# California Department of Transportation

## Federal Transit Administration

## Disadvantaged Business Enterprise Program Plan

2016

ACKNOWLEDGEMENTS

The California Department of Transportation (Caltrans), Office of Business and Economic Opportunity gratefully acknowledges the cooperation and contribution of staff of the Division of Rail and Mass Transportation, Division of Construction, the Division of Engineering Services-Office Engineer, the Division of Design – Build, the Division of Procurement and Contracts, the Division of Transportation Planning, and the Division of Local Assistance.

**This Disadvantaged Business Enterprise Program Plan reflects all current Federal Transit Administration (FTA) reporting, monitoring, contract language, and program-related requirements as it pertains to FTA recipients, subrecipients, subgrantees, and Caltrans' awarding divisions.**

To obtain a copy of the Policy Statement and Caltrans' DBE Program Plan contact:

California Department of Transportation

Office of Business and Economic Opportunity

Disadvantaged Business Enterprise Program

1823 14th Street

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Or access via Web site: http://www.dot.ca.gov/obeo/index.html

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# POLICY STATEMENT

## California Department of Transportation
## Disadvantaged Business Enterprise Program

The California Department of Transportation (Caltrans) established a Disadvantaged Business Enterprise (DBE) Program in accordance with U.S. Department of Transportation (USDOT), 49 Code of Federal Regulations (CFR), Part 26. Caltrans, as the recipient of USDOT's federal financial assistance, signed an assurance that it will comply with 49 CFR, Part 26.

It is Caltrans' policy to ensure DBEs, as defined in 49 CFR, Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. Caltrans' objectives are to:

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

The Office of Business and Economic Opportunity (OBEO) manages and administers Caltrans' DBE Program. The OBEO Assistant Director is the designated DBE Liaison Officer. In that capacity, the OBEO Assistant Director 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 Caltrans incurs in its financial assistance agreements with the USDOT.

Caltrans ensures this Policy Statement is disseminated to all its division executives and staff, all subrecipient/subgrantees, and local agencies. This policy statement is accessible to DBE and non-DBE businesses that perform on DOT-assisted contracts. Caltrans uses various networks to distribute this policy such as trade associations, online publications, electronic notification via stakeholder distribution lists, and the-OBEO Web portal.

Malcolm Dougherty
Director

6/24/2016
Date

## Applicability and Commitment to the DBE Program §26.23 and §26.3

The California Department of Transportation (Caltrans) is a recipient of federal financial assistance from the United States Department of Transportation (USDOT), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA).

As required by federal law, Caltrans has established and implemented a Disadvantaged Business Enterprise (DBE) Program, pursuant to the requirements of 49 Code of Federal Regulations (CFR), Part 26. Caltrans is committed to continue the implementation of its DBE Program in accord with the applicable requirements, and has signed an assurance to that effect with USDOT as a condition of continued eligibility for federal financial assistance.

## Responsibilities

Caltrans' DBE Program is managed and administered by the OBEO. Overall, it is the responsibility of the Caltrans Director to implement the Departments Policy of nondiscrimination rests with Caltrans' Director. The Director has delegated responsibility for developing, implementing, and monitoring the daily operations of the DBE Program to the DBE Liaison Officer, the Assistant Director, OBEO. The Director expects all Caltrans personnel to adhere to the provisions and the spirit of the DBE Program.

## Dissemination of Policy Statement

Caltrans' policy, "California Department of Transportation, Disadvantaged Business Enterprise Program," describes Caltrans' commitment to, and objectives for, its DBE Program. Caltrans circulates a copy of the signed policy statement to all applicable awarding and administrative divisions within Caltrans. The policy outlines the responsibilities for implementing the program. Caltrans circulates the policy to local agencies and DBE and non-DBE businesses that perform work on USDOT federally-assisted contracts.

The OBEO, DBE Program, publishes and distributes the Policy Statement on OBEO's Web site, through Caltrans, Industry and Trade publications, on-line publications, and through Caltrans' Statewide Small Business Council. To obtain a copy of the Policy Statement and Caltrans' DBE Program Plan contact:

California Department of Transportation
Office of Business and Economic Opportunity
Disadvantaged Business Enterprise Program
1823 14th Street
Sacramento, CA 95811
(916) 324-0449
http://www.dot.ca.gov/obeo/index.html

*View the Caltrans Organizational Chart at:*

*http://dbfs.onramp.dot.ca.gov/downloads/dbfs/files/departmentalorgchart.pdf. (See Attachment A.)*

*The following link is to the OBEO organizational chart, which identifies OBEO's activities by program area: http://www.dot.ca.gov/hq/bep/documents/OBEO_org_chart.pdf. (See Attachment B.)*

*A glossary and definitions of terms used in the DBE Program Plan are included. (See Attachment C.)*

*A list of Internet and Web site addresses referenced in the DBE Program Plan are included. (See Attachment D.)*

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## II. DBE Liaison Officer §26.25

As the delegated DBE Liaison Officer, the Assistant Director of the OBEO has direct, independent access to the Caltrans Director. The Caltrans Executive Branch organizational chart is included. (See Attachment A.) The Assistant Director is responsible for developing, implementing, and monitoring all aspects of the DBE Program on a daily basis and works closely with Caltrans' managers and consultants. The OBEO staff encompass six branches that ensure the delivery of DBE Program requirements. Contact the Assistant Director at:

**Assistant Director**
California Department of Transportation
Office of Business and Economic Opportunity
1823 14th Street
Sacramento, CA 95811
Phone: (916) 324-0449
Facsimile: (916) 324-1949
E-mail: smallbusinessadvocate@dot.ca.gov

### *A. Assistant Director, OBEO:*

1. Serves as Caltrans' DBE Advocate.
2. Ensures Caltrans meets its DBE participation goals.
3. Advises the Director and governing bodies on DBE Program matters and achievements.
4. Develops, implements, updates, and monitors all aspects of the DBE Program and DBE policy.
5. Oversees and ensures the gathering and reporting of statistical data and other program-related studies as required by the USDOT.
6. Oversees the coordination of Caltrans' statewide DBE outreach activities.
7. Coordinates and assists the development of Caltrans' staff statewide Caltrans staff training related to DBE Program requirements.
8. Oversees the DBE Certification Branch and ensures Caltrans representation in the California Unified Certification Program (CUCP).

9. Facilitates the assistance for DBEs in obtaining the necessary information to compete fairly by providing guidance and direction, and advising DBEs where to seek management, technical expertise, bonding, financing, and other supportive services.

10. Establishes and maintains a good working relationship with local agencies, industry partners, and community-based organizations.

11. Chairs and facilitates statewide Small Business Council (SBC) meetings.

12. Ensures coordination with Caltrans managers, the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), local agencies, and the business community.

13. Ensures only firms meeting eligibility standards participate as DBEs on USDOT federally-assisted contracts.

    The OBEO's staff administers the program in compliance with 49 CFR, Part 26. In addition, there are staff in Caltrans' divisions with DBE Program implementation responsibilities (see Attachment B - OBEO Oraganizational Chart). Those divisions are: Division of Engineering Services, Office Engineer, Contract Advertisement and Award, Section VI; Division of Construction, Contract Administration, Section VII; Division of Procurement and Contracts, Service Contracts, Architectural and Engineering Consultant Contracts and Minor B Contracts, Section VIII; and Subrecipient Monitoring Processes and Procedures, Section IX; Division of Local Assistance, Subsection A; Division of Rail and Mass Transportation, Subsection B; and Division of Transportation Planning, Subsection C.

## III. Administrative Requirements 49 CFR, Part 26

### *A. Definitions §26.5*

Caltrans will adopt the definitions contained in Section 26.5 of Part 26 of this program, and will add and include any new/amended definitions as they are provided by USDOT; and not include any definitions for terms not included in the definitions found in Section 26.5 of Part 26.

See Attachment C for a list of the definitions adopted by Caltrans as provided in Section 26.5 of Part 26.

### *B. Nondiscrimination DBE §26.7*

Caltrans does not 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. (Subpart A, §26.7(a))

Caltrans does 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. (Subpart A, §26.7(b))

### *C. Record Keeping and Reporting §26.11*

1. Scheduled Reporting (§26.11(a)(b))

   Caltrans provides semi-annual and annual DBE achievement reports to FTA and FHWA. Caltrans reports DBE participation on the Uniform Report of DBE Awards or Commitments and Payments form to the appropriate operating administration within the USDOT as follows:

   - DBE activity from October 1st through March 31st, will be submitted by June 1st.
   - DBE activity from April 1st through September 31st, will be submitted by December 1st.

   Caltrans awarding divisions, subrecipients, and local agencies must report contract awards, DBE commitments, prime and subcontractor payments, and other requested information to Caltrans' OBEO, Policy and Reports Branch on a semi-annual basis. Caltrans will include subrecipient activity in its semi-annual reports based on project data provided by the Division of Local Assistance (DLA), the Division of Rail and Mass Transportation (DRMT), and the Division of Transportation Planning (DOTP). Semi-annual report data includes:

   - Awards
   - Commitments
   - Payments to prime contractors and consultants
   - Payments to DBE subcontractors and subconsultants
   - Commitments and payments to women-owned DBE firms.

   Per the revisions to 49 CFR, Part 26, in October 2014, Caltrans, its subrecipients and local agencies will also monitor payments to non-DBE subcontractors and subconsultants, including lower-tier activity, to ensure prompt payment, although non-DBE information is not included in semi-annual reports.

2. Bidders List (§26.11(c) & (c)(1))

   The OBEO will be responsible for maintaining the list of bidders. The bidders list provides Caltrans with as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on Caltrans federally-assisted contracts.

   Caltrans, its subrecipients, and local agencies, per 49 CFR, Part 26.11, collect Bidders List information, regarding all DBE and non-DBE firms that bid and quote on USDOT federally-assisted contracts. Caltrans' divisions, subrecipients, and local agencies are required to submit their updated Bidders Lists on a quarterly basis to the OBEO. Bidders List information may be used in support of overall goal-setting calculations, but would not be used exclusively to substantiate availability or the "ready, willing, and able" status of affected certified California DBEs. Data gathered will include the name, address, DBE or non-DBE status, age, and annual gross receipts of firms. Bidders List forms shall be submitted by all bidders/offerors to Caltrans, subrecipients, and local agencies. Caltrans' divisions have explained their individual Bidders List maintenance procedures, dissemination, and gathering methods within the DBE Program Plan.

   49 CFR, Part 26, requires Caltrans to submit its DBE Program Goal and Methodology once every three years. Caltrans conducts two separate Disparity Studies (study) to support the development and data used for the DBE Program Goal and Methodology as it pertains to both FHWA and FTA. Caltrans conducted a study and developed the Goal and Methodology for its FHWA DBE Program in 2007, 2012, and 2015. Caltrans conducted a study for its FTA DBE Program in December 2014. The OBEO publishes the study results and Goal and Methodology on its Web site at http://www.dot.ca.gov/obeo/index.html.

3. DBE Program Annual Element Update

   The OBEO submits Caltrans' DBE Program Annual Element Update (update) to FHWA and FTA by October 15, each year. The update provides information on Caltrans' organization changes, accomplishments of the past federal fiscal year (FFY), and goals for the coming FFY in accordance with 49 CFR, Part 26. The update supplements Caltrans' DBE Program Plan.

4. Ad-Hoc Reports

   Caltrans submits information regarding the program to the USDOT, FHWA, FTA, and FAA as directed or requested. Currently, the OBEO, Policy and Reports Branch provides a monthly awards and DBE commitment report by the 15th of each month to FHWA.

### *D. Federal Financial Assistance Agreement Assurance §26.*13 *(a)(b)*

Caltrans signed the following assurance, which applies to the administration of USDOT federally-assisted contracts. The same language appears in financial-assistance agreements with subrecipients of USDOT federally-assisted contracts.

Each financial-assistance agreement Caltrans signs with USDOT includes the following assurance:

"The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-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 USDOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 and as approved by USDOT, 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 by the applicable USDOT agency to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 49 CFR, Part 26. They may also, 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.)."

Caltrans ensures contract language for all federal-aid projects include the following assurance:

"The contractor, subrecipient, 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 USDOT federally-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 the contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments

(2) Assessing sanctions

(3) Liquidated damages

(4) Disqualifying the contractor from future bidding as non-responsible"

The contract language also states, "Each subcontract signed by the bidder must include this assurance."

### *E. DBE Program Exemptions or Waivers §26.15*

Caltrans understands it can apply for an exemption from any provision of 49 CFR, Part 26. The exemption request must be in writing and requested of the Office of the Secretary of Transportation, FHWA, FTA, or FAA.

### *F. DBE Program Updates §26.21(b)(2)*

As a condition of receipt of FHWA, FTA, and FAA funding, Caltrans submits significant changes in the DBE Program to USDOT for approval. Caltrans understands changes must be approved by the applicable USDOT agency prior to implementation.

### *G. DBE Financial Institutions §26.27*

It is the policy of Caltrans 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.

To date, the only financial institution used by the DRMT is the Bank of America (BOA) Account used by 5310 Subrecipient Agencies as an EMS Municipal Trust Account. Caltrans is named on the Master Account. The Master Account will always have a zero balance. Caltrans does not have a prime or third party contractual agreement with BOA. The subrecipient agencies deposit local funds into their sub-accounts to cover their local match when it is time to pay for projects. This arrangement was set up so that Caltrans would not order vehicles and equipment and then the locals agencies find themselves unable to pay their local match.

We will re-evaluate the availability of DBE financial institutions and its applicability to our funding programs with every grant cycle.

Information on the availability of such institutions can be obtained from the DBELO.

### *H. Prompt Payment §26.29*

All federal-aid and USDOT federally-assisted projects include a specification that directs bidders' attention to California Public Contract Code (CPCC) Sections 10262 and 10262.5. These CPCC sections direct prime contractors to pay all subcontractors for work within seven days of the prime contractor's receipt of progress payment for the subcontractor's work.

Retainage: 26.29(b)

All federal-aid and USDOT-assisted projects include a specification that Caltrans will not withhold payment from the prime contractor, and that the prime contractor, and any of its subcontractors, may not withhold payment from any subcontractor.

### *I. DBE Database Directory §26.31*

The DBE Database Directory, which 49 CFR §26.81(g) requires, provides information pursuant to 49 CFR §26.31. It is accessible electronically on the OBEO Web site and in print. It lists DBE firms certified by the CUCP to be counted on USDOT-assisted contracts in the State of California. The list provides the following information for each DBE firm: name, contact person, address, telephone number, e-mail address, and where (geographically) the firm is willing to work. In addition, the list includes the North American Industry Classification System (NAICS) codes, work category codes, and licenses. Confidential information concerning DBEs is not shared.

For the most current list, download and print the directory from the Web site at: www.dot.ca.gov/hq/bep/find_certified.htm

### *J. Overconcentration §26.33*

Caltrans has determined there is no overconcentration of DBE firms on its USDOT federally-assisted contracts.

In conjunction with the disparity study, which is conducted every three years, Caltrans determines whether there is an overconcentration of DBE firms in a certain type of work. Caltrans takes appropriate measures to address overconcentration of DBEs when found, such as the use of:

(1) Technical assistance programs

(2) Business development programs

(3) Mentor Protégé programs

(4) Varied contract goals

### *K. Business Development and Mentor Protégé Programs §26.35*

In accordance with DBE regulations contained in 49 CFR, Part 26, Caltrans established the Small Business Program to assist small businesses, including DBEs, to compete fairly and successfully in the marketplace.

Caltrans awards DBE Supportive Services contracts on an annual and/or bi-annual basis through a competitive bid consultant services contract. The DBE Supportive Services

designs the contracts to increase the success of DBEs and other small businesses bidding on federal-aid projects. The contracts provide the services statewide.

Caltrans has a Mentor-Protégé (Construction) and Cal Mentor (Architectural and Engineering) Program. The Mentor-Protégé Program asks prime contractors/consultants to mentor smaller, less experienced firms seeking opportunities in highway transportation projects. Forums are held to promote the program and solicit participation of potential prime contractors and subcontractors as protégés. The program intends to develop protégé's business acumen, which increases their potential for State and federal contract awards.

The program encourages mentors and protégés to enter into a Memorandum of Understanding (MOU) with one another for one or two years. The MOU establishes the objectives and expectations for each party involved. Details are left to the individual parties, although an MOU template is available through district offices.

1. Small Business Program

   It is the Caltrans Small Business Advocate's responsibility to identify and implement innovative acquisition operating processes, such as payment processes and strategies to encourage and assist small business participation on Caltrans' contracting and procurement opportunities.

   The OBEO, Training and Outreach Branch directs Caltrans' small business activities, which include, but are not limited to, educating small businesses on how they can do business with Caltrans; participating in forums and industry meetings to hear about and address small business issues; developing and implementing outreach methods; and promoting small businesses to the public and Caltrans' districts/divisions, and assisting in developing brochures and other written material, providing in-person trainings and marketing tools that promote small businesses and DBE participation in contracts.

   Additionally, the Training and Outreach Branch coordinates and facilitates an annual District Small Business Liaison (DSBL) in-person conference, DSBL bi-monthly conference calls, and maintains Caltrans' Small Business Advocate e-mail posted on OBEO's Web site whose main purpose is assisting small businesses with information regarding certification, doing business with Caltrans, outreach events, etc.

   This branch maintains a Caltrans Event calendar on OBEO's Web site. It provides information about outreach events statewide. The DSBLs disseminate information on networking opportunities for all small businesses, including DBEs, provide expertise and advocacy for Small Business and DBE firms related to contracting and marketing opportunities.

2. Statewide Small Business Council

   Caltrans officially established the Statewide Small Business Council (SBC) in 1994. Currently, the council, which has a maximum membership of 35, is composed of 26 members, who represent trade organizations and associations throughout California. Many of these representatives are owners/operators of DBE firms, Small Businesses, Women-Owned Businesses, and Disabled Veteran Business Enterprises. The purpose of the Caltrans SBC is to encourage the participation of small businesses, including DBEs, on Caltrans' contracts. The SBC provides business trade associations with a forum to comment and provide feedback on Caltrans' policies and practices that affect or impact small business utilization and participation in Caltrans' contracts and projects. The SBC has four committees: Construction, Local Assistance/Professional Services, Commodities, and Executive. Caltrans uses external advisory committees to develop solutions to the State's transportation problems, to disseminate information regarding specified Caltrans' projects and programs, and to provide a forum for interactive discussions with interested parties. External advisory committees do not adopt policies that conflict with Caltrans' policies or that could be construed as representing Caltrans' policies.

3. Free Networking Tools

   Caltrans has made free tools available to prime contractors and subcontractors alike, on the Caltrans Web site. This can be found on the Office Engineer (OE) web page to assist in connecting primes and subcontractors on major construction contracts using the sites "Primes Seeking Help" and "Opt-In" features.

## *L. Monitoring and Enforcement Mechanisms §26.37*

Caltrans monitors and tracks actual DBE participation through contractor/consultant and subcontractor/subconsultant reports of payments and other appropriate monitoring methods (see the following Sections of this Plan for further details: Section VI – Division of Engineering-Office Engineer; Section VII – Division of Construction; Section VIII – Division of Procurement and Contracts; and Section IX – Subrecipient Monitoring Processes and Procedures, which includes the Division of Local Assistance, Division of Rail and Mass Transportation, and Division of Transportation Planning.) Caltrans receives data from the program areas identified above and submits the Uniform Report of DBE Commitments/Awards and Payments data to the OBEO's, Policy and Reports Branch on a semi-annual basis. The OBEO sends Caltrans' Uniform Report of DBE Commitments/Awards and Payments to FHWA and FTA on June 1, and December 1. DBE participation is counted toward the statewide overall DBE goal, in accordance with the federal regulations.

In addition, Caltrans' OBEO has established a "Compliance Branch." This branch responds to reports of fraudulent DBE participation, non-DBE utilization, or wrongful substitution on its contracts. Compliance staff do an investigation on the project in question and provide their findings and corrective action recommendation to the appropriate Caltrans divisions and outside agencies.

### *M. Fostering Small Business Participation §26.39*

Caltrans has incorporated a non-discriminatory element to its DBE Program, in order to facilitate competition on USDOT-assisted public works projects by small business concerns (both DBE and non-DBE small businesses). Details outlining Caltrans' "Fostering Small Business Element" plan, approved by FHWA on March 27, 2013, can be found in attachment E.

### *N. Set-asides or Quotas §26.43*

Caltrans does not use quotas in any way in the administration of the DBE Program.

### *O. Establishing Overall Goals §26.45*

Caltrans sets a triennial overall goal for DBE participation following these steps:

1. Establish figure based on evidence of availability of ready, willing, and able DBE firms who participate on USDOT federally-assisted contracts.
2. Consider using:
   - DBE Directories and Census Bureau Data
   - Bidders Lists
   - Data from an Availability/Disparity Study
   - DBE Goals of another USDOT recipient
   - Alternative statistical methods
3. Rely on the most recently completed Caltrans Availability/Disparity Study.
4. Evaluate evidence available in the marketplace to determine if an adjustment to the base figure is needed.
5. Submit to the applicable USDOT operating administration for review and approval on August 1 every three years, unless the Administrator establishes a different submission date or adjust the triennial timeline.

6. Submit the Goal and Methodology used to establish the overall DBE Program goal, along with base figures and evidence with which the goal was calculated and methods it will employ to achieve the goal. Also, include the adjustments from step two, if necessary, which are made to the base figure and evidence used to substantiate the adjustments.

7. Document public participation, which includes:

   a) Consultation with minority, women and general contractor groups, community organizations, industry associations and other public officials, 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 Caltrans' efforts to establish a level playing field for DBE participation.

   b) Caltrans issues a public notice to announce its proposal for an overall triennial goal. The public notice informs the public of the proposed goal and its methodology and are available for inspection during normal business hours at Caltrans' OBEO for 30 days following the date of the notice. Caltrans informs the public of the 45-day public comment period from the date of the notice and the address where to send comments. Caltrans publishes the notice in general circulation media and available minority-focused media, trade association publications, and Caltrans' OBEO Web site.

### *P. Failure to Meet Overall Goals §26.47*

Caltrans understands failure to meet the overall goal is not grounds for penalty if Caltrans administers its DBE Program in good faith.

Should Caltrans fall short of its overall DBE goal, it will provide a shortfall analysis and corrective action plan to the applicable USDOT administration in a timely manner.

### *Q. Transit Vehicle Manufacturers Goals §26.49*

Caltrans will require each transit vehicle manufacturer as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section.

### *R. Method of Meeting Overall Goals §26.51(a-c)*

**Breakout of Estimated Race-Neutral & Race-Conscious Participation §26.51(a):**

The breakout of estimated race-neutral and race-conscious participation can be found on the OBEO website at: http://www.dot.ca.gov/obeo/index.html, under "DBE Goal and Methodology". This information will be updated when goal calculation is updated.

**Contract Goals §26.51(a):**

Caltrans strives to meet the overall annual DBE goal using race-neutral measures to the fullest extent possible as it pertains to the FTA program. Caltrans currently has a race-neutral DBE Program for FTA funded contracts and grants. Therefore, Caltrans and its subrecipeients, and subgrantees do not set goals on individual contracts at this time.

At the time Caltrans establishes a race-conscious goal, Caltrans will use contract goals to meet a portion of the overall goal. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

Caltrans will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal 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).

Caltrans strives to meet the overall annual DBE goal using race-neutral measures to the fullest extent possible as it pertains to the FHWA program. Caltrans currently has a race-conscious DBE Program for FHWA funded contracts and grants. Therefore, in addition to those race-neutral measures, Caltrans and its subrecipients set individual contract goals on all applicable contracts, procurement, and grants with subcontracting opportunities.

## IV. Race-Neutral Measures Designed to Assist All Small Businesses Meeting the Requisite Size Standards

### *A. Examples of race-neutral activities Caltrans performs include:*

1. Host bi-monthly statewide SBC and committee meetings.
2. Provide technical assistance and training on transportation contracting related topics through a Supportive Services contract to assist all small businesses, including DBEs.
3. Conduct business communication and outreach activities to increase small business participation.
4. Provide access to the CUCP Directory via the Internet.

5. Market the CUCP database of certified DBEs that are also small businesses that meet the requisite federal size standards and emphasize the user-friendly format.

6. In a timely and relevant manner, update the OBEO Web site information on small business activities so that anyone interested may obtain practical advice on how to market their business, find contracting opportunities with Caltrans and other state agencies, and other useful information.

7. Partner with other divisions to generate ideas for enhancing the overall success of small businesses, including DBEs that meet the requisite size standards and reach out to local agencies for ideas that can be tailored to their jurisdictions.

8. Post "Best Practices" on Caltrans' Web site.

9. Work with organizations such as the Associated General Contractors (AGC), the Consulting Engineers and Land Surveyors of California (CELSOC), the United Contractors (UCON), and the American Council of Engineering Companies (ACEC) to identify ways to assist small businesses that meet the requisite size standards, including DBEs, to increase their opportunities to participate as contractors or subcontractors on Caltrans projects.

10. Expand technical assistance and supportive services on a statewide level to provide small businesses that meet the requisite size standards, including DBEs, with assistance on bidding and contract administration.

11. Partner with the Small Business Administration, Small Business Development Centers, and other government agencies.

12. Ensure compliance to prompt payment specifications, which helps all contractors and subcontractors.

13. Track all DBE participation on federally-assisted contracts, including monitoring the CUF of DBEs.

14. Host construction mandatory pre-bid meetings and A&E pre-bid conferences to encourage all businesses to attend and facilitate networking among potential bidders.

15. Maintain weekly "Ads for Bid" on the Internet describing projects advertised for bid.

16. Promote the "Opt-In" feature on the Caltrans OE Web site for construction projects. Allow all interested subcontractors, suppliers, and truckers to advertise services/capabilities directly to bidding prime contractors.

17. Disseminate the "How to do Business with Caltrans" brochure which provides information on procurement topics, especially to contractors/vendors new to doing business with the State of California. The booklet includes helpful tips on how to market their commodities or services to Caltrans, as well as how to market their commodities or services to other State departments and agencies through the California Department of General Services.

18. Provide information on where to obtain assistance with surety bonding and liability insurance.

19. Implement, maintain, and promote the Mentor Protégé and Cal Mentor Programs throughout the State.

20. Encourage each district or region to establish a District Small Business Council.

21. Improve access to bid openings by making them available via teleconference, web-based video, and the Internet. All bidders bid summaries are now provided on the Office Engineer Web site.

22. Unbundle large A&E contracts into smaller contracts.

23. Host district procurement fairs and increase the number of districts in which the fairs are held.

24. Administer prime contractor trainings in all 12 Caltrans districts, concentrating on the award and reporting requirements throughout the life of a project. At which time, Caltrans' Training and Outreach Branch encourages the participation of DBE and non-DBE small business on its contracts.

## V. Good Faith Efforts §26.53(a) & (c)

Caltrans' OBEO sets a contract specific DBE goal on FHWA funded projects, and awards the contract to the lowest bidder who meets, or makes a good faith effort to meet, the goal. Caltrans determines a bidder makes a good faith effort if the bidder does any of the following, per Appendix A of 49 CFR, Part 26:

- Documents he or she obtained enough DBE participation to meet the goal.
- Documents he or she made adequate good faith efforts to meet the goal.

Caltrans provides Appendix A of 49 CFR, Part 26 on its OBEO Web site as guidance outlining the steps the low bidder must take to demonstrate good faith effort.

Caltrans' OBEO, Contract Evaluation Branch, determines whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as

responsive. Caltrans will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Caltrans' DRMT, DOTP, nor OBEO currently set contract specific DBE goals on FTA funded projects, as Caltrans' FTA DBE Program is currently race-neutral. Should Caltrans' FTA funded program become race-conscious, Caltrans will adopt this good faith effort mechanism.

**Information to be Submitted: §26.53(b)**

Caltrans treats bidders/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been set will require the bidder/offeror to submit the applicable DBE Commitment forms, which can be found in attachment F. Should the contract goal not be met the bidder/offeror will be responsible for providing good faith documentation including the applicable DBE Good Faith Efforts form, which can be found in attachment G.

**Administrative Reconsideration: §26.53(d):**

Within five business days of being informed by Caltrans that it is not a responsive bidder, due to the lack of sufficient documentation of good faith efforts, a bidder/offeror may request administrative reconsideration. Requests for reconsideration must be sent in writing to:

**Reconsideration Official**
California Department of Transportation
Office of Business and Economic Opportunity
1823 14th Street
Sacramento, CA 95811
(916) 324-1700
smallbusinessadvocate@dot.ca.gov

Caltrans has a three-person Reconsideration Panel made up from different awarding divisions within Caltrans. None of the participating panel members will have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts. OBEO will ensure the participating divisions and the applicable awarding division or notified of the request for reconsideration.

As a part of the reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue 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 our reconsideration officials to discuss the issue of whether it met the goal or made good faith efforts to do so. Caltrans 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 the USDOT.

**Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals: §26.53(f)**

Caltrans requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without Caltrans prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to Caltrans its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to Caltrans prior to consideration of the request to terminate. The DBE will then have five days to respond and advise Caltrans of why it objects to the proposed termination. The five-day period may be reduced if the matter is one of public necessity (e.g., safety).

In those instances where "good cause" exists to terminate a DBE's contract, Caltrans will require the prime 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. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, Caltrans will require the prime contractor to obtain our 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, Caltrans 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.

Attached are samples of Good Faith Effort Forms. (See Attachment G.)

***A. Counting DBE Participation toward Goals §26.55***

Caltrans will count DBE participation toward overall and contract goals as provided in 49 CFR § 26.55.

Caltrans counts only the value of the work actually performed by the DBE toward the DBE participation goal. To determine the value of the work performed that can be counted toward participation goals, Caltrans' Contract Evaluation Branch, within the OBEO considers:

1. The entire amount of the contract that is performed using the DBE's own forces.
2. The entire amount of fees or commissions charged by a DBE for providing a genuine service, provided the fee is not excessive.
3. The portion of the work that a DBE subcontracts to another DBE.
4. The portion of work another subcontractor subcontracts out to a DBE.
5. The items of work the DBE performs that qualify as a CUF.

Caltrans' subrecipients and subgrantees are expected to perform the same evaluation mechanism on all USDOT federally-assisted projects. Attached are samples of divisions' DBE commitment forms.

***§26.55(c) Joint Checks***

Joint Check Language Pending Review and Approval

## VI. DBE Certification Standards and Procedures §26.61, §26.63, §26.65, §26.67, §26.69, §26.71, §26.73, and §26.85

The DBE certification process allows small businesses, independently owned and controlled by one or more socially and economically disadvantaged individuals, admittance into the DBE Program. The Program's goal is to remove barriers for DBE participation on USDOT federally-assisted highway and transit projects. DBE certification standards and procedures include collecting information, applying the criteria for eligibility, providing a DBE eligibility determination, and implementing an appeal process for denials and decertification.

In accordance with 49 CFR, Part 26, and Caltrans:

- Makes certification determinations based on the requirements of Part 26 Subpart D – Certification Standards and Subpart E – Certification Procedures;
- Provides eligibility determinations for new applicants within 90 days of receipt of all required documentation;
- Safeguards applicant information and documents in accordance with §26.109, §26.67(a)(2)(ii); the California Government Code Section 6250 et seq.; and

California Civil Code Section 1798 et seq., Information Practices Act (See Part J. "Records and Files"); and

- Cooperates with other USDOT recipients regarding DBE issues

### *A. Certification Eligibility Requirements*

There is no fee to apply for DBE certification or for the annual update. A sworn affidavit attesting to the accuracy and truthfulness of the information provided must accompany an application for certification.

The California Unified Certification Program (CUCP) certification application, a version of the USDOT Schedule A, must be submitted by each firm seeking DBE certification.

The firm will comply with the requirements of this section, in accordance with 49 CFR, Part 26, and 13 CFR, Part 121 (size standards) as follows:

1. The firm has the burden of demonstrating by a preponderance of evidence that it meets the eligibility requirements pursuant to 49 CFR, Part 26, Subpart D – Certification Standards.

2. The firm must be a "small business" as defined by the SBA, 13 CFR, Part 121 and the North American Industry Classification System (NAICS) codes outlined specifically in 13 CFR, Part 121.201 as paralleled with the DBEs assigned work category codes. Even when these requirements are met, the average gross receipts for the firm and its affiliates for the previous three fiscal years must not exceed $23.98 million as defined in §26.65(b).

3. The owner(s) of the firm must be "socially and economically disadvantaged," as detailed in §26.67. To verify economic disadvantage, each person whose ownership in the firm contributes to DBE status, must submit a signed Personal Net Worth (PNW) Statement with sufficient supporting documentation. The PNW Statement must be notarized.

   The PNW reveals the net value of an individual's total assets, excluding the value of the primary residence and capital interest in the DBE firm seeking certification, remaining after total liabilities and adjustments are deducted. A net worth over $1.32 million rebuts an individual's presumption of economic disadvantage.

4. The firm must be at least 51 percent owned by "socially and economically disadvantaged individuals," as described in §26.69, and not owned by other businesses, except as detailed in §26.73(e)(1) and (2) and §26.73(h). Some stipulations of ownership are:

a. Disadvantaged owner(s) must own at least 51 percent of the business or publicly held stock; and

b. Ownership must be obtained with real and substantial contributions of expertise, capital, or other tangible personal assets, as described in §26.69.

5. The firm must be at least 51 percent controlled by the disadvantaged owner(s) and must operate independently from other firms. Control by disadvantaged individuals may be demonstrated through managerial and operational control as identified in §26.71.

   a. To have managerial control, the disadvantaged owner(s) must demonstrate: authority to control, sufficient expertise in the firm's field of operation, responsibility for critical areas of the firm's operations and the sole authority to make independent and unilateral business decisions which guide the destiny of the business.
   b. To have operational control, the disadvantaged owner(s) must demonstrate that they make independent basic decisions concerning daily operations.

      Some factors considered in determining control are:

      1) The relative experience, qualifications, and number of years each owner, manager, and principal employee has dedicated to the firm's field of business;

      2) The daily duties and responsibilities of each owner, manager, and principal employee;

      3) The amount of time each owner, manager, and principal employee dedicates to business operations;

      4) Identification of the responsible managing officer(s) or employee(s) for contractors' licenses, majority owner(s) for professional licenses necessary to perform the services of the firm;

      5) Shared space, employees, equipment, or financing between firms;

      6) The timing of any changes in ownership and control to meet DBE requirements; and

      7) The salary received by owners, principles, and key employees.

6. Other rules of certification as defined in §26.73:

   a. The firm must not exhibit patterns of conduct that indicate attempts to evade or subvert the intent or requirements of the DBE Program.

b. The firm will be evaluated based on current, not past, circumstances.

c. The firm must cooperate fully with Caltrans; failure to do so will result in the denial of certification or intent to remove.

d. As a condition of eligibility, a DBE firm must notify Caltrans' OBEO, Certification Branch, regarding modifications in major business operations and any changes in ownership or control. The DBE firm must provide the written notice within 30 days of the occurrence, as indicated in §26.83 (i) (3). The DBE firm must also provide supporting documentation and details of modifications and changes.

7. Caltrans is also responsible for administering the Airport Concessionaire DBE (ACDBE) Certification Program. An airport concession is defined as:

   a. A business located on an airport that is engaged in the sale of consumer goods or services to the public under an agreement with an airport, another concessionaire, or the owner or lessee of a terminal.

   b. A business conducting one or more of the following activities, even if it does not maintain an office, store, or other business location on an airport, as long as the activities take place on the airport: management contracts and subcontracts, a Web-based or other electronic business in a terminal of which passengers can access at the terminal, an advertising business providing advertising displays or messages to the public on the airport, or a business providing goods and services to concessionaires.

### *B. California Unified Certification Program (CUCP) §26.81*

Caltrans participates in an active DBE Directory. As mandated by USDOT, 49 CFR, Part 26, all USDOT recipients of federal financial assistance must participate in the CUCP. In compliance with the regulations, Caltrans established the CUCP to lessen the burden of paperwork and time for firms seeking DBE certification from multiple agencies. The CUCP also lessens the burden of paperwork for the participating agencies. The certification of a firm is provided by 1 of the 11 participating certifying agencies of the CUCP is accepted by all other California agencies that participate in the Progrm. The CUCP enables firms seeking DBE certification from multiple agencies to submit documentation to a central location accessible to multiple agencies.

### *C. Interstate Certification §26.85*

Out-of-state firms seeking Caltrans' DBE certification are required to:

1. Complete and submit an Out-of-State Declaration.

2. Submit a complete copy of the DBE application, all supporting documents, and any other information provided to the home state. Caltrans will contact the certifying agency in the home state to request a copy of the on-site report. Caltrans may confirm the existence of an office operated by the firm within California and may perform an on-site review at the California business location.

3. Once all the required information is received from the out-of-state firm, an eligibility decision must be made within 60 days.

4. If there is reason to believe an out-of-state firm should not be certified, the CUCP certifying agency must send the firm a notice stating the reasons for the determination.

5. The out-of-state firm has the right to respond to the reasons for the determination either in-person, in writing, or both. If the firm requests a meeting in-person, the meeting must be scheduled within 30 days of receiving the firm's request. A written decision must be made within 30 days of the written response or the in-person meeting, whichever is later.

6. The firm is informed of its right to appeal the decision within 90 days by contacting the:

**DBE Appeal Team**
U.S. Departmental Office of Civil Rights
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: (202) 366-4070

7. When a firm is denied DBE certification, an entry must be made in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database.

### *D. On-site Reviews §26.83(c)*

Caltrans conducts on-site reviews of firms applying for DBE certification prior to an eligibility determination. The applicant is contacted and an on-site is scheduled.

### *E. Eligibility Determinations §26.83*

Based on the criteria in 49 CFR, Part 26, the following three determinations will be made:

1. The firm is certified and/or meets the criteria for continued certification as a DBE.

2. The firm meets the eligibility criteria. Information regarding the firm is entered in the CUCP Directory. The NAICS codes accurately reflect the primary source of

the firm's income, §26.71(n). The work category codes define the work the disadvantaged owner has the ability and expertise to perform.

3. As a condition of eligibility, a firm is required to notify the Certification Branch, in writing, within 30 days of any changes in the firm, such as size, ownership, control and location, telephone/fax numbers, licenses and work category, etc. (§26. 83 (i))

### *F. Records and Files §26.83(g) and §26.109*

In accordance with 49 CFR §26.83(g) and §26.109; California Government Code Section 6250 et seq.; California Civil Code Section 1798 et seq., and the Information Practices Act, certification documents are safeguarded and held according to the following criteria:

1. DBE files are maintained in a locked and enclosed area that is accessible only to authorized personnel.

2. All documents submitted by the applicant as part of the initial certification process becomes a permanent part of the file and are not purged from the file.

3. Active files are held in Caltrans' Certification Branch for an indefinite period of time. Active is defined to mean any firm that has filed annual updates.

### *G. Annual Update Declaration §26.83(h)*

Firms desiring to continue certification must submit an Annual Update Declaration, accompanied by a sworn affidavit attesting to the accuracy and truthfulness of the information provided. Applicants are also required to submit the firm's current year federal business taxes.

### *H. Denial Procedure §26.85, §26.86*

When the firm fails to meet eligibility criteria, they are notified, in writing, by certified mail, with a return receipt requested. The correspondence explains the reasons for the determination and provides evidence to support the decision. The letter also informs the business of their right to due process in the form of an appeal.

Any firm that is not currently a certified DBE and is denied certification receives a written explanation for the denial. The explanation references evidence cited in the file that supports Caltrans' decision.

1. Caltrans sends written notification to the firm by certified mail explaining the reasons for the denial.

    a. The firm is informed of its right to appeal the decision within 90 days by contacting the:

**DBE Appeal Team**
U.S. Departmental Office of Civil Rights
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: (202) 366-4070

b. The firm may reapply in 12 months from the date of denial.

### *I. Intent to Remove DBE Certification Status §26.87*

Any firm that receives written notice of intent to remove DBE certification status by Caltrans is allowed due process to appeal the determination. The firm is informed of its right to appeal a determination in the "Intent to Remove" notification letter.

1. Caltrans is responsible for the burden of proof in all decisions of "Intent to Remove" a firm's DBE certification status and must support its decision with evidence recorded in the Intent to Remove letter.

2. Caltrans sends written notification to the firm, by certified mail, explaining the reason Caltrans proposes to remove the firm's DBE status. The correspondence informs the firm of its right to appeal to a reconsideration official within 30 days of the date of the notification letter. The firm may request an informal hearing or present information and arguments in writing, without requesting a hearing. The firm must contact Caltrans' representative within 30 days at:

**Reconsideration Official**
California Department of Transportation
Office of Business and Economic Opportunity
1823 14th Street
Sacramento, CA 95811
(916) 324 - 1700

3. If the firm chooses not to appeal, the firm will be found ineligible to participate in the DBE Program effective 30 days after the date of the notification letter.

4. Following an evaluation, the firm will be notified in writing of Caltrans' administrative final decision. The Reconsideration Official may uphold or overturn the "Intent to Remove" determination based on the information presented by the firm.

5. If the final decision is to remove the firm's certification status, the firm's name is removed from the CUCP DBE Directory effective the date of the notification letter.

6. The firm is informed of its right to file an appeal with the USDOT within 90 days of Caltrans' final determination §26.89.

**DBE Appeal Team**
U.S. Departmental Office of Civil Rights
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: (202) 366-4070

### *J. DBE Ineligibility Complaints §26.87*

1. Types of DBE Ineligibility Complaints:

   a) Complaints by participating agencies.

   b) Pursuant to California Government Code Section 2055(a), all complaints filed by participating agencies must be processed within 30 days from the date the complaint was "properly filed." Therefore, all participating agency complaints are given a priority status.

   c) When Caltrans disputes the certification of a firm currently certified by a participating agency, the Certification Branch will notify the agency in writing informing them of the issues.

   d) Rebuttable presumption of social/economic disadvantaged status.

   e) A firm that is admitted to the DBE Program based on presumptive social and economic disadvantaged status may become the subject of a complaint based on individual situations. Admission to the program based on group membership is, according to the federal regulations, a "rebuttable presumption." Complaints regarding the presumed disadvantaged status of an individual member of a group will be dealt with on a case-by-case basis using the criteria set forth in 49 CFR, Part 26.

2. DBE Ineligibility Complaint Procedures:

   a) Proper filing –

      A written communique identifying both parties (identified DBE and complainant), including the complainant's name, address, and a summary of the issues (e.g., lack of ownership and/or control, inextricable ties, etc.) constitutes proper filing of a challenge. This summary must contain relevant information supporting the complainant's contention that the identified DBE firm does not meet the eligibility standards set forth under 49 CFR, Part 26.

b) Database entry and tracking –

Complaints will be date stamped and directed to the support staff for database entry and assignment.

c) DBE status of an identified firm –

After receiving a complaint, and prior to determining the validity of the complaint, the status of the identified firm will be determined. If the firm is no longer certified, has never been certified, or is currently in removal proceedings, the complaint need not be reviewed further. The complainant will be notified, in writing, of the current status of the firm. If the firm is in the process of undergoing an onsite review, the complaint will be taken into consideration during the review process.

d) Sufficient information for processing –

Once it is determined that a DBE complaint has been properly filed and recorded, the complainant will be sent a letter:

1) Verifying the receipt of their complaint;

2) Notifying them of Caltrans' intent to proceed with an evaluation; and

3) Informing them of their right to withdraw the complaint within 15 days of the date of Caltrans' correspondence. If a letter of withdrawal is not received from the complainant within 15 days, the complaint will be forwarded to a compliance analyst for evaluation.

e) Insufficient information to warrant further investigation –

If there is insufficient information to process the complaint, a request for additional information, "Insufficient Information Letter," will be sent to the complainant.

f) Withdrawal of the complaint or failure to respond to the Insufficient Information letter –

If the complainant elects to withdraw the complaint or fails to respond to the "Insufficient Information Letter," all related complaint correspondence will be placed in an envelope that is marked "Confidential" and will be retained in the certification file. The issues mentioned in the complaint will be noted in the file chronology and will be closely evaluated when the firm submits the Annual Update Declaration.

g) Evaluation of a Complaint –

A formal complaint challenging DBE certification is a sensitive issue. Caltrans will take all the steps necessary to ensure a sound decision is made.

Decisions to proceed with a complaint require that an on-site review be performed as part of the investigation. The identified party will be notified in writing and an on-site will be scheduled.

h) Determination –

1) If Caltrans determines a complaint is unsubstantiated, the case will be closed and no further action will be taken. The identified DBE firm will remain certified and the complainant will be informed that the case is closed.

2) If Caltrans determines that the identified firm does not meet DBE eligibility requirements, an "Intent to Remove" letter will be prepared and sent certified mail according to Part F, "Intent to Remove DBE Certification Status."

i) Right to Due Process –

When a firm is notified of an "Intent to Remove" as the result of a complaint, the firm may appeal that decision following the steps outlined in Part F.

### *K. Certification Appeal Process §26.89*

The Reconsideration Official performs the activities and functions of that office separate from any functions of the Certification Branch pursuant to §26.87(e).

If the applicant does not submit a written request to appeal Caltrans' decision within 30 days of the notification letter, the decision will be considered final. If a certified DBE firm is due for an Annual Update Declaration during the appeal process, the firm will remain certified until the appeal process is completed. The applicant may reapply for certification 12 months from the date of the certification denial.

1. Appeal to Reconsideration Official –

All applicants wishing to appeal Caltrans' decision to remove or deny certification status must notify the Reconsideration Official of their intent to appeal that decision. There are two appeal options. An applicant may choose only one of these options:

a. A written appeal should provide documented facts and evidence that support the applicant's belief that they meet all DBE eligibility criteria. The applicant will be notified by certified mail of the Reconsideration Offical's final determination and appeal rights to USDOT.

b. An informal hearing, a meeting between the owner(s) of the firm and a Reconsideration Official, will be granted when requested. The proceeding will be taped and transcribed and retained as a permanent part of the file. The applicant will be notified by certified mail of the Reconsideraion Offical's determination and USDOT appeal rights.

2. Appeal to the USDOT §26.91

a. Firms denied certifications have the right to file a written appeal with the USDOT within 90 days of Caltrans' final decision. USDOT will request a copy of Caltrans' records to conduct its review. Caltrans will provide USDOT with a copy of the firm's record and transcript within 20 days of USDOT's request (§26.89(d)). USDOT will render a final determination based on its review of the records provided and will forward a copy of its findings to Caltrans' Reconsideration Office and to the applicant.

b. If USDOT decides to deny or remove, the firm will be informed of that determination and of its right to reapply for DBE certification in 12 months.

c. If USDOT decides to certify, the firm will be informed by letter and a certificate issued.

3. Records and Correspondence:

All records and correspondence regarding the appeal become part of the permanent record in Caltrans' DBE file for the firm.

### *L. Compliance Procedures §26.101*

Caltrans understands that non-compliance in any part of the federal regulations may result in formal enforcement action or program sanctions by the USDOT.

### *M. Enforcement Actions §26.103*

Caltrans understands that enforcement actions are applicable when there is an allegation of non-compliance that has been submitted to the USDOT Office of Civil Rights. The written claim must be received no later than 180 days after the date of the alleged violation. The written claim initiates a compliance review.

