement and all supplemental agreements (Program Supplements) to the master agreements. These agreements are required for the State to provide reimbursement to the local agency for all federal-aid projects.

- Locode - Numeric identifier for each local agency or administering agency (assigned by the Office of Local Programs).

- LPP - Local Programs Procedures. A distribution of procedures from the Office of Local Programs. Each Procedure is numbered sequentially with the prefix being the year of distribution.

- MBE - Minority Business Enterprise

- MPO - Metropolitan Planning Organization

- MWBE - Minority Women-owned Business Enterprise

- NHS - National Highway System - A specially Designated Highway System established by the Intermodal Surface Transportation and Efficiency Act of 1991 and adopted by the United States Congress.

- OLP - Office of Local Programs (Caltrans headquarters unit only)

- Office Engineer - Chief of the Headquarters or District Office of Office Engineer. The office engineering unit is responsible for insuring that the PS&E is complete, biddable and buildable

- PS&E - Plans, Specifications, and Estimate

- PE - Preliminary Engineering. Location, design, and related work preparatory to the advancement of a project to physical construction.

- PR-2 - Federal-aid Project agreement (between the State and Federal Highway Administration). This agreement is required for the State to receive federal funds used to reimburse the local agency.

- PR-2A - Modification of Federal-aid Project agreement (Form PR-2A)

- Prequalification - The AASHTO defines prequalification as a means of predetermining job experience and work capacity and to identify individuals and organizations from whom the agency may accept a bid. The AASHTO also has encouraged the use of prequalification procedures in its 1981 Suggested Guidelines for Strengthening Bidding and Contract Procedures.

- RAP - Relocation Assistance Program

- Report of Expenditures - Collectively refers to the following final report documents: Final Inspection of Federal-aid Project (FIF 7/96), Final Invoice, Final Detail Estimate, Change Order Summary (containing liquidated damages/contractor's claims, date of completion, date of acceptance by City or County), Final Report Utilization of Disadvantaged Business Enterprise (DBE), Materials Certificate, and Report of Completion of Structures if bridges were constructed.

- Resident Engineer - A qualified Engineer who is empowered to administer the contract.

- S&H Code - California Streets and Highways Code

- SHA - State Highway Agency (Caltrans)

- Supplemental Work - Work that is anticipated but because of its uncertainty, cannot be included as a contract item e.g., additional staking, utility work, etc. If supplemental work is determined to be needed, a change order is required to include it in the contract. This work should normally be part of the contingencies.

- Surety - A security against loss or damage or for the fulfillment of contract obligation, bond

- WBE - Women-owned Business Enterprise

- WWBE - White Women-owned Business Enterprise

15.3 APPROVAL FOR LOCAL AGENCY TO ADMINISTER PROJECTS

MAJOR NHS PROJECTS

Caltrans must approve the local agency's construction administration procedures before a local agency can advertise the construction of a federally financed major NHS project (see Chapter 7 "Field Reviews" for the determination by the DLAE of which NHS projects will be considered major). The procedures should be discussed in general at the field review and detailed written procedures shall be approved by the DLAE before the local agency will be allowed to administer any construction contracts for the project. **Additionally, a local agency shall not advertise the project until it has received in writing an "Authorization to Proceed" with construction from Caltrans (see Chapter 3, "Project Authorization").**

The written construction administration procedures should cover the following items:

- Construction Management personnel and procedures
- Consultant use and selection
- Project advertisement, bid opening and award procedures
- Pre-Construction Procedures
- Subcontracting
- Project DBE good faith determination and monitoring
- Traffic Safety procedures
- Materials Testing

- Change order review and approval procedures
- Oversight procedures if a State highway is involved
- Maintenance of records and Access
- Estimates and Progress Payment

The DLAE will consult with Headquarters OLP for assistance with the review and approval of the local agency procedures.

ALL OTHER PROJECTS

Approval by Caltrans of the local agency's construction administration procedures will not be required for all other projects. However, each agency that administers a federal-aid construction project will be required to complete a "Local Agency Construction Contract Administration Checklist" (Exhibit 15-A) before their "Request for Authorization to Proceed with Construction" will be approved. **A local agency shall not advertise a project until it has received in writing an "Authorization to Proceed" with construction from Caltrans (see Chapter 3, "Project Authorization").**

15.4 PROJECT ADVERTISEMENT

INTRODUCTION

Project advertisement may be "locally administered" or "State administered." Whenever a local agency advertises for bids, opens bids, and awards the contract, the project is considered "locally administered." This decision must be made at an early stage of the project, and before final agreement. Federal-aid projects must be advertised by either a local agency authorized to do so or by the State. **The State advertises local agency projects only on an exception basis, and with prior written approval from the District Director.** The written approval is accomplished through the execution of a cooperative agreement between the two agencies. State administered projects usually occur when the project is located on a State highway, and there is a mixture of several fund sources to finance the project construction. If the State agrees to administer a project, the procedures included in the Caltrans *Construction Manual*, Chapter II, Section 2-90, "Local Assistance Projects and Projects Funded by Others," will apply in lieu of the requirements of this manual.

On locally administered projects, the construction engineering is performed by local agency personnel, unless arrangements are made to hire a consultant. If a consultant is used, the local agency must still designate an employee of the agency as the person in responsible charge of the project. The only exception to this procedure is if the administering agency has hired a consultant on retainer to act as the City Engineer or Public Works Director. Then the consultant may act as the person in responsible charge of the project.

Construction engineering for "locally administered" projects shall be performed in accordance with the requirements found in Chapter 16, "Administer Construction Contract" of this manual.

Each local agency and all of its contractors, subcontractors, and vendors shall take all reasonable steps to assure that DBEs have equitable opportunity to compete for and perform contracts (see 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" (FNM-76 for nonexempt projects) by Caltrans or the FHWA. Violation of this requirement shall result in the project 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 the *Local Assistance Program Guidelines*, Chapter 11, "Disaster Assistance."

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

PROCEDURES

Prior to project advertisement, the administering agency shall certify that their final PS&E package complies with all applicable federal and State regulations and procedures (see Exhibit 12-A "PS&E Certification"). Local agencies should also complete and retain the "Local Agency Project Advertising Checklist" (Exhibit 15-C) in the project files prior to requesting an Authorization to Proceed. All administering agencies must submit a completed "Request for Authorization" with the PS&E Certification before they can receive verification that construction has been authorized by Caltrans.

Upon receipt of "Authorization to Proceed" for construction by Caltrans, the local agency can proceed to advertise the project.

During the advertising period, the administering agency shall 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 local agency is required to certify that all bidders certify receipt of all addenda. The administering agency shall ensure free and open competition. The advertisement period is determined by the administering agency. A minimum advertisement period of three weeks is recommended for all projects. **For NHS projects a minimum advertisement period of three weeks is required by the FHWA**. The advertising period begins with publication of a "Notice to Contractors" in a newspaper receiving wide local circulation. The Notice shall identify the DBE project goals. The administering agency is responsible to approve and issue all addenda to the PS&E during the advertising period.

The local agency shall assure that all updated estimates are fundable from available local or federal resources.

As soon as the project is advertised, the local agency shall furnish the DLAE with one copy of the "as advertised" plans and special provisions or two copies if structures (bridges) are involved.

15.5 CONTRACT BID OPENING

INTRODUCTION

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 the bidder, the reading of the bids confirms whether his bid is successful. For the local agency 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 except for the "tabulation of bids requirement," which does not apply to projects off the NHS.

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, while

- A **responsible bidder** is one who is physically organized and equipped with the financial ability to undertake and complete the contract.

Some reasons for not reading a bid due to bidding irregularities include:

- Failure to sign the bid
- Failure to furnish the required bid bond
- Failure to include a unit bid price for each item
- Failure to include a total amount for the bid
- Failure to prepare the bid in ink
- Failure to submit a completed addenda certification statement
- Failure to submit a noncollusion affidavit
- Failure to commit to the achievement of the DBE contract goals or demonstrate good faith efforts to do so
- Inclusion of conditions or qualifications not provided for in the specifications
- Submission of a materially unbalanced bid

The above examples do not include all possible bidding irregularities. The local agency's standard specifications govern regarding what constitutes a bidding irregularity. Accordingly, the local agency's bidding documents should clearly identify those requirements with which the bidder must comply to make the bid responsive.

Just as the bid may be rejected for being irregular or unresponsive, a bid may also be rejected on the grounds that the bidder is not a responsible bidder. A bidder may be deemed not responsible because of past unsatisfactory performance, as evidenced by failure to meet the local agency's qualification requirements, or because of State or federal suspension/debarment action. The administering agency should check to see if a contractor is suspended or debarred from federal contracts. A publication titled, *A Listing of Parties Excluded from Federal Procurement and Nonprocurement Programs* is available electronically via the internet at http://epls.arnet.gov.

Note: Contractor's "Debarment and Suspension Certification" is part of the "Notice to Contractors and Special Provisions" boiler plate.

In summary, a successful bid opening should identify the **responsible bidder** submitting the lowest **responsive bid**.

PROCEDURES

The administering agency shall follow its own procedures for bid opening, provided such procedures include:

- As bid proposals are received, they shall be logged in and stamped with the time and date.
- The bids shall be retained in a secure place until the designated time and place for public opening.
- All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount.
- If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the bid opening.
- Negotiation with contractors, during the period following the opening of bids and before the award of the contract shall not be permitted.

If a local agency elects to prequalify contractors, the agency's prequalification procedures shall not include procedures or requirements for bonding, insurance, prequalification, qualification, or licensing of contractors, which may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed.

Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating. For further discussion on prequalification of bidders see: AASHTO publication on *Suggested Guidelines for Strengthening Bidding and Contract Procedures* (which is available in the FHWA *Contract Administration Core Curriculum*).

The agency's bidding procedures shall not discriminate against any qualified bidder regardless of political boundaries. No bidder shall be required to obtain a license before submitting a bid or before the bid is considered for award of a contract which includes federal financing; however, a State contractor's license must be obtained upon award of the contract. The local agency may also withhold payment under such contract until such time as the contractor furnishes proof of a proper license in compliance with State laws. No local agency shall bid in competition with, or enter into a subcontract with private contractors. As bid proposals are received, they shall be logged in and stamped with the time and date. The bids shall be retained in a secure place until the designated time and place for public opening.