A reasonable cause notice is sent if the results of the compliance review reflects that Caltrans is in non-compliance. Caltrans can request conciliation within 30 days of receipt of the notice and upon determination of good cause by the USDOT Office of Civil Rights, sign a conciliation agreement, which sets forth the measures Caltrans will take to ensure compliance.

If Caltrans fails to fulfill the terms of the conciliation agreement, it is non-compliant and binding enforcement proceedings may begin.

### *N. Enforcement of DBE Firms Participating §26.107*

Caltrans understands that it may initiate suspension or debarment proceedings as well as pursue prosecution against any firm that does not meet DBE eligibility criteria and attempts to participate in a federally-assisted program on the basis of false, fraudulent, or deceitful statements that reflect a lack of business integrity.

### *O. Information, Confidentiality, Cooperation §26.109*

Caltrans complies with the Federal Freedom of Information and Privacy Acts (U.S.C. 552 and 552a) and makes available to the public any information concerning the DBE Program that is permissible.

1. Caltrans does not release business information to third parties without express written consent from the firm.
2. Caltrans keeps the identity of complainants confidential.
3. Caltrans cooperates fully and promptly with any request for information, investigation, or review from the USDOT and understands that failure to do so could result in enforcement action.
4. Caltrans understands that intimidation and retaliation of contractors or program participants is strictly prohibited and results in non-compliance.

**Monitoring Payements to DBEs:**

Caltrans will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of Caltrans or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

Caltrans will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

## VII. Division of Engineering Services-Office Engineer, Contract Advertisement and Award

The Division of Engineering Services-Office Engineer (DES-OE) is responsible for all activities related to advertising, bid opening, award, and approval for all of Caltrans' public

works projects over a dollar threshold established by the California Department of Finance, currently $291,000. These projects fall into two categories: projects with $1 or more of federal funding, i.e., federal-aid projects, and projects solely funded with State monies. All federal-aid projects are subject to 49 CFR, Part 26.

### *A. The DES-OE Outreach Activities and Internet Page*

1. The DES-OE ensures proper language on project advertisement identifying those contracts selected for Mandatory Pre-Bid Meetings.

2. The DES-OE Internet page provides a variety of information related to DES-OE's contracting opportunities. Potential bidders view advertised projects and addenda (changes) to those projects. In addition, bidders view and print project plans, download a list of bid items, specifications, and lists of firms that have purchased bid documents for advertised projects.

3. The DES-OE also maintains and "Opt-In" and "Prime Seeking Help" section on all of its advertised projects. This allows free advertising and networking for all potential prime contractors and subcontractors interested in the project.

4. Following bid opening, the DES-OE Internet page includes summaries of all bids received, the subcontractors listed by each bidder, and the unit prices bid by each company.

   The DES-OE Internet page is at: http://www.dot.ca.gov/hq/esc/oe/.

### *B. Project Goal Setting*

DES-OE sends the OBEO a request for goal setting once a project is ready to list. An OBEO Research Analayst establishes a contract goal by electronically comparing the total contract work items with the number of eligible DBEs willing to work within the project district, which creates a "match list." The goal is a percentage of the total contract dollars. OBEO staff identifies work items most likely to be performed by the prime contractor and those most likely to be performed by a subcontractor.

OBEO calculates the individual project goals based on:

1) Project location.

2) Type of work.

3) Result of the "match list."

4) Availability of DBEs.

5) Dollar value of the individual contract item.

The OBEO shares the contract goal setting results with DES-OE once the goal is finalized. The goal is then included in the contract advertisement and contract documents.

### *C. Advertisement of Projects*

1. All DES-OE projects, except emergency work, are advertised in "The California State Contracts Register," (CSCR) or Cal e Procure published by the Department of General Services (DGS). The CSCR advertises contracting opportunities for all State agencies. The projects must be advertised in the CSCR before bid documents can be released to the public. The CSCR is updated daily and available only on the Internet. The DGS publishes advertisements on the Internet for 14 calendar days. They are viewed at: https://caleprocure.ca.gov/pages/public-search.aspx

2. The DES-OE also advertises projects on the DES-OE Internet page at http://www.dot.ca.gov/hq/esc/oe/. Bidders click on Advertised Projects (Projects for Bid) to view the list of newly advertised major highway construction projects, projects that have already advertised, and a tentative list of projects to be advertised. Each advertisement identifies: geographic location of the project; type of work; number of working days; estimated dollar value of the project; bid opening date and location. In addition to the advertisement, bidders can view a list of bid items and the Special Provisions for each advertised project.

3. The DES-OE provides the weekly advertisement information to major construction trade papers and purchases legal advertisements in general circulation newspapers when possible.

4. The DES-OE also posts a 12-Month Tentative Advertisement list (list) on the DES-OE Internet page at: http://www.dot.ca.gov/hq/esc/oe/ . Bidders click on Advertised Projects (Projects for Bid) to view the list of projects tentatively scheduled for advertising in the next twelve months. The list includes: contract number, project location, type of work, and estimated dollar value of the project. The list is updated quarterly by Headquarter Project Management.

### *D. Project Specifications*

1. Bid documents for all federal-aid projects advise bidders that, as required by federal law, the State has established a statewide overall DBE goal, and that Caltrans is required to report its DBE participation to FHWA each year. The bid documents further state that Caltrans tracks DBE participation on all Federal-aid projects to ascertain whether Caltrans is meeting the statewide overall annual DBE goal.

2. The bid documents include Federal Form PR-1273, "Required Contract Provisions for Federal-Aid Construction Contracts," and specifications related to how the DBE Program will be administered during construction.

A sample of the DBE "Boilerplate" Bid Specifications from the DES-OE is included as Attachment H.

### *E. Bid Opening*

1. The DES-OE publicly opens and reads all bids at the time specified in the contract documents. The DES-OE may make an immediate determination that a bid is non-responsive; e.g., the bidder failed to post a bidder's security or failed to complete the bid as specified in the Special Provisions of the Contract.

2. California Public Contract Code Sections 4100-4114, the Subletting and Subcontracting Fair Practices Act (Act), requires bidders list the names of subcontractors who are performing work in excess of 0.5 percent of the total bid, or $10,000, whichever is greater. The Act also requires bidders identify the portion of work performed by subcontractor(s). There is no provision, under the law, for the addition of a subcontractor over the listing law threshold after bid opening. Further, the Act provides that in the event the prime fails to list a subcontractor or lists two subcontractors for the same work (subject to the thresholds of the Act), the prime contractor agrees to self-perform the work.

3. No later than two working days following bid verification, the names of the three lowest bidders, their total bid, and the subcontractors identified by the low bidder in its bid proposal are:

   a) Posted on the DES-OE Website:

      http://www.dot.ca.gov/hq/esc/oe/bidsub/post_bid.php

   The complete bid summary, list of all bidders, their subcontractors, and their itemized bids, are posted on the DES-OE Internet site within two working days after bid opening.

### *F. Submittal of DBE Information and Good Faith Efforts*

Section 2-1.12 of the Special Provisions of the contract for federal-aid projects with goals, directs all bidders to submit the following DBE information:

1. The names, addresses, and telephone 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 participating in the contract. DBE prime contractors are required to identify the work performed by their own forces and the corresponding dollar value of that work. Bidders are cautioned their submittal should include information necessary to establish adequate good faith efforts in the event Caltrans finds the goal was met.

2. The names and dates of each publication in which a request for DBE participation for this project was placed. The bidder is asked to attach copies of advertisements or proof of publication.

3. 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 in bidding. The bidder is asked to attach copies of solicitations, telephone records, fax confirmations, etc.

4. The items of work which the bidder made available to DBE firms, including, where appropriate, any break down of the contract work items (including those items normally performed by the bidder's own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate sufficient work to facilitate DBE participation was made available to DBE firms.

5. The names, addresses, and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, and the actual firms selected for that work. The bidder is asked to attach copies of quotes from the firms involved.

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

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

8. The names of agencies, organizations, or groups contacted to provide assistance in contacting, recruiting, and using DBE firms. The bidder is asked to attach copies of requests to agencies and any responses received; i.e., list, printed Internet page downloaded, etc.

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

This information must be received by Caltrans no later than 4:00 p.m. on the fourth working day following the bid opening. If the DBE information is not submitted within the time limits specified, the bidder is considered ineligible for the project award.

### *G. The Contract Evaluation Branch*

All "DBE Submittals," as well as related documents, will be delivered to DES-OE for verification of timely receipt, as described in the contract. The low bidder's ''DBE Submittal" and 'List of Subcontractors" will then be forwarded to the OBEO's Contract Evaluation Branch for evaluation.

One of the following findings will be determined:

1) Low bidder met the project goal.

2) Low bidder did not meet the goal, but made adequate good faith efforts to meet the goal.

3) Low bidder did not meet the goal and did not make adequate good faith efforts to meet the goal.

The Contract Evaluation Branch Manager signs and returns the finding to DES-OE with the good faith documents.

If the Contract Evaluation Branch determines that a bidder did not meet the goal and/or the bidder has not made adequate good faith efforts to meet the goal, the bidder is offered an administrative reconsideration of its good faith efforts as outlined in "Administrative Reconsideration."

### *H. Administrative Reconsideration*

An administrative "Reconsideration Meeting," is informal and is not considered a public meeting because a bidder may present at which, proprietary and confidential information, such as bid spreadsheets or estimates to address the issues raised in the contract evaluation.

The meeting allows the bidder an opportunity to provide written documentation and/or arguments concerning whether the goal was met or adequate good faith efforts were made. The bidder is also allowed to present information substantiating or clarifying its DBE submittal. The committee will only consider information pertaining to efforts made prior to bid opening.

1. The DES-OE notifies the bidder, in writing, of the initial determination that the bidder did not meet the goal or made an adequate good faith effort to meet the goal; the notification includes a copy of the contract evaluation. The bidder has five working days to request administrative reconsideration. If the bidder does not request reconsideration, the original determination stands and the award will proceed to the next lowest responsible bidder.

2. If the bidder requests administrative reconsideration, a meeting of the Good Faith Effort Reconsideration Committee is scheduled within one week of the bidder's request. The Good Faith Effort Reconsideration Committee consists of a representative from the OBEO (not a manager involved in the initial determination), DES-OE, and the Division of Local Assistance. The Reconsideration Committee has a Caltrans attorney to act as legal advisor.

After the bidder has presented its documentation and/or arguments, the Committee prepares its decision. The Committee's decision is final for Caltrans. The bidder is cautioned that there is no other administrative appeal within Caltrans or to the FHWA.

The bidder is notified of the results in writing (usually within five working days of the reconsideration meeting date).

### *I. Reporting Requirements*

DES-OE reports to the OBEO on a monthly and semi-annual basis its DBE commitment at award and ongoing payments. DES-OE submits annualy, its contribution to the DBE Program Annual Element Update.

It is the responsibility of the DES-OE to gather all Bidders List information for each contract advertised and awarded. This information shall be updated and provided to the OBEO on a quarterly basis.

## VIII. Division of Construction, Contract Administration

### *A. Contract Award Information*

The DES-OE delivers an executed award contract to the district approximately one week after the award of a contract. The award package includes:

1) Contract Award Summary

2) Detailed Estimate of Cost

3) Bid Summary

4) Contractor's "List of Subcontractors"

Approximately three weeks after contract approval the District office receives the prime contractor's "Caltrans Bidder-DBE-Information." This information documents the amount of DBE participation the contractor committed to using.

### *B. Pre-Construction Conference*

1. During the pre-construction conference the Resident Engineer (RE) and the prime contractor discuss the work that each subcontractor and each DBE listed is to perform. The RE gives the prime contractor a copy of the "DBE Information" to ensure that everyone understands what work the DBEs are to perform. This discussion is documented and entered into the RE's pre-construction notes.

2. During the conference, the prime contractor is directed to the "Subcontracting" section of the contract, which specifies the responsibilities and conditions under which a prime contractor may request a subcontractor substitution and any consequences for disapproval of a substitution request.

3. DBEs must perform work or supply materials as listed on the DBE Commitment form. The RE is responsible to review the commitment forms with inspection staff before work begins to ensure field staff know who should be performing DBE contract work.

   A sample of the "Pre-Construction Checklist" can be found in attachement

### *C. Monitoring Activities During Contract Performance*

1. Caltrans requires that prime contractors submit Form CEM-1201, "Subcontracting Request" before work can be started on a subcontract. Once the RE receives the completed form, they verify it for conformity with the original "DBE Information" and "List of Subcontractors." Inconsistencies will be addressed prior to the RE's approval of the "Subcontracting Request."

2. The RE compares the suppliers, vendors, or manufacturers listed on the original DBE Information form to those listed on Form CEM-3101, "Notice of Materials to be Used." If the firms listed are inconsistent, the prime contractor is required to make corrections and report, in writing, changes to its DBE participation.

3. When the prime contractor has listed DBE trucking companies in its DBE Information, the RE will inform the prime contractor of the requirement to submit the monthly DBE Trucking Verification Form CEM-2404(F) "Monthly DBE Trucking Verification" and the monthly DBE Payment Form CEM-2406 "Monthly Disadvantaged Business Enterprise (DBE) Payment" before the 15th day of each month for the previous month's work. The trucking documentation must include the following information:

   - The truck owner's name.
   - The California identification (CA) number issued by the California Highway Patrol.
   - The truck owner's DBE certification number.
   - The company name and address.
   - The commission or amount paid.
   - The date paid.
   - The lease arrangement, if applicable.

   If the prime contractor fails to submit the forms, the RE must hold an administrative deduction for missing documents.

### *D. Monitoring for DBE Commercially Useful Function (CUF)*

1. The RE ensures inspectors know items of work each DBE is responsible for. Inspectors notify the RE of apparent changes in DBE participation.

2. A DBE performs a commercially useful function when it does all of the following:

   - Performs at least 30 percent of the total cost of its contract with its own work force and does not subcontract out portions of its contract work that are greater than normal industry practices for the type of work performed.

   - Performs, manages, and supervises the work involved.

   - Negotiates prices, determines quantity and quality, orders materials and supplies, pays for the materials and supplies, and installs the materials where applicable.

3. When a firm other than the listed DBE is found performing the work, the RE must notify the prime contractor immediately, in writing, that an apparent violation is taking place. An administrative hold will be made on the next estimate for the dollar amount of work that should have been performed as listed on the DBE commitment for the specific firm.

4. Payment will not be made for any non-approved DBE work until the RE approves a request for a substitution. A letter will be sent to the prime contractor explaining the reasons for the deduction, and information will be provided for the prime contractor to pursue the appropriate substitution process.

### *E. Substitutions*

1. The Subletting and Subcontracting Fair Practices Act (FPA), Sections 4100-4114 of the California Public Contract Code, outlines all of the conditions, including those prior to contract award, under which a prime contractor may request substitution of subcontractors. A contractor who violates any of the provisions of the FPA violates the contract, and the awarding authority may at its discretion: (1) cancel the contract or (2) assess a penalty of not more than ten percent of the amount of the subcontract involved.

2. The RE must not allow a prime contractor to remove or substitute a listed DBE firm without prior written consent from the Department. This includes allowing the prime contractor to self-perform work originally committed to a DBE firm. The prime contractor will be directed to Section 5 “General, Disadvantaged Business Enterprises,” of the contract for information required for a contractor-requested substitution.

3. When the prime contractor requests a listed subcontractor be removed from the project, the prime contractor must notify the RE of the substitution and submit a new completed Form CEM-1201, "Subcontracting Request." Requests for substitution of a listed DBE firm must be in writing.

4. The prime contractor is required to replace the listed DBE with another certified DBE or conduct good faith effort to do so to the extent needed to meet the original contract goal.

5. Caltrans authorizes a request for substitution if the request shows any of the following justifications:

   - Listed DBE fails or refuses to execute a written contract based on the plans and specifications for the project.
   - You stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet your bond requirements.
   - Work requires a contractor license and the listed DBE does not have a valid license under the Contractors License Law.
   - Listed DBE fails or refuses to perform the work or furnish the listed materials.
   - Listed DBE's work is unsatisfactory and not in compliance with the contract.
   - Listed DBE is ineligible to work on the project because of suspension or debarment.
   - Listed DBE becomes bankrupt or insolvent.
   - Listed DBE voluntarily withdraws with written notice from the contract.
   - Listed DBE is ineligible to receive credit for the type of work required.
   - Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract.
   - Department determines other documented good cause under 49 CFR § 26.53.

6. The original DBE must be notified of the request for substitution or the intent to use other forces or material sources. The DBE will be given five business days to respond to the notice.

7. The prime contractor's request for a DBE substitution must include the following:

   - One or more of the reasons listed in the preceding paragraph.

- A copy of the five-day notice from the contractor to the DBE regarding the substitution, including verification that the DBE received the notice.
- The DBE's response to the five-day notice.

8. If the RE denies a substitution request, the prime contractor is entitled to a public hearing and a five-day notice. Caltrans schedules a hearing, if requested.
9. If Caltrans authorizes the termination or substitution of a listed DBE, the prime contractor must make good faith efforts to find another DBE.
10. The substitute DBE must: (1) perform at least the same dollar amount of work as the original DBE under the contract to the extent needed to meet the DBE goal and (2) be certified as a DBE with the work code applicable to the type of work the DBE will perform on the contract at the time of the request for substitution. The prime contractor must submit documentation of good faith efforts within seven days of the request for authorization of the substitution. Caltrans may authorize a seven-day extension of this submittal period at the request. Refer to 49 CFR, Part 26, Appendix A for guidance regarding evaluation of good faith efforts to meet the DBE goal.
11. The RE will complete Form CEM-2401, "Substitution Report." If the prime contractor is replacing one DBE firm with another, the RE can sign the Form CEM-2401. If the substitution is based on good faith efforts, then the District Division Chief of Construction or a delegated representative must sign the form. The RE will review the good faith documentation and make a recommendation to the District Division Chief. Once a substitution is approved, the prime contractor must provide the RE with a new Form CEM-1201, "Subcontracting Request."

### *F. Reporting and Recording Participation*

1. The prime contractor is required to maintain records of the name, business address, and phone number of each first-tier subcontractor as well as any DBE subcontractor, DBE vendor of materials, and DBE trucking company regardless of tier, including the date of payment and total amount paid to each business.
2. Ensure CEM-2406 DBE Monthly Payments Report is submitted on the 15th of each month.
3. When a contract is completed, the prime contractor provides a summary of the above records on Form CEM-2402(F) "Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" which must be submitted to the RE within 90 days of the date of contract acceptance.

   a) The RE compares the Form CEM-2402(F) to the contractor's original "DBE Information" and Form CEM-1201, "Subcontracting Request," if applicable.

b) The DBEs shown on the Form CEM-2402(F) should be the same as those originally listed unless a change has been authorized, if applicable.

c) If the prime contractor fails to submit the Form CEM-2402(F), the RE will retain $10,000 from the prime contractor's payment to cover any outstanding Form CEM-2402(F), in conformance with the contract.

d) The RE files a copy of Form CEM-2402(F) in the project records, and submits the original to the Division of Construction. The Division of Construction forwards all original CEM-2402(F) Forms to the OBEO email: business.support.unit@dot.ca.gov for federal reporting.

### *G. Notification of DBE Decertification during Course of a Contract*

The OBEO, Certification Branch notifies the Division of Construction DBE Liaison Officer of the DBE contractor's or subcontractor's decertification. The Certification Branch provides the DBE certification number, date of decertification, and appropriate information. The Division of Construction DBE Liaison Officer notifies the District Labor Compliance Officer of the change in the firm's status. The District Labor Compliance Officer forwards the information to the RE. The RE requires the contractor to act in accordance with existing contractual commitments regardless of the decertification. The firm's participation is not counted toward the statewide overall DBE goal from the date of the decertification notice.

## IX. The Division of Design – Design-Build Contracting

The Design-Build Program wihin the Division of Design is responsible for all activities related to advertising, proposal evaluation, award, and approval for all of Caltrans' Design-Build projects. These projects fall into two categories: projects with $1 or more of federal funding; i.e., federal-aide projects, and projects solely funded with State monies. All federal-aid projects are cubject to 49 CFR, Part 26.

### *A. Design-Build Outreach Activities and Internet Page*

1. The Design-Build Program participates in Caltrans-sponsored workshops and outreach meetings to help guide the business community through the design-build contracting process. Topics covered include: overview of the design-build contracting method; how businesses can identify contracting opportunities with Caltrans; how businesses can become certified as DBEs, which includes meeting the requisite federal small business size standards.

2. The Design-Build Internet page provides a variety of information related to design-build projects. Proposers and potential subcontractors/subconsultants can view advertised projects, addenda (changes), and clarificaions to those projects.

3. Following selection of the preferred proposer, the Design-Build Internet page includes summaries of the proposal evaluation results and proposals of the top three proposals.

   The Design-Build Internet page is at the following address: http://www.dot.ca.gov/hq/oppd/designbuild/db.htm.

### *B. Project Goal Setting*

Design-Build Program sends the OBEO a request for goal setting once a project is ready to advertise. A Research Analyst within the OBEO establishes a contract goal by electronically comparing the total contract work items with the number of eligible DBEs willing to work within the project district, which creates a "match list." The goal is a percentage of the total contract dollars. OBEO staff identifies work items most likely to be performed by the prime contractor and those most likely to be performed by a subcontractor.

OBEO calculates the individual project goals based on:

1) Project location

2) Type of work

3) Result of the "match list"

4) Availability of DBEs

5) Dollar value of the individual contract item

The OBEO then shares with Design-Build Program the contract goal setting results, once the goal is finalized. The goal is then included in the request for proposals.

### *C. Advertisement of Projects*

1. All design-build projects are procured using a two-step process. The first step is to advertise a request for qualifications (RFQ). RFQs are published on the Internet at https://caleprocure.ca.gov/pages/public-search.aspx. Interested proposers submit their statements of qualification (SOQs) in response to the RFQ. Caltrans evaluates the SOQs and posts a shortlist of proposers it determines are most qualified. Caltrans then submits a Request for Proposals to each shortlisted proposer. Only shortlisted proposers are allowed to participate in the procurement.

2. The Design-Build Program also advertises projects on the Design-Build Program Internet page at http://www.dot.ca.gov/hq/oppd/designbuild/db.htm. Interested proposers click on "Currently Advertised Projects" to view the RFQs of advertised design-build projects. Each RFQ identifies: geographic location of the project; type

of work; qualifications being sought; estimated dollar value of the project; and procurement schedule.

### *D. Requests for Proposals*

1. Requests for Proposals (RFPs) for all federal-aid projects advise proposers that, as required by federal law, the State has established a statewide overall DBE goal, and that Caltrans is required to report its DBE participation to FHWA each year. The RFPs further state that Caltrans tracks DBE participation on all federal-aid projects to ascertain whether Caltrans is meeting the statewide overall annual DBE goal.

2. The RFPs also include Federal Form PR-1273, "Required Contract Provisions for Federal-Aid Construction Contracts," and requirements related to how the DBE Program will be administered during construction.

### *E. Proposal Evaluation and Price Opening*

1. The DES-OE publicly opens and reads all bids at the time specified in the contract documents. The DES-OE may make an immediate determination that a bid is non-responsive; e.g., the bidder failed to post a bidder's security, posted an invalid security, failed to complete all bid items, or failed to sign the bid proposal. The DES mathematically verifies the Responsive bids.

2. California Public Contract Code Section 41 00-4114, the Subletting and Subcontracting Fair Practices Act (Act), requires bidders list, in their sealed proposals, the names of subcontractors who are performing work in excess of 0.5 percent of the total bid, or $10,000, whichever is greater. The Act also requires bidders identify the portion of work performed by subcontractor(s). There is no provision, under the law, for the addition of a subcontractor over the listing law threshold after bid opening. Further, the Act provides that in the event the prime fails to list a subcontractor or lists two subcontractors for the same work (subject to the thresholds of the Act), the prime contractor agrees to self-perform the work.

3. No later than one working day following bid verification, the names of the three lowest bidders, their total bid, and the subcontractors identified by the low bidder in its bid proposal are:

    a. Posted on a telephone "Bids Results Hotline" at (916) 654-5500.

    b. Furnished to the construction trade papers.

Complete bid summaries, list of all bidders, their subcontractors and their itemized bids, are posted on the DES-OE Internet site within two working days after bid opening.

### *F. Submittal of DBE Performance Plan and Good Faith Efforts*

In the event Caltrans administers a race-conscious component, Instructions to Proposers of the RFP directs all proposers to submit a DBE Performance Plan which shall include the following DBE information:

1. An estimated dollar amount to be awarded to DBE firms.

2. Identification of the areas of work to be subcontracted to DBE firms, specifying the areas in which DBE firms have already been selected and the areas in which DBE firms are anticipated to be used. It is the proposer's responsibility to demonstrate that sufficient work to facilitate DBE participation was made or will be made available to DBE firms.

3. A description of the good faith efforts the proposer has made as of the date of the proposal and good faith efforts the proposer will make in the future to meet the DBE goals.

The DBE Performance Plan must, when fully implemented, result in the proposer meeting the DBE goal, unless the proposer can demonstrate afterwards that they made good faith efforts throughout the contract period. In addition to the DBE Performance Plan, proposers must submit good faith efforts documentation demonstrating their efforts to achieve the DBE goal up to the proposal due date. The good faith efforts documentation includes the following information:

1. The names, addresses, and telephone numbers of committed DBE firms that will participate with a complete description of work or supplies to be provided by each, the approximate dollar value of each DBE transaction, and a written confirmation from the DBE participating in the contract. DBE prime contractors are required to identify the work performed by their own forces and the corresponding dollar value of that work.

2. The names and dates of each publication in which a request for DBE participation for this project was placed. The proposer is asked to attach copies of advertisements or proof of publication.

3. 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 in bidding. The proposer is asked to attach copies of solicitations, telephone records, fax confirmations, etc.

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

5. The names, addresses, and phone numbers of rejected DBE firms, the reasons for the proposer's rejection of the DBEs, and the actual firms selected, if any, for that work. The proposer is asked to attach copies of quotes from the firms involved.

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

7. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, material, and related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the proposer or its affiliate.

8. The names of agencies, organizations, or groups contacted to provide assistance in contacting, recruiting, and using DBE firms. The proposer is asked to attach copies of requests to agencies and any responses received, i.e., list, printed Internet page downloaded, etc.

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

This information must be received by Caltrans no later than the date specified in the RFP. If the DBE information is not submitted within the time limits specified, the proposer is considered ineligible for the project award.

The Design-Build Program submits the "DBE Performance Plan" to the OBEO's, Contract Evaluation Branch along with the proposer's "good faith efforts" documentation.

### *G. The Contract Evaluation Branch*

All DBE Performance Plans, as well as related documents, will be delivered to Design-Build Program for verification of timely receipt, as described in the RFP. The preferred proposer's DBE Performance Plan and good faith efforts documentation will then be forwarded to the OBEO's Contract Evaluation Branch for evaluation.

One of three following determinations will be made:

1) The proposer met goal.

2) The proposer did not meet the goal, but submitted a DBE Performance Plan and made adequate good faith efforts to demonstrate that it will likely meet the goal during the contract period.

3) The proposer did not meet the goal and provided a DBE Performance Plan that is not adequate to meet the goal during the contract period.

The Contract Evaluation Branch Manager signs the finding and returns it to Design-Build Program with the good faith documents.

If the Contract Evaluation Branch determines that a proposer did not meet the goal and/or the proposer is not likely to meet the goal based on its DBE Performance Plan, the proposer is offered an administrative reconsideration of its good faith efforts as outlined in the "Administrative Reconsideration."

### *H. Administrative Reconsideration*

An administrative "Reconsideration Meeting", is informal and is not considered a public meeting because a proposer may present proprietary and confidential information, such as bid spreadsheets or estimates, to address the issues raised in the contract evaluation.

The meeting allows the proposer an opportunity to provide written documentation and/or arguments concerning whether the goal was met or whether its DBE Performance Plan is adequate to meet the DBE goal. The proposer is also allowed to present information substantiating or clarifying its DBE submittals. The Committee will only consider information pertaining to efforts made prior to submittal of its proposal.

1. The Design-Build Program notifies the proposer, in writing, of the initial determination that the proposer did not meet the goal or has submitted an inadequate DBE Performance Plan; the notification includes a copy of the contract evaluation. The proposer has five working days to request administrative reconsideration. If the proposer does not request reconsideration, the original determination stands and the award will proceed to the next ranked proposer.

2. If the proposer requests administrative reconsideration, a hearing panel is scheduled within one week of the proposer's request. The hearing panel consists of Caltrans employees as designated by the Public-Private Partnership Program Manager. The hearing panel will have a Caltrans attorney to act as legal advisor.

After the proposer has presented its documentation and/or arguments, the hearing panel prepares its decision. The hearing panel's decision is final for Caltrans. The proposer is cautioned that there is no other administrative appeal within Caltrans or to the FHWA. The proposer is notified of the results in writing (usually within five working days of the reconsideration meeting date).

### *I. Monitoring Activities during Contract Performance*

1. Monitoring a design-build contract during contract performance is similar to any other construction contract with the exception that all subcontractors and DBE firms are known at the time of award. Therefore, Caltrans must ensure that any subcontractors added during the contract period are added to the "List of Subcontractors" and are afforded all protections granted by State and federal law.

2. Caltrans requires the Design-Builder submit Form CEM-1201, "Subcontracting Request" before work can be started on a subcontract. Once the Caltrans Contract Manager receives the completed form, verifies it for conformity with the original "DBE Information" and "List of Subcontractors." Inconsistencies will be addressed prior to the Contract Manager's approval of the "Subcontracting Request" including addition of any new subcontractors to the "List of Subcontractors."

3. The Contract Manager compares the suppliers, vendors, or manufacturers listed on the original DBE Information form to those listed on Form CEM-3101, "Notice of Materials to be Used." If the firms listed are inconsistent, the Design-Builder is required to make corrections and report, in writing, any changes to its DBE participation.

4. When the Design-Builder has listed DBE trucking companies in its DBE Information, the Contract Manager will inform the Design-Builder of the requirement to submit monthly documentation showing the amount paid to the trucking companies used. The trucking documentation includes the truck number, the owner's name, the California Highway Patrol CA number, if applicable, and the DBE certification number of the owner of each truck used during that month in accordance with "Subcontractor and DBE Records" of the contract.

5. Design-Builder is required to report monthly on its progress towards the DBE goal. Caltrans and Design-Builder meet quarterly to review progress. Design-Builder is required to update its DBE Performance Plan as needed to ensure its ability to meet the contract goal.

6. If the Design-Builder does not achieve the DBE goal at the end of the contract period, Design-Builder is required to submit its good faith efforts documents for the life of the contract for an evaluation by Caltrans. The Contract Manager submits this information to the Office of Contract Evaluation for evaluation.

### *J. Reporting Requirements*

Monhtly and semi-annually, the Design-Build Program submits data regarding awards or commitments and payments on all federally-assisted contracts to the OBEO for reporting. The Design-Build Program also submits its DBE Program Annual Element Update contribution to the OBEO for reporting purposes.

Design-Build Program will provide an updated Bidders List to OBEO on a quarterly basis.

## X. The Division of Procurement and Contracts (DPAC), Service Contracts, Architectural and Engineering Contracts, and Minor B Contracts.

### *A. DBE Contract Administration Responsibilities*

1. DPAC is responsible for processing and awarding several types of federal-aid contracts, including, but not limited to, Information Technology (IT) and Non-IT service contracts, Architectural and Engineering (A&E) contracts, and Public Works contracts.

   a. IT service contracts are used for information technology-related projects and services.

   b. Non-IT service contracts consist of:

      - Commercial Services Agreements
      - Consulting Services Agreements
      - Emergency Agreements (non-Force Account)
      - Interagency Agreements
      - Research Agreements
      - Cooperative Agreements (with local governments)

   c. Public Works contracts consist of:

      - Minor B contracts for highway construction projects between $5,000 and $291,000 per State Contracting Manual, Volume 1, Section 10.15.
      - Emergency Force Account contracts for a sudden, unexpected occurrence that poses a clear and imminent danger requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, per Public Contract Code 1102.
      - The alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

   d. A&E contracts consist of professional services requiring a particular license, registration, or certification. The award of these contracts is based on qualifications, rather than low bid.

      A sample of a federal solicitation “boilerplate” with DBE requirements is included as Attachment I.

A sample of federal contract "boilerplate" with DBE requirements is included as Attachment J.

2. The Chief of DPAC is responsible for oversight of the processing, advertising, awarding, and execution of all IT and Non-IT service contracts, A&E contracts, and Public Works contracts. In addition, the Chief of DPAC is responsible for ensuring inclusion of DBE contract requirements (federally funded) in solicitation and contract documents. Any contract with a minimum of one-cent of federal money is considered a federal contract.

   Other responsibilities include, but are not limited to:

   - Ensuring that new and revised policy and procedures are implemented.
   - Participating in partnering efforts such as the Statewide Small Business Council meetings and the State Contracting Advisory Network.
   - Developing and submitting the following reports: Uniform Report of DBE Commitments/Awards and Payments; Title VI Annual Element, DBE Semi-Annual Report, and the DBE Annual Element Report to the OBEO.

3. Administrative Activities and Updates:

   DPAC is responsible for the development of policies and procedures that ensure contracts comply with state and federal laws and responsible for the Caltrans Service Contracts Manual, the Contract Manager's Handbook, the How to Do Business with Caltrans pamphlet, the DPAC Web site, and DBE forms and instructions to comply with 49 CFR, Part 26. The DPAC also provides mandatory Contract Manager training and various web-based trainings to all contract managers, and continuous ongoing training to DPAC staff.

4. Provisions in DPAC Federal-Aid Contracts:

   DPAC includes federal contract provisions in accordance with 49 CFR, Part 26. Such provisions are, but are not limited to the following:

   a) The prime contractor shall maintain records of all subcontracts entered into with certified DBE subconsultants/subcontractors and records of materials purchased from certified DBE suppliers and subcontractors. The records shall include:

      1) Name and business address of each DBE subconsultant/subcontractor.
      2) Total dollar amount actually paid to each DBE subconsultant/subcontractor, regardless of tier.
      3) Date of payment and total dollar amount paid to all firms.
      4) The date of work performed by their own work forces and the corresponding dollar amount of the work.

b) Upon completion of the contract, the prime consultant/contractor provides a summary of records, as stated above, in a final report, certified correct by the consultant/contractor or an authorized representative, and furnished to the State's contract manager with the final invoice. If the prime consultant/contractor fails to provide the final report showing a summary of all of the DBE payments with the final invoice, 25 percent of the dollar value of the final invoice is withheld from payment until the final report and invoice is submitted.

c) Minor B contractors report a summary of the DBE utilization on Caltrans Form CEM-2402F, Final Report-Utilization of Disadvantaged Business Enterprises (DBE) to the RE. The RE files the CEM-2402F in the project records and submits the original to the OBEO email: business.support.unit@dot.ca.gov for federal reporting purposes.

5. Bidders List

DPAC currently maintains a list of bidders in each contract file on the Agreement Summary (STD 215). In Fiscal Year 16/17, DPAC will develop and implement a process for maintaining a bidders list that will include all prime and subcontractor information pursuant to 49 CFR § 26.11.

### *B. Contract Goals*

Contract managers partner with OBEO on setting a goal amount for a specific scope of work. Once the goal is determined by OBEO, the contract manager submits the goal amount with a contract request (ADM-0360 or ADM-0360AE) to DPAC. DPAC develops and advertises the solicitation with the required DBE goal.

### *C. Contract Advertisement*

All contracts of $5,000 or more are advertised in the California State Contracts Registry (CSCR) unless otherwise exempted. The contract manager provides the scope of work and requirements for the solicitation. All DPAC Invitation for Bid (IFB), Request for Proposal (RFP), and Request for Qualification (RFQ) solicitations can be found on the Cal eProcure Web site located at https://caleprocure.ca.gov/pages/index.aspx. Builder exchanges, clearinghouses, and others may download Caltrans' contract information for use in their publications.

The following information is available to all consultants/contractors and subcontractors, including DBE prime contractors and DBE subcontractors from DPAC's Web site at http://www.dot.ca.gov/dpac/index.html:

1) Contracts Currently Out for Bid
2) Bid Opening Results
3) Notice of Intent to Award

DPAC encourages consultants/contractors to utilize DBE subcontractors and suppliers.

### *D. Bids and Bid Openings*

Bids are opened at a public bid opening conducted by DPAC staff. Public bid openings are conducted twice each week. All bids are date- and time-stamped upon receipt. Only sealed bids are accepted and all bids must be received by the date and time stated in the bid solicitation. Late and/or altered bids are not accepted. Bid opening procedures comply with all applicable State and federal statutes, regulations, and policies.

### *E. Submittal of DBE Information*

In conformance with 49 CFR, Part 26, DBE firms must be certified by the OBEO by the solicitation due date.

For contracts with DBE contract goals, bidders must submit the DBE Participation Form (ADM 0227F) and/or the DBE Good Faith Effort Information (ADM-0312F) at time of bid submittal. The purpose of the DBE Participation Form is to collect data required pursuant to 49 CFR, Part 26. The bidder completes and returns the DBE Participation Form even if no DBE participation is reported. Prior to contract award, DPAC sends the DBE information from the apparent lowest responsible bidder to OBEO for review and approval. Upon OBEO's approval, DPAC continues to process the contract through execution. If OBEO determines the bidder did not meet the goal or make an adequate Good Faith Effort, the bidder is informed and given an opportunity to request administrative reconsideration. If no request for reconsideration is made, DPAC awards the contract to the next apparent lowest responsible bidder and the process repeats itself.

### *F. Contract Award*

When all applicable solicitation requirements have been met, DPAC awards the contract and sends the awardee instructions for the contractor to complete the award package.

A&E contracts require qualifications-based selection in accordance with California Constitution, Article XXII and Government Code Sections 4525-4529. The RFQs are published in the CSCR and publications of professional societies as required by Government Code Section 4527. For purposes of this document, the term "bidder" means "proposer;" the term "contractor" means "consultant."

### *G. Prompt Payment*

DPAC has the following contract language in federal-aid contract boilerplates regarding payment to DBE and non-DBE subcontractors, per PCC 10262: "Contractor shall pay its DBE Subcontractor(s) and non-DBE Subcontractor(s) within seven (7) calendar days from receipt of each payment made to Contractor by the State."

### *H. Monitoring and Enforcement Mechanism*

DPAC has contract language in federal-aid contract boilerplate which requires the contractor to submit a Disadvantaged Business Enterprises Utilization Report (ADM-3069) form to the contract manager with each invoice. The contract manager finalizes the form and submits to OBEO. The contract language reads as follows:

"Contractor shall maintain records of all subcontracts entered into with certified DBE Subcontractor(s) and records of materiel purchased from certified DBE supplier(s). The 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, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE (prime) Contractor shall also show the date of work performed by its own forces along with the corresponding dollar value of the work.

Contractor shall prepare and submit the Disadvantaged Business Enterprises Utilization Report (ADM-3069) form to the contract manager with every invoice."

### *I. Reporting Requirements*

DPAC submits a federal DBE report (semi-annually and annually) to the OBEO for inclusion in the FHWA DBE report. DPAC reports DBE statistical data utilizing the Uniform Report of DBE Commitments/Awards and Payments. Provides monthly award and commitment information to the OBEO for reporting purposes. DPAC submits their contribution annually to the OBEO for the DBE Program Annual Update.

### *J. Outreach Activities*

The DPAC participates in State- and Caltrans-sponsored procurement fairs and small business outreach programs to assist contractors learning about the state contracting process. Topics covered include contracting information available on Caltrans' Internet sites, identifying contracting opportunities, and becoming DBE certified. A&E also has a Cal-Mentor program, which encourages and supports volunteer partnerships between small businesses and larger A&E firms in state and federal-aid transportation projects.

## XI. Subrecipient Monitoring Processes and Procedures

### *A. Division of Rail and Mass Transportation*

The Division of Rail and Mass Transportation (DRMT) is responsible for the administration of State and FTA grant programs that provide funding for operating assistance and capital projects. Consistent with federal guidance, a small percentage of funds are retained for the DRMT's administrative costs, with the majority of the funds being passed through to subrecipients for their transit projects.

1. DRMT Contracts

   The DRMT lets FTA-assisted contracts for consultant services. The solicitation and contract documents are prepared with assistance from DPAC, in accordance with §26.49. The DRMT provides DPAC with the names and address of potential bidders from Caltrans' directory of DBE certified firms and other small businesses.

2. Subrecipient Contracts

   For subrecipients, the DRMT has established procedures to take necessary and reasonable steps to ensure that all small businesses that meet the requisite federal size standards, including DBEs, have the maximum opportunity to compete for and perform contracts. All subrecipients of FTA are subject to the regulations in 49 CFR, Part 26.

For transit vehicles, the manufacturer works directly with FTA to satisfy the race-neutral DBE Program requirements. The DRMT is responsible for acquiring a certification of DBE compliance from each manufacturer receiving FTA funds through one of its FTA programs during the solicitation process. For other project categories (non-vehicle capital, operating assistance, planning), subrecipients satisfy race-neutral DBE Program requirements by following the procedures below.

Caltrans has established a "one plan" philosophy. That is, subrecipients must adhere to Caltrans' DBE Program Plan.

Subrecipients letting FTA-assisted contracts must use the DBE procurement language provided by the DRMT (see Attachment K – Standard Agreement). Prior to advertising request for proposals, invitations to bid, or other solicitation methods, subrecipients must submit procurement documents to the DRMT for review and approval. Once the solicitation process is complete, and a successful bidder is identified, the subrecipient notifies the DRMT of the successful bidder and whether the bidder is a DBE firm.

Subrecipients must create and maintain a Bidders List of DBE and non-DBE firms that bid or quote on its FTA-assisted contracts and subcontracts. The Bidders List must include the following: firm name, firm address, DBE/non-DBE status, the firm's number of years in business and the firm's annual gross receipts. Subrecipient's

approved purchases are made with local money, and then billing documents are submitted to the DRMT for reimbursement with FTA funds. An updated Bidders List shall be provided to DRMT on a quarterly basis. DRMT will be responsible for sharing all updated Bidders Lists from subrecipients with OBEO.

3. DRMT's Report Requirements

   Monthly and Semi-annually, the DRMT submits data regarding awards or commitments and payments on all FTA-assisted contracts for both the DRMT and its subrecipients to the OBEO for reporting to FTA. The DRMT also submits its DBE Annual Element update to OBEO for reporting to FTA.

***B. Division of Local Assistance***

*(All referenced exhibits can be found within attachment L of this plan.)*

1. Local Agency Requirements

   The following are requirements of local agency recipients who let USDOT-assisted contracts:

   a. Local Assistance Procedures Manual (LAPM)

      Submittal of a DBE Implementation Agreement as outlined in the LAPM. This Agreement formally acknowledges the local agencies' agreement to implement the State of California, Department of Transportation DBE Program Plan, and their commitment to comply with all the prescribed responsibilities explained in the regulations and as outlined in the LAPM (See LAPM Chapter 9 – Section 9.6 and Exhibit 9-A).

      A sample of DBE Implementation Agreement for Local Agencies is included within Attachment L.

   b. Local Agency DBE Annual Submittal Form

      Submittal of a "Local Agency DBE Annual Submittal Form", as outlined in the Local Assistance Procedures Manual. (See LAPM Chapter 9- Section 9.6 and Exhibit 9-B.)

      A sample of the Local Agency DBE Annual Submittal Form is included within Attachment L.

      1) The "Sample Boilerplate" contract documents on the Local Assistance Web site include the revised construction contract provisions containing the race-neutral DBE contract language. Although these provisions apply to contracts using the Caltrans Standard Specifications, they may be modified for contracts using the "Greenbook" or some other standard specifications.

2) Ensure that applicable race-neutral and/or race-conscious language are included in both Construction and Consultant Contracts.

3) Contractual language specifying prompt payment clauses that benefit all subcontractors equally are required and included in the foregoing provisions.

4) Designate a DBE Liaison Officer, accountable to the Chief Executive Officer of the local agency, to administer the Caltrans DBE program as it pertains to local agencies.

c. Bidders List

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 includes the name, address, DBE/non-DBE status, age, and annual gross receipts of firms. An updated Bidders List shall be submitted to the Division of Local Assistance (DLA). DLA will provide a compiled updated Bidders List from all local subrecipients to the OBEO on a quarterly basis.

d. Scheduled Report

1) Ensure that "Consultant Contract DBE Commitment" (Exhibit 10-O2) and "Local Agency Bidder DBE Commitment (Construction Contracts)" (Exhibit 15-G1) are reported to the District Local Assistance Engineer (DLAE) with 30 days of contract execution. Per the LAPM Chapter 9.

2) Ensure that the "Final Report-Utilization of First-Tier and Disadvantaged Business Enterprise (DBE) Subcontractors" (Exhibit 17-F) is reported by the prime contractor or consultant upon completion of the contract. It is included with the Final Report of Expenditures (Exhibit 17-M). Deadline for submittal 60 days after project completion.

3) Ensure that non-DBE data is collected and provided to Caltrans for its Disparity Study.

e. Race-Neutral Measures

The race-neutral component of the DBE goal is accomplished when the prime consultant/contractor is a DBE firm or when DBE participation exeeds the contract DBE goal. Race-neutral means include but are not limited to:

- 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, and requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces).
- 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).
- Providing technical assistance and other services.
- Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors, provision of information in languages other than English, where appropriate).
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capabilities for DBEs and other small businesses.
- Providing services to help DBEs and other small businesses, improve long-term development, increase opportunities to participate in various types of work, handle increasingly significant projects, and achieve eventual self-sufficiency.
- Establishing a program to assist new start-up firms, particularly in fields in which DBE participation has historically been low.
- Ensuring distribution of the DBE directory through print and electronic means to the widest feasible universe of potential prime contractors.
- Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.

f. Race-Conscious Measures

The use of contract goals is the primary example of a race-conscious measure in the DBE program. Local agencies must establish contract goals on each DOT-assisted contracts where there are subcontractable opportunities for DBEs. DBE goal setting methodology is outlined in the "DBE Contract Goal Methodology" (Exhibit 9-D).

All contract bidders or proposers are required to meet the DBE contract goal, or document that they have made adequate Good Faith Efforts (GFE) to meet the goal if they did not succeed in obtaining the DBE participation specified in the contract specifications. See "DBE Information – Good Faith Efforts" (Exhibit 15-H) for further details.

g. Required Contract Clauses

This and other requirements of this Chapter are included in the "Required Federal-aid Contract Language" LAPM Chapter 9 (Exhibit 12-G).

**Contract Assurance:**
"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."

2. Local Assistance Responsibilities

a. Monitoring Local Agencies

Local agencies are monitored primarily by the district local assistance staff. The DLA may also monitor local agencies by conducting a process review for DBE compliance.

Each district is responsible for DBE oversight of local agencies pursuant to the regulations outlined in the LAPM. The District Local Assistance Engineers (DLAEs) will:

1) Ensure the Final DBE Utilization Report (for consultant and construction contractors) is reported to DLA for inclusion in California Department of Transportation Semi-annual DBE report to FHWA.

2) The Districts must review at least one complete plan, specification & estimate (PS&E) package per local agency for federal provisions (including DBE requirements) per year, or, if an agency has a DOT-assisted contract only occasionally, the PS&E package will be reviewed at that time. If deficiencies are discovered, more frequent PS&E reviews of that local agency are required. Upon review and finding of DBE deficiencies, a corrective action plan is submitted by the local agency to district staff for approval.