The administering agency shall retain the following completed documents for the successful bidder in the project file:

- Bidder DBE Information (Exhibit 15-G) (not required when local agency sets zero DBE goal)
- A list of bidders and total amounts bid with an item-by-item breakdown (see Exhibit 15-D, "Sample Bid Tabulation Summary Sheet") of the three lowest bidders
- "DBE Information-Good Faith Efforts" form is to be retained in the project file if the commitment level(s) do not meet DBE goals (see Exhibit 15-H) (not required when local agency sets zero DBE goal)
- The Noncollusion Affidavit (see Chapter 12, "Plans Specifications & Estimate," Exhibit 12-E, Attachment D, "Noncollusion Affidavit")
- A Local Agency Bid Opening Checklist (Exhibit 15-I)

For NHS projects, the local agency shall submit the following to the DLAE (who will transmit it to FHWA headquarters) immediately following the bid opening:

- A letter of "Submission of Bid Tabulation" for all NHS projects (see Exhibit 15-E), (original plus 1 copy).

- A Bid Price Data (FHWA Form-45) for all federal-aid projects where the value of work on the NHS is $500,000 or more (see Exhibit 15-F), (original plus 1 copy).

In order to ascertain the successful bidder for contracts containing DBE goals, the local agency shall evaluate the apparent low bidder's efforts to attain the DBE goals in conformance with the approved contract Special Provisions.

Where the lowest bid exceeds the engineer's estimate by an unreasonable amount as defined by established agency procedures, or where competition is considered to be poor for the size, type, and location of project, bids may be rejected unless an award of contract is justified as being in the best interest of the public. See Section 15.6, "Contract Award, Bid Analysis Process," and *FHWA Technical Advisory T 5080.4 (December 29, 1980), and T 5080.6 (December 17, 1982)* for additional information regarding bid reviews. These technical advisories can be found in the appendix to the *US DOT, FHWA pub; Contract Administration Core Curriculum*.

The administering agency shall assure that all bid proposals submitted include a completed addenda certification statement. The addenda certification statement is as follows:

*ADDENDA - This Proposal is submitted with respect to the changes to the contract included in addendum number/s_*
(Fill in number/s if addenda have been received.)

Warning If an addendum or addenda have been issued by the administering agency and not noted above as being received by the bidder, this proposal may be rejected.

15.6 CONTRACT AWARD

INTRODUCTION

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 Caltrans or the FHWA. Violation of this requirement shall result in the project ineligible for federal funding.

The contract award is a critical milestone for all federal-aid projects. At this point the administering agency must have a complete financial package assuring adequate funding for the project. The administering agency shall award federal-aid contracts on the basis of the lowest responsive and responsible bidder. It is the administering agency's responsibility to assure that all successful bidders are licensed contractors upon award of any contract incorporating State or federal-aid funds.

BID ANALYSIS PROCESS

The administering agency should conduct a **bid analysis** for each project. The bid analysis is required for projects on the National Highway System. The bid analysis is the process performed to justify the award or rejection of the bids and should assure that good competition and the lowest possible cost were received. A proper bid analysis better ensures that funds are being used in the most effective manner. A bid analysis also assists the agency in preparing accurate engineering estimates on future projects.

The bid analysis process is an examination of the unit bid prices for reasonable conformance with the engineer's estimated prices. Beyond the comparison of prices, other factors that a bid analysis may consider include:

- Number of bids
- Distribution or range of the bids
- Identity and geographic location of the bidders
- Urgency of the project
- Unbalancing of bids
- Current market conditions and workloads
- Potential for savings if the project is readvertised
- Comparison of bid prices with similar projects in the letting
- Justification for significant bid price differences
- Other factors as warranted

The *Contract Cost Data* publication by Caltrans, is available to assist local agencies in preparing accurate engineers estimates. This annual publication is available in electronic form on the Internet. Instructions for downloading this information are located at Internet address:

http://tresc.dot.ca.gov./office_engineer/CoCoda.html

Not all of the factors above need to be considered for bids that indicate reasonable prices or show good competition. However, when the low bid exceeds the engineer's estimate by an unreasonable amount, a more thorough analysis should be undertaken to determine if the bids should be rejected or a justification for award of the contract can be made. In order to justify award of a contract under these circumstances, the following criteria should be examined:

- Was competition good?
- Is the project essential and deferral would be contrary to public interest?
- Would readvertisement result in higher bids?
- Is there an error in the engineer's estimate?
- Is the increase within the amount programmed in the FTIP?

For NHS projects, written justification shall be included in the project file for projects where the lowest responsible bidder exceeds the engineers estimate by 10% or more. The justification should explain the reasons for the difference between the engineer's estimate and bid amount, and why it was decided to award the contract.

Regarding the adequacy of competition, the *FHWA, Technical Advisory T 5080.4* suggests that competition can be considered excellent when six or more bids are within 20% of the low bid. Location and availability of bidders should also be considered when determining adequacy of competition. Some projects may be so essential that deferral, even for 60 days, would not be in the public's interest. Examples of such projects might include:

- Safety projects to correct an extremely hazardous condition where the traveling public is in danger
- Emergency repairs or replacement of damaged facilities
- Projects to close substantial gaps in otherwise completed facilities to allow opening to traffic
- Projects that are critical to staged or phased construction and delay would significantly impact the completion of the whole project

<u>Unbalanced bids</u> are one of the factors to review in a bid analysis. The two types of unbalanced bids are as follows:

- A <u>mathematically unbalanced bid</u> is a bid that contains lump sum or unit bid items that do not reasonably reflect the actual costs (plus reasonable profit, overhead costs, and other indirect costs) to construct the item, and

- A <u>materially unbalanced bid</u> is a bid that generates reasonable doubt that award to that bidder would result in the lowest ultimate cost to the Government

To detect mathematical unbalancing, the unit bid items should be evaluated for reasonable conformance with the engineer's estimate and compared with the other bids received. There are no definitive parameters (e.g., an amount or percent of variance from the engineer's estimate) that constitutes an unbalanced bid. The degree of unbalancing of a bid may depend on the reason for the unbalancing. Mathematically unbalanced bids, although not desirable, may be acceptable.

The determination of mathematically unbalanced bids may be aided by the use of one of the several computer software packages now available. However, the final decision should not preclude the use of engineering judgment. Care must also be exercised to ensure that unit bids for mobilization do not mask unbalancing. Also, "token bids" (i.e., bids with large variations from the engineer's estimate) should be considered as mathematically unbalanced bids and further evaluation and other appropriate steps should be taken to protect the public interest.

There may be situations where the quantity of an item could vary due to inaccuracies in the estimating, errors in the plans, changes in site conditions or design, etc. In such situations, the bids should be further evaluated to determine if the low bidder will ultimately yield the lowest cost. If unbalancing creates reasonable doubt that award would result in the lowest ultimate cost, the bid is materially unbalanced and should be rejected or other steps should be taken to protect the public interest.

AWARD PROCEDURES

The administering agency shall follow its normal procedures for award of the project and is delegated the authority to determine the lowest responsive/responsible bidder without concurrence to award by Caltrans or the FHWA. Written justification shall be included in the project file for all projects that are not awarded to the lowest bidder, including evaluation of good faith efforts. The administering agency shall follow its normal procedures for award of the contract and assure that all federal requirements are followed. A bid analysis is not a requirement but is recommended. The administering agency shall retain the executed contract, document the award date, and the Preconstruction conference minutes. The State shall not participate in resolving disputes between the administering agency and its bidders.

It is the responsibility of the administering agency to verify with the DLAE and RTPA/MPO that the appropriate amount of federal funds are authorized before the project is awarded.

POST-AWARD REVIEWS

The administering agency should conduct post-award bid evaluations to assure against bid rigging. An adequate number of projects awarded over a sufficient time period should be evaluated. A period of approximately 5 years should be selected for an initial evaluation to determine if any abnormal competitive bid patterns exist. The following information should be considered in a post-award review for abnormal bid patterns:

- Number of contract awards to a specific firm
- Project bid tabulations
- Firms that submitted a bid and later become a subcontractor on the same project

- Rotation of firms being the successful bidder
- Consistent percentage differential in the bids
- Consistent percentage of the available work in a geographic area to one firm or to several firms over a period of time
- Consistent percentage differential between the successful bid and the engineer's estimate
- Location of the successful bidder's plant versus location of the other bidders' plants
- Variations in unit bid prices submitted by a bidder on different projects in the same bid opening
- Type of work involved
- Number of plans and proposal taken out versus the number of bids submitted
- Any other items that indicate noncompetitive bidding
- On readvertised projects, if the eventual successful bidder was also low bidder on the first letting

TERMINATION OF CONTRACTS

(a) All NHS contracts exceeding $10,000 shall contain suitable provisions for termination by the administering agency, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(b) Prior to termination of a federal-aid contract that is not exempt from FHWA oversight, the administering agency shall consult with and receive the concurrence of the Caltrans DLAE. In addition, for all other federal-aid contracts the administering agency shall notify the DLAE of the termination. The extent of federal-aid participation in contract termination costs, including final settlement, depends on the merits of the individual case. However, under no circumstances shall federal funds participate in anticipated profit on work not performed.

(c) Except as provided for in paragraph (e) of this section, normal local agency federal-aid plans, specifications, estimates, advertising, and award procedures are to be followed when an administering agency awards the contract for completion of a terminated federal-aid contract.

(d) When an administering agency awards the contract for completion of a federal-aid contract previously terminated for default, the construction amount eligible for federal participation on the project should not exceed whichever amount is the lesser, either:

(1) The amount representing the payments made under the original contract plus payments made under the new contract; or

(2) The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

(e) If the surety awards a contract for completion of a defaulted federal-aid contract or completes it by some other acceptable means, the FHWA considers the terms of the original contract in effect and that the work be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action is therefore needed in connection with any defaulted federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for federal participation on the project should not exceed the amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

15.7 AWARD PACKAGE

The administering agency shall complete and forward the following information as **one** package to the DLAE immediately after award of the contract and prior to submitting the first invoice of the construction phase:

- The Local Agency Contract Award Checklist (see Exhibit 15-L)
- Detail Estimate (see Exhibit 15-M)
- Finance Letter (see Exhibit 15-N)
- Resident Engineer's Construction Contract Administration Checklist (see Exhibit 15-B)

The purpose of the Local Agency Award Checklist is to minimize delays in processing payments for federal-aid projects. If the award amount is more, or significantly less than the amount estimated at the time of authorization, the administering agency should submit a revised E-76 and revised finance letter to the DLAE along with the above package.

A "Detail Estimate" (see Exhibit 15-M) and "Finance Letter" (see Exhibit 15-N) must be prepared outlining all project costs by work type code. For further information on the work type code see Chapter 3, "Project Authorization," Exhibit 3-G, and Exhibit 3-H (Item #38). From the information contained in the Detail Estimate, Local Assistance Program will prepare a revised Authorization to Proceed (E-76) which automatically updates the funding agreement between Caltrans and FHWA. If the award amount is more, or significantly less than the amount estimated at the time of authorization, the administering agency should submit a revised E-76 and revised Finance Letter to the DLAE along with the Award Package.

NOTE: If the amount of federal funds obligated and agreed to in the E-76 "Authorization to Proceed" is less than the full pro-rata share, the federal reimbursement ratio used in the Detail Estimate and subsequent progress invoices will be held at the ratio of federal funds to total project funds authorized in the E-76. That ratio may be increased in the final Detail Estimate and final invoice, up to the full pro-rata share to utilize the full amount of federal funds authorized.

The local agency and State personnel involved shall ensure timely processing of the master agreement, program supplement, detail estimate, and finance letter. The local agency is responsible for ensuring that the various forms are complete and accurate.

If at any time during construction, the project cost is expected to overrun, the administering agency must submit a Revised Detail Estimate **along with a request for modification of the Authorization to Proceed E-76**, and a revised finance letter. The Revised Detail Estimate should include the effects of all change orders and anticipated changed work through the end of the contract. This is to avoid future revisions.

It is the administering agencies responsibility to ensure that there are enough federal-aid funds programmed by their MPO/RTPA (STP, TEA, or CMAQ) or Caltrans (HES, HBRR, ER, and RRX), to cover an increase due to a revised detail estimate. If additional federal funds are required, the local agency must obtain written approval from the MPO/RTPA or Caltrans prior to submitting a Revised Detail Estimate.

The resident engineer assigned to the project shall complete and sign the Resident Engineer's Construction Contract Administration Checklist. The purpose of this checklist is to assure that the resident engineer is familiar with the federal requirements before the project starts. Deficiencies in contract administration procedures discovered by process reviews are difficult to correct "after the fact." If the project has proceeded to the point that a deficiency cannot be corrected, federal and/or State funds may be withdrawn.

The DLAE shall perform a review of these documents for correct format and obvious errors and/or omissions. Complete and accurate documents will be forwarded to the OLP. The master agreement and program supplement must be executed prior to reimbursement. Invoices from the administering agency for the construction phase will be processed for reimbursement only after the project award information is submitted.

15.8 REFERENCES

23 USC 112
23 USC 114(a)
23 CFR 635
23 CFR part 40
23 CFR 630 Subpart C
49 CFR 23
California Public Contract Code, Chapter 6, Section 6100
California Public Contract Code Section 7106
FHWA TA T 5080.4, *Preparing Engineer's Estimate and Reviewing Bids* - 1980
FHWA TA T 5080.6 *Guidelines on Contract Procedures with Emphasis on Bid Reviews and Evaluation* - 1982
DOT, FHWA 1997 *Contract Administration Core Curriculum*
FHWA *Final Report Process Review on Competition in Bidding and Engineer's Estimate Review* - 1991
US DOT/US Dept. of Justice, *Suggestions for the Detection and Prevention of Construction Contract Bid Rigging* - 1983
AASHTO *Suggested Guidelines for Strengthening Bidding and Contract Procedures* - 1981

LOCAL AGENCY CONSTRUCTION CONTRACT ADMINISTRATION CHECKLIST

Local Agency _____

I ADVERTISE AND AWARD PROJECT

A. Project Advertisement

☐ Projects are not advertised until the Authorization to Proceed (E-76) for the construction phase has been approved by Caltrans (or the FHWA for nonexempt projects).

☐ For NHS projects, a minimum of three weeks for project advertisement (15.4 "Project Advertisement").

B. Contract Bid Opening

☐ All bids are 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 (15.5 "Contract Bid Opening")

The following documents will be completed and retained in the project files.

☐ For NHS Projects, a list of bidders and total amount bid with an item-by-item breakdown (Exhibit 15-D, "Sample Bid Tabulation Summary Sheet") of the three lowest bidders.

☐ Local Agency-Bidder DBE Information Sheet (Exhibit 15-G) if a DBE goal is specified.

☐ Bidders' list to be compiled from prime and subcontractors bidding or quoting on contract.

☐ EEO Certification (Exhibit 12-E, Attachment C), The Noncollusion Affidavit (Exhibit 12-E, Attachment D), Non-Lobbying Certification (Exhibit 12-E, Attachment F), Disclosure of Lobbying Activities (Exhibit 12-E, Attachment G)

☐ Local Agency Bid Opening Checklist (Exhibit 15-I)

C. Contract Award

☐ Contracts are awarded on the basis of the lowest responsive bid from a responsible bidder (15.6 "Contract Award").

☐ For all NHS projects, a bid analysis will be performed (15.6 "Contract Award").

☐ No negotiations with contractor occurred prior to award (not allowed)

The following documents will be forwarded to the Caltrans District Local Assistance Engineer immediately after award of the contract:

☐ Contract Award Checklist (Exhibit 15-L)

Distribution: Local Agency Project File

- ☐ Detail Estimate (Exhibit 15-M)
- ☐ Finance Letter
- ☐ RE's Checklist

D. Subcontracting

- ☐ For all NHS projects, at least 30% of the contract work is to be performed by the prime contractor (see Chapter 16, Section 16.6 "Subcontractors")

_____ _____
Local agency's person in "Responsible Charge" (date)

RESIDENT ENGINEER'S CONSTRUCTION CONTRACT ADMINISTRATION CHECKLIST

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

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

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

Local Agency Name _____

Federal-aid Project No. _____

1. Contract Staffing:

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

☐ Date of Preconstruction Conference (Attendees list in contract file)_____

2. Authorization:

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

☐ Date the project was advertised _____

3. Contract Files:

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

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

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

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

5. Construction Records and Accounting Procedures:

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

☐ Amount of federal-aid funds encumbered for the project, _____

☐ Program Supplemental Agreement is in the project files.

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

☐ There shall be source documents supporting progress payments made to contractor.

☐ There shall be separate item sheets for each contract item paid.

☐ There shall be a procedure for Administrative or Labor Compliance deductions.

☐ Invoices to the State shall match progress payments made to the contractor.

6. Contract Time:
☐ A method shall be established to determine contract time (see Chapter 16, Section 16.5 "Contract Time").

7. Labor Compliance:
☐ Certified payrolls shall be spot-checked against daily diaries and prevailing wages (see Chapter 16, Section 16.11 "Labor Compliance").
Local agency's Labor Compliance Officer, _____

8. EEO:
☐ Maintain records to ensure EEO requirements are performed and documented in contract record (see Chapter 16, Section 16.12 "Equal Employment Opportunity").

Local agency's EEO Compliance Officer, _____

9. EEO/Wage Rate/False Statements Posters:
☐ Federal posters shall be posted for every worker to see at, or near, the contractor's office at the construction site or at the workers central gathering point.

10. Employee Interviews:
☐ There shall be employee interviews conducted (see Chapter 16, Exhibit 16-N).

11. OJT:
☐ Are OJT requirements included in the contract, yes ☐ no ☐.

☐ If yes, documentation will be retained in project files to account for the apprentices on the job.

12. DBE: (*These items only required if a DBE contract goal is specified)
☐ Local agency's Annual Goal, _____

☐ Local agency's DBE Liaison Officer, _____

☐ *Contractor's completed Local Agency Bidder-DBE-Information Form (Exhibit 15-G) in project files.

☐ *Contract DBE goal, _____

☐ *Contractor's DBE goal, _____
(If the contractor's goal is less than the contract goal, the contractor's completed DBE Information-Good Faith Efforts Form (Exhibit 15-H) is in the project files.)

☐ *Local agency shall check payrolls and diaries, and conduct interviews for DBE goal compliance.

☐ *Contractor has been provided "Monthly DBE Trucking Verification" Form (see Chapter 16, Exhibit 16-Z)

13. CCOs/CLAIMs:

☐ A CCO approval process shall be established. For NHS projects, major change orders will be approved by DLAW prior to performance of work (see Chapter 16, Section 16.13 "Contract Change Orders").

☐ There shall be a list of the approved CCOs.

☐ All CCOs shall note federal-aid eligibility or not.

☐ **Pending claims to be identified and documentation in contract file**

14. Traffic Safety in Highway and Street Work Zones:

☐ Traffic Control Plan (TCP)/Traffic Management Plan (TMP) in the PS&E? yes ☐, no ☐, (see Chapter 16, Section 16.6 "Traffic Safety in Highway and Street Work Zones")
Comments:

Responsible Person _____ (if not the RE)

☐ Local Agency shall field review the project to see that the TCP agrees with the actual conditions.

☐ Local Agency shall be analyzing construction work site accidents for the purpose of correcting deficiencies which might be found to exist on this project projects and to improve the content of future TCPs.

15. Materials Files:

☐ The Quality Assurance Program (QAP) is in the project files (see Chapter 16, Section 16.14 "Quality Assurance Program").

☐ There shall be procedures for and filing of: (if appropriate)
Notice of Materials to be used.
Certifications of Compliance.
"Buy America" Requirements

☐ Acceptance Sampling and Testing Reports shall be in the files.

☐ There shall be a "Summary Log" of tests.

☐ Frequency tables shall be used.

☐ Failed tests shall be documented in the files with cross references to re-tests.

☐ Resident Engineer shall review all test reports.

16. Environmental

☐ The Environmental document is in the project files.