3) Review the local agencies' "DBE Program Implementation Agreement" and "DBE Annual Submittal Form."

4) Maintain a file with an index of all local agency DBE Program Implementation Agreements and DBE Annual Submittal Forms provided by local agencies.

5) Maintain a list of each local agency's designated DBE Liaison Officer provided by local agencies. This list is updated annually with the local agency's submittal of their annual form.

6) Provide to OBEO, on a quarterly basis, an updated Bidders List.

b. Monitoring Districts

The DLA conducts DBE Process Reviews of the districts and Metropolitan Planning Organizations. The Process Review Teams are comprised of representation from FHWA, District staff, and DLA. Districts are monitored for evidence of:

1) Oversight compliance, e.g., review and monitoring of local agency requirements of DBE Final Utilization Reports;

2) PS&E package and checklist for DBE requirements;

3) DBE Race-Neutral Implementation Agreements; and

4) DBE Annual Submittal Form.

c. Training

The DLA plans and participates in DBE training seminars provided to District and local agency staff.

d. Reporting

DLA reports to the OBEO on a monthly and semi-annual basis its DBE commitment at award, utilization, and payments. DLA also submits to the OBEO it contribution to the DBE Annual Update.

### *C. Division of Transportation Planning*

*(All referenced exhibits can be found within attachment M of this plan.)*

1. Planning Grant Programs

The Division of Transportation Planning (DOTP) is responsible for the administration of FTA and FHWA grant programs that provide funding for planning activities that meet the requirements of Federal transportation regulations and address the annually published national Planning Emphasis Areas (PEAs). The PEAs represent topics in Statewide and metropolitan planning that are of strategic national importance and are proposed for consideration by State and local officials as they prepare Overall Work Programs (OWPs) and State Planning and Research (SPR) programs during the annual planning program cycle.

a. FHWA Metropolitan Planning (PL) – These funds are pass-through funds that go directly to the Metropolitan Planning Organizations (MPOs). The PL Funds are used to carry out Section 134 of Title 23, United States Code (U.S.C.), among the States and the District of Columbia in the manner provided by the law in accordance with the formula in Section 104(f)(2) of Title 23, U.S.C.

b. FTA 5303 – These funds are pass through funds, and together with FHWA PL Funds, make up the Consolidated Planning Grant (CPG). The funds authorized by 49 USC 5303 and 5305, are used for Metropolitan planning activities.

c. Sustainable Transportation Planning Grants (FHWA Partnership Planning and FTA 5304) – These federal funds are allocated on a discretionary basis to various eligible recipient groups for long-range and short-range transportation planning studies. The MPOs and Regional Transportation Planning Agencies submit applications and are awarded on a competitive basis.

d. State Planning and Research (SPR) Part 1

The SPR Part I Program funds State planning operations. The funds are approved annually. SPR activities are reimbursable if they meet the federal eligibility criteria and are included or amended in the annual work program, pending approval by FHWA before the funds are obligated.

2. Title 23 CFR § 420.113 Eligibility of Costs

   a. Costs will be eligible for FHWA participation provided the costs:

      - Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities.
      - Are verifiable from the State DOT's or the subrecipient's records.
      - Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 2 CFR, Part 200.
      - Are included in the approved budget, or amendment thereto.
      - Were not incurred prior to FHWA authorization.

   b. Indirect costs of State DOTs and their subrecipients are allowable if supported by a cost allocation plan and indirect cost proposal prepared, submitted (if required), and approved by the cognizant or oversight agency in accordance with the OMB requirements applicable to the State DOT or subrecipient specified in 2 CFR, Part 200.

3. DBE Race-Neutral and Race-Conscious Measures

   The following are requirements of MPOs and Regional Transportation Planning Agencies (RTPA) and other recipients who get USDOT-assisted contracts:

   a. For MPOs and RTPAs: Submittal of an annual OWP and an OWP Agreement, which completes the Master Fund Transfer Agreement (MFTA). The MFTA outlines legal foundations of the MPO, the planning process, the obligations and responsibilities, the organizational makeup, and the funding process. The MFTA also establishes the responsibilities of all parties regarding Civil Rights and the DBE Program.

   b. For other recipients: Completion of a Restricted Grant Agreement outlining the requirements for each grant, including responsibilities regarding Civil Rights and the DBE Program.

   c. Completion of the FTA DBE Uniform Report form twice a year: April 1st and October 1st. The DBE Uniform Report shows the federal dollar amount provided through contracts as well as DBE participation in these contracts (see Appendix E for more details). This information will provide necessary data for the federally mandated Caltrans DBE disparity study and reporting to the FTA. The completed forms are sent to the appropriate HQ Office of Regional Planning Liaison (see the website listed below for more details).

      https://www.civilrights.dot.gov/sites/default/files/DBE/Guidance/Uniform%20Report%2011-03-2014.pdf

d. Development and implementation of a DBE Program following Caltrans' DBE Program Plan, pursuant to the MFTA, Article IV, Section 2. This DBE Plan formally acknowledges the statutory and/or regulatory requirements with its race-neutral measures, and their commitment to comply with all the prescribed responsibilities explained herein.

e. Development and maintenance of a Bidders List, consisting of information about all DBE and non-DBE firms that bid or quote on CPG-assisted contracts. The Bidders List includes the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

f. Ensuring selected DBEs perform a commercially useful function as provided in 49 CFR § 26.55(c)(1)-(4). Under 49 CFR § 26.55(c)(1)-(4), a DBE must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing, and supervising the work.

g. Inclusion of the following clauses are required, verbatim, in each CPG-assisted contract:

1. The contractor, subrecipient, 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 United States Department of Transportation-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, which may include but is not limited to:

   ii. Withholding monthly progress payments.
   iii. Assessing sanctions.
   iv. Liquidated damages
   v. Disqualifying the contractor from future bidding as non-responsible

2. The contractor must make available to the Caltrans contract manager a copy of all DBE subcontracts upon request.

3. The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains authorization from Caltrans. Unless Caltrans provides prior authorization approving a request for termination or substitution of a listed DBE, the contractor shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBEs.

## XII. Office of Business and Economic Opportunity, Compliance Branch (DBE) Program Process Reviews

### *A. The DBE Program conducts structured evaluation process reviews of the following DBE functional program areas:*

1. DBE Certification Branch;
2. DBE Supportive Services;
3. Division of Engineering Services – Office Engineer;
4. Construction Division, including Resident Engineers and Labor Compliance Officers;
5. Division of Local Assistance;
6. Division of Transportation Planning;
7. Division of Rail and Mass Transportation; and
8. Division of Procurement and Contracts.

Collected data is analyzed and used to monitor compliance with 49 CFR, Part 26, and to define and project future training needs.

The Annual Element Update to the FHWA and FTA reports the findings.

# ATIACHMENT A

## Caltrans Executive Branch Organizational Chart

State of California
Department of Transportation
April 2016

# ORGANIZATION CHART

**Director**
Malcolm Dougherty

**Chief Deputy Director**
Kome Ajise

**Sustainability Assistant Director**
Marlon Flournoy
*(Acting)*

**Chief of Staff**
Dara Wheeler

- **District 1 Director** — Charles Fielder
- **District 2 Director** — Dave Moore
- **District 3/North Region Director** — Amarjeet Benipal
- **District 4 Director** — Bijan Sartipi
- **District 5 Director** — Tim Gubbins
- **District 6/Central Region Director** — Sharn Bender Ehlert
- **District 7 Director** — Carrie Bowen
- **District 8 Director** — John Bulinski
- **District 9 Director** — Brent Green
- **District 10 Director** — Dennis T. Agar
- **District 11 Director** — Laurie Berman
- **District 12 Director** — Ryan Chamberlain

- **Administration Deputy Director** — Cristiana (Cris) Rojas
  - **Business, Facilities & Security** — Glenn Yee
  - **Enterprise Risk Management** — *Vacant*
  - **Equal Employment Opportunity** — Gina Cardoza
  - **Human Resources** — Michelle Tucker
  - **Procurement & Contracts** — Angela Shell
  - **Safety & Management Services** — Cheryl McNulty
- **External Affairs Deputy Director** — Will Shuck
  - **Legislative Affairs Assistant Director** — Melanie Perron
  - **Public Affairs Assistant Director** — Tamie McGowen
- **Finance Deputy Director** — Norma Ortega (Chief Financial Officer)
  - **Accounting** — Clark Paulsen
  - **Budgets** — Steven Keck
  - **Programming** — Bruce De Terra
  - **Road Charge Program Manager** — Carrie Pourvahidi
- **Information Technology Deputy Director** — George Akiyama (Chief Information Officer)
  - **Customer Service** — Sumi Smith
  - **Information Technology Solutions** — Tracy Scribner
  - **Infrastructure** — Ron Clemens *(Acting)*
  - **Security & Network Services** — Victoria Craig (Chief Information Security Officer)
  - **Management Support** — Roger Westrup
- **Maintenance & Operations Deputy Director** — Steve Takigawa
  - **Equipment** — Larry Orcutt
  - **Maintenance** — Tony Tavares
  - **Traffic Operations** — Thomas Hallenbeck
- **Planning & Modal Programs Deputy Director** — Coco Briseno
  - **Aeronautics** — Gary Cathey
  - **Local Assistance** — Rihui (Ray) Zhang
  - **Rail & Mass Transportation** — Bruce Roberts
  - **P3 Program Manager** — Nizar Melehani *(Acting)*
  - **Research, Innovation & System Information** — Jim Appleton
  - **Transportation Planning** — Katie Benouar
- **Project Delivery Deputy Director** — Karla Sutliff (Chief Engineer)
  - **Construction** — Rachel Falsetti
  - **Design** — Tim Craggs
  - **Engineering Services** — Michael Keever
  - **Environmental Analysis** — Katrina Pierce
  - **Project Management** — James E. Davis
  - **Right of Way & Land Surveys** — Jennifer Lowden
- **Audits & Investigations Assistant Director** — William E. Lewis
  - **Legal Chief Counsel** — Jeanne Scherer
  - **Federal Liaison** — Giles Giovinazzi
  - **Business & Economic Opportunity Assistant Director** — Janice Salais *(Acting)*

***"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability."***

# ATIACHMENT B

## Office of Business and Economic Opportunity Organizational Chart

# DEPARTMENT OF TRANSPORTATION
## Office of Business and Economic Opportunity
*April 1, 2016*

**Positions by Program**
50.10 Administration: 1
20.10 = Capital Outlay Positions: 27
20.80 Maintenance: 8
20.30 Local Assistance: 7

**J. Salais**
**(Acting) Assistant Director**
**CEA A**
**088-7500-002**

D. Gilbert
Exec. Secretary
088-1247-001

M. Isola
OT (T)
088-1139-003

**CERTIFICATION BRANCH & CONTRACT EVALUATION BRANCH**
J. Salais
SSM II
088-4801-009

C. Kamada
SSA
088-5157-065

I. Lasso-Durant
OT (T)
088-1139-004

**TRAINING/OUTREACH BRANCH & POLICY/REPORTS BRANCH**
R. Carlos, Jr.
SSM II
088-4801-010

R. Skewis
RAII
088-5731-002

**COMPLIANCE/TITLE VI & PROGRAM OPERATIONS**
S. Singh
SSM II
088-4801-002

M. Wiebke
Sr. Tr Eng
350-3161-085

**ADA BRANCH**
E. Dooher
Sup Tr Eng
Progam Manager (Acting)
350-7500-005

C. Barros
Sr. Tr Eng

### CERTIFICATION BRANCH

- Vacant, SSMI, 088-4800-005
- P. Lal, AGPA, 088-5393-095
- Vacant, AGPA, 088-5393-096
- A. Fife, AGPA, 088-5393-018
- D. Reynolds, AGPA, 088-5393-019
- J. Baker, AGPA, 088-5393-020
- R. Ram, AGPA, 088-5393-083
- C. Crenshaw-Hill, AGPA, 088-5393-078

### CONTRACT EVALUATIONS BRANCH

- T. Bullivant, SSM I, 088-4800-020
- J. Myers, AGPA, 088-5393-100
- M. Pogemiller, AGPA, 088-5393-024
- D. Crawford, AGPA, 088-5393-080
- S. Lu, AGPA, 088-5393-087
- D. Breed, OT (G), 088-1138-006

### POLICY AND REPORTS BRANCH

- A. Sequeira, SSM I, 088-4800-xxx
- A. Frank, AGPA, 088-5393-098
- K. Governor, AGPA, 088-5393-055
- A. Pearsall, AGPA, 088-5393-066

### TRAINING AND OUTREACH BRANCH

- Mario Solis, SSM I, 088-4800-014
- Vacant, AGPA, 088-5393-099
- D. Dorn, AGPA, 088-5393-002
- H. Baser, AGPA, 088-5393-011
- Vacant SSA, AGPA, 088-5157-001

### PROGRAM OPERATIONS BRANCH

- L. Madden, SSM I, 088-4800-013
- K. Grigsby, AGPA, 088-5393-079
- C. Ching, AGPA, 088-5393-084
- N. Tuttle, AGPA, 088-5393-088

### COMPLIANCE BRANCH

- M. Miglino, SSMI, 088-4800-015
- D. Stewart, AGPA, 088-5393-022
- M. Carrera, AGPA, 088-5393-097
- T. DeVriend, AGPA, 088-5393-062
- M. Baggenstoss, AGPA, 088-5393-070
- L. Tran, AGPA, 088-5393-023

### ADA BRANCH

- D. Moore, SSM I (Acting), 350-4800-003
- O. Beruman, AGPA, 088-5393-030
- Briana Peluso, AGPA, 350-5393-028

### LEGEND

- OCCUPIED Maintenance funded position 0000000318
- OCCUPIED Local Assistance funded position 0016000047
- OCCUPIED Administration funded position 0000001359
- OCCUPIED Capital Outlay funded position 0000000853

*Denotes Limited Term

Approved by _____

Date _____

3/29/2016

# ATIACHMENT C

## Definitions §26.5

**Section 26.5 Definitions**

Caltrans will adopt the definitions contained in Section 26.5 of Part 26 for this program, and will add and include any new/amended definitions as they are provided by USDOT; and not include any definitions for terms not included in the definitions found in Section 26.5 of Part 26.

*Affiliation* has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

*Alaska Native* means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

*Alaska Native Corporation* (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

*Assets* mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

*Business, business concern or business enterprise* means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

*Compliance* means that a recipient has correctly implemented the requirements of this part.

*Contingent Liability* means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

*Contract* means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

*Contractor* means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

*Days* mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

*Department* or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

*Disadvantaged business enterprise* or *DBE* means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent 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.

*DOT-assisted contract* means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

*Good faith efforts* means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

*Home state* means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

*Immediate family member* means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

*Joint venture* means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

*Liabilities* mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

*Native Hawaiian* means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

*Native Hawaiian Organization* means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

*Noncompliance* means that a recipient has not correctly implemented the requirements of this part.

*Operating Administration* or *OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

*Personal net worth* means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

*Primary industry classification* means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: *http://www.census.gov/eos/www/naics/.*

*Primary recipient* means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

*Principal place of business* means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

*Program* means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

*Race-conscious* measure or program 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 the purposes of this part, *race-neutral* includes gender-neutrality.

*Recipient* is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

*Secretary* means the Secretary of Transportation or his/her designee.

*Set-aside* means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

*Small Business Administration* or *SBA* means the United States Small Business Administration.

*SBA certified firm* refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

*Small business concern* means, with respect to firms seeking to participate as DBEs in 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 §26.65(b).

*Socially and economically disadvantaged individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

*Spouse* means a married person, including a person in a domestic partnership or a civil union recognized under State law.

*Transit vehicle manufacturer* means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

*Tribally-owned concern* means any concern at least 51 percent owned by an Indian tribe as defined in this section.

*You* refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., ‘You must do XYZ’ means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003; 76 FR 5096, Jan. 28, 2011; 79 FR 59592, Oct. 2, 2014]

# ATIACHMENT D

## List of Internet and Web site Addresses

## List of Internet and Web site Addresses

Web site access to a copy of the Policy Statement and Caltrans' DBE Program Plan :

http://www.dot.ca.gov/obeo/index.html

Office of Business and Economic Opportunity, Assistant Director, contact information:

smallbusinessadvocate@dot.ca.gov

The study results and Goal and Methodology Web site is at:

http://www.dot.ca.gov/hq/bep/disparity_study.htm

To download and print the most current list of DBE firms certified by the California Unified Certification Program, use the following Web site:

www.dot.ca.gov/hq/bep/find_certified.htm

The DES-OE Internet page is at the following address:

http://www.dot.ca.gov/hq/esc/oe/

The DGS publishes advertisements on the Internet at:

https://caleprocure.ca.gov/pages/public-search.aspx

The DES-OE advertises projects on the DES-OE Internet page at:

http://www.dot.ca.gov/hg/esc/oe/

The summaries of all bids received by the DES-OE, the subcontractors listed by each bidder, and the unit prices bid by each company are at the DES-OE Internet page:

http://www.dot.ca.gov/hq/esc/oe/

The Regional Planning Handbook is accessible on the Division of Transportation Planning's Web site at:

http://www.dot.ca.gov/hq/tpp/offices/orip/owp/index_files/2013_RPH_Final.pdf#zoom=85

# ATIACHMENT E

## “Fosterning Small Business Element” plan

U.S. Department of Transportation
Federal Highway Administration

California Division

650 Capitol Mall, Suite 4-100
Sacramento, CA 95814
(916) 498-5001
916 498-5008 (FAX)

March 27, 2013

In Reply Refer To: 901
HDA-CA

Mr. Malcolm Dougherty, Director
California Department of Transportation
1120 N Street
Sacramento, CA 95814

Subject: Disadvantaged Business Enterprise (DBE) Program Plan Small Business Element Approval

Dear: Dear Mr. Dougherty:

We are approving the California Department of Transportation's (Caltrans) DBE Small Business Element sent to our office in your letter dated September 19, 2012. This element is required pursuant to Section 1101 (b) of Moving Ahead for Progress in the 21st Century and 49 C.F.R. § 26.39. This memorandum serves as an acknowledgement of the Federal Transit Administration (FTA), the Federal Aviation Administration (FAA) and the Federal Highway Administration's (FHWA) approval.

If you have any questions regarding this matter please contact Lance Yokota, Civil Rights Program Manager, at 916-498-5012.

Vincent P. Mammano
Division Administrator

cc: Rene Halverson
Ramon Carlos
Derrin Jourdan, FTA Region 9 Civil Rights Program Manager

**DEPARTMENT OF TRANSPORTATION**
OFFICE OF BUSINESS AND ECONOMIC OPPORTUNITY
1823 14TH STREET
SACRAMENTO, CA 95811
PHONE (916) 324-0449
FAX (916) 324-1949
TTY 711
www.dot.ca.gov

*Flex your power!*
*Be energy efficient!*

September 19, 2012

Mr. Vincent Mammano
California Division Administrator
Federal Highway Administration
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814-4708

Dear Mr. Mammano:

In response to your August 16, 2012, review of the California Department of Transportation (Caltrans) Disadvantaged Business Enterprise (DBE) Program Small Business Participation Plan submitted to you on February 28, 2012, enclosed is the updated Caltrans DBE Small Business Element.

Per 49 CFR Part 26 DBE Program Regulations §26.39, this element is to be added to the DBE Program Plan, upon submittal and subsequent approval by the appropriate U.S. Department of Transportation operating administration. Caltrans will provide any additional information that is requested regarding the implementation plan to include: activities, timelines, and deliverables.

If you have any questions or need further information, please contact Ramon Carlos, Caltrans Acting DBE Program Manager, at (916) 324-6990 or by e-mail at ramon_carlos@dot.ca.gov.

Sincerely,

RENÉ HALVERSON
Assistant Director
Office of Business and Economic Opportunity

Enclosure

cc: Malcolm Dougherty, Director, California Department of Transportation
✔ Ramon Carlos, Acting DBE Program Manager, California Department of Transportation

**Fostering Small Business Participation**
**Caltrans Disadvantaged Business Enterprise Program Implementation**

Effective February 28, 2011, the U.S. Department of Transportation (DOT), Office of the Secretary, issued Disadvantaged Business Enterprise (DBE) Program Improvements (Final Rule) (49 CFR Part 26 DBE Program Regulations §26.39 subpart B). The purpose of this rule change is to encourage state programs that, by facilitating small business participation, augment race-neutral efforts to meet DBE goals. Therefore, the California Department of Transportation (Caltrans) hereby submits its proposed Fostering Small Business Participation, an element to structure contracting requirements to facilitate competition by addressing small business concerns, taking all reasonable steps to eliminate obstacles to their participation.

Specifically, Caltrans is required to actively implement DBE program elements that foster small business participation and augment its race-neutral efforts to meet its DBE goals. The program element could include items such as the unbundling of major Federal-aid contracts to allow for increased subcontracting opportunities with small firms. The small business certification that would be recognized by the Federal Highway Administration (FHWA) cannot be the result of self certification. The current small business certifications offered by the California Department of General Services (DGS) and the U.S. Small Business Administration (SBA) are self certifying thus making them ineligible to use on federal-aid contracts as a part of the current DBE program.

Furthermore, Caltrans lacks the resources to implement a Federal Small Business Certification program. It is also important to note that the state of California offers a Small Business Enterprise (SBE) and Disabled Veteran Business Enterprise (DVBE) certification program that Caltrans currently complies with on State-funded contracts. With that in mind, there are other ways Caltrans can help promote small business participation in Federal-aid contracts by proposing the following:

**Proposed Fostering Small Business Measure:**

- Caltrans proposes to unbundle large Federal-aid contracts to promote the use and provide more subcontracting opportunities to smaller industry firms. Unbundling could be done for those contracts that meet a specific size standard, provide an extensive amount of subcontracting opportunities, and the design sequence being broken up into different contracts would not have negative fiscal impact on the Department.

**Fostering Small Business Participation elements currently in place:**

- Caltrans regularly hosts Mandatory Pre-Bid meetings for pre-selected projects to help promote SB/DVBE/DBE participation. These meetings provide an opportunity for prime contractors to meet potential subcontractors.

- District Small Business Liaisons (DSBLs) are Caltrans employees dedicated to assist prime contractors in identifying potential subcontractors through the CUCP (DBE) database.

- Workshops, networking opportunities, and events such as, "Meet the Primes," are held statewide by individual Caltrans districts to increase potential contract opportunities for primes and subcontractors alike.

- "Mock Contracting Workshops" have been held in a number of districts over the years. These workshops assist small businesses in identifying advertised projects, prime contractors, contract requirements, insurance, bonding, etc. In these workshops, the subcontractors learn from prime contractors what qualifications they seek in a subcontractor.

- Free tools are made available to prime contractors and subcontractors alike, on the Caltrans website. From the "Opt-In" and "Primes Seeking Help" features on the Office Engineer (OE) webpage to assist in connecting primes and subcontractors on major contracts.

- The OE webpage also offers information on how a subcontractor can submit a responsive bid, which may be of great value to those firms without prior contracting experience with Caltrans.

- OBEO is currently working on three "DBE Supportive Services" contracts. These contracts will include one-on-one counseling and technical assistance to small businesses, including DBE firms that could potentially be certified DBE firms, and workshops on certification, bid submitting, marketing outreach, and understanding government contracting, all at no cost.

- The Caltrans Mentor-Protégé and CalMentor Programs are currently available in seven Caltrans districts. This program offers small disadvantaged businesses to pair with large prime contracting or consulting firms that have experience contracting with Caltrans. Depending on the size of each program, a prime can mentor up to two firms for a 12-18 month period, at which time the protégé graduates from the program with the real world experience in government contracting.

Caltrans will continue the small business measures currently in place and adopt the proposed measure that will foster and increase small business participation in Federal-aid contracts. Upon submittal and subsequent approval by the appropriate DOT operating administration, Caltrans will provide an implementation plan to include activities, timelines, and deliverables. Caltrans also commits to amending this plan as new measures for fostering small business arise.

# ATIACHMENT F

## Sample DBE Commitment Forms

## (All Caltrans Contracts)

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

# DBE - COMMITMENT

DES-OE-0102.10D (REV 12/2014)

CONTRACT NO:

BID AMOUNT:

$

BID OPENING DATE:

BIDDER'S NAME:

DBE GOAL FROM CONTRACT %:

| DBE PRIME CONTRACTOR CERTIFICATION[1]: | TOTAL NUMBER OF ALL SUBCONTRACTS (DBE & NON-DBE) | TOTAL VALUE OF ALL SUBCONTRACTS (DBE & NON-DBE) |
|---|---|---|
| | | |

| BID ITEM NO. | ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED[2] | WORK CATEGORY CODES[3] | NAME OF DBEs (Must be certified on the date bids are opened. Include Caltrans' certification no., DBE address, and phone number. Show 2nd and lower tier subcontractors) | AMOUNT ($) |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Show all DBE firms being claimed for credit, regardless of tier. Attach written confirmation from each DBE shown stating that it will be participating in the contract to perform the specific work shown for the specific amount agreed to.

The names of the 1st tier DBE subcontractors and items of work must be consistent with the Subcontractor List (Pub Cont Code § 4100 et seq.).

[1]Each DBE prime contractor must enter its certification number and show all work to be performed by DBEs, including work performed by its own forces.

[2]If 100% of an item is not to be performed or furnished by the DBE, describe the exact portion of the item to be performed or furnished.

[3]Use Work Category Codes from the California Unified Certification Program database.

| | |
|---|---|
| **Total Claimed Participation** | $ |
| | % |

**The bidder acknowledges that it is committed to use the DBEs shown on this form to meet the contract goal (49 CFR 26.53).**

Signature of Bidder

Date

(Area Code) Tel. No.

Person to Contact

(Please Type or Print)

**ADA Notice** For individuals with sensory disabilities, this document is available in alternate formats. For alternate format information, contact the Forms Management Unit at (916) 445-1233, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

# DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION / UNDERUTILIZED (UDBE) PARTICIPATION

ADM-0227F (REV 10/2009)  (CONTRACTS FEDERALLY FUNDED IN WHOLE OR IN PART)

**PART A - CONTRACTORS INFORMATION (Refer to Instructions in Page 2 of this form. Bidder/Proposer shall ensure all information provided is complete and accurate.)**

| (A1) CONTRACTOR'S BUSINESS NAME | (A2) AGREEMENT NUMBER | (A3) CONTRACT DOLLAR AMOUNT | (A4) DATE |
|---|---|---|---|
| | | | |

| (A1) CONTRACTOR'S BUSINESS ADDRESS | (A1) CITY | (A1) STATE | (A1) ZIP CODE |
|---|---|---|---|
| | | | |

| (A1) CONTACT PERSON | (A1) BUSINESS PHONE | (A1) FAX NUMBER | (A1) EMAIL ADDRESS |
|---|---|---|---|
| | (  ) | (  ) | |

**PART B - DBE/UDBE INFORMATION AND DOCUMENTATION (Refer to Instructions in Page 2 of this form. Bidder/Proposer shall verify DBE certifications or UDBE firms are certified as DBEs .)**

| | (1) List Name(s) and addresses of all DBEs/UDBEs that will participate in this Agreement: | (2) Area Code & Phone Number | (3) Tier | (4) Description of Work, Service, or Materials Supplied | (5) DBE/UDBE or CUCP Certification Number | (6) Ownership Code | (7) DBE/UDBE $ Amount Claimed | (8) % of $ Value Claimed | (9) Caltrans Use Only % |
|---|---|---|---|---|---|---|---|---|---|
| 1B | *EXAMPLE* Jane Prime Inc., 1234 Jane's Street, Jane's City, CA, 04321 | (XXX) 000-1111 | 0 | Project management | XXXXXXXX | 7,5 | 48,000 | 48% | |
| | | | | | | | | | |
| 2B | *EXAMPLE* Joe Subcontractor Inc., 4567 Joe's Street, Joe's City, CA, 07654 | (XXX) 111-0000 | 1 | Design, Surveys, environmental testing | 000000000000 | 6 | 42,000 | 42% | |
| | *EXAMPLE* Supplier International LLC, 1100 X Street Supplier's City, CA, 45670 | (111) XXX-0001 | 2 | Surveys instruments, testing materials | 111111111111 | 3 | 10,000 | 10% | |
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**PART C - FOR CALTRANS USE ONLY (Verification Completed by Civil Rights, Office of Business and Economic Opportunity):**

| (C1) PRINT VERIFIER'S NAME AND TITLE | (C1) SIGNATURE | (C2) DATE | (C3) CIVIL RIGHTS STAMP OF APPROVAL |
|---|---|---|---|
| | | | |

(C4) DBE Participation ☐ YES (  %) ☐ NO | (C5) UDBE Participation ☐ YES (  %) ☐ NO

# DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION / UNDERUTILIZED (UDBE) PARTICIPATION



AUTHORITY:

Title 49, Code of Federal Regulations, Part 26 (49 CFR 26)

INSTRUCTIONS FOR COMPLETING FORM ADM-0227F (Please Type or Print Legibly):

**PART A - CONTRACTOR INFORMATION**

(A1) Bidder's/Proposer's Business Name, Address, City, State, and Zip Code, Contact Person, Business Phone, Fax Number, and Email Address.

(A2) Agreement Number, that is the same number as the Invitation for Bid (IFB) or Request for Proposal (RFP) number.

(A3) Total dollar amount that Contractor proposes to accomplish the Agreement.

(A4) Date this form is completed.

**PART B - DBE/UDBE INFORMATION AND DOCUMENTS**

Row 1B Complete this row ONLY if Prime is a certified DBE/UDBE and refer also to column instructions below.

Row 2B Complete these rows ONLY if the Subcontractor(s)/Supplier(s) are certified DBE/UDBE and refer to instructions below for Columns 1 through 7. If there are more than five (5) certified DBE/UDBE subcontractors/suppliers to be listed, please use additional copies of page 1 of this form and only complete A1, Contractor's Business Name, A2, Agreement Number, and 2B rows in Part B.

Column 1 Enter the names and complete addresses of all certified DBE/UDBE Contractor/Subcontractor/Supplier(s) that will be used in the Agreement.

Column 2 Enter the area code and phone number of the corresponding certified DBE/UDBE listed in Column 1.

Column 3 Enter the Contracting Tier number for each DBE/UDBE corresponding listed in Column 1: **0** = Prime or Joint Consultant, **1** = Primary Subcontractor, **2** = Subcontractor/Supplier of level 1 Primary Subcontractor.

Column 4 Enter a description that briefly captures the work to be performed or supplies to be provided by each corresponding DBE/UDBE firm listed in Column 1.

Column 5 Enter the DBE/UDBE or CUCP Certification Number for the corresponding DBE/UDBE listed in Column 1. Self-certification is NOT acceptable. DBEs/UDBEs must be certified by the submittal date identified in the IFB or RFP. For more certification and verification information, refer to the IFB's or RFP's ***Notice to Bidders/Proposers Disadvantaged Business Enterprise (DBE) Program and Underutilized DBE (UDBE) Participation Goal.***

Column 6 Enter the correct Ownership Code number below for the corresponding DBE/UDBE listed in Column 1. Only UDBE participation counts toward contract goal.

| | | |
|---|---|---|
| 1 = Black American (UDBE) | 4 = Asian-Pacific American (UDBE) | 7 = Woman (UDBE) |
| 2 = Hispanic American (DBE) | 5 = Subcontinent Asian American (DBE) | 8 = Other (DBE) |
| 3 = Native American (UDBE) | 6 = Caucasian (DBE) | 9 = Not Applicable |

Column 7 Enter the percentage (%) of the dollar ($) value claimed for each corresponding DBE/UDBE listed in Column 1.

**ADDITIONAL INFORMATION:**

- Form ADM-0312F should be submitted with the ADM-0227F to demonstrate good faith efforts (GFE) AND protect bidder's/proposer's eligibility for contract award in the event Caltrans determines the bidder/proposer failed to meet the UDBE goal.
- A DBE/UDBE joint venture partner shall submit the joint venture agreement with the form ADM-0227F.

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# DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION FOR A&E CONTRACTS

ADM-0227F A&E (REV 03/2016) Page 1 of 2 (CONTRACTS FEDERALLY FUNDED IN WHOLE OR IN PART)

**PART A - CONSULTANT'S INFORMATION (Refer to Instructions on Page 2 of this form. Proposer shall ensure all information provided is complete and accurate.)**

| (A1) CONSULTANT'S BUSINESS NAME | | (A2) AGREEMENT NUMBER | (A3) ADVERTISED DBE% | (A4) DATE |
|---|---|---|---|---|
| (A1) CONSULTANT'S BUSINESS ADDRESS | | (A1) CITY | (A1) STATE | (A1) ZIP CODE |
| (A1) CONTACT PERSON | (A1) BUSINESS PHONE ( ) | (A1) FAX NUMBER ( ) | (A1) EMAIL ADDRESS | |

**PART B - DBE INFORMATION AND DOCUMENTATION (Refer to Instructions on Page 2 of this form. Proposer shall verify DBE certifications.)**

| (1) List Name(s) and addresses of all DBEs that will participate in this Agreement: | (2) Area Code & Phone Number | (3) Tier | (4) Description of Work, Service, or Materials Supplied | (5) CUCP Certification Number | (6) Work Category Code | (7) Ownership Code | (8) Percentage Committed | (9) Top Ranked Firm Use Only |
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**THE CONSULTANT ACKNOWLEDGES THAT IT MUST USE THE DBEs LISTED ON THIS FORM TO MEET ITS DBE CONTRACT COMMITMENT (49 CFR 26.53)**

| CONSULTANT REPRESENTATIVE'S SIGNATURE | DATE |
|---|---|
| CONSULTANT REPRESENTATIVE'S PRINTED NAME | |

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# DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION FOR A&E CONTRACTS



AUTHORITY:

Title 49, Code of Federal Regulations, Part 26 (49 CFR 26)

INSTRUCTIONS FOR COMPLETING FORM ADM-0227F A&E (Please Type or Print Legibly):

**PART A – CONSULTANT'S INFORMATION**

(A1) Consultant's Business Name, Address, City, State, Zip Code, Contact Person, Business Phone, Fax Number, and Email Address.

(A2) Agreement number, that is the same number as the Request for Qualifications (RFQ) number.

(A3) DBE Goal percentage advertised in the RFQ.

(A4) Date this form is completed.

**PART B – DBE INFORMATION AND DOCUMENTATION**

Column 1 Enter the names and complete addresses of all certified DBE Subconsultants, Subcontractors, Material Suppliers, and Truckers that will be used in the Agreement. Include DBE Prime Consultant participation, if applicable. Attach written confirmation from each listed DBE firm that it is participating in the contract and will perform the work as described in Column 4.

Column 2 Enter the area code and phone number of the corresponding certified DBE listed in Column 1.

Column 3 Enter the Contracting Tier number for each DBE listed in Column 1: **0** = Prime or Joint Consultant, **1** = Primary Subconsultant, **2** = Subcontractor/Supplier of level 1 Primary Subconsultant.

Column 4 Enter a description for the work/services to be performed or materials to be provided by each corresponding DBE firm in Column 1. If a DBE is not performing 100 percent of an item, describe the exact portion of the item to be performed or furnished.

Column 5 Enter the California Unified Certification Program (CUCP) certification number for the corresponding DBE listed in Column 1. DBEs must be certified by the CUCP by the submittal date identified in the RFQ. For more certification and verification information, refer to the Statement of Qualifications (SOQ) Submittal Instructions identified in the RFQ.

Column 6 Using the CUCP database, http://www.dot.ca.gov/hq/bep/find_certified.htm, enter the work category code(s) that corresponds to the type of work the DBE will perform on the contract. In order to count toward the DBE goal, a DBE must, at the SOQ Submittal deadline, possess the work category code(s) applicable to the type of work it will perform on the contract.

Column 7 Enter the correct Ownership Code number below for the corresponding DBE listed in Column B.

| | | |
|---|---|---|
| 1 = Black American | 4 = Asian-Pacific American | 7 = Woman |
| 2 = Hispanic American | 5 = Subcontinent Asian American | 8 = Other |
| 3 = Native American | 6 = Caucasian | 9 = Not Applicable |

Column 8 Enter the commitment percentage (%) (best estimate) for each firm listed in Column 1 for submittal of your SOQ. Enter a whole number. Do not enter a range, "less than" expression, or "more than" expression.

Column 9 The top-ranked firm must enter the dollar amount of commitment for each firm listed in Column 1 after the contract amount has been finalized.

**ADDITIONAL INFORMATION:**

- Form ADM-3012F should be submitted with the ADM-0227F A&E to demonstrate good faith efforts (GFE) AND protect bidder's/ proposer's eligibility for contract award in the event Caltrans determines the proposer failed to meet the DBE goal.
- A DBE joint venture partner shall submit the joint venture agreement with the form ADM-0227F A&E.

# ATIACHMENT G

## Sample Good Faith Efforts Forms

## (All Caltrans Contracts)

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

# DBE GOOD FAITH EFFORTS DOCUMENTATION

DES-OE-0102.11A (REV 12/2014)

Bidder's Name: _____

Contract No.: _____



1. List items of work the Bidder made available to DBE firms. Identify items of work the Bidder might otherwise perform with its own forces, items that have been broken down into economically feasible units to facilitate DBE participation, and items for which the Bidder has established flexible time frames for performance and delivery schedules in a manner that encourages and facilitates DBE participation. For each item listed, show the dollar value and percentage of the total contract. The Bidder must demonstrate that sufficient work to meet the goal was made available to DBE firms.

| Item of Work Offered, Services Offered, or Materials Supplied | Bidder Normally Performs Item Yes/No | Item Broken Down to Facilitate Participation Yes/No | Established Flexible Timeframes for Performance and Delivery Schedules Yes/No | Amount ($) | Percentage of Total Bid |
|---|---|---|---|---|---|
| | ☐ YES ☐ NO | ☐ YES ☐ NO | ☐ YES ☐ NO | | |
| | ☐ YES ☐ NO | ☐ YES ☐ NO | ☐ YES ☐ NO | | |
| | ☐ YES ☐ NO | ☐ YES ☐ NO | ☐ YES ☐ NO | | |
| | ☐ YES ☐ NO | ☐ YES ☐ NO | ☐ YES ☐ NO | | |
| | ☐ YES ☐ NO | ☐ YES ☐ NO | ☐ YES ☐ NO | | |
| | ☐ YES ☐ NO | ☐ YES ☐ NO | ☐ YES ☐ NO | | |
| | ☐ YES ☐ NO | ☐ YES ☐ NO | ☐ YES ☐ NO | | |
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| | ☐ YES ☐ NO | ☐ YES ☐ NO | ☐ YES ☐ NO | | |
| | ☐ YES ☐ NO | ☐ YES ☐ NO | ☐ YES ☐ NO | | |
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| | ☐ YES ☐ NO | ☐ YES ☐ NO | ☐ YES ☐ NO | | |
| | ☐ YES ☐ NO | ☐ YES ☐ NO | ☐ YES ☐ NO | | |

# DBE GOOD FAITH EFFORTS DOCUMENTATION

DES-OE-0102.11A (REV 12/2014)

Bidder's Name: _____

Contract No.: _____



4. Describe the Bidder's outreach efforts to identify and solicit the interest of all certified DBEs that have the capability to perform the work of the Contract. Provide copies of supporting documents.

| Description of Outreach | Dates | Location (if applicable) | Results |
|---|---|---|---|
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5. Describe the Bidder's efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the Contract to assist them in responding to a solicitation. Identify the DBEs assisted, the type of information provided, and the date of the contracts. Provide copies of supporting documents.

6. Describe the Bidder's efforts made to assist interested DBEs in obtaining bonding, lines of credit, or insurance. Identify the DBEs assisted, the type of assistance offered, and the dates. Provide copies of supporting documents.

7. Describe the Bidder's efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE purchases or leases from the prime contractor or its affiliate. Identify the DBEs assisted, the type of assistance offered, and the dates. Provide copies of supporting documents. List efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, 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. Identify the DBE assisted, the assistance offered, and the date. Provide copies of supporting documents.

8. List the names of agencies and the dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, provide copies of supporting documents.

9. Include additional data to support a demonstration of good faith efforts.

**NOTE**: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

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# BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION

ADM-0312F (REV 03/2016) (Page 1 of 4) (CONTRACTS FEDERALLY FUNDED IN WHOLE OR IN PART)

| CONTRACTOR'S NAME | IFB OR RFP OR RFQ NUMBER | DATE |
|---|---|---|
| | | |

**BIDDER/PROPOSER INSTRUCTIONS:** Submittal of only the Disadvantaged Business Enterprise (DBE) Information form, ADM-0227F, may not provide sufficient documentation to demonstrate that adequate good faith efforts (GFE) were made by the bidder/proposer. Bidder/proposer should always submit documentation for making GFE to protect its eligibility for award should Caltrans, in its evaluation, find that the bidder/proposer did not meet the DBE goal. If a bidder/proposer does not meet the DBE goal, a bidder/proposer must make an adequate GFE to be responsive. Bidder/proposer shall complete this Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation form, ADM-0312F, and submit the requested information below with its bid by the bid due date and time.

## 1. OUTREACH DOCUMENTATION

Describe the bidder's/proposer's outreach efforts to identify and solicit the interest of all certified DBEs that have the capability to perform the work of the contract. Provide copies of supporting documentation.

| DESCRIPTION OF OUTREACH | DATE(S) | LOCATION (IF APPLICABLE) | RESULTS |
|---|---|---|---|
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## 2. DBE DOCUMENTATION

a. List the names of certified DBEs and all dates on which they were solicited to bid on the contract.
b. Include the items of work offered and the dates and methods used for initial and follow-up solicitations to determine with certainty whether the DBEs were interested.
c. Attach copies of solicitations, e-mail messages, telephone records, fax confirmations, etc.

Check the appropriate box: ☐ IFB ☐ RFP ☐ RFQ

**SOLICITATIONS**

| NAME OF DBE SOLICITED | DATE OF INITIAL SOLICITATION | ITEM(S) OF WORK OFFERED | FOLLOW-UP METHODS AND DATES |
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# BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION

ADM-0312F (REV 03/2016) (Page 2 of 4) (CONTRACTS FEDERALLY FUNDED IN WHOLE OR IN PART)

| CONTRACTOR'S NAME | IFB OR RFP OR RFQ NUMBER | DATE |
|---|---|---|
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## 2. DBE DOCUMENTATION (Continued)

**SOLICITATIONS**

| NAME OF DBE SOLICITED | DATE OF INITIAL SOLICITATION | ITEM(S) OF WORK OFFERED | FOLLOW-UP METHODS AND DATES |
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## 3. ITEMS OF WORK

List the items of work made available to DBE firms. Identify items of work the bidder/proposer might otherwise perform with its own forces; items that have been broken down into economically feasible units to facilitate DBE participation; and items for which the bidder/proposer has established flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation. For each item listed, show the dollar value and percentage of the total contract. The bidder/proposer must demonstrate that sufficient work to meet the goal was made available to DBE firms.

| ITEMS OF WORK OFFERED, SERVICES OFFERED, OR MATERIALS SUPPLIED | BIDDER/PROPOSER NORMALLY PERFORMS ITEM (Y/N) | ITEM BROKEN DOWN TO FACILITATE PARTICIPATION (Y/N) | ESTABLISHED FLEXIBLE TIMEFRAMES FOR PERFORMANCE AND DELIVERY SCHEDULES (Y/N) | AMOUNT ($) | PERCENTAGE OF CONTRACT |
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STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

# BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION

ADM-0312F (REV 03/2016) (Page 3 of 4) (CONTRACTS FEDERALLY FUNDED IN WHOLE OR IN PART)

| CONTRACTOR'S NAME | IFB OR RFP OR RFQ NUMBER | DATE |
|---|---|---|
| | | |

**4. DBE RESPONSES**

For each item of work made available, indicate whether the bidder/proposer provided plans and specifications specific to the item(s) of work being offered; list the selected firm and its status as a DBE; the DBEs that provided quotes; the price quote for each firm; and the price difference for each DBE if the selected firm is not a DBE. Provide copies of each DBE and non-DBE quote submitted to the bidder/proposer when a non-DBE firm was selected over a DBE for work on the contract.

| ITEM(S) OF WORK | PROVIDE PLANS/SPECIFICATIONS FOR WORK OFFERED (Y/N) | NAME OF SELECTED FIRM | DBE or non-DBE | NAME OF REJECTED FIRM | QUOTE ($) | PRICE DIFFERENCE ($) |
|---|---|---|---|---|---|---|
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**5. ASSISTANCE TO DBEs - Plans/Specifications/Contract requirements**

Describe the bidder's/proposer's efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. Identify the DBEs assisted, the type of information provided, and the date of the contacts. Provide copies of supporting documents.

**6. ASSISTANCE TO DBEs - Bonding/Lines of Credit/Insurance**

Describe the bidder's/proposer's efforts made to assist interested DBEs in obtaining bonding, lines of credit, or insurance. Identify the DBEs assisted, the type of assistance offered, and the dates. Provide copies of supporting documents.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

# BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION

ADM-0312F (REV 03/2016) (Page 4 of 4) (CONTRACTS FEDERALLY FUNDED IN WHOLE OR IN PART)

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| CONTRACTOR'S NAME | IFB OR RFP OR RFQ NUMBER | DATE |
|---|---|---|
| | | |

**7. ASSISTANCE TO DBEs - Equipment/Supplies and Materials/Related Assistance or Services**

Describe the bidder's/proposer's efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE purchases or leases from the prime contractor or its affiliate. Identify the DBEs assisted, the type of assistance offered, and the dates. Provide copies of supporting documents.

**8. ASSISTANCE RECRUITING AND PLACING DBEs**

List the names of agencies and the dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, provide copies of supporting documents.

| NAME OF AGENCY/ORGANIZATION | METHODS/DATE OF CONTACT | RESULTS |
|---|---|---|
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**9. ADDITIONAL DATA TO SUPPORT A GOOD FAITH EFFORT**

Include additional data to support a demonstration of good faith efforts.

# ATIACHMENT H

## Sample Division of Engineering Services – Office Engineer

## DBE "Boilerplate" Bid Specifications

### 2-1.12B Disadvantaged Business Enterprise Goal

#### 2-1.12B(1) General

Section 2-1.12B applies if a DBE goal is shown on the *Notice to Bidders*.

The Department shows a goal for DBEs to comply with the DBE program objectives provided in 49 CFR 26.1.

Make work available to DBEs and select work parts consistent with the available DBEs, including subcontractors, suppliers, service providers, and truckers.

Meet the DBE goal shown on the *Notice to Bidders* or demonstrate that you made adequate good faith efforts to meet this goal.

You are responsible to verify at bid opening the DBE firm is certified as a DBE by the California Unified Certification Program and possess the work codes applicable to the type of work the firm will perform on the Contract.

Determine that selected DBEs perform a commercially useful function for the type of work the DBE will perform on the Contract as provided in 49 CFR 26.55(c)(1)–(4). Under 49 CFR 26.55(c)(1)–(4), the DBE must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing, and supervising the work.

All DBE participation will count toward the Department's federally mandated statewide overall DBE goal.

Credit for materials or supplies you purchase from DBEs will be evaluated on a contract-by-contract basis and counts toward the goal in the following manner:

1. 100 percent if the materials or supplies are obtained from a DBE manufacturer.
2. 60 percent if the materials or supplies are obtained from a DBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies if they are obtained from a DBE that is neither a manufacturer nor a regular dealer. 49 CFR 26.55 defines *manufacturer* and *regular dealer*.