☐ The construction project shall adhere to the mitigation requirements in the Environmental document.

17. For Projects on the State Highway System

☐ A Caltrans Encroachment Permit has been issued.

☐ Local Agency shall comply with State's Representative's oversight requirements.

_____
Local agency's Resident Engineer
agency employee or Consultant,
(Consultants on retainer are considered
Local agency employees)

Date: _____

_____
Local agency's person in "Responsible (Local)
Charge" if Resident Engineer is a Consultant.

LOCAL AGENCY PROJECT ADVERTISING CHECKLIST

Project :_____
DIST-----CO-----RTE------PM------Agency

Federal Project #_____

Location:_____

Limits:_____

	YES	NO	NOT APPLICABLE
PS&E Review	[ ]	[ ]	[ ]
Are the following complete?			
Environmental measures incorporated?	[ ]	[ ]	[ ]
Right of Way Certification.	[ ]	[ ]	[ ]
Design	[ ]	[ ]	[ ]
Traffic (Electrical/Signing/Striping)	[ ]	[ ]	[ ]
Materials	[ ]	[ ]	[ ]
Landscaping	[ ]	[ ]	[ ]
Hydraulics	[ ]	[ ]	[ ]
Permits	[ ]	[ ]	[ ]
Bridge Plans	[ ]	[ ]	[ ]
Are all encroachments permits obtained?	[ ]	[ ]	[ ]
Are design exceptions approved?	[ ]	[ ]	[ ]
Is material testing and sampling arranged?	[ ]	[ ]	[ ]
DBE program approved?	[ ]	[ ]	[ ]
Is there force account work for this project?	[ ]	[ ]	[ ]
Is agency furnished material approved?	[ ]	[ ]	[ ]
Are the federal funds for construction authorized ?	[ ]	[ ]	[ ]
Has a fund allocation been approved by the California Transportation Commission (if required)?	[ ]	[ ]	[ ]
Have a complete set of Plans and Special Provisions been sent to the Caltrans District Local Assistance Engineer (two copies if structures (bridges) are involved)?	[ ]	[ ]	[ ]

How long is the advertisement period?_____

Reviewed by:_____
(Name of Local Agency Representative)

Title:_____

Date: _____

Distribution: Local Agency Project File

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BID TABULATION SUMMARY SHEET (SAMPLE)

Project Information: _____
DIST----------CO----------RTE----------PM----------Agency

Federal Project Number: _____

Location: _____

Limits: _____

Bid Opening date: _____ Estimated Award date: _____		Engineers Estimate		Bidder # 1 Name		Bidder # 2 Name		Bidder # 3 Name	
Item #	Bid Item & Quantity	Unit Price	Cost	Unit Price	Cost	Unit Price	Cost	Unit Price	Cost

Distribution for NHS projects: (1) Original-Caltrans DLAE, (2) Copy - Local Agency Project File
Distribution for Non-NHS projects: None

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NATIONAL HIGHWAY SYSTEM BID TABULATION DATA

TO: Federal Highway Administration
Interstate & Program Support Branch (HNG-13)
400 Seventh Street, SW
Washington, DC 20590

Date _____

FROM: _____
_____

SUBJECT: Submission of Bid Tabulation Data

Attached is the following data for the recently awarded Federal-aid highway construction project:

State _____ FIPS County Code(s) _____

Federal-aid Project # (s) _____

Contractor's Name _____

Contractor's City/State _____

Low Bid Amount $ _____ Award Date (M/D/Y) _____

2nd Low Bid Amount $ _____ 3rd Low Bid Amount $ _____

Number of Bidders _____ Engineer's Estimate $ _____

Project Length _____ Miles/Kilometers
(Indicate which and report to nearest 0.1)

FMIS Predominant Type Code (s) _____

Estimate Completion Date (Mo./Yr.) _____

Is Contract a Joint Venture (yes/no) _____
If Yes, List Name/City/State of Other Contractor(s)

_____
_____
_____

Local Agency Contact Person _____ Telephone # _____

Form FHWA-45 is attached for projects on the NHS greater than $500,000.

All federal-aid contracts on the National Highway System (including the Interstate System) are to be reported regardless of size or type of federal-aid funding. Projects off the National Highway System are not to be reported. When several projects are combined into a single contract, all data should be combined and reported on a single transmittal sheet. Please direct questions to the Interstate and Program Support Branch (HNG-13), Telephone (202) 366-4636.

Distribution for NHS projects: (1) Original-Caltrans DLAE, (2) Copy - Local Agency Project File
Distribution for Non-NHS projects: Not Required

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OMB NO. 2125-0010

BID PRICE DATA

NOTE: *Transmit only original to the Washington Headquarters, Federal-aid & Design Division,*
DO NOT WRITE IN SHADED AREAS *ATTN.: HNG-13*

1 3	4 7	8 10	11 14	STATE	15 ALL
COUNTY	FEDERAL PROJECT NO.	URBAN ( ) RURAL ( )	DATE OF AWARD		CARD 1

ROADWAY Contract Amount	20 1	21 $ 30	Code Types	ROADWAY AND BRIDGE
BRIDGE Contract Amount	41 2	42 $ 51	52 54 55 63	
TOTAL CONTRACT AMOUNT		$	64 65 66 70 71 73	

NUMBER OF UNITS	UNIT	ITEM	UNIT PRICE Dollars	UNIT PRICE Cents	TOTAL COST (Dollars)	
	C.Y.	111 Common Roadway Excavation				CARD 2
	C.Y.	131 Unclassified Roadway Excavation [1]				
	LB.	421 Structural Reinforcement				
	LB.	431 Structural steel				
	TON	775 Bituminous concrete surfaces [2]				
	S.Y.	781 Port. cem. conc. surfaces *Inches* [3]				
	C.Y.	900 Structural concrete [3]				
16 25		26 31	32		42	CARD 3 1

PRICE ADJUSTMENTS PCC PAVEMENTS AND STRUCTURAL CONCRETE	UNIT PRICE *Per Square Yard*			*Per Cubic Yard*	
	781	781	781	900	900
Unit bid price					
Steel, not bid separately *(Subtract)*					
Longitudinal joints *(Subtract)*					
Transverse joints *(Subtract)*					
Fine finishing of subgrade *(Add)*					
Cement or aggregates bid separately *(Add)*					
3 ADJUSTED PRICE					

Prepared by: _____

Title: _____

Date: _____

REMARKS *(Use reverse side if more space is needed.)*

[1] *Unclassified Roadway Excavation (Item 131) when reported:*
_____ Percent Rock

Estimated Price of Rock _____ per cubic yard

[2] When aggregate and bituminous material are bid separately, combine quantities and total costs. In converting gallons to tons, 235 gallons per ton may be used. When bituminous material is bid in addition to the bid for mix, report weight of mix only, and the combined total costs.

Form FHWA-45 (Rev. 11-91) PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE
This form was electronically produced by Elite Federal Forms, Inc.

Distribution for Projects on the NHS $500,000 or more: (1) Original-Caltrans DLAE, (2) Copy - Local Agency Project File
Distribution for All other projects: None

Instructions for completing FHWA Form 45 can be found on the internet at the following address:

http://www.fhwa.dot.gov/legsregs/directives/fapg/g601110.htm

LOCAL AGENCY BIDDER-DBE-INFORMATION

This information may be submitted with your bid proposal. If it is not, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received as specified in the Special Provisions. Failure to submit the required DBE information will be grounds for finding the proposal nonresponsive.

CO.-RTE.-K.P.:_____
CONTRACT NO.:_____
FEDERAL-AID PROJECT NO.: _____
BID AMOUNT: $ _____
BID OPENING DATE:_____
BIDDER'S NAME:_____
DBE GOAL FROM CONTRACT:_____

CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED [2]	DBE CERT. NO.	NAME OF DBEs [1] (Must be certified on the date bids are opened - include DBE address and phone number)	DOLLAR AMOUNT DBE [3]

IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Copies of the DBE quotes are required. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above shall be consistent with the names and items of work in the "List of Subcontractors" submitted with your bid pursuant to the Subcontractors Listing Law and the Special Provisions.

Total Claimed Participation	$_____ _____%

1. DBE prime contractors shall enter their DBE certification number. DBE prime contractors shall indicate all work to be performed by DBEs including work performed by its own forces.

2. If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE.

3. See Section "Disadvantaged Business Enterprises," of the Special Provisions to determine the credit allowed for DBE firms.

_____
Signature of Bidder

_____
Date (Area Code) Tel. No.

_____
Person to Contact (Please Type or Print)

CT Bidder - DBE Information (Rev02-07-01)

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DBE INFORMATION—GOOD FAITH EFFORTS

Federal-aid Project No. _____ Bid Opening Date _____

The _____(City/County of)_____established a Disadvantaged Business Enterprise (DBE) goal of _____% for this project. The information provided herein shows that a good faith effort was made.

A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement

B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates

C. The items of work which the bidder made available to DBE firms, including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Items of Work	Breakdown of Items

D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, and the firms selected for that work (please attach copies of quotes from the firms involved):

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

_____
_____
_____
_____

Names, addresses and phone numbers of firms selected for the work above:

_____
_____
_____
_____

E. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs:

_____
_____
_____
_____

F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

_____
_____
_____
_____

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results

H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

_____
_____

LOCAL AGENCY BID OPENING CHECKLIST

Project Information: _____
DIST----------CO----------RTE----------PM----------Agency

Federal Project Number: _____

Location: _____

Limits: _____

Bid opening date and time	
Bid opening by	Name:
Bids publicly opened and read aloud?	(Yes/No)
Addenda certified by	
Advertisement date	
Engineers Estimate Compared?	(Yes/No)
Low Bidder Name	
Amount	
Number of Bidders	
Bid irregularities?	(Yes/No)
Noncollusion affidavit included (Exhibit 12-E, Attachment D)?	(Yes/No)
Low Bid signed?	(Yes/No)
Low Bid prepared in ink?	(Yes/No)
Bidder DBE information included (Exhibit 15-G)	(Yes/No)
All Addenda certified by all bidders?	(Yes/No)

Reviewed by: _____
(Name of Local Agency Representative)

Title: _____

Date: _____

Distribution for Exempt projects: Optional
Distribution for Nonexempt projects: (1) Original - Local Agency Project File

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LOCAL AGENCY CONTRACT AWARD CHECKLIST

Project Sponsor: _____

Federal-aid project #: _____
Location: _____
DIST-------CO-------(Road/Street or RTE)-------PM-------Agency
Limits: _____
(Physical limits reference postmiles or intersections)

Has Caltrans issued an "Authorization to Proceed" in writing with federal funds included for construction? and is the amount correct?	(yes/no)
Copy of engineers estimate:	to be attached
Is material testing and sampling arranged?	(yes/no)
Copy of low bidder's proposal:	to be attached
Low Bid signed in ink?	(yes/no)
Is a Good Faith Effort Statement of DBE Participation included in the low bidders proposal? Only required if DBE goal not achieved.	(yes/no/or not applicable)
Is the Noncollusion Affidavit (Chapter 12, "PS&E," Exhibit 12-F) signed and included in the low bidders proposal?	(yes/no)
Is the Bid summary (itemized bids for 3 lowest bidders) complete?	(yes/no)
Addendum procedures adhered to?	(yes/no)
TIP information, Authorized amount	$ amount
Include TIP page number or amendment number here:	
Bid opening procedures were adhered to?:	(yes/no)
Date OLP's Federal Wage Rate website was checked for updates	date
Date of bid opening	date
Date of award:	date
Amount of award:	$ amount
Detail Estimate (Exhibit 15-M):	to be attached
Finance Letter (Exhibit 15-N):	to be attached
Resident Engineer's Construction Contract Administration Checklist	to be attached
Is successful bidder licensed?	(yes/no)

Reviewed by: _____
(Signature of local agency Representative)

_____
(Name printed or typed)

Title: _____

Date: _____
Phone Number: _____

NOTE: If the answer is no to any of the above questions, a letter of explanation is required. The DLAE shall review the explanation and determine if the local agency is eligible for federal funds.

Distribution: All NHS Projects: (1) Original + 1 copy-Caltrans District Local Assistance Engineer . (2) Copy-Local Agency Project File

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DETAIL ESTIMATE

File:_____
Federal Project No.:_____
Project Location:_____
Date: _____

To be used as a basis of agreement for Federal-aid Project #(1)_____
in the City/County of(2)_____
_____
_____
_____

Construction Authorization Date:(3)_____,199_____
Type: (4)
Preliminary Engineering (Authorization Date:(5)_____,199_____

Right of way (Acquisition Authorization Date:(6)_____,199 _____

Acquisition (No. Parcels _____)	$_____
RAP	
(number homes _____)	$_____
(number businesses _____)	$_____
LRH (Parcel No. Name _____)	$_____
TOTAL COST	$(7)_____

Utilities (Authorization Date:(8) _____, 199 _____
Total Cost $_____

Work Type Code: (9)_____ Length(10)_____(kilometers)

Item Estimate (11)

Item No.	Item Description	Unit	Quantity	Unit Price	Amount
1	Item Description	Unit	Quantity	Unit Price	$
2	Item Description	Unit	Quantity	Unit Price	$
3	Item Description	Unit	Quantity	Unit Price	$
”	”	”	”	”	”
”	”	”	”	”	”

Subtotal Contract Items	$_____
Agency/State Furnished Materials	$(12)_____
Force Account (Day Labor) - striping, etc.	$_____
Total	$_____
Contingencies (Including supplemental work)	$(13)_____
Contract Total	$_____
Construction Engineering	$(14)_____
TOTAL COST	$_____

Distribution All Projects: (1) Original + 4 copies-Caltrans District Local Assistance Engineer. (2) Copy-Local Agency Project File

DETAIL ESTIMATE SUMMARY (15)

		Total Cost	Participating Cost	Federal Funds	Other Funds
Preliminary Engineering		$_____	$_____	$_____	$_____
Right of way		$_____	$_____	$_____	$_____
	Work type				
Construction:	Code _____	$_____	$_____	$_____	$_____
	Code _____	$_____	$_____	$_____	$_____
Construction Engineering :		$_____	$_____	$_____	$_____
	Total Cost	$_____	$_____	$_____	$_____

Contract Items Participating = $(16)_____ = _____%

Contract Items nonparticipating = $_____ = _____%

Total = $_____ = 100.00 %

* Reimbursement Ratio: (17) _____%

Appropriation Code(s) (18)

Name/Date Prepared_____

* Reimbursement ratios may vary within each phase of work such as Emergency Relief PE for Emergency Repair (100%) and PE for restoration (88.53%). In these cases, the detailed estimate shall include two separate lines of preliminary engineering.

Distribution All Projects: (1) Original + 4 copies-Caltrans District Local Assistance Engineer. (2) Copy-Local Agency Project File

DETAIL ESTIMATE INSTRUCTIONS

1. File
   - fill in project identification
     example: Dist-County-Rte-City: 07-LA-0-LA
   - Federal-aid Project #: STPL-5006(023)
   - Federal-aid Program: Surface Transportation Program, population > 200,000

2. Project Location
   - Fairly detailed (list intersections or project limits, etc.) Should agree with Authorization to Proceed

3. Construction Authorization Date
   - FHWA/Caltrans authorization date on the Authorization to Proceed

4. Type
   - General type of work (signalization, widening, construct four-lane divided street, etc.) Chapter 3 "Project Authorization," Exhibit 3-F-(Item 38)

5. P.E. Authorization
   - FHWA/Caltrans authorization date on the Authorization to Proceed

6. Right of way Authorization
   - FHWA/Caltrans authorization date on the Authorization to Proceed

7. Right of way Costs
   - Total for project

8. Utility Authorization
   - FHWA/Caltrans authorization date on the Authorization to Proceed

9. Work Type Code
   - Determine the major roadway improvement work type Y codes or structure section codes from Chapter 3 "Project Authorization," Exhibit 3-F-(Item 38) and place all work incidental thereto under this general code, except the following work which requires separated coding:
     - Each structure (X codes from: Chapter 3 "Project Authorization," Exhibit 3-F-(Item 38)
     - Utilities as construction item (Code Y060)
     - Utilities as right of way items (Code ROWA)
     - Landscaping - other than erosion control (Code Y003)
     - Major work performed as part of an outside agreement (i.e., sewers, railroad grad-crossing protective devices - Y codes from Chapter 3 "Project Authorization," Exhibit 3-F-(Item 38)
     - Trainees Y080

       Some examples of work type codes are:

       Traffic Signals -Y031
       Channelization -Y008
       Widening Roadwork -I000 (Bituminous Concrete)
       -J000 (Portland Cement Concrete)
       Bridges -X231 (Highway over Highway, Steel Girder)
       Trainees -Y080

10. Length
    - Length in kilometers (to nearest 0.1) is required for roadway codes and for bridge codes
    - Measured along center line

- Not required for "Miscellaneous" codes

11. Item Estimate
    - List Each bid item per sample format
    - Separate by "work type code" as noted above in item # 9. (should be same as preliminary estimate)
    - Place nonparticipation work directly following participating work of similar codes
    - Separate as "not part of Federal-aid Project" that work which is beyond project limits of federal participation but is being done under the same contract

12. State/Agency Furnished Materials
    - List each item and cost of all items or expenses that are to be furnished by other than contractor
    - Should agree with items listed in Special Provisions and Plans

13. Contingencies
    - Generally 5% to 10%
    - FHWA does not want supplemental work segregated from contingencies
    - If large amount of supplemental work, 10% may be exceeded, but contingencies should always be at least 5%
    - Separate for each code, etc.

14. Construction Engineering
    - Separate for each code, etc.
    - Indicate staking, construction trailer, etc., if claimed for reimbursement

15. Detail Estimate Summary
    - Summary generally broken down only between P.E., Construction, and Right of way
    - Work Type Codes and nonparticipating involved, must be outlined in summary
    - Calculate P.E., Construction (by code) and Right of way separately at appropriate reimbursement ratio
    - Federal funds share of phase cannot be more than the fund reimbursement ratio times the participating costs. (Always round down to the nearest dollar).

16. Federal Participation Calculation
    - Use contract items only

17. Reimbursement Ratio (Federal) (See list in Chapter 3, "Project Authorization")
    - Use current ratio
    - Project ratio if under funded

18. Appropriation Code(s) (Federal)
    - Appropriation code applicable to the program involved (see list in Chapter 3, "Project Authorization")

19. Revised Detail Estimate or Modification
    - Required when federal funds are to be changed from what was previously under agreement
    - Changes can be accomplished by updating item costs, supplemental work, contingencies, etc.
    - Change Title to "Revised Detail Estimate."
    - Must remain consistent with FTIP/FSTIP rules
    - Wording to be changed in Item 2 by adding "To be used as basis <u>for modification</u> of agreement for federal-aid project....."
    - Remaining instructions are unchanged
    - OLP will provide FHWA with two original PR-2A's upon receipt from the DLAE of a Revised Detail Estimate and Revised Finance Letter

FINANCE LETTER

DEPARTMENT OF TRANSPORTATION
ACCOUNTING SERVICE CENTER
LOCAL PROGRAM ACCOUNTING BRANCH

Date: _____
Agency: _____
Project No.: _____
EA No.: _____

Attention.: _____

	TOTAL COST OF WORK	TOTAL PARTICIPATING. COST	FEDERAL FUNDS (Fed-Aid code: _____)	LOCAL FUNDS	OTHER FUNDS Type:	OTHER FUNDS Type:
Agency Preliminary Engineering						
State Furnished Preliminary Engineering						
Overhead at _____%						
R/W Engineering & Administration Costs						
R/W Purchase Costs						
Relocation Assistance (SJ 3A055)						
Contract Items _____						
Utilities _____						
Contingencies _____						
Trainees _____						
Agency Furn. Mat. _____						
Contract Total _____						
Agency Construction Engineering						
State Furn. Construction Engineering						
Overhead at _____%						
State Furnished Materials Testing						
Overhead at _____% EA No. _____						
Force Account (Day Labor) - striping, etc.						
TOTAL:						

Federal Participation: _____%

Reimbursement. Ratio: _____%

Signature: _____

Title: _____

Questions regarding this finance letter should be directed to:
Printed name: _____

Telephone number: _____

REMARKS:

Distribution All Projects: (1) Original + 4 copies-Caltrans District Local Assistance Engineer. (2) Copy-Local Agency Project File

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conflicts at the lowest possible management level. A Caltrans special provision on partnering is included as a sample in the "Boiler Plate" contract documents in Section 12.8 of this manual.