You receive credit toward the goal if you employ a DBE trucking company that is performing a commercially useful function. The Department uses 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 responsible 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 lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- 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.

[49 CFR 26.55(d)]

### 2-1.12B(2) DBE Commitment Submittal

Submit DBE information under section 2-1.33.

Submit a copy of the quote from each DBE shown on the DBE Commitment form that describes the type and dollar amount of work shown on the form. Submit a DBE Confirmation form for each DBE shown on the DBE Commitment form to establish that it will be participating in the Contract in the type and dollar amount of work shown on the form. If a DBE is participating as a joint venture partner, submit a copy of the joint venture agreement.

### 2-1.12B(3) DBE Good Faith Efforts Submittal

You can meet the DBE requirements by either documenting commitments to DBEs to meet the Contract goal or by documenting adequate good faith efforts to meet the Contract goal. An adequate good faith effort means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal.

If you have not met the DBE goal, complete and submit the DBE Good Faith Efforts Documentation form under section 2-1.33 showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed toward obtaining participation by DBEs are considered.

Submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Department finds that the DBE goal has not been met.

Refer to 49 CFR 26 app A for guidance regarding evaluation of good faith efforts to meet the DBE goal.

The Department considers DBE commitments of other bidders in determining whether the low bidder made good faith efforts to meet the DBE goal.

## 2-1.33 BID DOCUMENT COMPLETION AND SUBMITTAL

### 2-1.33A General

Complete the forms in the *Bid* book.

Use the forms provided by the Department except as otherwise specified for a bidder's bond.

Do not fax forms except for the copies of forms with the public works contractor registration number submitted after the time of bid. Fax these copies to (916) 227-6282.

Submit the forms and copies of the forms to the Office Engineer.

Failure to submit the forms and information as specified may result in a nonresponsive bid.

If an agent other than the authorized corporate officer or a partnership member signs the bid, file a Power of Attorney with the Department either before opening bids or with the bid. Otherwise, the bid may be nonresponsive.

### 2-1.33B Electronic Bids

Section 2-1.33B applies to electronic bids.

Complete and submit the electronic portion of the *Bid* book under the *Electronic Bidding Guide* at the Bidders' Exchange website and submit the paper forms as specified for a paper bid.

Your authorized digital signature is your confirmation of and agreement to all certifications and statements contained in the *Bid* book.

On forms and certifications that you submit through the electronic bidding service, you agree that each form and certification where a signature is required is deemed as having your signature.

### 2-1.33C Paper Bids

Section 2-1.33C applies to paper bids.

Submit your bid and any *Bid* book forms after you submit your bid:

1. Under sealed cover
2. Marked as a bid
3. Identifying the contract number and the bid opening date

### 2-1.33D Bid Form Submittal Schedules

#### 2-1.33D(1) General

The *Bid* book includes forms specific to the contract. The deadlines for the submittal of the forms vary depending on the requirements of each contract. Determine the requirements of the contract and submit the forms based on the applicable schedule specified in section 2-1.33D.

Bid forms and information on the form that are due after the time of bid may be submitted at the time of bid.

#### 2-1.33D(2) Federal-Aid Contracts

#### 2-1.33D(2)(a) General

Section 2-1.33D(2) applies to a federal-aid contract.

#### 2-1.33D(2)(b) Contracts with a DBE Goal

Section 2-1.33D(2)(b) applies if a DBE goal is shown on the *Notice to Bidders*,

Submit the bid forms according to the schedule shown in the following table:

**Bid Form Submittal Schedule for a Federal-Aid Contract with a DBE Goal**

| Form | Submittal deadline |
|---|---|
| Bid to the Department of Transportation | Time of bid except for the public works contractor registration number |
| Copy of the Bid to the Department of Transportation as submitted at the time of bid with the public works contractor registration number | 10 days after bid opening |
| Subcontractor List | Time of bid except for the public works contractor registration number |
| Copy of the Subcontractor List as submitted at the time of bid with the public works contractor registration number | 10 days after bid opening |
| Small Business Status | Time of bid |
| Opt Out of Payment Adjustments for Price Index Fluctuations[a] | Time of bid |
| DBE Commitment | No later than 4 p.m. on the 4th business day after bid opening |
| DBE Confirmation | No later than 4 p.m. on the 4th business day after bid opening |
| DBE Good Faith Efforts Documentation | No later than 4 p.m. on the 4th business day after bid opening |

[a]Submit only if you choose the option.

## 2-1.33D(2)(c) Contracts without a DBE Goal

Reserved

IF THERE ARE NO DBE GOALS, THE FOLLOWING SPECIFICATION IS EDITED:

{XE "2-1.33D(2)(c) A10-30-15 2015"}



**Section 2-1.33D(2)(c). Use for a federal-aid contract without a DBE goal.**

**Replace *Reserved* in section 2-1.33D(2)(c) with:**

**1. Use for a non-informal-bid contract.**

Submit the bid forms according to the schedule shown in the following table:

**Bid Form Submittal Schedule for a Federal-Aid Contract without a DBE Goal**

| Form | Submittal deadline |
|---|---|
| Bid to the Department of Transportation | Time of bid except for the public works contractor registration number |
| Copy of the Bid to the Department of Transportation as submitted at the time of bid with the public works contractor registration number | 10 days after bid opening |
| Subcontractor List | Time of bid except for the public works contractor registration number |
| Copy of the Subcontractor List as submitted at the time of bid with the public works contractor registration numbers | 10 days after bid opening |
| Small Business Status | Time of bid |
| Opt Out of Payment Adjustments for Price Index Fluctuations[a] | Time of bid |

[a]Submit only if you choose the option.

**2. Use for an informal-bid contract.**

Submit the bid forms according to the schedule shown in the following table:

**Bid Form Submittal Schedule for an Informal-Bid Federal-Aid Contract without a DBE Goal**

| Form | Submittal deadline |
|---|---|
| Bid to the Department of Transportation | Time of bid |
| Subcontractor List | Time of bid |
| Small Business Status | Time of bid |
| Opt Out of Payment Adjustments for Price Index Fluctuations[a] | Time of bid |

[a]Submit only if you choose the option.

# ATIACHMENT I

## Sample Division of Procurement and Contracts (DPAC)

## Federal Solicaition "Boilerplate" Bid Specifications

**DEPARTMENT OF TRANSPORTATION**
DIVISION OF PROCUREMENT AND CONTRACTS MS-65
1727 30th STREET
SACRAMENTO, CA 95816-7006
PHONE (916) 227-6000
FAX (916) 227-6155
INTERNET http://caltrans-opac.ca.gov

*Flex your power!*
*Be energy efficient*

(DATE)

**NOTICE TO BIDDERS/PROPOSERS**
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
AND
DBE PARTICIPATION GOAL

The Department of Transportation (Caltrans) has set an overall annual DBE goal comprising of both race neutral and race conscious elements to be in compliance with Title 49, Code of Federal Regulations, Part 26 (49 CFR 26). This regulation requires that all recipients of United States Department of Transportation (USDOT), Federal Highway Administration (FHWA) federal-aid shall establish an overall annual Disadvantaged Business Enterprises (DBE) goal. Caltrans is required to report to FHWA the DBE participation for all federal-aid contracts each year so that the overall annual DBE goal attainment efforts may be evaluated. Caltrans encourages DBE participation in the performance of agreements financed in whole or in part with federal funds.

Bidders and proposers are advised that Caltrans has established a federally mandated overall annual DBE goal comprising both race neutral and race conscious elements to ensure equal participation of DBE groups specified in 49 CFR 26.5. In compliance with 49 CFR 26, Caltrans set a contract goal for DBEs participating in this solicitation expressed as a percentage of the total dollar value of the resultant agreement.

**The DBE participation goal for this solicitation is ___ percent (___%).**

To ensure applicable participation of the specified DBEs as defined in 49 CFR 26.5, this solicitation's goal applies to the following certified DBE groups: African Americans, Asian-Pacific Americans, Hispanic Americans, Native Americans, Subcontinent Asian Americans, or Women. Only DBE participation will count toward the contract goal for this solicitation.

The attached Kform15, Disadvantaged Business Enterprise (DBE) Information and Instructions for Bidders and subsequent forms **must** be submitted with the bid, cost proposal, price and/or rate schedule by the bid due date and time as indicated in the solicitation:

- ADM-0227f: Disadvantaged Business Enterprise (DBE) Information Participation, and/or
- ADM-0312f: Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation

Failure to complete and submit the required DBE information and forms, will be grounds for finding the bidder/proposer non-responsive and cause for rejection of the bid/proposal (also refer to the solicitation, Section D, Special Programs).

**New Requirement effective February 28, 2011:** The bidder/proposer awarded the Agreement shall complete and submit ADM-3069, Disadvantaged Business Enterprises Utilization Report with each invoice as required in the Proposed form of Agreement's Exhibit B, Budget Detail and Payment Provisions and Exhibit D, Special Terms and Conditions.

Please read this Notice and Attachments very carefully as bidder/proposer is responsible to ensure bid submittal documents are complete and accurate.

*"Provide a safe, sustainable, integrated and efficient transportation system*
*To enhance California's economy and livability"*

## I. AUTHORITY AND BIDDER'S RESPONSIBILITY

This solicitation is subject to Title 49, Code of Federal Regulations, Part 26 (49 CFR 26) entitled PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS. Bidders/Proposers (bidder) shall be fully informed of the requirements of the regulations and Caltrans' DBE Program developed pursuant to the regulations. It is the policy of the State of California, Department of Transportation (Caltrans), that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR 26, be encouraged to participate in the performance of Agreements financed in whole or in part with federal funds. The Bidder should ensure that DBE firms have an opportunity to participate in the performance of this solicitation and shall take all necessary and reasonable steps for this assurance. The bidder shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

**Terms as used in this document:**

- 'Caltrans' means 'State of California, Department of Transportation'
- 'Agreement' also means 'Contract'
- 'Bidder' also means 'proposer' or 'offerer'
- 'Work Codes' indicate the types of work DBE firms are certified to perform

It is the bidder's responsibility to make work available to DBEs and select portions of work, services, or materiel needed from the Proposed form of Agreement's, Exhibit A, Scope of Work. The required work, services and/or materiel must be relevant to the DBEs work codes to meet the contract goal for DBE participation in this solicitation or provide information to establish, that prior to bidding, the bidder made an adequate Good Faith Effort (GFE) to meet the goal.

To be eligible for award of the Agreement, the bidder shall demonstrate that the contract goal for DBE participation was met or that, prior to bidding, an adequate GFE to meet the goal was made. Final determination of goal attainment or GFE by the bidder will be at Caltrans' discretion.

Bidder is cautioned that even though its submittal indicates it will meet the stated DBE goal, its submittal should also include its GFE documentation along with DBE goal information to protect its eligibility for award of the Agreement in the event Caltrans, in its review, finds that the goal has not been met.

**It is the bidder's responsibility to verify DBE certifications.**

## II. SUBMISSION OF DBE INFORMATION AND PARTICIPATION

In order to be considered a responsible and responsive bidder, the bidder must meet the contract goal and/or make a GFE to meet the contract goal for DBE participation as established for this Agreement (refer to Section III, DBE Certification Requirements, Section 4). Bidder shall submit the attached form(s).

- ADM-0227f, Disadvantaged Business Enterprise (DBE) Information
- ADM-0312f, Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation. Bidder shall provide sufficient documentation to demonstrate adequate GFEs were made. For disqualification examples, refer to the Instructions to Bidder/Proposer on page 1 of the ADM-0312f.

## III. DBE CERTIFICATION REQUIREMENTS

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

1. A DBE must be a small business firm defined pursuant to Section 3 of the Federal Small Business Act **and** certified through the California Unified Certification Program (CUCP). A DBE firm is a DBE certified through CUCP. In accordance with 49 CFR 26, the DBE must be certified by bid opening date of the Invitation for Bid (IFB), the Request for Proposal (RFP), or the Architectural and Engineering

(A&E) Request for Quotations (RFQ), before credit may be considered toward meeting the DBE goal. It is the bidder's (prime contractor's) responsibility to verify that DBEs are certified by accessing the CUCP database.

2. The CUCP database includes DBEs certified from all certifying agencies participating in the CUCP. If a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
3. Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity (OBEO) web site at: **http://www.dot.ca.gov/hq/bep/**.

- Click on the blue DBE Search Click Here button
- Click on Click To Access DBE Query Form
- Searches can be performed by one or more criteria
- Follow instructions on the screen (read about NAICS definitions below)
- "Start Search", is located at the bottom of the query form,
- "Civil Rights Home" (OBEO), "Caltrans Home", and "Instructions/Tutorial" links are located on top of the query page.

MUST USE EITHER INTERNET EXPLORER 5.5 OR NETSCAPE 7 (OR GREATER) FOR THIS DATABASE.

**Resources to Obtain a List of Certified DBEs for Caltrans Solicitations**

Contractors bidding on Caltrans solicitations with a contract goal for DBE participation may contact the DBE supportive services consultant or obtain lists of certified DBEs from the CUCP database referenced above.

**NAICS Work Codes and Work Descriptions**

The North American Industry Classification System (NAICS) work codes are used to identify the type of work performed by DBEs. You will need to have the NAICS work code numbers before querying. The United States (US) Census Bureau has developed cross-references from Standard Industrial Classification (SIC) codes to the NAICS codes. Please visit the US Census Bureau web site for more information concerning work areas related to NAICS 237310 Highway, Street, and Bridge Construction, at the following location: http://www.census.gov/epcd/naics02/def/ND237310.HTM.

**How to Obtain a Quarterly List of Certified DBEs without Internet Access**

If you do not have Internet access, Caltrans also publishes a quarterly directory of certified DBE firms extracted from the on-line database. A copy of the quarterly directory of certified DBEs may be ordered from the Caltrans' Division of Procurement and Contracts/Materiel and Distribution Branch/Publication Unit by calling (916) 263-0822.

4. In order to be considered a responsible and responsive bidder, the bidder must meet the contract goal and/or make a Good Faith Effort to meet the contract goal for DBE participation established for the Agreement. The bidder can meet this requirement in one of two ways:
   a. Meet the contract goal and document commitments for participation by DBE firms.
   b. If the contract goal is not met or is partially met, the bidder must document an adequate GFE.
5. A bidder (**prime contractor), who is not a certified DBE,** will be required to document one or a combination of the following:
   a. The bidder will meet the contract goal for DBE participation through work performed by DBE subcontractors, suppliers, or trucking companies.
   b. Prior to bidding, the bidder made an adequate GFE to meet the contract goal for DBE participation.
6. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
7. A certified DBE bidder not bidding as a joint venture with a non-DBE, is required to document one or more of the following:
   a. The DBE bidder will meet the goal by performing work with its own forces.

b. The bidder will meet the contract goal for DBE participation through work performed by DBE subcontractors, suppliers, or trucking companies.
c. Prior to bidding, the bidder made adequate GFEs to meet the contract goal for DBE participation.

8. A DBE joint venture partner must be responsible for specific Agreement items of work, or portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces.
9. 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 attach and submit the joint venture agreement with the ADM 0227F as instructed on page 2 of the form.
10. A DBE must perform a Commercially Useful Function (CUF), pursuant to 49 CFR 26, 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 involved. To perform a CUF, the DBE must also be responsible for materiel and supplies to be used on the Agreement for negotiating price, determining quality, and quantity, installing (where applicable), and paying for the material itself.
11. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in its bid/proposal and all DBE subcontractors must be listed in the bid/cost proposal list of subcontractors.
12. Any dollar amount of work, service or supplies proposed for DBE participation can be counted only once. That is, any further subcontracting or spending for DBE work, service or supplies already credited once for DBE participation cannot be counted again.
13. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the goal except that portion of the work to be performed by non-DBE subcontractors.
14. If the bidder performs and documents an adequate GFE to meet the goal, the award cannot be denied on the basis that the bidder failed to meet the goal.

## IV. CREDIT: MATERIEL – SUPPLIES – TRUCKING COMPANIES

### A. CREDIT FOR MATERIEL OR SUPPLIES PURCHASED FROM DBEs WILL BE AS FOLLOWS:

1. If the materiel or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materiel or supplies will count toward the DBE goal.
2. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materiel, supplies, articles, or equipment required under the Agreement and of the general character described by the Agreement.
3. If the materiel or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materiel or supplies will count toward the DBE goal.
4. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse or other establishment in which the materiel, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
5. 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 both owns and operates distribution equipment for the products.
6. Any supplementing of regular dealers' own distribution equipment shall be a long-term lease Agreement and not on an ad-hoc or Agreement by Agreement basis.
7. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.

8. Credit for materiel 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 commission charged for assistance in the procurement of the materiel and supplies or fees or transportation charges for the delivery of materiel or supplies required on a job site, provided the fees are reasonable and not excessive as compared with similar fees charged for services. The cost of materiel or supplies is not counted toward the DBE goal in this instance.

**B. CREDIT FOR DBE TRUCKING COMPANIES WILL BE AS FOLLOWS:**

1. The DBE must manage and supervise the entire trucking operation for which it is responsible on a particular Agreement 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 Agreement.
3. The DBE will receive credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
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. A lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from being used by others during the term of the lease with the consent of the DBE, as 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.

## V. USE AND/OR TERMINATION OF PROPOSED DBEs

If awarded the Agreement, the successful bidder must use the DBE subcontractor(s) and or supplier(s) proposed in its bid/proposal.

The Contractor may not substitute, add or terminate a subcontractor, supplier or, if applicable, a trucking company, listed in the original bid/proposal without the prior written approval of the Contract Manager and only as allowable as specified in the Agreement. This includes work that a prime contractor can perform with its own forces, or with a non-DBE firm, or another DBE firm.

Prior to the termination request, the prime contractor **must** notify the DBE, in writing, of the intent to terminate allowing for five days of response time in opposition of the rejection.

The prime contractor must have good cause in which to terminate the DBE firm. A good cause includes:

1. The DBE fails or refused to execute a written contract.
2. The DBE fails or refuses to perform the work consistent with normal industry standards.
3. The DBE fails or refuses to meet the prime contractor's nondiscriminatory bond requirements.
4. The DBE becomes bankrupt or has credit unworthiness.
5. The DBE is ineligible to work because of suspension and debarment.
6. It has been determined that the DBE is not a responsible contractor.
7. The DBE voluntarily withdraws, with written notification, from the contract.
8. The DBE is ineligible to receive credit for the type of work required.
9. The DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract.
10. Or other documented compelling reason.

The Contractor must make an adequate GFE to find another certified DBE subcontractor to substitute for the original DBE. The GFE shall be directed at finding another DBE to perform at least the same amount of work under the Agreement as the DBE that was substituted or terminated to the extent needed to meet the established contract goal for DBE participation.

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

## VI. AWARD

Award of the Agreement will be in accordance with the respective solicitation.

The bidder awarded the Agreement shall be responsible for implementing the applicable requirements of 49 CFR 26 in performance of the Agreement.

The bidder awarded the Agreement shall complete and submit ADM-3069, Disadvantaged Business Enterprises Utilization Report with each invoice as required in the Proposed form of Agreement's Exhibit B, Budget Detail and Payment Provisions and Exhibit D, Special Terms and Conditions.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

# DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION

ADM-0227f (Rev. 06/2012) Page 1 of 2 (CONTRACTS FEDERALLY FUNDED IN WHOLE OR IN PART)

**PART A – CONTRACTORS INFORMATION (Refer to Instructions on Page 2 of this form. Bidder/Proposer shall ensure all information provided is complete and accurate.)**

| CONTRACTOR'S BUSINESS NAME | AGREEMENT NUMBER | CONTRACT DOLLAR AMOUNT | DATE |
|---|---|---|---|
| | | | |

| CONTRACTOR'S BUSINESS ADDRESS | CITY | STATE | ZIP CODE |
|---|---|---|---|
| | | | |

| CONTACT PERSON | BUSINESS PHONE | FAX NUMBER | EMAIL ADDRESS |
|---|---|---|---|
| | (  ) | (  ) | |

**PART B – DBE INFORMATION AND DOCUMENTATION (Refer to Instructions in Page 2 of this form. Bidder/Proposer shall verify DBE certifications.)** Contractor shall attach a copy of the bid (or price quote) from the DBE (on the DBE's Letterhead) for all DBEs listed below.

| (1) Prime and Subcontractors: List Name(s) and addresses of all DBEs that will participate in this Agreement: | (2) Area Code & Phone Number | (3) Tier | (4) Description of Work, Service, or Materiel Supplied | (5) DBE or CUCP Certification Number. | (6) Ownership Code | (7) DBE $ Amount Claimed | (8) % of $ Value Claimed | (9) Caltrans Use Only % |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
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**PART C – FOR CALTRANS USE ONLY (Verification Completed by Civil Rights, Office of Business and Economic Opportunity):**

| PRINT VERIFIER'S NAME AND TITLE | SIGNATURE | DATE | CIVIL RIGHTS STAMP OF APPROVED |
|---|---|---|---|
| DBE PARTICIPATION ☐ YES ( %) ☐ NO | | | |

# DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION



AUTHORITY: Title 49, Code of Federal Regulations, Part 26 (49 CFR 26)

INSTRUCTIONS FOR COMPLETING FORM ADM-0227f (Please Type or Print Legibly):

## PART A – CONTRACTOR INFORMATION

**CONTRACTOR'S BUSINESS INFORMATION:** Bidder's/Proposer's Business Name, Address, City, State, Zip Code, Contact Person, Business Phone, Fax Number, and Email Address.

**Agreement Number:** The Agreement number is the same number as the Invitation for Bid (IFB) or Request for Proposal (RFP) number.

**CONTRACT DOLLAR AMOUNT:** Total dollar amount that Contractor proposes to accomplish the Agreement.

**Date:** Date this form is completed.

## PART B – DBE INFORMATION AND DOCUMENTS

PRIME: Complete if Prime is a certified DBE.

Sub-Contractor: Complete if the Subcontractor(s)/Supplier(s) are certified DBE. Please make and attach additional copies of page 1 if needed. Attach a copy of the bid (or price quote) from the DBE (on the DBE's Letterhead) for all DBEs listed.

Column 1 Enter the names (includes all certified DBE Prime and Subcontractors) and complete addresses of all certified DBE Contractor/Subcontractor/Supplier(s) that will be used in the Agreement.

Column 2 Enter the area code and phone number of the corresponding certified DBE listed in Column 1.

Column 3 Enter the Contracting Tier number for each DBE correspondingly listed in Column 1: 0 = Prime or Joint Consultant, 1 = Primary Subcontractor, 2 = Subcontractor/Supplier of level 1 Primary Subcontractor.

Column 4 Enter a description that briefly captures the work to be performed or supplies to be provided by each corresponding DBE firm listed in Column 1.

Column 5 Enter the DBE or CUCP Certification Number for the corresponding DBE listed in Column 1. Self-certification is NOT acceptable. DBEs must be certified by the submittal date identified in the IFB or RFP. For more certification and verification information, refer to the IFB's or RFP's Notice to Bidders/Proposers Disadvantaged Business Enterprise (DBE) Program and Participation Goal.

Column 6 Enter the correct Ownership Code number below for the corresponding DBE listed in Column B.

| | | |
|---|---|---|
| 1 = Black American | 4 = Asian-Pacific American | 7 = Woman |
| 2 = Hispanic American | 5 = Subcontinent Asian American | 8 = Other |
| 3 = Native American | 6 = Caucasian | 9 = Not Applicable |

Column 7-8 Enter the dollar and/or percentage (%) of the dollar ($) value claimed for each corresponding DBE listed in Column 1.

EXAMPLE:

**PART B – DBE INFORMATION AND DOCUMENTATION (Refer to Instructions in Page 2 of this form. Bidder/Proposer shall verify DBE certifications.)**

| | **(1)** List Name(s) and addresses of all DBEs that will participate in this Agreement: | **(2)** Area Code & Phone Number | **(3)** Tier | **(4)** Description of Work, Services, or Materiel Supplied | (5) DBE or CUCP Certification Number. | (6) Ownership Code | (7) DBE $ Amount Claimed | (8) % of $ Value Claimed | (9) Caltrans Use Only % |
|---|---|---|---|---|---|---|---|---|---|
| 1B | Jane Prime Inc., 1234 Jane's Street, Jane's City, CA, 04321 | (XXX) 000-1111 | 0 | Project management | XXXXXXXX | 7, 5 | 48,000 | 48% | |
| | | | | | | | | | |
| 2B | Joe Subcontractor Inc., 4567 Joe's Street, Joe's City, CA, 07654 | (XXX) 111-0000 | 1 | Design, surveys, environmental testing | 000000000000 | 6 | 42,000 | 42% | |
| | Supplier International LLC, 1100 X Street, Supplier's City, CA, 45670 | (111) XXX-0001 | 2 | Survey instruments, testing materials | 111111111111 | 3 | 10,000 | 10% | |

**ADDITIONAL INFORMATION:**

- Form ADM-0312f should be submitted with the ADM-0227f to demonstrate good faith efforts (GFE) AND protect bidder's/proposer's eligibility for contract award in the event Caltrans determines the bidder/proposer failed to meet the DBE goal.
- A DBE joint venture partner shall submit the joint venture agreement with the form ADM-0227f.

**ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

# BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION

ADM-0312f (REV 06/2012) 

| CONTRACTOR'S NAME | IFB OR RFP OR RFQ NUMBER | DATE |
|---|---|---|
| | | |

**BIDDER/PROPOSER INSTRUCTIONS:** Submittal of only the Disadvantaged Business Enterprise (DBE) Information/Participation form, ADM-0227f, may not provide sufficient documentation to demonstrate that adequate good faith efforts (GFE) were made by the bidder/proposer. Bidder/proposers prosing goal attainment should always submit documentation for making GFE to protect its eligibility for award should Caltrans, in its evaluation, find that the goal was not met. Examples of disqualification may include but are not be limited to: 1) A DBE subcontractor was not certified by Caltrans or a state or local participating agency that has a reciprocal agreement with Caltrans, by the bid/proposal due date and time; or 2) Bidder/proposer made a mathematical error resulting in failure to meet the goal. Bidder/Proposer must make an adequate GFE to be responsive. When applying for a determination of a GFE when no contract goals have been attained **or** when only partial goal(s) have been attained, bidders/proposers shall complete this Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation form, ADM-0312f, and submit the requested information below with its bid by the bid due date and time.
**Bidder/Proposer is responsible to: (1) ensure information is complete and accurate, and (2) verify DBE certifications.**

**1. ADVERTISEMENT DOCUMENTATION**

List names and dates of each general circulation newspaper, trade paper and minority focused paper or other publication in which a request for DBE participation was placed. Attach a copy of the advertisement or proof of publication.

| TITLE OF PUBLICATION | PUBLICATION DATE(S) | TITLE OF PUBLICATION | PUBLICATION DATE(S) |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

**2. DBE DOCUMENTATION**

a. List the names and dates of written notices sent to certified DBE firms soliciting bids for the contract.
b. List the dates and methods used for following up initial solicitations to determine with certainty whether or not the DBEs were interested.
c. Attach a copy of any solicitation package, phone records, fax confirmations or solicitation follow-up correspondence sent to DBE firms.
d. Identify information submitted to the bidder for this solicitation:

Check the appropriate box: ☐ IFB ☐ RFP ☐ RFQ

**SOLICITATION**

| DATE MAILED | DATE PHONED | DATE OF FOLLOW-UP | FOLLOW-UP METHOD PHONE/EMAIL | NAME OF FIRM SOLICITED | CONTACT NAME | PHONE NUMBER |
|---|---|---|---|---|---|---|
| | | | | | | |
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# BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION



| CONTRACTOR'S NAME | IFB OR RFP OR RFQ NUMBER | DATE |
|---|---|---|
| | | |

**2. DBE DOCUMENTATION (Continued)**

**SOLICITATION**

| DATE MAILED | DATE PHONED | DATE OF FOLLOW-UP | FOLLOW-UP METHOD PHONE/EMAIL | NAME OF FIRM SOLICITED | CONTACT NAME | PHONE NUMBER |
|---|---|---|---|---|---|---|
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**3. ITEMS OF WORK**

Identify the items of work made available to DBE firms, including, where appropriate, any breakdown of the contract work into economically feasible units to facilitate DBE participation. Bidder/Proposer shall demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

ITEMS OF WORK:

BREAKDOWN OF ITEMS:

# BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION



| CONTRACTOR'S NAME | IFB OR RFP OR RFQ NUMBER | DATE |
|---|---|---|
| | | |

**4. DBE RESPONSES**

List the DBE firms that responded or submitted bids/proposals to your solicitation for participation in this contract that were not accepted. Provide a summary of your discussion and/or negotiations with each, the name of the firm selected for that portion of work, and the reasons for your choice. Attach copies of quotes from DBE firms contacted

| DBE FIRM NAME | PHONE NUMBER | RESPONDED | | SELECTED | | GIVE REASON FOR NON-SELECTION AND A SUMMARY OF DISCUSSIONS |
|---|---|---|---|---|---|---|
| | | YES | NO | YES | NO | |
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**5. ASSISTANCE TO DBEs – Bonding, Insurance, etc.**

Identify efforts to assist DBEs in obtaining bonding, lines of credit, insurance, and/or any technical assistance related to requirements for the work or for plans and specification provided to DBEs.

# BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION



| CONTRACTOR'S NAME | IFB OR RFP OR RFQ NUMBER | DATE |
|---|---|---|
| | | |

**6. ASSISTANCE TO DBEs – Equipment/Materials, etc.**

Identify 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. ADDITIONAL DATA**

Provide any additional data to support a demonstration of GFE such as contacts with DBE assistance agencies. Identify the names of agencies, organizations, and groups providing assistance in contacting, recruiting, and using DBE firms. Attach copies of requests to agencies and any responses received, i.e., lists, Internet pages, etc.

| NAME OF AGENCY/ORGANIZATION | METHODS/DATE OF CONTACT | RESULTS |
|---|---|---|
| | | |
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**ADA Notice** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacrament, CA 95814.

# ATIACHMENT J

## Sample Division of Procurement and Contracts (DPAC)

## Federal Contracts "Boilerplate" DBE Requirements

STATE OF CALIFORNIA
**STANDARD AGREEMENT**
STD 213 (Rev 06/03)

Department of Transportation
RFP Number
Delete above if not an RFP

ATTACHMENT #
Sample Consulting Services Agreement (Federal)
Delete if not a Sample Agreement

| AGREEMENT NUMBER |
|---|
| REGISTRATION NUMBER |

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME
**California Department of Transportation (Caltrans)**

CONTRACTOR'S NAME

2. The term of this Agreement is: For DGS Approval add: or upon DGS approval, whichever is later through

3. The maximum amount of this Agreement is: **(Enter the spelled out dollar value here)**

4. The parties agree to comply with the terms and conditions of the following exhibit t of the Agreement.

**Delete this text box if not applicable**
**Note to Bidders:**
The following __ pages represent a sample of the Agreement that will be awarded, if any, from this RFP. Please review it carefully and present any questions in writing to the contact identified for this RFP.

| | |
|---|---|
| **Exhibit A** – Scope of Work | Pages |
| **Exhibit B** – Budget Detail and Payment Provisions | Pages |
| **Exhibit C*** – General Terms and Conditions (GTC 610) | |
| **Exhibit D** - Special Terms and Conditions | Pages |
| Reference additional **"Exhibits"** and **"Attachments"** here: | |
| **Exhibit E** – Additional Provisions (For provisions that are uncommon. Delete | Pages |
| **Attachment 1 -** Cost Proposal Delete if not applicable or revise | Pages |
| **Attachment 2 -** Technical Proposal Delete if not applicable or revise | Pages |
| **Attachment 3 –** Subcontractor Provisions/List (ADM 1511) (Delete if not applicable or revise) | Pages |
| **Attachment 4 –** DBE Participation (ADM-0227f) (Delete if not applicable or revise) | Pages |
| **Attachment 5** - Disadvantaged Business Enterprises Utilization Report (ADM-3069) | Pages |

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this Agreement as if attached hereto. *These documents can be viewed at* http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx.

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

**CONTRACTOR**

CONTRACTOR'S NAME *(if other than an individual, state whether a corporation, partnership, etc.)*

BY *(Authorized Signature)* ✍ | DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

**STATE OF CALIFORNIA**

AGENCY NAME
**California Department of Transportation (Caltrans)**

BY *(Authorized Signature)* ✍ | DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

***California Department of General Services Use Only***

☐ Exempt per:

**EXHIBIT A**
**Consulting Services Agreement (Federal)**

## SCOPE OF WORK

Note to Analyst: If writing this Agreement from an RFP, Attachment 1 will be the Cost Proposal, Attachment 2 – Contractor's Certification Clause (CCC-307) and Attachment 3 will be the Technical Proposal. All other needed attachments will follow accordingly.

Give brief Overview/Introduction of services to be provided. Revise as needed.

**1.** The work to be performed under this Agreement shall be in accordance with the Contractor's Cost Proposal dated ( DATE ), **Attachment 1**, Contractor's Technical Proposal entitled ( NAME ) dated ( DATE ), **Attachment 2,** and the Scope of Work in this Agreement. The proposal is attached hereto and incorporated by reference. If there is any conflict between the Contractor's Cost and Technical Proposals, and provisions in the **STD 213 Agreement**, including **Exhibits A, B, C, D and E**, and **Attachments 3, 4, and 5** to this Agreement, the latter will prevail over **Attachments 1 and 2**.

Contractor agrees to provide (type of service) to the California Department of Transportation (Caltrans), as described herein:

04/14/2011: If **NO** subcontractors are allowed in this agreement, use the paragraph below. Delete if subcontracting is allowable. You will still modify the Subcontractor Language in Exhibit D as appropriate.

**2.** Subcontracting is not permitted under this Agreement. All references to subcontracting or subcontractors as found herein are not applicable to this Agreement.

**3.** The services shall be performed at (location).

Choose one of the two options below:

**Option 1:** Use this paragraph if this contract has to go to DGS for final review and approval.

**4.** This Agreement will commence on or upon approval by Department of General Services (DGS), whichever is later and no work shall begin before that time. This Agreement is of no effect unless approved by DGS. The Contractor shall not receive payment for work performed prior to approval of the Agreement and before receipt of notice to proceed by the Caltrans Contract Manager. This Agreement shall expire on . The services shall be provided during (time frame i.e., working hours, Monday through Friday, except holidays). The parties may amend this Agreement as permitted by law.

**Option 2:** Use this paragraph **if this contract is exempt** from DGS review and approval. (Reference: CSCM 1.3)

This Agreement will commence on or upon approval by Caltrans, whichever is later and no work shall begin before that time. This Agreement is of no effect unless approved by Caltrans. The Contractor shall not receive payment for work performed prior to approval of the Agreement and before receipt of notice to proceed by the Caltrans Contract Manager. This Agreement shall expire on . The services shall be provided during (time frame i.e., working hours, Monday through Friday, except holidays). The parties may amend this Agreement as permitted by law.

**5.** Any personnel that have been identified in Contractor's **Attachment 1, Cost Proposal**, whether by name or title, may be replaced only if approved in advance, in writing, by the

**EXHIBIT A**
**Consulting Services Agreement (Federal)**

Contract Manager without the necessity of an Amendment. All personnel replaced by the Contractor must possess qualifications that equal or exceed the qualifications of the replaced personnel without any increase to rates as stated in Attachment 1, Cost Proposal. All replacement personnel must provide the Caltrans Contract Manager with a resume.

**6.** All inquiries during the term of this Agreement will be directed to the project representatives listed below:

| **Department of Transportation** | **Contractor:** |
|---|---|
| Section/Unit: | Section/Unit: |
| Contract Manager: | Project Manager: |
| Address: | Address: |
| | |
| Phone: (  ) | Phone: |
| Fax: (  ) | Fax: |
| Email: | Email: |

Address the following issues as applicable:

- Specifications, requirements
- Personnel, staffing
- Coordination
- Results, deliverables, desired response time
- Timelines, progress reports
- Evaluation, acceptance

**7.** Detailed description of work to be performed and duties of all parties:

Use this language if the contract contains **ANY** Public Relations Services (PRS). PRS includes, but is not limited to marketing, advertising, communications, promotional media, public outreach campaigns, media relations, non-technology web development, and graphic design.

The Department of General Services (DGS) issued Management Memo (MM) 12-07 pertaining to contracts with PRS. Per MM 12-07, prior to submission to DGS, all PRS contracts with a value of $100,000 or greater must be reviewed and approved by the California State Transportation Agency (CalSTA) to ensure services are essential and provide good value to the State. This requirement also applies to any contracts for multiple services that contain a PRS component valued at $100,000 or more.

Delete if this section does not apply.

**8.** Contractor, in collaboration with Caltrans staff, shall provide assistance with Public Relation Services (PRS), including but not limited to, public service announcements, press

**EXHIBIT A**
**Consulting Services Agreement (Federal)**

releases, broadcast media, media kits, news conferences, outreach activities/events, public engagement activities/events, social media, web content, graphic design, project branding and fact sheets when necessary.

All PRS related work performed by the Contractor shall be appropriately reviewed and approved by the Caltrans Contract Manager and the Caltrans District Chief Public Relations Officer (PIO)/Assistant Deputy Director of Public Affairs prior to implementation/release. Caltrans Contract Manager/District Chief PIO will report all PRS related activities and events to Caltrans Headquarters Public Affairs Office on the Week Ahead Report (WAR) and the Day Ahead Report (DAR).

Contractor shall comply with Governor's Memo 02-18-2011 that prevents state spending on promotional and marketing items.

**EXHIBIT B**
**Consulting Services Agreement (Federal)**

## BUDGET DETAIL AND PAYMENT PROVISIONS

**1. Invoicing and Payment**

A. For services satisfactorily rendered, and upon approval of services by the Caltrans Contract Manager, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates in **Attachment 1** and this **Exhibit B**. Incomplete or disputed invoices shall be returned to the Contractor, unpaid, for correction.

Does not apply to contracts with Public Agencies.

B. In compliance with the recent passage of the revised regulation (Title 49 CFR 26.37), the Disadvantaged Business Enterprises Utilization Report form (ADM-3069) is required, as specified, in this agreement.

1. The Contractor shall submit a Disadvantaged Business Enterprises Utilization Report (ADM-3069), **Attachment __**, with each invoice. Also refer to **Exhibit D, Special Terms and Conditions**.

2. Failure to provide the Disadvantaged Business Enterprises Utilization Report (ADM-3069) with the invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Contractor when a satisfactory Disadvantaged Business Enterprises Utilization Report (ADM-3069) form is submitted to Caltrans Contract Manager.

C. Invoices shall be itemized per **Attachment 1**, **Cost Proposal**, and shall include the Agreement Number, dates of services, (include any other specific information that identifies line item charges in accordance with the Attachment 1, the Cost Proposal. E.g. Itemized line items may include the charges by location, service month, number of hours by classifications, etc.) other direct expenses and any other applicable items from **Attachment 1** and shall be submitted in triplicate not more frequently than monthly in arrears to:

Department of Transportation
Office/Unit Name, MS Number
Attention: Contract Manager's Name
Street Address/P.O. Box
City, CA Zip Code

Add paragraph "C" if Agreement is Capital Outlay Support Funded (Object Code 232).

D. Invoices shall be submitted showing the Caltrans Work Breakdown Structure (WBS) element for each billable hour increment.

Or

(For on-call type Agreements) You may have to modify "task orders" to say "work orders."

E. Invoices shall be submitted showing the Caltrans Work Breakdown Structure (WBS) element for each billable hour increment. When Task Orders are negotiated, the appropriate WBS level will be identified by the Contract Manager.

**EXHIBIT B**
**Consulting Services Agreement (Federal)**

F. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

**Add or revise other items in the space below as applicable**

G. Invoices shall be itemized in accordance with the **Cost Proposal**, **Attachment 1**, and include supporting documentation for materials, supplies, and equipment.

**2. Budget Contingency Clause**

A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.

B. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government or the California State Legislature for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.

C. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

D. Pursuant to GC, Section 927.13, no late payment penalty shall accrue during any time period for which there is no Budget Act in effect, nor on any payment or refund that is the result of a federally mandated program or that is directly dependent upon the receipt of federal funds by a state agency.

**Note: if the 30-day cancellation clause is changed, revise the following paragraph accordingly.**

E. Caltrans has the option to terminate the Agreement under the thirty (30) day termination clause or to amend the Agreement to reflect any reduction of funds.

Does not apply to contracts with Public Agencies.

**3. Prompt Payment Clause**

Payment will be made in accordance with, and within the time specified in, Government Code (GC), Chapter 4.5, commencing with Section 927.

Section 4- A to be used in Consulting Agreements and with Foundations.

**4. Rates**

A. Rates for these services may be found on **Attachment 1** of this document.

Delete paragraph "B" if no Federal Agency is involved.

B. The basis for determining overhead or indirect costs included therein shall be in accordance with the Contractor's indirect cost rates. These indirect cost rates are derived from the federal negotiated rates cited in the negotiated Agreement between _____(Fill in the name of the University with which the Foundation is affiliated) University and the _____ (Fill in the name of the specified Federal Agency) applicable to the time

**EXHIBIT B**
**Consulting Services Agreement (Federal)**

period. Additionally, fringe benefit rates will be determined by the actual rates, per employee, in effect at the time the services are performed.

Delete paragraph "C" if a Federal Agency is named in paragraph B

C. If the Contractor has not entered into an Agreement with a Federal Agency and therefore is not bound by that Federal Agency's negotiated rates, the basis for determining overhead and indirect costs shall be based upon the cost principles as outlined in **Section ___**.

Use one of two options:

**Option 1 Use** whenever the service is a study and the end product is a report or whenever the payment method is cost plus fixed fee and there are progress payments. If other than the aforementioned, discuss further with Team Manager.

**5. Allowable Costs and Payments**

A. The method of payment for this Agreement will be based on actual costs incurred by the Contractor and the amount set forth in sub-paragraph B. Caltrans will reimburse the Contractor for actual costs (including labor costs, employee benefits, travel, overhead and other direct costs) incurred by the Contractor in performance of the work, which amount will not exceed **$TBD**. Actual costs shall not exceed the estimated wage rates and other estimated costs set forth in the Contractor's cost proposal without prior written Agreement between Caltrans and the Contractor.

B. In addition to the actual costs, Caltrans will pay the Contractor a total fixed fee of **$TBD** as follows. In each invoice, the Contractor shall charge a pro rata share of the fixed fee based on the percentage of work completed to the satisfaction of the Contract Manager and Caltrans shall pay the pro rata share upon approval of the invoice in accordance with the procedures set forth in **Exhibit B, Section 1**.

C. Transportation and subsistence costs shall not exceed rates authorized to be paid non-represented State employees under current California Department of Human Resources (CalHR) rules.

D. The Contractor shall not commence performance of work or services until this Agreement has been approved by Caltrans and the Caltrans Contract Manager has issued the Notice to Proceed. No payment will be made prior to approval nor for any work performed prior to approval of this Agreement.

E. The total amount payable by Caltrans, shall not exceed **$TBD**.

OR

**Option 2**

The following Allowable Costs and Payments Clause is to be used in standard Agreements with Foundations.

**6. Allowable Costs and Payments**

A. The method of payment for this Agreement will be based on actual costs. (There will be no fixed fee as_____[name of foundation] is a non-profit organization. Wages and fringe benefits will be reimbursed at actual costs. Actual costs shall not exceed the

**EXHIBIT B**
**Consulting Services Agreement (Federal)**

estimated wage rates and other estimated costs set forth in the Contractor's costs proposal (**Attachment ___**) without prior written Agreement between Caltrans and the Contractor.

B. The Contractor will be reimbursed for direct costs, other than salary costs, that are identified in the Contractor's cost proposal (**Attachment ___**).

C. Contractor will bill in arrears for costs incurred during the billing period. If applicable, salary costs will be itemized and billed by position classification. Documentation supporting specific salary costs will be presented if requested by the State. Non-wage costs will be billed, in summary, according to general expense categories. A detailed report of transactions will support the billing. Individual expenditures exceeding five hundred dollars ($500) will be supported a photocopy of the original documentation. Documentation in support of expenditures less than five hundred dollars ($500) will be presented if requested by the State.

D. Transportation and subsistence costs shall not exceed rates authorized to be paid non-represented state employees under current CalHR rules.

E. The total amount payable by Caltrans shall not exceed .

F. The Contractor shall not commence performance of work or service until this Agreement has been approved by the State. No payment will be made prior to approval nor for any work performed prior to approval of this Agreement.

**7. Cost Principles**

A. The Contractor agrees that the Contract Cost Principles and Procedures in 48 CFR, Part 31, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, in 2 CFR, Part 200, shall be used to determine the allowable individual items of cost.

B. Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Part 31 or 2 CFR, Part 200, are subject to repayment by Contractor to Caltrans.

C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.

Use in all Agreements with Cities and Counties (allows re-payment to State when overpayment is made by the State).

**8. Failure To Pay**

Should Cities or Counties fail to pay moneys due the State within thirty (30) days of demand or within such other period as may be agreed between the parties hereto, State, acting through the State Controller, may withhold an equal amount from future apportionment due Cities or Counties from the Highway Users Tax Fund.

**9. Excise Tax**

The State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

**EXHIBIT B**
**Consulting Services Agreement (Federal)**

Required in Service Contracts with payment provisions for materials and/or supplies. Exception: A&E Contracts and Interagency Agreements.

**10. Materials/Supplies**

The Contractor will be reimbursed for the actual cost of materials/supplies purchased to be consumed or installed at the work site in performance of the Agreement (including applicable sales tax), without additional allowance for markup. Contractor costs associated with the purchase and installation of materials/supplies are considered as a component of the Contractor's hourly rate for services that include wages, overhead, general and administrative expenses and profit. Costs of materials/supplies are to be substantiated by a copy of the appropriately signed invoice verifying the actual cost and delivery of the replaced components to Caltrans. Total expenditures for materials/supplies shall not exceed the amount set forth in the line item for parts in **Attachment 1**.

Updated 11/25/98

Required in Agreements if Contractor is required or permitted to purchase equipment to perform the contracted services.

**11. Equipment Purchase (By Contractor)**

A. Prior authorization in writing by the Contract Manager shall be required before the Contractor enters into any non-budgeted purchase order or subcontract exceeding five hundred dollars ($500) for supplies, equipment, or consultant services. The Contractor shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service or consulting work not covered in the Contractor's Cost Proposal and exceeding five hundred dollars ($500), with prior authorization by the Contract Manager, three competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.

C. Any equipment purchased as a result of this Agreement is subject to the following: The Contractor shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this Agreement. The inventory record of each piece of such equipment shall include the date acquired, total cost, serial number, model identification (on purchased equipment), and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one year or more and an approximate unit price of $5,000 or more. In addition, theft-sensitive items of equipment costing less than $5,000 shall be inventoried. A copy of the inventory record must be submitted to the State on request by the State.

D. Any equipment purchased by the Contractor will be returned to Caltrans at the end of this Agreement unless used under a subsequent Agreement between the parties or research project funded by Caltrans. Both Caltrans and the Contractor agree to comply with State Contracting Manual (SCM) 7.29.

E. 2 CFR, Part 200.313 requires a credit to Federal funds when participating equipment with a fair market value greater than $5,000 is credited to the project.

F. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

**EXHIBIT D**
**Consulting Services Agreement (Federal)**

**SPECIAL TERMS AND CONDITIONS**

Updated 1-21-00

Required in all consultants Agreements, including Interagency Agreement for Consultant Services.

Recommended for all other Agreements. Exception: Consultant Agreements with the Federal Government.

**1. Settlement of Disputes**

A. Any dispute concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by Caltrans' Contract Officer, who may consider any written or verbal evidence submitted by the Contractor. The decision of the Contract Officer, issued in writing, shall be Caltrans' final decision regarding the dispute.

B. Neither the pendency of a dispute nor its consideration by the Contract Officer will excuse the Contractor from full and timely performance in accordance with the terms of the Agreement.

05/25/2004 Add paragraph 'C' to Agreements with the University of California or Foundations.

C. The final decision by Caltrans' Contract Officer does not preclude subsequent litigation of the dispute in a court of competent jurisdiction.

**2. Termination**

A. If, after award and execution of the Agreement, the Contractor's performance is unsatisfactory, the Agreement may be terminated for default. Additionally, the Contractor may be liable to Caltrans for damages including the difference between the Contractor's original bid price and the actual cost of performing the work by another Contractor. Default is defined as the Contractor failing to perform services required by the Agreement in a satisfactory manner.

B. Caltrans reserves the right to terminate this Agreement without cause upon thirty (30) days written notice to the Contractor or immediately in the event of default or material breach by the Contractor.

C. The State may terminate this Agreement immediately for good cause. The term "good cause" may be defined as "impossibility of performance" or "frustration of purpose," but does not include material breach, default, or termination without cause. In this instance, the Agreement termination shall be effective as of the date indicated on the State's notification to the Contractor.

D. In the event that the total Agreement amount is expended prior to the expiration date, Caltrans may, at its discretion, terminate this Agreement with thirty (30) days notice to Contractor.

Contractor Evaluation clause is required in Consultant Agreements and is optional in other types of Agreements.

**3. Evaluation of Contractor**

Performance of the Contractor under this Agreement will be evaluated. The evaluation shall be prepared on Contract/Contractor Evaluation Sheet (STD 4), and maintained in the Office file,

**EXHIBIT D**
**Consulting Services Agreement (Federal)**

and DGS, Office of Legal Services, if the evaluation is negative and the contract price is over $5,000.

This is a contingent fee prohibition clause commonly placed in federally funded Agreements.

**4. Agency Liability**

The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to terminate this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

04/26/2006 Applicable to Agreements in which the Contractor subcontracts out a portion of the work. Delete paragraph A if no subcontracting allowed.

**5. Subcontractors**

A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor.

Updated 9/18/06 Required in all Agreements and Interagency Agreements regardless of dollar amount. The first paragraph may be modified to indicate that no subcontracting will be allowed (omit " **except for subcontractors listed on the Subcontracting Provisions/List.**").

B. The contractor shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted except for subcontractors listed on **Attachment** , **Subcontracting Provisions/List**.

Eliminate paragraph "C" if Agreement is $25,000 or less, or if no subcontracting will be allowed.

C. Any subcontract in excess of $25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.

D. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the State.

Eliminate paragraph E if no subcontracting will be allowed.

E. Any substitution of subcontractors must be approved in writing by Caltrans' Contract Manager in advance of assigning work to a substitute subcontractor.

Required in consultant services Agreements.

Paragraph "A" required when there are progress payments.

Re-letter paragraphs, if necessary.

**EXHIBIT D**
**Consulting Services Agreement (Federal)**

**6. Contractor's Reports and/or Meetings**

A. The Contractor shall submit progress reports at least once a month to allow the Contract Manager to determine if the Contractor is performing to expectations or is on schedule, to provide communication of interim findings and to afford occasions for airing difficulties or special problems encountered so that remedies can be developed.

Paragraph "B" is optional.

B. The Contractor shall meet with the Contract Manager as needed to discuss progress on the Agreement.

C. Prior to completion of the Agreement, the Contractor shall hold a final meeting with the Contract Manager to present findings, conclusions and recommendations and shall submit a comprehensive final report on the project.

Use the following paragraph when a "report" is a "product" of the Agreement.

D. Any document or written report prepared as a requirement of this Contract shall contain, in a separate section preceding the main body of the document, a list of all Contracts and subcontracts (including dollar amounts) relating to the preparation of those documents or reports if the combined costs for work by non-employees of the Contractor exceed $5,000.

**7. Publication**

**Option 1:** Required if a "Publishable" report is part of the Scope of Work.

A. The Contractor shall not copyright any deliverable(s) developed and funded under this Agreement.

B. The Contractor shall have the right to publish any and all information, conclusions and developments (except that which is designated as **CONFIDENTIAL** by Caltrans) resulting from work conducted under this Agreement.

C. Any publication by Contractor shall give proper credit to Caltrans. All publications shall bear an appropriate inscription acknowledging the State's copyright ownership to the Work and Deliverable(s) (including but not limited to, all reports, design materials, advertisements, training materials, writings, articles, computer programs, inventions and any documentation related to the Agreement) consisting of a "c" in a circle followed by the four-digit year in which the Work or Deliverable was produced, followed by the words "California Department of Transportation. All rights reserved."

D. The Contractor shall submit to the Caltrans any materials released for publication simultaneously with submission to the publisher for the purpose of comment and review by the State with respect to the presence of patentable, confidential and/or proprietary subject matter within the materials released for publication.

E. Caltrans will take all reasonable steps to have United States Patent Applications, or other appropriate protection of intellectual property, filed prior to the time the information, conclusions or developments are published or otherwise made available to the public.

F. The Contractor agrees to keep confidential, any proprietary information supplied to it by Caltrans during the course of the Agreement and designated in writing as

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"**CONFIDENTIAL**". Such information will not be included in any published material without the prior written approval of the parties.

G. All publications shall contain the following disclaimer in a separate section preceding the main body of the document:

"The contents of this report reflect the views of the author who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the State of California or the Federal Highway Administration. This publication does not constitute a standard, specification or regulation."

**Option 2:** Use when materials, written products, or documents other than "publishable reports" are part of the Scope of Work (usually in Consultant Service Contracts for Training

A. The Contractor shall not copyright the training course materials or written report developed and funded from this Agreement.

B. The training course materials/written product/report funded from this Agreement shall become the property of the State, and all publication use rights are reserved to the State.

C. The written product or title pages of the report/course outline shall bear an appropriate description acknowledging the source of funds used to produce the report/document/ training course and materials.

D. The course outline/written product/report shall contain the following disclaimer in a separate section preceding the main body of the document:

"The contents of this training course/documentation/report reflect the views of the author who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the State of California or the Federal Highway Administration. This course outline/document/report does not constitute a standard, specification, or regulation."

**8. Confidentiality of Data**

A. All financial, statistical, personal, technical, or other data and information relative to the Caltrans' operations, which is designated confidential by Caltrans and made available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.

B. Permission to disclose information on one occasion or public hearing held by Caltrans relating to this Agreement shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.

C. The Contractor shall not comment publicly to the press or any other media regarding this Agreement or Caltrans' actions on the same, except to the Caltrans' staff, Contractor's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.

D. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by Caltrans and receipt of Caltrans' written permission.

**EXHIBIT D**
**Consulting Services Agreement (Federal)**

E. All information related to the construction estimate is confidential and shall not be disclosed by the Contractor to any entity, other than Caltrans.

F. Any subcontract, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

(Rev. 3/25/03) Required in all Service Agreements, Consultant Service Agreements, Public Works Agreements and Federally Funded Agreements. May be revised, i.e. 15 days, 60 days, etc. **Do not use in R/W Property Maintenance Agreements**.

**9. State-Owned Data - Integrity and Security**

A. Contractor shall comply with the following requirements to ensure the preservation, security, and integrity of State-owned data on portable computing devices and portable electronic storage media:

1) Encrypt all State-owned data stored on portable computing devices and portable electronic storage media using government-certified Advanced Encryption Standard (AES) cipher algorithm with a 256-bit or 128-bit encryption key to protect Caltrans data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and even unused disk space.

   Data encryption shall use cryptographic technology that has been tested and approved against exacting standards, such as FIPS 140-2 Security Requirements for Cryptographic Modules.

2) Encrypt, as described above, all State-owned data transmitted from one computing device or storage medium to another.

3) Maintain confidentiality of all State-owned data by limiting data sharing to those individuals contracted to provide services on behalf of the State, and limit use of State information assets for State purposes only.

4) Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.

5) Notify the Contract Manager immediately of any actual or attempted violations of security of State-owned data, including lost or stolen computing devices, files, or portable electronic storage media containing State-owned data.

6) Advise the owner of the State-owned data, the agency Information Security Officer, and the agency Chief Information Officer of vulnerabilities that may present a threat to the security of State-owned data and of specific means of protecting that State-owned data.

B. Contractor shall use the State-owned data only for State purposes under this Agreement.

C. Contractor shall not transfer State-owned data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s). (State Administrative Manual (SAM) section 5335.1).

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06/29/12 - DBE is used in Agreements that are fully or partially funded with Federal Funds. If **NO GOALS** are required, choose Section 10 and **delete Sections 11-19**. For contract **WITH GOALS** use Sections 11-19 and **delete Section 10**.

Does not apply to contracts with Public Agencies.

**10. Disadvantaged Business Enterprise (DBE) Program Participation Without Goals**

A. This Agreement is subject to Title 49, Code of Federal Regulations, Part 26 (49 CFR 26), entitled "Participation by Disadvantaged Business Enterprises in Caltrans Financial Assistance Programs," in the award and administration of federally assisted Agreements. The regulations in their entirety are incorporated by this reference and made part of this Agreement as if attached hereto.

B. There is no specific contract goal for DBE participation in this Agreement. However, the Contractor will still be required to submit a Disadvantaged Business Enterprises Utilization Report (ADM-3069), **Attachment __**, with each invoice (also refer to Exhibit B, Budget Detail and Payment Provisions).

C. It is the policy of Caltrans that DBEs, as defined in 49 CFR 26, shall be encouraged to participate in the performance of Agreements financed in whole or in part with federal funds to assist the State in meeting its federally mandated overall annual DBE goal. Contractor shall ensure that DBEs have an opportunity to participate in the performance of this Agreement and shall take all necessary and reasonable steps, as set forth 49 CFR 26, for this assurance. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Failure to carry out the requirements of this paragraph shall constitute a breach of Agreement and may result in termination of this Agreement or other remedies Caltrans may deem appropriate.

D. Contractor shall notify Caltrans Contract Manager, in writing, of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

E. If subcontracting is allowed in this solicitation, any subcontract entered into between the Contractor and Subcontractor(s) as a result of this Agreement shall contain all of the provisions of this section.

**11. DBE Information and Contract Goal Requirement for DBE Participation**

A. This Agreement is subject to Title 49, Code of Federal Regulations, Part 26 (49 CFR 26), entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs," in the award and administration of federally assisted Agreements. The regulations in their entirety are incorporated by reference and made part of this Agreement as if attached hereto.

B. A DBE is a firm which meets the definition of a DBE as specified in 49 CFR 26. Only the participation of certified DBEs will count toward any Agreement goal. DBE participation will count toward Caltrans' federally mandated overall annual DBE goal. In order to ascertain whether its overall annual DBE goal is being achieved, Caltrans tracks DBE participation on all federal-aid contracts.

**EXHIBIT D**
**Consulting Services Agreement (Federal)**

This is not Caltrans goal but the participation goal specific to this Agreement.

C. The certified DBE participation contract goal for this Agreement is percent (___%). (NOTE: The Analyst shall insert the required goal percentage as committed by the Contractor in the Disadvantage Business Enterprise (DBE) Information form – ADM-0277f) Participation by DBE prime and Subcontractors shall be in accordance with the information contained in the Disadvantaged Business Enterprise (DBE) Information form ADM-0227f, attached hereto and incorporated as part of this Agreement.

D. Non-compliance by Contractor or Subcontractor(s) with the requirements of the regulations is a material breach of this Agreement and may result in termination of the Agreement or other such appropriate remedy for a breach of this Agreement, as Caltrans deems appropriate.

E. Contractor or subcontractor shall not discriminate on the basis of race color, national origin or sex in the performance of this Agreement. Each subcontract signed by and between Contractor and Subcontractor(s) in the performance of this Agreement must include this assurance.

**12. Performance of DBE Contractors, and other DBE Subcontractors/Suppliers**

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

B A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

C If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, presume that it is not performing a CUF.

D DBE subcontractors shall perform the work and supply the materials which they have listed in their response to the Agreement award requirements specified in the form ADM 0227F, attached, unless 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 the Section 8 below entitled, "DBE Substitution".

E 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 Contractor) pursuant to prior written authorization of the Contract Manager.

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**Consulting Services Agreement (Federal)**

**13. Exclusion of Retention**

A. In conformance with 49 CFR 26.29 (b) (1), the retention of proceeds required by Public Contract Code (PCC), Section 10261 shall not apply.

B. In conformance with Public Contract Code (PCC) Section 7200 (b), in subcontracts between Contractor and a Subcontractor and in subcontracts between a Subcontractor and any Subcontractor thereunder, retention proceeds shall not be withheld, and the exceptions provided in PCC Section 7200 (c), shall not apply. At the option of Contractor, Subcontractor(s) may be required to furnish payment and performance bonds issued by an admitted surety insurer.

C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

**14. Payment to DBE and Non-DBE Subcontractor(s)**

A. Contractor shall pay its DBE Subcontractor(s) and non-DBE Subcontractor(s) within seven (7) calendar days from receipt of each payment made to Contractor by the State.

B. Prior to the fifteenth of each month, Contractor shall submit documentation to Caltrans Contract Manager showing the amount paid to DBE trucking companies listed in 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. Contractor shall also obtain and submit documentation to Caltrans 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 non-DBE 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 to the requirements of Section 8 below entitled, "DBE Substitutions."

C. Contractor shall also submit to Caltrans Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number and if applicable, the DBE certification number of the truck owner for all trucks used during that month for which DBE participation will be claimed. This documentation shall be submitted on the Monthly DBE Trucking Verification form provided to Contractor by Caltrans Contract Manager.

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

**15. DBE Records**

A. Contractor shall maintain records of all subcontracts entered into with certified DBE Subcontractor(s) and records of materiel purchased from certified DBE supplier(s). The 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, regardless of tier.

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The records shall show the date of payment and the total dollar figure paid to all firms. DBE (prime) Contractor shall also show the date of work performed by its own forces along with the corresponding dollar value of the work.

B. Contractor shall prepare and submit the Disadvantaged Business Enterprises Utilization Report (ADM-3069) form (**Attachment ___**) to the Contract Manager with every invoice (refer to Exhibit B, Budget Detail and Payment Provisions).

**16. DBE Substitutions**

A. Contractor shall not substitute or add a subcontractor, supplier or, if applicable, a trucking company, listed in the original bid/proposal without the prior written approval of the Contract Manager. This includes work that a prime contractor can perform with its own forces, or with a non-DBE firm, or another DBE firm.

B. Prior to the substitution request, the prime contractor must notify the DBE, in writing, of the intent to substitute allowing for five days of response time in opposition of the rejection.

C. The prime contractor must have good cause in which to substitute the DBE firm. A good cause includes:

1) The DBE fails or refused to execute a written contract.
2) The DBE fails or refuses to perform the work consistent with normal industry standards.
3) The DBE fails or refuses to meet the prime contractor's nondiscriminatory bond requirements.
4) The DBE becomes bankrupt or has credit unworthiness.
5) The DBE is ineligible to work because of suspension and debarment.
6) It has been determined that the DBE is not a responsible contractor.
7) The DBE voluntarily withdraws, with written notification, from the contract.
8) The DBE is ineligible to receive credit for the type of work required.
9) The DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract.
10) Or other documented compelling reason.

D. The Contractor must make an adequate GFE to find another certified DBE Subcontractor to substitute for the original DBE. The GFE shall be directed at finding another DBE to perform at least the same amount of work under the Agreement as the DBE that was substituted to the extent needed to meet the established contract goal for DBE participation.

E. Noncompliance by Contractor with the requirements of this section is considered a material breach of this Agreement and may result in termination of the Agreement or other such appropriate remedies for a breach of this Agreement as Caltrans deems appropriate.

F. The requirement that DBEs must be certified by the bid opening date does not apply to DBE substitutions after award of the Agreement. DBEs substituted after award must be certified at the time of the substitution.

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G. At a minimum, Contractor's substitution request to Caltrans Contract Manager must include a:

1) Written explanation of the substitution reason; and if applicable, Contractor must also include the reason a non-DBE Subcontractor is proposed for use.

2) Written description of the substitute business enterprise, include its business status, DBE certification number, and status as a sole proprietorship, partnership, corporation, or other entity.

3) Written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of the overall Agreement that the substitute firm will perform.

H. Prior to the approval of Contractor's substitution request, Caltrans Contract Manager must give written notice to the Subcontractor being substituted by Contractor. A copy of the notice sent by Caltrans Contract Manager must be sent to the Division of Procurement and Contracts (DPAC). The notice must do all of the following:

1) Give the reason Contractor is requesting substitution of the listed subcontractor;

2) Give the listed subcontractor five (5) working days within which to submit written objections to DPAC and copies to Caltrans Contract Manager;

3) Notify the subcontractor that if a written objection is not received or received past the due date, such failure will constitute consent to the substitution; and

4) Be served by certified or registered mail to the last known address of the listed Subcontractor.

I. The listed subcontractor, who has been so notified, shall have five (5) working days within which to submit written objections to the substitution to Caltrans Contract Manager. Failure to submit a written objection shall constitute the listed Subcontractor's consent to the substitution.

If written objections are filed by the listed Subcontractor, DPAC will render a written decision. DPAC shall give written notice of at least five (5) working days to the listed Subcontractor of a hearing by Caltrans on Contractor's request for substitution.

**17. DBE Certification and De-certification Status**

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

B. Contractor shall report any changes to Caltrans Contract Manager within thirty (30) days.

**18. DBE Eligibility**

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

B. Credit for DBE Prime Contractors

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Contractor, if a certified DBE, is eligible to claim all of the work toward the goal except that portion of the work to be performed by non-DBE Subcontractors.

C. Credit for Material or Supplies

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

1) If the materials or supplies are obtained from a DBE manufacturer, one hundred percent (100%) 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 Agreement and of the general character described by the specifications.

2) If the materials or supplies purchased from a DBE regular dealer, sixty percent (60%) 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 Agreement 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 provided in this paragraph.

3) 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 an ad hoc or Agreement by Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.

4) 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 the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

D. Credit for DBE trucking companies will be as follows:

1) The DBE must manage and supervise the entire trucking operation for which it is responsible. 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 Agreement.

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

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

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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 the DBE.

6) 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 for others during the term of the lease with the consent of the DBE, as 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.

**19. Termination of DBE**

A. Contractor shall not terminate a DBE Subcontractor, supplier or, if applicable, a trucking company, listed in the original bid/proposal without the prior written approval of the Contract Manager. This includes work that a prime contractor can perform with its own forces, or with a non-DBE firm, or another DBE firm.

B. Prior to the termination request, the prime contractor must notify the DBE, in writing, of the intent to terminate allowing for five days of response time in opposition of the rejection.

C. The prime contractor must have good cause in which to terminate the DBE firm. A good cause includes:

1) The DBE fails or refused to execute a written contract.

2) The DBE fails or refuses to perform the work consistent with normal industry standards.

3) The DBE fails or refuses to meet the prime contractor's nondiscriminatory bond requirements.

4) The DBE becomes bankrupt or has credit unworthiness.

5) The DBE is ineligible to work because of suspension and debarment.

6) It has been determined that the DBE is not a responsible contractor.

7) The DBE voluntarily withdraws, with written notification, from the contract.

8) The DBE is ineligible to receive credit for the type of work required.

9) The DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract.

10) Or other documented compelling reason.

D. The Contractor must make an adequate GFE to find another certified DBE Subcontractor to substitute for the original DBE. The GFE shall be directed at finding another DBE to perform at least the same amount of work under the Agreement as the DBE that was substituted or terminated to the extent needed to meet the established contract goal for DBE participation.

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E. Noncompliance by Contractor with the requirements of this section is considered a material breach of this Agreement and may result in termination of the Agreement or other such appropriate remedies for a breach of this Agreement as Caltrans deems appropriate.

**20. Nondiscrimination Clause (2 CCR 11105 Clause b)**

A. During the performance of this Agreement, the Contractor, and its Subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

B. The Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, §§ 11135-11139.5), and the regulations or standards adopted by Caltrans to implement such article.

C. The Contractor shall permit access by representatives of the Department of Fair Employment and Housing and Caltrans upon reasonable notice at any time during the normal business hours, but in no case less than twenty four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Caltrans shall require to ascertain compliance with this clause.

D. The Contractor and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

E. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

Updated 10/01/15

071608 Rev. Required in all Federally-Funded Agreements. Delete if not applicable

**21. Federal-Aid Required Provisions (Appendix A)**

During the performance of this Agreement, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

A. **Compliance with regulations:** The Contractor shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation - Title 49 Code of Federal Regulations Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of

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California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

B. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

C. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

D. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by Caltrans or any duly authorized representative of the Federal Government to be pertinent to ascertain compliance with such regulations or directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to Caltrans, or any duly authorized Federal Agency as appropriate, and shall set forth what efforts it has made to obtain the information.

E. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, Caltrans shall impose such Agreement sanctions as it or any Federal funding agency may determine to be appropriate, including, but not limited to:

1) Withholding of payments to the Contractor under the Agreement until the Contractor complies, and/or

2) Cancellation, termination or suspension of the Agreement, in whole or in part.

F. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (A) through (F) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor will take such action with respect to any subcontractor or procurement as Caltrans or any Federal funding agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request Caltrans to enter into such litigation to protect the interest of the State, and, in addition, the Contractor may

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request the United States to enter into such litigation to protect the interests of the United States.

Required in Federally Funded Agreements exceeding $100,000

**22. Federal Lobbying Activities Certification**

1) The Contractor certifies, to the best of his or her knowledge and belief, that:

   No State or Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal Agreement, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any Cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal Agreement, 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 Agreement, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LL., "Disclosure Form to Report Lobbying", in accordance with its instructions.

3) 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.

4) The Contractor also agrees by signing this document 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 subcontractors shall certify and disclose accordingly.

**23. Retention of Records/Audits**

A. For the purpose of determining compliance with GC, Section 8546.7, the Contractor and Subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The State, the State Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

**EXHIBIT D**
**Consulting Services Agreement (Federal)**

B. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this article.

Updated 7/10/98 To be used with R/W property maintenance on-call Agreements. To be included in all Federally Funded Agreements.

**24. Rebates, Kickbacks and Other Unlawful Consideration**

The Contractor warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any state agency employee. For breach or violation of this warranty, the State shall have the right, in its discretion, to terminate the Agreement without liability, to pay only for the value of work performed, or to deduct from the Agreement price or otherwise recover the full amount of each rebate, kickback or other unlawful consideration.

Required in all Consultant Service Agreements. Does not apply to regular Service Agreements or A&E Agreements.

**25. Prohibition From Bidding**

This Agreement is subject to the provisions of Section 10365.5 of the Public Contract Code which states: "No contractor who has been awarded a consulting services Agreement may submit a bid for, nor be awarded an Agreement for, the provision of services, goods and supplies, or any other related action which is required, suggested or otherwise deemed appropriate in the end product of the original consulting services Agreement."

To be used in all Consultant Service/EDP Agreements.

**26. Consultant Contractor's Rights and Obligations**

The Contractor is advised that the provisions of Public Contract Code Sections 10335 through 10381 pertaining to the duties, obligations and rights of a consultant service Contractor are applicable to this Agreement.

Updated 9/30/99

Required in any Agreement requiring a pre-award, Interim and/or post audit. Provision provides process for resolution of disputes concerning facts resulting from interim or postaward audits.

**27. Audit Review Procedures**

A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by Agreement shall be reviewed by the Chairperson of the Audit Review Committee (ARC). The ARC will consist of the Deputy Director, Audits & Investigations (Chairperson); Deputy Director of the functional Program area; the Chief Counsel, Legal Division, or their designated alternates; and if Caltrans chooses, two representatives of Caltrans' choosing, from private industry. The two representatives from private industry will be advisory in nature only and will not have voting rights. Additional members or their alternates may serve on the ARC.

B. Not later than thirty (30) days after issuance of the final audit report, the Contractor may request a review by the ARC of unresolved audit issues. The request for review will be submitted in writing to the Chairperson of the ARC. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the ARC will

**EXHIBIT D**
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be scheduled if the Chairperson concurs that further review is warranted. After the meeting, the ARC will make recommendations to the appropriate Chief Deputy Director. The Chief Deputy Director will make the final decision for Caltrans. The final decision will be made within three (3) months of receipt of the notification of dispute.

C. Neither the pendency of a dispute nor its consideration by Caltrans will excuse the Contractor from full and timely performance, in accordance with the terms of this Agreement.

To be used in all Agreements if Federal Funds are included.

To be used with R/W property maintenance on-call Agreements, if Federal Funds are included.
*****Exception:**** Interagency Agreements

**28. Debarment and Suspension Certification**

A. The Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer, or manager:

1) is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

2) has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;

3) does not have a proposed debarment pending; and

4) 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 three (3) years.

B. Any exceptions to this certification must be disclosed to Caltrans. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply the initiating agency, and the dates of agency action.

5/29/98

Include the following language if the Contractor is certified, and is participating in the Target Area Contract Preference Act (TACPA) preference program.

If the Contractor is certified for the Target Area Contract Preference Act (TACPA) preference programs, include the language for both preferences in the Proposed Form of Contract.)

**29. Target Area Contract Preference Act (TACPA)**

A. This portion of the Agreement applies only to Contractors who are certified and participating in the TACPA Preference Program established by GC, Section 4530, et seq., and all attendant rules and regulations (Title 2, California Administrative Code, Section 1896.30, et seq.), when performing work at a work site location in a qualified distressed area or when employing persons in accordance with GC, Section 4533.1.

B. Contractor or vendor agrees that the state contracting agency, or its delegacy, will have the right to inspect its facilities and operations and to inspect, review, obtain, and copy all records pertaining to performance of the Agreement or compliance with the requirements of

**EXHIBIT D**
**Consulting Services Agreement (Federal)**

the Act and attendant rules and regulations. Contractor or vendor further agrees that such records shall be maintained for a period of three (3) years after final payment under the Agreement.

C. Contractor or vendor agrees with respect to a certification to hire persons with high risk of unemployment, to:

1) Act in good faith for the purpose of maintaining such persons as employees for the duration of the Agreement performance; and

2) Make a reasonable effort to replace such persons, who for any reason permanently cease to be on the payroll, with other persons with high risk of unemployment; and

3) Promptly report to the state contracting agency and thereafter confirm in writing within seven (7) days the names of any such persons who have been terminated or absent from work for more than three (3) consecutive work days and to communicate reasons for the termination or absence. The Contractor or vendor agrees under such circumstances to consult with the state contracting agency and the Employment Development Department with respect to replacement of such persons.

**EXHIBIT E**
**Consulting Services Agreement (Federal)**

## ADDITIONAL PROVISIONS

### 1. General Provisions Required in all Insurance Policies

A. Deductible: Contractor is responsible for any deductible or self-insured retention contained within the insurance program.

B. Coverage Term: Coverage must be in force for the complete term of this Agreement. If insurance expires during the term of this Agreement, a new certificate must be received by the Caltrans Contract Manager at least ten (10) days prior to the expiration of the insurance. Any new insurance must continue to comply with the original terms of this Agreement **(enter Agreement number)**.

C. Policy Cancellation or Termination and Notice of Non-Renewal: Contractor shall provide, to the Caltrans Contract Manager within five (5) business days, following receipt by Contactor, a copy of any cancellation or non-renewal of insurance required by this Agreement. In the event Contractor fails to keep, in effect at all times, the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.

D. Primary Clause: Any required insurance contained in this Agreement shall be primary, and not excess or contributory, to any other insurance carried by the State.

E. Inadequate Insurance: Inadequate or lack of insurance does not negate the Contractor's obligations under this Agreement.

F. Endorsements: Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

G. Insurance Carrier Required Rating: All insurance companies must carry a rating acceptable to the Department of General Services, Office of Risk and Insurance Management (ORIM). If the Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required. Department of General Services, ORIM Website: http://www.dgs.ca.gov/orim/home.aspx

H. Contractor shall include all of its subcontractors as insured's under Contractor's insurance or supply evidence of insurance to the State equal to the policies, coverage's and limits required of Contractor.

I. The State will not be responsible for any premiums or assessments on the policy.

(Revised 02/21/2012) - Commercial Liability Required With respect to limits of insurance, the majority of State Agreements require $1,000,000 per occurrence and $2,000,000 aggregate. However, you must the weigh financial liability for the worst case scenario depending on the type and size of your contract. Some types of services, not many, may allow for smaller amounts and other may require higher amounts. Consult with DGS ORIM as necessary. Document the Date, name of Risk Management Staff, position title and instructions provided on the Contract Log. Also, consult with your Team Manager.

### 2. Insurance Requirements

A. Commercial General Liability

1) Contractor shall maintain general liability on an occurrence form with limits not less than **$1,000,000** per occurrence and **$2,000,000** aggregate for bodily injury and property damage

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**Consulting Services Agreement (Federal)**

liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured Agreement. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The policy must include:

Caltrans, State of California, its officers, agents, employees and servants are included as additional insured but only with respect to work performed under this Agreement.

2) This endorsement must be supplied under form acceptable to the Department of General Services, Office of Risk and Insurance Management.

(Revised 02/21/2012) Delete if not applicable.

Automobile Liability Required for:

- Armored Car service, Security Service, Elevator Maintenance and Repair, Auto Repair, and Towing Services.
- If Auto is used in the SOW: New Structures, Remodels, Site Work (grading, paving, underground, etc.)
- If the contractor will likely be using vehicles to complete the project.
- Auto Liability coverage is needed only if a vehicle is used in the SOW stated in the Agreement.

With respect to limits of insurance, the majority of State contracts require $1,000,000 per occurrence. Some instances, such as ongoing landscaping services without use of pesticides, can be reduced to $500.00, but for the most part $1,000,000 should be required.

B. Automobile Liability

Contractor shall maintain motor vehicle liability with limits not less than **$1,000,000** combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. The same additional insured designation and endorsement required for general liability is to be provided for this coverage.

(Revised 02/21/2012) Delete if not applicable.

Workers' Compensation required if the Contractor is using employees in this Agreement (workers' comp. coverage is mandatory). In some cases, the owner will complete the work called for in the Agreement without hiring staff, therefore, these Agreements do not need the workers' comp/employer's liability language.

With respect to limits of insurance, contractors should be required to maintain statutory Workers' Compensation Coverage and employer's liability at $1,000,000 per occurrence.

C. Workers' Compensation and Employer's Liability

Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement. Employer's liability limits of **$1,000,000** are required. When work is performed on State owned or controlled property the workers'

**EXHIBIT E**
**Consulting Services Agreement (Federal)**

compensation policy shall contain a waiver of subrogation in favor of the State. The waiver of subrogation endorsement shall be provided to the Caltrans' Contract Manager.

(Revised 02/21/12) Delete if not applicable

Environmental Liability (Pollution) Required for: Equipment Maintenance and Repair, Landscape Maintenance, Refuse Service, Janitorial Service (required if hazardous waste is being transported), Aviation Services (Required if pesticides are being applied), [New Structures, Remodels, Site Work (grading, paving, underground, etc.) Require if abatement work in SOW – How likely is work to uncover contaminants?]

D. Pollution Liability

Contractor shall maintain Pollution Liability covering the Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Limits of not less than **$[Insert Limit of Insurance]** per incident and an annual aggregate amount of **$[Insert double the limit]** shall be provided. The same additional insured designation and endorsement required for general liability is to be provided for this coverage.

(Revised 02/21/12) Delete if not applicable

Professional Liability Required for: Professional Contracts: Accountants/Actuaries, Architects/Engineers Counselors, Doctors/Nurses, Environmental Assessment, computer Design, New Structures, Remodels, Site Work (grading, paving, underground, etc.)

E. Professional Liability

Contractor shall maintain Professional Liability at **$1,000,000** covering any damages caused by a negligent error, act or omission. The policy's retroactive date must be displayed on the certificate of insurance and must be before the date this Agreement was executed or before the beginning of this Agreement work. The Contractor is responsible to maintain continuous coverage for up to three years after the notice of completion.

F. Fidelity Bond/Crime Insurance

Contractor shall maintain Employee Dishonesty and theft, forgery or alteration, and when applicable, Inside/Outside Money and Securities coverage for state-owned property in the care, custody and/or control of the Contractor. Coverage limits shall not be less than $ {insert value here}. A Clients' Property endorsement as broad as CR 04 01 08 13 must be endorsed to this policy and notated on the certificate of insurance. The policy shall include as loss payee DOT and the State of California.

Include in all Agreements with private business enterprises only, except A&E fixed price Agreements of $50,000 or less.

**3. Ownership of Proprietary Property:**

For the purposes of this section (**Ownership of Proprietary Property**) of **Exhibit E** of Contract _____ (herein after referred to as "this Agreement") the following definitions shall apply:

**Work**: As delineated in Exhibit A of the Agreement.

**EXHIBIT E**
**Consulting Services Agreement (Federal)**

**Work Product**: As defined as Deliverable in Exhibit A of the Agreement including but not limited to, all Work and Deliverables conceived or made, or made hereafter conceived or made, either solely or jointly with others during the term of this Agreement and during a period of six (6) months after the termination thereof, which relates to the Work commissioned or performed under this Agreement. "Work Product" includes all deliverables, inventions, innovations, improvements, or other works of authorship Contractor may conceive of or develop in the course of this Agreement, whether or not they are eligible for patent, copyright, trademark, trade secret, or other legal protection.

**Inventions**: Any idea, methodologies, design, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by the Contractor or jointly with the Contractor's Subcontractor and/or the Contractor's Subcontractor's employee's with one or more employees of the Department of Transportation (herein after referred to as "the Department"), during the term of this Agreement and in performance of any Work under this Agreement, provided that either the conception or reduction to practice thereof occurs during the term of this Agreement and in performance of Work issued under this Agreement.

**4. Ownership of Work Product and Rights**

A. **Ownership of Work Product:**
Except in regard to Pre-existing Works, all Work Product derived by the Work performed by the Contractor, its employees or by any of the Contractor's Subcontractor's employees under this Agreement, shall be owned by the Department and shall be considered to be works made for hire by the Contractor's Subcontractor for the Department. The Department shall own all United States and international copyrights in the Work Product.

As such, all Work Product shall contain, in a conspicuous place, a copyright designation consisting of a "c" in a circle followed by the four-digit year in which the Work Product was produced, followed by the words "California Department of Transportation." For example, a Work Product created in the year 2012 would contain the copyright designation © 2012 California Department of Transportation.

B. **Vesting of Copyright Rights:**
Contractor, its employees or any of Contractor's Subcontractor's employees agrees to perpetually assign, and upon creation of each Work Product automatically assigns, to the Department, its successors and assigns, ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Contractor's Subcontractor from the Department. From time to time upon the Department's request, the Contractor's Subcontractor and/or its employees, shall confirm such assignments by execution and delivery of such assignments, confirmations or assignment, or other written instruments as the Department may request. The Department, its successors and assigns, shall have the right to obtain and hold in its or their own name(s) all copyright registrations and other evidence of rights that may be available for Work Product. Contractor hereby agrees to waive all moral rights relating to identification of authorship restriction or limitation on use, or subsequent modifications of the Work.

**5. Inventions**

A. **Vesting of Patent Rights:**
The Contractor, its employees and any Contractor's Subcontractor hereby agrees to assign to the Department, its successors, and assigns, all Inventions, together with the right to seek protection by

**EXHIBIT E**
**Consulting Services Agreement (Federal)**

obtaining patent rights therefore and to claim all rights or priority there under, and the same shall become and remain the Department's property regardless of whether such protection is sought. The Contractor, its employees and Contractor's Subcontractor shall promptly make a complete written disclosure to the Department of each Invention not otherwise clearly disclosed to the Department in the pertinent Work Product, specifically pointing out features or concepts that the Contractor, its employees and Contractor's Subcontractor believes to be new or different. The Contractor, its employees and Contractor's Subcontractor shall, upon the Department's request and at the Department's expense, cause patent applications to be filed thereon, through solicitors designated by the Department, and shall sign all such applications over to the Department, its successors, and assigns. The Contractor, its employees and Contractor's Subcontractor shall give the Department and its solicitors all reasonable assistance in connection with the preparation and prosecution of any such patent applications and shall cause to be executed all such assignments or other instruments or documents as the Department may consider necessary or appropriate to carry out the intent on this Agreement.

B. **Agency:**
In the event that the Department is unable for any reason whatsoever to secure the Contractor's, its employees' and/or Contractor's Subcontractor's signature to any lawful or necessary document required or desirable to apply for or prosecute any United States application (including renewals or divisions thereof), Contractor, its employees and Contractor's Subcontractor hereby irrevocably designates and appoints the Department and its duly authorized officers and agents, as its agent and attorney-in-fact, to act for and on Contractor, its employees and Contractor's Subcontractor's behalf and stead, to execute and file such applications and to do all other lawfully permitted acts to further the prosecution and issuance of any copyrights, trademarks or patents thereon with the same legal force and effect as if executed by Contractor, its employees and/or Contractor's Subcontractor. The Department shall have no obligations to file any copyright, trademark or patent applications.

C. **Avoidance of Infringement:**
In performing services under this Agreement, Contractor and its employees agree to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Contractor or its employees becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Contractor or its employees shall immediately notify the Department in writing.

D. **Pre-existing Works and License:**
Contractor acknowledges that all Work Product shall be the sole and exclusive property of the Department, except that any pre-existing works created by Contractor and third parties outside of the Agreement but utilized in connection with the Agreement (the "Pre-existing Works") shall continue to be owned by Contractor or such parties. Contractor agrees to notify the Department in writing of any Pre-existing Works used in connection with any Work Product produced under this Agreement and hereby grants to the Department a non-exclusive, perpetual, royalty-free license to utilize the Pre-existing Works in connection with the Work Product.

**6. Additional Conditions**
**Subcontractors:**

**EXHIBIT E**
**Consulting Services Agreement (Federal)**

Contractor shall affirmatively bind by contract any of its subcontractors or service vendors (hereinafter "Contractor's Subcontractor") providing services under this Agreement to conform to the provisions of this **Exhibit E**. Contractor's Subcontractor shall then provide the signed contract to the Contractor, who shall provide it to the Department's Contract Manager prior to the commencement of any work. In performing services under this Agreement, Contractor's Subcontractor agrees to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Contractor's Subcontractor becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Contractor's Subcontractor shall immediately notify the Contractor in writing, Contractor will then immediately notify the Department in writing.

**Ownership of Data:**

A. Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates, produced as part of this Agreement will automatically be vested in Caltrans and no further agreement will be necessary to transfer ownership to Caltrans. The Consultant shall furnish Caltrans all necessary copies of data needed to complete the review and approval process.

B. It is understood and agreed that all calculations, drawings, and specifications, whether in hard copy of machine readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.

C. The Consultant is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by Caltrans of the machine readable information and data provided by the Consultant under this Agreement; further, the Consultant is not liable for claims, liabilities or losses arising out of, or connected with, any use by Caltrans of the project documentation on other projects, for additions to this project, or for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Consultant.

D. Any sub-agreement in excess of $25,000.00, entered, into as a result of this Agreement, shall contain all of the provisions of this clause.

Caltrans staff must verify that a contractor/vendor is not one of the top 500 persons or companies identified as being the most delinquent on their tax obligations by checking the FTB and BOE websites prior to executing any Agreement, purchase order for goods and/or services or CAL-Card transaction.

**7. Prohibition of Delinquent Taxpayers**

Public Contract Code (PCC) Section 10295.4 prohibits the State from entering into an Agreement for goods or services with any taxpayer, whose name appears on either list maintained by the State Board of Equalization or the Franchise Tax Board pursuant to Revenue and Taxation Code sections 7063 and 19195, respectively, of the 500 largest tax delinquencies. PCC Section 10295.4 provides no exceptions to these prohibitions.

Delete if not applicable: Include the following Iran Contracting Act language only if the estimated contract value equals or exceeds $1 million dollars for goods and services contracts.

**8. Iran Contracting Act**

The proposed Contractor must complete and submit to Caltrans the Iran Contracting Act Certification certifying that it is not on the most current Department of General Services (DGS) list to Entities

**EXHIBIT E**
**Consulting Services Agreement (Federal)**

Prohibited from Contracting with Public Entities in California per the Iran Contracting Act, 2010 (http://www.documents.dgs.ca.gov/pd/poliproc/Iran%20Contracting%20Act%20List.pdf), before the contract has been executed, unless the Contractor is exempted from the certification requirement by Public Contract Code Section 2205 (c) or (d). If claiming an exemption, the proposed Contractor shall provide written evidence that supports an exemption under Public Contract Code Section 2203 (c) or (d) before execution of the contract.

# ATIACHMENT K

## Sample Division of Rail and Mass Transportation Standard Agreement

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

Unlock All Fields

# STANDARD AGREEMENT

DOT-213 (REV 4/2014)

AGREEMENT NUMBER | AMENDMENT NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

CONTRACTOR'S NAME

2. The term of this Agreement is:

3. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

| | |
|---|---|
| Exhibit A - Scope of Work | page(s) |
| Exhibit B - Budget Detail and Payment Provisions | page(s) |
| Exhibit C - General Terms and Conditions | page(s) |
| Exhibit D - Special Terms and Conditions (Attached hereto as part of this agreement) | page(s) |
| Exhibit E - Special Section 5333(b) Warranty | page(s) |

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto.

| CONTRACTOR | | California Department of Transportation use only |
|---|---|---|
| Contractor's Name *(if other than an individual, state whether a corporation, partnership, etc.)* | | |
| BY *(Authorized Signature)* RS | DATE SIGNED | |
| PRINTED NAME AND TITLE OF PERSON SIGNING | | |
| ADDRESS | | |
| **STATE OF CALIFORNIA** | | |
| AGENCY NAME | | |
| BY *(Authorized Signature)* RS | DATE SIGNED | |
| PRINTED NAME AND TITLE OF PERSON SIGNING | | |
| ADDRESS | | |

| | | | | |
|---|---|---|---|---|
| AMOUNT ENCUMBERED BY THIS DOCUMENT | PROGRAM/CATEGORY (CODE AND TITLE) | | FUND TITLE | |
| PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT | (OPTIONAL USE) | | | |
| TOTAL AMOUNT ENCUMBERED TO DATE | ITEM | CHAPTER | STATUTE | FISCAL YEAR |
| OBJECT OF EXPENDITURE (CODE AND TITLE) | | | | |

| | |
|---|---|
| I *hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.* T.B.A. NO. | B.R. NO. |
| SIGNATURE OF ACCOUNTING OFFICER | DATE SIGNED |

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 654-6410, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

**EXHIBIT A**

**SECTION 5311**

**SCOPE OF WORK**

1. The parties agree that only those paragraphs that have a mark ("X") opposite to the transportation services category (hereafter called the PROJECT) shall apply to Exhibit A of this Agreement.

**A. Capital Project (Vehicle/Equipment)**

1. The CONTRACTOR's application for a capital assistance grant under 49 USC Section 5311 of the Federal Transit Act, as amended, has been certified to the Federal Transit Administration (FTA) by the California Department of Transportation (hereinafter referred to as STATE) as having met all the statutory and administrative requirements for PROJECT approval. The purpose of this Agreement is to implement the approved capital grant PROJECT.

2. The CONTRACTOR agrees to perform the PROJECT to provide public transportation service to the general public in a nonurbanized area of the State and in accordance with the terms and conditions of this Agreement.

3. The CONTRACTOR agrees to operate the equipment funded and made available through the PROJECT within the service area as described in Exhibit A.1, A.4.

4. The CONTRACTOR'S scope of work is described as follows:

   A. At a minimum, transportation service shall be provided between through (or at a minimum of 20 hours per week) for each vehicle as described in the CONTRACTOR'S original Grant Application.

   B. The CONTRACTOR'S geographic area that will be served by the transportation program as described in the original grant application is as follows:

5. The new PROJECT for equipment or new vehicles (not designated as "used" by Federal Trade Commission Agency 16 CFR Part 455.1(d)(2) as well as California Vehicle Code Section 100-680), and estimated cost, is as follows:

| ITEM | QUANTITY | *AWARD | TOTAL AMOUNT |
|---|---|---|---|

Grant Award-Total Cost of PROJECT Equipment:

Federal Share:
Local Share:
Toll Credits:

*Maximum grant amount as determined by awarded project costs

| PROCUREMENT SCHEDULE | DATE |
|---|---|
| Bid Package to Caltrans | |
| Award Contract | |
| Issue Purchase Order to Vendor | |
| Delivery or Installation | |
| Place into Service | |

**EXHIBIT A**

**B. Operating Project**

1. The CONTRACTOR's application for an operating assistance grant under 49 USC Section 5311 of the Federal Transit Act, as amended, has been certified to the Federal Transit Administration (FTA) by the California Department of Transportation (hereinafter referred to as STATE) as having met all the statutory and administrative requirements for PROJECT approval. The purpose of this Agreement is to implement the approved operating assistance grant (hereinafter referred to as the PROJECT).

2. The CONTRACTOR agrees to provide public transportation service to the general public in a nonurbanized area of the State in accordance with the terms and conditions of this Agreement.

3. Operating assistance eligible for reimbursement under this Agreement are costs directly related to system operations and may include: fuel, oil, drivers' salaries and fringe benefits, dispatcher salaries and fringe benefits, and licenses. Up to percent of the net PROJECT costs are eligible for reimbursement under this Agreement, not to exceed $ No payment shall be made in advance of performance of work.

4. For the purpose of carrying out the PROJECT, the operating costs pursuant to this Agreement shall not exceed the estimated cost specified herein:

| Item Description | Cost |
|---|---|
| Federal Share: | |
| Total Local Share: | |
| Toll Credits: | |
| Federal Share*: Total Project Cost: | |

*Not to exceed percent of Net PROJECT Cost

5. The CONTRACTOR agrees to operate the PROJECT in the service area as described in Exhibit A. 1, B. 6.

6. The CONTRACTOR'S scope of work is described as follows:

   A. At a minimum, transportation service shall be provided between MONDAY through FRIDAY (or at a minimum of 20 hours per week).

   B. The CONTRACTOR'S geographic area that will be served by the transportation program as described in the original grant application is as follows:

**C. Preventive Maintenance Project**

1. The CONTRACTOR's application for a preventive maintenance grant under 49 USC Section 5311 of the Federal Transit Act, as amended, has been certified to the Federal Transit Administration (FTA) by the California Department of Transportation (hereinafter referred to as STATE) as having met all the statutory and administrative requirements for PROJECT approval. The purpose of this Agreement is to implement the approved preventive maintenance grant (hereinafter referred to as the PROJECT).