Partnering is not a requirement of the federal-aid program, but it is eligible for participation as part of the construction engineering cost of the project. Generally, the costs are shared between the contractor and administering agency. Partnering can be a valuable extension of the pre-construction conference.

Partnering is not an alternate dispute resolution method. It is a change in the attitude and the relationship between owner and contractor. Partnering is the creation of a relationship between the owner and contractor that promotes achievement of mutual and beneficial goals. Partnering is where trust, cooperation, teamwork and the successful attainment of mutual goals are the hallmark.

The keys to making partnering work include communication, willing participants, senior management support, up front commitment, and a plan. Communication starts early in the process through a team-building session. All the key managers for the project are assembled for a workshop which focuses on team building, goal setting, identifying issues, and solving problems. The workshop is run by a facilitator who ensures all issues are brought out into the open. Authority to solve problems is delegated to the lowest level. Follow up meetings are held to evaluate goals and objectives.

When a local agency chooses to use the partnering approach, the partnering workshop can be independent of the pre-construction conference or integrated as a breakout session.

When formal partnering is desired the contract should contain appropriate specifications for partnering. The Caltrans Office Engineer in each district is available to assist in providing specifications for the process. Partnering is not always appropriate and judgment should be exercised when selecting which projects this process would be beneficial to. Informal partnering may also be beneficial and does not require contract provisions to be implemented.

PRE-CONSTRUCTION CONFERENCE

For all construction projects, the administering agency shall schedule a pre-construction conference, unless the administering agency determines that the project is of such a minor nature that a meeting is not necessary.

The meeting shall be attended by representatives of the local agency and contractor. It is suggested that other affected agencies; local authorities (police, fire, etc.); and public utilities personnel be invited to attend. When an invitation is extended to Caltrans, representation will be up to the DLAE when he/she determines resources are available. Additional meetings may be advisable where considerable effort and time is required to cover specific areas, such as labor compliance, Equal Employment Opportunity (EEO), record keeping, etc.

Local agency representatives shall explain the various forms, reports, as well as sanctions for noncompliance with local, State, and federal requirements. Discussion is to include requirements for Equal Employment opportunity, State and federal safety, labor compliance and DBE. Potential utility and traffic safety problems should also be discussed, as well as environmental requirements.

A written record of attendance and items discussed shall be made by the administering agency. A copy of the written record or the reasons for not holding the pre-construction conference shall be kept in the project files.

16.5 CONTRACT TIME

PROCEDURES

The administering agency is responsible for reviewing working days, contract time requirements, and documenting time extensions according to their own requirements. These requirements must be consistent with other similar projects not using federal aid. Contract time extensions proposed after acceptance of the contract must have written approval of the administering agency. Generally the approval is made by change order for a specified amount of working days. Approvals can be made if the justification demonstrates a delay to the controlling item of work in the contractors schedule.

The administering agency shall maintain a written record of project progress. This record must indicate factors which may affect the work, such as weather conditions, utility delays, strikes or labor disputes, and material shortages. Based on these factors a record of working days shall be maintained.

Documentation similar to Exhibit 16-A, "Weekly Statement of Working Days," Form CEM-2701 (Old HC-146) is an acceptable record of project progress and shall be retained in the project file. A discussion of the use of the form is contained in Section 2-08 of the State's *Construction Manual*.

16.6 SUBCONTRACTORS

INTRODUCTION

Subcontracting procedures only apply to federal-aid projects on the NHS.

PROCEDURES

1. NHS PROJECTS

Contracts for NHS projects shall specify the minimum percentage of work that a contractor must perform with "its own organization." This percentage shall be not less than 30 percent (for NHS projects only) of the total original contract price excluding any identified "specialty items"[1]. When "specialty items" are specifically identified, they may be performed by subcontract and the amount of any such specialty items may be deducted from the total original contract before computing the amount of work required to be performed by the contractor's own organization. The contract amount upon which the above requirement is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

[1] Local Agencies which use *Caltrans Standard Specifications* or the *Standard Specifications for Public Works Construction (Green Book)* and choose to use the 30 percent (NHS Projects only) or the no limit option (Non NHS projects) specified for federal-aid projects must include a special provision to override the *Caltrans Standard Specifications Section 8-1.01,* or the *Green Book specifications Section 2-3.1,* which require that the minimum percentage of work that a contractor must perform with its own organization is 50 percent excluding any identified specialty items. The no limit for subcontractors option for Non NHS projects also requires that the FHWA boiler plate provisions (FHWA Form 1273) section VII must be overriden by a Special Provision to exclude the 30 percent requirement.

2. SUBCONTRACTING

a. The contractor must request permission in writing and receive written consent from the local agency **before** subletting any portion of a contract to a first tier subcontractor. This is accomplished by using the "Subcontracting Request" (FORM DC-CEM-1201). This form is included as Exhibit 16-B, of this chapter and states what portion of an item is to be subcontracted along with the dollar value of that item. The requirement for written consent does not apply to second and lower tier subcontracts. However, all weekly payroll, DBE, labor compliance, EEO, insurance and other contractual obligations remain in effect regardless of tier. All subcontracts shall be in the form of a written agreement and contain all pertinent provisions and requirements of the prime contract including all or a portion of the federal boiler plate specifications. Certain provisions of the boiler plate are required based on the dollar amount of the contract, or type of facility being constructed. Refer to Chapter 12, "Plans Specifications & Estimate," for specific details of these requirements.

b. There are special requirements for DBE trucking as reporting must be done monthly on all trucking done by DBE subcontractors in order to get DBE credit toward the contract goal. Monthly reporting will be accomplished using Exhibit 16-Z, "Monthly DBE Trucking Verification".

3. TERMS: Terms used above are defined as follows**:**

"its own organization" - includes only workers employed and paid directly by the prime contractor, and equipment owned or rented, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

"Specialty Items" - are limited to items of work that require highly specialized knowledge, craftsmanship or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole. The items are generally limited to minor components of the overall contract. However, the fabrication and erection of certain types of steel structures are of such a nature and intricacy that they should be considered "specialty items" even though the cost of this work may constitute the major portion of the contract amount. For each individual construction contract, the administering agency must select any items that are to be treated as "specialty items" and list such selected items in the Special Provisions, or bid schedule.

4. SUBCONTRACTOR SUBSTITUTION

Substitution of subcontractors shall be in accordance with the contract specifications. If a listed or approved DBE subcontractor is unable to perform the work in accordance with the specifications, the prime contractor shall, if needed to meet the DBE goal, replace the DBE subcontractor with another DBE subcontractor, or make a good faith effort to do so subject to approval of the local agency.

A letter from the Prime Contractor at the time a request for substitution is submitted to the Liaison Officer must include as a minimum, the following:

- Reason for substitution if it is initiated by a DBE subcontractor
- Name, address and telephone number of the listed or approved DBE
- Name, address and telephone number of the proposed subcontractor
- Item numbers, description of work and the proposed subcontractor's bid amount
- Good-faith effort if the substitute subcontractor is not a DBE

The DBE Liaison Officer shall evaluate the substitution request for documentation of the good faith effort and approve the request in accordance with the contract specifications. In addition, there shall be on-going monitoring of work by the DBE subcontractors in accordance with the subcontractor listing.

16.7 ENGINEER'S DAILY REPORTS

PROCEDURES

The administering agency's Resident Engineer, Assistant Resident Engineers, and construction inspectors shall keep daily reports to record work in progress.

The Daily Reports shall record the hours worked by men and equipment:

- Where work is being paid for based on the cost of labor, equipment, and material
- When there is an anticipated change in character of work
- When there is a potentially significant overrun or underrun, or
- When there is disputed work or a potential claim

The detail should be sufficient to permit review of the contractor's costs of the work in a manner similar to force account. Equipment should be identified sufficiently to enable determination of the applicable rental rates and operator's minimum wage. In some cases it may be desirable to record dates of arrival or departure 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 and the location where the work was performed. It should also include statements made by the contractor or agency personnel which are pertinent to the work. The report must also contain the name of the contractor or subcontractor performing the work.

When the report is used to determine compliance with the labor provisions (see (Section 16.11, "Labor Compliance") of the contract, include the following additional information:

- The names or identification numbers of the contractor's personnel
- The respective classifications of the work being performed
- The number of hours worked on the date covered by the report

Reporting for labor compliance shall be done on a random spot-check basis only. The number of reports for labor compliance purposes should vary with the size and duration of the contract and the degree of compliance revealed by checking previous reports. One report per week for each operation being performed on the project should be used as an initial guide. The frequency may be reduced after a high degree of compliance has been verified.

An example of both the Resident Engineer and Assistant Resident Engineers daily report forms used by Caltrans are shown as Exhibit 16-C.

The engineers' daily reports discussed herein are required in addition to the extra work reports submitted by the contractor. For more information on the organization and use of the daily reports see the Caltrans *Construction Manual*, Chapter I, Section 1-10, and Chapter III, Section 3-00 and Section 3-01.

16.8 PROJECT FILES

An administering local agency must establish a separate record file for each federal-aid highway project. The project file shall contain all data pertinent to the work and to

STATE OF CALIFORNIA – DEPARTMENT OF TRANSPORTATION

MONTHLY DBE TRUCKING VERIFICATION

CP-CEM-2404(F) (NEW 12/99)

CONTRACT NO.	MONTH	YEAR

Truck Owner	DBE Cert. No.	Company Name and Address	Truck No.	California Hwy. Patrol CA No.	Commission Or Amount Paid*	Date Paid	Lease Arrangement (√ if applicable)
					$		Lease Agreement ☐ with Non-DBE ☐ with DBE ☐
					$		Lease Agreement ☐ with Non-DBE ☐ with DBE ☐
					$		Lease Agreement ☐ with Non-DBE ☐ with DBE ☐
					$		Lease Agreement ☐ with Non-DBE ☐ with DBE ☐
					$		Lease Agreement ☐ with Non-DBE ☐ with DBE ☐
					$		Lease Agreement ☐ with Non-DBE ☐ with DBE ☐
					$		Lease Agreement ☐ with Non-DBE ☐ with DBE ☐
					$		Lease Agreement ☐ with Non-DBE ☐ with DBE ☐
					$		Lease Agreement ☐ with Non-DBE ☐ with DBE ☐
				TOTAL AMOUNT PAID	$		

PRIME CONTRACTOR	BUSINESS ADDRESS	BUSINESS PHONE NO.

** Upon request all Lease Agreements shall be made available, in accordance with the Special Provisions.*

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT

CONTRACTOR REPRESENTATIVE'S SIGNATURE	TITLE	DATE

CEM-2404F (NEW 12/99)

COPY DISTRIBUTION: ORIGINAL - RESIDENT ENGINEER

Form CP-CEM 2404 (F)(NEW 12/99)
MONTHLY DBE TRUCKING VERIFFICATION

The top of Form CEM-2404(F) contains boxes to put in the Contract Number, the Month of the reporting period and the Year of the reporting period.

The Form CEM-2404(F) has a column to enter the name of the Truck Owner, the DBE Cert. No. (if DBE certified) and the Name and Address of the trucking company. The Form CEM-2404(F) also requires the Truck No. and the California Highway Patrol CA No.

Form CEM-2404(F) is to be submitted prior to the 15th of each month and must show the dollar amount paid to the DBE trucking company(s) for trucking work performed by DBE certified trucks and for any fees or commissions of nonDBE trucks utilized each month on the project. The amount paid to each trucking company is to be entered in the column called "Commission or Amount Paid," in accordance with the Special Provisions Section 5-1.X.

Payment information is derived using the following:

1.) 100% for the trucking services provided by the DBE using trucks it owns, operates and insures.
2.) 100% for the trucking services provided by the trucks leased from other DBE firms.
3.) The fee or commission paid to nonDBEs for the lease of trucks. The Prime does not receive 100% credit for these services because they are not provided by a DBE company.

The total dollar figure of this column is to be placed in the box labeled "Total Amount Paid." The column "Date Paid" requires a date that each trucking company is paid for services rendered. The next column contains information that must be completed if a lease arrangement is applicable. Located at the bottom of the form is a space to put the name of the "Prime Contractor," their "Business Address" and their "Business Phone No."

At the bottom of the form there is a space for the Contractor or designee "Contractor Representative's Signature, Title and Date" certifying that the information provided on the form is complete and correct.

CHAPTER 17 PROJECT COMPLETION

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- **Final Inspection Forms**

  1. **Final Inspection Form FIF-8/97** (Exhibit 17-C) - This form when completed by both the local agency and the DLAE shall be included as part of the Federal Report of Expenditures for all projects.
  2. **Final Inspection of Federal-Aid Project** (Exhibit 17-B) - This form, when completed by both Caltrans and the FHWA Transportation Engineer, shall be included as part of the Federal Report of Expenditures for projects that are not exempt from FHWA oversight.

- **Final Invoice** - Final Invoice should conform to the format in Exhibit 17-D. Submit one original. The Final Invoice **must** agree with the Final Detail Estimate.

- **Final Detail Estimate -** The format of the final detail estimate is the same as presented in Chapter 15, Section 15.7, "Award Package," except that it must be labeled "Final" and show the total of previous progress payments plus the final invoice. The local agency shall prepare the final detail estimate. If claims are still pending, the final detail estimate should not be prepared until the claims are resolved. The final detail estimate must agree with the final invoice. State costs (Example: State material testing) should not be included in the final detail estimate prepared by the local agency. Once claims are settled, the final invoice and a final detail estimate shall be submitted to the DLAE as part of the Report of Expenditures.

- **Change Order Summary** - The Change Order Summary should conform to sample form in Exhibit 17-E. This is required regardless of whether or not change orders were made during the course of the contract. If there were none, please note "none." Additionally, the following mandatory items of information must also be included on this form:

  1. **Liquidated damages** - Indicate the liquidated damage days charged (calendar days) if any, the amount per day, and the total amount charged. Refer to Chapter 16, "Administer Construction Contracts," Section 16.15, "Claims," for contractor's claims procedures. If there were no liquidated damages, please note "none." Liquidated damages shall also be shown on the Final Invoice and Final Detail Estimate.
  2. **Contractors Claims -** Refer to Chapter 16, "Administer Construction Contracts," Section 16.15, "Contract Claims," for contractor's claims procedures. If there were no contractor's claims, please note "none."
  3. **Date of acceptance**

- **Final Report, Utilization of Disadvantaged Business (DBE) and Woman-Owned Business Enterprise** (Exhibit 17-F) - This form shall be completed and signed, and it shall be in conformance with the requirements in Chapter 9, "Disadvantage Business Enterprises." The completed form shall be submitted to the DLAE with the final report of expenditures for construction contracts (or as specified in the provisions for consultant contracts).
- **Disadvantaged Business Enterprises (DBE) Certification Status Change** (Exhibit 17-O) - This form shall be completed, signed, and submitted to the DLAE with the final report of expenditures for construction contracts (or as specified in the provisions for consultant contracts). If no change, state so.
- **Materials Certificate** (Exhibit 17-G) - This certificate (commonly referred to as the "Materials Certificate") is to be included in the project files upon completion of the project. Exceptions to the certification should be documented in project records in summary form along with explanations and attached to the certificate.

- **Statement of Materials and Labor Used by Contractors Involving Federal Funds FHWA - Form 47** (Exhibit 17-H) - This report is required for all NHS projects over $1.0 million, except for force account, installation of protective devices and railroad grade crossings, or highway beautification.[1] Contract provisions require that the prime contractor complete and submit one combined or aggregate report for each subcontractor at or near completion. The local agency Resident Engineer should check the completed form for reasonableness and accuracy. The DLAE should also review for reasonableness and accuracy and forward to OLP (who will maintain a file) for submission to FHWA, headquarters. Instructions for completing the form are provided on the reverse side, as is the address for FHWA. This information can be submitted either in hard copy or electronically. The FHWA has developed personal computer software to automate the FHWA (Form 47) input. Copies of the software can be obtained from the DLAE and used by agencies who prefer to submit the information electronically.

- **Cover Letter and Report of Completion of Structures on Local Streets and Roads** (Exhibits 17-I and 17-J) - This report is to be forwarded by the DLAE to the Engineering Service Center: Division of Structures, Office of Structures Maintenance and Investigations Local Assistance Branch, for projects which include a bridge or other major structure. This information is necessary to incorporate all bridges into the statewide inventory and maintenance management system. (Include two (2) copies in the Report of Expenditures).

- **Report of Completion of Right of Way Expenditures** - Projects with Right of Way expenditures require additional information in the Report of Expenditures. When the project is complete, a summary of the progress payment requests is submitted on a Report of Completion of Right of Way Expenditures, Form FM 1592A (see Exhibit 17-K). This claim should be submitted when final right of way costs are known in order to expedite audit of the claim and reimbursement. The report shall also include the following:

  1. A parcel list
  2. Final maps (those that come with Right of Way Certification if not previously sent)
  3. A breakdown of Right of Way costs (with participating costs shown separately). The total participating costs should equal the "Participating Costs to Date" as shown on the Final Progress Payment Request (Form FM 1592A).
  4. Final Invoice for Right of Way - The invoice must be prepared on an agency letterhead; each phase must include:

     a. All agency and project identification shown on the form including the Local Agency-State agreement number
     b. Dates and amounts of funding authorized for Incidental and Capital Outlay
     c. Period of expenditures (dates) for Incidental and Capital Outlay
     d. Cost breakdown for Incidental and Capital Outlay as follows:
        - Total Cost to Date
        - Rental Income
        - Nonparticipating Cost to Date
        - Subtotal - Participating Costs

[1] FHWA Division Administrator letter 7/2/96

COVER LETTER

Project No: STPL-5999(001)

Mrs. Jane Doe
District Director of Transportation
Caltrans - Local Assistance
P. O. Box 007
Pickit, CA 90000-0007

Attention: Mr. Roland N. DaMoney,
District Local Assistance Engineer

Dear Mrs. Doe:

Submitted for your consideration is:

FEDERAL REPORT OF EXPENDITURES

LOCAL AGENCY AWARDED CONTRACT

COUNTY OF SOMEWHERE

PROJECT: Sawpit Avenue, PM 13.2-14.5

CONTRACTOR: A thru Z Contractors

RESIDENT ENGINEER: Sam Strait

Sincerely,

_____
Local Agency Representative

Reviewed by:

_____
District 4 Local Assistance Engineer

COVER LETTER-Continued

Federal Project No.: STPL-5920(001)

Description of Project

The work done consisted, in general, of asphalt concrete overlays on Sawpit Avenue, asphalt concrete replacement, cold planing performed, and shoulder backing and pavement markers and metal beam guardrail installed. Other misc. items and details shown in the project plans, Standard Specifications, and Special Provisions were installed.

Contract Chronology

1.	Bids Opened	03/30/93
2.	Contract Approved by local agency	04/27/93
3.	First chargeable working day	05/21/93
4.	Contract Time (Working Days)	40
5.	Unworkable Days - weather	0
6.	Time Extensions - CCOs	0
7.	Time Extensions - other	0
8.	Number of working days suspended	0
9.	Extended Date of Completion	07/30/93
10.	Date work accepted by Resident Engineer	09/21/93
11.	Liquidated damage days charged (calendar days)	0
12.	Date accepted by County Supervisors	09/21/93

REPORT OF EXPENDITURES CHECKLIST

Federal-aid Project Number:_____
Project Name: _____
Project Location: _____
_____

( ) Final Inspection of Federal-aid Project (See Exhibit 17-B for nonexempt projects) or Local Agency Final Inspection Form (See Exhibit 17-C for exempt projects)

( ) Final Invoice (See Exhibit 17-D)

( ) Final Detail Estimate

( ) Change Order Summary (See Exhibit 17-E)

( ) Statement of the existence or absence of liquidated damages and/or contractor's claims(See Exhibit 17-E)

( ) Date of completion:_____

( ) Date of acceptance:_____

( ) Final Report- Utilization of Disadvantaged Business Enterprise(DBE), First-Tier Subcontractors (See Exhibit 17-F)

( ) Materials Certificate (Exhibit 17-G)

( ) Statement of Materials and Labor Used by Contractors Involving Federal Funds, FHWA Form-47 (See Exhibit 17-H) (for all NHS projects > $1.0 million, except for force account, installation of protective devices and railroad grade crossings, or highway beautification)

( ) * Report of Completion of Structure (two copies) *(Shall include one set of "As Built" Plans)*(See Exhibit 17-I and Exhibit 17-J)

( ) Disadvantaged Business Enterprises (DBE) Certification Status Change (Exhibit 17-O)

Note: A single submittal of all these documents will facilitate timely project closure.