2. Preventive Maintenance activities consist of routine revenue and non-revenue vehicle inspection and maintenance for bus operations including: inspecting revenue vehicle components on a scheduled preventive maintenance basis (e.g., engine and transmission, fuel system, ignition system, chassis, body - exterior and interior, electrical system, lubrication system, trolleys, pantographs and third rail shoes, trucks, braking system, air-conditioning system); performing minor repairs to the above-listed revenue vehicle components; changing lubrication fluids; replacing minor repairable units of the above-listed revenue vehicle components; making road calls to service revenue vehicle breakdowns; towing and shifting revenue vehicles to maintenance facilities; rebuilding and overhauling repairable components; performing major repairs on revenue vehicles on a scheduled or unscheduled basis. For the purpose of

**EXHIBIT A**

carrying out the PROJECT, the labor, associated administrative, and incidental costs pursuant to this Agreement shall not exceed the estimated cost specified in the Agreement.

3. The CONTRACTOR agrees that the PROJECT will enhance provision of public transportation service provided to the general public in a nonurbanized area of the State in accordance with the terms and conditions of this Agreement.

4. For the purpose of carrying out the PROJECT, the labor and incidental costs pursuant to this Agreement shall not exceed the estimated cost specified herein:

| Item Description | Add Item | Cost |
|---|---|---|
| Operating Expense | | |

Total Local Share:
Federal Share*: Total Project Cost:
*Not to exceed _____percent of Net PROJECT Cost

**D. <u>Capital Project (Real Estate Acquisition/Construction)</u>**

1. The CONTRACTOR's application for a capital assistance grant under 49 USC Section 5311 of the Federal Transit Act, as amended, has been certified to the FTA by the STATE as having met all the statutory and administrative requirements for PROJECT approval. The purpose of this Agreement is to implement the approved PROJECT.

2. The CONTRACTOR agrees to perform the PROJECT to provide public transportation service to the general public in a nonurbanized area of the State and in accordance with the terms and conditions as described in this Agreement.

3. For Real Estate Acquisition, the CONTRACTOR must follow the procedures below pursuant to FTA Circular 5010.1D; 49 CFR Part 18.31; 49 CFR Part 24 Subpart B; and by the FTA Master Agreement:

   a. The conduct of Hazardous Waste Site Assessments before acquiring real property.

   b. The conduct of an independent appraisal by a certified appraiser.

   c. The requirement for a review appraisal of the initial appraisal.

   d. FTA review and concurrence requirements related to the CONTRACTOR's offer to buy the property.

   e. If the CONTRACTOR is leasing the property, incidental use of acquired real property as a means to supplement transit revenues.

   f. Disposition of excess real property by sale, lease, donation, transfer to other programs, or other conveyance methods.

   g. The requirement to prepare an excess property utilization plan for all real property no longer used for its original purpose.

4. CONTRACTOR must submit the Plans, Specifications, and Estimate (PS&E) Checklist for any construction PROJECT. CONTRACTOR certifies that the PROJECT was designed and prepared for advertisement in accordance with 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreement to State Governments, Federal Transit Administration (FTA) circular 4220.1F-Third Party Contracts Guidance, FTA Circular 9040.1F – Construction Management and Oversight, the FTA Projects and Construction Management Guidelines, and the FTA Best Practices Procurement Manual.

**EXHIBIT A**

5. CONTRACTOR understands and agrees that all documents relating to this project are subject to review by FTA and/or STATE in order to verify the PS&E certification. CONTRACTOR also understands and agrees that if deficiencies are found in subsequent reviews, the following actions may be taken:

   a. Where minor deficiencies are found, PS&E certification for future projects may be conditionally approved or not accepted until the deficiencies are corrected.

   b. Where deficiencies are of such magnitude as to create doubt that the policies and objectives of applicable federal and state laws will not be accomplished by the project, federal funding may be withdrawn at the discretion of the Office Chief of Federal Transit Grants Programs.

6. For the purpose of carrying out the PROJECT, the following described Real Estate Acquisition/ Construction PROJECT is to be purchased/constructed, pursuant to this Agreement at costs not to exceed the estimated cost specified herein:

| Item Description | Add Item | Cost |
|---|---|---|
| Operating Expense | | |

Total Local Share:
Federal Share*: Total Project Cost:
*Not to exceed _____percent of Net PROJECT Cost

| PROCUREMENT SCHEDULE | DATE |
|---|---|
| Environmental Clearance (CEQAINEPA) | |
| Preliminary Engineering/PS&E | |
| Right of Way Coordination | |
| Construction | |

**E. <u>Transfer of Used Vehicle/Equipment</u>**

1. The CONTRACTOR agrees to perform the PROJECT to provide public transportation service to the general public in a nonurbanized area of the State and in accordance with the terms and conditions of this Agreement with the STATE.

2. The CONTRACTOR shall use the PROJECT equipment at all times exclusively and in conformity with the following project description for as long as the equipment is needed for the PROJECT. Vehicles may not be transferred without prior written approval from STATE.

3. The PROJECT equipment as described in Project Description and Justification for Funding Request as attached to attachment 1 of this **Agreement was transferred from**
SA# to

4. The STATE has evaluated and approved the transfer for vehicle/equipment based on the CONTRACTOR's request containing the following information.

   A. Project Description and Justification for Funding Request (Replacement or Expansion)

   B. Proposed Service and Operating Plan (including map of service area)

   C. Existing Transportation Services (current fleet)

   D. Proposed Transportation Services

   E. Signed Certifications and Assurances

## EXHIBIT A

F. Board Resolutions of Both Parties

2. The PROJECT representatives during the term of this Agreement will be:

| State Agency: | Contractor: |
|---|---|
| Name: | Name: |
| Title: | Title: |
| Phone: | Phone: |
| Fax: | Fax: |

Direct all inquiries to:

| State Agency: | Contractor: |
|---|---|
| Section/Unit: | Section/Unit: |
| Attention: | Attention: |
| Address: | Address: |
| | |
| Phone: | Phone: |
| Fax: | Fax: |

**EXHIBIT B**

**SECTION 5311**
**BUDGET DETAIL AND PAYMENT PROVISIONS**

1. Invoicing and Payment

The full project invoice (both federal and local share) shall be submitted by the CONTRACTOR to the STATE for review and approval prior to payment. Federal regulations hold the STATE accountable for all projects funded with federal funds including those projects funded with local share. CONTRACTORS therefore, MUST submit ALL invoices both federal and local share to the STATE for verification of costs and payments made. This new step will ensure that both the federal and local funding shares are reported accurately and reviewed accordingly for the Federal Financial Report (SF-425).

The CONTRACTOR's accounting system and billing procedures are subject to audit by STATE prior to contract award, and accounting records pertaining to work performed and costs billed to STATE are subject to audit for a period of three (3) years after date of final payment under this Agreement. If the CONTRACTOR fails to retain records such as employee time cards, payroll records, travel records, equipment time and cost records, billings from subcontractors, material and equipment suppliers records that are sufficient to permit audit verification of the validity of costs charged to STATE, the CONTRACTOR will be liable for reimbursement to STATE of all unsubstantiated billings.

Upon review and approval by the STATE, STATE agrees to reimburse the CONTRACTOR for allowable costs as defined in 2 CFR Part 225 and 49 CFR, Part 18, upon receipt of an invoice that is itemized per Project Budget Worksheet in the application as applicable, and otherwise meets the requirements of this Standard Agreement. Incomplete or disputed invoices shall be returned to CONTRACTOR, unpaid, for correction and must be resubmitted to STATE prior to the payment of the invoice.

Invoices shall be itemized in accordance with Exhibit E, Cost Worksheet or Project Budget Worksheet in the application as applicable, and shall include original signed receipts along with the proof of payments for materials, supplies, and equipment, and for travel describing the purpose of travel as it pertains to Project Budget Worksheet, classifications, hourly rates, and identification of work to be reimbursed for the payment period, indirect costs, and subcontractor costs itemized similar to those of the CONTRACTOR, as set forth in the Project Budget Worksheet. Proof of payment made to the vendor or a copy of the method of payment must be submitted by the CONTRACTOR. Proof of payment includes: Bank statements or cancelled check showing check number and "Paid in Full" or CONTRACTOR accounting records showing the transaction.

The parties agree that only those paragraphs that have a mark ("X") opposite to the PROJECT category shall apply to this Agreement.

**A. Capital Project**

1. For services satisfactorily rendered, and upon receipt and approval of the invoices, the basis of payment for the services provided under this Agreement shall be reimbursement in arrears for actual allowable costs. The request(s) for reimbursement shall certify that the CONTRACTOR has paid wages and salaries, and shall list the various salary and other accounts to which the grant funds will be applied. Upon receipt of these invoices, the STATE shall reimburse the CONTRACTOR up to percent of the total PROJECT cost but not to exceed $ _____

2. The STATE's obligations to compensate the CONTRACTOR under the terms of this Agreement shall terminate upon payments of CONTRACTOR's invoice(s) for the FTA allowable portions of said equipment costs. The request(s) for reimbursement shall certify that the CONTRACTOR has received and accepted the equipment and shall be submitted together with copies of the equipment vendor's invoices and the CONTRACTOR's purchase orders. The CONTRACTOR's invoices and the vendor's invoices shall be consistent internally and with the purchase order and shall include a breakdown of equipment unit costs, sales tax, registration fees , and any other items procured with said purchase orders, including items and costs not reimbursab le under this PROJECT and any items not subject to sales tax. The later includes "items and materials when used to modify a vehicle for physically handicapped persons", which are exempt from sales tax under Revenue and Taxation Code Section 6369.4.

**EXHIBIT B**

3. The net PROJECT cost and the allowable individual items of PROJECT cost shall be determined in conformance with CFR 48, Federal Acquisition Regulations (FAR), Chapter 1, Part 31, 2 CFR Part 225 (OMB Circular A-87), "Cost Principles for State, Local, and Indian Tribal Governments", FAR Subpart 31.2, "Contracts with Commercial Organizations," and other applicable regulations, circulars, or memorandums that may be issued by FTA

4. Direct and Indirect Costs. The CONTRACTOR shall comply with 2 CFR Part 225 (formerly Office of Management and Budget (OMB) Circular A--87 and certifies that all direct and indirect costs billed are allowable. All direct costs, even for project administration activities, must be adequately supported with proper documentation. Indirect costs must be supported by an approved Cost Allocation Plan (CAP) and/or Indirect Cost Rate Proposal. The CONTRACTOR shall obtain approval from the STATE's Audits and Investigations Office of the CONTRACTOR's CAP prior to submitting any invoices for payment for the PROJECT. Indirect charges incurred prior to plan approval by the STATE is not an allowable expense. The CONTRACTOR's that are private for-profit organizations must comply with 48 CFR Subpart 31.2, "Contracts with Commercial Organizations."

5. No advance payment will be made for the PROJECT. Reimbursements will only be allowed after execution of this Agreement for submission of the appropriate purchase orders, receipt of all invoices and the full delivery of all equipment described in Exhibit A of this Agreement. Reimbursement will only be allowed for purchases made after the effective date of this Agreement. Project invoices shall be submitted in triplicate not more frequently than monthly in arrears and must include the Agreement Number. Incomplete or erroneous invoices shall be returned to the CONTRACTOR, unpaid, for correction. Final invoices are due to the STATE- District Transit Representative on or before to:

   Name:
   Address:

6. Upon successful completion of the PROJECT or upon termination by STATE, the parties shall determine the amount of compensation, if any, to be repaid by the CONTRACTOR to STATE in order to avoid any STATE liability to FTA due to payments erroneously made to the CONTRACTOR in excess of the total PROJECT amount eligible for Federal reimbursement.

7. As specified in Exhibit D, Section 4. Useful Life Standard, this Agreement will expire upon the PROJECT meeting its useful life period but not before

**B. Operating Project**

1. For services satisfactorily rendered, and upon receipt and approval of the invoices, the basis of payment for the services provided under this Agreement shall be reimbursement in arrears for actual allowable costs. The STATE will reimburse the CONTRACTOR for actual allowable costs, including, but not limited to, employee benefits and overhead, incurred after the effective date of this Agreement. Not more than once a month, the CONTRACTOR may submit to STATE signed invoices in triplicate with enough detail to assure that costs are eligible and allowable under this Agreement. Upon receipt of these signed invoices, STATE shall reimburse the CONTRACTOR up to percent of the total operating cost, not to exceed $ No payment shall be made in advance of performance of work.

2. The net PROJECT cost and the allowable individual items of PROJECT cost shall be determined in conformance with CFR 48, Federal Acquisition Regulations (FAR), Chapter 1, Part 31, 2 CFR Part 225 (OMB Circular A-87), "Cost Principles for State, Local, and Indian Tribal Governments", FAR Subpart 31.2, "Contracts with Commercial Organizations," and other applicable regulations, circulars, or memorandums that may be issued by FTA

3. Direct and Indirect Costs. The CONTRACTOR shall comply with 2 CFR Part 225 (formerly Office of

**EXHIBIT B**

Management and Budget (OMB) Circular A--87 and certifies that all direct and indirect costs billed are allowable. All direct costs, even for project administration activities, must be adequately supported with proper documentation. Indirect costs must be supported by an approved Cost Allocation Plan (CAP) and/or Indirect Cost Rate Proposal. The CONTRACTOR shall obtain approval from the STATE's Audits and Investigations Office of the CONTRACTOR's CAP prior to submitting any invoices for payment for the PROJECT. Indirect charges incurred prior to plan approval by the STATE is not an allowable expense. The CONTRACTORs that are private for-profit organizations must comply with 48 CFR Subpart 31.2, "Contracts with Commercial Organizations."

4. The PROJECT period for which transit operational expenses are eligible for reimbursement under this Agreement is the period from to

5. Reimbursements will only be allowed after execution of this Agreement for submission of the appropriate purchase orders, receipt of all invoices and the full delivery of all operating services described in Exhibit A of this Agreement. Reimbursement will only be allowed for purchases made after the effective date of this Agreement. Project invoices shall be submitted in triplicate not more frequently than monthly in arrears and must include the Agreement Number. Incomplete or erroneous invoices shall be returned to the CONTRACTOR, unpaid, for correction. Final invoices are due to the STATE-District Transit Representative on or before to:

   Name:
   Address:

6. Upon successful completion of the PROJECT or upon termination by STATE, the parties shall determine the amount of compensation, if any, to be repaid by the CONTRACTOR to STATE in order to avoid any STATE liability to FTA due to payments erroneously made to the CONTRACTOR in excess of the total PROJECT amount eligible for Federal reimbursement.

7. The Contract expires on , after which time no further CONTRACTOR invoices will be paid.

**C. Preventive Maintenance Project**

1. For services satisfactorily rendered, and upon receipt and approval of the invoices, the basis of payment for the services provided under this Agreement shall be reimbursement in arrears for actual allowable costs. The request(s) for reimbursement shall certify that the CONTRACTOR has paid wages and salaries, and shall list the various salary and other accounts to which the grant funds will be applied. Upon receipt of these invoices, the STATE shall reimburse the CONTRACTOR up to _____percent of the total PROJECT cost but not to exceed $_____

2. The PROJECT period for which preventive maintenance expenses are eligible for reimbursement under this Agreement is the period from to _____

3. The STATE's obligations to compensate the CONTRACTOR under the terms of this Agreement shall terminate upon payments of the CONTRACTOR's invoice(s) for the FTA allowable activities, supplies, materials, wages, salaries, and services required to preserve or extend the functionality and serviceability of the asset in a cost effective manner. Project invoices shall be submitted in triplicate not more frequently than monthly in arrears and must include the Agreement Number. Final invoices are due to the STATE -District Transit Representative on or before _____to:

   Name:
   Address:

4. The net PROJECT cost and the allowable individual items of PROJECT cost shall be determined in

conformance with CFR 48, Federal Acquisition Regulations (FAR), Chapter 1, Part 31, 2 CFR Part 225 (OMB Circular A-87), "Cost Principles for State, Local, and Indian Tribal Governments", FAR Subpart 31.2, "Contracts with Commercial Organizations," and other applicable regulations, circulars, or memorandums that may be issued by FTA.

5. Direct and Indirect Costs. The CONTRACTOR shall comply with 2 CFR Part 225 (formerly Office of Management and Budget (OMB) Circular A--87 and certifies that all direct and indirect costs billed are allowable. All direct costs, even for project administration activities, must be adequately supported with proper documentation. Indirect costs must be supported by an approved Cost Allocation Plan (CAP) and/or Indirect Cost Rate Proposal. The CONTRACTOR shall obtain approval from the STATE's Audits and Investigations Office of the CONTRACTOR's CAP prior to submitting any invoices for payment for the PROJECT. Indirect charges incurred prior to plan approval by the STATE is not an allowable expense. The CONTRACTORs that are private for-profit organizations must comply with 48 CFR Subpart 31.2, "Contracts with Commercial Organizations."

6. No payment will be made for preventive maintenance in advance of payment of wages and services. Reimbursements will only be allowed after execution of this Agreement for submission of appropriate purchase orders, receipt of all invoices and the completion of preventive maintenance services described in Exhibit A (Item Description and Cost) of this Agreement. Reimbursement will only be allowed for activities performed after the effective date of this Agreement. Incomplete or erroneous invoices shall be returned to the CONTRACTOR, unpaid, for correction.

7. The Contract expires on _____, after which time no further CONTRACTOR invoices will be paid.

**D. <u>Capital Project (Real Estate Acquisition/Construction)</u>**

1. For services satisfactorily rendered, and upon receipt and approval of the invoices, the basis of payment for the services provided under this Agreement shall be reimbursement in arrears for actual allowable costs. The request(s) for reimbursement shall certify that the CONTRACTOR has paid wages and salaries, and shall list the various salary and other accounts to which the grant funds will be applied. Upon receipt of these invoices, the STATE shall reimburse the CONTRACTOR up to _____percent of the total PROJECT cost but not to exceed $._____

2. The STATE's obligations to compensate the CONTRACTOR under the terms of this Agreement shall terminate upon payments of CONTRACTOR's invoice(s) for the FTA allowable portions of said Real Estate Acquisition/Construction costs. The request(s) for reimbursement shall certify that the CONTRACTOR has received the equipment/materials and shall be submitted together with copies of the equipment/materials of vendor's invoices and the CONTRACTOR's purchase orders. The CONTRACTOR 's invoices and the vendor's invoices shall be consistent internally and with the purchase order and shall include a breakdown of equipment/material unit costs, sales tax, and any other items procured with said purchase orders, including items and costs not reimbursable under this PROJECT and any items not subject to sales tax.

3. The net PROJECT cost and the allowable individual items of PROJECT cost shall be determined in conformance with CFR 48, Federal Acquisition Regulations (FAR), Chapter 1, Part 31, 2 CFR Part 225 (OMB Circular A-87), "Cost Principles for State, Local, and Indian Tribal Governments", FAR Subpart 31.2, "Contracts with Commercial Organizations," and other applicable regulations, circulars, or memorandums that may be issued by FTA.

4. Direct and Indirect Costs. The CONTRACTOR shall comply with 2 CFR Part 225 (formerly Office of Management and Budget (OMB) Circular A--87 and certifies that all direct and indirect costs billed are allowable. All direct costs, even for project administration activities, must be adequately supported with proper documentation. Indirect costs must be supported by an approved Cost Allocation Plan (CAP) and/or Indirect Cost Rate Proposal. The CONTRACTOR shall obtain approval from the STATE's Audits and Investigations Office of the CONTRACTOR's CAP prior to submitting any invoices for payment for

**EXHIBIT B**

the PROJECT. Indirect charges incurred prior to plan approval by the STATE is not an allowable expense. The CONTRACTOR's that are private for-profit organizations must comply with 48 CFR Subpart 31.2, "Contracts with Commercial Organizations."

5. No payment will be made for Real Estate Acquisition/Construction in advance of purchase/any stage of PROJECT completion. Reimbursements will only be allowed after execution of this Agreement for submission of the appropriate purchase orders, receipt of all invoices and the full delivery of all equipment and consumption of materials described in Exhibit A of this Agreement. Reimbursement will only be allowed for purchases/consumption made after the effective date of this Agreement. Project invoices shall be submitted in triplicate not more frequently than monthly in arrears and must include the Agreement Number. Incomplete or erroneous invoices shall be returned to the CONTRACTOR, unpaid, for correction. Final invoices are due to the STATE- District Transit Representative on or before _____to:

   Name:
   Address:

6. Upon successful completion of the PROJECT or upon termination by STATE, the parties shall determine the amount of compensation, if any, to be repaid by the CONTRACTOR to STATE in order to avoid any STATE liability to FTA due to payments erroneously made to the CONTRACTOR in excess of the total PROJECT amount eligible for Federal reimbursement.

7. As specified in Exhibit D, Section 4. Useful Life Standard, this Agreement will expire upon the PROJECT meeting its useful life period but not before _____

2. Budget Contingency Clause

A. The CONTRACTOR agrees that it will provide funds in an amount sufficient, together with the grant, to assure payment of those actual total net PROJECT costs. The funds provided shall include sufficient funds from other eligible sources to provide the PROJECT local matching requirements in accordance with Safe, Accountable, Moving Ahead for Progress in the 21st Century Act (MAP-21) (pub 1.112-141).

B. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the STATE shall have no liability to pay any funds whatsoever to the CONTRACTOR or to furnish any other considerations under this Agreement and the CONTRACTOR shall not be obligated to perform any provisions of this Agreement.

C. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the STATE shall have the option to either cancel this Agreement with no liability occurring to the STATE, or offer an Agreement amendment to the CONTRACTOR to reflect the reduced amount.

3. <u>Prompt Payment Clause</u>

A. In the event the contractor is a certified small business or similar entity, but not a public agency, the STATE shall make payment within 45 days in accordance with Government Code Chapter 4.5 Section 927.

B. The CONTRACTOR shall pay any third-party contractor not later than 7-days of receipt of each progress payment unless a longer period is agreed to in writing, as cited in the California Business and Professions Code, Section 7108.5.

C. The Department will not withhold retention from the prime contractor, and the prime contractor and any of its subcontractors may not withhold retention from any subcontractor.

**EXHIBIT B**

D. It is the parties' intention that grant funds will be available for expenditure for three fiscal years, commencing with the State fiscal year that this Agreement is entered into. In the event that funds are not appropriated for the purpose of this Agreement in an amount sufficient to allow the encumbrance of grant funds in accordance with this paragraph, the parties agree that this Agreement will terminate at the end of the fiscal year for which funds have been encumbered. The CONTRACTOR's obligations under this Agreement shall remain in effect until the PROJECT is completed under the terms of this Agreement. Upon expiration date of this Agreement the unreimbursed funds will revert and no further invoices can be paid to CONTRACTOR.

4. Project Closeout Clause

A. CONTRACTOR agrees that once PROJECT is complete, any outstanding balance will be returned to the most recent regional apportionment for the FTA Section 5311 Regional Apportionment Program for redistribution or reallocation per FSTIP requirements. For FTA Section 5311(f) Intercity Bus Program, any remaining balance/ cost savings will be returned to STATE.

B. Upon successful completion of the PROJECT or upon termination by STATE, the parties shall determine the amount of compensation, if any, to be repaid by the CONTRACTOR to STATE in order to avoid any STATE liability to FTA due to payments erroneously made to the CONTRACTOR in excess of the total PROJECT amount eligible for Federal reimbursement.

## EXHIBIT C

### GENERAL TERMS AND CONDITIONS FOR ALL FEDERAL GRANT PROGRAM

1. Subrecipient. For the purpose of this Agreement, the CONTRACTOR is the subrecipient as referenced in the Moving Ahead for Progress in the 21st Century Act (MAP-21) (pub 1.112-141). As a grant subrecipient of FTA funds the CONTRACTOR agrees to comply with the Federal statutes, regulations, executive orders, directives and administrative requirements which relate to applications made to and grants received from FTA including but limited to the USDOT FTA Master Agreement (15), October 1, 2008 and FTA C 9070.1G, Enhanced Mobility for Seniors and Individuals with Disabilities Program Guidance and Application Instructions.

2. Approval.

   A. Except as provided herein this Agreement is of no force or effect until signed by both parties and approved by the STATE.

   B. The STATE reserves the right to sign and approve the Agreement provided however, the commencement of work should not be authorized until the expenditure of federal funds has been authorized by the FTA for a specific Federal fiscal year. The CONTRACTOR may not commence performance until federal authorization has been obtained.

   C. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the Agreement were executed after the determination was made.

   D. This Agreement is valid and enforceable only if sufficient funds are made available to the STATE by the United States Government or the California State Legislature for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.

   E. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

   F. State Law. This Agreement shall be interpreted according to the laws of the State of California, except as to those provisions where federal law shall apply; as to those provisions where federal law applies, the rules, regulations, statutes and executive orders of the federal government shall be applicable. In the event that any provision of this Agreement requires that CONTRACTOR observe or comply with or perform any activity in contradiction or violation of State law, the CONTRACTOR will notify STATE at once, in writing, of such provision. The remaining Agreement provisions shall not be affected. The unenforceable provisions(s) shall be renegotiated by the CONTRACTOR and STATE for mutually agreed appropriate changes and/or modifications; and the CONTRACTOR shall proceed, as soon as is possible, with PROJECT.

   G. No issuance of a Standard Agreement or amendments will be provided until proof of the project has been programmed and is in an approved FSTIP.

## EXHIBIT C

3. Enforcement/Remedies for Non-Compliance. If a CONTRACTOR materially fails to comply with any term of this Agreement, or fails to refund any moneys due STATE, the STATE may take one or more of the following actions:

   A. Disallow or temporarily withhold cash payments pending correction of the deficiency by the CONTRACTOR.
   B. Wholly or partially suspend or terminate the current award for the CONTRACTOR's PROJECT.
   C. Withhold future awards to the CONTRACTOR for the program.
   D. Withhold or demand a transfer of an amount equal to the amount paid by or owed to STATE from remaining grant balance and/or future apportionments, or any other funds due CONTRACTOR from the Federal Trust Fund or any other sources of funds.
   E. Take other remedies that may be legally available.

4. Timeliness. Time is of the essence in this agreement and shall be signed and returned by the CONTRACTOR within 90 calendar days after mailing. In the event this agreement is not signed and returned within 90 days of mailing, the PROJECT identified in Exhibit A of this AGREEMENT from FTA's grant award may at the discretion of the STATE be withdrawn and cancelled.

5. Amendment. No amendment or alteration of the terms of this Agreement shall be valid unless submitted in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties. Amendments shall be signed and returned by the CONTRACTOR within 90 calendar days after mailing. In the event this amendment is not signed within 90 days of mailing, the PROJECT identified in Exhibit A of this AGREEMENT from FTA's grant award may at the discretion of the STATE be withdrawn and cancelled.

6. Assignment. This Agreement is not assignable by the CONTRACTOR, either in whole or in part, without the consent of the STATE in the form of a formal written amendment.

7. Independent Contractor. The CONTRACTOR, and the agents and employees of the CONTRACTOR, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the STATE.

8. Antitrust Claims. The CONTRACTOR by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the CONTRACTOR shall comply with the requirements of the Government Codes Sections set out below.

   A. The Government Code Chapter on Antitrust claims contains the following definitions:

      1. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the STATE or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
      2. "Public purchasing body" means the STATE or the subdivision or agency making a public purchase. Government Code Section 4550.

   B. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

**EXHIBIT C**

C. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

D. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

9. Child Support Compliance Act. "For any Agreement in excess of $100,000, the CONTRACTOR acknowledges in accordance with Public Contract Code 7110, that:

A. The CONTRACTOR recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

B. The CONTRACTOR, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

10. Unenforceable Provision. In the event that any provision of this Agreement is unenforceable or held to be unenforceable by a court of competent jurisdiction, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

11. Priority Hiring Considerations: If this Agreement includes services in excess of $200,000, the CONTRACTOR shall give priority consideration in filling vacancies in positions funded by the Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Public Contract Code §10353.

12. State Management Plan. The STATE is designated by the Governor to administer the FTA Section 5310, 5311, 5316 and 5317 programs in California. The implementation and administration of the FTA programs are outlined in each program's State Management Plan and is available at the Department of Transportation, Division of Mass Transportation website at, http://www.dot.ca.gov/hq/MassTrans/

13. Annual Certification and Assurances. As requested by the STATE, the CONTRACTOR must complete and submit to the STATE the annual FTA Certifications and Assurances for Federal Transit Administration Assistance Programs, Certifications and Assurances Checklist and Signature Page to be provided by STATE.

14. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statue or regulations, the CONTRACTOR agrees that it will comply with the requirements of 49 U.S.C. Section 5323(h)(2) by refraining from using any Federal assistance funds awarded by STATE on behalf of the FTA to support procurements using exclusionary or discriminatory specifications.

## EXHIBIT C

15. Buy America. The CONTRACTOR shall comply with the Buy America requirements of 49 USC 5323U) and 49 CFR Part 661 for all procurements of steel, iron and manufactured products used in PROJECT. Buy America requirements apply to all purchases, including materials and supplies funded as operating costs, if the purchase exceeds the threshold for small purchases (currently $100,000). Separate requirements for rolling stock are set out at 49 USC 5323U)(2)(c) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

16. U.S. Flag Requirements.

    A. Shipments by Ocean Vessel. For third-party contracts that may involve equipment, materials, or commodities which may be transported by ocean vessels, the CONTRACTOR and subcontractors must comply with 46 U.S. C. Section 55303 and 46 CFR Part 381, "Cargo Preference-U.S. Flag Vessels."

    B. Shipments by Air Carrier. For third-party contracts that may involve shipments of federally assisted property by air carrier, the CONTRACTOR and subcontractors must comply with the "Fly America" Act and 49 U.S.C. Section 40118, "Use of United States Flag Air Carriers," and 41 CFR Sections 301-10.131 through 301-10.143.

    C. Project Travel. In accordance with 49 U.S.C. 40118 and 41 CFR Part 301-10, the CONTRACTOR and all subcontractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation, to the extent such service is available or applicable.

17. Accounting Records. The CONTRACTOR shall establish and maintain separate accounting records and reporting procedures specified for the fiscal activities of the PROJECT. The CONTRACTOR's accounting system shall conform to generally accepted accounting principles (GAAP) and uniform standards that may be established by STATE. All records shall provide a breakdown of total costs charged to the PROJECT including properly executed payrolls, time records, invoices and vouchers.

18. Worker's Compensation. The CONTRACTOR hereby warrants that it carries Workers' Compensation Insurance on all of its employees who will be engaged in the performance of this Agreement. If staff provided by the CONTRACTOR is defined as independent contractors, this clause does not apply.

19. Vehicle Operator Licensing. The CONTRACTOR is required to comply with all applicable requirements of the Federal Motor Carrier Safety Administration regulations and the California Vehicle Code including, but not limited to, the requirement that all vehicle operators have a valid State of California driver's license, including any special operator license that may be necessary for the type of vehicle operated.

20. Audit Requirements. The CONTRACTOR shall be responsible for meeting the audit requirements of OMB Circular A-133, or any revision or supplement thereto. The required audit reports shall be submitted to the State Controller with a copy to STATE in conformance with the compliance guidelines issued by the California Department of Finance. The cost of audits made in accordance with the provisions of OMB Circular A-133 is an allowable charge to this PROJECT, to the extent provided by OMB Circular A-133.

21. Record Keeping. The CONTRACTOR and all subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the performance period and for three (3) years from the date of final payment under this Agreement and all subrecipient contracts.

22. Examination of Records. STATE'S Audits Office, the State Auditor General, and any duly authorized representative of the Federal government shall have access to any books, records, and documents of the CONTRACTOR and its subcontractors that are pertinent to this Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. The CONTRACTOR shall include a clause to this effect in every subcontract entered into relative to the PROJECT.

## EXHIBIT C

23. Examination of Accounting. The CONTRACTOR'S accounting system and billing procedures are subject to audit by STATE prior to contract award, and accounting records pertaining to work performed and costs billed to STATE are subject to audit for a period of three (3) years after date of final payment under this Agreement. If the CONTRACTOR fails to retain records such as employee time cards, payroll records, travel records, equipment time and cost records, billings from subcontractors, material and equipment suppliers records that are sufficient to permit audit verification of the validity of cost charged to STATE, the CONTRACTOR will be liable for reimbursement to STATE of all unsubstantiated billings.

24. Reporting Forms. The CONTRACTOR shall furnish STATE with any additional reports or data that may be required by FTA or other federal agencies. Such reports and/or data will be submitted on forms provided by STATE.

25. Debarment and Suspension. The CONTRACTOR agrees as follows:

A The CONTRACTOR agrees to comply with the requirements of Executive Order Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. Section 6101 note; and U.S. DOT regulations on Debarment and Suspension and 49 CFR Part 29.

B. Unless otherwise permitted by FTA, the CONTRACTOR agrees to refrain from awarding any third-party contract of any amount to or entering into any sub-agreement of any amount with a party included in the "U.S. General Services Administration's (U.S. GSA) List of Parties Excluded from Federal procurement or Non-procurement Program," implementing Executive Order Nos. 12549 and 12689, "Debarment and suspension" and 49 CFR Part 29. The list also include the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order Nos. 12549 and 12689.

C. Before entering into any sub-agreements with any subrecipient, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information of that subrecipient and its "principals," as defined at 49 CFR Part 29.

D. Before entering into any third-party contract exceeding $25,000, the CONTRACTOR agrees to obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its "principals," as defined at 49 CFR 29.105 (p). The CONTRACTOR also agrees to require each third-party contractor to refrain from awarding any third-party sub-contract of any amount (at any tier) to a debarred or suspended sub-contractor, and to obtain a similar certification from any third-party subcontractor (at any tier) seeking a contract exceeding $25,000.

26. Compliance with Federal Statutes. During the performance of this Agreement, the CONTRACTOR, its assignees and successors in interest, agree to comply with all Federal statutes and regulations applicable to grantee recipients under the Federal Transit Act, including, but not limited to the following:

A Nondiscrimination- In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color and national origin. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity -The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, National Origin, - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by

**EXHIBIT C**

Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, or national origin. Such action shall include, but not be limited to, the following: 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age- In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities- In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F. R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(d) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

C. In accordance with 49 CFR Part 26 and as described in FTA Circular 4702.1B, and the California Department of Transportation Title VI Program Plan, and upon request from the STATE, the CONTRACTOR shall comply with the following reporting requirements. The CONTRACTOR is also responsible for ensuring compliance of each third-party contractor at any tier of the PROJECT.

1. Prepare and submit a Title VI Program.

2. Establish and maintain a Title VI complaint procedures.

3. Record Title VI investigations, complaints, and lawsuits.

4. Provide meaningful access to Limited English Proficient Persons.

5. Notify beneficiaries of protection under Title VI.

6. Provide additional information upon request.

7. Provide an Annual Title VI Certification and Assurance.

8. Guidance on conducting an Analysis of Construction PROJECTS.

9. Guidance on promoting Inclusive Public Participation.

10. Report minority representation on transit related Planning and Advisory Bodies.

11. Service standards.

    a. Vehicle load for each mode

    b. Vehicle headway for each mode

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c. On time performance for each mode

d. Service availability for each mode

12. Service policies

a. Transit Amenities for each mode

b. Vehicle Assignment for each mode

D. Solicitations for Subcontracts Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation by the CONTRACTOR for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

E. Information and Reports. The CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or the FTA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the STATE or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

F. Incorporation of Provisions. The CONTRACTOR shall include the provisions of these paragraphs (a) through (f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontractor or procurement as the STATE or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request the STATE to enter into such litigation to protect the interest of the STATE, and, in addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

27. Disadvantaged Business Enterprise. The CONTRACTOR agrees to:

A. Comply with U.S. DOT regulations, "Participation by Disadvantaged Enterprises in Department of Transportation Financial Assistance Programs", 49 CFR Part 26.

B. Complete and submit to STATE a DBE Implementation Agreement with the DOT-213 Standard Agreement. STATE shall provide the Implementation Agreement to the CONTRACTOR prior to vehicle ordering.

C. Report twice annually on DBE participation in their contracting opportunities; their award/commitments and actual payments.

D. Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by U.S. 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 STATE 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.).

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E. Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The CONTRACTOR, subrecipient 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 U.S. 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.

28. Section 504 and Americans with Disabilities Act Program Requirements. The CONTRACTOR will comply with 49 C.F.R. Parts 27, 37 and 38, implementing the Americans with Disabilities Act and Section 504 of the Rehabilitation Act or 1973, 29 U.S.C. Section 794, as amended.

29. Warranty for Application to the Small Urban and Rural Program. The CONTRACTOR accepts the terms and conditions of the "Special Section 13(c) Warranty for Application to the Small Urban and Rural Program," as executed by the Secretary of Labor and the Secretary of Transportation on May 31, 1979, and those terms and conditions are incorporated by reference into this Agreement.

30. Public Lands. The CONTRACTOR agrees to refrain from using in its PROJECT any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of National, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, and also refrain from using in its PROJECT any land from a historic site of National, State, or local significance unless the Federal Government makes the specific findings as required by 49 U.S.C.§ 303.

31. Energy Conservation. The CONTRACTOR agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42, U.S.C. §§ 6321 et seq.

32. Receipt of Commission. The CONTRACTOR warrants that it has not paid, and also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for these funds obtained as a consequence of this Agreement.

33. Conflict of Interest.

A In accordance with 41 U.S.C. § 22, no member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising there from.

B. The CONTRACTOR certifies that its employees and the officers of its governing body shall avoid any actual or potential conflicts of interest, and that no officer or employee who exercises any functions or responsibilities in connection with this Agreement shall have any personal financial interest or benefit which either directly or indirectly arises from this Agreement.

C. The CONTRACTOR shall establish safeguards to prohibit its employees or its officers from using their positions for a purpose which could result in private gain or which gives the appearance of being motivated for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

D. The CONTRACTOR will not be awarded a contract if the financial interests are held by a current officer or employee of the STATE. Additionally, a contract will not be awarded to an officer or employee of the STATE to provide goods and service. Likewise, the CONTRACTOR officials and employees shall also avoid actions resulting in or creating an appearance of:

1. Using an official position for private gain;

2. Giving preferential treatment to any particular person;

**EXHIBIT C**

3. Losing independence or impartiality;

4. Affecting adversely the confidence of the public or local officials in the integrity of the program.

E. Former STATE employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the agreement, or for one (1) year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the 12-month period to his or her separation from State service.

F. Neither the CONTRACTOR nor any of its employees, suppliers or subcontractors shall enter into any contract, subcontract, or arrangement in connection with the PROJECT or any property included or planned to be included in the PROJECT, in which any member, officer, or employee of the CONTRACTOR or its subcontractor, during the PROJECT term and for one year thereafter, has any direct or indirect conflict of interest. If any such present or former member, officer, or employee involuntarily acquires or had acquired prior to the beginning of the PROJECT term any such interest, and if such interest is immediately disclosed to the CONTRACTOR and such disclosure is entered upon the minutes of the CONTRACTOR 's written report to STATE of such interest, the STATE, may waive the conflict of interest; provided that the officer or employee shall not participate in any action by the CONTRACTOR or the locality relating to such contract, subcontract, or arrangement.

G. The CONTRACTOR shall insert in all contracts entered into in connection with the PROJECT or with any property included or planned to be included in any PROJECT, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer, or employee of the CONTRACTOR or of the locality during the PROJECT term or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof."

H. The provisions of this subsection shall not be applicable to any agreement between the CONTRACTOR and its fiscal depositories or to any agreement for utility services, the rates for which are fixed or controlled by a governmental agency.

34. Lobbying.

A. The CONTRACTOR agrees that it will not use Federal assistance funds to support lobbying. In accordance with 31 U.S.C. and U.S. DOT Regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, if the CONTRACTOR'S PROJECT exceeds $100,000, FTA will not make any Federal assistance available to the CONTRACTOR until FTA has received the CONTRACTOR 'S certification that the CONTRACTOR has not and will not use Federal appropriated funds to pay any person or organization to influence or attempt 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 grant, cooperative agreement or any other Federal award from which funding for the PROJECT is originally derived, consistent with 31 U.S.C. Section 1352, and;

B. If applicable, 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 Form to Report Lobbying," in accordance with the form instructions.

C. The CONTRACTOR shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) which exceed $100,000 and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of facts upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement 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.

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35. Program Fraud and False or Fraudulent Statements or Related Acts.

A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this PROJECT. Upon execution of an underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to that underlying contract or the FTA assisted PROJECT for which this contracted work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

B. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a PROJECT that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C.§ 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

C. The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

36. Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the CONTRACTOR and its employees that administer any system of records on behalf of the Federal Government under any contract:

A. The CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the CONTRACTOR agrees to obtain the express consent of the Federal Government before the CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. The CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

B. The CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

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37. Drug-Free Workplace. The CONTRACTOR certifies by signing this Agreement that it will provide a drug-free workplace, and shall establish policy prohibiting activities involving controlled substances in compliance with Government code Section 8355, et seq. The CONTRACTOR is required to include the language of this certification in award documents for all sub-awards at all tiers (including subcontracts, contracts under grants, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. To the extent the CONTRACTOR, any third-party contractor at any tier, any subrecipient at any tier, or their employees, perform a safety sensitive function under the PROJECT, the CONTRACTOR agrees to comply with, and assure the compliance of each affected third-party contractor any tier, each affected subrecipient at any tier, and their employees with 49 U.S.C. Section 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug use in Transit Operations," 49 CFR Part 655.

38. Charter Service Operations. The CONTRACTOR agrees to comply with the Charter service operations provisions pursuant to 49 CFR part 604.4, which provides that recipients and subrecipients seeking Federal assistance under the Federal Transit Laws to acquire or operate any public transportation equipment or facilities shall enter into a "Charter Service Agreement" as set out in paragraph (b) of this section. (b) A recipient shall enter into a Charter Service Agreement if it receives Federal funds for equipment or facilities under the Federal Transit Laws. The terms of the Charter Service Agreement are as follows: "The recipient agrees that it, and each of its subrecipients, and third party contractors at any level who use FTA-funded vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only in compliance with the regulations set out in 49 CFR 604, the terms and conditions of which are incorporated herein by reference." (c) The Charter Service Agreement is contained in the Certifications and Assurances published annually by FTA for applicants for Federal financial assistance. Once a recipient receives Federal funds, the Certifications and Assurances become part of its Grant Agreement or Cooperative Agreement for Federal financial assistance. The CONTRACTOR understands that the requirements of 49 CFR part 604.4 will apply to any charter service provided, the definitions in 49 CFR 604.4 apply to this agreement, and any violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

39. School Bus Operations. Pursuant to 49 U.S.C. 5323(F) and 49 CFR Part 605, the CONTRACTOR agrees that it and all its subcontractors will: (1) engage in school transportation operations in competition with private school transportation operators only to the extent permitted by an exception provided by 49 U.S.C. 5323 (f) and implementing regulations, and (2) comply with requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance awarded by FTA and authorized by 49 U.S.C. Chapter 53 or Title 23 U.S.C. for transportation projects. The CONTRACTOR understands that the requirements of 49 CFR part 605 will apply to any school transportation it provides, that the definitions of 49 CFR part 605 apply to any school transportation agreement, and a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

40. Use of $1 Coins. As applicable, and to comply with Section 104 of the Presidential $1 Coin Act of 2006, 31 U.S.C. Section 5312(p), the CONTRACTOR must ensure that FTA assisted property that requires the use of coins or currency in public transportation service or supporting service be fully capable of accepting and dispensing $1 coins.

41. Protection of Animals. The CONTRACTOR must ensure that all third-party contractors providing services involving the use of animals must comply with the Animal Welfare Act, 7 U.S.C. Sections 2131 et seq. and Department of Agriculture regulations, "Animal Welfare," 9 CFR Subchapter A, Parts 1,2,3, and 4.

42. Additional Termination Clauses.

A Termination for Convenience. When it is in the STATE'S best interest, the STATE reserves the right to terminate this Agreement, in whole or in part, at any time by providing a ten (10) day written notice to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the STATE. If the CONTRACTOR has any property in its possession belonging to the STATE, the CONTRACTOR will account for the same, and dispose of it in the manner the STATE directs.

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B. Termination for Default. The STATE may terminate this Agreement upon a finding that the CONTRACTOR has not made satisfactory progress toward procuring the PROJECT equipment, services, salary and wages, as appropriate, within twelve (12) months of execution of this Agreement, has not billed for operating assistance funds within twelve (12) months of execution of this Agreement, or that the CONTRACTOR is otherwise not complying with the terms of this Agreement. Termination shall be by written notice specifying the reason for termination and giving the CONTRACTOR thirty (30) days to correct the default. The STATE shall be the sole judge as to whether the CONTRACTOR's corrective measures are adequate. If the CONTRACTOR fails to remedy to STATE's satisfaction the breach or default or any of the terms, covenants, or conditions of this Agreement the STATE shall have the right to terminate the Agreement without any further obligation to the CONTRACTOR. Any such termination for default shall not in any way operate to preclude the STATE from also pursuing all available remedies against the CONTRACTOR.

C. Period of Performance Extension. If it is later determined by the STATE that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the CONTRACTOR, the STATE, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

D. Mutual Termination. The PROJECT may also be terminated if the STATE and the CONTRACTOR agree that its continuation would not produce beneficial results commensurate with the further expenditure of funds or if there are inadequate funds to operate the PROJECT equipment or otherwise complete the PROJECT.

43. Disputes. The STATE and the CONTRACTOR shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the CONTRACTOR shall submit to the authorized STATE Representative for this Agreement or designee a written demand for a decision regarding the disposition of any dispute arising under this Agreement. The STATE Representative shall make a written decision regarding the dispute and will provide it to the CONTRACTOR. The CONTRACTOR shall have an opportunity to challenge the STATE Representative's determination but must make that challenge in writing within ten (10) working days to the STATE's Chief, Office of Federal Transit Grants or his/her designee. [If the CONTRACTOR challenge is not made within the ten (10) day period, the STATE Representative shall become the final decision of the STATE.] The STATE and the CONTRACTOR shall submit written, factual information and supporting data in support of their respective positions. The decision of the STATE's Chief, Office of Federal Transit Grants or his/her designee shall be final, conclusive and binding regarding the dispute, unless the CONTRACTOR commences an action in court of competent jurisdiction to contest the decision in accordance with Division 3.6 of the California Government Code.

44. Procurement. For all procurements of property, supplies, equipment or services under an FTA assisted grant, the CONTRACTOR shall provide full and open competition and comply with the procurement requirements set forth in 49 U.S.C. Section 5325(a), applicable third-party procurement requirements of 49 U.S.C. chapter 53 and other procurement requirements of Federal laws in effect now or as amended to the extent applicable. The CONTRACTOR shall prepare a bid package, including equipment and material specifications or a scope of work. In accordance with applicable U.S. DOT third-party procurement regulations at 49 C.F.R. § 18.36 and the provisions of FTA Circular 4220.1F, "Third-Party Contracting Guidance," November 1, 2008, and any later revision thereto, the CONTRACTOR agrees that it may not use FTA assistance to support its procurements unless there is satisfactory compliance with Federal laws and regulations including but not limited to the following:

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A. To state clearly that the final contract award to any bidder requires prior written approval by the STATE and that bids are consistent with the PROJECT equipment description identified in Exhibit A, Scope of Work.

B. To comply with applicable Federal laws and regulations including, but not limited to, Federal transit laws at 49 U.S.C. Chapter 53, FTA regulations, and other Federal laws and regulations that contain requirements applicable to FTA recipients and their FTA assisted procurements. Also, to include all required Federal procurement provisions in each subcontract financed in whole or in part with Federal assistance provided by FTA.