* Additional documents required on bridge/major structural project or projects which meet specified conditions (described under **Reports at Completion of Contract**). Send Original copy to structures

Distribution (all projects): (1) Original Report of Expenditures (2) local agency project files

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STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION

FINAL REPORT - UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE), FIRST-TIER SUBCONTRACTORS

(FEDERALLY FUNDED PROJECTS)

CP-CEM-2402(F) (Rev. 10/99) CT# 7541-3502-2

CONTRACT NUMBER	COUNTY	ROUTE	POST MILES/POST KILOMETERS	FEDERAL AID PROJECT No.	ADMINISTERING AGENCY	CONTRACT COMPLETION DATE

PRIME CONTRACTOR	BUSINESS ADDRESS	ESTIMATED CONTRACT AMOUNT $

ITEM NO.	DESCRIPTION OF WORK PERFORMED AND MATERIALS PROVIDED	SUBCONTRACTOR NAME AND BUSINESS ADDRESS	DBE CERT. NO.	CONTRACT PAYMENTS					DATE WORK COMPLETE	DATE OF FINAL PAYMENT
				Non-DBE	DBE*	DBE,SMBE*	DBE,SWBE*	DBE, SMBE, SWBE*		
				$	$	$	$	$		
			TOTAL	$	$	$	$	$		

ORIGINAL COMMITMENT:

$_____ DBE $_____ DBE, SMBE

$_____ DBE, SWBE $_____ DBE SMBE, SWBE

*The decision of which column to be used for entering the DBE dollar value is based on what Program(s) the firm is Certified. This Program status is determined by the Civil Rights Certification Unit based on ethnicity, gender, ownership and control issues at time of certification. The certified firm is issued a certificate by the Civil Rights unit that states their program status as well as the firms Expiration Date. DBE Program status may be obtained by accessing the Civil Rights website (http://www.dot.ca.gov/hq/bep/) and downloading the Calcert Extract or by calling 916 227 2207.

List all First Tier Subcontractors, Disadvantaged Business Enterprises (DBE's) regardless of tier, whether or not the firms were originally listed for goal credit. If actual DBE utilization (or item of work) was different than that approved at time of award, provide comments on a separate page. List actual amount paid to each DBE, even if different than originally listed for goal credit. Definitions: SMBE (State Minority Business Enterprise) and SWBE (State Women-Owned Business Enterprise)

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT

CONTRACTOR REPRESENTATIVE SIGNATURE	BUSINESS PHONE NUMBER	DATE

TO THE BEST OF MY KNOWLEDGE THE ABOVE INFORMATION IS COMPLETE AND CORRECT

RESIDENT ENGINEER SIGNATURE	BUSINESS PHONE NUMBER	DATE

Distribution: (1) Original plus one copy to DLAE included in the Report of Expenditures (original forwarded to Division of Structures , Office of External Liaison and Agreements)
(2) Copy- local agency project files (3) Copy - OLP Area Engineer

Form CP-CEM 2402(F) (Rev. 04/00)
FINAL REPORT – UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE), FIRST-TIER SUBCONTRACTORS (FEDERALLY FUNDED PROJECTS)

The form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles/ Post Kilometers, a box to check that the project is indeed a Federal Aid Project, the Administering Agency, the Contract Completion Date and the Estimated Contract Amount. It requires the Prime Contractor name and Business Address. The focus of the form is to describe who did what by contract item numbers and descriptions, asking for specific dollar values of item work completed broken down by subcontractors who performed the work, both DBE and nonDBE work forces. DBE prime contractors are required to show the date of work performed by their own forces along with the corresponding dollar value of work.

The form has a column to enter the Contract Item No (or Item No's) and Description of work performed or Materials provided, as well as a column for the Subcontractor Name and Business Address. For those firms who are DBE, there is a column to enter their DBE Cert No. The DBE should provide their certification number to the Contractor and notify the Contractor in writing with the date of the decertification if their status should change during the course of the project.

The form has five columns for the dollar value to be entered for the item work performed by the subcontractor.

The NonDBE Column is used to enter the dollar value of work performed for firms who are not certified DBE.

The decision of which column to be used for entering the DBE dollar value is based on what Program(s) the firm is Certified. This Program status is determined by the Civil Rights Certification Unit based on ethnicity, gender, ownership and control issues at time of certification. The certified firm is issued a certificate by the Civil Rights unit that states their program status as well as the firms Expiration Date. DBE Program status may be obtained by accessing the Civil Rights website (www.dot.ca.gov/hq/bep/) and downloading the Calcert Extract or by calling 916 227 2207. Based on this DBE Program status, the following table depicts which column to be used:

DBE Program Status	Column to be used
If program status shows DBE only with no other programs listed	DBE
If program status shows DBE, SMBE	DBE Minority
If program status shows DBE, SMBE, SWBE	DBE (Minority Women)
If program status shows DBE, SWBE	DBE (Non-Minority Women)

If a contractor performing work as a DBE on the project becomes decertified and still performs work after their decertification date, enter the total dollar value performed by this contractor on Form 2402(F) under the appropriate DBE Program Status (include all work performed after decertification) and complete and submit Form CEM-2403 (F) as appropriate. Any comments to be made on the Form 2402 (F) are to be explained on the reverse side of the Form. Indicate in the Comment section that Form CEM 2403(F) is being submitted.

If a contractor performing work as a Non-DBE on the project becomes certified as a DBE enter the dollar value of all work performed as a DBE on CEM-2402(F) and CEM-2403(F). Any comments to be made on the Form 2402 (F) are to be explained on the reverse side of the Form. Indicate in the Comment section that Form CEM 2403(F) is being submitted.

There is a space provided on the CEM-2402(F) where the TOTAL is entered for these five columns.

There is a column on the CEM-2402(F) to enter the Date Work Complete as well as a column to enter the Date of Final Payment, which is an indicator of when the Prime Contractor made the "final payment" to the subcontractor for the portion of work listed as being completed.

The Original Commitment area on the CEM-2402(F) is based on information at Award time of the project and is the total dollar value of those subcontractors listed at Award based on the above table.

The CEM-2402(F) has an area at the bottom where the Contractor and the Resident Engineer sign and date that the information provided is complete and correct.

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION

DISADVANTAGED BUSINESS ENTERPRISES (DBE) CERTIFICATION STATUS CHANGE

CP-CEM-2403(F) (New. 10/99)

CONTRACT NUMBER	COUNTY	ROUTE	POST MILES/POST KILOMETERS	ADMINISTERING AGENCY	CONTRACT COMPLETION DATE

PRIME CONTRACTOR	BUSINESS ADDRESS	ESTIMATED CONTRACT AMOUNT
		$

Prime Contractor: List all DBEs with change in certification status (certified/decertified) while in your employ, whether or not firms were originally listed for goal credit. Attach DBE certification/decertification letter in accordance with the Special Provisions.

CONTRACT ITEM NO.	SUBCONTRACTOR NAME AND BUSINESS ADDRESS	BUSINESS PHONE	CERTIFICATION NUMBER	AMOUNT PAID WHILE CERTIFIED	CERTIFICATION/ DECERTIFICATION DATE Letter attached ☐
				$	☐
				$	☐
				$	☐
				$	☐
				$	☐
				$	☐
				$	☐
				$	☐
				$	☐

Comments:

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT

CONTRACTOR REPRESENTATIVE SIGNATURE	TITLE	BUSINESS PHONE NUMBER	DATE

TO THE BEST OF MY KNOWLEDGE, THE ABOVE INFORMATION IS COMPLETE AND CORRECT

RESIDENT ENGINEER SIGNATURE	BUSINESS PHONE NUMBER	DATE

DISTRIBUTION Original-DLAE Copy to: 1) Business Enterprise Program 2) Prime Contractor 3) Local Agency 4) Resident Engineer

Form CP-CEM 2403(F) (New 10/99)
DISADVANTAGED BUSINESS ENTERPRISES (DBE) CHANGE IN CERTIFICATION STATUS REPORT

The top of the form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles/ Post Kilometers, the Administering Agency, the Contract Completion Date and the Estimated Contract Amount. It requires the Prime Contractor name and Business Address. The focus of the form is to substantiate and verify the actual DBE dollar amount paid to contractors on Federally funded projects that had a change in Certification status during the course of the completion of the contract. The two situations that are being addressed by CP-CEM 2403(F) are if a firm certified as a DBE and doing work on the contract during the course of the project becomes Decertified, and if a non-DBE firm doing work on the contract during the course of the project becomes Certified as a DBE.

The form has a column to enter the Contract Item No (or Item No's) as well as a column for the Subcontractor Name, Business Address, Business Phone, and contractor's Certification Number.

The column entitled Amount Paid While Certified will be used to enter the actual dollar value of the work performed by those contractors who meet the conditions as outlined above during the time period they are Certified as a DBE. This column on the CP-CEM-2403 (F) should only reflect the dollar value of work performed while the firm was Certified as a DBE.

The column called Certification/Decertification Date (Letter attached) will reflect either the date of the Decertification Letter sent out by the Civil Rights Program or the date of the Certification Certificate mailed out by the Civil Rights Program. There is a box to check that support documentation is attached to the CP-CEM-2403(F) form.

There is a Comments section for any additional information that may need to be provided regarding any of the above transactions.

The CEM-2403 (F) has an area at the bottom where the Contractor and the Resident Engineer sign and date that the information provided is complete and correct.