C. For all contracts and subcontracts financed with Federal assistance, to comply with cargo preference requirements of 46 U.S.C.§ 1241 and 46 CFR Part 381 when contracts involve equipment, materials, or commodities which may be transported by ocean vessels.

D. To comply with the requirements of 49 U.S.C.§ 5323 (c) and FTA regulations, "Bus Testing", 49 C.F.R. Part 665, and any revision thereto.

E. To comply with the requirements of 49 U.S.C.§ 5323(1) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663, and any revision thereto.

F. To comply with the requirements of 49 U.S.C. § 5325(b) to award a third-party contract using a competitive procurement process.

G. In accordance with 49 U.S.C. § 5325(e)(1), in the procurement of rolling stock, may not enter into a multi-year contract to purchase additional rolling stock and replacement parts with options exceeding five (5) years after the date of the original contract.

H. To comply with 49 U.S.C. § 5325(f), agrees that any third-party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.

I. To comply with the requirements of 49 U.S.C. Section 5323(m) and FTA regulations, "Pre- Award and Post-Delivery Audits of Rolling Stock Purchases, " 49 CFR Part 663, and any revision thereto.

J. To award a third-party contract using a competitive procurement process in compliance with the requirements of 49 U.S.C. Section 5325.

K. To comply with the requirements of 49 U.S.C. Section 5318(e) and FTA regulations, "Bus Testing", 49 CFR Part 665, including the certification that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or before authorizing final acceptance of that bus, that model of bus will have been tested at the ALTOONA Bus Research and Testing Center. The CONTRACTOR must obtain the final testing report and provide a copy of the report to the STATE.

L. To require each bidder to certify that it has complied with 49 CFR 26, which requires each transit vehicle manufacturer to establish annual goals for the participation of disadvantaged business enterprise and to submit those goals to FTA for approval.

M. To comply with 49 U.S.C. Section 5323U), FTA's Buy America regulations at 49 CFR Part 661 and any amendments thereto, and any implementing guidance issued by FTA, with respect to each third-party contract.

N. To meet applicable regulations of 49 CFR Part 663 in the purchase of revenue rolling stock.

## EXHIBIT C

O. In subcontracts exceeding $100,000, to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et. seq. and Clean Water Act, as amended, 33 U.S.C. Section 1251 et. seq. Agrees to report and require each third-party contractor or subcontractor at any tier to report any violation of these requirements resulting from any PROJECT implementation activity of a third-party contractor, subcontractor, or itself to FTA and the appropriate U.S. EPA Regional Office.

P. To comply with U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the CONTRACTOR agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

Q. To comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

R. To the extent applicable, agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by MAP-21 § 5307(c), 23 U.S.C.§ 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit PROJECTs," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

S. In accordance with 40 CFR Part 85, "Control of Air Pollution from Mobile Sources," 40 CFR Part 86, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," and 40 CFR Part 600, "Fuel Economy of Motor Vehicles, the CONTRACTOR must include provisions in all third-party contract for procurement of rolling stock to ensure compliance with applicable Federal air pollution control and fuel economy regulations.

T. CONTRACTOR shall refer to FTA "Best Practices Procurement Manual" for additional procurement guidance on procurement processes and any omissions applicable to the PROJECT. The CONTRACTOR 'S failure to comply with all mandates shall constitute a material breach of this Agreement.

U. CONTRACTOR must comply with applicable cost principles circulars, current in Title 2 of the Code of Federal Regulations, in determining whether project costs are allowable or unallowable. Title 2 CFR Part 225, previously OMB Circular A-87, establishes principles and standards for determining costs applicable to grants, contracts, and other agreements with State and local governments and federally recognized Indian tribal governments. 2 CFR Part 230 previously OMB Circular A-122, establishes cost principles for nonprofits. Where applicable, CONTRACTOR must comply with cost principles of FAR 31.2.

V. CONTRACTOR must have written protest procedures covering the pre-bid/pre-proposal, post proposal, and post award processes, and shall in all instances disclose to all bidders the CONTRACTOR's protest and the STATE's appeal procedures. All CONTRACTOR's protest decisions must be dated and in writing. A protester must exhaust all administrative remedies with the CONTRACTOR before pursuing an appeal with the STATE. Reviews of protests by the STATE will be limited to:

1. CONTRACTOR 's failure to have or follow its own protest procedures, or its failure to review a complaint or protest
2. Violations of the Federal or State law or regulation.

An appeal to the STATE must be received or postmarked ten (10) calendar days (includes mailing time) from the date of the protest decision (See Exhibit A, 2 for contact person and his/her address).

## EXHIBIT C

45. Bid Proposal and Contract Award. All bid solicitation documents, proposed vendor selection and request for non-competitive bid must be reviewed and approved by the STATE prior to the award of the contract. No award shall be made without the written approval from the STATE. The CONTRACTOR (or procurement agent acting on its behalf) shall prepare the bid documents, solicit and receive competitive bids or proposals, shall evaluate the bids or proposals received, and shall select the lowest price compliant bid for award.

    A. The CONTRACTOR (or procurement agency acting on its behalf) shall forward to the STATE, at least thirty (30) days prior to the release of the bid solicitation, a copy of the bid solicitation document proposed contract, and bidders list.

    B. Prior to contract award, the CONTRACTOR (or procurement agency acting on its behalf) shall forward to STATE a list of all bids, proposals, or price quotations received, a copy of the selected bid or proposal, copy of the bids or proposals of all those whose prices are lower than the selected vendor's, an explanation of the basis for selecting the selected vendor and for rejecting lower bids (if any). In the case of a single bid, sole source, or negotiated price contract, this shall include a statement by the CONTRACTOR that the price is fair and reasonable and the basis for that determination (FTA Circular C 4220.1F "Third-party Contracting Guidance").

46. FTA Regulations, Policies, Procedures and Directives. The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (15) dated October, 2008) between the STATE and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The CONTRACTOR's failure to so comply shall constitute a material breach of this Agreement. In the event any portion, term, condition or provision of this Agreement should be deemed illegal or in conflict with the laws of the State of California or with Federal law or otherwise be unenforceable, the remaining portion, terms, conditions or provisions shall not be affected thereby.

47. Amendments to Federal, State and Local Laws, Regulations and Directives. The terms of the most recent amendment to any Federal, State, or local laws, regulations, FTA directives, and amendments to the grant or cooperative contract that may be subsequently adopted, are applicable to the PROJECT to the maximum extent feasible, unless FTA provides otherwise in writing.

48. Disposition of Equipment or Property. The disposition of all PROJECT equipment or property shall be made in accordance with the requirements of 49 C.F.R. Part 19, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations" and FTA C 9070.1F (Section 5310) and 49 U.S.C. § 5310. Whenever any PROJECT equipment is withdrawn from the PROJECT for any reason, the CONTRACTOR shall immediately notify the STATE. Should the PROJECT be terminated, all property procured under this agreement becomes property of the STATE and may be transferred to other eligible contractors at the sole discretion of the STATE. At the option of the STATE, the CONTRACTOR shall do one of the following:

    A. Written Notice of Termination. The STATE may terminate this contract upon finding that the CONTRACTOR is not operating the PROJECT equipment in accordance with the project description in Exhibit A, Scope of Work, or that the CONTRACTOR is otherwise not complying with the terms of this contract. Termination shall be by written notice specifying the reason for termination and giving the CONTRACTOR thirty (30) days to correct the default. The STATE shall be the sole judge as to whether the CONTRACTOR'S corrective measures are adequate. If CONTRACTOR fails to remedy to STATE'S satisfaction the breach or default or any of the terms, covenants, or conditions of this contract the STATE shall have the right to terminate the contract without any further obligation to the CONTRACTOR. Any such termination for default shall not in any way operate to preclude the STATE from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default. Once a contract has been terminated within the provisions of this section, the STATE reserves the right to seize vehicles or equipment procured under this agreement.

**EXHIBIT C**

B. Remit to the STATE the proportional amount of current market value that exceeds $5,000 per unit at the time of disposition, if any, of PROJECT equipment which shall be based on the percentage of the FTA grant funds paid by CONTRACTOR under this agreement. Fair market value shall be deemed to be the value of the PROJECT equipment as determined by a competent appraisal at the time the equipment is withdrawn from use; and

C. Return the equipment to the STATE in the same condition as when received by the CONTRACTOR, except for reasonable wear and tear resulting from its use. The parties shall thereupon determine the amount of compensation, if any, to be paid by the CONTRACTOR to the STATE in order to avoid any STATE liability to FTA or to others.

49. Property Maintenance and Inspection. While the PROJECT is in the possession or control of the CONTRACTOR, the CONTRACTOR shall operate or maintain the PROJECT in accordance with detailed maintenance and inspection schedules provided by the manufacturer, keeping a written log or record of all repairs and maintenance. STATE and the FTA shall have the right to conduct periodic inspections for the purpose of confirming the existence, condition, and proper maintenance of the PROJECT. No alterations may be made to the PROJECT in its as-received condition without first receiving written approval from STATE.

50. Insurance.

A While the PROJECT equipment is in the possession or control of the CONTRACTOR, the CONTRACTOR shall maintain adequate insurance protection against liability for damages for personal bodily injuries (including death), property damage, and vehicle damage as conditioned in this section.

B. The minimum limits of liability, shown below in parts J and K, may be increased by the STATE at any time upon thirty (30) days notice to the CONTRACTOR.

C. The CONTRACTOR shall place Vehicle Physical Damage, including collision and comprehensive (fire, theft, etc.) insurance for amounts equal to the actual cash value of each vehicle and any other equipment that is part of the PROJECT equipment, with deductibles acceptable to the STATE. This insurance shall include a provision designating the State of California, Department of Transportation as the Loss Payee for all purposes of adjusting, settling, or paying claims for damage to the insured vehicle(s).

D. The STATE, its officers, employees, and agents shall be named as additional insured.

E. The STATE is designated as the Loss Payee for claims of damage to the insured vehicle(s).

F. The STATE will not be responsible for any premiums or assessments on the policy.

G. The CONTRACTOR, and/or third-party subcontractor, shall furnish to the STATE, before delivery of the PROJECT vehicle(s) to the CONTRACTOR, a certificate of insurance issued by a company licensed to write such insurance in California.

H. Prior to the annual insurance policy expiration date, the CONTRACTOR shall furnish to the STATE a new certificate of insurance or other written evidence of insurance satisfactory to the STATE. At any time that such evidence of insurance has not been provided, the STATE shall have the right immediately to take possession of the PROJECT equipment and to enter the property of the CONTRACTOR for this purpose.

## EXHIBIT C

I. The CONTRACTOR shall provide the STATE at least thirty (30) days notice of cancellation or material change of the vehicle insurance policy.

J. Public Agency or For-Profit CONTRACTORS. The following terms apply to all CONTRACTORS who are defined as a Public Agency or For-Profit entity, regardless if they are providing the service as the prime CONTRACTOR or subcontractor:

1. Property Damage: The CONTRACTOR shall place property damage, whether the property of one or more claimants, in an amount not less than one million five hundred thousand dollars ($1,500,000) per occurrence (combined single limit) for property damage liability combined in respect to vehicles with seating capacity of fifteen (15) or less, or five million dollars ($5,000,000) per occurrence for property damage liability combined in respect to vehicles with seating capacity of sixteen (16) or more.

2. Bodily Injury: The CONTRACTOR shall place bodily injury in an amount not less than one million five hundred thousand dollars ($1,500,000) per occurrence (combined single limit) in respect to vehicles with seating capacity of fifteen (15) or less, or five million dollars ($5,000,000) per occurrence for bodily injury in respect to vehicles with seating capacity of sixteen (16) or more.

3. Vehicle Physical Damage: The CONTRACTOR shall place Vehicle Physical Damage, including collision and comprehensive (fire, theft, etc.) insurance for amounts equal to the actual cash value of each vehicle and any other equipment that is part of the PROJECT equipment, with deductibles acceptable to the STATE. This insurance shall include a provision designating the State of California, Department of Transportation as the Loss Payee for all purposes of adjusting, settling, or paying claims for damage to the insured vehicle(s).

K. Non-Profit Agencies: The following terms apply to all CONTRACTORS who are defined as a non-profit agency, regardless if they are providing the service as the prime CONTRACTOR or subcontractor:

1. Property Damage: The CONTRACTOR shall place property damage, whether the property of one or more claimants, in an amount not less than one million dollars ($1,000,000) per occurrence (combined single limit) for property damage liability combined in respect to vehicles with seating capacity of fifteen (15) or less, or one million five hundred thousand dollars ($1,500,000) per occurrence for property damage liability combined in respect to vehicles with seating capacity of sixteen (16) or more.

2. Bodily Injury: The CONTRACTOR shall place bodily injury in an amount not less than one million dollars ($1,000,000) per occurrence (combined single limit) in respect to vehicles with seating capacity of fifteen (15) or less, or one million five hundred thousand dollars ($1,500,000) per occurrence for bodily injury in respect to vehicles with seating capacity of sixteen (16) or more.

3. Vehicle Physical Damage: The CONTRACTOR shall place Vehicle Physical Damage, including collision and comprehensive (fire, theft, etc.) insurance for amounts equal to the actual cash value of each vehicle and any other equipment that is part of the PROJECT equipment, with deductibles acceptable to the STATE. This insurance shall include a provision designating the State of California, Department of Transportation as the Loss Payee for all purposes of adjusting, settling, or paying claims for damage to the insured vehicle(s).

## EXHIBIT C

51. Excise Tax. The State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees' wages. The STATE will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

52. Potential Subcontractors

A No Relationship Between STATE and Third-Party Contractor. Nothing contained in this Agreement or otherwise, shall create any contractual relation, obligation or liability between the STATE and any third-party contractors, and no third-party agreement shall relieve the CONTRACTOR of his responsibilities and obligations hereunder. The CONTRACTOR agrees to be as fully responsible to the STATE for the acts and omissions of its third-party contractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONTRACTOR. The CONTRACTOR'S obligation to pay its third-party contractors is an independent obligation from the STATE'S obligation to make payments to the CONTRACTOR. As a result, the STATE shall have no obligation to pay or to enforce the payment of any moneys to any third-party contractor.

B. Third-Party Contracts and Subagreements Affected. To the extent applicable, Federal requirements extend to third-party contractors and their contracts at every tier, and to the subcontractors of third-party contractors and their subagreements at every tier. Accordingly, the CONTRACTOR agrees to include, and to require its third-party contractors to include appropriate clauses in each third-party contract and each subagreement financed in whole or in part with financial assistance provided by FTA.

C. No Federal Government Obligations to Third Parties. The CONTRACTOR agrees that, absent of the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any contractor, any third-party contractor, or any other person not a party to the Grant Agreement in connection with the performance of the PROJECT. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, or third-party agreement, the Federal Government continues to have no obligation or liabilities to any party, including the CONTRACTOR or third-party contractor.

D. Obligations on Behalf of the STATE. The CONTRACTOR shall have no authority to contract for or on behalf of, or incur obligations on behalf of the STATE.

E. STATE Approval of All Third-Party Contracts. The STATE shall approve in writing all proposed third-party contract agreements, Memorandums of Understanding (MOU), or similar documents relating to the performance of the Agreement prior to implementation. The CONTRACTOR agrees that it will not enter into any third-party contracts unless the same are approved in writing by the STATE. Any proposed amendments to such third-party contracts must be approved by the STATE prior to implementation.

53. Narrowband Migration Deadline. The CONTRACTOR must comply with the Federal Communications Commission Public Notice DA09-2589 deadline for private land mobile radio services in the 150-174 MHz and 421-512 MHz bands which will migrate to narrowband (12.5 kHz or narrower) technology effective January 1, 2013.

54. Indemnification. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CONTRACTOR and/or its agents under or in connection with any work, authority or jurisdiction conferred upon CONTRACTOR under this Agreement. It is understood and agreed that CONTRACTOR and/or its agents shall fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CONTRACTOR and/or its agents under this Agreement., employees, representatives, and agents.

## EXHIBIT D

### SECTION 5311

### SPECIAL TERMS AND CONDITIONS

1. Private for profit. The CONTRACTOR assures and certifies that private for profit transit operators have been afforded a fair and timely opportunity to participate to the maximum extent feasible in the planning and provision of the proposed transportation services.

2. Environmental Impact and Related Procedures. The CONTRACTOR assures and certifies that the PROJECT complies with regulations of 23 CFR Part 771.

3. Research, Development, Demonstration, Deployment, and Special Studies. In accordance with 37 CFR Part 401, 49 CFR Parts 18 and 19, the CONTRACTOR must comply with patent and rights in data requirements for federally assisted contracts involving experimental, developmental or research work.

4. Useful Life Standard. In accordance with FTA Circular 5010.1D, the following Useful Life Standards shall determine when PROJECT property will no longer be subject to monitoring and reporting requirements once the CONTRACTOR notifies the STATE in writing. This criteria is subject to review by the 5311 Branch Chief if either factor is less than the value shown herein.

| | |
|---|---|
| Large Size, Heavy-Duty Transit Buses | 12 years or 500,000 miles |
| Small Size, Heavy-Duty Transit Buses | 10 years or 350,000 miles |
| Medium Size, Medium-Duty Transit Buses | 7 years or 200,000 miles |
| Medium Size, Light-Duty Transit Buses | 5 years or 150,000 miles |
| other Light-Duty Vehicles (Small Buses & Specialized Vans) | 4 years or 100,000 miles |
| Bus Shelters | 10 years |
| Facilities (Concrete, Steel, and Frame Construction) | 40 years |

In reference to rolling stock, while age and mileage are the primary criteria used to determine the useful life of vehicles, this determination is based on the date the vehicle was put into active service, not the actual model year of the vehicle.

5. Disposition.

   A. The disposition of all PROJECT equipment or property shall be made in accordance with FTA's implementing regulations of 49 CFR Part 18 and FTA Circular 9040.1F (Section 5311) and 49 U.S.C. § 5311. Prior to the disposition of any FTA funded capital equipment including rolling stock and facilities, the CONTRACTOR must submit to the STATE a report that identifies the capital equipment to be retired or disposed of. The report will be used to verify that a vehicle has met the minimum useful life, as established in Section 4 of this Exhibit, and that there is no remaining Federal interest. The report must include the following information:

      1. Equipment Serial Identification Number or Vehicle Identification Number or Property Location;

      2. Make and Model of the equipment;

      3. Date when equipment was placed into service;

      4. Current age and mileage of rolling stock;

      5. Established minimum useful life period (include miles for rolling stock);

      6. Proposed date of removal from service;

      7. Disposition outcome (sale, transfer, use as backup);

      8. Current market value; and

**EXHIBIT D**

9. Proposed anticipated spare ratio.

B. Whenever any PROJECT property is withdrawn from the service for any reason prior to meeting the Useful Life standard, and at the direction of the STATE, the CONTRACTOR shall be required to do one of the following:

1. Remit to the STATE, for repayment to the FTA, a proportional amount of the fair market value of the property, which shall be determined on the basis of the ratio of the Federal grant funds paid under this Agreement to the actual purchase cost of the property. Fair market value shall be deemed to be the unamortized value of the remaining service life per unit, based on a straight-line depreciation of the original purchase price, or the Federal share of the sales price.

2. Relinquish the property to the STATE in the same condition as when received by the CONTRACTOR except for reasonable wear and tear resulting from its use. The parties shall thereupon determine the amount of compensation, if any, to be paid by the CONTRACTOR to the STATE in order to avoid any STATE liability to FTA or to others. Upon subsequent disposal of the property, the STATE shall reimburse the CONTRACTOR for its proportional amount of the property value received or identified by the STATE, if any.

3. When PROJECT property is lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the property immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. Based on the calculation, the proceeds shall be applied to the cost of replacing the damaged or destroyed PROJECT property taken out of service.

4. If any damage to PROJECT property results from abuse or misuse occurring with the CONTRACTOR's knowledge and consent, the CONTRACTOR agrees to restore the PROJECT property to its original condition or refund the value of the Federal interest in that property to the STATE.

C. When any PROJECT property is withdrawn from service <u>after it has met its Useful Life standard</u>, and at the direction of the STATE, the CONTRACTOR shall be required to do one of the following:

1. <u>For PROJECT property with Fair Market Value Greater Than or Equal to $5,000</u>. The CONTRACTOR will remain the registered owner and the lien holder. Should the CONTRACTOR choose to sell the property, the STATE must be notified in advance of the pending sale and outline in writing the terms of the sale and the intended use of the sale revenue. All sale revenue must be retained in the CONTRACTOR 's transportation program. Supporting documentation on the use of sale revenue must be provided to the STATE upon request.

2. <u>For PROJECT property with Fair Market Value Less Than $5,000</u>. The CONTRACTOR will remain the registered owner and the lien holder. All proceeds from the sale of PROJECT property must be retained in the CONTRACTOR's transportation program. Supporting documentation on the use of sale revenue must be provided to the STATE upon request.

6. <u>Complementary Paratransit Service</u>. The CONTRACTOR, providing complementary paratransit service, certifies that they have submitted to the STATE an initial plan for compliance with the complementary paratransit service provision by January 26, 1992, as required by 49 CFR Part 37, and have provided the STATE annual updates to its plan each year, as required by 49 CFR Part 37, Section 139U].

7. Reporting Requirements. Upon request by the STATE, the CONTRACTOR must submit the following reports (Failure to meet these requirements may result in withholding of all invoice payments):

A. National Transit Data (NTD) Reporting. CONTRACTOR shall submit their data to Caltrans (Department) in a timely manner annually, per due dates as directed by the Department NTD annual reporting is required by FTA Circular 9040.1F, Section 12[e].

**EXHIBIT D**

B. Drug & Alcohol Management Information System (MIS) Reporting. CONTRACTOR shall submit their MIS data annually, as required by FTA Circular 9040.1F, Section 14.

C. Disadvantaged Business Enterprise Reporting. CONTRACTOR shall report their DBE participation in their Other Equipment procurement opportunities using the STATE'S DBE Award/Commitments biannually and Actual Payments forms to be provided by the STATE at the time of submittal of the final request for reimbursement. Additional DBE requirements are provided at Exhibit C Part 28.

D. Milestone Reporting. The CONTRACTOR shall submit a semi-annual report of its use of the Capital PROJECT (vehicles, facilities, and other equipment), and an annual report of progress made for Operating Assistance PROJECT within thirty (30) calendar days after the close of each federal reporting period. The federal reporting periods for Capital PROJECT are October 1 through March 31 and April1 through September 30. The federal reporting period for Operating Assistance PROJECT is October 1 through September 30. Semi-annual reports are due no later than April 30 for the first half and October 30 for the second half. Annual reports are due no later than October 30. The report shall contain information requested by the STATE to indicate the extent to which the CONTRACTOR is carrying out the PROJECT in accordance with the terms of this contract.

E. Federal Funding Accountability and Transparency Act (FFATA) Reporting. CONTRACTOR and SUBCONTRACTOR shall submit their FFATA reporting, as required by the FFATA Public Law 109-282,31 U.S. C. 6101.

8. This Agreement may be amended in writing, by mutual consent of the parties, on a case-by-case basis where warranted. The request for an amendment must be made in writing to the Division of Mass Transportation, Chief of Rural Transit and Intercity Bus Branch, at least one month before the Agreement expiration date.

9. The CONTRACTOR agrees to the comply with applicable transit employee protective requirements as follows:

A. Transit Employee Protective Requirements for PROJECTs Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas- If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the CONTRACTOR agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

B. The CONTRACTOR also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

10. Purchase Order. Upon approval by the STATE of a procurement award, the CONTRACTOR (or procurement agent acting on its behalf) may issue a purchase order for the PROJECT equipment. Each purchase order shall:

A. Be consistent with the approved bid award;

B. Include a reference to the STATE's contract number assigned this Agreement.

11. Property Ownership and Relinquishment. At all times while the PROJECT property is in the possession or control of the CONTRACTOR, the CONTRACTOR shall be the registered owner and STATE shall be the legal owner or lien holder. The CONTRACTOR shall not transfer ownership of the PROJECT property at any time while this Agreement is in effect. As the lien holder, the STATE may take possession of the PROJECT property, as a result of the CONTRACTOR's non-compliance with contract terms or by mutual agreement between the STATE and the CONTRACTOR. The STATE shall retain the original Certificate of Title until such time that disposition of the PROJECT property is released by the STATE to the CONTRACTOR or other appropriate party as outlined in Exhibit D, Paragraph 4.

12. Liability Insurance. In addition to Exhibit C, Section 55, under Insurance, the following provisions will also apply:

**EXHIBIT D**

A. The CONTRACTOR is responsible for any deductible or self-insured retention contained within the insurance program.

B. Coverage must be in force for the complete term of this Agreement. If insurance expires during the term of the Agreement, a new certificate must be received by the STATE at least ten (10) days after the expiration of this insurance. This new insurance must still meet the terms of this Agreement.

C. In the event CONTRACTOR fails to keep in effect at all times the specified insurance coverage, the STATE may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of the Agreement.

D. Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the STATE.

1. Commercial General Liability

a. The limits of liability shall be at least

i. $2,000,000 for each occurrence (combined single limit for bodily injury and property damage).

ii. $2,000,000 aggregate for products completed operations

iii. $4,000,000 general aggregate. This general aggregate limit shall apply separately to the CONTRACTOR's work under this Agreement.

iv. $15,000,000 umbrella or excess liability. For projects over $25,000,000 only, an additional $10,000,000 umbrella or excess liability (for a total of $25,000,000). Umbrella or excess policy shall include products liability completed operations coverage and may be subject to $15,000,000 or $25,000,000 aggregate limits. Further, the umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

b. The STATE, including their officers, directors, agents, and employees, shall be named as additional insureds under the Commercial General Liability policy with respect to liability arising out of or connected with work or operations performed by or on behalf of CONTRACTOR under this Agreement.

c. The policy shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance. Any other insurance or self-insurance maintained by the STATE will be excess only and shall not be called upon to contribute with this insurance.

13. Loss or Damage to PROJECT Equipment. The CONTRACTOR shall notify the STATE within ten (10) working days of any loss or damage to PROJECT equipment, including, but not limited to loss by accident, fire, vandalism, or theft.

14. <u>Third Party Construction Contract.</u>

A. Davis-Bacon. In accordance with the requirements of 49 U.S.C. § 5333(a) and the implementing regulations of 29 CFR Part 5, to comply with the employee protection requirements of the Davis-Bacon Act for construction activities exceeding $2,000 performed in connection with the PROJECT. The Davis-Bacon Act applies to contracts in excess of $2,000 for construction, alteration, or repair of public buildings or public works and requires the inclusion of a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor.

B. Bonding. For construction or facility improvement contracts or subcontracts exceeding $100,000, the following

## EXHIBIT D

bonding requirements must be included: Bid guarantee from each bidder equivalent to five (5%) percent of the bid price; performance bond on the part of the CONTRACTOR for 100 percent of the contract price; and payment bond in the amount of (1) 50% of the contract price if the contract price is not more than $1 million or, (2) 40% of the contract price if the contract price is more than $1 million but not more than $5 million, or (3) $2.5 million if the contract price is more than $5 million.

C. Copeland Anti-Kickback. For construction or facility improvement contracts or subcontracts exceeding $100,000 and in accordance with 18 U.S.C. Section 874, Copeland "Anti-Kickback" Act, 29 CFR Part 3, the CONTRACTOR and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," the CONTRACTOR and subcontractors are prohibited from inducing, by any means, any employee, to give up any part of his or her compensation to which he or she is otherwise entitled.

D. Construction Safety. As prohibited by the safety requirements of Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 3704 and 29 CFR Part 1926, "Safety and Health Regulations for Construction," the CONTRACTOR and subcontractors must ensure safety at construction sites so that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous.

# ATIACHMENT L

## Division of Local Assistance

***(All Exhibits Referenced within Section)***

# EXHIBIT 9-A DBE IMPLEMENTATION AGREEMENT FOR LOCAL AGENCIES

## CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) DISADVANTAGED BUSINESS ENTERPRISE (DBE) IMPLEMENTATION AGREEMENT

For the City/County of _____, hereinafter referred to as "SUB-RECIPIENT."

### I. Definition of Terms

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

### II. Objective/Policy Statement (49 CFR 26.1 and 26.23)

SUB-RECIPIENT intends to receive federal financial assistance from the U. S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans), and as a condition of receiving this assistance, SUB-RECIPIENT will sign the California Department of Transportation Disadvantaged Business Enterprise Implementation Agreement (hereinafter referred to as Agreement). SUB-RECIPIENT agrees to implement the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan (hereinafter referred to as the DBE Program Plan) as it pertains to local agencies. The DBE Program Plan is based on U.S. Department of Transportation (DOT), 49 CFR 26 requirements.

It is the policy of SUB-RECIPIENT to ensure that DBEs, as defined in 49 CFR 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also SUB-RECIPIENT's policy:

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

### III. Nondiscrimination (49 CFR 26.7)

SUB-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 26 on the basis of race, color, sex, or national origin. In administering the local agency components of the DBE Program Plan, SUB-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 Plan with respect to individuals of a particular race, color, sex, or national origin.

### IV. Annual DBE Submittal Form (49 CFR 26.21)

SUB-RECIPIENT will provide to the Caltrans District Local Assistance Engineer (DLAE) a completed "*Local Agency DBE Annual Submittal Form*" (Exhibit 9-B), by June 30 of each year for the following Federal Fiscal Year (FFY). This form must include the name, phone number, email address of the designated Disadvantaged Business Enterprise Liaison Officer (DBELO), and the choice of Prompt Pay Provision to be used by SUB-RECIPIENT for the following FFY.

## V. Race-Neutral Means of Meeting Caltrans Overall Statewide Annual DBE Goal (49 CFR 26.51(a))

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

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

## VI. Race-conscious Means of Meeting Caltrans Overall Statewide Annual DBE Goal (49 CFR 26.51(d))

SUB-RECIPIENT must establish DBE contract goals to meet any portion of Caltrans Overall Statewide Annual DBE Goal that cannot be achieved through race-neutral means.

## VII. Quotas (49 CFR 26.43)

SUB-RECIPIENT will not use quotas or set-asides in any way in the administration of the local agency component of the DBE Program Plan.

## VIII. DBE Liaison Officer (DBELO) (49 CFR 26.25)

SUB-RECIPIENT has designated a DBE Liaison Officer. The DBELO is responsible for implementing the DBE Program Plan as it pertains to the SUB-RECIPIENT, and ensures that the SUB-RECIPIENT is fully and properly advised concerning DBE Program Plan matters. [Specify resources available to the DBELO; e.g., the DBELO has a staff of two professional employees assigned to the DBE program on a

full-time basis and two support personnel who devote a portion of their time to the program.] The name, address, telephone number, email address, and an organization chart displaying the DBELO's position in the organization are found in

Attachment _____ to this Agreement. This information will be updated annually and included on the DBE Annual Submittal Form.

The DBELO is responsible for developing, implementing, and monitoring the SUB-RECIPIENT's requirements of the DBE Program Plan in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to determine DBE contract goals.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and DBE race-neutral issues.
8. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

## IX. Federal Financial Assistance Agreement Assurance (49 CFR 26.13)

Each agreement SUB-RECIPIENT signs with Caltrans must include the following assurance:

The SUB-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 26. The SUB-RECIPIENT shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The SUB-RECIPIENT's DBE Program, as required by 49 CFR 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 SUB-RECIPIENT of its failure to carry out its approved program, Caltrans may impose sanctions as provided for under 49 CFR 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.).

Each contract SUB-RECIPIENT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

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 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 SUB-RECIPIENT deems appropriate.

## X. DBE Financial Institutions (49 CFR 26.27)

SUB-RECIPIENT must 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 DBELO. The Caltrans Disadvantaged Business Enterprise Program may offer assistance to the DBELO.

## XI. Directory (49 CFR 26.31)

SUB-RECIPIENT will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's website at: www.dot.ca.gov/hq/bep.

## XII. Required Contract Clauses (49 CFR 26.13 and 26.29)

SUB-RECIPIENT ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

### A. Contract Assurance

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 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 SUB-RECIPIENT deems appropriate.

**NOTE:** This language is to be used verbatim, as is stated in *"Required Federal-aid Contract Language"* (Exhibit 12-G). See also 49 CRF 26.13(b).

### B. Prompt Payment

***Prompt Progress Payment to Subcontractors***

The local agency shall require contractors and subcontractors to be timely paid as set forth in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 7-day is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. 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 by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

***Prompt Payment of Withheld Funds to Subcontractors***

The local agency shall ensure prompt and full payment of retainage from the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed and accepted. This shall be accompanied by including; either (1), (2), or (3) of the following provisions [local agency equivalent will need Caltrans approval] in their federal-aid contracts to ensure prompt and full payment of retainage [withheld funds] to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. 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 by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

2. No retainage will be held by the agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. 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 by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. 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 by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

## XIII. Local Assistance Procedures Manual

The SUB-RECIPIENT will advertise, award and administer Federal-aid contracts in accordance with the current *Local Assistance Procedures Manual* (LAPM) including forms and Exhibits.

## XIV. Vehicle Manufacturers/Specialized Equipment (§26.49)

If Federal-aid contracts will include vehicle/specialized equipment procurements, SUB-RECIPIENT will require each vendor, as a condition of being authorized to bid or propose on vehicle/specialized equipment procurements, to certify that it has complied with the requirements of 49 CFR 26.69.

## XV. Reporting to the DLAE

SUB-RECIPIENT will promptly submit a copy of the Consultant Proposal DBE Commitment (Exhibit 10-O1) at the time of award of the consultant contract.

SUB-RECIPIENT will promptly submit a copy of Consultant Contract DBE Information (Exhibit 10-O2) or the Local Agency Bidder DBE Commitment (Construction Contracts) (Exhibit 15-G) to the DLAE within 30 days after execution of consultant or construction contract.

SUB-RECIPIENT will promptly submit a copy of the Final Report-Utilization of DBE, First-Tier

Subcontractors (Exhibit 17-F) of the LAPM, immediately upon completion of each consultant or construction contract.

**XVI. Certification (§26.83(a))**

SUB-RECIPIENT ensures that only DBE firms currently certified by the California Unified Certification Program (CUCP) will participate as DBEs on Federal-aid contracts.

**XVII. Confidentiality**

SUB-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.

By: _____ Date: _____
(Signature)

_____ Phone #: _____
(Print Name and Title)
ADMINISTERING AGENCY
(Authorized Governing Body Representative)

This California Department of Transportation's Disadvantaged Business Enterprise Program Implementation Agreement is accepted by:

_____ Date: _____
(Signature of DLAE)

_____
(Print Name of DLAE)

**Distribution:** (1) Original – DLAE
(2) Signed copy by the DLAE – Local Agency

# EXHIBIT 9-B LOCAL AGENCY DBE ANNUAL SUBMITTAL FORM

TO: CALTRANS DISTRICT ____
District Local Assistance Engineer

The information for Exhibit 9-B presented herein is in accordance with Title 49 of the Code of Federal Regulations (CFR), Part 26, and the State of California Department of Transportation (Caltrans) Disadvantaged Business Enterprise (DBE) Program Plan.

The City/County/Region of _____
submits our annual 9-B information for the Federal Fiscal Year _____ beginning on _____ and ending on September 30.

Disadvantaged Business Enterprise Liaison Officer (DBELO)

(Please provide the name, address, phone number, fax number, and electronic mail address of the DBELO for the coming Federal Fiscal Year.)

Planned Race-neutral Measures

(Please detail the race-neutral measures your local agency plans to implement for the upcoming Federal Fiscal Year per 49 CFR 26.51 and Section V of the Caltrans DBE Program Implementation Agreement for Local Agencies.)

Prompt Pay

Federal regulation 49 CFR 26.29 requires one of three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

(Attached is a listing of the three methods. On the attachment, please designate which prompt payment provision the local agency will use.)

Prompt Pay Enforcement Mechanism

49 CFR 26.29(d) requires providing appropriate means to enforce prompt payment. These means may include appropriate penalties for failure to comply with the terms and conditions of the contract. The means may also provide that any delay or postponement of payment among the parties may take place only for good cause with the local agency's prior written approval.

Please briefly describe the monitoring and enforcement mechanisms in place to ensure that all subcontractors, including DBEs, are promptly paid.

| | |
|---|---|
| _____ | _____ |
| (Signature) | (Date) |
| _____ | _____ |
| (Print Name and Title)<br>ADMINISTERING AGENCY<br>(Authorized Governing Body Representative) | (Phone Number) |
| _____ | _____ |
| (Signature of Caltrans District Local Assistance Engineer) | (Date) |

**Distribution:** (1) Original – DLAE
(2) Signed copy by the DLAE – Local Agency

(**Attachment**)

## Prompt Payment of Withheld Funds to Subcontractors

Federal regulation (49 CFR 26.29) requires one of the following three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

Please check the box of the method chosen by the local agency to ensure prompt and full payment of any retainage.

☐ **Method 1**: No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. 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 by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

☐ **Method 2**: No retainage will be held by the agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. 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 by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

☐ **Method 3**: The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. 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 by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

## EXHIBIT 9-C LOCAL AGENCY ADA ANNUAL CERTIFICATION FORM

# Local Agency ADA Annual Certification Form

49 CFR 27: Nondiscrimination on the Basis of Disability in
Programs or Activities
Receiving Federal Financial Assistance

Local Agency: _____

Program Year: _____

Date Certification submitted: _____

I. Name of ADA Liaison Officer: _____

Telephone Number: _____

E-mail Address: _____

II. ADA Complaint Procedure Adopted:

Yes: _____ Date of Adoption: _____

No: _____ Planned Date of Adoption: _____

Final Completion Date: _____

III. Self-evaluation completed:

Yes: _____ Date of Completion: _____

No: _____ Planned Date of Completion: _____

Final Completion Date: _____

System established for periodically reviewing and updating the evaluation: _____

IV. Transition Plan completed:

Yes: _____ Date of Completion: _____

Date of Implementation: _____

No: _____ Planned Date of Completion: _____

Final Completion Date: _____

V. Policies, procedures, and criteria for implementing ADA compliance improvements in maintenance and capital improvement programs have been reviewed and the required revisions have been made:

Yes: _____ No: _____

VI. Division of State Architect (DSA) Checklists are used to verify compliance of design packages, standard plans and field inspections to ensure compliance with both State and federal accessibility standards:

Yes: ☐ No: ☐

DSA website: http://www.dsa.dgs.ca.gov/Access/ud_accessmanual.htm

*Reminder: State of California Government Code Section 4454 requires Division of State Architect (DSA) review and approval of the plans and specifications for local agency pedestrian projects using State funds.*

VII. Standard Plans are reviewed and updated on an ongoing basis for full ADA and California Accessibility compliance:

Yes: ☐ No: ☐

_____ Date: _____

Signature
(ADA Liaison Officer)

**Distribution:** (1) Original - DLAE

# Exhibit 9-D DBE Contract Goal Methodology

**Policy:**
Local Agencies must submit DBE Contract Goals, including calculations for each contract funded with federal funds (as shown Contract Goal – Example") along with the Exhibit 12-D, "PS&E Checklist".

**Procedure for Calculating DBE Contract Goal:**

1. The cost estimate for the project must be finalized.
   For a construction project: the approximate, lump sum, final pay quantities and associated costs for each item of work must be completed.
   For a consultant project: the scope of work along with the cost estimate for the various professional disciplines necessary to complete the scope of work must be completed.
2. Determine from the final cost estimate what work items will be (typically) done by the prime contractor what work items can be subcontracted out. This does not mean that if the prime contractor is capable of performing all the work items, then no work can or will be subcontracted out. The Agency should make Good Faith Efforts to identify work items that can be subcontracted to DBEs. This can be done by reviewing past projects or from past experience to assess what work can be done by the prime and For example, in an AC overlay project, traffic control, striping, pavement marking, and storm water preparation are typically subcontracted out, and in a bridge sign project, geotechnical, computer aided drafting (CAD), and surveying can be subcontracted out. Since each project can be unique, care should be exercised in properly identifying work items that can be subcontracted out.
3. Determine the "DBE Work Factor" for each item of work to be subcontracted. The Work Factor is the percentage of work that can be performed by a DBE subcontractor for each item of work:

| Work Factor % | Description |
|---|---|
| 100.00% | DBE performs, manages and supervises the work item |
| 12.00% | DBE provides the material or supplies for work item |
| 10.00% | DBE provides the trucking operation for a work item |

4. For the work items that can be subcontracted, identify the Work Category Codes from the California Unified Certification Program (CUCP) DBE database.
5. For each Work Category Code, determine the number of available (able and willing) DBE subcontractors or subconsultants by carrying out a search in the CUCP DBE database. If the number of available DBE subcontractors or subconsultants is 10 or higher, the Work Category (item of work) will then be considered for determining the DBE Contract Goal.
6. Calculate the "DBE Work Dollar Amount" by multiplying the estimated cost of the work item by the "DBE Work Factor" established in Step 3.
7. Sum up the "DBE Work Dollar Amount" for each work item to arrive at the "Total DBE Work Dollar Amount".
8. Determine the "Percentage DBE Work" by dividing the "Total DBE Work Dollar Amount" by the estimated total cost of the project.
9. Calculate "DBE Contract Goal" by multiplying the "Percentage DBE Work" by "60%". The "60%" reflects the realistic representation of the available DBE participation as established using the CUCP DBE database.

**Common errors when evaluating Prime vs. Sub-Contractor work:**

1. Small dollar contracts or projects with limited scope (contract comprising very few work items) in which it is impractical to subcontract out any portion of the work. For example, a bridge, minor deck repair project comprising of sealing a few cracks and pot holes. Such a project can have a small contract dollar amount and a limited scope of work with very few work items thus limiting, if not eliminating, the feasibility for subcontracting.
2. Assume there are no subcontracting opportunities, because the Prime did all the work on a similar previous job.
3. Assume all the work can be subcontracted out leaving no work for a prime to perform.

**DBE Contract Goal - Example**

| Item No. | Approx. Quant. | Meas. Unit | Item Description | Unit Price | Total | Likely to be Performed by Sub-contractor (Y=Yes)? | Trucking or Supply of Material Involved (Y=Yes)? | Work Category Code (enter a code if corresponding cell in either Column G or H is "Y") | Number of Available DBEs | DBE Work Factor (input a percentage only if the number of available DBEs > 9) | DBE Work Dollar Amount | Comment |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | LS | Mobilization | $ 55,000.00 | $ 55,000.00 | | | 1 | 38 | 0.00% | $ 0.00 | 1 |
| | 1 | LS | Traffic Control | $ 50,000.00 | $ 50,000.00 | Y | | | | 10.00% | $ 5,000.00 | 1 |
| | | | | | $ 0.00 | | Y | | | 0.00% | $ 0.00 | 1 |
| | | | | | $ 0.00 | | | | | 0.00% | $ 0.00 | 1 |
| | | | | | $ 0.00 | | | | | 0.00% | $ 0.00 | 1 |
| | | | | | $ 0.00 | | | | | 0.00% | $ 0.00 | 1 |
| | | | | | $ 0.00 | | | | | 0.00% | $ 0.00 | 1 |
| | | | | | $ 0.00 | | | | | 0.00% | $ 0.00 | 1 |
| | | | | | $ 0.00 | | | | | 0.00% | $ 0.00 | 1 |
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| | | | | | $ 0.00 | | | | | 0.00% | $ 0.00 | |
| | | | | | $ 0.00 | | | | | 0.00% | $ 0.00 | |

**TOTAL** $ 105,000.00

**TOTAL DBE WORK AMOUNT** $ 5,000.00

**DBE Goal** 15.00%

| Work Code | Category |
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## EXHIBIT 9-E SAMPLE EVALUATION OF GOOD FAITH EFFORTS

# M e m o r a n d u m

**To:** **PROJECT FILE** **Date:** Month XX, XXXX
Project Number:
Bid Opening Date: Month XX, XXXX
Bidder: [Contractor/Consultant Name]
Type of Work: : [General Description of Work]
Bid Amount: [$ Award Amount]

**From:** **Name of Agency**

**Subject:** Evaluation of Good Faith Efforts

The _____Name of Agency_ established a Disadvantaged Business Enterprise (DBE) goal of _____ percent for this project. The bidder achieved _____ percent DBE participation.

The _____Name of Agency_'s evaluation of the apparent low bidder's Good Faith Efforts is based on the *"Guidance Concerning Good Faith Efforts"* contained in *49 CFR Part 26, Appendix A*. The efforts of the bidder were reviewed by the _Name of Department_____ from the information provided in Exhibit 15-H "DBE Information – Good Faith Efforts" signed and submitted by _name of low bidder___.

The _____Name of Agency_ determined that the Low Bidder __did not_ demonstrate Good Faith Efforts to meet the DBE participation goal of this project for the reasons cited in this evaluation report.

**EVALUATION**

**A. Items of work the bidder made available to DBE firms**

[Describe the work and approximate dollar amount, as a percentage of total work, made available to DBEs by the Low Bidder and was this sufficient to meet the DBE contract goal? If the bidder did not make enough work available to meet the goal, the bidder definitely did not make adequate efforts to meet the goal. The amount of work made available relative to the goal is generally positively correlated with the adequacy of the bidder's Good Faith Efforts.]

[Did the Low Bidder separate the work into economically feasible units to facilitate DBE participation?]

**B. Solicitation effort documentation**

[How many DBEs were originally contacted by the Low Bidder and did the Low Bidder conduct follow-up solicitations? What were the dates and was sufficient time allowed by the Low Bidder for the DBEs to respond?]

[Were the DBE firms provided information about the contract (location of project, contract number, bid date, items of work made available and contact information) in the Invitation for Bid from the Low Bidder]

[Did the Low Bidder solicit 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?]
[Did the Low Bidder provide proof of aforementioned items?]

[How many DBEs are capable of performing the work identified in A?

Use the California Unified Certification Program (CUCP) online database at: http://www.dot.ca.gov/hq/bep/find_certified.htm]

**C. Rejected DBE documentation**

[How many DBE quotes were accepted or rejected by the Low Bidder? Why were the quotes rejected?]
[Was/were quote(s) rejected when it was only marginally higher and could have substantially increased the DBE commitment or even allow it to meet the DBE goal?]

**D. Publication effort made to advertise the projects to include DBE participation**

[What publications were used and when to request DBE participation for this the project? Did the Low Bidder provide copies of publications?]

**E. Agencies, organizations, or groups contacted to provide assistance in contacting, recruiting and using DBEs**

[Did the Low Bidder make any contacts?]

**F. Efforts to provide information about the plans, specifications, and contract requirements**

[Did the Low Bidder provide contract information to interested DBEs and were these listed in the GFE?]

**G. Assistance with bonding, lines of credit, insurance, equipment, supplies, materials, and/or services**

[Did the Low Bidder assist any DBEs and were these listed in the GFE?]

**H. Additional data to support a demonstration of Good Faith Effort**

[Was any more information provided by the Low Bidder?]
[Does the Low Bidder's level of reported participation tend to support a finding of good faith?]
[Did the 2nd or 3rd low bidder meet the goal or get substantially more DBE commitment than the apparent low bidder? When an apparent low bidder fails to meet the goal and other bidders meet the goal, you may reasonably

**FINDING OF THE Name of Agency**

The Name of Agency finds that the Low Bidder did not demonstrate Good Faith Efforts to meet the DBE participation for this contract, for the reasons cited in the evaluation report. Consider the quantity, quality and intensity of the efforts of the Low Bidder to meet the DBE goal. Are these efforts of a bidder who is actively and aggressively trying to meet the goal?

| Submitted by: | Approved by: |
|---|---|
| (name) | (name) |
| (Title) | (Title) |

*Must be approved by someone other than the reviewer.

# EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____

3. Project Description: _____

4. Project Location: _____

5. Consultant's Name: _____ 6. Prime Certified DBE: ☐

| 7. Description of Work, Service, or Materials Supplied | 8. DBE Certification Number | 9. DBE Contact Information | 10. DBE % |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
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| | | | |
| | | | |
| | | | |

| Local Agency to Complete this Section | | |
|---|---|---|
| 17. Local Agency Contract Number: _____<br>18. Federal-Aid Project Number: _____<br>19. Proposed Contract Execution Date: _____ | **11. TOTAL CLAIMED DBE PARTICIPATION** | **%** |
| Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.<br><br>20. Local Agency Representative's Signature _____ 21. Date _____<br>22. Local Agency Representative's Name _____ 23. Phone _____<br>24. Local Agency Representative's Title _____ | IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.<br><br>12. Preparer's Signature _____ 13. Date _____<br>14. Preparer's Name _____ 15. Phone _____<br>16. Preparer's Title _____ | |

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

**ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

# INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

**1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
**2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
**3. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
**4. Project Location** - Enter the project location as it appears on the project advertisement.
**5. Consultant's Name** - Enter the consultant's firm name.
**6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
**7. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
**8. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
**9. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
**10. DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
**11. Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
**12. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
**13. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
**14. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
**15. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
**16. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

**17. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
**18. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
**19. Proposed Contract Execution Date** - Enter the proposed contract execution date.
**20. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
**21. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
**22. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
**23. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
**24. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

# EXHIBIT 10-R A &E SAMPLE CONTRACT LANGUAGE

(For Local Assistance Federal-aid Projects)

***NOTE TO LOCAL AGENCY - BE SURE THAT YOUR LEGAL STAFF REVIEWS AND APPROVES ALL CONSULTANT CONTRACTS BEFORE EXECUTION. THIS CONTRACT LANGUAGE IS ONLY SUGGESTED LANGUAGE. MODIFY AS RECOMMENDED BY YOUR OWN LEGAL STAFF AND TO FIT YOUR PARTICULAR REQUIREMENTS AND PROJECT.***

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## ARTICLE I INTRODUCTION

A. This contract is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the "CONSULTANT" is as follows:

_____

Incorporated in the State of (*NAME OF STATE*)
The Project Manager for the "CONSULTANT" will be *(NAME)*
The name of the "LOCAL AGENCY" is as follows:

_____

The Contract Administrator for LOCAL AGENCY will be (NAME)

B. The work to be performed under this contract is described in Article II entitled Statement of Work and the approved CONSULTANT's Cost Proposal dated *(DATE)*. The approved CONSULTANT's Cost Proposal is attached hereto (Attachment I) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence.

C. CONSULTANT agrees to indemnify and hold harmless LOCAL AGENCY, its officers, agents, and employees from any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of CONSULTANT. CONSULTANT will reimburse LOCAL AGENCY for any expenditure, including reasonable attorney fees, incurred by LOCAL AGENCY in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of CONSULTANT.

D. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of LOCAL AGENCY.

E. Without the written consent of LOCAL AGENCY, this contract is not assignable by CONSULTANT either in whole or in part.

F. No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

G. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

## ARTICLE II STATEMENT OF WORK

(*INSERT APPROPRIATE STATEMENT OF WORK INCLUDING A DESCRIPTION OF THE DELIVERABLES*)

A. Consultant Services

Detail based on the services to be furnished should be provided by CONSULTANT. Nature and extent should be verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. Reference to the appropriate standards for design or other standards for work performance stipulated in consultant contract should be included. Describe acceptance criteria, and if the responsible consultant/engineer shall sign all Plans, Specifications and Estimate (PS&E) and engineering data furnished under the contract including registration number. Environmental documents are not considered complete until a Caltrans District Senior Environmental Planner signs the Categorical Exclusion, a Caltrans Deputy District Director signs the Finding of No

Significant Impact, or the Caltrans District Director signs the Record of Decision [see Chapter 6, "*Environmental Procedures"* in the LAPM, and the *Standard Environmental Reference*].

B. Right of Way

State whether Right of Way requirements are to be determined and shown by CONSULTANT, whether land surveys and computations with metes and bounds descriptions are to be made, and whether Right of Way plots are to be furnished.

C. Surveys

State whether or not the CONSULTANT has the responsibility for performing preliminary or construction surveys.

D. Subsurface Investigations

State specifically whether or not CONSULTANT has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of CONSULTANT, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in the *Standard Environmental Reference*.

E. Local Agency Obligations

All data applicable to the project and in possession of LOCAL AGENCY or another agency, or government that are to be made available to CONSULTANT are referred to in the contract. Any other assistance or services to be furnished to CONSULTANT are to be stated clearly.

F. Conferences, Visits to Site, Inspection of Work

The contract provides for conferences as needed, visits to the site, and inspection of the work by representatives of the state, or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

G. Checking Shop Drawings

For contracts requiring the preparation of construction drawings, make provision for checking shop drawings. Payment for checking shop drawings by CONSULTANT may be included in the contract fee, or provision may be made for separate payment.

H. Consultant Services During Construction

The extent, if any of CONSULTANT's services during the course of construction as material testing, construction surveys. etc., are specified in the contract together with the method of payment for such services.

I. Documentation and Schedules

Contracts where appropriate, shall provide that CONSULTANT document the results of the work to the satisfaction of LOCAL AGENCY, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the contract objectives.

J. Deliverables and Number of Copies

The number of copies of papers or documents to be furnished, such as reports, brochures, sets of plans, specifications, or Right of Way plots is specified. Provision may be made for payment for additional copies.

## ARTICLE III CONSULTANT'S REPORTS OR MEETINGS

*(Choose either Option 1 or Option 2)*

*(Option 1 - Use paragraphs A & B below for standard contracts)*

A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the contract.

*(Option 2 - Use paragraphs A & B below for on-call contracts)*

A. CONSULTANT shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for LOCAL AGENCY's Contract Administrator or Project Coordinator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

## ARTICLE IV PERFORMANCE PERIOD (Verbatim)

*(A time must be set for beginning and ending the work under the contract. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the contract. If it is desirable that Critical Path Method (CPM) networks, or other types of schedules be prepared by CONSULTANT, they should be identified and incorporated into the contract.*

*(Choose either Option 1 or Option 2)*

*(Option 1 - Use paragraphs A & B below for standard and on-call contracts)*

A. This contract shall go into effect on (DATE), contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The contract shall end on (DATE), unless extended by contract amendment.

B. CONSULTANT is advised that any recommendation for contract award is not binding on LOCAL AGENCY until the contract is fully executed and approved by LOCAL AGENCY.

*(Option 2 - Use paragraph C below in addition to paragraphs A & B above for on-call contracts)*

C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this contract, the terms of the contract shall be extended by contract amendment.

## ARTICLE V ALLOWABLE COSTS AND PAYMENTS (Verbatim)

*(Choose either Option 1, 2, 3, or 4)*

*(Option 1 - Use paragraphs A through J below for Actual Cost-Plus-Fixed Fee contracts. Use Exhibit 10-H, Example #1 for Cost Proposal Format*)

A. The method of payment for this contract will be based on actual cost plus a fixed fee. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work.

CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY's approved overhead rate set forth in the Cost Proposal. In the event, that LOCAL AGENCY determines that a change to the work from that specified in the Cost Proposal and contract is required, the contract time or actual costs reimbursable by LOCAL AGENCY shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by contract amendment.

B. In addition to the allowable incurred costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of $(AMOUNT). The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.

C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

D. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.

E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article VI Termination.

F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.

G. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY including any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(*LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR*)

(*ADDRESS*)

H. The total amount payable by LOCAL AGENCY including the fixed fee shall not exceed $(Amount).

I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by LOCAL AGENCY's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

J. All subcontracts in excess of $25,000 shall contain the above provisions.

(*Option 2 - For Cost per Unit of Work contracts, replace paragraphs A & B of Option 1 with the following paragraphs A, B, and C and re-letter the remaining paragraphs. Adjust as necessary for work specific to your project. Use Exhibit 10-H, Example #3 for Cost Proposal Format)*

A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.

B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be $(Amount) per approved Cost Proposal. This rate shall be for a fully equipped vehicle, with radio and flashing yellow light (if needed), as specified in Article II of this contract.

The specified rate to be paid for equipment shall be, as listed in Attachment (Insert Attachment Number).

C. The method of payment for this contract, except those items to be paid for on a specified rate basis, will be based on cost per unit of work. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY approved overhead rate set forth in the approved Cost Proposal. In the event, LOCAL AGENCY determines that changed work from that specified in the approved Cost Proposal and contract is required; the actual costs reimbursable by LOCAL AGENCY may be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I," shall not be exceeded unless authorized by contract amendment.

D. All subcontracts in excess of $25,000 shall contain the above provisions.

*(Option 3 - Use paragraphs A through Q for Specific Rates of Compensation contracts [such as on-call contracts]. Use Exhibit 10-H, Example #2 for Cost Proposal Format)*

A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANTs Cost Proposal (Attachment Number). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract.

B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.

D. After a project to be performed under this contract is identified by LOCAL AGENCY, LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both LOCAL AGENCY and CONSULTANT.

E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's Cost Proposal.

F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

I. CONSULTANT shall not commence performance of work or services until this contract has been approved by LOCAL AGENCY, and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this contract.

J. A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.

K. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase of this contract, must be reimbursed by CONSULTANT prior to the expiration or termination of this contract. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

*(NAME OF LOCAL AGENCY/ NAME OF CONTRACT ADMINISTRATOR)*

(*ADDRESS*)

L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Contract.

M. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.

N. If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

O. Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.

P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this contract shall not exceed $ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Task Orders.

Q. All subcontracts in excess of $25,000 shall contain the above provisions.

*(Option 4 - Use paragraphs A through F below for lump sum contracts. Use Exhibit 10-H, Example #1 for Cost Proposal Format)*

A. The method of payment for this contract will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article II Statement of Work of this contract. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by contract amendment and approved by LOCAL AGENCY.

B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule

set forth in the Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article VI Termination.

C. CONSULTANT shall not commence performance of work or services until this contract has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this contract.

D. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice should be submitted within 60-calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(*LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR)*

(*ADDRESS*)

E. The total amount payable by LOCAL AGENCY shall not exceed $(Amount).

F. All subcontracts in excess of $25,000 shall contain the above provisions.

**ARTICLE VI TERMINATION (Verbatim)**

A. LOCAL AGENCY reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.

B. LOCAL AGENCY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, LOCAL AGENCY may proceed with the work in any manner deemed proper by LOCAL AGENCY. If LOCAL AGENCY terminates this contract with CONSULTANT, LOCAL AGENCY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to LOCAL AGENCY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.

C. The maximum amount for which the LOCAL AGENCY shall be liable if this contract is terminated is _____ dollars.

**ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS (Verbatim)**

A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to LOCAL AGENCY.

D. All subcontracts in excess of $25,000 shall contain the above provisions.

## ARTICLE VIII RETENTION OF RECORDS/AUDIT (Verbatim)

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and LOCAL AGENCY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, LOCAL AGENCY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and it's certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of $25,000 shall contain this provision.

## ARTICLE IX AUDIT REVIEW PROCEDURES (Verbatim)

A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.

B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this contract.

*(The following AUDIT CLAUSE must be inserted into all contracts of $150,000 or greater)*

D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

*(The following AUDIT CLAUSE must be inserted into all contracts of $3,500,000 or greater).*

E. CONSULTANT Cost Proposal is subject to a CPA ICR Audit Work Paper Review by Caltrans' Audit and Investigation (Caltrans). Caltrans, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

1. During a Caltrans' review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans will work with the CPA and/or CONSULTANT toward a resolution of issues that arise

during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at a provisional ICR until a FAR compliant ICR {e.g. 48 CFR, part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials Audit Guide; and other applicable procedures and guidelines}is received and approved by A&I. Provisional rates will be as follows:

a. If the proposed rate is less than 150% - the provisional rate reimbursed will be 90% of the proposed rate.
b. If the proposed rate is between 150% and 200% - the provisional rate will be 85% of the proposed rate.
c. If the proposed rate is greater than 200% - the provisional rate will be 75% of the proposed rate.

2. If Caltrans is unable to issue a cognizant letter per paragraph E.1. above, Caltrans may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
3. If the CONSULTANT fails to comply with the provisions of this Section E, or if Caltrans is still unable to issue a cognizant approval letter after the revised independent CPA-audited ICR is submitted, overhead cost reimbursement will be limited to the provisional ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this provisional ICR will become the actual and final ICR for reimbursement purposes under this contract.
4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) Caltrans approves or rejects the original or revised independent CPA-audited ICR; (2) all work under this contract has been completed to the satisfaction of LOCAL GAENCY; and, (3) Caltrans has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICETO local agency no later than 60 days after occurrence of the last of these items.

The provisional ICR will apply to this contract and all other contracts executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

## ARTICLE X SUBCONTRACTING (Verbatim)

A. Nothing contained in this contract or otherwise, shall create any contractual relation between LOCAL AGENCY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to LOCAL AGENCY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from LOCAL AGENCY'S obligation to make payments to the CONSULTANT.

B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by LOCAL AGENCY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by LOCAL AGENCY.

D. Any subcontract in excess of $25,000 entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

E. Any substitution of subconsultant(s) must be approved in writing by LOCAL AGENCY's Contract Administrator prior to the start of work by the subconsultant(s).

## ARTICLE XI EQUIPMENT PURCHASE (Verbatim)

A. Prior authorization in writing, by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding $5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding $5,000 prior authorization by LOCAL AGENCY's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

C. Any equipment purchased as a result of this contract is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of $5,000 or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than $5,000 is credited to the project.

D. All subcontracts in excess $25,000 shall contain the above provisions.

## ARTICLE XII STATE PREVAILING WAGE RATES (Verbatim)

*(Choose either Option 1 or Option 2)*

*(Option 1 - For contracts where a portion of the proposed work to be performed are crafts affected by state labor laws, use paragraphs A and B)*

A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

B. Any subcontract entered into as a result of this contract, if for more than $25,000 for public works construction or more than $15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See http://www.dir.ca.gov.

*(Option 2 - Use only paragraph A below when all of the proposed work in the contract is performed by crafts not affected by state labor laws or are not contemplated for use)*

A. The State of California's General Prevailing Wage Rates are not applicable to this contract.

**Note:** The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

## ARTICLE XIII CONFLICT OF INTEREST (Verbatim)

A. CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this contract, or any ensuing LOCAL AGENCY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing LOCAL AGENCY construction project, which will follow.

B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

C. Any subcontract in excess of $25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

*(Choose either Option 1 or Option 2 if appropriate)*

*(Option 1 - Use paragraphs D & E below with paragraphs A, B and C above for PS&E contracts only)*

D. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

E. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

*(Option 2 - Use paragraphs D, E & F below with paragraphs A, B and C above for Construction Contract Administration contracts only)*

D. CONSULTANT hereby certifies that neither CONSULTANT, its employees, nor any firm affiliated with CONSULTANT providing services on this project prepared the Plans, Specifications, and Estimate for any construction project included within this contract. An affiliated firm is one, which is subject to the control of the same persons through joint- ownership, or otherwise.

E. CONSULTANT further certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT, will bid on any construction subcontracts included within the construction contract. Additionally, CONSULTANT certifies that no person working under this contract is also employed by the construction contractor for any project included within this contract.

F. Except for subconsultants whose services are limited to materials testing, no subconsultant who is providing service on this contract shall have provided services on the design of any project included within this contract.

## ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION (Verbatim)

CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

## ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING (Verbatim)

*(Include this article in all contracts where federal funding will exceed $150,000. If less than $150,000 in federal funds will be expended on the contract; delete this article and re-number the notification article which follows.)*

A. CONSULTANT certifies to the best of his or her knowledge and belief that:

1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

B. 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.

C. CONSULTANT also agrees by signing this document 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 sub recipients shall certify and disclose accordingly.

## ARTICLE XVI STATEMENT OF COMPLIANCE

A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

B. During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

*(For contracts with Federal funding, add paragraphs C & D)*

C. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on

the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

D. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

## ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or 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 three (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 three (3) years. Any exceptions to this certification must be disclosed to LOCAL AGENCY.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

## ARTICLE XVIII FUNDING REQUIREMENTS

A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

B. This contract is valid and enforceable only, if sufficient funds are made available to LOCAL AGENCY for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this contract in any manner.

C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

D. LOCAL AGENCY has the option to void the contract under the 30-day termination clause pursuant to Article VI, or by mutual agreement to amend the contract to reflect any reduction of funds.

## ARTICLE XIX CHANGE IN TERMS

A. This contract may be amended or modified only by mutual written agreement of the parties.

B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.

C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this contract without prior written approval by LOCAL AGENCY's Contract Administrator.

## ARTICLE XX DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

A. This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. The goal for DBE participation for this contract is_____%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT 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 LOCAL AGENCY deems appropriate.

D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.

E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).

F. A DBE performs a Commercially Useful Function (CUF) 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 CUF, 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 CUF, 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 other relevant factors.

G. A DBE does not perform a CUF 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, examine similar transactions, particularly those in which DBEs do not participate.

H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

I. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

J. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.

K. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within 30 days.

## ARTICLE XXI CONTINGENT FEE

CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

## ARTICLE XXII DISPUTES

*(Choose either Option 1 or Option 2)*

*(Option 1 - Use paragraphs A through C below for all contracts without PS&E submittal)*

A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and (Insert Department Head or Official), who may consider written or verbal information submitted by CONSULTANT.

B. Not later than 30 days after completion of all work under the contract, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this contract.

*(Option 2 - Replace Paragraph B, above, with the following for contracts requiring the submission of PS&E)*

B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

## ARTICLE XXIII INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

## ARTICLE XXIV SAFETY

*(Use on all contracts regardless of funding source)*

A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

B. Pursuant to the authority contained in Section 591 of the Vehicle Code, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

*(Add to all contracts, which may require trenching of five feet or deeper)*

D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

## ARTICLE XXV INSURANCE

*(Choose either Option 1 or Option 2)*

*(Option 1 - for Contracts with a scope of services that may require the consultant or subconsultant to work within the operating state or Local Agency Highway Right of Way; where there would be exposure to public traffic or construction operations)*

A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than one million dollars ($1,000,000) per occurrence.

B. The Certificate of Insurance will provide:

   1. That the insurer will not cancel the insured's coverage without 30 days prior written notice to LOCAL AGENCY.
   2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this contract are concerned.
   3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.

C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

*(Option 2 - For Contracts with a scope of services that will not require the Consultant or subconsultant to work within the operating State or LOCAL AGENCY Highway Right of Way where there would be exposure to public traffic or construction Consultant operations)*

CONSULTANT is not required to show evidence of general comprehensive liability insurance.

## ARTICLE XXVI OWNERSHIP OF DATA

A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in LOCAL AGENCY; and no further agreement will be necessary to transfer ownership to LOCAL AGENCY. CONSULTANT shall furnish LOCAL AGENCY all necessary copies of data needed to complete the review and approval process.

B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.

C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by LOCAL AGENCY of the machine-readable information and data provided by CONSULTANT under this contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by LOCAL AGENCY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by CONSULTANT.

D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).

E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

F. Any subcontract in excess of $25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

## ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY's CONSTRUCTION CONTRACTOR

A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this contract.

C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

D. Any subcontract in excess of $25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

## ARTICLE XXVIII CONFIDENTIALITY OF DATA

A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.

B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

C. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.

E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

*(For PS&E contracts add paragraph F, below, to paragraphs A through E, above)*

F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than LOCAL AGENCY.

## ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

## ARTICLE XXX EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

## ARTICLE XXXI RETENTION OF FUNDS

A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.

*(Local agency to include either B, C, or D below; delete the other two)*

B. No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

C. No retainage will be held by the Agency from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

D. The Agency shall hold retainage from the prime consultant and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work, and pay retainage to the prime consultant based on these acceptances. The prime consultant, or subconsultant, shall return all monies withheld in retention from a subconsultant within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over thirty (30) days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime Consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

**ARTICLE XXXII NOTIFICATION**

All notices hereunder and communications regarding interpretation of the terms of this contract and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

_____*(CONSULTANT)*_____
_____*(NAME)*_____, Project Manager
_____*(ADDRESS)*_____
_____

LOCAL AGENCY:

___*(LOCAL AGENCY)*_____
_____*(NAME)*_____, Contract Administrator
_____*(ADDRESS)*_____
_____

**ARTICLE XXXIII CONTRACT**

The two parties to this contract, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this contract constitutes the entire agreement which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this contract as evidenced by the signatures below.

**ARTICLE XXXIV SIGNATURES**

| (Name of CONSULTANT) | (Name of LOCAL AGENCY) |
|---|---|
| __(Signature)_____ | __(Signature)_____ |
| (Name of Signer) | (Name of Signer) |

**DATE:**_____

# EXHIBIT 12-G REQUIRED FEDERAL-AID CONTRACT LANGUAGE

(For Local Assistance Construction Projects)

The following language must be incorporated into all Local Assistance Federal-aid construction contracts. The following language, with minor edits, was taken from the Code of Federal Regulations.

**1. DISADVANTAGED BUSINESS ENTERPRISES (DBE) ..... 2**
**A. DBE COMMITMENT SUBMITTAL ..... 2**
**B. GOOD FAITH EFFORTS SUBMITTAL ..... 3**
**C. EXHIBIT 15-G - CONSTRUCTION CONTRACT DBE COMMITMENT ..... 4**
**D. SUBCONTRACTOR AND DISADVANTAGED BUSINESS ENTERPRISE RECORDS ..... 4**
**E. PERFORMANCE OF DISADVANTAGED BUSINESS ENTERPRISES ..... 4**
**2. BID OPENING ..... 5**
**3. BID RIGGING ..... 5**
**4. CONTRACT AWARD ..... 6**
**5. CONTRACTOR LICENSE ..... 6**
**6. CHANGED CONDITIONS ..... 6**
**A. DIFFERING SITE CONDITIONS ..... 6**
**B. SUSPENSIONS OF WORK ORDERED BY THE ENGINEER ..... 6**
**C. SIGNIFICANT CHANGES IN THE CHARACTER OF WORK ..... 7**
**7. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES ..... 7**
**8. BUY AMERICA ..... 7**
**9. QUALITY ASSURANCE ..... 8**
**10. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS ..... 8**
**11. FORM FHWA-1273 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONTRACTS ..... 9**
**12. FEMALE AND MINORITY GOALS ..... 20**
**13. FEDERAL TRAINEE PROGRAM ..... 21**
**14. TITLE VI ASSURANCES ..... 23**
**15. USE OF UNITED STATE-FLAG VESSELS ..... 24**

## 1. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

Under 49 CFR 26.13(b):

> The contractor, subrecipient 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.

Take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49 CFR 26).

To ensure equal participation of DBEs provided in 49 CFR 26.5, the Agency shows a goal for DBEs.

Make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

Meet the DBE goal shown elsewhere in these special provisions or demonstrate that you made adequate good faith efforts to meet this goal.

It is your responsibility to verify that the DBE firm is certified as DBE at date of bid opening. For a list of DBEs certified by the California Unified Certification Program, go to: http://www.dot.ca.gov/hq/bep/find_certified.htm.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal.

Credit for materials or supplies you purchase from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are obtained from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit towards the goal if you employ a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55(d)(1) through (4) and (6).

### *a. DBE Commitment Submittal*

Submit the Exhibit 15-G *Construction Contract DBE Commitment* form, included in the Bid book. If the form is not submitted with the bid, remove the form from the Bid book before submitting your bid.

If the DBE Commitment form is not submitted with the bid, the apparent low bidder, the 2nd low bidder, and the 3rd low bidder must complete and submit the DBE Commitment form to the Agency. DBE Commitment form must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

Other bidders do not need to submit the DBE Commitment form unless the Agency requests it. If the Agency requests you to submit a DBE Commitment form, submit the completed form within 4 business days of the request.

Submit written confirmation from each DBE stating that it is participating in the contract. Include confirmation with the DBE Commitment form. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract.

If you do not submit the DBE Commitment form within the specified time, the Agency will find your bid nonresponsive.

### *b. Good Faith Efforts Submittal*

If you have not met the DBE goal, complete and submit the DBE Information - Good Faith Efforts, Exhibit 15-H, form with the bid showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed towards obtaining participation by DBEs will be considered. If good faith efforts documentation is not submitted with the bid, it must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

If your DBE Commitment form shows that you have met the DBE goal or if you are required to submit the DBE Commitment form, you must also submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Agency finds that the DBE goal has not been met.

Good faith efforts documentation must include the following information and supporting documents, as necessary:

1. Items of work you have made available to DBE firms. Identify those items of work you might otherwise perform with your own forces and those items that have been broken down into economically feasible units to facilitate DBE participation. For each item listed, show the dollar value and percentage of the total contract. It is your responsibility to demonstrate that sufficient work to meet the goal was made available to DBE firms.
2. Names of certified DBEs and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the DBEs were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit certified DBEs through all reasonable and available means and provide sufficient time to allow DBEs to respond.
3. Name of selected firm and its status as a DBE for each item of work made available. Include name, address, and telephone number of each DBE that provided a quote and their price quote. If the firm selected for the item is not a DBE, provide the reasons for the selection.
4. Name and date of each publication in which you requested DBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the DBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.
7. List of efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials, excluding supplies and equipment that the DBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by you, identify the name of the DBE assisted, nature of the assistance offered, and date assistance was provided. Provide copies of supporting documents, as appropriate.
8. Any additional data to support demonstration of good faith efforts.

The Agency may consider DBE commitments of the 2nd and 3rd bidders when determining whether the low bidder made good faith efforts to meet the DBE goal.

### *c. Exhibit 15-G - Construction Contract DBE Commitment*

Complete and sign Exhibit 15-G *Construction Contract DBE Commitment* included in the contract documents regardless of whether DBE participation is reported.

Provide written confirmation from each DBE that the DBE is participating in the Contract. A copy of a DBE's quote serves as written confirmation. If a DBE is participating as a joint venture partner, the Agency encourages you to submit a copy of the joint venture agreement.)

### *d. Subcontractor and Disadvantaged Business Enterprise Records*

Use each DBE subcontractor as listed on Exhibit 12-B *Bidder's List of Subcontractors (DBE and Non-DBE)* and Exhibit 15-G *Construction Contract DBE Commitment* form unless you receive authorization for a substitution.

The Agency requests the Contractor to:

1. Notify the Engineer of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
   - Name and business address of each 1st-tier subcontractor
   - Name and business address of each DBE subcontractor, DBE vendor, and DBE trucking company, regardless of tier
   - Date of payment and total amount paid to each business

If you are a DBE contractor, include the date of work performed by your own forces and the corresponding value of the work.

Before the 15th of each month, submit a Monthly DBE Trucking Verification form.

If a DBE is decertified before completing its work, the DBE must notify you in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify you in writing of the certification date. Submit the notifications. On work completion, complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form. Submit the form within 30 days of contract acceptance.

Upon work completion, complete Exhibit 17-F *Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors*. Submit it within 90 days of contract acceptance. The Agency will withhold $10,000 until the form is submitted. The Agency releases the withhold upon submission of the completed form.

### *e. Performance of Disadvantaged Business Enterprises*

DBEs must perform work or supply materials as listed in the Exhibit 15-G *Construction Contract DBE Commitment* form, included in the Bid.

Do not terminate or substitute a listed DBE for convenience and perform the work with your own forces or obtain materials from other sources without authorization from the Agency.

The Agency authorizes a request to use other forces or sources of materials if it shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. You stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet your bond requirements.

3. Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials.
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. Agency determines other documented good cause.

Notify the original DBE of your intent to use other forces or material sources and provide the reasons. Provide the DBE with 5 days to respond to your notice and advise you and the Agency of the reasons why the use of other forces or sources of materials should not occur. Your request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph
2. Notices from you to the DBE regarding the request
3. Notices from the DBEs to you regarding the request

If a listed DBE is terminated or substituted, you must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet the DBE goal.

The substitute DBE must be certified as a DBE at the time of request for substitution.

Unless the Agency authorizes (1) a request to use other forces or sources of materials or (2) a good faith effort for a substitution of a terminated DBE, the Agency does not pay for work listed on the Exhibit 15-G *Construction Contract DBE Commitment* form unless it is performed or supplied by the listed DBE or an authorized substitute.

**2. BID OPENING** The Agency publicly opens and reads bids at the time and place shown on the *Notice to Bidders*.

**3. BID RIGGING** The U.S. Department of Transportation (DOT) provides a toll-free hotline to report bid rigging activities. Use the hotline to report bid rigging, bidder collusion, and other fraudulent activities. The hotline number is

(800) 424-9071. The service is available 24 hours 7 days a week and is confidential and anonymous. The hotline is part of the DOT's effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General.

**4. CONTRACT AWARD** If the Agency awards the contract, the award is made to the lowest responsible bidder.

**5. CONTRACTOR LICENSE**

The Contractor must be properly licensed as a contractor from contract award through Contract acceptance (Public Contract Code § 10164).

**6. CHANGED CONDITIONS**

***a. Differing Site Conditions***

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
2. Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.
4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the Local Agency, at their option.)

***b. Suspensions of Work Ordered by the Engineer***

*1.* If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

*2.* Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

*3.* No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

*4.* No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

***c. Significant Changes in the Character of Work***

1. The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.
2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.
3. If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
4. The term "significant change" shall be construed to apply only to the following circumstances:
   - When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
   - When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

## 7. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES

The Contractor shall begin work within 15 calendar days after the contract has been approved by the attorney appointed and authorized to represent the City/County of _____.

This work shall be diligently prosecuted to completion before the expiration of WORKING DAYS beginning on the fifteenth 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.

## 8. BUY AMERICA

Furnish steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

1. Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478 (03/24/1995)];
2. If the total combined cost of the materials does not exceed the greater of 0.1 percent of the total bid or $2,500, materials produced outside the U.S. may be used.

Production includes:

1. Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending, grinding, and drilling) or chemical composition;
2. Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

## 9. QUALITY ASSURANCE

The Agency uses a Quality Assurance Program (QAP) to ensure a material is produced to comply with the Contract.

You may examine the records and reports of tests the Agency performs if they are available at the job site.

Schedule work to allow time for QAP.

## 10. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS

(The local agency must include one of the following three provisions to ensure prompt and full payment of any retainage from the prime contractor, or subcontractor, to a subcontractor. Remove or strike out the methods not used.)

(EITHER)

No retainage will be withheld by the agency from progress payments due the prime contractor. Retainage by the prime contractor or subcontractors is prohibited and no retainage will be held by the prime contractor from progress due subcontractors. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor or deficient subcontract performance, or noncompliance by a subcontractor.

(OR)

No retainage will be held by the agency from progress payments due the prime contractor. Any retainage held by the prime contractors or subcontractors from progress payments due subcontractors shall be promptly paid in full to subcontractors within 30 days after the subcontractor's work is satisfactorily completed. Federal law (49CFR26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

(OR)

The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime contractor, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall

subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

## 11. FORM FHWA-1273 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONTRACTS

(Excluding ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS)

[The following 10 pages must be physically inserted into the contract without modification.]

FHWA-1273 -- Revised May 1, 2012

**REQUIRED CONTRACT PROVISIONS**
**FEDERAL-AID CONSTRUCTION CONTRACTS**

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, 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.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**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, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) 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 provisions of the Americans with 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 contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its 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, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program 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 minorities and women.

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 minorities and women 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 minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women 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, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such 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 insure 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 its 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 their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

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 employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 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 good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith 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 contracting agency 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 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 minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. 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 contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. 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. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. 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 the contracting agency deems appropriate.

**11. 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 the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours 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; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency 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. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

**III. NONSEGREGATED FACILITIES**

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

**IV. DAVIS-BACON AND RELATED ACT PROVISIONS**

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

**1. Minimum wages**

a. All laborers and mechanics 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 issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, 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 29 CFR 5.5(a)(4). 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. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) 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.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), 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 Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The 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.

(3) In the event the contractor, the laborers or mechanics to be employed in the 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. The Wage and Hour 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.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. 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 shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as 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.

**2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor 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, so 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 contracting agency 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.

**3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her

correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of 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. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) 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 shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each 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 Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) 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 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, 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 FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action 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.

**4. Apprentices and trainees**

a. Apprentices (programs of the USDOL).

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 U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or 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 Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen 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 worker 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 on 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 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's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

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 journeymen 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 determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

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 U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman 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 wage rate on the wage determination which provides for less than full fringe benefits for apprentices. 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.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor 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. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. 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.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 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 U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required

by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages**. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the 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 or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor 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 (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

**VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

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 contracting agency. 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 635.116).

a. The term “perform work with its own organization” refers to workers employed or leased 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 or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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 or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI 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 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 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 contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

**VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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 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. 3704).

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.3704).

**VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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, Form FHWA-1022 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:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of 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 under this title or imprisoned not more than 5 years or both."

**IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

**X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1**. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier 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 first tier 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 first tier 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 contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier 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," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered

transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first 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 entering into this transaction.

g. The prospective first tier 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 Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

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 is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective 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.

* * * * *

**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-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;

(3) 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 (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective 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 Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

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," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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 exceeding the $25,000 threshold.

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 is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

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 Participants:**

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 participating in covered transactions 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.

* * * * *

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is 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, 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 its bid or proposal that the participant 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.

## 12. FEMALE AND MINORITY GOALS

To comply with Section II, "Nondiscrimination," of "Required Contract Provisions Federal-Aid Construction Contracts," the following are goals for female and minority utilization goals for Federal-aid construction contracts and subcontracts that exceed $10,000:

The nationwide goal for female utilization is 6.9 percent.

The goals for minority utilization [45 Fed Reg 65984 (10/3/1980)] are as follows:

**MINORITY UTILIZATION GOALS**

| Economic Area | | Goal (Percent) |
|---|---|---|
| 174 | Redding CA:<br>Non-SMSA (Standard Metropolitan Statistical Area) Counties:<br>CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehama | 6.8 |
| 175 | Eureka, CA<br>Non-SMSA Counties:<br>CA Del Norte; CA Humboldt; CA Trinity | 6.6 |
| 176 | San Francisco-Oakland-San Jose, CA:<br>SMSA Counties:<br>7120 Salinas-Seaside-Monterey, CA<br>CA Monterey<br>7360 San Francisco-Oakland<br>CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo<br>7400 San Jose, CA<br>CA Santa Clara, CA<br>7485 Santa Cruz, CA<br>CA Santa Cruz<br>7500 Santa Rosa<br>CA Sonoma<br>8720 Vallejo-Fairfield-Napa, CA<br>CA Napa; CA Solano<br>Non-SMSA Counties:<br>CA Lake; CA Mendocino; CA San Benito | <br><br>28.9<br><br>25.6<br><br>19.6<br><br>14.9<br><br>9.1<br><br>17.1<br><br>23.2 |
| 177 | Sacramento, CA:<br>SMSA Counties:<br>6920 Sacramento, CA<br>CA Placer; CA Sacramento; CA Yolo<br>Non-SMSA Counties<br>CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA Yuba | <br><br>16.1<br><br>14.3 |
| 178 | Stockton-Modesto, CA:<br>SMSA Counties:<br>5170 Modesto, CA<br>CA Stanislaus<br>8120 Stockton, CA<br>CA San Joaquin<br>Non-SMSA Counties<br>CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Tuolumne | <br><br>12.3<br><br>24.3<br><br>19.8 |

| | | |
|---|---|---|
| 179 | Fresno-Bakersfield, CA<br>SMSA Counties:<br>0680 Bakersfield, CA<br>CA Kern<br>2840 Fresno, CA<br>CA Fresno<br>Non-SMSA Counties:<br>CA Kings; CA Madera; CA Tulare | <br><br>19.1<br><br>26.1<br><br>23.6 |
| 180 | Los Angeles, CA:<br>SMSA Counties:<br>0360 Anaheim-Santa Ana-Garden Grove, CA<br>CA Orange<br>4480 Los Angeles-Long Beach, CA<br>CA Los Angeles<br>6000 Oxnard-Simi Valley-Ventura, CA<br>CA Ventura<br>6780 Riverside-San Bernardino-Ontario, CA<br>CA Riverside; CA San Bernardino<br>7480 Santa Barbara-Santa Maria-Lompoc, CA<br>CA Santa Barbara<br>Non-SMSA Counties<br>CA Inyo; CA Mono; CA San Luis Obispo | <br><br>11.9<br><br>28.3<br><br>21.5<br><br>19.0<br><br>19.7<br><br>24.6 |
| 181 | San Diego, CA:<br>SMSA Counties<br>7320 San Diego, CA<br>CA San Diego<br>Non-SMSA Counties<br>CA Imperial | <br><br>16.9<br><br>18.2 |

For each July during which work is performed under the contract, you and each non material-supplier subcontractor with a subcontract of $10,000 or more must complete Form FHWA PR-1391 (Appendix C to 23 CFR 230). Submit the forms by August 15.

## 13. FEDERAL TRAINEE PROGRAM

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

This section applies if a number of trainees or apprentices is specified in the special provisions.

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

You have primary responsibility for meeting this training requirement.

If you subcontract a contract part, determine how many trainees or apprentices are to be trained by the subcontractor.

Include these training requirements in your subcontract.

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

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

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

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

Obtain the City/County's of _____ approval for this submitted information before you start work. The City/County of _____ credits you for each apprentice or trainee you employ on the work who is currently enrolled or becomes enrolled in an approved program.

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

Do not employ as an apprentice or trainee an employee:

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

Ask the employee if the employee has successfully completed a training course leading to journeyman status or has been employed as a journeyman. Your records must show the employee's answers to the questions.

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

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

Obtain the State's approval for your training program before you start work involving the classification covered by the program.

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

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

1. For on-site training
2. For off-site training if the apprentice or trainee is currently employed on a Federal-aid project and you do at least one of the following:
   - Contribute to the cost of the training
   - Provide the instruction to the apprentice or trainee
   - Pay the apprentice's or trainee's wages during the off-site training period

3. If you comply this section.

Each apprentice or trainee must:

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

Furnish the apprentice or trainee:

1. Copy of the program you will comply with in providing the training
2. Certification showing the type and length of training satisfactorily completed

## 14. TITLE VI ASSURANCES

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONTRACTOR) agrees as follows:

(1) Compliance with Regulations: CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) Nondiscrimination: CONTRACTOR, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONTRACTOR of the CONTRACTOR'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the California Department of Transportation or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the California Department of Transportation or the FHWA as appropriate, and shall set forth what efforts CONTRACTOR has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this agreement, the California Department of Transportation shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to CONTRACTOR under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONTRACTOR shall take such action with respect to any sub-agreement or procurement as the California Department of Transportation or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONTRACTOR may request the California Department of Transportation enter into such litigation to protect the interests of the State, and, in addition, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

## 15. USE OF UNITED STATE-FLAG VESSELS

The CONTRACTOR agrees-

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carries, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
2. To Furnish within 20 days following the date of loading for shipments originating within the United State or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

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**MAINTAIN RECORDS AND SUBMIT REPORTS DOCUMENTING YOUR PERFORMANCE UNDER THIS SECTION**

# EXHIBIT 15-G CONSTRUCTION CONTRACT DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____

3. Project Description: _____

4. Project Location: _____

5. Bidder's Name: _____ 6. Prime Certified DBE: ☐ 7. Bid Amount: _____

8. Total Dollar Amount for **ALL** Subcontractors: _____ 9. Total Number of **ALL** Subcontractors: _____

| 10. Bid Item Number | 11. Description of Work, Service, or Materials Supplied | 12. DBE Certification Number | 13. DBE Contact Information (Must be certified on the date bids are opened) | 14. DBE Dollar Amount |
|---|---|---|---|---|
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**Local Agency to Complete this Section**

21. Local Agency Contract Number: _____

22. Federal-Aid Project Number: _____

23. Bid Opening Date: _____

24. Contract Award Date: _____

Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.

25. Local Agency Representative's Signature _____ 26. Date _____

27. Local Agency Representative's Name _____ 28. Phone _____

29. Local Agency Representative's Title _____

**15. TOTAL CLAIMED DBE PARTICIPATION** **$** _____ **%** _____

IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable with the names and items of the work in the "Subcontractor List" submitted with your bid. Written confirmation of each listed DBE is required.

16. Preparer's Signature _____ 17. Date _____

18. Preparer's Name _____ 19. Phone _____

20. Preparer's Title _____

DISTRIBUTION: 1. Original – Local Agency
2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract. Include additional copy with award package.

**ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

# INSTRUCTIONS – CONSTRUCTION CONTRACT DBE COMMITMENT

CONTRACTOR SECTION

**1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
**2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
**3. Project Location** - Enter the project location as it appears on the project advertisement.
**4. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
**5. Bidder's Name** - Enter the contractor's firm name.
**6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
**7. Bid Amount** - Enter the total contract bid dollar amount for the prime contractor.
**8. Total Dollar Amount for ALL Subcontractors** – Enter the total dollar amount for all subcontracted contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime contractor information in this count.
**9. Total number of ALL subcontractors** – Enter the total number of all subcontracted contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime contractor information in this count.
**10. Bid Item Number** - Enter bid item number for work, services, or materials supplied to be provided.
**11. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime contractor's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
**12. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
**13. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted contractors. Also, enter the prime contractor's name and phone number, if the prime is a DBE.
**14. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime contractor if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
**15. Total Claimed DBE Participation** - $: Enter the total dollar amounts entered in the "DBE Dollar Amount" column. %: Enter the total DBE participation claimed ("Total Claimed DBE Participation Dollars" divided by item "Bid Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
**16. Preparer's Signature** - The person completing the DBE commitment form on behalf of the contractor's firm must sign their name.
**17. Date** - Enter the date the DBE commitment form is signed by the contractor's preparer.
**18. Preparer's Name** - Enter the name of the person preparing and signing the contractor's DBE commitment form.
**19. Phone** - Enter the area code and phone number of the person signing the contractor's DBE commitment form.
**20. Preparer's Title** - Enter the position/title of the person signing the contractor's DBE commitment form.

LOCAL AGENCY SECTION

**21. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
**22. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
**23. Bid Opening Date** - Enter the date contract bids were opened.
**24. Contract Award Date** - Enter the date the contract was executed.
**25. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Contractor Section of this form is complete and accurate.
**26. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
**27. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the contractor's DBE commitment form.
**28. Phone** - Enter the area code and phone number of the person signing the contractor's DBE commitment form.
**29. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the contractor's DBE commitment form.

## EXHIBIT 15-H DBE INFORMATION —GOOD FAITH EFFORTS

# DBE INFORMATION - GOOD FAITH EFFORTS

Federal-aid Project No. _____ Bid Opening Date _____

The _____established a Disadvantaged Business Enterprise (DBE) goal of 15.00% for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the "Local Agency Bidder DBE Commitment" form indicates that the bidder has met the DBE goal. This will protect the bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the "Local Agency Bidder DBE Commitment" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions:

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 |
|---|---|---|
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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 | Bidder Normally Performs Item (Y/N) | Breakdown of Items | Amount ($) | Percentage Of Contract |
|---|---|---|---|---|
| | | | | |
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D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

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):

_____
_____

**NOTE**: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

# EXHIBIT 17-F FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS

| 1. Local Agency Contract Number | 2. Federal-Aid Project Number | 3. Local Agency | 4. Contract Completion Date |
|---|---|---|---|
| | | | |

| 5. Contractor/Consultant | 6. Business Address | 7. Final Contract Amount |
|---|---|---|
| | | |

| 8. Contract Item Number | 9. Description of Work, Service, or Materials Supplied | 10. Company Name and Business Address | 11. DBE Certification Number | 12. Contract Payments | | 13. Date Work Completed | 14. Date of Final Payment |
|---|---|---|---|---|---|---|---|
| | | | | Non-DBE | DBE | | |
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| 15. ORIGINAL DBE COMMITMENT AMOUNT $ | | | 16. TOTAL | | | | |

List all first-tier subcontractors/subconsultants and DBEs 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 the time of award, provide comments on an additional page. List actual amount paid to each entity. If no subcontractors/subconsultants were used on the contract, indicate on the form.

| **I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT** | | | |
|---|---|---|---|
| 17. Contractor/Consultant Representative's Signature | 18. Contractor/Consultant Representative's Name | 19. Phone | 20. Date |
| **I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAS BEEN MONITORED** | | | |
| 21. Local Agency Representative's Signature | 22. Local Agency Representative's Name | 23. Phone | 24. Date |

DISTRIBUTION: Original – Local Agency, Copy – Caltrans District Local Assistance Engineer. Include with Final Report of Expenditures

**ADA NOTICE**: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

## INSTRUCTIONS – FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS

**1. Local Agency Contract Number -** Enter the Local Agency contract number or identifier.
**2. Federal-Aid Project Number -** Enter the Federal-Aid Project Number.
**3. Local Agency -** Enter the name of the local or regional agency that is funding the contract.
**4. Contract Completion Date -** Enter the date the contract was completed.
**5. Contractor/Consultant -** Enter the contractor/consultant's firm name.
**6. Business Address -** Enter the contractor/consultant's business address.
**7. Final Contract Amount -** Enter the total final amount for the contract.
**8. Contract Item Number -** Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
**9. Description of Work, Services, or Materials Supplied -** Enter description of work, services, or materials provided. Indicate all work to be performed by DBEs including work performed by the prime contractor/consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
**10. Company Name and Business Address -** Enter the name, address, and phone number of all subcontracted contractors/consultants. Also, enter the prime contractor/consultant's name and phone number, if the prime is a DBE.
**11. DBE Certification Number -** Enter the DBE's Certification Identification Number. Leave blank if subcontractor is not a DBE.
**12. Contract Payments -** Enter the subcontracted dollar amount of the work performed or service provided. Include the prime contractor/consultant if the prime is a DBE. The Non-DBE column is used to enter the dollar value of work performed by firms that are not certified DBE or for work after a DBE becomes decertified.
**13. Date Work Completed -** Enter the date the subcontractor/subconsultant's item work was completed.
**14. Date of Final Payment -** Enter the date when the prime contractor/consultant made the final payment to the subcontractor/subconsultant for the portion of work listed as being completed.
**15. Original DBE Commitment Amount -** Enter the "Total Claimed DBE Participation Dollars" from Exhibits 15-G or 10-O2 for the contract.
**16. Total -** Enter the sum of the "Contract Payments" Non-DBE and DBE columns.
**17. Contractor/Consultant Representative's Signature -** The person completing the form on behalf of the contractor/consultant's firm must sign their name.
**18. Contractor/Consultant Representative's Name -** Enter the name of the person preparing and signing the form.
**19. Phone -** Enter the area code and telephone number of the person signing the form.
**20. Date -** Enter the date the form is signed by the contractor's preparer.
**21. Local Agency Representative's Signature -** A Local Agency Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
**22. Local Agency Representative's Name -** Enter the name of the Local Agency Representative signing the form.
**23. Phone -** Enter the area code and telephone number of the person signing the form.
**24. Date -** Enter the date the form is signed by the Local Agency Representative.